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LEADERSHIP MATTERS: LAWYERS' LEADERSHIP SKILLS AND COMPETENCIES

Donald J. Polden*

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INTRODUCTION

Leadership matters. In nearly every aspect of public and private life, the ability to inspire others to work towards positive and ethical change is critical to the success of organizations, businesses and communities, and other groups. Leadership also is critical to the success of our political and governmental institutions because people want to believe in the ability of their leaders to guide change and achieve success. The same is true for lawyers whether in private law practice, government service, work with nonprofit entities or

* Dean and Professor of Law, Santa Clara University. The author expresses his appreciation to the members of Santa Clara University School of Law's leadership initiatives team—Marina Hsieh, Sandee Magliozzi, and Julia Yaffee—for their inspired and sustaining work on leadership education at the law school. Bob Cullen has been a real leader in the effort to develop a leadership curriculum in law schools and has contributed to the success of Santa Clara's leadership for lawyers educational program. Finally, the leadership education scholarship of Barry Posner and Jim Kouzes has informed my work about leadership education for lawyers and law students. None of them are responsible for any errors in this Article.

other areas where lawyers use their skills and knowledge.¹ Leadership involves skills and competencies that are essential for success in the practice of law and in other occupations and callings that lawyers fulfill. It is therefore surprising that leadership is not taught in most American law schools and that only a few, but visionary, law firms are developing leadership skills in their lawyers in a systematic way. What accounts for this gap between the skills necessary for success in a client-service and value-driven profession and the educational objectives of both the professional education and practice regimes?

The main theme of the Article is why leadership skills are important for today's lawyers, especially lawyers beginning their careers in law firms and other law practice settings. This Article attempts to explain the reasons for the gap between what the legal profession values with respect to leadership competencies and what law school graduates are being taught, and, more importantly, to fill those gaps by articulating a more robust case for leadership education for the legal profession. Without question, there is growing interest in the development of leadership skills in law schools and in law practice settings and this trend toward greater leadership education is described in the Article. This Article describes how leadership skills are being built into the performance expectations at some leading law firms as they attempt to develop and strengthen their associate level talent.

Part I begins by describing the importance of leadership education for lawyers and other professionals. This description includes a working definition of leadership abilities that lawyers and law students should be taught and be able to demonstrate. Part II provides a definition of leadership by lawyers and Part III identifies and describes several leadership models and theories and explains their applicability to lawyers in the service of clients. Then, Part IV attempts to "unbundle" leadership by examining various competencies subsumed within the skill of leadership and several useful approaches to understanding the fundamental

1. See Gregory Williams, *Teaching Leaders and Leadership*, THE NEWSL. (AALS, Washington, D.C.), Apr. 1999, available at <http://www.aals.org/presidentsmessages/leaders.html>.

attributes of leaders. Part V then examines these competences in the specific context of lawyers and demonstrates that leadership education for lawyers is achievable and desirable. The legal profession and certainly the well being of lawyers' clients are advanced by the broader and more systematic education of lawyers for leadership roles and responsibilities. This Article argues that the development of leadership skills is desirable in many walks of American life and that these abilities are critical to the success of our organizations and institutions—commercial, non-profit, governmental, and others. Further, it develops a workable definition of leadership that is particularly applicable to the roles and responsibilities of lawyers in our communities and in their work with clients.

I. WHY LEADERSHIP EDUCATION IS IMPORTANT

There is a significant perceivable need for greater leadership in government, business and commerce, and in everyday life after the many financial industry and governmental scandals of the past decade, including Enron, Bernie Madoff, and child abuse by religious figures and teachers.² The articulated need for more leadership education is due, in significant part, to an acknowledged deficit of effective and ethical judgment and decision-making in our communities, on Wall Street, and in government.³

The need for greater leadership competence by lawyers is due to the important and visible roles they play in our communities, government institutions, and significant commercial, business and inter-personal transactions. Professor Deborah Rhode has noted the important leadership roles and responsibilities of lawyers:

In the public sector, lawyers shape and enforce law. In the private sector, they orchestrate responses to law through compliance, evasion, resistance, and reform. Moreover, because law is to [*sic*] large extent a self-

2. JAMES M. KOUZES & BARRY Z. POSNER, CREDIBILITY: HOW LEADERS GAIN AND LOSE IT, WHY PEOPLE DEMAND IT xii–xiii (2011).

3. Deborah Rhode, *Lawyers and Leadership*, 20 THE PROF. LAW., no. 3, 2010 at 1 (“Our profession’s need for leaders with inspiring vision and values has never been greater.”); Ben W. Heineman, Jr., *Law and Leadership*, 56 J. LEGAL EDUC. 596, 596 (2006) (“[O]ur society—national and global—suffers from a leadership deficit.”)

regulating occupation, its leaders have special responsibility to act for the public, not just the profession, when its own governance is at issue.⁴

Rhode also points out that public confidence in lawyers is “distressingly low” both in terms of perception of their integrity and their ability to lead major law firms.⁵ Because of the significant roles that lawyers play in our economy and government, their integrity and reputation for honesty and credibility must be impeccable and perceptions of their competence must be above reproach.

Ben Heineman, Jr., former general counsel of General Electric, has persuasively argued that we need effective leadership by lawyers in managing transactions and global arrangements involving important and legitimate private interests. He argued that:

Someone will have to provide the vision, wisdom and energy to lead. Such leadership will require many skills and multiple perspectives. No one is totally suited for such tasks, but no one is better suited than a lawyer with broad training and experience. Properly defined, the lawyer’s core skills of understanding how values, rules and institutions interrelate with social, economic, and political conditions is central to the demands of contemporary leadership.⁶

The apparent gap between lawyers’ need for reputations of great integrity, credibility, and honesty and the current public perceptions of lawyers’ selfishness and dishonesty highlights the importance of greater emphasis on leadership education and a stronger commitment to professionalism and ethics. Leadership education in law schools and in law firms, if developed in a systematic way, would begin to address the concerns described by Rhode and Heineman and would permit lawyers and legal institutions to rebuild the reputation of lawyers for integrity and credibility.

II. DEFINING CORE ATTRIBUTES OF LAWYERS WHO LEAD

There are many definitions of leadership and what makes an effective leader. For purposes of this Article, leadership is

4. Rhode, *supra* note 3, at 13.

5. *Id.*

6. Heineman, *supra* note 3, at 607.

defined as a process by which an individual or a group influences others to achieve positive and ethical change.⁷ This definition of effective leadership by lawyers is built on the model of dynamic leadership articulated by Professors James Kouzes and Barry Posner in their important contribution to the literature on leadership development and training.⁸ Kouzes and Posner identify five practices of exemplary leadership: Leaders model the way for others, inspire a shared vision for change or movement, challenge the status-quo, encourage and enable others to act toward change or gain, and encourage the heart of those who follow them.⁹ These practices are the key manifestations of the relationship between leaders and their constituents and provide a coherent theory for how leaders lead.

According to this model, leadership is fundamentally about a relationship between people—sometimes denominated as leaders and their constituents or followers—that has as its purpose positive change or movement.¹⁰ The relationship is one established and built on trust, veracity, and credibility. Establishing this trust requires personal interaction, candor, and commitment to follow through on promises given.¹¹ Clearly, these attributes and abilities equally define the relationship between attorneys and clients and between lawyers as “officers of the court,” and legal and judicial institutions such as courts and government tribunals.

Another core idea is that leadership, which is really a competency or set of skills and traits, can be learned and practiced by anyone; it is not a status that one is born into.¹² Anyone can be a leader, and leadership is everyone’s business; it is not limited to only a few.¹³ Given this broad

7. Donald J. Polden, *Educating Law Students for Leadership Roles and Responsibilities*, 39 U. TOL. L. REV. 353, 356 (2008). See also ROBERT CULLEN, *THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP* 13 (Thomson Reuters/West 2009).

8. JAMES M. KOUZES & BARRY Z. POSNER, *THE LEADERSHIP CHALLENGE* 14–25 (4th ed. 2007).

9. *Id.* at 14–23.

10. DEBORAH RHODE & AMANDA PACKEL, *LEADERSHIP: LAW POLICY AND MANAGEMENT* 41 (2011); CULLEN, *supra* note 7, at 8–9.

11. KOUZES & POSNER, *supra* note 2, at 27–34.

12. CULLEN, *supra* note 7, at 15–16.

13. According to Kouzes and Posner in *THE LEADERSHIP CHALLENGE*, It’s just pure myth that only a lucky few can ever understand the intricacies of leadership. Leadership is not a gene, and it’s not a secret

and enticing definition of leadership, it bears repeating that educating lawyers for leadership abilities is both achievable and beneficial to the work they perform as lawyers and citizens as it has been for leaders in other fields.¹⁴

III. MODELS OF LEADERSHIP AND THEIR APPLICABILITY TO LAWYERS

The basic approach to leadership advocated in this Article is representative of one model or type of leadership—transformational leadership. In this concept of leadership, leaders themselves undergo a transformation by and through their commitment to lead others in the shared goal of change, whether it is increased market share or profits, building a better product or delivering a product or service in a better manner, or making a better work group or organization.¹⁵ This type of leader inspires others to share the vision or goal of transformative change, progress or action, and then models the way for others to move toward the change.¹⁶

There are several other theories about leaders and their leadership approaches and many definitions of leadership and types.¹⁷ Most of these approaches and theories do not advance knowledge about or understanding of “leading lawyers” and are not described or applied to lawyers and law students in this Article. Some of the prevalent theories of leadership include transactional, servant, behavioral,

code that can't be deciphered by ordinary people. The truth is that leadership is *an observable set of skills and abilities* that are useful whether one is in the executive suite or on the front line, on Wall Street or Main Street, in any campus, community, or corporation. And any skills can be strengthened, honed, and enhanced, given the motivation and desire, along with practice and feedback, role models, and coaching.

KOUZES & POSNER, *supra* note 8, at 339–40.

14. Professor Deborah Rhode reports that leadership education is prevalent in many aspects of American life: “[C]orporate spending on leadership development totals forty-five-billion dollars annually and at least seven hundred academic institutions have leadership programs” Rhode, *supra* note 3, at 12 (footnote omitted).

15. See Neil Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358, 378–80 (2009). See also JAMES MACGREGOR BURNS, *LEADERSHIP* 4–5 (1978).

16. Hamilton, *supra* note 15, at 378–79. See also BERNARD M. BASS, *LEADERSHIP AND PERFORMANCE BEYOND EXPECTATIONS* 17 (1985).

17. See HERB RUBENSTEIN, *LEADERSHIP FOR LAWYERS* 6, 14–17, 188 (2d ed. 2008).

charismatic, and contingent, among others. The various theories differ according to a number of factors, including the different types of relationships between leader and followers, the context in which the leader acts, and whether leadership skills are learned or inherent to the individual. Suffice it to say that in considering an appropriate, working definition of leadership it is necessary to consider the context of the work that lawyers perform, the relationships with constituents (such as clients, community citizens, etc.), and whether they are working as lawyers in public or professional life.

Professor Neil Hamilton has provided a thoughtful analysis of theories of leadership in the context of lawyers and their work and he has considered more specifically the usefulness of theories of adaptive leadership, transformative leadership, and servant leadership.¹⁸ These theories, according to Hamilton, are most useful in understanding how lawyers act in leadership roles and demonstrate leadership abilities because they permit the incorporation of ethics in leadership.¹⁹ He makes an important contribution to the literature of leadership by lawyers by identifying and contrasting two significant roles that lawyers play in their work: They provide leadership in positions or roles that have formal directing authority (such as governmental appointments, service on boards of public and non-profit firms, and directing a law firm) and they demonstrate leadership through their influence and persuasion in relationships with clients (such as counseling, mediation, etc.) in which they lack authority as such.²⁰ According to

18. Hamilton, *supra* note 15, at 378–87.

19. *Id.* According to Hamilton, transformational leadership involves leaders who inspire others to pursue a shared vision and both the leader and the followers are dedicated to accomplishing the shared goals. The transformational leader often “models” the values and behavior that he or she wants the followers to embrace. *Id.* at 378–79. Adaptive leaders motivate, mobilize and orient others to make progress on goals and needs of the group or organization. The principal contributions of this theory of leadership is an identification and description of the skills needed to motive and mobilize others, but it does not fully explicate the values that leaders much possess and demonstrate to act as a leader. *Id.* at 380–81. Servant leadership is a theory of leadership that emphasizes the leader’s personal strengths and self-confidence to lead and an accompanying passion for serving others. Such a leader is deeply committed to the group or the project and tries to help others toward shared goals, but does so with humility and selflessness. *Id.* at 383–87.

20. *Id.* at 361–65.

Hamilton, “a lawyer who leads in either a position of formal directing authority or a position of influence in counseling clients has a duty to consider for him or herself and should help the client and others consider the ethical dimensions of a decision.”²¹ Hamilton contends that servant leadership is the most helpful in incorporating the importance of ethical obligations of lawyers to each other and to their clients and he describes this form of leadership as “helping others reach their potential in order to realize the mission and goals of the organization.”²² According to Hamilton, other theories of leaders and leadership are less helpful than servant leadership in understanding the roles that lawyers play in the legal system and in relationships with each other, judicial officers and their clients.²³

The relevant theories of ethical leadership by lawyers—servant, transformational, and adaptive—provide guidance in understanding the responsibilities that lawyers owe to their clients and to professional and community institutions. They also provide a useful framework for understanding the essential competencies that lawyers need to possess and demonstrate in order to serve their clients’ needs or their communities in public service. The next section surveys these essential or core skills and competencies and describes their relevance to the prevailing approaches to leadership by lawyers.

IV. UNBUNDLING LEADERSHIP—ESSENTIAL COMPETENCIES AND APPROACHES

There is a great deal of literature on the fundamental attributes or traits of leaders and they are useful in understanding how leadership is a core or essential skill of

21. *Id.* at 365.

22. *Id.* at 386.

23. *Id.* at 387–93. While conceding that all three theories of leadership are useful in guiding lawyers who serve in formal leadership roles such as when they have “formal directing authority” (e.g., government, boards of directors, etc.), Professor Hamilton contends that servant leadership and adaptive leadership theories help inform the roles of counselor and advisor. He also contends that servant leadership is the theory most receptive to recognition of the ethical obligations that lawyers owe to clients, courts and the legal profession. *Id.* at 388. These are situations where lawyers influence others such as clients and these relationships are best understood by reference to concepts and skills of servant leadership. *Id.* at 391–92.

successful lawyers. Related to the attributes or characteristics of effective leaders are styles or approaches that effective leaders use to influence their followers. These fundamental traits are summarized in this section and they will provide form and substance to the more detailed look at leadership skills and competencies by lawyers in the next section.²⁴

Several scholars identify specific personal traits as fundamental for successful leadership. Jim Kouzes and Barry Posner conducted thousands of surveys throughout the world in an effort to identify the characteristics of admired leaders. The four characteristics that have consistently been recognized as the top ones are honesty, forward-looking, inspiring, and competent.²⁵ Bob Cullen has listed the key traits of “leading lawyers” as credibility, drive and determination, creative thinking and problem solving, communication and persuasion, and, finally, relationship and team building.²⁶ Deborah Rhode has identified a number of characteristics of leaders and views them as clustering around the following five main categories: (1) values (including integrity, honesty, and trust), (2) interpersonal skills (including social awareness, empathy, persuasion, and conflict management), (3) vision, (4) technical competence (including knowledge and judgment) and (5) personal skills (such as self-awareness, self-control and self-direction).²⁷

These enumerations of essential leadership characteristics are useful in providing a framework for identifying leadership ability and articulating the goals of leadership education. Most of the descriptions of key attributes or traits of effective leaders include knowledge of subject matter, high-level technical competence in the field,

24. In the literature, the term “competency” is often used interchangeably with the term “skill” and for good reason—the two are closely related. As we use the terms or concepts in this article, leadership is framed as a competency that is demonstrated or exercised by credible individual who inspires or influences others to shared goals or activities. Acts of leadership involve specific skills, or traits or behaviors that together describe the leadership competency. For an example of this usage of the terms, see Susan Manch, *Competencies and Competency Models—An Overview*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS* 83–84 (Terri Mottershead ed., 2010).

25. KOUZES & POSNER, *supra* note 2, at 4–13.

26. CULLEN, *supra* note 7, at 9–12.

27. Rhode, *supra* note 3, at 14–15.

ability to formulate and act upon a vision for action or change, integrity and a strong moral compass, and initiative or determination toward action or change. To fully understand the importance of identifying characteristics of leaders, it is important to examine the competencies that shape and inform the leader's ability to provide leadership.

Increasingly, many of the descriptions of leadership traits or characteristics of leaders are based on research and scholarship on some of the "soft skills" demonstrated by effective leaders. Daniel Goleman has published his research and theories on the importance of "emotional intelligence" to successful leaders.²⁸ He argues that "the most effective leaders are alike in one crucial way: they all have a high degree of what has come to be known as emotional intelligence."²⁹ Goleman contends that highly effective leaders, in addition to more technical and knowledge-based abilities, possess and demonstrate the components of emotional intelligence and the ability to draw upon these components enhance their performance.³⁰ According to Goleman, the components are self-awareness, self-regulation, motivation, empathy, and social skill.³¹ Self-awareness is "the ability to recognize and understand your moods, emotions, and drives as well as their effect on others."³² Self-regulation refers to one's "ability to control or redirect disruptive impulses and moods" and "the propensity to suspend judgment—to think before acting."³³ Motivation refers to one's passion for work and "a propensity to pursue goals with energy and persistence."³⁴ Empathy refers to "the ability to understand the emotional makeup of other people" and "skill in treating people according to their emotional reactions."³⁵ Finally, Goleman describes social skill as "proficiency in managing relationships and building networks" and "an ability to find common ground and build

28. Daniel Goleman, *Leadership That Gets Results*, HARV. BUS. REV., Mar.–Apr. 2003, at 78; Daniel Goleman, *What Makes a Leader?*, HARV. BUS. REV., Nov.–Dec. 1998, at 94.

29. Goleman, *What Makes a Leader?*, *supra* note 28, at 94.

30. *Id.*

31. *Id.* at 95.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

rapport.”³⁶

The importance of these skills and abilities to effective leadership is perhaps obvious. Leaders must have the subject matter knowledge and skills to convince others that his or her views and vision are the appropriate path of action or direction. People in leadership positions cannot inspire confidence in others if the leader cannot manage his or her own emotions or lacks motivation to formulate a vision for change or action. People in leadership situations must have the ability and inclination to listen to their constituents and to interact with them in a sustaining relationship. However, many organizations systematically do not encourage or insist upon their leaders developing the skills and abilities necessary to more effectively lead change or action in the organization, and this is true for law firms and law practice organizations.

Goleman’s work on the identification of a broader range of essential skills and abilities—both the technical and analytic and the interpersonal and behavioral abilities (“soft skills”)—has inspired and informed thinking about the behavioral approaches or styles that leaders take to lead change or action. His reports on surveys and research projects that have identified several distinct leadership styles and that effective leaders use several styles to achieve their goals.³⁷ He defines each of the six leadership styles:

Coercive leaders demand immediate compliance.
Authoritative leaders mobilize people toward a vision.
Affiliative leaders create emotional bonds and harmony.
Democratic leaders build consensus through participation.
Pacesetter leaders expect excellence and self-direction.
And *coaching leaders* develop people for the future.³⁸

Goleman asserts that effective leaders often use all or most of the six leadership styles but that only four of them consistently improve organizational performance and the workplace’s climate.³⁹ His research concluded that the most

36. *Id.*

37. Goleman, *Leadership That Gets Results*, *supra* note 28, at 78. The author refers to research by a leading consulting firm that drew upon a sample of over 3800 executives worldwide.

38. *Id.* at 80.

39. *Id.* at 81. Workplace climate refers to several factors that determine the effectiveness of the organization. Those factors are the flexibility demonstrated within the organization, the employee’s sense of responsibility to the mission

useful styles were authoritative, affiliative, democratic, and coaching, and that executives who have mastered those four create the best climate for success and business performance.⁴⁰ Indeed, according to Goleman's research successful leaders are able to switch into these styles and from one style to another fluidly as the situation requires and as the needs of the leader's constituents change.⁴¹

The research about the key characteristics of effective leaders, the "soft" and "hard" skills possessed by effective leaders, and the relevant styles of leadership are important to understanding the characteristics, skills, and styles of leadership that are important to lawyers who assume leadership roles and responsibilities. By considering how these attributes and styles align with the work of lawyers and their organizations we can begin to identify how to develop these traits, skills, and capabilities within the law firm or organization or in the law school curriculum.

In the next section, we look at new directions in competency-based performance goals and evaluation in some American law firms and how the growing literature of leadership as a core competency can inform our thinking on lawyers who lead.

V. LEADERSHIP COMPETENCIES OF LAWYERS

The literature on leadership skills, characteristics, and attitudes described above is not specific to any particular job, profession, or undertaking, although a great deal of the literature seems applicable principally to leaders in business or corporate enterprises.⁴² However, as argued earlier,

and goals of the organization, the standards for performance and success set within the organization, perceptions of the appropriateness of rewards, the clarity around mission and values, and the level of commitment to common purposes and goals. According to Goleman, all six leadership styles have a measurable effect on each aspect of the organization's climate, but that four styles—authoritative, affiliative, democratic, and coaching—have the most positive effect on workplace climate. *Id.* at 81–82.

40. *Id.* at 82–83, 87.

41. *Id.* at 87–88.

42. Just as there are important and recent efforts to develop and increase leadership education in law schools, there are increasing efforts to expand medical school leadership programs. See Association of American Medical Colleges, Medical School Based Career and Leadership Development Programs (2010) (listing thirty programs at medical schools that seek to nurture medical school faculty members skills, abilities, and knowledge through leadership skills

leadership is for everyone, irrespective of calling or occupation, even though the situations in which leadership is called for or is demonstrated may vary among various settings or occupations. Thus, physicians may demonstrate their leadership abilities in ways that are different from lawyers or business executives and political figures demonstrate leadership in contexts different from most lawyers, physicians and business executives. Nevertheless, the essential competences of leadership practiced by lawyers, physicians, and business executives are fundamentally the same—to inspire action or change by followers who trust the leader to guide the organization or group. It is therefore possible to gain insights into the key competencies and abilities of lawyers who lead and who seek to develop leadership skills in their colleagues.

Lawyers are called upon to demonstrate their leadership skills in different settings and ways as they work in law firms, government positions, non-profit organizations, corporate executive positions, and community advocacy roles. Leadership education is important to all lawyers and law students because it provides the skills and abilities necessary for successful engagement in civic responsibilities, for meeting the requirements of client representation, and for managing the responsibilities within a law firm or law organization.

In this section, we focus on the development and demonstration of leadership skills in one significant area of work that lawyers do—practice law through representation of clients in the context of a law firm or law practice setting. While this is not the only setting that lawyers demonstrate leadership abilities or act like a leader, it is one of the most common settings for the demonstration of effective, ethical lawyering. Moreover, law firms have been increasingly interested in identifying the core skills and competencies of young lawyers for purposes of attorney compensation and promotion within the law firm.

This section describes the movement toward identification of lawyering skills, including leadership, and how that identification process can be used in the education and professional development of lawyers. The linkage

between the skills and attributes of lawyers in law firms and the characteristics, trait and abilities of leaders discussed in the preceding section will permit an explication of educational models in law schools and in law firms can be created and used to better prepare lawyers for law practice.

A. *Law Firms' Competency Models*

In recent years, law firms have moved toward competency models for recruiting, retaining, and compensating attorneys. In the past, most large firms have used “lock step” compensation plans to retain junior lawyers but, increasingly, these firms are moving away from a “graduation year from law school” approach to a skills-based approach to developing their talent.⁴³ According to a recent report on law firms’ development of competency approaches, the ability to demonstrate leadership has been identified as a core competency by leading law firms.⁴⁴

Psychologist David McClelland initially described the importance of competencies to predicting and measuring performance.⁴⁵ His research concluded that intelligence alone did not account for employees’ high performance and success, but that other factors—or key competencies—predicted workplace success.⁴⁶ The importance of McClelland’s research and analysis was pointing out that once organizations identified the right set of competencies (for example, in law they include persuasive writing and showing client-oriented initiative), they “could begin to assess the extent to which professionals exhibited the competencies in evaluation processes in almost as objective a fashion as they measured tangible output.”⁴⁷ McClelland’s work has

43. Manch, *supra* note 24, at 85–86. See generally SCOTT WESTFAHL, YOU GET WHAT YOU MEASURE: LAWYER DEVELOPMENT FRAMEWORKS AND EFFECTIVE EVALUATIONS (NALP 2008).

44. NALP Foundation, Research Findings: Survey of Law Firm Use of Core Competencies and Benchmarking in Associate Compensation and Advancement Structures (July 2009), available at <http://www.nalpfoundation.org/uploads/PDCCompetenciesandBenchmarksSurveyResultsFINAL.pdf> (last visited Mar. 30, 2012).

45. David McClelland, *Testing for Competence Rather Than for “Intelligence,”* 28 AM. PSYCHOLOGIST, 1–14 (1973).

46. Manch, *supra* note 24, at 77–78.

47. *Id.* McClelland’s competency-based approach was quite different than the “[T]raditional performance management models that focused on setting static performance criteria against which performance would be measured

generated considerable research and literature on competency-based evaluation and retention approaches to talent management; and some law firms have adopted this approach in recent years.

According to recent surveys and reports, law firms are moving toward competency- or skills-based approaches to associate lawyer hiring, retention, and promotions.⁴⁸ With these approaches or programs, firms identify the core lawyering competencies applicable to each firm's mission, culture, and organizational goals by analyzing and describing the skills and traits of the outstanding performers in the law firm.⁴⁹ These competencies often include written or oral communication, leadership, teamwork, client development and service, or others relevant to the firm's culture or goals. For each competency, the firm will identify the performance factors or traits of each competency, which are "the specific skills, traits, and behaviors that together describe the behavioral dimensions" of the particular core competence.⁵⁰ The next set of decisions in forming a competence-based management model for a law firm is to identify the specific behaviors or activities that demonstrate the attorney has acquired and demonstrated the performance trait, such as preparing a memoranda or a client letter, or collecting, reviewing, organizing, and producing documents in a proceeding.⁵¹ Firms then create levels of proficiency (for example, from novice to expert or "first year associate" to "fifth year associate") and describe the mastery of each performance trait or criteria at each level or stage of development.⁵²

based on the presumed skills and knowledge needed to do the job." *Id.*

48. NALP Foundation, *supra* note 44.

49. Manch, *supra* note 24, at 79. According to Manch, "As they have evolved in practice today, core competencies or success factors are simply the skills and traits top performers demonstrate more often, in more situations, and to a greater degree than average performers. A fully articulated law firm competence model includes core competences based on the skills and traits that are shared by a firm's most successful lawyers, as well as practice-specific benchmarks that describe the specific experiences associates should accumulate as they progress in the firm." *Id.*

50. *Id.* at 82.

51. See *id.* at 82-85; see also Sari Fried-Flori, *Competency-Based Development Programs*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS* 119, 121-38 (Terri Mottershead ed., 2010).

52. Manch, *supra* note 24, at 82.

While competency-based approaches to law firm management are relatively recent in origin, they are increasingly important to firms attempting to manage the “new world” of law firm economics and associate development and education. Through these approaches, law firms have a reliable and consistent method of making advancement and compensation decisions that reflect the values of each firm and provide young lawyers with useful and clear information of expectations that the firm has for them and a “roadmap” of what they need to do to progress within the firm.⁵³ Further, partners and other lawyers in the firms “benefit from a consistent description of performance standards and experiential expectations that allow them to assess performance accurately, assign work effectively, and offer more meaningful career guidance . . .”⁵⁴

Through the development of competency-based talent management programs, law firms and thinkers in the area of law office management and associate development have begun to think about the critical skills and abilities that their legal talent needs to possess when recruited and to learn as they move up through the ranks of the firm. Law schools need to understand why law firms value these core competencies and provide opportunities for their students to acquire and demonstrate these skills during law school. The next section returns to the issue of leadership as a key competency for lawyers and describes how leadership abilities are important at a growing number of law firms.

B. Leadership as Core Competency

Some national law firms have identified leadership—which is defined by one firm as “taking an active role in motivating, inspiring, and coaching people to enable team, individual and organizational effectiveness”—as a critical or core competency for lawyers at that firm.⁵⁵ The firm has five levels of competence or ability with respect to leadership: Level 1 involves looking after the team; Level 2 looks to ability to promote the effectiveness of the team; Level 3 looks to how the associate promotes individual effectiveness by

53. *Id.* at 86–87.

54. *Id.*

55. Heather Bock & Lori Berman, *Building and Using an Associate Competency Model*, PROF. DEV. Q. Aug. 2006, at 1–2.

developing other team members; Level 4 looks to his or her ability to act as a “steward of the firm”; and Level 5 considers whether he or she communicates a compelling vision.⁵⁶ Ideally, the associate will progress through the levels as he or she develops the competencies and demonstrates the behaviors that define leadership skills within the firm.

This firm’s concept of leadership as a fundamental competence for its lawyers is broad-reaching but also focused on the work that its lawyers are expected to do for firm clients. Often, these competencies and the corresponding performance indices are identified by the firm as a result of an internal process of describing the skills, abilities, and characteristics of the firm’s best performers. At the most fundamental or basic level, the associate is expected to “look after the team” by understanding the skills, experience, and capabilities of all team members and treats all team members “with fairness and respect.”⁵⁷ Another performance indicator expects the associate to promote team effectiveness by, among other things, communicating the team’s successes and supporting other team members’ career goals.⁵⁸ At a higher level of performance and experience, associates are expected to demonstrate “coaching”, communicating and giving support to others who are learning how to approach a task or address a problem.⁵⁹ At the highest level, the attorney is expected to “stimulate the group to higher performance standards . . . [and] . . . [g]enerate excitement and commitment to the vigorous pursuit of a clear and compelling vision.”⁶⁰ These skills are, of course, aspects of the capabilities and styles demonstrated by leaders.

Another law firm, identified four core “focus areas” for measuring performance of their associates. Those areas are communication, leadership, management, and client relations. The firm also has identified sixteen performance factors that explicate the four core competencies. With respect to the competence of leadership, the firm identified these four performance factors for lawyer development of leadership skill: self-awareness, ability to build relationships,

56. *Id.* at 2.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

team building and inclusion, and performance management.⁶¹ These competencies or performance indicators are also ones that are commonly identified as traits, capabilities, or behaviors of effective leaders in other contexts.⁶²

It is useful to compare the performance factors identified by these law firms to the skills, abilities, and traits of effective leaders described in preceding sections of this Article. This comparison may permit the articulation of a more cohesive statement of why leadership is a critical skill for lawyers and one that all law firms and law practice organizations should train their lawyers for and that all law schools should seek to educate their students for.⁶³

First, and some might argue, foremost, lawyers must be credible. According to Kouzes and Posner, “credibility is the foundation of leadership” and consists of other peoples’ assessment of the leader’s integrity, expertise and competence, and ability to inspire others.⁶⁴ Colleagues and law firm team-members must acknowledge the fundamental integrity and subject matter competence of the department or project leader before they will be willing to follow the judgments and directions of that lawyer. Moreover, clients must accept the lawyer’s credibility before they have the confidence in the lawyer’s lawyering acumen and professional judgment.⁶⁵

61. Manch, *supra* note 24, at 83.

62. Compare, for example, these performance factors identified by two law firms described in the text with Daniel Goleman’s fundamental capabilities of emotionally intelligent professionals: self-awareness, self-management, social awareness, and social skills. Goleman, *Leadership That Gets Results*, *supra* note 28, at 80.

63. In his book, *THE LEADING LAWYER*, *supra* note 7, at 11, Robert Cullen identifies the critical need for enhanced education for new skills, especially leadership skills, in the dramatically changing environment that lawyers face today,

We need to learn the skills not typically taught in our law school education: how to communicate with and develop a better understanding of our clients; how to approach problems collaboratively and creatively, rather than with a solely adversarial approach; how to work well with our associates, peers, and even our adversaries; how to utilize teams efficiently and productively; how to bring the human element (emotions, motivation, and culture) into a discipline that is notoriously suspicious of anything it sees as irrational, emotional, or unquantifiable.

Id.

64. KOUZES & POSNER, *supra* note 2, at 15–16.

65. Robert Cullen argues that “[c]redibility is the foundation of leadership

Lawyers must also be able to communicate to those they wish will follow them, or, in some instances, agree with them. Lawyers' ability to communicate has many aspects, including the "hard skills" of written and oral advocacy, but with respect to their leadership abilities there are two principal aspects: that the leader has credibility and that the leader can articulate the reason for or purpose of action or change. According to Kouzes and Posner, "if you don't believe in the messenger, you won't believe the message."⁶⁶ This critical leadership trait or capability includes the ability to listen to colleagues, judicial officers, and clients, correctly interpret the meaning and importance of the received information, and formulating clear and appropriately-timed responses.⁶⁷

As one of the firms that identified leadership as a core skill for their lawyers stated, their attorneys must be capable of demonstrating commitment "to the vigorous pursuit of a clear and compelling vision." Goleman identifies "visionary leadership", which he defines as "the ability to take charge and inspire others with a compelling vision," as a fundamental capability of a leader.⁶⁸ According to Robert Cullen, lawyers need to develop and demonstrate creative thinking and problem solving in the resolution of client needs and other professional work requirements. They also often need to have the capacity to form a shared and embraced vision that will motivate others (colleagues in the law office enterprise, other lawyers and judges, members in the bar association, etc.) to engage in necessary action leading to positive change.⁶⁹ Indicators of this competency include identification of creative or novel solutions to client problems, implementing new strategies to resolve cases or complete transactions, and bringing "fresh ideas" to law firm management issues or to bar association projects.

and of our professional lives. Nothing is more important to the success of our careers and to the representation of our clients than our credibility as lawyers." CULLEN, *supra* note 7, at 27.

66. KOUZES & POSNER, *supra* note 8, at 47.

67. According to Daniel Goleman, communication skills are aspects of one's social skills and contribute to one's capacity for leadership. Goleman, *Leadership That Gets Results*, *supra* note 28, at 80.

68. *Id.*

69. CULLEN, *supra* note 7, at 68-70, 80-84. Cullen describes this competency in two ways: "small v," which is the ability to engage in a process of creative thinking and problem solving and "big V Vision," which is an ability often demonstrated by general counsel, bar presidents, managing partners. *Id.*

Lawyers, increasingly, need to be able to lead teams by inspiring others to achieve litigation or transaction goals and meet clients' needs and demands. Lawyers need to be collaborative and interact with others in positive and effective ways. Law firms that have identified leadership as a core skill for associates emphasize the importance of team building and support of team members. According to Kouzes and Posner, "[l]eaders understand that to create a climate of collaboration they need to determine what the group needs in order to do their work and to build the team around common purpose and mutual respect."⁷⁰ Lawyers who practice "solo" need these same collaborative abilities in their work with adversaries in litigation or in effectuating transactions, in dealing with courts or government agencies, and in leading non-profit or other organizations.

Lawyers who lead teams and address client needs must be animated to put client needs first and have the organizational and personal skills necessary to effectively prioritize those needs. This competency requires the lawyer to manage his or her time, adapt to time pressures, and be aware of his or her client's needs, whether they are personal, corporate, or commercial.⁷¹ In the context of the work of lawyers, this competency is a central aspect of the professional engagement, or, as it is sometimes referred to, demonstrating "professionalism."

The forgoing analysis suggests that demonstrated leadership ability is a skill that is an integral part of the work that successful lawyers perform and that the underlying, but fundamental, competences or capabilities can be identified both for purposes of development and training and for performance evaluation. It is encouraging that law firms are increasingly turning to competency-based models for talent search, training, and retention and that leadership—both within the law firm and law practice setting and outside—is being recognized as a critical skill that will develop better

70. KOUZES & POSNER, *supra* note 8, at 223.

71. In the range of fundamental capabilities that comprise the concept of emotional intelligence, the lawyer is called upon to demonstrate personal self-awareness and self-confidence, exercise self-control and adaptability to the environment, take personal and professional initiative, and demonstrate empathy to the needs of the client and the professional engagement. See Goleman, *Leadership That Gets Results*, *supra* note 28, at 80.

lawyers and strengthen the firm's ability to deliver quality legal services efficiently. This creates a basis from which more pervasive models of leadership education can be developed and implemented by the legal profession and by legal education providers.

CONCLUSION

Legal education is changing, or, as some argue, being forced to change, due to rapidly changing forces in law practice economics and law firm talent management. Law practice is changing rapidly due to changes in technology, global clients and business opportunities, the current economic recession, and other dynamic factors.⁷² Today's young lawyers need to be prepared for a "multi-job" career path involving multiple employers and types of positions—in law practice, in non-profits and NGOs, in business and management.⁷³ Clearly, today's young lawyers and law students need to have a broader set of core lawyering skills and personal and professional competencies to be successful throughout their careers and, indeed, to be capable of easily and successfully shifting from one career path to another.⁷⁴ These attorneys' underdeveloped and unmet needs will require more skills education at law schools and by the legal profession, including leadership education. According to Professor Neil Hamilton, "[l]egal education needs both to assess its failures of socialization that contribute to catastrophic failures of morally responsible leadership in our society and to move from rhetoric and exhortation about opportunities for ethical leadership in speeches to law students toward educational engagements to equip students

72. See RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 27–57 (Oxford University Press 2008) (arguing that the two directional forces of increasing "commoditization" of lawyers' work and dynamic changes in the application of technology to the work of lawyers will dramatically change opportunities for most lawyers); Terri Mottershead, *The Business Case for Talent Management in Law Firms—Are People Really Our Greatest Asset*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS*, 21, 24–48 (Terri Mottershead ed., 2010).

73. David Van Zandt, *Foundational Competencies: Innovation in Legal Education*, 66 *RUTGERS L. REV.* 1127, 1132–33 (2009).

74. Sandee Magliozzi, *Bridging the Gap—From Law School to Law Firm*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS* 55, 63–67 (Terri Mottershead ed., 2010).

for the leadership roles lawyers serve in society.”⁷⁵ Clearly, leadership is one of the key skills that tomorrow’s lawyers need today for success in their careers.⁷⁶

There are emerging reasons for optimism that young lawyers and law students will receive training and education in a broader, but increasingly relevant, range of professional and personal skills. Law schools are developing curricula and programs to introduce leadership skills to students and create academic interest in expanding this innovative course work to other schools and faculty.⁷⁷ Law school academics are preparing profession-relevant materials for use in law school courses.⁷⁸ Finally, and most importantly, law firms are identifying leadership as a core skill that their associates need to be successful in the firm and in the practice of law and are investing in professional development programs (such as competency-based associate development approaches) that will increase our thinking about leadership as a core skill for lawyers and signal the importance of leadership education to law students and legal education. While leadership education in the legal profession and in legal education is behind other disciplines’ educational goals and curricula, there appears to be interest and expertise building behind this trend. We can look forward to future lawyers inspired by the leadership education they have received and to lawyer-leaders who will help address the great challenges facing the profession.

75. Hamilton, *supra* note 15, at 395.

76. David Van Zandt, *supra* note 73, at 1133–34.

77. See Hamilton, *supra* note 15, at 370 (describing leadership programs and courses at several American law schools, including Santa Clara, St. Thomas, Elon, Harvard, and Ohio State).

78. See, e.g., Deborah Rhode & Amanda Packel, LEADERSHIP (2011); CULLEN, *supra* note 7.