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EXPANDING THE LAWYER'S TOOLKIT OF SKILLS AND COMPETENCIES:

Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law

Susan Swaim Daicoff*

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INTRODUCTION

The legal profession is in the midst of rapid and dramatic change,¹ fueled by longstanding dissatisfaction

1. See AMERICAN BAR ASSOCIATION, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (a very influential assessment of the fundamental nontraditional skills and professional values that should be taught in law school, emphasizing the value of practical skills instruction, often referred to as the "MacCrate Report") [hereinafter NARROWING THE GAP]; see also EDWIN W. PATTERSON III & JONATHAN I. ARONS, JOINT NOBC/APRL COMMITTEE ON COMPETENCY: FINAL REPORT (2010), available at www.nobc.org/uploadedFiles/About_Us/Final_Report.pdf (discussing the need for change, and proposing solutions on how to train lawyers in basic competencies); Robert MacCrate, *The Lost Lawyer Regained: The Abiding Values of The Legal Profession*, 100 DICK. L. REV. 587 (1996) (commenting on the state of the legal profession); see generally LEGAL

within² and without³ the profession, and inflamed by the economic recession beginning around 2007.⁴ Changes in the profession are propelling or reflecting concomitant changes in legal education.⁵ Lawyers may no longer be able to rely

EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (Robert MacCrate ed., 1992) [hereinafter LEGAL EDUCATION] (emphasizing the value of practical skills instruction in assessing the fundamental nontraditional skills and professional values that should be taught in law school); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 15–17 (Jossey-Bass 2007) (concluding that a sixteen school study indicated that legal education needs a comprehensive change to address nontraditional skills and professionalism to adequately prepare students for actual law practice); RICHARD SUSSKIND, THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES 270–84 (2d ed. 2010) (noting the imminent and rapid change in the legal profession fomented by outsourcing, unbundled legal services, technology such as the internet, greater competition, a dual-tiered stratification of the profession, reduced client loyalty, lateral moves by private lawyers within firms, globalization, and similar phenomena); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) (concluding that legal education needs to change to produce graduates with full nontraditional competencies and skills).

2. AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION SURVEY, THE STATE OF THE LEGAL PROFESSION: 1990 (1991) (reporting results of National Survey of Career Satisfaction/Dissatisfaction Waves I and II conducted by the Young Lawyers Division in 1984 and 1990 which surveyed attorneys of all ages); AMERICAN BAR ASSOCIATION YOUNG LAWYERS DIVISION, THE STATE OF THE LEGAL PROFESSION: 1990—EXECUTIVE SUMMARY (1992) (summarizing results of National Survey of Career Satisfaction/Dissatisfaction Waves I and II conducted by the Young Lawyers Division in 1984 and 1990); AMERICAN BAR ASSOCIATION, THE REPORT OF AT THE BREAKING POINT: A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS' HEALTH AND LIVES—ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES (1991) (presenting results of the A.B.A.'s 1984 and 1990 surveys of lawyer dissatisfaction and burnout and including reasons for the problem such as too much work, lack of communication between lawyers and clients, isolation in the firm, and a lack of mentoring and training).

3. PETER D. HART RESEARCH ASSOCIATES, INC., A SURVEY OF ATTITUDES NATIONWIDE TOWARD LAWYERS AND THE LEGAL SYSTEM (1993); Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, A.B.A. J., Sept. 1993, at 60, 63–64 (reporting on the poor public opinion of attorneys).

4. Chris Isidore, *It's Official: Recession Since Dec. '07*, CNN.COM, (Dec. 1, 2008, 5:40 PM), <http://money.cnn.com/2008/12/01/news/economy/recession/index.htm> (reporting that the National Bureau of Economic Research, a “private group of leading economists,” said in 2008 that the United States “has been in a recession since December 2007”).

5. See NARROWING THE GAP, *supra* note 1 (a very influential assessment of the fundamental nontraditional skills and professional values that should be taught in law school, emphasizing the value of practical skills instruction, often referred to as the “MacCrate Report” (hereinafter referred to as MacCrate)); SULLIVAN ET AL., *supra* note 1 (reporting on the results of a study of sixteen law

simply on excellent legal analysis and advocacy, written and oral communication skills, trial skills and traditional pre-

schools, concluding that legal education needs a comprehensive change to address nontraditional skills and professionalism, to adequately prepare students for actual law practice, often referred to as the “Carnegie Report” (hereinafter referred to as Carnegie)); STUCKEY ET AL., *supra* note 1 (also concluding that legal education needs to change to produce graduates with full nontraditional competencies and skills, contemporary with Carnegie, often referred to as the “Best Practices Report” (hereinafter referred to as Best Practices)); *see also* MacCrate, *supra* note 1 (commentary on the state of the legal profession written by the author of the MacCrate Report); Edwin W. Patterson, III & Jonathan I. Arons, Final Report, Joint Nat’l Org’n of Bar Counsel Members/Ass’n of Prof. Resp. Lawyers Committee on Competency (August, 2010) *available at* www.nobc.org/uploadedFiles/About_Us/Final_Report.pdf (last visited Sept. 9, 2011) (providing a helpful review of these reports and other studies of legal education documenting the need for change and some efforts to respond to train lawyers in basic competencies). Collectively, MacCrate, Carnegie, and Best Practices are hereinafter referred to as the “Three Reports.”

For example, many law schools including those at Harvard University, and Washington & Lee University, have revised or are substantially revising all or part of their curricula. *See J.D. Program*, LAW.HARVARD.EDU, <http://law.harvard.edu/academics/degrees/jd/index.html> (last visited Mar. 28, 2012) (stating that Harvard Law School “recently undertook a sweeping overhaul of its first-year curriculum” adding a required problem-solving workshop); *About the J.D. Program at W&L*, LAW.WLU.EDU, <http://law.wlu.edu/admissions/page.asp?pageid=311> (last visited Mar. 28, 2012) (describing W&L’s “new third year” as “entirely based on learning through engagement—combining practicum courses, practice simulations, client interactions, the formation of professional identity and the cultivation of practice skills”); *see also* MICHAEL KING ET AL., NON-ADVERSARIAL JUSTICE 240–41 (2009) (documenting concerns about “insufficient emphasis on the practical aspects of law” in law school from 1987 to 2003); Sheldon M. Bonovitz, *How Would Students Grade Their Law Schools?*, THE NATIONAL LAW JOURNAL, http://www.lexis.com/research/retrieve?_m=9df84792f8b14fb29a1c1b079a215e8b&csvc=bl&cform=searchForm&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLzVzt-zSkAb&md5=ea42ecf125e425edc0b9b9804188abaa (last visited Mar. 28, 2012), (exploring the value-for-money concerns about law school in light of its curricular content); Marie P. Grady, *Pressure Mounts to Help Graduates Manage Debt*, TEXAS LAWYER ONLINE (Sept. 7, 2011), http://www.lexis.com/research/retrieve?_m=0c5bc998476544f0711e514a515ee5e2&csvc=bl&cform=searchForm&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLbVzt-zSkAl&md5=7347a49e55ec7b3857935691a533153e (exploring the high costs of student loans to fund law school and the dearth of employment post-graduation); *Upperclass Curriculum*, CWSL.EDU, http://www.cwsl.edu/main/default.asp?nav=academic_programs.asp&body=academic_programs/upper_class_curriculum.asp (last visited Mar. 28, 2012) (discussing an expansion or revision of their curricula. California Western School of Law expanded its professional responsibility course into a six-credit required second-year set of courses incorporating professional skills and identity development, problem solving, preventive law, and simulated cases with legal ethics).

litigation negotiation and settlement skills. Clients want more legal work for less cost.⁶ Law school applications have declined and unemployment among lawyers is a concern.⁷ In efforts to cut costs, clients are hiring auditors to oversee and audit their counsel's legal bills, and using in-house counsel, paralegals, or even nonlawyers to do their legal work.⁸ Court dockets are clogged to the point of inaccessibility⁹ and yet

6. SUSSKIND, *supra* note 1, at 270–71 (stating that “clients are requiring more for less,” noting enormous pressure on clients to cut costs and reduce legal risks).

7. Debra Cassens Weiss, *Legal Field Is Nation's Most Difficult Industry for Job Placement, Employment Website Says*, AMERICAN BAR ASSOCIATION JOURNAL (Sept. 6, 2011, 6:01 AM), http://www.abajournal.com/news/article/legal_field_is_nations_worst_industry_for_job_placement_employment_website/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email (stating that the “legal field is the most difficult industry for job placement” because there is less than one job opening for every 100 lawyers working in the field); Fallyn B. Reichert, Comment, “Screening” New York's New Rules—*Laterals Remain Conflicted Out*, 31 PACE L. REV. 464, 465 (2011) (reporting that, in the first three months of 2009, 3000 lawyers lost their jobs; in 2008, there was a ten-year record of 20,000 unemployed lawyers, a 66% increase over prior years); *Economic News Release; Table A-14: Unemployed Persons by Industry and Class of Worker, Not Seasonally Adjusted*, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/news.release/empsit.t14.htm> (stating that the unemployment rates for those in “Professional and Business Services” were 10.5% in August, 2010 and 9.5% in August, 2011); *see also Databases, Tables & Calculators by Subject*, BUREAU OF LABOR STATISTICS, http://data.bls.gov/timeseries/LNU04032239?data_tool=XGtable (last visited Mar. 28, 2012) (showing that this professional unemployment rate, which peaked in January 2010, is substantially higher than rates in the previous decade and have increased since 2003). The Labor Department reported that:

[W]hite-collar unemployment is the highest it's ever been, nearly 9 percent. For lawyers, at 1.2%, it's the highest since 1997. While that rate is low in absolute terms (in 2002, 11,000 unemployed out of 940,000), it's up sharply from 0.8% in 2001 and 0.6% in 1999. In other words, attorney joblessness jumped by half last year and has doubled since the Internet boom's peak. The real rate is higher than the official one, though it's impossible to say by how much [because] . . . [t]he government considers all those working more than one hour a week in their chosen fields to be employed The result is a growing number of lawyers [with] . . . long-term joblessness.

Matt Kelly, *The Attorney: Unemployed*, NAT'L L.J. (Apr. 10, 2003), available at <http://www.law.com/jsp/article.jsp?id=1048518251066&slreturn=1&hblogin=1>; *see also A Less Gilded Future*, THE ECONOMIST, available at <http://www.economist.com/node/18651114> (last visited Mar. 28, 2012) (discussing the effects of the recession on the legal business in terms of “structural change,” “profits,” and “survival”).

8. SUSSKIND, *supra* note 1, at 270–73.

9. *See, e.g., Dow Chem. Co. v. Castro Alfaro*, 786 S.W.2d 674, 707 (Tex. 1990) (Hecht, J., dissenting) (noting the “already burdened dockets of the state's

many parties still lack access to lawyers.¹⁰ The legal profession is rife with commentary exploring how to be more marketable in the law profession of the future given the rapid changes fostered by technological advances, disruptive concepts and strategies, the need for sustainability, and outsourcing.¹¹ Law schools are under fire for providing students with unsatisfactory returns on investment, when

courts”); Diarmuid F. O’Scannlain, *Striking A Devil’s Bargain: The Federal Courts and Expanding Caseloads in the Twenty-First Century*, 13 LEWIS & CLARK L. REV. 473, 473 (2009) (noting that caseloads in the federal courts in the last forty years have “grown by leaps and bounds,” describing them as “impossibly inflated dockets”).

10. Lash, Gee, and Zelton provide a stark reminder that:

Respect for justice and laws is diminished when large segments of our society do not have equal access to civil justice because they cannot obtain legal assistance to resolve disputes that touch on the very basics of life (e.g., health care, food, and shelter) or to seek legal redress of their grievances. Recent studies show that only one-fourth of poor California families with a civil legal problem receive full or partial legal assistance. Not reflected in this statistic are the many people above the poverty line and of moderate means who experience serious legal problems but neither can afford to pay a private attorney nor qualify for free legal services. Without legal assistance, many of these low or moderate income Californians either simply give up or experience the frustration of representing themselves. . . . While lawyers throughout the country collectively provide millions of pro bono hours each year, this outstanding contribution simply does not provide full representation for the growing numbers of civil indigent. Similarly, despite efforts by the judiciary to address the skyrocketing numbers of unrepresented parties, judges acknowledge that those who appear in pro per do not fare well in a contest in which the other side has an attorney. . . . The bar and bench alone cannot achieve access to justice for all.

Karen A. Lash et al., *Equal Access to Civil Justice: Pursuing Solutions Beyond the Legal Profession*, 17 YALE L. & POL’Y REV. 489, 489–90 (1998) (citations omitted); see also Isidore, *supra* note 4 (stating the U.S. has been in a recession since 2007 and indicating the situation has not improved since 1998);

11. Administrator, *During This Tough Economy, Take Your Law Firm Back to Basics*, THE COMPLETE LAWYER, www.thecompletelawyer.com/during-this-tough-economy-take-your-law-firm-back-to-basics.html (last visited Mar. 28, 2012); Spencer Barback & Rick Hayden, *Law Firm Survival: Tough Economic Times Call for Sound Management*, LAW.COM (Jan. 12, 2009), www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1202427353108; Miriam Rozen & Brenda Sapino Jeffreys, *In Tough Economy, Firms See Marketing Potential*, discussed in *Stimulus Bill*, TEXAS LAWYER (Mar. 16, 2009), www.law.com/jsp/tx/PubArticleTX.jsp?id=1202429045386&slreturn=1&hblogin=1; Deborah C. Scaringi, *Recessionary Thinking: 12 Smart Marketing Tips for Tough Times*, LEGAL MARKETING READER, (Mar. 2009), www.legalmarketingreader.com/recession_marketing.html; see also SUSSKIND, *supra* note 1, at 99–145.

students compare their employment prospects with the cost of legal education.¹² A reevaluation of the competencies needed to be a twenty-first century lawyer thus seems appropriate. Some assert that it is time to decisively redefine both the role of the lawyer and the content of legal education.¹³

Law firms are experimenting with different interviewing methods and processes, including performance-based tasks and simulations.¹⁴ Law schools are placing a greater emphasis on bar passage results¹⁵ and teaching lawyering skills,¹⁶ rather than limiting classes to the acquisition of

12. Rules and Regulations, Department of Education, 34 C.F.R. 600 et seq., 2010 WL 4255276 (2010) (stating that for-profit institutions of higher education, including law schools, whose students receive federal aid, are under pressure “Gainful Employment” regulations, which require their graduates in law-related jobs to prove the effectiveness of their programs by showing the results of their students post-graduate legal employment); see Elizabeth Ewing, *Thomas Jefferson Graduate’s Lawsuit over Employment Stats Faces Long Odds*, THE NATIONAL JURIST (June 9, 2011, 2:45 PM), <http://www.nationaljurist.com/content/thomas-jefferson-graduate’s-lawsuit-over-employment-stats-faces-long-odds> (showing that non-profit law schools are under fire from law students via a suit charging the law school with fraud in the reporting of its graduates’ employment data, and predicting that more lawsuits are to come).

13. See SULLIVAN ET AL., *supra* note 1 (proposing change to legal education); STUCKEY ET AL., *supra* note 1 (proposing change to legal education); Kara Abramson, “Art for a Better Life”: A New Image of American Legal Education, 2006 B.Y.U. EDUC. & L.J. 227 (2006) (criticizing Langdell’s method and arguing for an approach to legal education that incorporates liberal arts and practical skills); MacCrate, *supra* note 1 (proposing change to legal education); Edward Rubin, *What’s Wrong with Langdell’s Method, and What to Do About It*, 60 VAND. L. REV. 609 (2007) (criticizing Langdell’s approach and proposing an integrated curriculum that includes experiential learning).

14. See Elizabeth Goldberg, *Is This Any Way to Recruit Associates?*, LAW.COM, <http://www.law.com/jsp/article.jsp?id=1185820712334> (last visited Mar. 28, 2012) (noting many law firms that are experimenting with a wide variety of new recruiting approaches, such as: behavioral interviews, asking students to discuss what obstacles they have overcome and how—in an effort to discover their “priorities, attitudes and analytical abilities,” looking for traits of their successful employees, asking applicants to perform a case study on the spot, presenting real-life scenarios and asking for responses, critical reasoning tests, group negotiation exercises, asking applicants to present a five-minute client pitch and draft a letter in response to a customer complaint, and aptitude and personality tests).

15. See, e.g., Dan Markels, PRAWFSBLAWG, <http://prawfsblawg.blogspot.com/prawfsblawg/2007/09/law-school-curr.html> (last visited Mar. 28, 2012) (noting “[i]n many states, bar passage rates are a significant concern . . . a school’s reputation may largely hinge on its bar pass rate”).

16. See, e.g., Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465, 467 (2011) (stating that Georgia State University College of Law instituted a

doctrinal knowledge and traditional lawyering skills. Some are expanding the set of skills being included in legal education,¹⁷ while others may even be experimenting with

Fundamentals of Law Practice course in Spring 2010 which includes nontraditional skills, law practice management, ethical decision-making, and professional identity development through fieldwork, interviews of attorneys, and reflection); *see also Course Descriptions*, CALIFORNIA WESTERN SCHOOL OF LAW 8 (2012), http://www.cwsl.edu/content/registrar/course_descriptions.pdf (stating that California Western School of Law now requires a six-credit Professional Responsibility course called STEPPS ["Skills Training for Ethical and Preventive Practice and Career Satisfaction"] which integrates "the study of Professional Responsibility, Advanced Legal Research and Writing, Lawyering skills, and Problem Solving/Preventive Law . . . [and] career satisfaction" in which students meet weekly in "Law Offices" to conduct simulations, role plays, and work through simulated cases).

17. For example, Dean Don Polden at the Santa Clara University School of Law teaches leadership for lawyers; Professor Joshua Rosenberg at the University of San Francisco Law School teaches interpersonal dynamics; and Professor Leonard Riskin at the University of Florida Levin College of Law teaches mindfulness as used in the law. *See, e.g.*, Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002); Douglas Codiga, *ADR Reflections On The Potential Growth Of Mindfulness Meditation In The Law*, 7 HARV. NEGOT. L. REV. (2002) (discussing the application of mindfulness meditation in dispute resolution); *see also* CULTIVATING A LEADERSHIP CULTURE (HINT: YOU DIDN'T LEARN THIS IN LAW SCHOOL), PARTNER'S REPORT 1 (Inst. of Management & Administration, Inc., 2000) (recommending many well-known leadership resources, including emotional intelligence and personality type materials, and noting the value of these overlooked skills in managing law firms); Brent W. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 146–50 (2010) (proposing "significant changes" are needed to implement practical skills training in law school, including changes in faculty and law reviews); Karen H. Rothenberg, *Recalibrating the Moral Compass: Expanding "Thinking Like a Lawyer" into "Thinking Like a Leader,"* 40 U. TOL. L. REV. 411, 412 (2009) (arguing for leadership training in law school); Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J. (July 11, 2011), <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html?KEYWORDS=legal+emotional+intelligence> (stating that Indiana University Maurer School of Law teaches courses on "project management" and "emotional intelligence" and that New York Law School hired fifteen new faculty members "from the ranks of working lawyers," to teach negotiation, counseling, and fact investigation, rather than the one or two typical hired annually, and that Stanford Law School "is considering making a full-time clinical course—which entails 40-hour plus weeks of actual case work—a graduation requirement"); *Well Being and the Practice of Law*, LAW.DUKE.EDU, <http://www.law.duke.edu/curriculum/courseinfo/course?id=419> (last visited Mar. 28, 2012) (stating that a one-credit course is offered on well-being and the practice of law that qualifies for "ethics and professionalism" credits);.

admissions criteria that include assessing applicants' proficiency in various competencies, in order to produce more effective graduates.¹⁸

In evaluating legal education reform, law schools have turned to empirical studies to define the skills needed to be an effective lawyer. These studies highlight the importance of skills sometimes overlooked in legal education. This Article will first synthesize a number of empirical studies identifying the skills and competencies important for effective lawyering. It will briefly evaluate their inclusion in current legal education. The Article will also explore twelve disciplines that provide training for law students in these skills and competencies and advocate the synthesis of these twelve fields, in an effort to prepare lawyers more effectively for the legal profession of the future.

I. BACKGROUND OF CHANGE WITHIN THE PROFESSION

At least four areas have contributed to massive change within the legal profession throughout the last quarter-century. First, economic pressures and client demands are changing the profession.¹⁹ Second, data on lawyer personality and well-being suggest a need for change among some (if not all) lawyers.²⁰ Third, legal education has been attempting to

18. Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620, 622–24 (2011) (suggesting this for admissions decisions in a study sponsored by the University of California, Berkeley, School of Law (Boalt Hall)); see also Marjorie M. Shultz & Sheldon Zedeck, *Final Report: Identification, Development, and Validation of Predictors for Successful Lawyering*, 79 (Jan. 30, 2009) (unpublished manuscript) [hereinafter Shultz & Zedeck, *Final Report*], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1353554.

19. SUSSKIND, *supra* note 1, at 270.

20. SUSAN DAICOFF, *LAWYER, KNOW THYSELF* 141–63 (2004) [hereinafter DAICOFF, *KNOW THYSELF*] (exploring whether lawyers should change); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 122–23 (2002) (reporting the results of an empirical study linking intrinsic values to law student well-being) [hereinafter Krieger, *Dark Side*]; Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. ASS'N LEGAL WRITING DIRS. 259, 260–61 (2002); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 283 (2004) (exploring the effects of various law school environments on law student

respond to multiple calls for reform and greater relevance to the practice of law.²¹ Finally, the “comprehensive law movement” of law as a healing profession has been growing, in an attempt to respond to deficiencies in the current legal system.²² These are examined in turn, below.

A. *Current Economic and Market Pressures*

In the late 1980s and early 1990s, scholars began to complain of a decline in professionalism in the law.²³ Specifically, they pointed to perceived increases in uncivil behavior among lawyers and judges.²⁴ They also noted that lawyers were not particularly well-liked in society.²⁵ By the end of the twentieth century, societal dissatisfaction with lawyers, legal fees, and litigation processes was relatively

well-being).

21. See *supra* notes 17–18.

22. See Susan Daicoff, *The Future of the Legal Profession*, 37 MONASH U. L. REV. 7 (2011) (arguing that the publication of five books between 2007 and 2010, synthesizing disparate disciplines such as restorative justice and collaborative law, demonstrates the growth and expansion of the comprehensive law movement which encompasses these disciplines); see also SUSAN L. BROOKS & ROBERT G. MADDEN, RELATIONSHIP-CENTERED LAWYERING: SOCIAL SCIENCE THEORY FOR TRANSFORMING LEGAL PRACTICE (Carolina Academic Press, 2010) (including therapeutic jurisprudence, preventive law, procedural justice, transformative mediation, and restorative justice); KING ET AL., *supra* note 5; JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW (UBC Press, 2008) (exploring in depth the nontraditional approach underpinning the movement and including collaborative law, restorative justice, therapeutic jurisprudence, and problem solving courts); Marjorie A. Silver, *Emotional Competence and the Lawyer's Journey*, in MARJORIE A. SILVER, ED., THE AFFECTIVE ASSISTANCE OF COUNSEL (2007); J. KIM WRIGHT, LAWYERS AS PEACEMAKERS: PRACTICING HOLISTIC, PROBLEM-SOLVING LAW (A.B.A. 2010) (including all of the vectors).

23. Warren E. Burger, *The Decline of Professionalism*, 61 TENN. L. REV. 1, 5 (1993); Deborah Moss & Mark Hansen, *Lawyer's Perspective*, 77 A.B.A. J. 40 (May, 1989) (stating that 62% of lawyers surveyed did not believe lawyers were adequately policing lawyer misconduct); Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85 (1994).

24. Seth Rosner, *A Decade of Professionalism*, 6 PROF. LAW. 2, 2 (Aug. 1995) (deploring growing numbers of lawyers and legal malpractice suits, shrinking demands for lawyers, high incidences of fraud, theft, and fiduciary breaches by lawyers, and uncivil behavior by judges and lawyers).

25. HART RESEARCH ASSOCIATES, *supra* note 3 (reporting that a majority of the public held negative perceptions of lawyers as not honest or ethical, greedy, etc.); Hengstler, *supra* note 3, at 63–64 (reporting on the discouraging results of a poll on public opinion of attorneys, whose ethical and honesty standards were perceived as much lower than other professions).

well-established.²⁶ For example, the social science field of procedural justice empirically demonstrated that litigants might be dissatisfied with legal processes, despite “winning,” if they were not given a voice and a chance to participate.²⁷ As most litigation and mediation processes do not afford litigants a voice or opportunity to participate, litigant dissatisfaction is not surprising.

Clients began to pressure their lawyers to be more affordable, economical, efficient, and accountable.²⁸ Then came the 2007 recession, which created unbearable financial pressure on clients and lawyers. Seeking ways to cut legal costs, clients began looking for alternative sources of legal assistance. In his highly influential book *The End of Lawyers*, David Susskind lists a number of these alternative sources in what he calls “disruptive technologies” affecting the legal profession.²⁹ These include: do-it-yourself legal services; in-house legal research, document review, and drafting; virtual delivery of legal services; outsourcing;³⁰ and Forrest Mosten’s concept of “unbundled legal services,” meaning limited scope representation.³¹ For example, corporate clients might have their in-house attorneys draft the pleadings and perform the legal research—and hire outside counsel only to represent the corporation in hearings and trials.³²

Faced with the changes necessitated by the economic crisis, and the backdrop of a quarter-century of dissatisfaction with lawyers and legal processes, clients began to ask for

26. DAICOFF, KNOW THYSELF, *supra* note 20, at 3–12 (describing this situation as a “tripartite crisis” of low public opinion, deprofessionalism, and lawyer distress and dissatisfaction).

27. See Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, in DAVID B. WEXLER & BRUCE J. WINICK, *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* 3 (1996).

28. SUSSKIND, *supra* note 1, at xviii–xxiv, 24, 151–53, 175–80 (discussing these increasing demands by clients on lawyers and law firms).

29. *Id.*

30. *Id.*

31. MODEL RULES OF PROF'L CONDUCT R. 1.2(c) (2009) (allowing lawyers to limit the scope of their representation of a client as long as the limitation is “reasonable” and the client renders informed consent); Forrest S. Mosten, *Unbundling Model Rule 1.2(c) of Legal Services and the Family Lawyer*, 28 *FAM. L. Q.* 421, 440 (1994).

32. SUSSKIND, *supra* note 1, at xxii–xxiii, 46–50.

legal outcomes to their legal problems that were “sustainable” in human terms, rather than “scorched earth, take-no-prisoners” litigation, which they could ill afford, economically or in human-capital terms. For example, divorcing spouses could no longer afford extensive legal fees and protracted custody and property division battles. Instead, they were likely to be facing divorce, foreclosure, and bankruptcy simultaneously.³³ Around 2007, the first law students in the “Millennial” generation entered law school.³⁴ This generation, according to generational experts Howe and Strauss, may not be content with existing institutions and methodologies.³⁵ They may not be satisfied “paying their dues,” and instead may question the reason for traditional processes and rules, and seek innovation and technological savvy.

An outcry of outrage against the rising cost of legal education emerged in 2010 and 2011.³⁶ Law schools were challenged to demonstrate their worth through published bar passage rates and employment data.³⁷

33. See Sandy T. Fox, *Divorces on the Rise in Florida*, DIVORCE LAWYER BLOG (May 3, 2011), <http://www.fortlauderdaledivorcelawyerblog.com/divorce/economy/> (noting that the economic downturn is causing divorcing couples to seek alternatives to a fully litigated divorce, such as mediation and pro se divorces).

34. See Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255, 259 (2009) (placing the birth years of the “Millennial Generation” between 1982 and the mid-2000s); see, e.g., Melody Finnemore, *Meet the Millennials: Young Attorneys Prompt Need for Firms to Explore New Ways of Doing Business*, 66 OREGON ST. BAR BULL. 9, 9–13 (2005); Melissa H. Weresh, *I’ll Start Walking Your Way, You Start Walking Mine: Sociological Perspectives on Professional Identity Developmental and Influence of Generational Differences*, 61 S.C. L. REV. 337, 368 (2009) (discussing how to work with and teach this new generation).

35. NEIL HOWE AND WILLIAM STRAUSS, *GENERATIONS: THE HISTORY OF AMERICA’S FUTURE, 1584 TO 2069* (Morrow 1991); NEIL HOWE AND WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* (Vintage, 2000); Judith Welch Wegner, *Reframing Legal Education’s “Wicked Problems,”* 61 RUTGERS L. REV. 867, 988 (2009).

36. See Ewing, *supra* note 12 (discussing lawsuits by graduates against law schools).

37. See Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. WEST. L. REV. 219, 235, 255 n.121 (2007) (pointing out the deficiencies of legal education in terms of training students to practice law, high amounts of student debt, and dismal bar passage results); Deborah Rhode, *Legal Education: Professional Interests and Public Values*, 34 IND. L. REV. 23, 23–29 (2000) (noting the deficiencies of legal education in training students in practical skills and the benefits to law faculty and universities of continuing to provide deficient legal education).

B. Lawyer Distress and Well-Being Data

Not only may clients and society be dissatisfied with lawyers, but lawyers themselves may be suffering.³⁸ By the end of the twentieth century, lawyer distress and dissatisfaction were established as common and worrisome phenomena.³⁹ Public opinion of lawyers was low, particularly regarding lawyers' ethics and morals.⁴⁰ Data on job dissatisfaction among lawyers conflicted,⁴¹ but very consistent findings demonstrated an above-average incidence of depression, substance abuse, and other psychological distress among lawyers.⁴² Bar associations across the United States bolstered their lawyers' assistance programs and mandatory substance abuse continuing legal education requirements emerged, in several states.⁴³

38. DAICOFF, KNOW THYSELF, *supra* note 20, at 3–12 (documenting empirical studies showing low public opinion of lawyers and their honesty and ethics).

39. Susan Daicoff, *Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decision-Making Preference, and Lawyer Wellbeing*, 16 VA. J. SOC. POL'Y & L. 87, 88–90, 93–103 (2008) [hereinafter Daicoff, *Be Thyself*] (summarizing available empirical studies on lawyer job dissatisfaction, alcoholism, depression, and other forms of psychological distress).

40. DAICOFF, KNOW THYSELF, *supra* note 20, at 4–6; HART RESEARCH ASSOCIATES, *supra* note 3; Hengstler, *supra* note 3 (documenting low public opinion of attorneys).

41. DAICOFF, KNOW THYSELF, *supra* note 20, at 6–7 (reporting on studies showing 19–27.5% of lawyers were dissatisfied with their jobs and a more recent study finding only 16.6% similarly dissatisfied).

42. See, e.g., Connie J.A. Beck et al., *Lawyer Distress: Alcohol Related Concerns Among a Sample of Practicing Lawyers*, 10 J.L. & HEALTH L. 5, 18, 50–58 (1996) (demonstrating that psychological distress was reported by male and female lawyers in frequencies much higher than that of the general population; then linking lawyer distress to hostility, anger and marital dissatisfaction); G. Andrew H. Benjamin et al., *Comprehensive Lawyer Assistance Programs: Justification and Model*, 16 LAW & PSYCHOL. REV. 113 (1992) [hereinafter Benjamin et al., *Comprehensive*] (finding alcoholism and other psychological distress at a rate among lawyers that is about twice the rate in the general population); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233 (1990) [hereinafter Benjamin et al., *Prevalence*].

43. E.g., *Commission on Lawyer Assistance Program*, AMERICANBAR.ORG http://www.americanbar.org/groups/lawyer_assistance.html (last visited Mar. 28, 2012) (stating that the American Bar Association's Commission on Lawyer Assistance Programs is "committed to promoting both the physical and mental wellness of legal professionals," encompassing alcohol and drug abuse and dependence, compassion fatigue, compulsive behavior, depression, stress, and

Causes of this lawyer distress remain unknown, but persuasive studies established a link between a lawyer's well-being and his or her "intrinsic values" (as opposed to extrinsic values such as money, prestige, fame, and tangible benefits).⁴⁴ The more law students focused on extrinsic rewards (such as grades, rank, Order of the Coif, etc.), the more likely they were to suffer from lowered well-being. In contrast, those students who were motivated by intrinsic values were more likely to have higher well-being and less psychological distress.⁴⁵

Other studies found that certain logical, analytical personality traits and decision-making preferences were more prevalent among lawyers and law students than among nonlawyers.⁴⁶ Some suggested that these "lawyer traits" contributed to an uneven development of skills among lawyers, an imbalance, or a tendency to overemphasize logic, rationality,⁴⁷ and the economic bottom line.⁴⁸ Consequently,

suicide); *Continuing Legal Education for Attorneys FAQ*, SCONET.STATE.OH.US, <http://www.sconet.state.oh.us/AttySvcs/CLE/faq-atty/> (last visited Mar. 28, 2012) (stating that in Ohio, attorneys must complete "[t]hirty minutes of instruction on substance abuse, including causes, prevention, detection, and treatment alternatives," every two years (which is 2% of the total 24 hours required)); *Rule 6-10.3 Minimum Continuing Legal Education Standards*, FLORIDABAR.ORG, <http://www.floridabar.org/names.nsf/Member%20of%20the%20Judiciary?OpenAgent> (last visited Mar. 28, 2012) (stating that in Florida, 16% of the attorney's required continuing legal education credits must be in professionalism, mental illness awareness, substance abuse, bias elimination, or ethics).

44. Krieger, *Dark Side*, *supra* note 20, at 122–25 (linking law student distress to a shift in values towards an extrinsic motivations, such as appearance and image, and away from intrinsic motivations, such as altruism and community service; the higher the students' grades were, the more likely they were to shift away from service-oriented career interests towards lucrative, high-status careers); Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425 (Spring 2005) (arguing that depression and unprofessional lawyer behavior stems from lawyers' disconnection from their intrinsic values and motivations, or "loss of integrity").

45. Krieger, *Dark Side*, *supra* note 20, at 122–25.

46. SUSAN DAICOFF, *COMPREHENSIVE LAW PRACTICE: LAW AS A HEALING PROFESSION* 9–15 (2011) [hereinafter DAICOFF, *COMPREHENSIVE LAW*] (identifying eight traits distinguishing lawyers from nonlawyers, these are: achievement orientation, materialism/economic bottom-line orientation, competitiveness, dominance, interpersonal insensitivity, aggressive and ambitious responses to stress, a thinking preference in decision-making, and rights/justice orientation to decision-making).

47. Logic and rationality might be linked to lawyers' overwhelming

lawyers at times may overlook interpersonal and emotional concerns.⁴⁹ Thus, to be optimally effective and avoid psychological distress, some scholars and researchers called for attorneys to: (1) identify and follow their own intrinsic values,⁵⁰ and (2) develop their interpersonal skills and competencies.⁵¹

preference for “Thinking” as a decision-making preference on the Myers-Briggs Type Indicator (78%), as compared to “Feeling” (22%). Lawrence R. Richard, *Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States*, 29 CAP. U. L. REV. 979 (2002) (reporting that lawyers also tended to prefer judging over perceiving, making their “Thinking/Judging” profile resemble that of many top corporate executives); Erica Weissman, *Gender-Role Issues in Attorney Career Satisfaction*, 74–76 (1994) (unpublished Ph.D. dissertation, Yeshiva University) (on file with author) (discussing that lawyers also tend to prefer a rights or justice ethic over an ethic of care, in psychologist Carol Gilligan’s decision-making model); See DAICOFF, *COMPREHENSIVE LAW*, *supra* note 46, and Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1374–75 (1997) [hereinafter Daicoff, *Empirical Research*].

48. Russell Korobkin & Chris Guthrie, *Psychology, Economics, and Settlement: A New Look at the Role of the Lawyer*, 76 TEX. L. REV. 77, 112 n.119 (1997) (finding that lawyers attended to the economic bottom line and ignored noneconomic intangible factors such as apologies and negotiating opening strategies, unlike nonlawyers); see also Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Studies and Performance*, 26 CUMB. L. REV. 63, 92–93 (1996) (concluding that law students may have made higher grades in law school because “law school teaches to their level”; however, they are “likely to undervalue factors, such as the importance of human relationships in legal problems, the human side of legal issues, the role of values in legal decision-making, and the art of communication” and need to “learn to appreciate the problems of people” lest they “objectify and dehumanize the entire process”).

49. See Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193, 219–34 (1991) (more women than men law students espoused the ethic of care, but care-oriented students shifted to a rights orientation, in Carol Gilligan’s care/rights continuum of decision-making, during law school) (finding that law school tended to “silence” the “ethic of care” as a decision-making preference, and shift students towards an orientation towards rights and justice, instead); Randall, *supra* note 48, at 93 (asserting that law school teaches an approach consistent with a “Thinking” approach to decision-making); Richard, *supra* note 47; Weissman, *supra* note 47 (finding law students by nature, as a group, may prefer logical analysis of rights, obligations, and duties to a consideration of emotions, interpersonal relationships, mercy, or context).

50. Krieger, *Dark Side*, *supra* note 20, at 125–29.

51. Randall, *supra* note 48, at 93 (concluding that law students, who are in the majority [perhaps seventy-five to eighty percent] need to be exposed to real clients and in touch with the role of values to “help them develop their less preferred [F]eeling”); Silver, *supra* note 22, at 5–16 (arguing for training law students in “emotional competencies,” based on psychologists Peter Salovey and John Mayer’s emotional intelligence, as “training for lawyers rarely includes

C. Changing Goals and New Models of Legal Education

In the last two decades, three major reports on legal education were published: the MacCrate Report, the Best Practices Report, and the Carnegie Report (collectively, the Reports).⁵² The Reports called for reform in the direction of more lawyering skills and greater emphasis on professionalism and the development of professional identity. Other commentary has criticized legal education as irrelevant to the actual practice of law, self-serving of law professors, esoteric arcane, inefficient, and lacking in value.⁵³ Finally, commentary spanning from 1959 to 1992 advocated for greater emphasis on humanistic training in legal education.⁵⁴

exposure to principles of psychology or an exploration of the emotional aspects of practice” which would “greatly benefit any lawyer/client relationship”).

52. MacCrate, *supra* note 1 (agreeing that legal education needed to include more training in the practical skills of nontraditional and professionalism), SULLIVAN ET AL., *supra* note 1 (agreeing that legal education needed to include more training in the practical skills of nontraditional and professionalism), STUCKEY ET AL., *supra* note 1.

53. See, e.g., Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. WEST. L. REV. 219 (2007) (providing a candid assessment of the deficiencies of legal education).

54. *Id.*; see also ELIZABETH DVORKIN ET AL., BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM (1980) (noting that this is an early law school text including humanistic concepts and professionalism concerns); HOWARD LESNICK, BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW vii, 345, 382 (1992) (including material on the ethic of care and problem solving); THOMAS L. SHAFFER & ROBERT S. REDMOUNT, LAWYERS, LAW STUDENTS AND PEOPLE 24 (1977); ANDREW S. WATSON, THE LAWYER IN THE INTERVIEWING & COUNSELING PROCESS (1975) (noting that this is a very early work taking a psychological and humanistic approach to training lawyers); Peter D’Errico et al., *Humanistic Legal Studies at the University of Massachusetts at Amherst*, 28 J. LEGAL EDUC. 18 (1976) (predicting a sustained national interest in humanist analysis in the law in spite of pressure for formal legal techniques); Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906–2000s*, 22 LAW & HIST. REV. 277, 277 (2004); Robert S. Redmount, *Humanistic Law Through Legal Education*, 1 CONN. L. REV. 201, 210 (1968) (emphasizing the value of human experience in law); Robert S. Redmount, *Humanistic Law Through Legal Counseling*, 2 CONN. L. REV. 98 (1969–70); Charles A. Reich, *Toward the Humanistic Study of Law*, 74 YALE L.J. 1402 (1965) (advocating greater emphasis on social science, interdisciplinary approaches, and moral and psychological knowledge in legal education); Howard Sacks, *Human Relations Training for Law Students and Lawyers*, 11 J. LEGAL EDUC. 316, 317 (1959); Andrew S. Watson, *The Quest For Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 94–95 (1968).

Partly in response to the Reports, several law schools revised their curricula to infuse more lawyering skills in law school courses and provide more clinical and externship experiences.⁵⁵ It is now well established that law school should provide some opportunity for law students to develop traditional lawyering skills, including clinical skills, such as legal research and writing, drafting legal documents, oral advocacy, interviewing, and counseling.⁵⁶ Legal research and writing, which was nascent in the early 1980s, is usually a mandatory course or series of courses in law schools.⁵⁷

The Reports concluded that students should also have an opportunity to develop their professional values, although this is often not explicitly provided in or required by the curriculum. Training in negotiation, professional identity development, leadership, and other competencies may be offered in elective courses.⁵⁸ Infusing professional ethics, values, and professionalism into existing law school courses has been proposed for many years, most notably by Stanford law professor Deborah Rhode.⁵⁹ Adjunctive professionalism

55. *J.D. Program*, *supra* note 5 (stating that Harvard Law School undertook a multi-year assessment of its curriculum, which resulted in the addition of problem solving and international perspectives to its required first year curriculum).

56. *E.g., About the J.D. Program at W&L*, *supra* note 5 (stating that, for example, Washington & Lee University School of Law recently revised its third-year curriculum to an entirely skills-based, clinical experience).

57. *Standards*, AMERICANBAR.ORG, http://www.americanbar.org/groups/legal_education/resources/standards.html (last visited Mar. 28, 2012) (stating that Standard 302(a)(3) for Approval of Law Schools 2011–2012, requires “substantial instruction in . . . legal analysis and reasoning, legal research, problem solving, and . . . at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year.”).

58. *See, e.g., Juris Doctor Course Selection*, LAW.UFL.EDU, <http://www.law.ufl.edu/programs/jd/selection.shtml> (last visited Mar. 28, 2012) (stating, for example, leadership and negotiation are often elective courses at the University of Florida Levin College of Law, omitting negotiations and listing legal research and writing as required courses); “*Leadership for Lawyers*” *Law School Course Noted by National Media*, LAW.SCU.EDU, <http://law.scu.edu/news/pr/leadership-for-lawyers-law-school-course-noted-by-national-media.cfm> (last visited Mar. 28, 2012) (describing Robert Cullen’s leadership for lawyers course at Santa Clara University School of Law).

59. Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 41 (1992). Rhode’s most recent book explores leadership skills for lawyers. DEBORAH L. RHODE & AMANDA K. PACKEL, *LEADERSHIP, LAW, POLICY, AND MANAGEMENT* (2011).

programs have also been implemented.⁶⁰

For example, Florida Coastal School of Law has a six-hour continuing professional education requirement for graduation. Students must attend six hours of programs on professionalism and professional values.⁶¹ These programs are in addition to traditional law school courses and often are sponsored by the law school.⁶²

Recently, Washington and Lee University School of Law revised its third year, which is now composed of an entirely clinical experience, based on either live client clinics, field placements (externships), or simulated legal cases and problems.⁶³ Harvard Law School substantially revised its first year curriculum to include a workshop on problem solving and international perspectives.⁶⁴ CUNY School of Law implemented a “low bono” “incubator” program to employ graduates in providing legal representation to low-income clients who cannot afford legal fees or qualify for pro bono assistance; other law schools are following suit.⁶⁵ The STEPPS program at California Western School of Law redesigned the school’s three-credit professional responsibility course into a six-credit, full-year set of courses integrating traditional classes led by a doctrinal professor, and small “law firm” group classes led by adjunct professors who are practicing lawyers and judges. The small groups focus on simulated cases and problems.⁶⁶ “Educating Tomorrow’s

60. See, e.g., *Professionalism Credits*, FCSL.EDU, <https://fcsl.edu/content/professionalism-credits> (last visited Mar. 28, 2012) (stating that the Florida Coastal School of Law has implemented a six-credit graduation requirement of “continuing professionalism education”).

61. *Id.* (stating that the program is focused on “professionalism, mental health, substance abuse, and diversity”).

62. *Id.*

63. See *supra* note 5.

64. See *supra* note 5.

65. Karen Sloan, *Incubators give birth to flocks of solo practitioners*, NAT’L L.J. (Sept. 5, 2011), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202513353708> (stating that City University of New York (“CUNY”) School of Law was the first to institute such a program, in 2007, that the University of Missouri-Kansas City School of Law, the University of Maryland School of Law, and the Columbus Bar Association in Ohio all followed suit, and that Charlotte School of Law, Thomas Jefferson School of Law, Georgia State University College of Law, and the University of Dayton School of Law are considering implementing them as well).

66. Personal observation of the author of two STEPPS classes, California Western School of Law, San Diego, Cal. (Spring, 2011)

Lawyers” is a consortium of law schools collaborating on curricular reform in response to the Reports.⁶⁷ Another collaboration by law professors to infuse practical lawyering skills in law school courses is the Legal Education, ADR, and Problem Solving (LEAPS) Project sponsored by the American Bar Association.⁶⁸

Also, a number of nontraditional teaching techniques are being employed to teach lawyering skills.⁶⁹ These include: assigning students to keep daily or weekly journals as a part of a law school course, small group exercises in and out of class, simulated cases, using actors as clients, conducting class in a circle without desks, and assigning students to create in-class exercises for the rest of the class.⁷⁰

Some law schools provide stress management training or wellness programs.⁷¹ There is another movement focused on contemplative practices in lawyering and in dispute resolution.⁷² These developments reflect an awareness of the

67. *About ETL*, EDUCATING TOMORROW'S LAWYERS, <http://educatingtomorrowlawyers.du.edu/about-et/> (last visited Apr. 18, 2012).

68. *See Legal Education, ADR and Practical Problem Solving (LEAPS) Project*, ABA, <http://leaps.uoregon.edu> (last visited May 10, 2012) (collaboration of law professors to develop instructional materials for incorporating practical problem-solving in various law school courses).

69. Personal observation of the author of Mary Dolores Guerra's mediation course, Phoenix School of Law, Phx, Ariz. (Spring 2011). *See also* Mary Dolores Guerra, *Student Self-Assessment Book (SAB): Reflective Thinking and Journaling in Law School*, L. TCHR., 6 (Spring 2010).

70. Personal observations of the author in Professor Mary Dolores Guerra's mediation classes, Phx, Ariz. (Spring 2011); Personal observation of the author in Professor Linda Morton's mediation classes, San Diego, Cal. (Spring 2011); Personal observation of the author in Professor Ellen Waldman's mediation classes, San Diego, Cal. (Spring, 2011). *See also* Guerra, *supra* note 69.

71. *See, e.g., Special Programs - Student Affairs*, LAW.VANDERBILT.EDU, <http://law.vanderbilt.edu/student-resources/programming/index.aspx> (last visited Mar. 28, 2012) (stating that Vanderbilt University Law School, which offers “Professionalism in Practice” and “Supportive Practices” groups to its first-year law students as non-credit, non-graded groups meeting for one hour weekly for the first ten weeks of the first semester of law school; the first of which focuses on professionalism, leadership skills, and ethical issues and the second which teaches students stress-reducing techniques and strategies designed to enhance their well-being).

72. *See, e.g., The Initiative of Mindfulness in Law & Dispute Resolution*, LAW.UFL.EDU, <http://www.law.ufl.edu/imldr/index.shtml> (last visited Mar. 28, 2012) (stating that the initiative serves to provide resources for legal personnel interested in applying mindfulness and contemplative practices in the law and in their lives, directed by mindfulness pioneer Professor Leonard L. Riskin at the University of Florida Levin College of Law).

importance in the law of self-knowledge and self-awareness.

Given the fiercely competitive nature of the legal employment market⁷³ and the traits of the Millennials now entering the law,⁷⁴ law students are likely to continue to press legal education to be more relevant to and preparatory for the actual practice of law.

D. A Changing Profession: New Forms of Law Practice and Adjudication

What has not yet been integrated into this discussion, however, is the emergence of new forms of law practice, dispute resolution, and adjudication in the last twenty-five years, often referred to as the “comprehensive law movement.”⁷⁵ The disciplines comprising this movement towards law as a healing profession⁷⁶ include: therapeutic jurisprudence,⁷⁷ restorative justice,⁷⁸ collaborative law,⁷⁹

73. See *supra* notes 6–13 and accompanying text.

74. See sources cited *supra* note 34–35 (discussing that the Millennial Generation is posited to consist of individuals born between about 1982 and 2001; they are also deemed to have characteristics that differentiate them from earlier generations such as “Generation Xers” and “Baby Boomers,” such as civic-mindedness, innovation, facility with technology, and a desire for direction and structure).

75. Susan Daicoff, *Growing Pains: The Integration vs. Specialization Question for Therapeutic Jurisprudence and Other Comprehensive Law Approaches*, 30 T. JEFFERSON L. REV. 551 (2008) (exploring the emergence, growth, and development of the “comprehensive law movement”).

76. Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement,”* 6 PEPPERDINE DISP. RESOL. J. 1, 42 (2006) [hereinafter Daicoff, *Healing Profession*] (introducing the concept of the comprehensive law movement and describing each of these included “vectors”).

77. WEXLER & WINICK, *supra* note 27 (noting that the entire book is devoted to articles that apply therapeutic jurisprudence to various substantive areas of the law); see also PRACTICING THERAPEUTIC JURISPRUDENCE (Dennis P. Stolle et al. eds., 2000) (collecting articles on how to apply therapeutic jurisprudence in law practice).

78. See, e.g., HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* (2002) (introducing the main concepts and forms of restorative justice); Gordon Bazemore & Curt Taylor Griffiths, *Conferences, Circles, Boards & Mediations: Scouting the “New Wave” of Community Justice Decision-Making Approaches*, 61 FED. PROB. 25 (1997) (describing in detail four forms of restorative justice processes).

79. See, e.g., NANCY J. CAMERON, *COLLABORATIVE PRACTICE: DEEPENING THE DIALOGUE* (2004) (noting the growth of collaborative law); FORREST S. MOSTEN, *THE HANDBOOK OF COLLABORATIVE LAW* (2009); PAULINE H. TESLER & PEGGY THOMPSON, *COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON*

preventive law,⁸⁰ creative problem solving,⁸¹ problem solving courts,⁸² transformative mediation,⁸³ holistic law,⁸⁴ and

WITH YOUR LIFE (2006) (describing the concept and practice of collaborative divorce, which uses an interdisciplinary team to resolve divorce); PAULINE H. TESLER, COLLABORATIVE LAW: ACHIEVING EFFECTIVE RESOLUTION IN DIVORCE WITHOUT LITIGATION (American Bar Association 2001) [hereinafter TESLER, COLLABORATIVE LAW] (introducing the concept and practice of collaborative law); see, e.g., *A Team Approach*, COLLABORATIVE FAMILY LAWYERS OF SOUTH FLORIDA, INC., <http://www.collaborativefamilylawfl.com/index.html> (last visited Mar. 27, 2012) (demonstrating that collaborative law websites exist in many metropolitan areas); see also STUART G. WEBB & RONALD D. OUSKY, HOW THE COLLABORATIVE DIVORCE METHOD OFFERS LESS STRESS, LOWER COST, AND HAPPIER KIDS WITHOUT GOING TO COURT: THE SMART DIVORCE (Hudson Street Press, 2006) (discussing collaborative law); Pauline H. Tesler, *Client Relations: Tips from a Collaborative Practitioner*, 21 ALTERNATIVES HIGH COST LITIG. 13 (2003); Pauline H. Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce Without Litigation*, 40 FAM. CT. REV. 403 (2002); Pauline H. Tesler, *Collaborative Law: A New Approach to Family Law ADR*, 2 CONFLICT MGMT. 12 (1996); Pauline H. Tesler, *Collaborative Law: A New Paradigm for Divorce Lawyers*, 5 PSYCH. PUB. POL'Y & LAW 967 (1999); Pauline H. Tesler & Peter B. Sandmann, *Ten Questions for Clients Weighing Litigation v. Collaborative Law*, 21 ALTERNATIVES HIGH COST LITIG. 11 (2003); Pauline H. Tesler, *The Basic Elements of Collaborative Law*, 21 ALTERNATIVES HIGH COST LITIG. 9 (2003); Pauline H. Tesler, *Collaborative Law Neutrals Produce Better Resolutions*, 21 ALTERNATIVES HIGH COST LITIG. 1 (2003); Pauline H. Tesler, *Collaborative Law: What It Is and Why Family Law Attorneys Need to Know About It*, 13 AM. J. FAM. L. 215 (1999).

80. THOMAS D. BARTON, PREVENTIVE LAW AND PROBLEM SOLVING: NONTRADITIONAL FOR THE FUTURE (2009); ROBERT M. HARDAWAY, PREVENTIVE LAW: MATERIALS ON A NON ADVERSARIAL LEGAL PROCESS (2d ed. 1997) (revising and republishing the original textbook by Louis M. Brown and Edward A. Dauer, published in 1977).

81. Creative problem solving is associated with the McGill Center for Creative Problem Solving at California Western School of Law, which sponsors a number of law school courses on CPS, national and international projects, and periodic convergences. See *Creative Problem Solving*, CWSL.EDU, http://cwsl.edu/main/default.asp?nav=creative_problem_solving.asp&body=creative_problem_solving/home.asp (last visited Mar. 27, 2012); see, e.g., Thomas D. Barton, *Conceiving the Lawyer as Creative Problem Solver*, 34 CAL. W. L. REV. 267 (1998) (discussing a symposium issue to educate creative problem solvers); James M. Cooper, *Toward a New Architecture: Creative Problem Solving and the Evolution of Law*, 34 CAL. W. L. REV. 297 (1998) (advocating creative problem solving skills in the practice of law, legal education, and other professional fields, by the McGill Center director); Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998) (introducing the emergence of creative problem solving as a legal discipline in response to the need for change in legal education); Linda Morton, *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375, 386-87 (1998).

82. See, e.g., Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the*

procedural justice,⁸⁵ among others.⁸⁶ All of these disciplines attempt to resolve legal matters in ways that: (1) optimize human functioning as well as uphold legal rights; and (2) consider more than bare legal rights, such as parties' needs, goals, emotional well-being, relationships, resources, beliefs, values, morals, and the like.⁸⁷ The emergence of these disciplines may reflect an attempt to respond to changing and emerging demands of society for sustainable, holistic, problem solving—oriented, and rehabilitative resolutions of legal problems.⁸⁸

While alternative dispute resolution (“ADR”) processes are becoming more prevalent,⁸⁹ in part due to clogged court dockets and dwindling governmental funding for courts,⁹⁰ mediation and arbitration have not entirely fulfilled these demands. Instead, collaborative law⁹¹ and alternative ADR forms such as transformative mediation⁹² have developed in response to frustration with existing mediation forms and processes.⁹³ Frustration with criminal court,⁹⁴ and an interest

Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America, 74 NOTRE DAME L. REV. 439 (1999) (discussing drug treatment courts); CENTER FOR COURT INNOVATION, <http://www.courtinnovation.org> (last visited Mar. 27, 2012) (noting that now in its sixteenth year the center is collecting information on the wide array of problem solving courts now being implemented).

83. ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, *THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT* (2005) (noting that this work is considered to be the seminal publication work on transformative mediation).

84. KING ET AL., *supra* note 5, at 80–87 (focusing on the spiritual, systemic, and holistic aspects of same).

85. *See generally* Tyler, *supra* note 27.

86. DAICOFF, *COMPREHENSIVE LAW*, *supra* note 46, at 52 (discussing rebellious lawyering, affective lawyering, the humanizing legal education movement, mindfulness in the law, and law and spirituality, among others); *see, e.g.*, Linda Mills, *Affective Lawyering*, in *PRACTICING THERAPEUTIC JURISPRUDENCE*, *supra* note 77.

87. *See* Daicoff, *Healing Profession*, *supra* note 76, at 5–9 (proposing these two unifying features).

88. *Id.* at 1–4; *see also* KING ET AL., *supra* note 5, at v, 230–39.

89. *See* Patricia Lee Refo, *The Vanishing Trial*, 30 LITIG., Winter 2004, at 1; Jeff Rifleman, *Mandatory Mediation: Implications and Challenges*, *MEDIATE.COM*, <http://www.mediate.com/articles/riflemanJ1.cfm> (last visited Mar. 27, 2012).

90. *See supra* note 9–10.

91. *See supra* note 79.

92. *See supra* note 83.

93. *See* JOSEPH P. FOLGER ET AL., *TRANSFORMATIVE MEDIATION: A*

in native or aboriginal justice forms, have led to experimentation with various restorative justice processes, such as family group conferencing, victim-offender mediation, and circle sentencing.⁹⁵ Frustration with criminal court outcomes and the lack of rehabilitation has led to the rise of interdisciplinary problem solving courts, such as drug treatment courts, community courts, homeless courts, veterans' "Stand Down" court programs, and neighborhood justice courts and centers.⁹⁶

Lawyers, mediators, and judges operating in these disciplines may need special skills. These emerging innovations in the law resolve legal problems while also carefully considering human functioning, needs, goals, emotional well being, relationships, resources, beliefs, values, or morals.⁹⁷ For example, legal personnel may need excellent intrapersonal and interpersonal skills and be adept at problem solving, collaboration, and cooperation with other disciplines.⁹⁸

In conclusion, there are a number of reasons for lawyers and law students to extend their skills training. Market forces may propel lawyers to expand their skills and services to attract and retain clients, lawyer well-being may encourage lawyers to develop certain values and competencies, law

SOURCEBOOK, RESOURCES FOR CONFLICT INTERVENTION PRACTITIONERS AND PROGRAMS 453 (2010) (identifying concerns with traditional mediation practice that spurred the development of transformative mediation and asserting that traditional forms of mediation practice had not reached mediation's full potential).

94. See Peggy Fulton Hora & William G. Schma, *As Demonstrated by Drug Courts, Judges Can Improve the Psychological Well Being of People Subject to the Legal Process and, in Turn, Make Their Own Jobs More Rewarding*, 1 JUDICATURE 82 (July-August 1998) (noting judges' dissatisfaction with the criminal courts).

95. KING ET AL., *supra* note 5, at 39–42 (describing these three forms of restorative justice and noting the link between aboriginal justice and circle process).

96. *Id.* (describing these three forms of restorative justice and noting the link between aboriginal justice and circle process). See Hora & Schma, *supra* note 94; CENTER FOR COURT INNOVATION, *supra* note 82 (exploring these different forms of problem solving courts).

97. Daicoff, *Healing Profession*, *supra* note 76, at 5–9; Silver, *supra* note 22, at 5–16.

98. DAICOFF, COMPREHENSIVE LAW, *supra* note 46, at 63–80; Silver, *supra* note 22, at 5–52 (discussing other competencies such as managing countertransference, maintaining boundaries, dealing with trauma, shame, humiliation, and grief).

schools are expanding the range of skills they teach, and changes in forms of law practice may require more interdisciplinary and broad-ranging competencies among lawyers.

II. EMPIRICALLY DEFINING THE SKILLS OF THE LAW

Empirical evidence defines what skills are most important to the practice of law. At least six studies have investigated this question, including a series of studies of the traits of practicing lawyers in Canada⁹⁹ and several surveys of lawyers in Arizona,¹⁰⁰ California,¹⁰¹ Chicago,¹⁰² and Minnesota,¹⁰³ and Montana.¹⁰⁴ These are summarized below.

A. Traits of “Top” Canadian Lawyers

The Canadian studies, by Irene Taylor, are the most striking, as they first compared lawyers’ scores on various well-accepted personality tests and measures of motivation and emotional intelligence (“EQ”) to scores of the general population. Then the studies compared the traits of lawyers who were considered by their peers to be “top” lawyers, with those of the rest of the lawyer population.¹⁰⁵ In these studies,

99. Irene E. Taylor, *Canada’s Top 30 Corporate Dealmakers*, LEXPERT MAGAZINE (Nov. 2002) [hereinafter Taylor, *Dealmakers*] (assessing traits differentiating “top” corporate dealmakers from other lawyers); Irene E. Taylor, *Canada’s Top 25 Corporate Litigators*, LEXPERT MAGAZINE (July 2002) [hereinafter Taylor, *Litigators*] (assessing traits differentiating “top” corporate litigators from other lawyers); Irene E. Taylor, *Top 40: 40 and Under 40*, LEXPERT MAGAZINE (Nov. 2004) [hereinafter Taylor, *Top 40*] (assessing traits differentiating “top” lawyers ages forty and under from other lawyers); Irene E. Taylor, *Carpe Diem! Canada’s Top 25 Women Lawyers*, LEXPERT MAGAZINE (Sept. 2003) [hereinafter Taylor, *Women Lawyers*] (assessing traits differentiating “top” women lawyers from other women lawyers).

100. Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513, at 523–25, 548 (2009).

101. Shultz & Zedeck, *Final Report*, *supra* note 18.

102. Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993) (study of Chicago lawyers).

103. John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Legal Education*, 26 WM. MITCHELL L. REV. 327, 329–30 (2000).

104. John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11 (1988) (acknowledging that none of these studies surveyed lawyers practicing “comprehensive law”; the legal personnel surveyed were in diverse but traditional areas of practice).

105. Taylor, *Litigators*, *supra* note 99; see *Publications*, PRAXIS, <http://www.praxispartners.ca/publications.html> (last visited Mar. 27, 2012)

lawyers scored better than average in “intrapersonal” skills and adaptability skills, but below the norm on interpersonal skills, overall.¹⁰⁶ Lawyers’ scores exceeded the norm in many specific areas: independence, problem solving, and certain intrapersonal skills (i.e., self-reflection and self-awareness).¹⁰⁷ Lawyers scored consistent with the average on stress management and general mood, which appears to be somewhat inconsistent with earlier studies¹⁰⁸ showing greater levels of psychic distress among lawyers when compared to the general population.¹⁰⁹

However, when “top stars” among the Canadian lawyers were assessed separately, distinct differences emerged. Taylor studied four groups: (1) top corporate litigators, (2) top corporate dealmakers, (3) top women lawyers, and (4) top lawyers forty years old and younger (“young lawyers”).¹¹⁰ She reported the following:

1. *Common Traits*: Higher “emotional intelligence” generally, and independence and stress tolerance abilities specifically, were present in top lawyers of all types, who scored higher than lawyers in general on these two traits, thus highlighting the importance of these

(providing a complete list of Taylor’s excellent empirical work on lawyer effectiveness traits). The methods used in these four studies are remarkably careful: thousands of attorneys were surveyed to determine the “top” lawyers in Canada in various areas (women, forty years old and younger, corporate litigators, and corporate dealmakers), with a fifty-one to fifty-five percent response rate. *Id.* They also evaluated the lawyers’ roles and endorsements by their colleagues. *Id.* Then, they conducted in person interviews with the lawyers and administered the 16PF, a well-known personality test, and the EQ, an emotional intelligence standard test. *Id.* In some studies, they also administered a test of motivation. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

106. Taylor, *Litigators*, *supra* note 99 (reporting these findings in the context of “emotional intelligence” [EQ], arguing that top lawyers have in general higher EQ than other lawyers and than the general population).

107. *Id.*

108. Alcoholism rate among lawyers is at about 18%, compared to an expected 9–10% in the general population). See Benjamin et al., *Prevalence*, *supra* note 42; Benjamin et al., *Comprehensive*, *supra* note 42.

109. See, e.g., Beck et al., *supra* note 42 (finding ten to eighteen percent of lawyers to be experiencing significant psychological distress—two standard deviations above the mean—as compared to the three percent or so one might expect to score that high, statistically).

110. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

two traits for success across the board. Top young lawyers and top women lawyers shared the same four strengths: independence, stress tolerance, assertiveness, and optimism. Top corporate litigators also scored higher than other lawyers in optimism, while top corporate dealmakers also scored higher than other lawyers in optimism and assertiveness, suggesting that these two traits may also be important to general success as a lawyer.¹¹¹

2. *Top corporate litigators* also scored higher than lawyers in general in reality testing, total EQ, intrapersonal skills, stress management, adaptability, and general mood. They think differently than eighty percent of the population; their thinking is abstract and creative rather than concrete and practical. They are empathetic, read others' emotions, and factor emotions into their assessments. They were also competitive, highly intelligent, and not motivated by money or power but by self-actualization, mastery, peer recognition, winning, and making a contribution. All were married.¹¹²

3. *Top corporate dealmakers* also scored higher than lawyers in general in problem-solving, practical creativity, initiative, and self regard. Not surprisingly, corporate dealmakers' raw intelligence was in the 98th percentile, verbal fluency was in the 82nd percentile, and working memory was in the 80th percentile. Their honesty and conscientiousness were high as well (in the 88th percentile) and their adaptability and ability to learn quickly in a changing environment were also important strengths. Creativity was in the 66th percentile (high average, but well below these other traits). Despite corporate dealmakers' self-assessment that their interpersonal skills were weak, their clients expressed faith in them in this regard, claiming that these lawyers were "always there" for them and could read beyond the words of a question to ascertain what is really meant, before answering. Clients also praised corporate

111. Taylor, *Litigators*, *supra* note 99 (stating that top lawyers' lowest EQ scores were in the area of interpersonal relationships of which three of the four types' lowest scores were in flexibility and impulse control).

112. *Id.* (stating that their weak areas were hypothesized as potential arrogance, a controlling nature, being a team player not coming naturally, workaholicism, and argumentativeness in personal relationships).

dealmakers' trust, integrity, and reliability.¹¹³

4. *Top young lawyers* shared these traits with Olympic athletes and other high achievers, according to Taylor,

[A] way of thinking, learning and concentrating that differs significantly from [ninety] percent of the population . . . intense detailed focus and concentration coupled with big picture conceptual strategic thinking . . . an almost inexplicable drive for achievement and success that appears to originate in a variety of sources, such as adversity and challenge in the formative years . . . a predisposition (i.e., hard-wiring) that ensures an unstoppable need to compete and win . . . an incredibly strong sense and knowledge of self . . . [and] an intuitive sense of others by which one can "read" what is implicit or understand subtle body language and gestures.¹¹⁴

They were motivated by and exhibited engagement, persistence, and dominance or leadership in groups, believed in their own ability to succeed, and tended to attribute success to their skills, not simply fate.¹¹⁵

To summarize, the Canadian studies highlight the importance of many EQ competencies, including independence, assertiveness, optimism, and stress tolerance, for lawyers seeking to be perceived as "top" lawyers.¹¹⁶

B. Lawyer Effectiveness Factors Identified by Practicing Lawyers

Five other surveys of practicing lawyers used a different methodology.¹¹⁷ These studies asked lawyers and other legal personnel what skills they believe are important to the practice of law.¹¹⁸ Many of the skills listed were traditional skills taught in law school, such as legal analysis and

113. Taylor, *Dealmakers*, *supra* note 99 (stating that weak areas also included emotional self-awareness and empathy).

114. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

115. Taylor, *Top 40*, *supra* note 99.

116. *Id.*

117. Garth & Martin, *supra* note 102; Gerst & Hess, *supra* note 100; Mudd & LaTrielle, *supra* note 104; Shultz & Zedeck, *Final Report*, *supra* note 18; Sonsteng & Camarotto, *supra* note 103.

118. *See* sources cited *supra* note 117.

reasoning, written and oral communication, legal research, legal drafting, factual investigation, interviewing and questioning, recognizing and resolving ethical dilemmas, pretrial discovery and advocacy, and trial advocacy.¹¹⁹ However, a surprising number of nontraditional skills were also identified in these studies as important. These included intrapersonal (e.g., self-knowledge, self-awareness, and self-management) and certain interpersonal skills, attributes, and values that are not typically part of a traditional law school curriculum.¹²⁰ One study, by Marjorie Shultz and Sheldon Zedeck, is explored in detail and the other four studies are summarized, below.

In 2008, Shultz and Zedeck interviewed hundreds of attorneys, judges, law professors, law students, and clients, individually and in groups, to identify what traits they felt were important to effectiveness as a lawyer.¹²¹ Their methods were exhaustive and repetitive. Eventually, they identified twenty-six “effectiveness” factors in eight categories.¹²² They also developed and empirically tested “a set of 715 behavioral examples of performance that illustrate poor to excellent performance on each of the [twenty-six] factors; and . . . [twenty-six] flexible Behaviorally Anchored Rating Scales (BARS; Smith & Kendall, 1963) based on the 715 examples, with which an evaluator could assess the effectiveness of any given practicing lawyer.”¹²³ The twenty-six effectiveness factors have eight umbrella categories and are:

1: intellectual & cognitive

- analysis and reasoning
- creativity/innovation
- problem solving
- practical judgment

119. See, e.g., Shultz & Zedeck, *Final Report*, *supra* note 18; Sonsteng & Camarotto, *supra* note 103.

120. See sources cited *supra* note 117.

121. Shultz & Zedeck, *Final Report*, *supra* note 18 (asking questions such as: “If you were looking for a lawyer for an important matter for yourself, what qualities would you most look for? What kind of lawyer do you want to teach or be?”). Their interviewees were associated with the University of California, Berkeley School of Law (Boalt Hall) and the University of California, Hastings School of Law. *Id.*

122. *Id.*

123. *Id.* at 25.

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2: research & information gathering

- researching the law
- fact finding
- questioning and interviewing

3: communications

- influencing and advocating
- writing
- speaking
- listening

4: planning and organizing

- strategic planning
- organizing and managing one's own work
- organizing and managing others (staff/colleagues)

5: conflict resolution

- negotiation skills
- able to see the world through the eyes of others

**6: client & business relations—
entrepreneurship**

- networking and business development
- providing advice & counsel & building relationships with clients

7: working with others

- developing relationships within the legal profession
- evaluation, development, and mentoring

8: character

- passion and engagement
- diligence
- integrity/honesty
- stress management
- community involvement and service
- self-development.¹²⁴

Of these twenty-six competencies, perhaps seven (about twenty-seven percent) are skills traditionally taught in law school.¹²⁵ Three to six more skills are often taught in elective

124. *Id.* at 26–27.

125. These are: analysis and reasoning (traditional legal analysis and issue spotting), researching the law (legal research and writing), fact finding (traditional legal analysis; elective clinical and trial advocacy courses),

clinical courses in law school.¹²⁶ The remaining thirteen to sixteen (fifty to fifty-seven percent) are skills that may not be typically explicitly covered by most legal educators.¹²⁷ This highlights the imbalance between legal education's current focus and what competencies are determined by those in the occupation as necessary to be professionally prepared to practice law.¹²⁸

These twenty-six competencies are relatively consistent with four other studies, dating from 1988 to 2000, in which practicing lawyers were asked to identify what traits are important to the practice of law.¹²⁹ For example, a 1988 survey of Montana lawyers identified the following traits as important: honesty, integrity, reliability, judgment, maturity, dealing effectively with others, motivation, continued professional development, tolerance and patience, understanding human behavior, and self-confidence.¹³⁰ A 1993 survey of Chicago lawyers and a 2000 study of

questioning and interviewing (elective interviewing and counseling or clinic courses), writing (legal research and writing), speaking (appellate advocacy), influencing and advocating (appellate advocacy, elective trial and appellate practice courses). These may not always be covered in law school, however; this list may be a bit generous.

126. These are: listening, problem solving, practical judgment, negotiation skills, seeing the world through another's eyes, and counseling clients (either in live client clinics or in simulation-based courses covering topics such as interviewing, counseling, negotiation, and mediation). This is debatable: live client clinics may indeed provide opportunities for law students to acquire more, if not most, of the twenty-six skills; however, few students can be enrolled in these clinics, typically. For example, in a school of perhaps 1000 students, a clinic may enroll six students per semester. Even if several clinics are offered, a small percentage of the total student body can enroll. Field placements/externships are often substituted but these are limited, due to availability and need for intensive supervision by law faculty. Simulation-based courses are also substituted but these are elective and often have limited sizes.

127. Live client clinics may or may not afford some opportunities to develop: organizing and managing one's own work, organizing and managing others (staff/colleagues), passion and engagement, diligence, integrity/honesty, stress management, and self-development. Finally, these skills may be absent from law school entirely: creativity/innovation, strategic planning, networking and business development, building relationships with clients, developing relationships within the legal profession, evaluation, development, and mentoring of others, community involvement and service.

128. KING ET AL., *supra* note 5, at 241 (discussing that "current legal education remains unbalanced").

129. Garth & Martin, *supra* note 102; Gerst & Hess, *supra* note 100; Mudd & LaTrielle, *supra* note 104; Sonsteng & Camarotto, *supra* note 103.

130. Mudd & LaTrielle, *supra* note 104.

Minnesota lawyers identified the following characteristics as important: instilling others' confidence in you, negotiation, counseling, and the ability to obtain and keep clients.¹³¹ A survey of Arizona lawyers in 2005¹³² identified the following skills as important: listening, working cooperatively with others as part of a team, problem solving, counseling, negotiation, obtaining and keeping clients, networking within the profession, mediation, and strategic planning.¹³³ A synthesis of these relatively consistent findings is attempted below.

C. Synthesizing the Lawyer Effectiveness Skills

To summarize, the foregoing six studies of lawyering skills suggest the importance of the skills and competencies listed in *Table 1*, below. These skills and abilities can be divided into four categories, loosely based on emotional intelligence theory:¹³⁴ (1) intrapersonal competencies (self-oriented) and (2) interpersonal competencies (relational). Within these two categories, the competencies are broken down further into two subcategories: (a) awareness, values, or abilities; and (b) management (ability to display behavior consistent with one's abilities).¹³⁵ Finally, within each category, the skills are not listed in order of importance, but are organized from the most general to the most specific, where possible:

131. Garth & Martin, *supra* note 102; Sonsteng & Camarotto, *supra* note 103.

132. Gerst & Hess, *supra* note 100, at 15–19 (discussing the Phoenix School of Law's survey of area lawyers, tables of results and description of subsequent development of professional skills and values course).

133. *Id.*

134. These four quadrants come from the literature on emotional intelligence. See Silver, *supra* note 22, at 9–12 citing DANIEL GOLEMAN, *WORKING WITH EMOTIONAL INTELLIGENCE* 14–27 (1997) [hereinafter GOLEMAN, *WORKING*] (describing Goleman's five divisions as personal (self-awareness, self-regulation, and motivation) and social (empathy and social skills)).

135. Note that Goleman had five categories; the fifth was "motivation," which is included in this *Table 1* under self-awareness skills. See Silver, *supra* note 22.

Table 1.

INTRAPERSONAL (SELF) AWARENESS, VALUES, & ABILITIES

- intrapersonal skills¹³⁶
- practical judgment¹³⁷
- maturity¹³⁸
- passion and engagement¹³⁹
- motivation¹⁴⁰
- diligence¹⁴¹
- drive for achievement and success and a need to compete and win¹⁴²
- intense detailed focus and concentration¹⁴³
- self-confidence¹⁴⁴
- strong sense of self and self-knowledge¹⁴⁵
- integrity, honesty,¹⁴⁶ and ethics¹⁴⁷
- reliability¹⁴⁸
- independence¹⁴⁹
- adaptability¹⁵⁰
- creativity/innovation¹⁵¹ (in a practical sense¹⁵²)

136. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

137. Mudd & LaTrielle, *supra* note 104; Shultz & Zedeck, *Final Report*, *supra* note 18.

138. Mudd & LaTrielle, *supra* note 104.

139. Shultz & Zedeck, *Final Report*, *supra* note 18.

140. Mudd & LaTrielle, *supra* note 104.

141. Shultz & Zedeck, *Final Report*, *supra* note 18.

142. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

143. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

144. Mudd & LaTrielle, *supra* note 104.

145. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

146. Mudd & LaTrielle, *supra* note 104; Shultz & Zedeck, *Final Report*, *supra* note 18.

147. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

148. Mudd & LaTrielle, *supra* note 104.

149. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

150. *Id.*

151. Shultz & Zedeck, *Final Report*, *supra* note 18.

152. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

INTRAPERSONAL MANAGEMENT COMPETENCIES

- organizing and managing one's own work¹⁵³
- self-development¹⁵⁴
- continued professional development¹⁵⁵
- stress management¹⁵⁶
- general mood¹⁵⁷

INTERPERSONAL (OTHER) AWARENESS

- understanding human behavior¹⁵⁸
- an intuitive sense of others by which one can "read" what is implicit or understand subtle body language and gestures¹⁵⁹
- ability to see the world through the eyes of others¹⁶⁰
- tolerance and patience¹⁶¹
- ability to read others and their emotions¹⁶²

INTERPERSONAL MANAGEMENT COMPETENCIES

- dealing effectively with others¹⁶³
- questioning and interviewing¹⁶⁴
- influencing and advocating¹⁶⁵
- instilling others' confidence in you¹⁶⁶
- speaking¹⁶⁷
- listening¹⁶⁸
- providing advice & counsel to clients¹⁶⁹
- obtaining, building relationships with, and keeping clients¹⁷⁰

153. Shultz & Zedeck, *Final Report*, *supra* note 18.

154. *Id.*

155. Mudd & LaTrielle, *supra* note 104.

156. Shultz & Zedeck, *Final Report*, *supra* note 18; Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

157. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

158. Mudd & LaTrielle, *supra* note 104.

159. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

160. Shultz & Zedeck, *Final Report*, *supra* note 18.

161. Mudd & LaTrielle, *supra* note 104.

162. Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

163. Mudd & LaTrielle, *supra* note 104.

164. Shultz & Zedeck, *supra* note 18.

165. *Id.*

166. Garth & Martin, *supra* note 102; Sonsteng & Camarotto, *supra* note 103.

167. Shultz & Zedeck, *supra* note 18.

168. *Id.*; Gerst & Hess, *supra* note 100.

169. Garth & Martin, *supra* note 102; Gerst & Hess, *supra* note 100; Shultz & Zedeck, *supra* note 18; Sonsteng & Camarotto, *supra* note 103.

- developing business¹⁷¹
- working cooperatively with others as part of a team¹⁷²
- organizing and managing others (staff/colleagues)¹⁷³
- evaluation, development, and mentoring¹⁷⁴
- negotiation skills¹⁷⁵
- mediation¹⁷⁶
- developing relationships within the legal profession (networking)¹⁷⁷
- community involvement and service¹⁷⁸
- problem solving¹⁷⁹
- strategic planning¹⁸⁰

Of the skills listed above, some appear more frequently than others, suggesting that they may be more important or universally valued. For example, competencies or traits named consistently in three of the six studies are: *drive, honesty, integrity, understanding others, obtaining and keeping clients, counseling clients, negotiation, problem solving, and strategic planning*.¹⁸¹

Because the skills listed in *Table 1*, above, have been identified by lawyers and social scientists as important to success in the legal workplace and in the practice of law, they may be essential components of effective lawyering. As such, it may make sense to attempt to include training in them, in law school.¹⁸²

170. Garth & Martin, *supra* note 102; Gerst & Hess, *supra* note 100; and Shultz & Zedeck, *supra* note 18; Sonsteng & Camarotto, *supra* note 103.

171. Shultz & Zedeck, *supra* note 18.

172. Gerst & Hess, *supra* note 100.

173. Shultz & Zedeck, *supra* note 18.

174. *Id.*

175. Garth & Martin, *supra* note 100; Sonsteng & Camarotto, *supra* note 103; Gerst & Hess, *supra* note 100; Shultz & Zedeck, *supra* note 18.

176. Gerst & Hess, *supra* note 100.

177. Gerst & Hess, *supra* note 100; Shultz & Zedeck, *supra* note 18.

178. Shultz & Zedeck, *supra* note 18.

179. Gerst & Hess, *supra* note 100; Shultz & Zedeck, *Final Report*, *supra* note 18; Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

180. Gerst & Hess, *supra* note 100; Shultz & Zedeck, *Final Report*, *supra* note 18; Taylor, *Litigators*, *supra* note 99; Taylor, *Dealmakers*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99.

181. Determined from the results in the foregoing table.

182. SULLIVAN ET AL., *supra* note 1; STUCKEY ET AL., *supra* note 1; MacCrate, *supra* note 1.

D. Teaching the Lawyer Effectiveness Skills

There may be some challenges to teaching the skills or competencies listed above in *Table 1*. First, empirical research on lawyer traits suggest that because these competencies touch on interpersonal dynamics or emotional concerns, they may be skills law students find challenging or uninteresting.¹⁸³ Second, some might argue that they are the kind of competencies that develop in one's family of origin or in the "school of hard knocks," rather than in graduate school—suggesting that it may be challenging for law schools to provide training in these areas. Some law students may arrive at law school with these skills firmly mastered. They may be second-career students or have had significant life experience prior to law school and do not need additional training in these skills. Third, the typical "lawyer personality" may naturally work against training in these skills.¹⁸⁴ Empirical research spanning the last forty years of

183. Randall, *supra* note 48; Stephen Reich, *California Psychological Inventory: Profile of a Sample of First-Year Law Students*, 39 PSYCHOL. REP. 871, 873 (1976) (noting that law students scores indicate feeling internally insecure, lacking in maturity and socialization, defensive, distant, moody, dogmatic, impulsive, suspicious, aloof, cautious, nervous, inhibited, internally conflicted, and awkward in social situations despite an exterior image of confidence and dominance); Richard, *supra* note 47 (stating that eighty-one lawyers overwhelmingly preferred "Thinking" to "Feeling" on the Myers-Briggs Type Indicator, a popular personality trait instrument, suggesting a de-emphasis on personal values, mercy, harmony, effects on other people, and sensitivity to others, in decision-making); Heather M. McLean & Rudolf Kalin, *Congruence Between Self-Image and Occupational Stereotypes in Students Entering Gender-Dominated Occupations*, 26 J. BEHAV. SCI. 142, 153–57 (1994) (stating that lawyers were perceived by undergraduates as less "affiliative" and more "dominant"; law students also saw themselves as less "affiliative" than average); Barbara Nachmann, *Childhood Experience and Vocational Choice in Law, Dentistry and Social Work*, 7 J. COUNSEL. PSYCHOL. 243–44, 248–49 (1960) (finding that the early childhood of lawyers deemphasized emotions and concern for others' feelings).

184. See, e.g., DAICOFF, KNOW THYSELF, *supra* note 20, at 25–69 (summarizing forty years of empirical research differentiating lawyers, law students, and pre-law students from the general (non-lawyer) population). Eight to ten "lawyer" traits emerged: (1) achievement orientation, (2) competitiveness, (3) dominance, (4) tendency to become more aggressive and ambitious under stress, (5) economic bottom line orientation when evaluating options and materialistic goals, (6) "Thinking" decision-making preference on the Myers-Briggs Type Indicator, a popular personality trait instrument, (7) "rights orientation" to decision-making as defined by Carol Gilligan, and (8) a tendency to deemphasize interpersonal relations—in addition, lawyers had a higher incidence of psychological distress and alcoholism compared to the

the Twentieth Century suggests that lawyers generally tend to be more competitive, dominant, achievement-oriented, focused on the economic bottom line, and analytical than the general population.¹⁸⁵ They tend to respond to stress by becoming more aggressive and ambitious (not affiliative). Attorneys may prefer to make decisions on the basis of rights, rules, logical analysis, rationality, and justice, as opposed to contextual factors such as interpersonal relationships, emotions, harm to others, or mercy. They may not be interpersonally sensitive or skilled, albeit they prefer to be perceived as socially ascendant, confident, and dominant. Furthermore, attorneys may tend to focus on external rewards and achievements, and suffer from higher rates of psychological distress and alcoholism.¹⁸⁶ Some of these traits appear to have been present before law school and some develop or deepen during legal education.¹⁸⁷ While several of these traits “fit” well with some of the empirically-derived skills of the law (such as practical judgment, motivation, diligence, self-confidence, managing one’s own work, and influencing others),¹⁸⁸ other typical lawyer traits work against lawyers’ proficiency in skills, such as understanding and dealing with others, listening, collaborating in teams, stress management, and general mood.¹⁸⁹

The next logical steps are to determine which of these skills are teachable in order to craft a law school curriculum to accomplish or confirm the acquisition of these skills by law students. Mayer, Salovey, and Caruso’s article debunking popular conceptions of emotional intelligence asserts that

general population. *Id.*

185. *Id.*

186. *Id.*

187. See Daicoff, *Empirical Research*, *supra* note 47, at 1348–1410 (summarizing empirical studies documenting the traits of pre-law students, law students, and lawyers, and the effects of law school).

188. See *Table 1*, *supra*.

189. Susan Daicoff, *Asking Leopards to Change Their Spots: Can Lawyers Change? A Critique of Solutions to Professionalism by Reference to Empirically-Derived Attributes*, 11 *GEO. J. LEGAL ETHICS* 547, 587–88, 590, 594–95 (1998) (noting that the author has previously argued that the typical lawyer traits may be adaptive to the traditional, adversarial practice of law, as they allow lawyers to represent clients and causes which are unpopular or differ from the lawyers’ personal morals and values, without undue angst; however, these self-same “adversarial” traits may work against the lawyers’ “bedside manners” and, thus, their overall effectiveness as professionals).

teachable traits are those relating only to “the ability to monitor one’s own and others’ feelings and emotions, to discriminate among them and to use this information to guide one’s thinking and actions.”¹⁹⁰ Their assertion suggests that it may be difficult to teach the intangible traits above, such as honesty, integrity, or drive. However, it should be possible to teach many of the intrapersonal competencies and most of the interpersonal, conflict resolution, teamwork, problem solving, and planning skills listed above.¹⁹¹

Curricula exist for teaching many of these skills.¹⁹² These curricula may be customized and adapted for law school by utilizing law school hypotheticals as context.¹⁹³ Finally, even for skills that are arguably non-teachable, such as honesty, drive, and passion, law students can be placed in hypothetical or real situations where they have opportunities to develop these traits. They can be asked to choose how they would respond to particular circumstances and then asked to reflect on how they reacted.

These skills are not new; the legal profession and legal education train these skills in a variety of ways.¹⁹⁴ However, the variety of methods being used and the lack of cohesion among them are striking. The following section examines the relationships and overlap between various disciplines now

190. Mayer et al., 63 AM. PSYCHOL., no. 6, 2008 at 503–17 (debunking popular conceptions of emotional intelligence).

191. For example, the author has been teaching these latter skills in her elective courses, Comprehensive Law Practice and Leadership for Lawyers. DAICOFF, COMPREHENSIVE LAW, *supra* note 46.

192. *See, e.g.*, DIANNE SCHILLING, 50 ACTIVITIES FOR TEACHING EMOTIONAL INTELLIGENCE, LEVEL III: HIGH SCHOOL (1999) (including modules on self-awareness, managing feelings, decision-making, managing stress, self-concept, personal responsibility, empathy, communication, group dynamics, conflict resolution); *see also* Roland B. Smith & Paul Bennett Marrow, *The Changing Nature of Leadership in Law Firms*, N.Y.S.B.A. J. 33, 36 (Sept. 2008); Roland B. Smith, *The Struggles of Lawyer-Leaders and What They Need to Know*, N.Y.S.B.A. J. 38 (Mar.–Apr. 2009) (noting the importance of emotional intelligence for lawyers, particularly in current challenging times); HAROLD SCHARLATT & ROLAND B. SMITH, INFLUENCE: GAINING COMMITMENT, GETTING RESULTS (2d ed. 2011) (including training materials on persuasion skills).

193. *See, e.g.*, THOMAS D. MORGAN & RONALD D. ROTUNDA, PROFESSIONAL RESPONSIBILITY: PROBLEMS & MATERIALS (Foundation Press, 10th ed. 2008) (including several hypothetical ethical dilemmas in which lawyers, law students, and judges might encounter ethical and moral dilemmas requiring careful assessment, soul searching, and decision-making).

194. *See Table 1, supra.*

infusing these skills into law and law school, after overseeing legal education in general.

III. NON-EMPIRICALLY DEFINING THE SKILLS OF LEGAL WORK

Legal commentators have observed that human brains are divided into two hemispheres, left and right, with different competencies and tasks.¹⁹⁵ They note that left-brain dominant individuals tend to excel at analytical, logical tasks, while right-brain dominant individuals tend to excel at creative, imaginative, artistic, big picture tasks, and empathetic, caring interactions with others.¹⁹⁶ Susskind asserts that right-brain preferred individuals have a greater ability to empathize; he predicts a shift away from the dominance of left-brain thinkers and towards right-brain thinkers, in the law.¹⁹⁷ The skills traditionally taught in law school are consistent with left-brained competencies of logic, reason, and analysis,¹⁹⁸ suggesting that law school curricula typically may emphasize left-brain dominant tasks.¹⁹⁹ These are explored below.

195. See, e.g., Ran Kuttner, *The Wave/Particle Tension in Negotiation*, 16 HARV. NEGOT. L. REV. 331, 339–40 (2011) (describing the differences between the right- and left-brain competencies and emphases), citing David A. Hoffman, *Paradoxes of Mediation*, in BRINGING PEACE INTO THE ROOM: HOW THE PERSONAL QUALITIES OF THE MEDIATOR IMPACT THE PROCESS OF CONFLICT RESOLUTION 167, 167 (Daniel Bowling & David A. Hoffman eds., 2003).

196. SUSSKIND, *supra* note 1, at 282–83, citing DANIEL PINK, *A WHOLE NEW MIND: WHY RIGHT-BRAINERS WILL RULE THE FUTURE* (2005) (noting that these are generalizations and may or may not adequately describe individuals, who utilize both hemispheres without a preference for one over the other).

197. SUSSKIND, *supra* note 1, at 282–83.

198. See Randall, *supra* note 48 (focusing on the prevalence of a “Thinking” decision-making preference among law students); Richard, *supra* note 47 (finding a strong preference for a “Thinking” decision-making style among lawyers).

199. SUSSKIND, *supra* note 1, at 283 (“[i]f Pink’s analysis is right, the legal world today is dominated by ‘left brain’ thinkers who will not find it easy to empathize.”). The predicted or emerging shift to right-brain thinking may have something to do with the infusion of women into the law. *Id.* Susskind explains that “the typical male brain systemizes while the female brain empathizes” and predicts creativity, innovation, and artistry from female lawyers. *Id.*; see also Daicoff, *Empirical Research*, *supra* note 47, at 1367–68, 1370 (noting the increase in women in the legal profession from 1969 (five to ten percent) to 1981 (forty-five percent)), citing ABA Comm. on Women in the Profession, *Basic Facts From Women in the Law: A Look at the Numbers* 1 (1995).

A. Traditional Lawyering Skills

Law school currently requires law students to acquire a number of substantive and procedural doctrinal skills. These include: legal research, reading and briefing cases, the time-honored IRAC analysis of legal issues (Issue-Rule-Analysis-Conclusion), making a legal argument, legal writing, drafting, oral advocacy and argument, marshalling facts and evidence, trial skills, identifying which law applies to a hypothetical fact pattern, synthesizing cases, distinguishing cases, and jurisprudential analyses from the perspective of legal realism, legal positivism, critical legal studies, and other schools of jurisprudential thought.²⁰⁰

The legal educational experience in these areas is related to and well-supported by trial and appellate courts, doctrinal scholarship by law faculty, and jurisprudential schools of thought.

In recent decades, many law schools have added “lawyering skills” training to their required curricula, which almost always include legal research and writing, and oral and written advocacy.²⁰¹ It may include interviewing, counseling, and negotiating skills.²⁰² The curricula may also include skills such as legal drafting of litigation and transactional documents and professionalism concerns not addressed by the ethics codes.²⁰³ Elective courses may introduce students to other issues, such as access to justice issues, mediation advocacy, and the need for pro bono legal services.²⁰⁴

200. See MacCrate, *supra* note 1; SULLIVAN ET AL., *supra* note 1; STUCKEY ET AL., *supra* note 1.

201. See *id.*; see also AMERICAN BAR ASSOCIATION LEARNING OUTCOMES PAPER, KEY ISSUES CONSIDERED BY THE STUDENT LEARNING OUTCOMES SUBCOMMITTEE 2 (2009) (setting forth two alternative skills lists for law schools to teach and assess (“learning outcomes”: Alternative 1 includes traditional legal skills such as “legal analysis and reasoning, legal research, problem solving, written and oral communication and the ability to resolve ethical and professional dilemmas,” while Alternative 2 includes skills such as counseling, alternative dispute resolution, interviewing, negotiation, and organization and management of legal work, among others)).

202. See, e.g., *Elective Skills Courses*, LAW.BERKELEY.EDU, <http://www.law.berkeley.edu/178.htm> (last visited Mar. 28, 2012) (noting the skills listed at the University of California, Berkeley (Boalt Hall) School of Law).

203. *Id.*

204. See, e.g., *Coastal Law*, FCSL.EDU, <http://www.fcsl.edu/academics/>

B. Filling in the Blanks with Negative²⁰⁵ Behaviors

Armed with these arguably left-brain-oriented lawyering skills, law students and recent law school graduates may find themselves in professional situations that call for judgment, maturity, self-awareness, self-control, interpersonal awareness, the ability to influence people, relationship-building, teamwork, collaboration, problem solving, and strategic planning.²⁰⁶ For example, in law school, they may be working with a clinic client on an immigration case and find themselves angry with the immigration authorities who are threatening to deport their client. After graduation, they may be asked to represent a vitriolic spouse in a bitter custody battle and be stymied by having to deal with hostility and bitterness of the client. They may be asked to work with other lawyers as a team on a complex commercial case, find themselves in conflict with the team leader in terms of strategy and approach, and not be sure how (or whether) to confront or handle the conflict.

Because law school did not explicitly train these individuals in all lawyering skills, they are apt to “fill in the blanks” with the kind of behavior they think the situation calls for, based on their personalities, life experiences, and stereotypes and media portrayals of lawyers. They may engage in hostility, sarcasm, anger, criticism, threats, belittling, and other hostile behavior towards opposing counsel, believing that this behavior is consistent with “zealous advocacy” and vigorous legal representation. These lawyers can lapse into over-identification with the client’s cause and become overly emotionally invested in the success or failure of the client’s case, resulting in “emotions on rampage” and legal representation by “Mongo”—what Professor James McElhaney calls the lawyer’s “inner beast.”²⁰⁷ They may focus on acquiring the external rewards

courses-and-schedules (last visited Mar. 28, 2012) (identifying the curriculum and course offerings at Florida Coastal School of Law).

205. Florida Coastal founding dean Don Lively originated the concept of “filling in the blanks with negatives.” This information was obtained by the author as faculty member of Florida Coastal School of Law from 1998–99 and 2000–present.

206. *E.g.*, MORGAN & ROTUNDA, *supra* note 193 (including approximately forty hypothetical problems, many of which require such skills, in the context of learning the law of professional responsibility).

207. *See also* James McElhaney, *Mongo on the Loose*, A.B.A. J. 24 (Feb.

of the profession (such as money, material possessions, and prestige) and become vulnerable to distress because they overlook or ignore the intrinsic satisfactions of the work empirically linked to lawyer well-being.²⁰⁸

If law school graduates were lucky enough to have well-supervised clinical or field placement experiences during law school, they might avoid some of these grosser errors. If not, or if their clinical experiences were limited, they may guess at what behaviors to employ in these challenging situations and select negative behaviors that unnecessarily exacerbate conflict and tension for the lawyers, clients, and all involved in the legal matter. Comprehensive skills training, which enhances self-awareness, self-management, and conflict resolution skills, could have ensured that the lawyers had access to more effective attitudes, behaviors, and competencies to use in these situations.

C. *The Twelve Disciplines*

Rather than allowing lawyers' skills to develop into "Mongo"²⁰⁹ at worst, or haphazardly at best, law schools have begun expanding their curricula to include arguably "right-brained," less traditional skills training (e.g., they may include professionalism, values, interviewing, counseling, and negotiating in law school courses).²¹⁰ Practicing lawyers have begun to attend programs emphasizing these skills as well, either as conferences and workshops or continuing legal

1996).

Everyone has an inner beast—a primitive set of emotions driven by a region of the brain under the cerebellum and close to the brain stem. There, deep inside the skull, is what some folks call the reptilian brain. It processes basic drives: eating, sleeping, sex. When you are attacked, it sends out the signal to fight or run. I call the inner beast Mongo. Mongo is your co-counsel in every case you try. You cannot make him go away. When Mongo is aroused, he takes absolute control over the nervous system and can put all reason on hold until the danger has passed. Unfortunately, Mongo tends to misinterpret what happens in the courtroom. For Mongo, every lawsuit is a fight, every witness a potential enemy and every opposing lawyer a saber-toothed tiger—to be attacked and destroyed Mongo can cause a lot of trouble.

Id.

208. Krieger, *Dark Side*, *supra* note 20 (linking extrinsic values to a decline in well-being).

209. McElhaney, *supra* note 207.

210. *See, e.g., supra* notes 15–18, 52–60, 71–72, and accompanying text.

education courses (e.g., on stress management, mindfulness, leadership, etc.).²¹¹ At least twelve disciplines provide training for nontraditional training in the law; these are examined below.

1. *Professionalism and Ethics*

For years, legal professional responsibility and ethics scholars have suggested the inclusion of professionalism and values in legal education.²¹² They decry the loss of the lawyer's "moral compass" and encourage legal education to go beyond the rules of ethics and ask what should be done in situations where the rules are not clear, are "gray," or are silent.²¹³ In addition, some professional responsibility courses in law school and continuing legal education courses for lawyers now include "professionalism" and broad values and morals in their content.²¹⁴ These topics often include civility, judgment, one's "moral compass," accountability, and maturity.²¹⁵ However, because the Multistate Professional Responsibility Exam tests only on ethics rules,²¹⁶ initiatives to focus on professionalism and morals can easily fall by the wayside in favor of only teaching the rules in law schools.

211. See *supra* notes 17 and 71–72 and accompanying text (discussing Len Riskin's Initiative on Mindfulness at the University of Florida); see also *supra* note 192 and accompanying text (discussing Roland Smith's leadership training).

212. ANTHONY KRONMAN, *THE LOST LAWYER* (1993); SOL LINOWITZ & MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994); JEAN STEFANCIC & RICHARD DELGADO, *HOW LAWYERS LOSE THEIR WAY: A PROFESSION FAILS ITS CREATIVE MINDS* (2005); STUCKEY ET AL., *supra* note 1; SULLIVAN ET AL., *supra* note 1; RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER, AND GREED* (1999); MacCrate, *supra* note 1; Peter Marguiles, *Review Essay: The Lost Lawyer: Failing Ideals of the Legal Profession by Anthony T. Kronman*, 73 TEX. L. REV. 139 (1995).

213. See KRONMAN, *supra* note 212; ZITRIN & LANGFORD, *supra* note 212.

214. See RUSSELL PEARCE ET AL., *PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH* 12–13 (2011) (quoting Professor Neil Hamilton's professionalism definitions); see also *supra* notes 82–83 and accompanying text (discussing the non-course professionalism requirement instituted by Florida Coastal School of Law); *Course Descriptions*, *supra* note 16 and accompanying text (discussing the STEPPS course at California Western School of Law).

215. PEARCE ET AL., *supra* note 214, at 12–13.

216. See *About Us*, NATIONAL COUNCIL OF BAR EXAMINERS, www.ncbex.org (last visited Mar. 28, 2012).

Faith-based communities also support the legal profession's search for nontraditional skills. For example, faith-based law schools often explicitly include professionalism in their curricula.²¹⁷ Practicing lawyers and judges are also important resources to law schools seeking to include topics "beyond the rules" in professional responsibility and other law school courses, as they can provide real-world examples that students find compelling. Additionally, some states require continuing legal education in "professionalism" for lawyers licensed within their states.²¹⁸

2. *Lawyer Well-Being*

Beyond professionalism, state bar associations also have focused on improving lawyer distress.²¹⁹ Lawyer well-being researchers, stress management experts, and lawyers' assistance programs, have responded to the alarming data on lawyer distress, depression, and dissatisfaction, by investigating how to improve lawyer well-being.²²⁰ As a result, they recommend more focus on "intrinsic values," autonomy control, and social support for lawyers.²²¹ Lawyers are encouraged to integrate their passions and interests into their legal work. Pro bono work and other altruistic pursuits have been encouraged to enhance lawyers' sense of purpose and meaning.²²² Stress management, meditation, yoga, and other wellness initiatives are occasionally subjects of continuing legal education for lawyers (and some law school curricula).²²³

217. See, e.g., *About Elon University*, ELON.EDU, <http://www.elon.edu/web/about/default.xhtml> (last visited Mar. 28, 2012) (explaining that these "professionalism roundtables" feature "a keynote speaker and an ethics/professionalism hypothetical at each table," which the attendees discuss).

218. See *supra* note 17 and accompanying text (discussing Riskin's Initiative on Mindfulness at the University of Florida).

219. See, e.g., *Commission on Lawyer Assistance Program*, *supra* note 43.

220. See, e.g., Sheldon & Krieger, *supra* note 20.

221. *Id.*

222. See, e.g., *Pipeline to Justice: A Novel New Program from CUNY Law*, LAW.CUNY.EDU, <http://www.law.cuny.edu/clinics/JusticeInitiatives/pipeline.html> (last visited Mar. 28, 2012) (emphasizing public service and pro bono work).

223. See, e.g., AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* (1995); STEVEN KEEVA, *TRANSFORMING PRACTICES, FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999); MICHAEL F. MELCHER, *THE CREATIVE LAWYER: A PRACTICAL GUIDE TO AUTHENTIC PROFESSIONAL SATISFACTION* (2007); see also

Bar associations and private consultants and coaches also support lawyer well-being, such as Irene Taylor, Dennis Coyne, and Lawrence Richard.²²⁴ State bar associations are particularly interested in maintaining the mental health of lawyers. Some have implemented mandatory substance abuse education requirements for lawyers.²²⁵ Better mental health among lawyers prevents malpractice and disciplinary actions²²⁶ and protects lawyers, society, and clients alike. Some schools, such as Vanderbilt Law School, have implemented wellness programs based on the lawyer well-being research.²²⁷

3. Leadership Education

Rather than focus on ameliorating lawyer distress or a decline in professionalism, some law schools focus more positively on fostering “leadership” traits and abilities in law students.²²⁸ As many lawyers serve in positions of leadership,

Special Programs - Student Affairs, *supra* note 71 (discussing Vanderbilt University School of Law’s wellness noncredit course); *Well Being and the Practice of Law*, *supra* note 17.

224. *E.g.*, *About Dennis*, DENNISCOYNE.COM, <http://denniscoyne.com/about> (last visited Mar. 28, 2012) (stating that Dennis Coyne formerly practiced law for thirty years in Minnesota and is now a professional coach); Taylor, *Dealmakers*, *supra* note 99; Taylor, *Litigators*, *supra* note 99; Taylor, *Top 40*, *supra* note 99; Taylor, *Women Lawyers*, *supra* note 99; Consultant Dr. Larry Richard has a Ph.D. in psychology, a law degree, and has practiced law for ten years. Richard, *supra* note 47; *Larry Richard*, LINKEDIN.COM, <http://www.linkedin.com/in/lawyerbrain> (last visited Mar. 28, 2012) (stating that consultant Dr. Larry Richard has a law degree and a Ph.D. in psychology and practiced law for ten years).

225. *See supra* note 43 (discussing the professionalism continuing legal education requirements of the Ohio and Florida bars).

226. *See* Daicoff, *Empirical Research*, *supra* note 47, at 1423 n.540 (establishing the link between malpractice and disciplinary actions and conditions such as depression and alcohol abuse); Jonathan Goodliffe, *Alcohol and Depression in English and American Disciplinary Proceedings*, 89 ADDICTION 1237, 1243 (1994).

227. *See Special Programs - Student Affairs*, *supra* note 71 (discussing Vanderbilt University School of Law’s wellness noncredit course).

228. *See Coastal Law*, *supra* note 204; *Leadership for Lawyers*, LAW.SCU.EDU, <http://law.scu.edu/academics/courses/leadership-for-lawyers-521.cfm> (last visited Mar. 28, 2012) (Santa Clara has hosted three annual leadership conferences bringing together legal educators, consultants, law students, and lawyers); *see also* RHODE & PACKEL, *supra* note 59 (discussing the importance of leadership for lawyers); Karen H. Rothenberg, *Recalibrating the Moral Compass: Expanding “Thinking Like a Lawyer” into “Thinking Like a Leader,”* 40 U. TOL. L. REV. 411, 412 (2009) (arguing for leadership training in

within the government, the court systems, and nonprofit organizations, leadership training is a somewhat natural extension of legal education. Leadership training often includes competencies such as collaboration, teamwork, problem solving, inspiring others, creativity, transparency, humility, healthy conflict, goal setting, self-promotion, and marketing.²²⁹

Business schools can serve as important outside resources for the initiative towards leadership in law. For example, Santa Clara School of Law crafted its leadership for lawyers course by collaborating with the University's business school.²³⁰

4. *Corporate Management Models*

In a related vein, new models of corporate management have sprung up in the last decade or two. These include models such as those in Jim Collins' book, *Good to Great*,²³¹ Kouzes and Posner's book, *The Leadership Challenge*,²³² and Patrick Lencioni's book, *The Five Dysfunctions of a Team*.²³³ Collins' work is particularly persuasive, as he empirically studied Fortune 500 corporations whose profits grew over a period of time and compared them to corporations whose earnings plateaued over the same period of time.²³⁴ He found that the successful corporations' management adopted a style of managing that abandoned a "command and control," hierarchical form of leadership in favor of a more egalitarian style emphasizing transparency and humility on the part of the leaders. He soundly denounced the command and control style, which may use the raw exercise of power to lead, as inefficient and unsuccessful.²³⁵ The management models

law school).

229. *Leadership for Lawyers*, *supra* note 228 (listing skills).

230. *Id.*

231. JIM COLLINS, FROM GOOD TO GREAT: WHY SOME COMPANIES MAKE THE LEAP . . . AND OTHERS DON'T (2001) (describing a shift in corporate management from hierarchical, command-and-control to team and humility-based leadership).

232. JAMES M. KOUZES & BARRY Z. POSNER, THE LEADERSHIP CHALLENGE (2002).

233. PATRICK LENCIONI, THE FIVE DYSFUNCTIONS OF A TEAM: A LEADERSHIP FABLE (2002) (exploring this shift in corporate management by illustrating positive and dysfunctional dynamics in a work team).

234. COLLINS, *supra* note 231, at 2–8.

235. *Id.* at 12–14, 21, 30, 35, 56, 130–33.

described in these books are a rich source for developing leadership curricula in law schools.

Corporate America and corporate management experts provide guidance to law schools and lawyers seeking to retool to be conversant in these new styles of management. Lawyers working with corporate clients today may need to be well-versed in these models of management, in order to be effective and cooperate with their clients' representatives. For example, lawyers may be asked to serve on a cooperative team consisting of their corporate client's officers, directors, employees, and outside consultants; teamwork, collaboration, and problem solving competencies in this context may be most useful.²³⁶

5. *Emotional Intelligence*

Some leadership experts refer to the well-known work of best-selling author and social scientist Daniel Goleman, in the field of "emotional intelligence," or "EQ."²³⁷ In his 1997 book, Goleman sets forth empirical research indicating that EQ can be more important than intelligence quotient ("IQ") to success.²³⁸ To oversimplify, EQ roughly equates to one's personal and human relations skills, sometimes commonly referred to as "people skills."

Yale University Provost and psychologist Peter Salovey postulates that EQ can be divided into five domains: knowing one's emotions, managing one's emotions, motivating oneself, recognizing emotions in others, and handling relationships.²³⁹ Howard Gardner is credited for the notion that there are two types of personal intelligence: intrapersonal and interpersonal.²⁴⁰ Intrapersonal intelligence "gives people ready access to their own feelings . . . the ability to discriminate among their emotions, and accurate awareness of their

236. SUSSKIND, *supra* note 1, at 282–83 (predicting a need for different skills among lawyers in the future).

237. Silver, *supra* note 22; see also John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOLEDO L. REV. 323 (2008).

238. Silver, *supra* note 22; see also DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* (2005).

239. Mayer et al., *supra* note 190; see also Silver, *supra* note 22, at 5–16 (exploring training law students in "emotional competencies," based on psychologists Peter Salovey and John Mayer's emotional intelligence concept).

240. SCHILLING, *supra* note 192, at 11.

strengths and weaknesses.”²⁴¹ Interpersonal intelligence allows individuals “to discern and respond appropriately to the moods, temperaments, motivations and desires of others.”²⁴² Intrapersonal refers to self-awareness and self-management, whereas interpersonal refers to understanding others’ behavior, interacting effectively with others, responding appropriately to others, working cooperatively, and resolving conflicts.²⁴³

Emotional intelligence models can be split into five areas: four neatly-organized quadrants consisting of intrapersonal awareness, intrapersonal management, interpersonal awareness, and interpersonal management, and a fifth area—Salovey’s motivation domain.²⁴⁴ Within these four or five areas, several sub-competencies are often discussed. Psychologist William Valentine has presented the four quadrants of EQ in his training workshops as: self-awareness, self-management, social awareness, and relationship management.²⁴⁵ Valentine explains that self-awareness usually encompasses knowing one’s emotions and their impact, knowing one’s strengths and limitations, and a sense of one’s self worth, capabilities, and values.²⁴⁶ Self-management includes keeping disruptive emotions and impulses under control, having integrity, being honest, adaptability to changing situations, overcoming obstacles, a drive for achievement, initiative, optimism, accountability, and understanding, regulating, and managing automatic reactions²⁴⁷ (such as “Mongo,” the fictional “inner beast” of the lawyer, who can emerge when the lawyer feels threatened).²⁴⁸

The third and fourth quadrants consist of awareness of others and management of one’s interactions with others.

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.* See also *supra* note 192 and accompanying text (discussing Roland Smith’s leadership training and his use of concepts of EQ in leadership training).

245. Training materials by consultant William Valentine, Psy. D., on emotional intelligence (on file with the author) (2005–07).

246. *Id.*

247. *Id.*

248. See McElhaney, *supra* note 207 (noting that these two categories include some of Salovey’s fifth dimension of motivation when they include concepts such as drive and initiative).

Social awareness includes empathy (i.e., identifying and understanding others' emotions and perspective and being interested in others' concerns), identifying and reading "currents, decision networks, and politics at the organizational level," and recognizing and meeting the needs of others (i.e., service). Relationship management includes teamwork, collaboration, and conflict management, as might be expected, but also includes inspiring and guiding others as a leader with a "compelling vision," exercising influence and persuading others through a "range of tactics," developing others through "feedback and guidance," and initiating, managing, and leading others in a new direction.²⁴⁹

Social scientists and psychologists, such as Goleman, Salovey, Gardner, and Valentine, provide important resources for law schools seeking to identify EQ competencies relevant to law students.²⁵⁰ The benefits of emotional intelligence training for lawyers and law students and its relationship to lawyering have been well-explored, particularly by scholars like Marjorie Silver; yet, law schools rarely explicitly include EQ training or testing in their required curricula.²⁵¹ Finally, while these skills may seem duplicative of the lawyering effectiveness competencies identified by the empirical research, they are not identical. The lawyering competencies add a number of skills and concepts peculiarly relevant to the law (such as passion, engagement, diligence, reliability, and questioning) and deemphasize some EQ skills that appear less relevant to the law (such as inspiring leadership or being a change catalyst).²⁵² EQ competencies are therefore helpful but not an exhaustive or accurate catalogue of what skills are needed to be an effective lawyer.

249. See *supra* note 245 (noting that all text in quotes is taken verbatim from Valentine's training materials).

250. GOLEMAN, WORKING, *supra* note 134; Mayer, et al., *supra* note 190; see also SCHILLING, *supra* note 192; Silver, *supra* note 22, at 5–16.

251. Silver, *supra* note 22, at 5–52; see also Paul J. Cain, *A First Step Toward Introducing Emotional Intelligence into the Law School Curriculum: The 'Emotional Intelligence and the Clinic Student' Class*, 14 LEGAL EDUC. REV. 1 (2004) (describing an externship law school class incorporating concepts of emotional intelligence).

252. See *supra* notes 237–51 and accompanying text.

6. *Psychology and Other Social Sciences*

Psychology and other social sciences take EQ's third and fourth quadrants one step further; they seek to explain, in empirical or clinical terms, why individuals and groups behave in a particular manner and seek to develop ways of interacting with others that achieve specific results.²⁵³ For example, psychologists learn how to interact with clients in ways that foment changed behavior in the clients.²⁵⁴ They learn how to build trust within a relationship, understand the client's verbal and nonverbal behavior and communicate that understanding in an effective way, use open and closed-ended questions strategically and carefully to elicit certain responses, and maintain personal boundaries with clients. They learn how to train clients in assertive and effective communication, self-awareness, and self-management. They learn how to confront contradictions in another's behavior or thoughts and effect and monitor change in others. They may also learn to understand group dynamics and how to handle group dysfunctions. Finally, they learn to identify and handle bias or countertransference in themselves towards clients, which would destroy their objectivity and professionalism.²⁵⁵ Some of what they do may be arguably irrelevant to lawyering, such as fostering insight or conducting interventions, but many of the skills used in psychology are quite useful in the law, particularly wisdom about others' behavior and how to interact with others.²⁵⁶

Social scientists' empirical research and psychologists' clinical knowledge and training are important sources of information for lawyers and law professors seeking to integrate these social sciences into the law. Individuals

253. See, e.g., Michael D. Clark et al., *Motivational Interviewing for Probation Officers: Tipping the Balance Toward Change*, 70 FED. PROB. 38 (2006) (exploring motivational interviewing as a psychological technique that probation officers can use to foment change in criminal offenders).

254. See *id.*

255. Silver, *supra* note 22, at 5–52; see also Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (1999) (exploring counter-transference in depth, in the lawyer-client relationship).

256. See BROOKS & MADDEN, *supra* note 22, at 287–329 (exploring the uses of a wide variety of psychological, counseling, and clinical social work skills in law practice).

trained in both law and psychology, such as Marjorie Silver,²⁵⁷ Joshua Rosenberg,²⁵⁸ and Susan Brooks,²⁵⁹ have been particularly influential in enhancing the law and legal education with social science wisdom. For example, Brooks has analyzed family law disputes from a “family systems perspective,” an approach used in social work.²⁶⁰ Silver has advocated for the “affective assistance of counsel” and argued that lawyers need to understand and be adept at managing phenomena such as transference, countertransference, love, and hate in the lawyer-client relationship.²⁶¹ However, beyond clinical, therapeutic jurisprudence, or law and psychology courses and textbooks, few law school courses may integrate these valuable skills into their content. Further, while clinical casebooks, such as those by Robert Bastress and Joseph Harbaugh,²⁶² and Bergman, Binder, and Price²⁶³ include some of these skills, this training is likely only available to a small fraction of law students. This is because these texts are used in elective courses such as interviewing, counseling, and negotiating that are often small-enrollment “skills” classes.²⁶⁴

257. Silver, *supra* note 22, at 5–52.

258. See, e.g., Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, or Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225 (2004) (describing Professor Rosenberg’s course at the University of San Francisco School of Law integrating psychological skills, particularly involving interpersonal dynamics and process, into legal education).

259. BROOKS & MADDEN, *supra* note 22.

260. *Id.*

261. Silver, *supra* note 22, at 5–52.

262. ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, *INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION* 255–308 (Aspen Law & Business, 1990).

263. DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (1991) (textbook on lawyering that includes training in active listening, questioning, empathic understanding, problem solving, counseling, and decision making).

264. See, e.g., *Coastal Law*, *supra* note 204 (requiring six credits of “skills courses” to graduate, which may be selected from: trial advocacy, mock trial, moot court, prelitigation drafting, and transactional drafting, which may not cover these skills, and interviewing, counseling, negotiating, externships, and live client clinics).

7. *Procedural Justice*

Procedural justice is a field based on empirical social science studies finding that litigants' satisfaction with the legal process and their perceptions of its fairness depended more on three intangible factors than on whether they won or lost, received a large award, or were awarded nothing.²⁶⁵ Simplified, these three factors are voice, participation, and trustworthiness.²⁶⁶ Voice is the opportunity for the litigant to tell his or her story and have it heard in the process by important participants. Participation means the litigant had a chance to participate in making the ultimate decision in the matter, or, if that is unavailable, the opportunity to have the decision-maker explain the reasons for his or her decision. The last factor is the litigant's perceived trustworthiness of those in authority, which in turn depended on whether the litigant was treated with respect and dignity by those in authority and given a voice, in the proceedings.²⁶⁷

Most litigation and dispute resolution processes provide few opportunities for voice, participation, or interaction with those in authority.²⁶⁸ Plaintiffs may testify in a civil case, but crime victims are often given no official role in court, unless it is through a victim impact statement program or diversionary restorative justice process (which may not be the norm).²⁶⁹ Defendants are often encouraged not to testify in court.

In mediation processes, lawyers often make the opening statements to the mediator, after which the parties are often separated into separate rooms in "caucus." The mediator then shuttles between the two rooms.²⁷⁰ The parties may or may not have a chance to tell their "story" and, if they do, it is most likely to occur in caucus with the mediator, behind closed doors and not in open session with the other side

265. Tyler, *supra* note 27, at 3–15.

266. *Id.*

267. *Id.*

268. See, e.g., *In Re* Amendment to the Rules of Juvenile Procedure, FLA. R. JUV. P. 8.350, 804 So.2d 1296 (Fla. 2001); Bruce J. Winick & Ginger Lerner-Wren, *Do Juveniles Facing Civil Commitment Have a Right to Counsel?: A Therapeutic Jurisprudence Brief*, 71 U. CIN. L. REV. 115 (2002) (arguing for partisan counsel for juveniles facing involuntary civil commitment, in addition to guardians ad litem; their position was ultimately successful).

269. See generally ZEHR, *supra* note 78.

270. Chris Shulman, Trainer, in his Circuit Civil Mediation Training course, Remarks at Florida Coastal School of Law (July 2007).

present.²⁷¹ In court, parties also have no role in decision-making (unless there is a criminal plea agreement or civil negotiated settlement), and decision-makers such as judges and arbitrators may not explain the reasons for their decisions. Depending on how the attorneys handle their case, parties and crime victims may have no interaction with the judge; thus, they may not have the opportunity to experience being treated with respect and dignity by those in authority. Thus, it is not surprising that litigants express dissatisfaction with legal process, even when they win or settle.²⁷²

Procedural justice teaches lawyers to build in opportunities for clients to have a voice, participate in decision-making processes, and be treated with dignity and respect, in resolving legal matters.²⁷³ These opportunities can be built into court proceedings, mediation processes, and informal settlement negotiations. However, if that fails, the lawyer may provide these opportunities. Even if the lawyer is the only person listening to the client's story, asking them to collaborate with the lawyer in deciding how to resolve the case, explaining the lawyer's strategy in the case, and treating the client with respect and dignity, may enhance the client's satisfaction with the outcome of the legal matter.²⁷⁴ To do this, the lawyer may want to understand the value of "voice" and participation to his or her client, facilitate process well, listen to their client, initiate these opportunities for the client, collaborate well in a team with the client, and communicate respect and dignity to the client. Thus, a variety of skills may underpin a lawyer's effective use of procedural justice.

The social science field of procedural justice and its empirical research are rich sources of wisdom for practicing lawyers, mediators, arbitrators, and judges seeking to improve litigants' satisfaction with legal process and outcomes. In turn, higher litigant satisfaction is likely to

271. *Id.*

272. Tyler, *supra* note 27, at 3–15.

273. *See, e.g.,* Winick & Lerner-Wren, *supra* note 268 (arguing that juveniles will be more likely to think the process was fair, respect the legal system, and comply with the judge's ruling if they are given counsel who represent their desires and wishes, in court (thus, "voice"), rather than act solely as a guardian *ad litem* who argues for the juvenile's "best interest").

274. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 289–91, 296, 241.

enhance litigants' compliance with the court's order or settlement agreement resulting from the resolution of the legal matter.²⁷⁵

8. *Comprehensive Law Movement Vectors*

Procedural justice is part of a larger movement towards utilizing legal problems as opportunities for healing.²⁷⁶ This "comprehensive law movement," which has been growing steadily since about 1990, includes nine or more "vectors" or disciplines moving towards a common goal.²⁷⁷ These include: therapeutic jurisprudence, preventive law, procedural law, holistic justice, creative problem solving, collaborative law, transformative mediation, restorative justice, and problem solving courts.²⁷⁸ What unifies these fields are two common features: attempting to resolve legal problems in ways that optimize human functioning and considering factors beyond simple legal rights (concerns such as parties' goals, values, needs, resources, relationships, emotions, psychological well-being, and the like).²⁷⁹

Attorney and journalist J. Kim Wright also includes sharing law, restorative mediation, contemplative practices (such as mindfulness) in the law, peacemaking, and community courts in this movement.²⁸⁰ Others have suggested including cooperative law, community-oriented lawyering, multidimensional lawyering, spiritual-legal counseling, coaching, rebellious lawyering, affective lawyering, and ethical wills.²⁸¹ To the extent that (or when)

275. *Id.* at 280–81 (discussing this research in the context of criminal lawyering); WEXLER & WINICK, *supra* note 27, at 167 (discussing the value of research by Donald Meichenbaum and Dennis Turk on health care order compliance by patients, in the context of the criminal courts); David B. Wexler, *Inducing Therapeutic Compliance Through the Criminal Law*, 14 L. & PSYCHOL. REV. 43 (1990).

276. Daicoff, *Healing Profession*, *supra* note 76 (arguing for the existence of the movement as a whole).

277. *Id.*

278. *Id.* See also BROOKS & MADDEN, *supra* note 22 (synthesizing some or all of the vectors of the movement); KING ET AL., *supra* note 5; MACFARLANE, *supra* note 22; PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77; Silver, *supra* note 22; WRIGHT, *supra* note 22.

279. Daicoff, *Healing Profession*, *supra* note 76, at 5–9.

280. WRIGHT, *supra* note 22, at 77–86; Email from J. Kim Wright (June 1, 2011) (on file with author).

281. See, e.g., PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at

these disciplines are used in ways that share the two unifying features, they may also be part of the comprehensive law movement.

More specifically, therapeutic jurisprudence suggests that legal personnel consider ways in which to resolve legal matters that either improve the parties' post-matter psychological functioning or at the least do not impede it, while upholding the parties' legal rights. In TJ, therapeutic concerns do not trump legal rights but are considered in resolving the matter.²⁸² TJ uses the social sciences to improve legal processes, rules, matters, and outcomes.²⁸³ Restorative justice seeks to heal criminal matters through encounter-oriented processes involving victims, offenders, and members of society; it focuses on accountability and restitution.²⁸⁴ Transformative mediation and collaborative law seek to resolve civil disputes through processes designed to foster greater understanding between the parties and optimal personal decision-making competencies.²⁸⁵ Preventive law seeks to prevent legal problems before they occur.²⁸⁶ Problem solving courts take an explicitly rehabilitative, therapeutic, and holistic approach to solving criminal and family law matters.²⁸⁷

To practice comprehensive law effectively, lawyers, dispute resolution professionals, and judges must be well-versed in rudimentary social science and psychology concepts, have good intrapersonal and interpersonal skills, and have

309; see also Judith A. Frank, *The Human Legacy: Using Ethical Wills to Enhance Estate Planning*, 6 T.M. COOLEY J. PRAC. & CLINICAL L. 65 (2003) (describing the ancient Jewish tradition of passing down one's values in the form of a written, ethical will); Silver, *supra* note 22, at 13.

282. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 7; WEXLER & WINICK, *supra* note 27, at xvii.

283. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at xv–xvii, 7–9.

284. DANIEL W. VAN NESS & KAREN HEETDERKS STRONG, RESTORING JUSTICE: AN INTRODUCTION TO RESTORATIVE JUSTICE (4th ed. 2010); ZEHR, *supra* note 78.

285. ROBERT A. BARUCH BUSH & JOSEPH P. FOLGER, THE PROMISE OF MEDIATION: THE TRANSFORMATIVE APPROACH TO CONFLICT (1st ed. 1994) (considered the seminal work on transformative mediation); TESLER, COLLABORATIVE LAW, *supra* note 79.

286. BARTON, *supra* note 80.

287. Hora, et al., *supra* note 82; see also CENTER FOR COURT INNOVATION, *supra* note 82.

values consistent with a healing, rehabilitative, or restorative approach.²⁸⁸ Bruce Winick has examined the need for comprehensive lawyers to deal effectively with denial and resistance in clients, particularly in criminal cases.²⁸⁹ Marjorie Silver has examined the intra- and inter-personal skills necessary for comprehensive law practice and concluded that “emotional competence” (in lieu of emotional intelligence) is required; she also included self-awareness and an understanding and ability to manage transference and countertransference, shame and humiliation, stress, vicarious trauma, and burnout, among other competencies.²⁹⁰ Kim Wright lists listening, speaking, counseling, coaching, nondefensive communication, nonviolent communication, storytelling, questioning, conflict resolution competence, interest-based problem solving, contract drafting, facilitating apology and forgiveness, and understanding grief as skills necessary for comprehensive law practice.²⁹¹ Pauline Tesler, one of the leading innovators in the collaborative divorce law field, has noted the importance of creativity and collaboration in practicing collaborative law,²⁹² while the author has included the skill of “triage,” which refers to choosing which comprehensive law vector best fits the case at hand.²⁹³ Strategic thinking “ahead,” by “fast forwarding” situations to identify and plan to avoid potential future litigation is also necessary, particularly for those seeking to practice law preventively.²⁹⁴ Communication skills (such as conveying basic and advanced empathy, active listening, and strategically using open- and close-ended questions), maintaining boundaries, and making appropriate referrals to mental health professionals are also important to comprehensive law practice.²⁹⁵

288. Silver, *supra* note 22, at 5–52.

289. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 327 (discussing psychological competencies useful in criminal defense work).

290. Silver, *supra* note 22, at 5–52.

291. WRIGHT, *supra* note 22.

292. TESLER, COLLABORATIVE LAW, *supra* note 79, at 30–32, 192–93.

293. DAICOFF, COMPREHENSIVE LAW, *supra* note 46, at 258.

294. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 71.

295. DAICOFF, COMPREHENSIVE LAW, *supra* note 46, at 63–80 (describing these skills in more detail); PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 237–326 (setting forth extensive material by David Wexler and Bruce Winick on using some of these skills in therapeutic jurisprudential

Nonlawyer professionals are useful resources for comprehensive law, including: psychologists, psychiatrists, nonlawyer restorative justice practitioners, mental health professionals, family systems professionals, vocational rehabilitation specialists, addictions treatment professionals, coaches, and financial specialists.²⁹⁶ Multidisciplinary approaches to legal problems often may require lawyers to work effectively within interdisciplinary teams working towards a common goal.²⁹⁷ For example, drug treatment court judges hold progress meetings or “staffings” for each defendant enrolled in the court.²⁹⁸ These meetings include lawyers, court personnel, mental health professionals, addictions specialists, and others who convene to discuss and evaluate the defendant’s progress and treatment plan.²⁹⁹

9. Conflict Resolution

The general field of conflict resolution relates to the law and legal education. There are nonlaw graduate programs on conflict resolution and nonlawyer conflict resolution professionals,³⁰⁰ as well as conflict resolution programs within the law.³⁰¹ While law-related conflict resolution focuses on alternative dispute resolution, non law-related conflict resolution can be much broader, focusing on fostering

lawyering); Silver, *supra* note 22, at 5–52 (exploring the use of these skills in lawyering).

296. See, e.g., BROOKS & MADDEN, *supra* note 22 (noting that the authors are professors and lawyers with graduate degrees, certifications, and experience in social work).

297. TESLER & THOMPSON, *supra* note 79 (describing collaborative divorce, in which lawyers, mental health professionals, and other professionals work together in a collaborative interdisciplinary team to assist clients through the divorce process).

298. David Stevens Hobler, *Drug Treatment Court: The Making of Judicial Capital – Collaborative Therapeutic & Preventive Practices*, PREVENTATIVELAWYER.ORG, <http://www.preventivelawyer.org/main/default.asp?pid=essays/hobler.htm> (last visited Mar. 28, 2012).

299. *Id.* See also Hora et al., *supra* note 82.

300. E.g., CATHY A. COSTANTINO & CHRISTINA SICKLES MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS* (1996) (noting that this book was co-authored by an attorney/mediator and a nonlawyer dispute resolution professional).

301. See *Academics Master of Laws in Dispute Resolution*, LAW.PEPPERDINE.EDU, University School of Law, <http://law.pepperdine.edu/academics/master-laws-dispute-resolution/> (last visited Mar. 28, 2012) (stating that these are generally thought of as “dispute resolution” programs).

institutional and organizational change, managing conflict within organizations, managing organizational dynamics, and managing human resources.³⁰² The field of conflict resolution sees conflict as useful, natural, and necessary for growth—“like water,” according to Costantino and Merchant³⁰³—too much or too little is problematic. It also focuses on healthy conflict management. Similarly, corporate leaders are encouraged by corporate management models intentionally to promote healthy conflict among their employee and management teams. For example, Patrick Lencioni describes “absence of conflict” as a symptom that a team has become dysfunctional, at work.³⁰⁴ He advises “engaging in unfiltered and passionate debate of ideas” and avoiding “veiled discussions and guarded comments.”³⁰⁵ In contrast, the law often encounters conflict in the context of a legal dispute, after a failure in interpersonal interactions or communications, causing relations to become completely dysfunctional.

Paper and pencil tests, such as the Thomas-Kilmann Conflict Mode Instrument, can be helpful in assisting lawyers and law students to identify their preferred method of dealing with conflict (e.g., aggression, avoidance, suppression, etc.).³⁰⁶ The nonlawyer field of conflict resolution may assist lawyers and law students in becoming more adept at and comfortable with handling conflict—and perhaps in guiding conflict into a healthier, less destructive form.³⁰⁷

10. Dispute Resolution

When the legal community considers conflict resolution, it usually thinks of alternative dispute resolution, including mediation, arbitration, private adjudication, negotiation and settlement, in the context of a lawsuit.³⁰⁸ Within mediation, Ellen Waldman and others have established a continuum of approaches from evaluative mediation, which is the most like

302. See generally COSTANTINO & MERCHANT, *supra* note 300.

303. *Id.* at xiii.

304. LENCIONI, *supra* note 233, at 188.

305. *Id.*

306. E.g., TKI (*Thomas-Kilmann Conflict Mode Instrument*), CPP.COM, <https://www.cpp.com/products/tki/index.aspx> (last visited Mar. 28, 2012).

307. LENCIONI, *supra* note 233, at 188.

308. See KING ET AL., *supra* note 5, at 101–18.

third-party decision-making, to facilitative mediation, which places decision-making power in the hands of the parties rather than the mediator and may focus on needs and interest-based negotiation rather than position-based negotiation.³⁰⁹ A third form, transformative mediation (TM), focuses not on settling the dispute, but on the moral growth of the parties.³¹⁰ Moral growth is accomplished in TM by focusing on opportunities for the parties to understand each other (recognition) and realize they are not trapped but have several options and choices for action, in the matter (empowerment).³¹¹ Because of its unusual focus and potential healing effects, TM is included above in the comprehensive law movement.³¹²

Due to clogged courts and costly, hostile litigation, dispute resolution is becoming more prevalent.³¹³ For example, courts in Duval County, Florida require parties in real estate foreclosure actions to undergo mandatory mediation before they can schedule a trial.³¹⁴ Mediation is voluntary, but is encouraged and funded by the city in employment law disputes in Jacksonville, Florida.³¹⁵ As a result, lawyers may need to know how to represent clients in mediation processes. Dispute resolution requires different skills than litigation. Beyond researching the law, legal analysis, and oral and written advocacy, effective law-related dispute resolution may require lawyers to be able to elicit

309. See, e.g., Ellen Waldman, *The Evaluative-Facilitative Debate in Mediation: Applying the Lens of Therapeutic Jurisprudence*, 82 MARQUETTE L. REV. 155 (1998).

310. BUSH & FOLGER, *supra* note 285.

311. *Id.*

312. DAICOFF, *COMPREHENSIVE LAW*, *supra* note 46; Daicoff, *Healing Profession*, *supra* note 76, at 28–30.

313. See Refo, *supra* note 89.

314. See Rifleman, *supra* note 89. E.g., Rob Samouce, *Rob Samouce: Florida Supreme Court Orders a New Mandatory Mediation for Residential Homestead Property in Foreclosure*, NAPLESNEWS.COM (Feb. 6, 2010, 6:00 AM) <http://www.naplesnews.com/news/2010/feb/06/rob-samouce-florida-supreme-court-orders-new-manda/> (stating that Florida has instituted mandatory mediation of mortgage foreclosure actions to deal with the large number of foreclosure cases in the state).

315. *Welcome to the Jacksonville Human Rights Commission*, COJ.NET, <http://www.coj.net/Departments/Human-Rights-Commission.aspx> (last visited Mar. 28, 2012).

315. Jacksonville Human Rights Council provides mediation services to parties to employment law disputes. *Id.*

goals, needs, positions, and interests from their clients and communicate them to the mediator and the other side.³¹⁶ They may need to be able to provide mediation clients with “reality checks” and “create value” so that clients can see their options clearly and make more informed settlements.³¹⁷ Lawyers may need to understand the difference between position-based negotiation and interest-based negotiation.³¹⁸ They also may need to be conversant with the uses of effective apologies and statements of forgiveness.³¹⁹ They may need to engage in creative problem solving with their clients to help them brainstorm possible resolutions in mediation.³²⁰

Here, the mediation community can be an important outside resource for law schools seeking to train students in

316. Chris Shulman, Trainer, in his Circuit Civil Mediation Training course, Remarks at Florida Coastal School of Law (July 2007).

317. *Id.*

318. *Id.*; see also David Hoffman and Pauline Tesler, *Chapter 41. Collaborative Law and the Use of Settlement Counsel*, in IV BETTE J. ROTH ET AL., ALTERNATIVE DISPUTE RESOLUTION PRACTICE GUIDE § 41.13 (Sept., 2011).

In a recent experiment, lawyers were divided into two groups. One group was asked to prepare for a deposition and the other group to prepare for a settlement meeting, based on identical facts involving the break up of a business partnership. The settlement lawyers ‘focused more on the relationships and interests of the parties, while litigation counsel looked more for facts on which to build a theory of the case.’ This reorientation was found to be similar to that of collaborative lawyers: This new model change the purpose and focus of all inquiry, thought, and discussion: (1) from past to future; (2) from facts to relationships; (3) from faultfinding to restructuring relationships; and (4) from positions to interests.

D. Reynolds & D. Tennant, ‘*Collaborative Law: An Emerging Practice*’, 45 BOSTON BAR J. 1, 2 (Dec. 2001).

319. Jonathan Cohen has written extensively about apologies in the law. See, e.g., Jonathan R. Cohen, *Advising Clients to Apologize*, 72 S. CAL. L. REV. 1009 (May 1999); Jonathan R. Cohen, *Apologizing for Errors*, 6 NO. 4 DISP. RESOL. MAG. 16 (2000); Jonathan R. Cohen, *Apology and Organizations: Exploring an Example from Medical Practice*, 27 FORDHAM URB. L.J. 1447 (June 2000); Jonathan R. Cohen, *Encouraging Apology Improves Nontraditional and Dispute Resolution*, 18 ALTERNATIVES TO HIGH COST LITIG. 171 (Oct. 2000); Jonathan R. Cohen, *Legislating Apology: The Pros and Cons*, 70 U. CIN. L. REV. 819 (Spring 2002); Jonathan R. Cohen, *Nagging Problem: Advising the Client Who Wants to Apologize*, 5 DISP. RESOL. MAG., Spring 1999, at 19; Jonathan R. Cohen, *The Immorality of Denial*, 79 TUL. L. REV. 903 (2005); Jonathan R. Cohen, *The Culture of Legal Denial*, 84 NEB. L. REV. 247 (2005).

320. Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351 (1998) (introducing the emergence of creative problem solving as a legal discipline in response to the need for change in legal education).

dispute resolution and provide clinical experiences involving dispute resolution. Some schools provide mediation clinics or courses in which students are trained and then mediate small claims cases referred to them by local courts.³²¹

11. Contemplative Practices in the Law

Mediation and other alternative dispute resolution processes may require skills different from litigation. Leonard Riskin and others advocate for the cultivation of contemplative practices, such as “mindfulness” and meditation, in lawyers representing clients in these processes.³²² Mindfulness meditation is sometimes described as nonjudgmental awareness of oneself and one’s surroundings, often achieved through concentration on one’s breathing.³²³

These contemplative practices are said to help lawyers improve their concentration, understanding of themselves and others, listening, and creativity. They aid stress management and adherence to one’s values. Finally, contemplative practices are said to assist lawyers in their work as lawyers and mediators.³²⁴ They may also be helpful practices for clients, as well. Recidivism rates were reportedly lower among prison inmates who were taught meditation as a condition of parole.³²⁵ The skills of self-awareness and self-reflection may be relevant to contemplative practice. Some law schools are including

321. Linda Morton’s class at California Western School of Law does so. Personal observation of the author of Professor Morton’s class, California Western School of Law, San Diego, Cal. (Mar. 2011); Interview with Professor Morton, California Western School of Law, San Diego, Cal. (Mar. 2011). The mediation clinic at the University of Denver Sturm College of Law does the same. See *Law School Clinical Program*, LAW.DU.EDU, <http://law.du.edu/index.php/law-school-clinical-program/mediation-and-arbitration-clinic> (last visited Mar. 28, 2011).

322. See Riskin, *supra* note 17 and CUTTINGEDGE.LAW.COM, www.cuttingedgelaw.com (last visited Mar. 28, 2012).

323. See *supra* note 17.

324. See *supra* note 17 (discussing Professor Leonard Riskin’s course on mindfulness and Initiative on Mindfulness in Law & Dispute Resolution at the University of Florida Levin College of Law).

325. J. Kim Wright, *Kim Wright Talks About Cutting Edge Law*, CUTTINGEDGE.LAW.COM, www.cuttingedgelaw.com (last visited Mar. 28, 2011) (stating that this was in the Enlightened Sentencing Project in St. Louis, which trained inmates in transcendental meditation).

mindfulness training in their curricula and sponsoring mindfulness conferences in the law.³²⁶

Contemplative practices are often practiced by communities with spiritual or meditational practices, who can serve as important outside resources to law schools infusing mindfulness, meditation, and other practices into their curricula.

12. *Clinical Legal Education*

Although it may not be mandatory in all law schools, clinical legal education is arguably the most integrated into current law school curricula, of these twelve fields.³²⁷ Clinical legal education often requires direct or indirect (i.e., on-the-job) training in areas such as interviewing, counseling, negotiating, teamwork, persuasion, trial and litigation skills, and professional values. Even if training in these areas is not explicit, the clinical experience alone requires students to face these challenges and thereby acquire these skills. In some schools, clinical skills such as interviewing, counseling, and negotiating are mandatory as part of legal research and writing courses³²⁸ or ethical lawyering courses.³²⁹ Subskills include communication skills, such as listening, questioning, active listening, paraphrasing, and summarizing, and may include problem solving, self-reflection (e.g., in journals), and working in teams or groups (e.g., when students are paired to work on live client or simulated cases or mediations).³³⁰ With the influences of the Carnegie, Best Practices, and MacCrate

326. See, e.g., *supra* notes 17 and 72 (discussing the Initiative on Mindfulness in Law & Dispute Resolution).

327. See, e.g., CLINICAL LEGAL EDUCATION ASSOCIATION, <http://www.cleaweb.org/> (last visited Mar. 28, 2012).

328. E.g., *Coastal Law*, *supra* note 204 (stating that at Florida Coastal School of Law, the legal research and writing program includes simulation exercises on interviewing, counseling, and negotiating in the first year).

329. See, e.g., *Ethical Lawyering*, TECHNOLOGY.LLS.EDU, <https://technology.lls.edu/courses/index.php?c=2j04> (last visited Mar. 28, 2012) (stating that at Loyola Law School in Los Angeles, there is an "Ethical Lawyering" class infusing clinical skills of interviewing and counseling into an ethics and professional responsibility course); see also *Upperclass Curriculum*, *supra* note 5 (discussing Cal Western's recent expansion of its six unit STEPPS class).

330. Some of these skills are covered in textbooks like BASTRESS & HARBAUGH, *supra* note 262; BINDER ET AL., *supra* note 263.

Reports,³³¹ clinical legal education's "share" of legal education is likely to continue to grow. Expert clinicians are likely to have developed successful methods of teaching these skills.

The practicing bar and bench are important resources supporting clinical legal education from outside the academy. They provide opportunities for externships and field placements of students and keep educators informed about the changing landscape of modern law practice.

D. Identifying Overlap and Commonalities of the Twelve Fields

None of these twelve disciplines is new; all have been integrated into the law and legal education (some for many years). While the twelve disciplines are distinct and different, some of the ideas, skills, and competencies in the twelve disciplines are similar concepts with different labels. The commonalities and overlap of these fields and concepts are worth exploring.

For example, many of these fields advocate training in problem solving, planning, collaboration, and teamwork. Many recommend developing self-awareness and self-management through self-reflection and other reflective practices. Other fields emphasize the importance of communication skills, such as listening, questioning, speaking, interviewing, counseling, and inspiring others.

Many fields offer training in excellent conflict resolution skills, while others require lawyers to examine their values and integrate them into their work. Most expect lawyers to have excellent interpersonal skills, be able to stand in the shoes of another person, and be able to build and maintain relationships. Some also advocate being able to be an instrument of change.³³² Also, in several cases, similar concepts bear different labels in different fields, as described below. For example, several fields provide training in concepts such as empathy, self-reflection, self-management, strategic planning, transparency, humility, and judgment, though they may have different labels for the concepts.

331. STUCKEY ET AL., *supra* note 1; SULLIVAN ET AL., *supra* note 1; MacCrate, *supra* note 1.

332. See *supra* notes 282–87 and accompanying text (e.g., therapeutic jurisprudence and restorative justice).

1. *Empathy*

Therapeutic jurisprudence, clinical psychology, and affective lawyering refer to the ability to stand in the shoes of another person and understand where they are coming from, as “empathy.”³³³ It is not sympathy, which is feeling another’s emotions, but empathy, which is understanding how someone feels, thinks, or acts, and learning to communicate that to the other person.³³⁴ In the dispute resolution field, transformative mediation calls this “recognition.”³³⁵ The EQ literature calls it awareness of others or interpersonal competence, which is one of its four or five categories.³³⁶ Leadership education might call empathy “good communication skills” and professionalism might call it good client relations. Surveys of lawyers and other legal personnel note the value of the ability to understand another person’s behavior.³³⁷ Social scientists might call it the ability to understand human behavior generally.

For example, in one transformative mediation script in Bush and Folger’s first book, a crime victim’s father is initially furious with the offender for hitting his teenage son. Through the course of the mediation, he learns that the offender, while walking through the neighborhood on his way to his girlfriend’s house, had been taunted for weeks by the son and his gang of friends. The offender had a limp and the boys had been making fun of him. Finally, one day, the offender snapped and swung at the jeering boys, hitting one. The victim’s father, with emotion, said something like, “I understand how cruel kids can be. And I’ve told my son not to be cruel.”³³⁸ Though plain, this statement was received by the offender as an affirmation that the father understood the offender’s situation and had some empathy for him. They quickly resolved the matter thereafter, agreeing to find a new route for the offender’s walks through the neighborhood.³³⁹

333. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 436–37 (discussing affective lawyering); Silver, *supra* note 22, at 8–9, 350–51.

334. Silver, *supra* note 22, at 350.

335. FOLGER ET AL., *supra* note 93, at 21.

336. SCHILLING, *supra* note 192.

337. See also *supra* note 192 and accompanying text (discussing Roland Smith’s leadership training).

338. BUSH & FOLGER, *supra* note 285, at 8–13 (the “Sensitive Bully”).

339. *Id.*

Empathy was the key to the resolution of the conflict. Empathy can be important in conflict and dispute resolution, negotiation, client counseling, and building and maintaining relationships.

2. *Self Reflection*

The contemplative practices movement in the law focuses on self-reflection and self-management through reflective practices such as “mindfulness,” yoga, and meditation.³⁴⁰ Faith-based professionalism programs may also focus on reflection and introspection to the extent that they encourage prayer and meditation as faith-based practices. Also, the EQ field emphasizes self-awareness and self-management in its first and second quadrants.³⁴¹ Contemplative practice may be seen as an effective method for enhancing one’s self-awareness and self-management competencies. Clinical legal education sometimes employs self-reflective assignments, such as reflection papers or journals about students’ clinical experiences, thus also fostering competency in self-reflection.³⁴²

3. *Self Management*

EQ focuses broadly on self-awareness and management of one’s own behaviors, which may also include knowing when one is overly biased for or against one’s client.³⁴³ For example, the lawyer may be single, lonely, and find his or her client very attractive. Alternatively, the lawyer may detest the client based on what the client has done (a heinous crime or abhorrent act) or because the client reminds the lawyer of someone familiar (his or her feared or hated father, for example).³⁴⁴ For example, in one situation described by Linda Mills, the lawyer mercilessly grills a client with questions in

340. See sources cited *supra* notes 17, 72 and accompanying text (regarding mindfulness meditation).

341. See *supra* notes 237–52 and accompanying text (regarding the EQ quadrants).

342. Personal communication with Professor Mary Dolores Guerra, Phoenix School of Law, Phx, Ariz. (Mar. 2011). Professor Guerra utilizes self-reflection journaling in her commercial and business law courses as well, see Guerra, *supra* note 69.

343. Silver, *supra* note 22, at 17–28.

344. Silver, *supra* note 22, at 17–28 (giving the Adam/Carl/Belle examples of countertransference, positive and negative).

the initial client interview.³⁴⁵ The client is so off-put he never returns. The lawyer realizes later that the new client reminded her of her brother, with whom she had a conflicted relationship, and she reacted by attempting to tear him down and establish her superiority over him in the interview, rather than building trust and a good lawyer-client relationship.³⁴⁶

Therapeutic jurisprudence focuses on this explicitly when it teaches lawyers to manage their “countertransference,” or overblown emotional reactions to their clients, whether positive or negative.³⁴⁷ Silver sets forth an excellent series of questions lawyers can ask themselves to ferret out such problems.³⁴⁸ Professionalism might call this “bias” or lack of objectivity, and maybe even identify this situation as a conflict of interest with the lawyer’s own personal interests under Rule 1.7(a)(2) of the American Bar Association’s Model Rules of Professional Conduct.³⁴⁹ Mindfulness may assist lawyers in identifying if and when bias is present within them.

4. *Strategic Planning*

Preventive law within the comprehensive law movement asks lawyers to “fast forward” client situations to predict and foresee “legal soft spots” or situations which may lead to future litigation.³⁵⁰ Preventive law then asks lawyers to strategically plan ahead with the client to avoid such litigation.³⁵¹ The ability to think ahead may relate to professionalism and ethics experts’ concepts of judgment and maturity. The ability to strategically plan is discussed in leadership and corporate management models.³⁵² Further, strategic planning skills may be important in charting a course for one’s law practice, for example, in developing a

345. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77, at 426–32.

346. *Id.*

347. Silver, *supra* note 22, at 17–28.

348. *Id.* at 24.

349. MODEL RULES OF PROF’L CONDUCT R. 1.7(a)(2) (2009) (discussing conflict with the lawyer’s own personal interest).

350. BARTON, *supra* note 80; Silver, *supra* note 22, at 317–39.

351. PRACTICING THERAPEUTIC JURISPRUDENCE, *supra* note 77.

352. The author’s co-teacher, Professor James Cataland, included strategic decision-making and planning in their leadership for lawyers course at Florida Coastal School of Law in Fall 2010.

specialty (such as water law), responding to market changes (such as retooling from real estate development work to foreclosure work), and integrating technological changes (such as learning to use social media to communicate with clients).

5. *Accountability*

Personal accountability appears in several of the twelve disciplines. Corporate management models might call it accountability when a person in a position of authority admits having made a mistake.³⁵³ Restorative justice would label this the ability to apologize and accept responsibility, which is often helpful in repairing the harm done by criminal actions.³⁵⁴ Therapeutic jurisprudence and procedural justice explain that it is important for those in authority to describe the reasons for their decisions, in order to ensure that subordinates (or litigants) will more willingly comply with those decisions.³⁵⁵ They also argue that individuals are more likely to comply with an order if they have a voice or participate in the decision-making process leading up to the order.³⁵⁶ Giving others voice and participation (concepts from procedural justice³⁵⁷) may thus be consistent with good leadership. Finally, admitting when one is wrong may be evidence of one's accountability, a concept mentioned in professionalism and leadership literature.

6. *Judgment*

Professionalism and ethics experts view judgment and maturity in law students and lawyers as important to professionalism.³⁵⁸ These qualities may be developed by increasing law students' awareness of themselves and others, for example, through mindfulness training and other reflective practices. Self-awareness and understanding of others are also emotional intelligence competencies.³⁵⁹ For

353. See, e.g., LENCIONI, *supra* note 233.

354. See ZEHR, *supra* note 78.

355. See BUSH & FOLGER, *supra* note 285 and accompanying text.

356. *Id.*

357. Tyler, *supra* note 27, at 3–15.

358. Mudd & LaTrielle, *supra* note 104; Shultz & Zedeck, *Final Report*, *supra* note 18.

359. See Roland B. Smith & Paul Bennett Marrow, *The Changing Nature of*

example, one's judgment and maturity may increase as one wrestles with making decisions, perhaps in an internship or live client clinic setting. They may also increase when reflecting on past decisions and considering how outcomes might be improved in future situations. Finally, judgment is important in comprehensive law practice, when the lawyer is assessing which nontraditional approaches might be most appropriate for a particular case or matter ("triage"). Thus, a seemingly nebulous concept in the professionalism field may benefit from concrete training in other areas.

7. *The Case for Integration*

It is not necessary to learn all twelve fields, above, and indeed it may simply be confusing to try. Yet, leaving these twelve disciplines "as is" may leave them, individually, incomplete. Alone, they may omit important skills. They certainly miss important opportunities to benefit from one another. Integrating the twelve disciplines into a cohesive effort to train lawyers in an expanded set of lawyering skills may allow for repetition of concepts, which should enhance learning. It may also give lawyers a number of ways to learn similar concepts, which should appeal to their different learning styles and preferences. For example, some law students may respond to leadership training, while others respond to mindfulness training, professionalism, alternative dispute resolution, or interdisciplinary approaches to law. Using all the approaches is, therefore, likely to be a more successful training method. Further, the current pressure on the legal profession and legal education to change supports the need for greater coordination and synthesis among the fields.

IV. SYNTHESIZING LAWYERING SKILLS

Professionalism, ethics, leadership education, EQ literature, corporate management styles, psychology, social science, the comprehensive law vectors, mindfulness and spiritual practices, conflict resolution, dispute resolution, and clinical legal education may be combined, synthesized, and

Leadership in Law Firms, N.Y.S.B.A. J. at 33, 36 (Sept. 2008); Roland B. Smith, *The Struggles of Lawyer-Leaders and What They Need to Know*, N.Y.S.B.A. J. at 38 (Mar.-Apr. 2009).

used to ensure that legal education incorporates a full panoply of lawyering skills into existing doctrinal and traditional curricula. However, synthesis need not dilute any one field. These fields may best interface in a web-like, egalitarian fashion rather than a linear or hierarchical manner (consistent with newer models of corporate management).

The six empirical studies on lawyer effectiveness traits can be compared to the twelve disciplines' combined competencies to develop an expanded, empirically-based list of lawyering skills. This list is proposed, along with the corresponding fields, in *Table 2* of Section IV.A.

A. Combining Empirically-Derived Lawyer Effectiveness Traits with the Twelve Fields

Table 2 first combines the empirically-derived lawyer effectiveness traits with the skills found in the twelve disciplines listed above and then links the competencies to the relevant fields.³⁶⁰ The fields listed are proposed only and may not be exhaustive of all of the sources for training in a particular competency. *Table 2's* purpose is to add to the discussion, assist legal education reform, and foster more efficient acquisition of these skills.

Table 2.

GENERAL SKILLS AREA	COMPETENCIES TO BE ACQUIRED	DISCIPLINE(S) FROM WHICH TO RESOURCE
Intrapersonal Skills	Honesty, integrity, accountability, maturity, reliability, judgment	Professionalism, ethics, emotional intelligence/self-awareness & self-management, corporate management models; leadership education
	Passion, motivation, engagement, diligence	Emotional intelligence/motivation, self-awareness, & self-management; lawyer well-being; leadership education

360. Other disciplines other than the ones listed may be good sources for training in the various skills listed, thus this table is not meant to be exhaustive. Rather, it is descriptive. Proposal of other links is welcomed.

	Self-confidence, tolerance, patience, independence, adaptability, general mood, stress management	Lawyer well-being; emotional intelligence/self-awareness & self-management; mindfulness & other contemplative practices
	Continued professional and self-development	Emotional intelligence/self-awareness & self-management; corporate management models; leadership education
Interpersonal Skills	General communications skills—dealing effectively with others, listening, speaking, questioning, interviewing, influencing, advocating	Clinical legal education; psychology & social sciences; conflict resolution; leadership education; procedural justice
	Empathy - understanding human behavior	Psychology & social sciences; comprehensive law movement (therapeutic jurisprudence and transformative mediation)
	Instilling others' confidence in you, obtaining and keeping clients, developing relationships, networking within the profession; marketing and self-promotion	Psychology & social sciences; leadership education; emotional intelligence/social awareness & relationship management
	Counseling	Clinical legal education; psychology & social sciences
	Managing and mentoring others Inspiring others	Corporate management models; emotional intelligence/relationship management; leadership education
Conflict Resolution	Managing healthy conflict	Leadership education; corporate management

		models; conflict resolution; procedural justice
	Mediation & negotiation	Conflict resolution; dispute resolution; comprehensive law movement (transformative mediation, collaborative law, & restorative justice); clinical legal education; mindfulness & other contemplative practices
Teamwork & Collaboration	Working cooperatively with others	Leadership education; corporate management models; comprehensive law movement
	Working well with professionals in other disciplines (multidisciplinary teams & collaboration)	Comprehensive law movement (collaborative law, therapeutic jurisprudence, problem solving courts)
Problem Solving	Problem solving	Comprehensive law movement (creative problem solving); leadership education; corporate management models
Strategic Planning	Strategic planning	Leadership education; corporate management models; preventive law (in comprehensive law movement)

The following Section IV.B sets forth a number of methods for including lawyering skills training, as defined above, in law school curricula.

B. Lawyering Skills Training in Law School

First, because of their demonstrated value to practicing lawyers and the potential for lawyers to need additional training in some of the nontraditional lawyering skills listed above, it may be helpful for legal educators to consider making the acquisition of the expanded set of lawyering skills (above) an explicit goal of legal education.

Second, the development of a comprehensive set of lawyering skills in law school should not be left to chance. It should be intentional, purposeful, orderly, obvious, and successful. This curriculum may consist of courses already being offered in the twelve disciplines, above, or may consist of new offerings that incorporate and integrate wisdom from the twelve disciplines in Section III.C.

A moderate goal is one required law school course or training program teaching this expanded set of lawyering skills, in every U.S. law school. This may be implemented in various ways. For schools that teach lawyering skills such as legal research and writing, interviewing, and negotiation in a two-course series during the first year of law school,³⁶¹ this course could be a third lawyering skills course added to the series. Another option is to create a Professional Responsibility II course that would follow the standard Professional Responsibility course covering the Model Rules of Professional Responsibility and the code of judicial ethics. Alternatively, there could simply be a stand-alone required course on "Lawyering Skills." There are a number of textbooks on the various twelve disciplines, but perhaps a more general textbook containing all of the skills and drawing from all of the disciplines would be useful. There are a number of excellent textbooks such as Howard Lesnick's *Being a Lawyer*³⁶² and Elizabeth Dvorkin, Howard Lesnick, and Jack Himmelstein's *Becoming a Lawyer*,³⁶³ Marjorie Silver's *The Affective Assistance of Counsel*,³⁶⁴ Robert Cullen's *Leadership for Lawyers*,³⁶⁵ Deborah Rhode and Amanda Packel's *Leadership, Law, Policy, and Management*,³⁶⁶ and more that may be used to teach these expanded legal skills in a comprehensive and practice-oriented fashion.

Regardless of the delivery form, the course should occur early in the second year of law school, if not earlier. Although many of these skills may be acquired in third-year clinical

361. *E.g.*, *Coastal Law*, *supra* note 204; *see also Juris Doctor Course Selection*, *supra* note 58.

362. LESNICK, *supra* note 54.

363. DVORKIN ET AL., *supra* note 54.

364. Silver, *supra* note 22.

365. ROBERT CULLEN, *THE LEADING LAWYER, A GUIDE TO PRACTICING LAW AND LEADERSHIP* (2008).

366. RHODE & PACKEL, *supra* note 59.

courses, this may be late, after troublesome habits have developed.

Third, the infusion of these comprehensively-defined lawyering skills into all law school courses and curricula is recommended, parallel to Deborah Rhode's proposal to teach ethics by the pervasive method.³⁶⁷ Also, it may be wisest to offer skills training via an ungraded, noncourse credit course or program, in order to remove the spectre of grades from the learning experience. Julie Sandine at Vanderbilt Law School reports success with such an approach, when teaching "balance."³⁶⁸

Fourth, like a "disruptive technology" in the law,³⁶⁹ this skills training may be provided through a distance education-formatted course with a standardized curriculum available to all lawyers and law students in the United States. The course might also be effectively taught by an outside provider of educational services that is not affiliated with any specific law school.³⁷⁰ A battery of online tests could be developed to assess law students' competency in each of these lawyering skills at various points during law school.³⁷¹ Law students who already have these competencies well developed would not need the training, in law school. Extended training could be offered to law students who wished to distinguish themselves via an expanded set of lawyering skills in the job market.

Fifth, some concerns have been anecdotally voiced. Some may be concerned that nontraditional skills training is not the proper function of law schools and that law faculty are not

367. See generally Rhode, *supra* note 59 (setting forth the concept that ethics can be taught throughout the law school curriculum, in small ways in many different law school courses, not just confined to the required professional responsibility course or an upper-class elective on ethics; for example, a business associations course might include a discussion of conflicts of interest arising when a lawyer represents joint business owners simultaneously).

368. Personal communication with Julie Sandine, Assistant Dean for Student Affairs Julie Sandine (Dec. 2, 2011).

369. SUSSKIND, *supra* note 1, at 99–145 (discussing how technology has disrupted the legal market and profession).

370. See *About Us*, *supra* note 216 (discussing the way the National Council of Bar Examiners writes and administers the multistate bar exam).

371. *E.g.*, *School of Mastery for Evolutionary Entrepreneurs*, SCHOOL OF MASTER, http://www.schoolofmastery.ie/index_files/EQ_Assessments_Tests.htm (last visited Mar. 28, 2012) (offering an online emotional intelligence, or "E.Q.," assessment).

trained or qualified to train individuals in these skills. Some may believe that law students should have acquired these skills elsewhere, such as through life experiences or in their families, or that they will “naturally” pick them up, as they enter into law practice post-graduation. Some might argue that any assessment of these skills will be arbitrary and lack academic rigor, as they are unduly subjective to evaluate.

The preference of lawyers for “Thinking” on the Myers-Briggs may cause law professors and students to downplay the importance of some of these competencies, (particularly those involving sensitivity to emotions and interpersonal relations). They may also believe that some of these nontraditional skills are unteachable and unassessable, which in turn might cause them to marginalize these skills as unimportant, particularly if they do not excel in them. However, current pressures on legal education do appear to call for some reform along the lines of greater practical skills training. Some of these skills (for example, some EQ competencies) appear to be indeed learnable. Faculty may choose to hire specialized instructors to provide this training, in intensive workshop formats, rather than in traditional law school courses. Delivery via noncourse credit programs and ungraded exercises may alleviate some of these concerns.

In addition, law students may need to be carefully trained in “triage,” or knowing when to use various skills. For example, lawyers need to know when to recommend pursuing litigation and when to recommend alternative forms of dispute resolution. They need to know when conveying empathy is useful and when it might be perceived as a sign of weakness by an opponent in a negotiation. For example, they need to understand the difference between using empathy instrumentally as an interviewing tool with a hostile witness and feeling sympathy for the witness’ plight. Where the hostile witness is a crime victim being questioned by a criminal defense attorney, the latter could derail the lawyer’s effectiveness as a cross-examiner. They need to beware engaging in paternalism, coercion, and countertransference, when acquiring some of these nontraditional skills such as interdisciplinary collaboration.

Finally, further study is recommended. For example, academic support, student services, or career counseling departments may also be training law students in these

competencies, in some law schools. More empirical research to evaluate the effectiveness and importance of the identified lawyering effectiveness traits should be conducted. Empirical research to determine the most effective methods for training legal personnel in these skills should also be conducted.

C. *Methods for Lawyering Skills Training*

There are existing law school courses on most of the twelve disciplines discussed previously³⁷² listed in Section III.C. Simulated or live client cases may be useful contexts for exploring and intentionally teaching these skills.³⁷³

Team teaching could be encouraged, with teams consisting perhaps of full-time law professors (clinical, doctrinal, and legal writing) and adjunct professors who are local practitioners, mediators, and judges.³⁷⁴ It may be optimal to have doctrinal or clinical professors co-teach with professors specializing in nontraditional skills or with nonlawyers, or receive special training in one or more of the twelve disciplines listed above.³⁷⁵ Law professors may also be given time away from the law school to re-engage in the active practice of law or to provide pro bono legal services (or work in law school clinics or in the local legal community), to

372. See *supra* note 17 and accompanying text (discussing educational opportunities including Professor Joshua Rosenberg's successful and popular elective course on the nontraditional skills of lawyering, titled "Interpersonal Dynamics," at the University of San Francisco School of Law; Dean Don Polden and Professor Bob Cullen's "Leadership for Lawyers" course at Santa Clara University School of Law; "Leadership for Lawyers," taught by the author and Professor James Cataland at Florida Coastal School of Law; and "Comprehensive Law Practice," including all of the vectors of the comprehensive law movement, taught by the author at Florida Coastal School of Law and by Professor Michael Jones at Phoenix School of Law).

373. For example, clinical courses often require an interviewing, counseling, and negotiating skills course as a prerequisite; textbooks for such courses often include coverage of some of the lawyering skills listed in this Article. See, e.g., BASTRESS & HARBAUGH, *supra* note 262; BINDER ET AL., *supra* note 263; DVORKIN ET AL., *supra* note 54; LESNICK, *supra* note 54. See *supra* note 5 and accompanying text (discussing Washington and Lee University School of Law's new program).

374. See *supra* note 5 (discussing California Western's STEPPS programs utilizes this method; there, the professional responsibility course has been doubled in size and co-taught by a doctrinal professor and adjunct professors actively engaged in the legal profession).

375. For example, they may be credentialled with a law degree as well as a graduate degree in one of the relevant fields or social sciences, such as psychology, social work, or corporate management.

keep all their lawyering skills honed.

Various non-Socratic teaching methods being used in law schools around the country may be useful in teaching the nontraditional skills of law. These include: teaching in a circle (using "circle process," a group process borrowed from restorative justice), working in dyads in class on simulated exercises (e.g., role plays for one to five minutes), and role-plays arranged in class in a "fishbowl" style, where the non-playing students sit in a circle around those simulating the role play. Other techniques include pair and share discussions in class (for perhaps one to five minutes) on various questions, small group collaborative exercises in class, and simulated exercises graded in part on students' reflective essays on the exercises. Finally, large lecture sections may have small, breakout sections led by adjunct professors (local practitioners) to conduct simulations or small group discussions of topics introduced in the large lectures. Classes may also include student-led portions of class and student-led class discussions that are graded (where the student leaders are graded on their leadership of the class discussion) to assist in acquiring skills in this expanded skill set.

Out of class methods include group projects, graded reflective journals, and field work such as: mediating small claims cases or community disputes, debriefing exercises after live client work, and field placements. Finally, technology such as interactive synchronous (or asynchronous) web-based platforms for regular class sessions (which reach students in class and those participating from off-campus sites)³⁷⁶ and class websites where links, videos, slides, and resources are posted and where discussions and posts can be held,³⁷⁷ are also helpful current techniques that allow students to practice professional behaviors in front of their peers and professors.

In summary, various methods of teaching may be helpful in teaching the expanded set of lawyering skills described above. These include team-teaching, professors with

376. See, e.g., *Illuminate Live!*, ELLUMINATE.COM, http://www.illuminate.com/Services/Training/Elluminate_Live!/id=418 (last visited Mar. 28, 2012).

377. See, e.g., TWEN, LAWSCHOOL.WESTLAW.COM, <https://lawschool.westlaw.com/shared/signon10.asp?path=%2ftwen%2fdefault.asp> (last visited Mar. 28, 2012).

interdisciplinary training, professors engaged in the active practice of law, programs and courses allowing students to handle simulated and live client cases, small group work, reflection, and use of technology.

1. *One School's Leadership Training Experiment*

A “nontraditional skills” course was conceived as a “leadership” course, partly in response to studies finding lawyers to be competitive and to desire to be seen as dominant, self-confident, and socially ascendant.³⁷⁸ At Florida Coastal School of Law, a pilot course incorporating leadership concepts and other lawyering skills was offered to students in leadership positions within the law school.³⁷⁹ These students were first offered training in various skills and then asked, as a team, to problem-solve the following questions: whether these nontraditional skills were important to law and, if so, how best to teach them in law school. They collectively decided that the skills were valuable and should be presented in all three years of law school, including orientation. They suggested focusing on the skills intensively in the professional responsibility course as well as in a stand-alone course devoted solely to these skills.

Based on their feedback, a course was developed combining training in leadership competencies and emotional intelligence skills, and communications and conflict resolution skills from the school's comprehensive law practice course, and a corporate management-style strategic decision-making model for group decision-making. It was team-taught as a one-week intersession course. Skills were taught for the first few days, while the latter part of the week was devoted to a simulation and exam. In the simulation, the class and professors role-played the officers and in-house and outside advisors of a major oil company dealing with an oil spill crisis. It seemed to work well and the students were engaged in the project. Grades were assigned to students' in-class performance on the simulation and to their performance on a written essay examination.

378. See, e.g., Daicoff, *Empirical Research*, *supra* note 47, at 1368–73.

379. *Leadership for Lawyers*, *supra* note 228 (stating that Santa Clara University School of Law's course catalog lists a leadership course for student leaders along with a general leadership course).

Both the pilot course and the subsequent course met in a circle around a conference table. It may have been particularly helpful to have the classes co-taught by a skills professor who formerly served as a criminal defense attorney and, later, as the chief executive officer of a large, publicly-traded corporation, and a doctrinal professor with graduate-level clinical psychology training and experience as a corporate attorney.

The methods used in the course appeared to be reasonably effective means to teach the competencies that were included. In particular, having two professors with diverse strengths (and one with a wealth of practical lawyering experience) team-teach these skills in an upper-level elective course permitted modeling of collaboration. It also may have established credibility of the course's contents. In contrast, teaching these skills in a traditional doctrinal course with traditional grades and without an institutional culture focused on comprehensive lawyering skills development may be less effective.

A more effective course would have covered all the nontraditional skills, had more credit hours, and been required, although perhaps graded differently than traditional doctrinal courses. It would have assigned readings from each of the twelve disciplines, above, and customized those disciplines to apply them specifically to multiple situations in the law. For example, leadership and conflict resolution skills could be applied to a hypothetical situation in which an associate in a law firm must deal with a difficult senior partner, perhaps one who assigns complicated cases to the associate without adequate direction or supervision.³⁸⁰ Various responses could be generated and evaluated by students. Additional such situations could be presented, throughout the semester, as opportunities for students to develop and display their competency in the expanded set of lawyering skills.³⁸¹ While the leadership

380. See PEARCE ET AL., *supra* note 214, at 90 (discussing the terms of applying the Model Rules of Professional Conduct (Rules 1.1 and 5.1, specifically), but distinguishing the interpersonal, leadership, and conflict resolution skills needed to resolve the situation are omitted from the discussion).

381. See also MORGAN & ROTUNDA, *supra* note 193 (providing excellent hypotheticals, many of which can be used as situations presenting opportunities

course was effective, further course development should be pursued.

CONCLUSION

The legal profession cannot afford to have twice the incidence of psychological problems as are in the general population. Clients will not stand for it. After all, it is the client who suffers; he suffers when his legal counsel is impaired by diminished well-being, which can consequently affect judgment, responsiveness, decision-making, and cognitive abilities. Lawyers deserve to be happy and healthy. They should enjoy their work and derive satisfaction from it. The new generation of lawyers, in particular, demands balance between work and life and satisfying work.

Lawyer well-being has been empirically demonstrated to be associated with pursuing one's intrinsic values and motivations, in one's work. Lawyers also want satisfied clients who will return for future legal work. Clients want their legal services to be affordable, economical, and efficient. They will not pay for protracted litigation when well-done dispute resolution can solve the problem. They are already seeking do-it-yourself solutions and online legal service providers who can assist them in that endeavor. Clients also want "sustainable" solutions to their legal problems that serve their long-term business ends. Finally, law students are demanding more value for their educational dollars. They want to audit law schools' bar pass data and employment statistics. They seek an education that will prepare them, beyond the traditional legal skills, to practice law when they graduate. The entry of those in the Millennial generation into the law may further emphasize values such as collaboration, teamwork, innovation, civic-mindedness, and desire for meaningful work.³⁸²

It is time to expand the lawyers' toolkit of skills with a

to exercise nontraditional skills competencies).

382. See, e.g., Finnemore, *supra* note 34; McClellan, *supra* note 34; Wegner, *supra* note 35 (noting the characteristics of the Millennial Generation); Weresh, *supra* note 34; see also Leslie Larkin Cooney, *Giving Millennials a Leg-Up: How To Avoid The "If I Knew Then What I Know Now" Syndrome*, 96 KY. L.J. 505, 505-06 (2008) (noting characteristics of Millennials as collaborative, technology-minded, achievement-oriented, team-oriented, ambitious, demanding, questioning of everything, and more).

full panoply of competencies, including some nontraditional ones. Nontraditional skills training in the law has been proposed for decades;³⁸³ however, its relevance may be increasing due to current challenges facing the legal profession. Many of these skills are what appear to differentiate, both empirically and observationally, top lawyers from the rest of “the herd.”³⁸⁴ These skills may also be important for long-term lawyer well-being and satisfaction³⁸⁵ if they help lawyers fulfill their intrinsic satisfactions and link their work with their values (such as building community, creativity, and making a difference).³⁸⁶

Legal educators have sometimes avoided some of these skills, asserting that the skills are “unteachable” or should have been acquired by students pre-law school or in their families of origin. The process of acquiring these skills can be uncomfortable for many lawyers and law students, as some skills may not be competencies in which they readily excel. Thus, both law students and law professors may tend to shy away from these topics, in law school. As a result, post-graduation, new lawyers may “fill in the blanks” with behavior they guess will be effective, professionally; yet, their guesses are often wrong, leading to uncivil and socially inept behavior, as many professionalism experts point out. However, social scientists find that many of these skills are teachable; there are existing curricula in other fields available for doing so. The process of acquiring these competencies for many lawyers and law students has, for too long, been left to chance.

Based on empirical studies, this Article proposes training in law school designed to encourage the development of the following lawyering skills:³⁸⁷ intrapersonal skills (such as honesty, integrity, maturity, reliability, judgment, passion, motivation, engagement, diligence, self-confidence, tolerance, patience, independence, adaptability, general mood, stress management, and continued professional and self-development); certain interpersonal skills (such as dealing

383. *See supra* note 54 (noting that some texts date back to 1959).

384. *See supra* Part II.

385. Robert Cullen, Remarks at the Third Annual Leadership in the Law Conference (Mar. 24, 2011).

386. Krieger, *Dark Side*, *supra* note 20.

387. *See supra* Parts II.C. (Table 1), IV.A. (Table 2).

effectively with others, understanding human behavior, empathy, listening, questioning, interviewing, counseling, influencing, advocating, instilling others' confidence in you, obtaining and keeping clients, developing relationships, and networking within the profession); conflict resolution (including mediation and negotiation); collaboration (including teamwork, working cooperatively with others, and managing and mentoring others); problem solving; and strategic planning. While most of these are teachable, even arguably non-teachable skills may be addressed in law school.

Fortunately, many scholars, researchers, and educators have made excellent efforts to infuse nontraditional skills into the law and legal education. However, nontraditional skills are being infused with and mixed with the traditional skills of the law under a panoply of different names and labels from twelve fields of study.

It is time to unify these fields' impact upon law schools and the law by: (1) agreeing upon the constellation of skills needed for maximal lawyer effectiveness and success in the modern practice of law; (2) making the acquisition of these skills a required component of legal education, i.e., a "learning outcome;"³⁸⁸ and (3) drawing from the knowledge and curricula of the twelve or so disciplines currently teaching these skills to create an integrated curriculum for law schools that incorporates all twelve disciplines. It may assist in preparing the next generation of lawyers for the challenges they may face, in the profession of the future.

388. See AMERICAN BAR ASSOCIATION, *supra* note 201, at 2; see also, AMERICAN BAR ASSOCIATION: SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, INTERIM REPORT OF THE OUTCOME MEASURES COMMITTEE 1 (May 12, 2008), available at www.apps.americanbar.org/legaled/committees/OutcomeMeasures.doc (last visited Mar. 28, 2012).

In recent years, there has been a growing sentiment within the legal education community that the Accreditation Standards of the ABA Section of Legal Education and Admissions to the Bar should be reframed to focus more heavily on "outcome measures" – accreditation criteria that concentrate on whether the law school has fulfilled its goals of imparting certain types of knowledge and enabling students to attain certain types of capacities, as well as achieving whatever other specific mission(s) the law school has adopted.

Id.