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...
within\textsuperscript{2} and without\textsuperscript{3} the profession, and inflamed by the economic recession beginning around 2007.\textsuperscript{4} Changes in the profession are propelling or reflecting concomitant changes in legal education.\textsuperscript{5} Lawyers may no longer be able to rely

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\item \textbf{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 refered 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=9df4792f8b14fb29a1c1b079a215e8b&csvc=bl&cform=searchForm&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLzVzt-zSkAb&m d5=ea42ecf125e425edc0b9b5804188baa (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=05bc98947654f0711e514a515ee5e2&csvc=bl&cform=searchForm&fmtstr=FULL&docnum=1&startdoc=1&wchp=dGLbVzt-zSkAl&md5=7347a49e55ec7b385793691a533153 (exploring the high costs of student loans to fund law school and the dearth of employment post-graduation); Upperclass Curriculum, CWLS.EDU, http://www.cwls.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. Law school applications have declined and unemployment among lawyers is a concern. 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. Court dockets are clogged to the point of inaccessibility 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 PACER 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 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:

White-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.


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.\textsuperscript{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.\textsuperscript{11} Law schools are under fire for providing students with unsatisfactory returns on investment, when

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  \item 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. \ldots 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. \ldots The bar and bench alone cannot achieve access to justice for all.
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Karen A. Lash et al., \textit{Equal Access to Civil Justice: Pursuing Solutions Beyond the Legal Profession}, 17 YALE L. \\& POLY 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);

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students compare their employment prospects with the cost of legal education. 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.

Law firms are experimenting with different interviewing methods and processes, including performance-based tasks and simulations. Law schools are placing a greater emphasis on bar passage results and teaching lawyering skills, 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).


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).


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, 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.\textsuperscript{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.\textsuperscript{19} Second, data on lawyer personality and well-being suggest a need for change among some (if not all) lawyers.\textsuperscript{20} Third, legal education has been attempting to

\textsuperscript{18} Marjorie M. Shultz & Sheldon Zedeck, Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions, 36 L.

\textsuperscript{19} SUSSKIND, supra note 1, at 270.

respond to multiple calls for reform and greater relevance to the practice of law.\textsuperscript{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.\textsuperscript{22} These are examined in turn, below.

\textbf{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.\textsuperscript{23} Specifically, they pointed to perceived increases in uncivil behavior among lawyers and judges.\textsuperscript{24} They also noted that lawyers were not particularly well-liked in society.\textsuperscript{25} By the end of the twentieth century, societal dissatisfaction with lawyers, legal fees, and litigation processes was relatively

\textsuperscript{21.} See supra notes 17–18.


\textsuperscript{24.} Seth Rosner, \textit{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).

\textsuperscript{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

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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).


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).

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

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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).


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) (nothing 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

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


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). 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.

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


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. 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; and (2) develop their interpersonal skills and competencies.

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).


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). 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. Finally, commentary spanning from 1959 to 1992 advocated for greater emphasis on humanistic training in legal education.

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.


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. 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. Legal research and writing, which was nascent in the early 1980s, is usually a mandatory course or series of courses in law schools.

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. 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. 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).


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

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. 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.

Also, a number of nontraditional teaching techniques are being employed to teach lawyering skills. 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.

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

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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 market and the traits of the Millennials now entering the law, 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.” The disciplines comprising this movement towards law as a healing profession include: therapeutic jurisprudence, restorative justice, collaborative law,

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).
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).
preventive law, creative problem solving, problem solving courts, transformative mediation, holistic law, and


82. See, e.g., Peggy Fulton Hora et al., Therapeutic Jurisprudence and the
procedural justice among others. 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. 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.

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


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.


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. 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.

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. For example, legal personnel may need excellent intrapersonal and interpersonal skills and be adept at problem solving, collaboration, and cooperation with other disciplines.

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

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

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”). 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).

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.\footnote{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).}

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.\footnote{Id. (stating that their weak areas were hypothesized as potential arrogance, a controlling nature, being a team player not coming naturally, workaholism, and argumentativeness in personal relationships).}

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 dealmakers.\footnote{Id. (stating that their weak areas were hypothesized as potential arrogance, a controlling nature, being a team player not coming naturally, workaholism, and argumentativeness in personal relationships).}
dealmakers’ trust, integrity, and reliability.\textsuperscript{113}

4. \textit{Top young lawyers} shared these traits with Olympic athletes and other high achievers, according to Taylor,

\begin{quote}
[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.\textsuperscript{114}
\end{quote}

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.\textsuperscript{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.\textsuperscript{116}

\textbf{B. Lawyer Effectiveness Factors Identified by Practicing Lawyers}

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

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\item \textsuperscript{113} Taylor, \textit{Dealmakers}, supra note 99 (stating that weak areas also included emotional self-awareness and empathy).
\item \textsuperscript{115} Taylor, \textit{Top 40}, supra note 99.
\item \textsuperscript{116} Id.
\item \textsuperscript{117} Garth & Martin, supra note 102; Gerst & Hess, supra note 100; Mudd & LaTrielle, \textit{supra} note 104; Shultz & Zedeck, \textit{Final Report}, \textit{supra} note 18; Sonsteng & Camarotto, \textit{supra} note 103.
\item \textsuperscript{118} See sources cited supra note 117.
\end{itemize}
\end{multicols}
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. 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. 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. Their methods were exhaustive and repetitive. Eventually, they identified twenty-six “effectiveness” factors in eight categories. 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.”

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.
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 courses.

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. The remaining thirteen to sixteen (fifty to fifty-seven percent) are skills that may not be typically explicitly covered by most legal educators. 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.

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. 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. 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. A survey of Arizona lawyers in 2005 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. 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: (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). 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.
INTRAPERSONAL (SELF) AWARENESS, VALUES, & ABILITIES

- intrapersonal skills
- practical judgment
- maturity
- passion and engagement
- motivation
- diligence
- drive for achievement and success and a need to compete and win
- intense detailed focus and concentration
- self-confidence
- strong sense of self and self-knowledge
- integrity, honesty, and ethics
- reliability
- independence
- adaptability
- creativity/innovation (in a practical sense)

138. Shultz & LaTrielle, supra note 104.
140. Mudd & LaTrielle, supra note 104.
144. Mudd & LaTrielle, supra note 104.
148. Mudd & LaTrielle, supra note 104.
150. Id.
INTRAPERSONAL MANAGEMENT COMPETENCIES

• organizing and managing one's own work\textsuperscript{153}
• self-development\textsuperscript{154}
• continued professional development\textsuperscript{155}
• stress management\textsuperscript{156}
• general mood\textsuperscript{157}

INTERPERSONAL (OTHER) AWARENESS

• understanding human behavior\textsuperscript{158}
• an intuitive sense of others by which one can “read” what is implicit or understand subtle body language and gestures\textsuperscript{159}
• ability to see the world through the eyes of others\textsuperscript{160}
• tolerance and patience\textsuperscript{161}
• ability to read others and their emotions\textsuperscript{162}

INTERPERSONAL MANAGEMENT COMPETENCIES

• dealing effectively with others\textsuperscript{163}
• questioning and interviewing\textsuperscript{164}
• influencing and advocating\textsuperscript{165}
• instilling others’ confidence in you\textsuperscript{166}
• speaking\textsuperscript{167}
• listening\textsuperscript{168}
• providing advice & counsel to clients\textsuperscript{169}
• obtaining, building relationships with, and keeping clients\textsuperscript{170}

\textsuperscript{154} Id.
\textsuperscript{155} Mudd & LaTrielle, supra note 104.
\textsuperscript{158} Mudd & LaTrielle, supra note 104.
\textsuperscript{160} Shultz & Zedeck, \textit{Final Report}, supra note 18.
\textsuperscript{161} Mudd & LaTrielle, supra note 104.
\textsuperscript{163} Mudd & LaTrielle, supra note 104.
\textsuperscript{164} Shultz & Zedeck, supra note 18.
\textsuperscript{165} Id.
\textsuperscript{166} Garth & Martin, supra note 102; Sonsteng & Camarotto, supra note 103.
\textsuperscript{167} Shultz & Zedeck, supra note 18.
\textsuperscript{168} Id.; Gerst & Hess, supra note 100.
\textsuperscript{169} Garth & Martin, supra note 102; Gerst & Hess, supra note 100; Shultz & Zedeck, supra note 18; Sonsteng & Camarotto, supra note 103.
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
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. 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. Empirical research spanning the last forty years of

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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.\textsuperscript{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.\textsuperscript{186} Some of these traits
appear to have been present before law school and some
develop or deepen during legal education.\textsuperscript{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),\textsuperscript{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.\textsuperscript{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

\footnotesize{\textsuperscript{185} Id.  \\
\textsuperscript{186} Id.  \\
\textsuperscript{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).  \\
\textsuperscript{188} See Table 1, supra.  \\
\textsuperscript{189} Susan Daicoff, Asking Leopards to Change Their Spots: Can Lawyers
Change? A Critique of Solutions to Professionalism by Reference to Empirically-
(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 morels 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.” 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.

Curricula exist for teaching many of these skills. These curricula may be customized and adapted for law school by utilizing law school hypotheticals as context. 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. 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.


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 overviewing 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. 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. 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. The skills traditionally taught in law school are consistent with left-brained competencies of logic, reason, and analysis, suggesting that law school curricula typically may emphasize left-brain dominant tasks. These are explored below.


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)).
203. Id.
204. See, e.g., Coastal Law, FCSEL.EDU, http://www.fcsl.edu/academics/
B. Filling in the Blanks with Negative\textsuperscript{205} 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.\textsuperscript{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.”\textsuperscript{207} They may focus on acquiring the external rewards

\textsuperscript{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.

\textsuperscript{206} \textit{E.g.}, \textsc{Morgan & Rotunda}, \textit{supra} note 193 (including approximately forty hypothetical problems, many of which require such skills, in the context of learning the law of professional responsibility).

\textsuperscript{207} See also James McElhaney, \textit{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.\footnote{Krieger, \textit{Dark Side}, supra note 20 (linking extrinsic values to a decline in well-being).}

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.

\section*{C. The Twelve Disciplines}

Rather than allowing lawyers’ skills to develop into “Mongo”\footnote{McElhaney, \textit{supra} note 207.} 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).\footnote{See, \textit{e.g.}, \textit{supra} notes 15–18, 52–60, 71–72, and accompanying text.} Practicing lawyers have begun to attend programs emphasizing these skills as well, either as conferences and workshops or continuing legal education.

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.

\textit{Id.}

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.

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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).


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).


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.\textsuperscript{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.\textsuperscript{218}

2. Lawyer Well-Being

Beyond professionalism, state bar associations also have focused on improving lawyer distress.\textsuperscript{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.\textsuperscript{220} As a result, they recommend more focus on “intrinsic values,” autonomy control, and social support for lawyers.\textsuperscript{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.\textsuperscript{222} Stress management, meditation, yoga, and other wellness initiatives are occasionally subjects of continuing legal education for lawyers (and some law school curricula).\textsuperscript{223}

\textsuperscript{217.} See, e.g., About Elon University, ELON.EDU, http://www.elon.edu/e-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).

\textsuperscript{218.} See supra note 17 and accompanying text (discussing Riskin’s Initiative on Mindfulness at the University of Florida).

\textsuperscript{219.} See, e.g., Commission on Lawyer Assistance Program, supra note 43.

\textsuperscript{220.} See, e.g., Sheldon & Krieger, supra note 20.

\textsuperscript{221.} Id.


\textsuperscript{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. State bar associations are particularly interested in maintaining the mental health of lawyers. Some have implemented mandatory substance abuse education requirements for lawyers. Better mental health among lawyers prevents malpractice and disciplinary actions 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.

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. As many lawyers serve in positions of leadership,
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

229. Leadership for Lawyers, supra note 228 (listing skills).
230. Id.
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).
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." Interpersonal intelligence allows individuals “to discern and respond appropriately to the moods, temperaments, motivations and desires of others.” 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.

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. 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. 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. 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 reactions (such as “Mongo,” the fictional “inner beast” of the lawyer, who can emerge when the lawyer feels threatened).

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).
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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).\textsuperscript{252} EQ competencies are therefore helpful but not an exhaustive or accurate catalogue of what skills are needed to be an effective lawyer.

\textsuperscript{249} See supra note 245 (noting that all text in quotes is taken verbatim from Valentine’s training materials).

\textsuperscript{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.

\textsuperscript{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).

\textsuperscript{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.\(^\text{253}\) For example, psychologists learn how to interact with clients in ways that foment changed behavior in the clients.\(^\text{254}\) 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.\(^\text{255}\) 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.\(^\text{256}\)

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–
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. Simplified, these three factors are voice, participation, and trustworthiness. 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.

Most litigation and dispute resolution processes provide few opportunities for voice, participation, or interaction with those in authority. 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). 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. 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.
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”).
enhance litigants’ compliance with the court’s order or settlement agreement resulting from the resolution of the legal matter.  

8. Comprehensive Law Movement Vectors

Procedural justice is part of a larger movement towards utilizing legal problems as opportunities for healing. This “comprehensive law movement,” which has been growing steadily since about 1990, includes nine or more “vectors” or disciplines moving towards a common goal. These include: therapeutic jurisprudence, preventive law, procedural law, holistic justice, creative problem solving, collaborative law, transformative mediation, restorative justice, and problem solving courts. 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).

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. Others have suggested including cooperative law, community-oriented lawyering, multidimensional lawyering, spiritual-legal counseling, coaching, rebellious lawyering, affective lawyering, and ethical wills. To the extent that (or when)

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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. TJ uses the social sciences to improve legal processes, rules, matters, and outcomes. Restorative justice seeks to heal criminal matters through encounter-oriented processes involving victims, offenders, and members of society; it focuses on accountability and restitution. 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. Preventive law seeks to prevent legal problems before they occur. Problem solving courts take an explicitly rehabilitative, therapeutic, and holistic approach to solving criminal and family law matters.

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 HEETDEKIS 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. Bruce Winick has examined the need for comprehensive lawyers to deal effectively with denial and resistance in clients, particularly in criminal cases. 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. 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. 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, while the author has included the skill of “triage,” which refers to choosing which comprehensive law vector best fits the case at hand. 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. 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.

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.
293. DAI OFF, COMPREHENSIVE LAW, supra note 46, at 258.
294. PRACTICING THERAPEUTIC JURISPRUDENCE, supra note 77, at 71.
295. DAI OFF, 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. Multidisciplinary approaches to legal problems often may require lawyers to work effectively within interdisciplinary teams working towards a common goal. For example, drug treatment court judges hold progress meetings or “staffings” for each defendant enrolled in the court. 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.

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, as well as conflict resolution programs within the law. While law-related conflict resolution focuses on alternative dispute resolution, nonlaw-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).


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.\footnote{302} The field of conflict resolution sees conflict as useful, natural, and necessary for growth—“like water,” according to Costantino and Merchant\footnote{303}—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.\footnote{304} He advises “engaging in unfiltered and passionate debate of ideas” and avoiding “veiled discussions and guarded comments.”\footnote{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.).\footnote{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.\footnote{307}

\textbf{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.\footnote{308} Within mediation, Ellen Waldman and others have established a continuum of approaches from evaluative mediation, which is the most like
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.\footnote{309} A third form, transformative mediation (TM), focuses not on settling the dispute, but on the moral growth of the parties.\footnote{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).\footnote{311} Because of its unusual focus and potential healing effects, TM is included above in the comprehensive law movement.\footnote{312}

Due to clogged courts and costly, hostile litigation, dispute resolution is becoming more prevalent.\footnote{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.\footnote{314} Mediation is voluntary, but is encouraged and funded by the city in employment law disputes in Jacksonville, Florida.\footnote{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

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

\footnote{310. BUSH & FOLGER, supra note 285.}

\footnote{311. Id.}

\footnote{312. DAICOFF, COMPREHENSIVE LAW, supra note 46; Daicoff, Healing Profession, supra note 76, at 28–30.}

\footnote{313. See Refo, supra note 89.}

\footnote{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).}


\footnote{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.\textsuperscript{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.\textsuperscript{317} Lawyers may need to understand the difference between position-based negotiation and interest-based negotiation.\textsuperscript{318} They also may need to be conversant with the uses of effective apologies and statements of forgiveness.\textsuperscript{319} They may need to engage in creative problem solving with their clients to help them brainstorm possible resolutions in mediation.\textsuperscript{320}

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

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

\textsuperscript{317} Id.

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


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. Mindfulness meditation is sometimes described as nonjudgmental awareness of oneself and one’s surroundings, often achieved through concentration on one’s breathing.

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. 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. The skills of self-awareness and self-reflection may be relevant to contemplative practice. Some law schools are including

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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).
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).
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, 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. 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.”\textsuperscript{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.\textsuperscript{334} In the dispute resolution field, transformative mediation calls this “recognition.”\textsuperscript{335} The EQ literature calls it awareness of others or interpersonal competence, which is one of its four or five categories.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{339}

\textsuperscript{333} PRACTICING THERAPEUTIC JURISPRUDENCE, supra note 77, at 436–37 (discussing affective lawyering); Silver, supra note 22, at 8–9, 350–51.
\textsuperscript{334} Silver, supra note 22, at 350.
\textsuperscript{335} FOLGER ET AL., supra note 93, at 21.
\textsuperscript{336} SCHILLING, supra note 192.
\textsuperscript{337} See also supra note 192 and accompanying text (discussing Roland Smith’s leadership training).
\textsuperscript{338} BUSH & FOLGER, supra note 285, at 8–13 (the “Sensitive Bully”).
\textsuperscript{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. 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. 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.

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

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. Silver sets forth an excellent series of questions lawyers can ask themselves to ferret out such problems. 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. 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. Preventive law then asks lawyers to strategically plan ahead with the client to avoid such litigation. 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. 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.
348. Id. at 24.
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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{356} Giving others voice and participation (concepts from procedural justice\textsuperscript{357}) 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.\textsuperscript{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.\textsuperscript{359} For

\textsuperscript{353} See, e.g., Lencioni, supra note 233.
\textsuperscript{354} See Zehr, supra note 78.
\textsuperscript{355} See Bush & Folger, supra note 285 and accompanying text.
\textsuperscript{356} Id.
\textsuperscript{357} Tyler, supra note 27, at 3–15.
\textsuperscript{358} Mudd & LaTrielle, supra note 104; Shultz & Zedeck, Final Report, supra note 18.
\textsuperscript{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

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

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.
## EXPANDING THE LAWYER’S TOOLKIT

<table>
<thead>
<tr>
<th>Component</th>
<th>Skills</th>
<th>Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Self-confidence</strong></td>
<td>tolerance, patience, independence, adaptability, general mood, stress management</td>
<td>Lawyer well-being; emotional intelligence/self-awareness &amp; self-management; mindfulness &amp; other contemplative practices</td>
</tr>
<tr>
<td><strong>Continued professional and self-development</strong></td>
<td></td>
<td>Emotional intelligence/self-awareness &amp; self-management; corporate management models; leadership education</td>
</tr>
<tr>
<td><strong>Interpersonal Skills</strong></td>
<td>General communications skills—dealing effectively with others, listening, speaking, questioning, interviewing, influencing, advocating</td>
<td>Clinical legal education; psychology &amp; social sciences; conflict resolution; leadership education; procedural justice</td>
</tr>
<tr>
<td><strong>Empathy</strong></td>
<td>understanding human behavior</td>
<td>Psychology &amp; social sciences; comprehensive law movement (therapeutic jurisprudence and transformative mediation)</td>
</tr>
<tr>
<td><strong>Instilling others’ confidence in you</strong></td>
<td>obtaining and keeping clients, developing relationships, networking within the profession; marketing and self-promotion</td>
<td>Psychology &amp; social sciences; leadership education; emotional intelligence/social awareness &amp; relationship management</td>
</tr>
<tr>
<td><strong>Counseling</strong></td>
<td></td>
<td>Clinical legal education; psychology &amp; social sciences</td>
</tr>
<tr>
<td><strong>Managing and mentoring others</strong></td>
<td></td>
<td>Corporate management models; emotional intelligence/relationship management; leadership education</td>
</tr>
<tr>
<td><strong>Inspiring others</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Conflict Resolution</strong></td>
<td>Managing healthy conflict</td>
<td>Leadership education; corporate management</td>
</tr>
</tbody>
</table>
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, 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 and Elizabeth Dvorkin, Howard Lesnick, and Jack Himmelstein’s Becoming a Lawyer, Marjorie Silver’s The Affective Assistance of Counsel, Robert Cullen’s Leadership for Lawyers, Deborah Rhode and Amanda Packel’s Leadership, Law, Policy, and Management, 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.
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. Also, it may be wisest to offer skills training via an ungraded, noncourse credit course or program, in order to remove the specter of grades from the learning experience. Julie Sandine at Vanderbilt Law School reports success with such an approach, when teaching “balance.”

Fourth, like a “disruptive technology” in the law, 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. 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. 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

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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).

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
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 previously\(^{372}\) 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

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\(^{372}\) See \textit{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. \textit{See, e.g.,} \textit{Bastress \& Harbaugh, supra} note 262; \textit{Binder et al., supra} note 263; \textit{Dvorkin et al., supra} note 54; \textit{Lesnick, supra} note 54. See \textit{supra} note 5 and accompanying text (discussing Washington and Lee University School of Law's new program).

\(^{374}\) See \textit{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 credentialed 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) and class websites where links, videos, slides, and resources are posted and where discussions and posts can be held, 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

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. 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. 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. 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. 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.\textsuperscript{382}

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

\textsuperscript{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; 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.” These skills may also be important for long-term lawyer well-being and satisfaction if they help lawyers fulfill their intrinsic satisfactions and link their work with their values (such as building community, creativity, and making a difference).

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: 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.
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,” 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.

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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.