

University of St. Thomas Law Journal

Volume 11
Issue 1 Fall 2013

Article 2

2013

Law Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism

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Bluebook Citation

Neil Hamilton, *Law Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. St. Thomas L.J. 6 (2013).

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ARTICLE

**LAW FIRM COMPETENCY MODELS &
STUDENT PROFESSIONAL SUCCESS:
BUILDING ON A FOUNDATION OF
PROFESSIONAL FORMATION/
PROFESSIONALISM**

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*“If you don’t like change, you are going to like irrelevance even less.”***

Because of structural changes in the legal employment markets and a surplus of law school graduates relative to entry-level job growth, applicants for law school, current law students, and law schools are increasingly focused on what both the students and the law schools can do to increase the probability that each student will secure meaningful long-term employment.¹ At the same time, the data presented in Part I below indicate that many law firms are moving toward “competency models” that define the characteristics of the most effective and successful lawyers in the firm and are then using those characteristics in the assessment and development (and, in some cases, the hiring) of junior lawyers. In addition, the nearly complete proposed changes for law school accreditation add a new requirement that each law school “establish learning outcomes that shall at a minimum include *competency* in the following . . . : (c) exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) other professional skills needed for competent and ethical participation as a member of the legal profession.”²

* T.J. Lang and Peter Leslie provided outstanding research assistance by tabulating the responses from the fourteen Minnesota firms that provided their associate evaluation forms for this study. Deborah Walker and Colin Seaborg provided excellent help on the footnotes.

** James Dao & Thom Shanker, *No Longer a Soldier, Shinseki Has a New Mission*, N.Y. TIMES, Nov. 11, 2009, at A21 (quoting Former Secretary of Veterans Affairs Eric Shinseki).

1. William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 468–70, 491–92 (2013).

2. ABA Section of Legal Educ. and Admissions to the Bar, *Revised Standards for Approval of Law Schools*, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy

Both law students and law schools have an opportunity created by the convergence of (1) significant employment market changes for law graduates, (2) sharp declines in law school applications, (3) increased applicant attention to each school's employment outcomes, (4) law firm development of competency models to assess associate development, and (5) the high probability of accreditation changes emphasizing each student's competency to represent clients and participate ethically in the profession. A law student who understands legal employer competency models can differentiate him or herself from other graduates by using the three years of law school to develop (and to create supporting evidence to demonstrate) specific competencies beyond just knowledge of doctrinal law, legal analysis, and some written and oral communication skills. Indiana law professor Bill Henderson notes that "there is a glut in the market for entry level law graduates. Further, virtually all lack the skills needed to differentiate themselves"³

Similarly, a law school moving toward a "competency-based curriculum"⁴ can provide graduates who have more of the competencies that legal employers need.⁵ This will improve the law school's employment outcomes for students, and thus increase applications and each applicant's ability to pay the tuition.⁶ Henderson recommends creating a competency-based curriculum, where law schools "identify the knowledge, skills, behaviors, and attributes of highly successful professionals . . . and then work backwards"⁷ to structure a curriculum to help students develop these competencies.

Henderson also notes that "[t]here is a paucity of high quality empirical research on the factors that contribute to lawyer effectiveness. But what little evidence there is suggests that academic indicators are less important than what some of us law professors might believe."⁸

In Part I below, this essay analyzes all available empirical research on the values, virtues, capacities, and skills in law firm competency models that define the competencies of the most effective and successful lawyers. Part I also reports new data from an empirical study of the competencies that the fourteen largest Minnesota law firms assess in the evaluation of existing associates and in the hiring of new associates. Part II examines empirical evidence on the competencies that clients evaluate. Part III evalu-

.authcheckdam.pdf (last visited Sept. 5, 2014) (requiring each law school, under standard 315, to undertake ongoing evaluation of the law school's learning outcomes and academic program). See also Neil W. Hamilton et al., *Encouraging Each Student's Personal Responsibility for Core Competencies Including Professionalism*, 21 PROF. LAW. no. 3, 2012, at 9 & n.19 (educational assessment model).

3. Henderson, *supra* note 1, at 493.

4. *Id.* at 492.

5. *Id.* at 464–65, 491–92, 503–04.

6. *Id.* at 469–70, 492, 497.

7. *Id.* at 496.

8. *Id.* at 498.

ates the competencies that make the most difference in fast-track associate and partnership promotions. These data and analyses lead to several bold propositions developed in Part IV:

1. Law students and legal educators should identify and understand the values, virtues, capacities, and skills (the competencies) of highly effective and successful lawyers in different types of practice (one major example is law firm competency models analyzed below in Part I);
2. Each student should use all three years of experiences both inside and outside of law school (including the required and elective curriculum, extracurricular activities, and paid or pro bono work experiences) to develop and be able to demonstrate evidence of the competencies that legal employers and clients want in the student's area of employment interest;
3. Law schools should develop a competency-based curriculum that helps each student develop and be able to demonstrate the competencies that legal employers and clients want; and
4. Both law students and law schools should understand that the values, virtues, capacities, and skills of professional formation (professionalism) are the foundation for excellence at all of the competencies of an effective and successful lawyer.

I. INTRODUCTION TO LAW FIRM COMPETENCY MODELS

A. *Competency Models Used to Assess Associate Performance*

A growing response of law firms to the changes in market forces is the development of competency models, a tool which drives talent management by reference to the competencies of the already-successful lawyers within the firm. A competency model begins with identification of the characteristics of a firm's most effective and successful lawyers.⁹ Using these characteristics, the firm develops a framework of core competencies for associates to master. The benefit accrues to both the firm and the associate in the form of increased transparency as the firm clarifies what is needed for recognition, advancement, and compensation within the organization. Associates are given a roadmap for success.¹⁰

A 2011 survey of professional development directors and chief talent officers indicated 66 percent of the sixty responding firms had or were in the process of developing competency models for the firm's associates.¹¹ A July 2009 survey of U.S. law firms revealed that almost 75 percent of the

9. Susan Manch & Terri Mottershead, *Introduction: Talent Management in Law Firms—Evolution, Revelation, Revolution or Business as Usual?*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS* 1, 9 (Terri Mottershead ed., 2010).

10. Neil W. Hamilton et al., *supra* note 2, at 9.

11. IDA ABBOTT, *LAWYERS' PROFESSIONAL DEVELOPMENT* 140 (2d ed. 2012).

firms had or were planning to develop a competency-model approach to talent management.¹²

There is strong evidence that this trend of developing competency models is widespread. In May and June 2012, the fourteen largest law firms in Minnesota (ranging in size from 281 to 67 lawyers based in Minnesota)¹³ provided me with their associate evaluation forms. All fourteen had developed competency models and were using them to assess the effectiveness of their associate attorneys.

The competencies these firms assess are listed in Table 1.

TABLE 1

Most Common Values, Virtues, Capacities, and Skills from Analysis of the Associate Evaluation Forms of the 14 Largest Minnesota Law Firms¹⁴

Number of Firms That Considered Each Value/Virtue/Capacity/Skill in Their Evaluation of Associates	
Initiates and maintains strong work and team relationships	14
Good judgment/common sense/problem-solving	14
Business development/marketing/client retention	14
Analytical skills: identify legal issues from facts, apply the law, and draw conclusions	13
Effective written and oral communication skills	13
Project management, including high quality, efficiency, and timeliness	13
Legal competency/expertise/knowledge of the law	12
Dedication to client service/responsive to client	12
Initiative/ambition/drive/strong work ethic	12
Commitment to firm, its goals, and values	10
Commitment to professional development toward excellence	9
Integrity/honesty/trustworthiness	9
Research skills	9
Delegation/supervision/mentoring	8
Pro bono, community, bar association involvement	8
Inspires confidence	4
Stress/crisis management	4
Ability to work independently	4

12. Susan Manch, *Competencies and Competency Models—An Overview*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS*, *supra* note 9, at 77, 85.

13. *Minnesota's Largest Law Firms 2012*, MINN. LAW., <http://minnlawyer.com/2012/12/10/minnesotas-largest-law-firms-2012/> (last visited July 19, 2014) (including lawyers outside of Minnesota, the firms ranged in size from 740 to 67 total lawyers).

14. In May and June, 2012, the fourteen largest Minnesota firms provided Professor Neil W. Hamilton with their associate evaluation forms. Professor Hamilton's research assistant T.J. Lang tabulated all the capacities and skills the firms are evaluating.

Seeks feedback/responsive to feedback	3
Leadership	2
Negotiation skills	2
Demonstrates interest in business and financial arrangements with clients	2
Strategic and creative thinking	2

There are four studies analyzing the competency models of individual firms that were published in 2012 (of firms larger than 250 lawyers),¹⁵ 2008 (of firms of approximately 750 lawyers),¹⁶ 2007 (of firms of larger than 300 lawyers),¹⁷ and 2006 (a firm of approximately 600 lawyers).¹⁸ Table 2 lists the competencies that these four studies assessed.

TABLE 2

Most Common Values, Virtues, Capacities, and Skills from Analysis of Four Studies of the Competency Models of Individual Firms

Number of Firms That Considered Each Value/Virtue/Capacity/Skill in Their Evaluation of Associates	
Initiates and maintains strong work and team relationships	4
Good judgment/common sense/problem-solving	4
Business development/marketing/client retention	2
Analytical skills: identify legal issues from facts, apply the law, and draw conclusions	3
Effective written and oral communication skills	4
Project management, including high quality, efficiency, and timeliness	4
Legal competency/expertise/knowledge of the law	2
Dedication to client service/responsive to client	4
Initiative/ambition/drive/strong work ethic	3
Commitment to firm, its goals, and values	0
Commitment to professional development toward excellence	3
Integrity/honesty/trustworthiness	0
Research skills	3
Delegation/supervision/mentoring	1
Pro bono, community, bar association involvement	0
Inspires confidence	0
Stress/crisis management	1
Ability to work independently	0

15. Lori Berman & Heather Bock, *Developing Attorneys for the Future: What Can We Learn from the Fast Trackers?*, 52 SANTA CLARA L. REV. 875 (2012).

16. SCOTT A. WESTFAHL, *YOU GET WHAT YOU MEASURE* (2008).

17. PETER B. SLOAN, *FROM CLASSES TO COMPETENCIES, LOCKSTEP TO LEVELS* (2007).

18. HEATHER BOCK & ROBERT RUYAK, *CONSTRUCTING CORE COMPETENCIES* (2006).

Seeks feedback/responsive to feedback	2
Leadership	0
Negotiation skills	2
Demonstrates interest in business and financial arrangements with clients	0
Strategic and creative thinking	2

Table 3 provides a synthesis of Tables 1 and 2.

TABLE 3

Most Common Values, Virtues, Capacities, and Skills from Analysis of Studies Research on the Competency Models of Eighteen Individual Firms

Number of Firms Included in Competency-Model Studies That Considered Each Value/Virtue/Capacity/Skill in Their Evaluation of Associates	
Initiates and maintains strong work and team relationships	18
Good judgment/common sense/problem-solving	18
Effective written and oral communication skills	17
Project management, including high quality, efficiency, and timeliness	17
Business development/marketing/client retention	16
Dedication to client service/responsive to client	16
Analytical skills: identify legal issues from facts, apply the law, and draw conclusions	15
Initiative/ambition/drive/strong work ethic	15
Legal competency/expertise/knowledge of the law	14
Commitment to professional development toward excellence	12
Research skills	12
Commitment to firm, its goals, and values	10
Integrity/honesty/trustworthiness	9
Delegation/supervision/mentoring	9
Pro bono, community, bar association involvement	8
Seeks feedback/responsive to feedback	5
Stress/crisis management	5
Inspires confidence	4
Ability to work independently	4
Negotiation skills	4
Strategic and creative thinking	4
Leadership	2
Demonstrates interest in business and financial arrangements with clients	2

There is a high degree of convergence on the competencies the firms are assessing with twelve or more of the firms (66 percent) assessing eleven

of the competencies. Nine or more of the firms (50 percent) are assessing fourteen of the competencies.

A 2007 study of clinicians at U.S. law schools about the competencies needed for effective practice yielded similar results with agreement on nine of the top eleven competencies on which the law firm studies had substantial convergence.¹⁹ The two competencies that the clinicians did not include (that were on the list for law firms) are “business development/marketing/client retention” and “commitment to the firm, its goals and its values” as competencies of an effective lawyer.²⁰

As competency models become the norm, some firms are going beyond a simple model to develop stage-specific models, as demonstrated by Tables 4A and 4B showing stage development competency models for teamwork and business development skills from three or four firms in the

19. See generally, ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) (synthesizing the responses from a survey of clinicians in U.S. law firms). Prof. Stuckey explained to me the methodology of this study:

I was aware that the Law Society of London and Wales was developing a statement of the core characteristics and abilities that solicitors should have on day one in practice. Once they created their list, I made some modifications so the statement would be a better fit for the U.S. I then sent it out to the steering committee and many other law teachers (not just clinicians) for their comments. There is no way to tell you from my memory or records how many comments were made, who they were made by, or what changes, if any, were made because of the comments. I doubt there were many comments or changes.

Email from Professor Stuckey to Professor Hamilton, April 10, 2014 at 17:32 CST (on file with author).

20. Other earlier empirical studies have similar findings. A 1998–2000 survey and interview study of fifty senior lawyers and seventeen law firm training directors asked what business, management, and supervisory skills associates should acquire in their first years of practice in order to serve clients effectively and to practice law profitably. The study produced a list of fifty-eight distinct skills grouped into the six general categories of: (1) client relations and development; (2) being an effective member of a team; (3) managing and supervising others’ work; (4) managing one’s own work; (5) understanding firm operations; and (6) general business skills. STEPHEN CHITWOOD ET AL., A BUSINESS SKILLS CURRICULUM FOR LAW FIRM ASSOCIATES 2 (2001).

Two large-scale empirical studies of practicing lawyers published in 1993 and 2000 make similar findings about seventeen important skills for the practice of law. John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327 (2000); Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 472–73 (1993) (including: (1) oral communication; (2) written communication; (3) instilling others’ confidence in you; (4) ability in legal analysis and legal reasoning; (5) drafting legal documents; (6) ability to diagnose and plan solutions for legal problems; (7) knowledge of substantive law; (8) organization and management of legal work; (9) negotiation; (10) fact gathering; (11) sensitivity to professional ethical concerns; (12) knowledge of procedural law; (13) counseling; (14) understanding and conducting litigation; (15) library legal research; (16) ability to obtain and keep clients; and (17) computer legal research).

In a 2006 survey of how firms evaluate associates, including responses from 124 managing partners, the Association for Legal Career Professionals reported that the most important factors in associate evaluations were the quality of work (including excellence at legal analysis) and client relationship skills, followed by billable hours and relationship skills with other attorneys in the firm. Relationship skills with support staff and business management skills were next in importance. NAT’L ASS’N FOR L. PLACEMENT, HOW ASSOCIATE EVALUATIONS MEASURE UP: A NATIONAL STUDY OF ASSOCIATE PERFORMANCE ASSESSMENTS 84 (2006).

Minnesota law firm study. These more complex competency models designate the specific skills expected at each stage of an associate's career.²¹ Again, this enables both the firm and the associate to understand and measure progress by reference to transparent, clear factors that have been determined by the firm to lead to success in the practice of law.

TABLE 4A

Levels of Development—Teamwork

Junior Associate	
Firm A	-Works effectively with others to address client and firm needs -Interacts well with staff and other lawyers
Firm B	-Communicates and collaborates with others as part of a team -Communicates effectively with staff
Firm C	-Finds common ground and works effectively with other attorneys and staff to address issues and complete assignments -Is viewed as a contributing member—one who encourages cooperation, collaboration, and respectful candor with all attorneys and staff -Is timely for meetings and conference calls
Mid-Level Associate	
Firm A	-Accepts leadership responsibilities -Works effectively with others to address client and firm needs -Interacts well with staff and other lawyers
Firm B	-Functions well as a member of a team -Effectively supervises staff -Functions as a positive role model and is beginning to develop leadership responsibility over staff and colleagues
Firm C	In addition: -Delegates assignments appropriately to junior associates
Senior Associate	
Firm A	-Demonstrates strong leadership capabilities -Works effectively with others to address client and firm needs -Interacts well with staff and other lawyers
Firm B	-Delegates tasks to and effectively supervises junior lawyers -Demonstrates leadership responsibilities over teams of lawyers and staff
Firm C	In addition: -Can deal effectively and maturely with interpersonal conflict among team members

21. See *supra* note 14.

TABLE 4B

Levels of Development—Business Development

Junior Associate	
Firm A	-Attends activities that enhance client relationships -Develops familiarity with firm's key practice areas and clients -Lays the groundwork for development of professional networks through various activities
Firm B	-Develops familiarity with industries and clients serviced in the associate's practice area -Identifies industry, civic, or professional groups of interest -Maintains existing relationships for networking purposes
Firm C	-Develops a network with existing clients -Identifies opportunities to meet new business and legal contacts and expand network -Begins to create a business development strategy to stay in touch with network -Makes an effort to understand the client's business -Participates in firm-sponsored business development training
Firm D	-Participates in department marketing activities -Presents substantive topics at other departments' meetings -When opportunities arise, acts professionally with clients and prospects
Mid-Level Associate	
Firm A	-Attends activities that enhance client relationships -Takes leading role in assisting partners with practice group's business development efforts -Continues to actively develop and maintain professional networks through various activities
Firm B	-Engages in business development activities, such as writing articles, speaking, or involvement in industry, civic, or professional groups -Supports practice group's client development efforts
Firm C	In addition: -Establishes networks and develops relationships with more senior attorneys and participates in growing an existing client relationship -Establishes a network of contacts in the business and legal communities to build referral network -Leverages online media to promote experience and build networks
Firm D	-Has developed an effective bio -Seeks out opportunities to publish and present to clients and prospects -Has developed reputation within firm as one who is knowledgeable in chosen area of law
Senior Associate	
Firm A	-Attends activities that enhance client relationships -Significant involvement in practice group's business development efforts -Has developed, and continues to actively expand and maintain, strong professional networks through various activities
Firm B	-Interacts directly with new or existing clients -Is actively publishing or speaking or involved in industry, community, or civic groups -Demonstrates skills that will likely result in additional business

Firm C	In addition: -Capable of playing a major role in a marketing presentation to a client or prospective client -Proven record of initiating face-to-face meetings with contacts in network to increase visibility and support future business development -Creates and implements a firm-approved business development plan
Firm D	-Maintains and executes an individual marketing plan with specific, measureable goals -Maintains a current, effective bio -Has developed reputation in the firm and the community as an expert in chosen area of the law

B. Competencies Most Important in the Hiring Decision

Table 1 indicates the number of the fourteen largest firms in Minnesota that considered each competency in their forms for the evaluation of associates. In the period of January through March 2013, I went back to the same fourteen firms and asked the ethics partner/general counsel of each firm to indicate the relative importance of each of the competencies used in associate evaluation in the firm's decision to hire an associate. All fourteen ethics partners/general counsel responded using a scale where "0" indicates "not considered in the hiring decision," "1" equals "somewhat important," "2" equals "slightly important," "3" equals "important," "4" equals "very important," and "5" equals "critical" in the hiring decision. Table 5 sets forth the average responses of the fourteen firms on relative importance of the different competencies for the decision to hire an associate.

TABLE 5

The Relative Importance of Different Competencies in the Decision to Hire a New Associate for the Largest 14 Minnesota Law Firms²²

Competencies Considered Very Important to Critically Important		
1.	Integrity/honesty/trustworthiness	4.8
2.	Effective written and oral communication skills	4.67
3.	Analytical skills: identify legal issues from facts, apply the law, and draw conclusions	4.6
4.	Initiative/ambition/drive/strong work ethic	4.53
5.	Good judgment/common sense/problem solving	4.53
6.	Dedication to client service/responsiveness to client	4.47
7.	Commitment to firm, its goals, and values	4.27
8.	Inspires confidence	4.2
9.	Research skills	4.13
10.	Commitment to professional development toward excellence	4.07

22. 0 = Not Considered; 1 = Somewhat Important; 2 = Slightly Important; 3 = Important; 4 = Very Important; 5 = Critical.

11.	Initiates and maintains strong work and team relationships	4.07
Competencies Considered Important to Very Important		
12.	Project management, including high quality, efficiency, and timeliness	3.93
13.	Strategic/creative thinking	3.8
14.	Legal competency/expertise/knowledge of the law	3.73
15.	Business development/marketing/client retention	3.67
16.	Ability to work independently	3.67
17.	Leadership	3.47
18.	Stress/crisis management	3.4
19.	Candidate's class rank	3.33
20.	Seeks feedback/responsive to feedback	3.13
21.	Negotiation skills	3.07
Competencies Considered Somewhat Important to Important		
22.	Rank of candidate's law school	2.93
23.	Understanding the business of large firm practice	2.93
24.	Delegation/supervision/mentoring	2.73
25.	Demonstrates interest in business and financial arrangements with clients	2.73
26.	Pro bono, community, bar association involvement	2.53

A brief comparison of the competencies that the fourteen largest Minnesota firms are using to hire associates with the criteria that the large firms are using to assess the existing associates leads to five main observations.

1. While these fourteen firms are reporting that in their hiring decisions a candidate's class rank is the nineteenth most important factor and the rank of the candidate's law school is the twenty-second most important factor, I think, after discussing these data with several respondents, this is true only after an initial screen based on a candidate's class rank and the rank of the candidate's law school. Essentially, the firms use class rank and rank of law school as surrogates for some threshold level of excellence that a candidate's legal analysis and doctrinal knowledge must meet. The lower-bound of this initial screen may be changing because of the market realities of the new legal economy. Among those candidates remaining in the pool after the initial screen, the other competencies are important differentiating factors in the decision to hire. This is a topic for further research.
2. The high importance given to "integrity/honesty/trustworthiness" suggests that any doubts about integrity or honesty will weigh heavily in the hiring decision. It is possible for a student to demonstrate affirmative evidence of "trustworthiness" which is closely related to the competency of "inspires confidence." A candidate who can demonstrate evidence of trustworthiness and high confidence from supervisors in the student's work and academic

record is showing an important differentiating competency for the hiring decision. For example, do the candidate's references emphasize that supervisors had a high degree of trust and confidence in the candidate's work?

3. Large firms greatly value a candidate or associate who can demonstrate (with evidence) effective written and oral communication skills, initiative/drive/ambition/strong work ethic, good judgment, dedication to client service/responsiveness to client, and commitment to professional development toward excellence. A law student can differentiate herself by showing experience and strength in any of these competencies.
4. While all or nearly all large firms assess existing associates on teamwork, business development, and project management competencies, the firms rank teamwork competencies eleventh, project management competencies twelfth, and business development competencies fifteenth in making a hiring decision. This may be because law schools historically have given students little or no education on these competencies and thus give legal employers no or little valid and reliable assessment of students on these competencies. Individual students could develop portfolios of experiences during law school to demonstrate these competencies.
5. Law students seeking to differentiate themselves often do so by seeking concentrations in specific doctrinal law areas, but the large firms rank knowledge of doctrinal law fourteenth. This suggests that students may be over-emphasizing the use of a concentration to differentiate themselves in comparison with an emphasis on some of the other competencies.

Recent empirical research using focus groups with nineteen Dayton, Ohio attorneys from a variety of practice backgrounds explored the questions, "how would you describe the ideal recent law school graduate?" and "what would you expect a recent law school graduate to be able to do?"²³ The comments of the legal employers fell into two categories:

First and predominant was an employer preference for attorneys who have well-developed professional . . . [skills] such as strong work ethic, willingness to take the initiative, the ability to collaborate well with colleagues and clients, and the ability to adapt to the demands of supervisors. Second, employers wanted new hires with strong fundamental practice skills, i.e. legal research, written and verbal communication, and analysis.²⁴

23. Susan Wawrose, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 515, 518 (2013).

24. *Id.* at 522.

Professor Wawrose thought “the most surprising outcome of our research” was the primary importance employers placed on the intra- and interpersonal skills needed for workplace success.²⁵

II. CLIENTS’ DEFINITION OF THE VALUES, VIRTUES, CAPACITIES, AND SKILLS OF AN EFFECTIVE LAWYER

To what degree do clients’ definitions of the competencies of an effective lawyer match those of the law firm competency models? Overall there are surprisingly few empirical studies of how clients define the values, virtues, capacities, and skills of an effective lawyer. In the most rigorous study, Marjorie Shultz and Sheldon Zedeck identified and defined the measurable dimensions of lawyer effectiveness with a methodology that in part relied on asking lawyers what they would look for in another lawyer if they were clients seeking a lawyer:

In our initial study (Shultz and Zedeck 2003), we identified factors important for lawyer effectiveness by interviewing individuals ($n = 133$) within five stakeholder groups associated with Berkeley Law: alumni ($n = 62$, across three cities), clients ($n = 6$, plus reading their consumer complaints), law faculty ($n = 10$), law students ($n = 51$), and judges ($n = 4$) (Shultz and Zedeck 2003). We posed questions to the stakeholders, such as . . . “If you were looking for a lawyer for an important matter for yourself, whom would you identify, and why? What qualities and behavior would cause you to choose that attorney? . . .” From these interviews and focus groups 26 factors important to lawyering effectiveness emerged Next, again using focus groups and interviews, followed by a survey to which more than 2,000 Berkeley alumni responded, we constructed 26 BARS [behaviorally anchored rating scales] to be used in measuring individual lawyer performance.²⁶

The twenty-six factors important to lawyering effectiveness are set forth in Table 6.

TABLE 6

*Shultz/Zedeck List of 26 Effectiveness Factors*²⁷

1. Analysis and Reasoning
2. Creativity/Innovation
3. Problem Solving
4. Practical Judgment

25. *Id.*

26. Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 629, 632 (2011).

27. *Id.* at 629.

5. Researching the Law
6. Fact Finding
7. Questioning and Interviewing
8. Influencing and Advocating
9. Writing
10. Speaking
11. Listening
12. Strategic Planning
13. Organizing and Managing One's Own Work
14. Organizing and Managing Others (Staff/Colleagues)
15. Negotiation Skills
16. Able to See the World Through the Eyes of Others
17. Networking and Business Development
18. Providing Advice & Counsel & Building Relationships with Clients
19. Developing Relationships within the Legal Profession
20. Evaluation, Development, and Mentoring
21. Passion and Engagement
22. Diligence
23. Integrity/Honesty
24. Stress Management
25. Community Involvement and Service
26. Self-Development

There is substantial convergence between the competencies that law firms are assessing listed in Table 3 and the Shultz/Zedeck list of effectiveness factors in Table 6. It seems reasonable that “Organizing and Managing One’s Own Work” and “Organizing and Managing Others” from Table 6 are included in “Project Management” from Table 3. Similarly, “Passion and Engagement” in Table 5 is implicit in “Initiative/Drive/Strong Work Ethic” in Table 3, and “Diligence” in Table 6 is implicit in “Dedication to the Client” in Table 3. With those assumptions, then, Table 3 and Table 6 reflect the same competencies except Table 5 (reflecting what lawyers want if they are hiring a lawyer for themselves on an important matter) also includes “Listening,” “Able to See the World Through the Eyes of Others,” “Fact Finding,” and “Questioning and Interviewing” as effectiveness factors.²⁸

There are very few other empirical studies of how clients assess the effectiveness of lawyers, and nearly all of them focus on how in-house

28. *Id.*

counsel for corporate clients assess the effectiveness of outside counsel.²⁹ In 2008, the Association of Corporate Counsel (“ACC”) developed an outside litigation firm performance evaluation model that emphasizes three areas: legal analysis and judgment skills, litigation practice skills, and leadership and teamwork skills.³⁰ The leadership and teamwork skills focus on a lawyer’s commitment to achieving needed client results in a timely way, respect for others, good judgment on when to challenge a client decision, and prompt communication both when asked for assistance and when appropriate regarding the status of a project.³¹ Similarly, the 2012 Altman Weil Chief Legal Officer Survey found that the most important efforts that outside counsel could make to improve relations with the client all related to improved responsiveness to the client’s needs including more efficient project management, non-hourly based pricing structures, improved budget forecasting, improved project staffing, and improved communication and responsiveness.³²

More supporting evidence is provided by the BTI Consulting Group’s 2013 survey of more than 240 corporate clients, which asked the clients to identify outside counsel who “deliver[] the highest levels of client service.”³³ Corporate clients expect solid legal skills, but the dominant (68.8 percent) factor that distinguishes “the absolute best client service” is “client focus” where the client perceives the lawyer to be highly committed to and proactively responsive to the client.³⁴ “Client focus” includes understanding the client’s business and legal objectives and recognizing and demonstrating a mutual interest in achieving client goals.³⁵ “Client focus” overlaps with the second most important (10.8 percent) factor that distinguishes “the highest levels of client service”—understanding the client’s business.³⁶

The ACC’s most recent effort in 2009 to evaluate the effectiveness of outside counsel is its Value Index. Informed by many years of conversations with in-house and outside counsel, ACC turned to law and management technology consulting firm Serengeti Law to develop the Value Index to assess the value of outside counsel service from the in-house client’s perspective. The ACC decided that six key criteria define high value service: (1) understanding client objectives and expectations; (2) legal expertise; (3) efficiency/process management; (4) responsiveness/communica-

29. The text here from notes 28–36, 39–41 borrows substantially from Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137 (2011).

30. ASS’N OF CORPORATE COUNSEL, HOW TO EVALUATE THE PERFORMANCE OF LITIGATION LAW FIRMS 1–2 (2008).

31. *Id.*

32. ALTMAN WEIL, INC., CHIEF LEGAL OFFICER SURVEY 23 (2012).

33. BTI CONSULTING GROUP, *Executive Summary*, in THE BTI CLIENT SERVICE ALL-STAR TEAM FOR LAW FIRMS 1, 2, 43 (2013).

34. *Id.* at 3.

35. *Id.*

36. *Id.* at 3–4.

tion; (5) predictable cost/budgeting skills; and (6) results delivered.³⁷ ACC General Counsel Susan Hackett concluded that the distinguishing skill for outside counsel is to go beyond high-quality work (because excellent technical legal skills are available globally) by providing high-quality work in a way that the client gets the most value. The lawyer must understand the client and be responsive to the client to provide this value.³⁸

General counsel on behalf of the corporate client also evaluate the competencies of the in-house attorneys working for the corporation. In 2011, Nabarro interviewed more than 100 general counsel and senior in-house attorneys to determine what competencies contribute most to the value of in-house lawyers.³⁹ Strong technical legal skills were taken as a given, and understanding the business was the most important competency followed by focusing on helping the business realize its objectives, relationship skills with the client's decision makers, and teamwork skills.⁴⁰

The central theme of these studies of corporate clients' definition of lawyer effectiveness is that exceptional effectiveness moves beyond excellent technical competence toward excellent relationship skills demonstrating (1) a strong understanding of the client's business and needs, (2) good judgment and problem solving in light of that understanding of the client, (3) strong responsiveness to the client, and (4) a focus on cost-effective solutions that provide value to the client.

There are very few empirical studies of how individual clients assess lawyer effectiveness. A major 1993 ABA survey of both individual and corporate clients showed that clients believed lawyers to be knowledgeable and able to solve problems, but clients in general did not believe that lawyers were committed to, focused on, or responsive to client needs. Many clients perceived lawyers as excessively focused on money.⁴¹ A 1997–98 survey of clients of solicitors in England and Wales revealed similar client perceptions of lawyer effectiveness. Clients indicated that effective two-way communication including attentive listening and clear explanations to-

37. Larry Bodine, *ACC Launches Controversial "Value Index" Ranking of Law Firms*, LARRY BODINE L. MARKETING BLOG (Oct. 20, 2009), <http://blog.larrybodine.com/2009/10/articles/current-affairs/acc-launches-controversial-value-index-ranking-of-law-firms/>.

38. Email from Susan Hackett to Neil Hamilton and Verna Monson (Aug. 13, 2010, 16:08 CST) (on file with the author); *See also* John C. Coates et al., *Hiring Teams, Firms, and Lawyers: Evidence of the Evolving Relationships in the Corporate Legal Market*, 36 LAW & SOC. INQUIRY 999, 1013 (2011) (drawing on interview and survey data from 166 chief legal officers of S&P 500 companies from 2006–07, Coates et al. found that the chief legal officer's selection of outside counsel for major matters is "almost always determined by prior experience with the company based on the chief legal officer's personal knowledge about the lawyer or law firm As one CLO interviewee explained, "At the end of the day, it is personal relationships.'").

39. NABARRO LLP, GENERAL COUNSEL: VAGUE ABOUT VALUE? 1 (2011).

40. *Id.* at 5, 9–10.

41. Stuart A. Forsyth, *Good Client Relations: The Key to Success*, ARIZ. ATT'Y, May 1998, at 20, 21.

gether with the qualities of empathy and respect were important.⁴² In 2001, the ABA Section of Litigation commissioned a survey of 450 U.S. households plus focus groups in five cities to explore public perceptions of lawyers. On the positive side, the respondents in general thought that lawyers were knowledgeable about the law and the majority of the respondents who had hired a lawyer were satisfied.⁴³ However, on the negative side, 69 percent of the respondents thought that many lawyers are “more interested in making money than serving their clients,” “manipulative,” and “do a poor job of policing themselves.”⁴⁴ Two empirical surveys from the early 2000s examining how criminal defendants view the effectiveness of their lawyers found that criminal defendants value some client relationship skills of their lawyer as much or more than some technical legal skills. Caring about the client, keeping the client informed, and listening skills were the most important of the relationship skills.⁴⁵

III. COMPETENCIES THAT MAKE THE BIGGEST DIFFERENCE FOR EFFECTIVENESS AND SUCCESS

A. *Differentiating Competencies for Legal Employers*

Part I analyzed the competency model studies that have defined the characteristics of the most effective and successful law firm attorneys. There is substantial agreement among those studies on the basic competencies the firms are assessing. Another level of inquiry is whether, among the basic competencies, some are more important for an associate’s promotion opportunities. Bock and Ruyak note that “Boyatzis defined differentiating competencies as those that could distinguish superior performers from those who were average, and threshold competencies as those that defined adequate job performance.”⁴⁶ A few studies have focused on what the differentiating competencies are that distinguish superior performers from average performers as an associate.

In his 2008 study of a competency model for a firm with 750 lawyers, Westfahl identified the “key differentiators” that define successful progression. Analytical and written communication skills were the key differentiators among junior associates (1–2 years of experience), while

42. See Clark Cunningham, *What Clients Want From Their Lawyers*, 3–4 (Aug. 3, 2006) (essay prepared for The Society of Writers to Her Majesty’s Signet), available at <http://law.gsu.edu/Communication/WhatClientsWant.pdf>.

43. ABA SECTION ON LITIGATION, PUBLIC PERCEPTIONS OF LAWYERS CONSUMER RESEARCH FINDINGS 17, 19 (April 2002).

44. *Id.* at 7–10.

45. Marcus T. Boccaccini et al., *Client Relations Skills in Effective Lawyering: Attitudes of Criminal Defense Attorneys and Experienced Clients*, 26 *LAW & PSYCHOL. REV.* 97, 100, 111, 118–19 (2002); Marcus T. Boccaccini & Stanley L. Brodsky, *Characteristics of the Ideal Criminal Defense Attorney from the Client’s Perspective: Empirical Findings and Implications for Legal Practice*, 25 *LAW & PSYCHOL. REV.* 81, 97 (2001).

46. BOCK & RUYAK, *supra* note 18, at 3.

“ownership” and project management skills seemed to define progression from mid-level to senior associate.⁴⁷ “Ownership” meant an associate “effectively kept senior lawyers informed about developments in the case; engaged senior lawyers appropriately on key case decisions; anticipated client and project needs; [was] organized, efficient, and resourceful; and delivered under pressure.”⁴⁸

In their 2012 study of an Am Law 100 firm, Berman and Bock analyzed a firm using a merit-based evaluation system that placed each associate in one of twelve tiers or levels from “1,” representing the lowest level, to “12,” meaning the associate was ready to be put up for partnership.⁴⁹ Each associate’s placement in a tier was based on the associate’s ratings on each of the eight competencies as well as performance criteria such as billable hours.⁵⁰ Berman and Bock’s analysis revealed that associates who scored higher on each of the eight competencies the firm was assessing generally also received higher tier placements relative to those other associates who entered the same year.⁵¹ Their analysis also indicated that excellence in four competencies “seemed especially critical in predicting performance.”⁵² These differentiating competencies were (1) drive for excellence, (2) teamwork, (3) case management and leadership, and (4) written advocacy.⁵³ Based on analysis of data both from their quantitative survey and their qualitative interviews, Berman and Bock also found that “high performers differed from other associates in three broad categories: (1) their *mindset and philosophy*, (2) *managing the work environment and results*, and (3) *working and collaborating with others*.”⁵⁴

“[M]indset and philosophy capture how attorneys see themselves, and specifically highlights who they are rather than what they do.”⁵⁵

First high-performing associates exhibit *equanimity*. That is, these associates experience and acknowledge their own anxiety during challenging times, but they are able to rise to the challenge of unexpected pressures and mask that anxiety. Second, high-performing associates have an *action-oriented mental strength*, or a cognitive desire to act upon the world, be proactive, and persist in the face of challenges. Third, these associates have an *intrinsic need for achievement*, in that they appreciate and desire learning and achievement for their inherent value. At the same time, they have an *extrinsic need for achievement*, in that they also place

47. WESTFAHL, *supra* note 16, at 19–21.

48. *Id.* at 22.

49. Berman & Bock, *supra* note 15, at 883.

50. *Id.*

51. *Id.* at 888.

52. *Id.*

53. *Id.* at 888–89.

54. *Id.* at 894–95 (emphasis added).

55. Berman & Bock, *supra* note 15, at 895.

value on others perceiving them as capable and recognizing their achievements, expertise and knowledge. Finally, high-performing associates have a strong *sense of self*. As such, they are able to acknowledge and accept their own strengths, weaknesses, boundaries, preferences and sphere of control.⁵⁶

“Managing the work environment and results” means that high-performing associates also demonstrated three approaches to work in terms of independent action.

First, they are able to *handle curve balls*. That is, these individuals are flexible in handling unforeseen or ambiguous situations. . . . Second, high-performing associates demonstrate *openness* when solving work problems. . . . [T]hey are able to think of multiple solutions and actively seek external advice where appropriate to help identify the best solution. Finally, high-performing associates strategically demonstrate *effort and ownership* to reach challenging goals that they see as important. . . . These associates put forth their best effort and own the challenges that are set before them; they persist in order to achieve.⁵⁷

“Working and collaborating with others” means first that

high-performers *build and use social networks*. They strategically develop professional relationships needed to meet personal and team goals. . . . Second, high-performers seek to have a *direct impact on others*. . . . They are aware of what others can do for them, as well as what effect they might have on others. When working with others, high-performers use their interpersonal understanding of others to influence and impact them, rather than using generic tactics.⁵⁸

Bock reported some preliminary findings from a broader multi-firm second phase of the study above seeking to identify what differentiating competencies make the most difference for associates who make partner ahead of their peers at large law firms.⁵⁹ Is the model for explaining the differentiating competencies of fast-track associates good also for predicting early partnership? Bock’s preliminary findings indicate the differentiating competencies for associates who made partner early are: (1) a mindset and philosophy with both a particularly strong appreciation and desire for learning and achievement for their inherent value—an intrinsic need for achievement⁶⁰—and an ability to handle curve balls; (2) an approach to

56. *Id.* (emphasis added).

57. *Id.* at 895–96.

58. *Id.* at 896.

59. Heather Bock, Chief Prof’l Dev. Officer, Hogan Lovells U.S. LLP, Fast Track to Leadership, Presentation at Santa Clara University Law School 5th Annual Leadership Education Roundtable: Teaching Leadership Competencies in Law School and in the Profession: Why It Matters (March 22, 2013).

60. A strong learning orientation is demonstrated by “the extent to which people approach tasks from a learning perspective, where the goal is to develop and grow So, for those with a

working and collaborating with others that emphasizes networking, making strong emotional connections, and strategically investing in relationships; and (3) closely related to (2) above, an approach to managing the work where networks of strong emotional connections help provide expert judgment and advice where appropriate to help identify the best solution.⁶¹

B. Differentiating Competencies Identified by Clients

There are no empirical studies of similar quality to those discussed in Part III(A) where clients have identified the differentiating competencies that distinguish superior lawyers from average lawyers. However, the studies discussed in Part II earlier point strongly toward a changing legal market where corporate clients in particular can find high-quality technical legal skills globally at competitive prices. In making a decision whether to select a U.S.-based attorney, these clients are looking not only for strong technical legal skills, but also for a strong understanding of the client's business and needs, and based on that understanding, high commitment and responsiveness to the client, good judgment, and teamwork with the client and others to achieve the client's objectives. Corporate clients are also increasingly expecting a lawyer to emphasize cost effectiveness, service, and solutions that provide value to the client.

IV. LESSONS FOR LAW STUDENTS AND LAW SCHOOLS

A. Substantial Agreement on the Most Important Competencies

The general principle of triangulation is that we can best understand a phenomenon by using a variety of quantitative and qualitative research methods and then look for general areas of convergence where different methods corroborate the findings.⁶² Triangulation here using the studies of law firm competency models shown in Table 3 indicates a substantial agreement on the most important competencies for an effective lawyer. In addition, as noted earlier in Part II, a comparison of Table 3 showing the most common competencies that eighteen firms assess and Table 6 showing the Shultz/Zedeck study's list of twenty-six effectiveness factors (that lawyers would look for if they were clients seeking a lawyer on an important matter) again shows substantial agreement on the same core competencies.

high learning orientation, a mistake might be seen as something to learn from and a growth opportunity, rather than a personal failure." Berman & Bock, *supra* note 15, at 880.

61. Bock, *supra* note 59; See also Berman & Bock, *supra* note 15, at 895–96.

62. E.g., NORMAN K. DENZIN, *THE RESEARCH ACT: A THEORETICAL INTRODUCTION TO SOCIOLOGICAL METHODS* 301 (3d ed. 1989).

B. Each Law Student Should Understand and Work to Develop the Core Competencies that Legal Employers and Clients Want

In this challenging market for employment, a law student can differentiate herself from other graduates by demonstrating to legal employers that the student both understands the core competencies that legal employers and clients want and is implementing a plan to develop these competencies, including an ability to demonstrate that the student has experience with these competencies. O'Melveny and Meyers' lead director, partner Peter Healey, recently commented, "[n]ew lawyers are virtually clueless on adding value for a client beyond technical legal skills."⁶³

Historically, law schools have provided a strong education in the required curriculum for legal analytical skills and knowledge of doctrinal law, and have in more recent years increasingly focused on research skills and effective written and oral communication skills. However, based on my thirty-seven years of teaching at four different law schools, legal education has not given adequate attention to competencies like good judgment and responsiveness to clients based on an understanding of the client's business, teamwork, project management, or an internalized commitment to professional development toward excellence at all the other competencies. Sonsteng and Camarotto captured this failure in an empirical study thirteen years ago, and the situation today remains about the same. Table 7 indicates Sonsteng's and Camarotto's findings.

TABLE 7

*Capacities and Skills that Law Schools Teach and Do Not Teach
Sonsteng & Camarotto⁶⁴*

Skill	Percent perceiving law school provided preparedness
1. Ability in legal analysis and legal reasoning	85
2. Library legal research	84
3. Written communication	81
4. Computer legal research	76
5. Oral communication	69
6. Sensitivity to professional and ethical concerns	68

63. Peter Healy, Partner, O'Melveny & Myers LLP, The Business of Leadership, Presentation at Santa Clara University Law School 5th Annual Leadership Education Roundtable: Teaching Leadership Competencies in Law School and in the Profession: Why It Matters (March 22, 2013).

64. Sonsteng & Camarotto, *supra* note 20, at 337. Professors Sonsteng and Camarotto surveyed Minnesota lawyers in 1997–98 (a 58.4 percent return on 1,777 surveys) and 1999 (a 51.4 percent return on 1,500 surveys) to determine the extent to which law schools taught the skills necessary for the practice of law.

7. Knowledge of the substantive law	62
8. Ability to diagnose and plan solutions for legal problems	55
9. Knowledge of procedural law	49
10. Instilling others' confidence in you	38
11. Fact gathering	38
12. Drafting legal documents	33
13. Negotiation	30
14. Counseling	29
15. Understanding and conducting litigation	26
16. Organization and management of legal work	21
17. Ability to obtain and keep clients	13

In a 2012 empirical study of data from the Law School Survey of Student Engagement, Carole Silver, Amy Garver, and Lindsay Watkins asked law students to assess their progress during law school toward several practice competencies. “One of the most striking aspects of these data relates to the low mean response to the question about building relationships with clients. Respondents indicated that law schools are least effective with regard to this issue”⁶⁵ Students with clinical experience reported somewhat higher gains on the skills of building a positive relationship with clients.⁶⁶

Even if law schools are not helping students understand and develop all the core competencies for effective and successful practice, each law student should take the initiative to understand and develop the core competencies, including developing evidence that the student has experience at the different competencies. The student should understand how to use all the experiences of law school to achieve this goal, including the required and elective curriculum, clinics, externships, simulations, clerkships, pro bono service, and student organizations.

Students should understand that capacities and skills related to project management, teamwork, and networking (particularly having a network to provide expert judgment and counsel as needed) are key differentiating competencies for legal employers. As corporate clients put increasing cost pressures on the larger firms, the firms are placing particular emphasis on project management and teamwork skills in order to provide more cost-effective solutions that provide value to the client.⁶⁷ Henderson predicts “[t]he beginning of the project manager era—which I believe is now dawn-

65. Carole Silver et al., *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 J. LEGAL WRITING INST. 373, 401 (2011).

66. *Id.* at 403.

67. See HILDEBRANT BAKER ROBBINS & CITI PRIVATE BANK, 2011 CLIENT ADVISORY 17, available at https://peermonitor.thomsonreuters.com/ThomsonPeer/docs/2001_Client_Advisory_FINAL.pdf.

ing—is marked by sophisticated corporate counsel looking for methods of workplace organization and process that will deliver higher quality legal inputs and outputs (a bundle of both services and products) for a predictable fee.”⁶⁸

The most important lesson for each student from the data in Parts I–III is that, in the context of a glut in the market for entry-level law graduates, a student can differentiate him or herself by understanding all the core competencies and using the three years of law school to develop (and to create evidence demonstrating) some of the core competencies most useful for employment beyond just technical legal skills in the required curriculum. Dennis Monroe, founder of a medium-size law firm and former CEO of Parasole Restaurants (about 1,500 employees) emphasized recently “[l]aw students generally operate on the strong belief that being a good lawyer is about subject matter expertise and analysis. The first question that I ask an applicant for an associate position is: ‘What value do you bring beyond just technical legal skills to help our clients be successful?’”⁶⁹ Each student should use the three years of law school to prepare to answer this question.

C. *Each Law School Should Develop a Competency-Based Curriculum*

Each law school should offer a competency-based curriculum that helps each student develop and be able to demonstrate the competencies that legal employers and clients want.⁷⁰ To create a competency-based curriculum, Henderson suggests that each law school “identify the knowledge, skills, behaviors, and attributes of highly successful professionals . . . and then work backwards”⁷¹ to structure a curriculum and adopt pedagogies to help students develop these competencies and have evidence of experience with these competencies.

This type of curriculum and pedagogy will help each student increase his or her probability of finding meaningful employment. Henderson emphasizes

[i]magine students from Law School A, who have the benefit of a competency-based curriculum, and students from rival Law School B, who receive a traditional legal education that is unstructured after the 1L year. . . . [I]t is possible for a student who receives three years of an outstanding competency-based education to obtain a permanent, sustainable advantage over a more

68. William Henderson, *Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers*, 70 MD. L. REV. 373, 381 (2011).

69. E-mail from Lynn Sonia, Executive Assistant to Dennis L. Monroe, to Professor Hamilton (June 16, 2014, 12:44 CST) (on file with author).

70. See Henderson, *supra* note 1, at 492.

71. *Id.* at 496.

academically qualified student who received a traditional—and therefore largely unstructured—legal education.⁷²

If students are more successful in finding employment, the law school's metrics on employment of students will improve.

A law school should consider its unique teaching strengths in terms of the values, virtues, capacities, and skills that legal employers and clients demand, and emphasize the school's comparative strengths. Henderson emphasizes that legal employers are also “under enormous and unprecedented economic pressure.”⁷³ Employers are “looking for resources and venues that help them successfully adapt to a rapidly changing legal marketplace.”⁷⁴

Legal employers are facing a battle over market share, and high quality professional talent is the solution to their problem. Legal employers lack the know-how and expertise to solve this problem on their own. Further they are under enormous cost pressures. Effective engagement [of a law school] with the legal industry can and should result in mutually beneficial collaboration. . . . Thus, it is ripe for a law school-legal employer collaboration that drives down costs while accelerating lawyer development.⁷⁵

“The key to moving an entry level labor market is clarity between educators and employers on the requisite knowledge, skills, values, and behaviors that amount to high performance.”⁷⁶

Law firms implementing competency models begin with an orientation for associates that explains the full model followed by reminders as needed at evaluations and transition stages as well as continuing formal training and formal mentoring to help lawyers understand the model.⁷⁷ Each law school can use the empirical data on which competencies legal employers and clients want as the basis for a debate and decision on which competencies are most important for the graduates of the law school. The law school would then explain the competency model to the students at appropriate times throughout the curriculum.⁷⁸ Silver, Garver, and Watkins emphasize the importance of “connecting the dots” so that each law student understands how to use the curriculum to develop (and create evidence of achievement regarding) the competencies that legal employers and clients want.⁷⁹ This process of articulating learning outcomes regarding these com-

72. *Id.* at 492, 497.

73. *Id.* at 492.

74. *Id.* at 491.

75. *Id.* at 503.

76. Henderson, *supra* note 1, at 495.

77. Sari Fried-Fiori, *Competency-Based Development Programs*, in *THE ART AND SCIENCE OF STRATEGIC TALENT MANAGEMENT IN LAW FIRMS*, *supra* note 9, at 119, 120–22.

78. See Silver et al., *supra* note 65, at 378–79 (advocating the importance of intentionality and explicitness with respect to explanations about the curriculum to students).

79. *Id.* at 405.

petencies and creating formative and summative assessments to help students and to help assess the effectiveness of the curriculum will also fulfill the ABA's late-stage proposed changes to the accreditation standards discussed earlier in the Introduction.⁸⁰

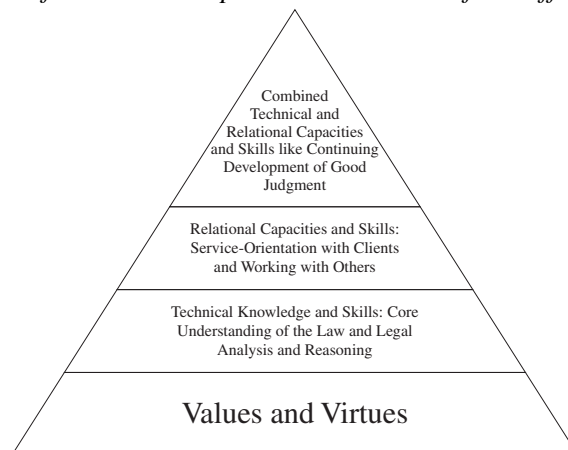
D. The Values, Virtues, Capacities, and Skills of Professional Formation/Professionalism are the Foundation for Excellence at the Other Competencies

The data in Parts I and II make clear that legal employers and clients want qualities beyond a new lawyer's technical skills. They also want the new lawyer to demonstrate values, virtues, and capacities like: (1) an internalized commitment to self-development toward excellence at all the competencies of lawyering; (2) initiative/ambition/drive/strong work ethic; (3) integrity/honesty/trustworthiness; (4) continuing development of good judgment; (5) dedication and responsiveness to the client; and (6) the capacity to seek and be responsive to feedback. These six values, virtues, and capacities are the foundation for a lawyer's long-term effectiveness in terms of the competencies of initiating and maintaining strong work and team relationships, business development, successful client relationship capacities, and persuasive communication skills.

Table 8 presents this visually, where the values and virtues that legal employers and clients want in a lawyer are the foundation on which an effective lawyer builds.⁸¹

TABLE 8

The Foundation of Values and Virtues that Lead to Career-Long Development of the Other Capacities and Skills of an Effective Lawyer



80. See *supra* text accompanying note 2.

81. See Neil Hamilton, *The Qualities of the Professional Lawyer*, in *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 1, 5 (2013) (Table 8).

These fundamental values and virtues that legal employers and clients want are largely the same as those that define the profession's understanding of professionalism or professional formation. Scholars have been using these terms as synonyms. For example, the authors of the five Carnegie Foundation for the Advancement of Teaching studies of education in the professions used synonymously the terms professional formation, formation of a professional identity, professionalism, professionalism and ethics, and ethical comportment. *Educating Physicians* (2010), the last in a series of five studies of higher education for the professions, adopted "professional formation" rather than "professionalism" as the best term to use going forward because it emphasizes the developmental and multi-faceted nature of the construct.⁸² Professional formation indicates "an ongoing self-reflective process involving habits of thinking, feeling and acting," and a lifelong commitment to continued progress toward technical excellence and the aspirational goals of the profession.⁸³ While "professional formation" seems the best choice among those terms in current use because it specifically refers to continuing development over a career, an even more specific statement—"professional formation toward a moral core of responsibility for others"—best captures both the developmental nature of the challenge for each law student and the "other-directedness" inherent in all of these synonyms. This paper uses "professional formation" as shorthand for "professional formation toward a moral core of responsibility for others."

The studies of the understandings of professionalism from the organized legal profession, the legal scholars who have written on professionalism/professional formation, and the five Carnegie studies on higher education for the professions, combined with a study of peer-honored exemplary lawyers in Minnesota, all agree that professional formation encompasses an internalized moral core characterized by a deep responsibility for others, particularly the client, as well as some restraint on self-interest in carrying out this responsibility. Nearly all of the studies also agree that professional formation includes these elements: (1) ongoing solicitation of feedback and self-reflection; (2) an internalized standard of excellence at lawyering skills; (3) integrity and honesty; (4) adherence to the ethical codes; (5) public service (especially for the disadvantaged); and (6) independent professional judgment and honest counsel.⁸⁴

Table 9 below juxtaposes the values, virtues, capacities, and skills of a later-stage understanding of professional formation with those that legal

82. MOLLY COOKE ET AL., *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* 41 (2010).

83. *Id.*

84. Neil Hamilton et al., *Empirical Evidence that Legal Education Can Foster Student Professionalism/Professional Formation to Become an Effective Lawyer*, 10 U. ST. THOMAS L.J. 11, 15–16 (2012).

employers and clients expect in evaluating the effectiveness of a new lawyer.⁸⁵ As the table reflects, the overlap is substantial.

TABLE 9

Comparison of the Values, Virtues, Capacities, and Skills Defining Professional Formation with Those that Legal Employers and Clients Want in Assessing the Effectiveness of a New Lawyer

Professional Formation Values, Virtues, Capacities, and Skills		Values, Virtues, Capacities, and Skills that Legal Employers and Clients Want (Beyond Technical Legal Skills)
1.	Internalized Moral Core Characterized by Deep Responsibility for Others, Particularly the Client	Internalized Commitment to Grow Toward Excellence in All Competencies plus Initiative/Ambition/Drive/Strong Work Ethic
2.	Integrity/Honesty	Integrity/Honesty/Trustworthiness
3.	Internalized Standard of Excellence at Lawyering Skills and Career-Long Growth Toward Later-Stages of Professional Formation	Seeks Feedback and Is Responsive to Feedback to Foster Self-Development
4.	Ongoing Solicitation of Feedback and Self-Reflection	Good Judgment/Common Sense/ Problem Solving
5.	Honest Independent Professional Judgment and Counsel to the Client	Pro Bono/Community/Bar Association Involvement
6.	Adherence to Ethical Codes	Client Relationship Skills Including Dedication to Client Service/ Responsiveness to Client, Business Development/Marketing/Client Retention
7.	Public Service (especially for the disadvantaged)	Initiates and Maintains Strong Work and Team Relationships
8.		Project Management
9.		Effective Written and Oral Communication Skills

This bedrock foundation for professional formation of an internalized moral core characterized by deep responsibilities for others, particularly the client (on the top left of Table 9), is also the unstated but implicit foundation for all of the values, virtues, capacities, and skills that legal employers and clients want and listed on the right side of Table 9. William Sullivan, the co-director of all five Carnegie Foundation studies of higher education for the professions, recognizes the importance of this bedrock foundation of an internalized moral core of deep responsibility for others. Sullivan believes that the “chief formative challenge” is to help each student entering a profession to change from thinking like a student where he or she learns and applies routine techniques to solve well-structured problems toward the ac-

85. *Id.* at 16.

ceptance and internalization of responsibility for others (particularly the person served) and for the student's own development toward excellence as a practitioner at all of the competencies of the profession.⁸⁶ Each client or patient needs to trust that her lawyer or physician is dedicated above all else to care for us with all their ability.⁸⁷ This is essentially a fiduciary disposition, using "fiduciary" in the general meaning of founded on trustworthiness. Each student must internalize a fiduciary disposition for others, particularly the client.

Sullivan also includes internalization of responsibility for the student's own development toward excellence in all of the competencies of the profession along with the internalization of responsibility for others, particularly the client. The two responsibilities go hand in glove since a fiduciary disposition toward others requires the fiduciary to develop excellence at all the capacities required to fulfill his or her responsibility for others. To paraphrase Samuel Johnson from 250 years ago, a fiduciary's service to others without excellence in the competencies required is weak and useless, and excellence in the competencies required without a fiduciary disposition to serve others is dangerous.⁸⁸

Thus, an internalized commitment to professional development toward excellence in all the competencies that legal employers evaluate is one of the most important values and virtues for each student to seek and for each law school to foster in its students.⁸⁹ Table 10 explains the stages of development for this competency.

TABLE 10

*Internalized Commitment to Professional Development Toward Excellence at All the Other Competencies*⁹⁰

Stage	Student Characteristics
Dependent Stage	<ul style="list-style-type: none"> - Assumes passive role with respect to professional self-development - Lacks insight into strengths and weaknesses - Depends on external authority for explicit direction and validation - Lacks interest in developing competencies except minimum required by external authority - Resists external authority on occasion

86. William M. Sullivan, *Foreword* to TEACHING MEDICAL PROFESSIONALISM, at ix, xv (Richard L. Cruess et al. eds., 2009).

87. *See id.* at ix.

88. SAMUEL JOHNSON, RASSELAS 158 (Henry Morley ed., London, Cassell & Co. 1889), available at <http://www.gutenberg.org/files/652/652-h/652-h.htm>.

89. *See generally* Hamilton et al., *supra* note 84 (arguing that law schools should help students develop excellence in competencies employers value).

90. *See generally* Gerald O. Grow, *Teaching Learners to be Self-Directed*, 41 ADULT EDUC. Q. 125 (1991) (proposing that learners advance through stages of self-direction).

Interested Stage	<ul style="list-style-type: none"> - Can see self-interest in professional self-development - May recognize weaknesses, but motivation to improve is principally externalized - Responds reasonably to questions and feedback on strengths and weaknesses - Is willing to engage mentors/coaches in goal-setting and implementation strategies - Shows some initiative and persistence to learn competencies
Involved Stage	<ul style="list-style-type: none"> - Is committed to professional self-development - Identifies strengths and weaknesses in development of competencies - Responds positively to and reflects on feedback concerning strengths and weaknesses and how to improve - Seeks insight from mentors and coaches in goal-setting and implementation - Is internalizing motivation to learn new knowledge and skills continuously - Is internalizing standard of excellence at all competencies - Shows substantial persistence in learning competencies
Self-Directed Stage	<ul style="list-style-type: none"> - Is intrinsically motivated to professional self-development and learning new knowledge and skills over a career - Actively identifies both strengths and weaknesses in development and sets goals and creates and executes implementation plans - Proactively develops mentor and coach relationships and proactively seeks help and feedback from mentors and coaches - Reflects on feedback and responds to feedback appropriately - Knows when and how to seek help - Actively seeks challenges - Has internalized standard of excellence at all competencies

Each student can create a plan for professional development toward excellence at the competencies most appropriate for the student's employment objective and implement his or her plan over the three years of law school. This will send legal employers a strong message that the student is in the process of internalizing this competency. The student is also demonstrating project management where the student's own professional development is the project. Finally, the student will be both developing and creating evidence of development in other competencies.

While the focus of this article is not on the most effective curriculum and pedagogy to foster each student's internalization of these professional formation competencies, particularly the competency outlined in Table 10, there is a body of empirical research that explores effective curriculum and pedagogy for this learning outcome. Table 11 outlines the most effective pedagogies recommended by the five Carnegie Foundation studies of higher education for the professions.⁹¹

91. Hamilton et al., *supra* note 84, at 19.

TABLE 11

*The Most Effective Pedagogies for Professional Formation
from the Carnegie Studies*

Carnegie Studies' Findings that Apply to All Law School Educational Engagements
<ul style="list-style-type: none"> - Reflecting on the responsibilities of the profession - Fostering each student's habit of actively seeking feedback, dialogue on the tough ethical calls, and reflection - Consideration of each student's developmental stage and engaging the student at the appropriate stage - Scaffolding
Carnegie Studies' Findings that Apply Particularly to Team-Based and Individualized Instruction
<ul style="list-style-type: none"> - Practical experiences and clinical education - Coaching

Table 12 outlines the most effective pedagogies recommended by empirical studies based on moral psychology's model of the four capacities that are necessary for a moral action.⁹²

TABLE 12

*The Most Effective Pedagogies for Professional Formation Suggested by
the Four Component Model (FCM) Research*

FCM Studies' Findings that Apply to All Law School Educational Engagements
<ul style="list-style-type: none"> - Consideration of each student's developmental stage and engaging the student at the appropriate stage - Creating "optimal conflict" or cognitive dissonance to challenge each student's existing ideas and assumptions - Fostering each student's reflective judgment - Repeated opportunities for reflective self-assessment on professional formation throughout the curriculum - Teacher-facilitated discussion of the ethical dimensions of cases to foster moral reasoning - Case-method discussion that also fosters professional identity - Service learning and moral reasoning
FCM Studies' Findings that Apply Particularly to Team-Based Education
<ul style="list-style-type: none"> - Constructive controversy - Formal cooperative learning - Peer coaching
FCM Studies' Findings that Apply Particularly to Individualized Education
<ul style="list-style-type: none"> - Ethical sensitivity testing and feedback - Coaching and identity formation - Role play/coaching to foster moral implementation

92. *Id.* at 28.

A comparison of Tables 11 and 12 indicates a great deal of overlap in the empirical evidence on the most effective pedagogies for professional formation. The empirical studies strongly support culture, pedagogies, and a curriculum that engage each student repeatedly in stage-appropriate engagements to both reflect on the responsibilities of the profession and foster the habit of actively seeking Feedback, Dialogue on the tough calls, and Reflection (called the FDR habit). Coaching is a particularly effective strategy to ask stage-appropriate questions that promote this feedback, dialogue, and reflection on responsibility. There is no empirical evidence that a rules-based ethics course that does not call for each student's reflection on what the rules and responsibilities of the profession mean for that student will have any impact on professional formation using the Four Component Model.⁹³

V. CONCLUSION

Former Secretary of Veterans Affairs Shinseki's observation that "if you don't like change, you are going to like irrelevance even less" captures the present market challenges facing both law students to secure meaningful employment and law schools to improve the employment metrics of graduates in order to attract more applicants. It is time to address these changes with good judgment and creative problem-solving for ourselves just as we do for our clients. We can make lemonade out of these market lemons. Henderson emphasizes that the deficits of legal education in terms of inadequate preparation for students on some of the key competencies of an effective and successful lawyer are a law school's (and a law student's) greatest opportunity.⁹⁴ Each student can take ownership over his or her self-development toward excellence in the competencies of effective lawyering that contribute most to the student's employment objectives. Each law school can lean the curriculum and pedagogy toward those competencies where the school has unique strengths to help students toward meaningful employment.

Effectuating these changes presents a very substantial educational hurdle with the major stakeholder groups: law faculty, law students, and legal employers. Historically, as the Sonsteng study discussed earlier demonstrated, law faculty teaching doctrinal courses have emphasized legal analysis, legal research, doctrinal knowledge, including knowledge of the Rules of Professional Conduct, and written and oral communication. They have given much less attention to helping students develop the other competencies needed to become an effective lawyer, particularly the competencies of

93. Neil Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J. 325, 372-73 (2011).

94. Henderson, *supra* note 1, at 501.

professional formation.⁹⁵ Faculty education will be essential to help each faculty member and the faculty as a whole to develop new curriculum and pedagogies that address the challenge. The faculty will need a willingness to experiment and to learn from trial and error in this new kind of teaching.⁹⁶

Henderson points out that a second major hurdle is managing law students' expectations.⁹⁷ A competency-based curriculum and pedagogy, particularly to the degree they involve fostering each student's professional-formation competencies like an internalized commitment to professional self-development, are going to be different from traditional legal education and involve some cognitive dissonance or "optimal conflict" for students that the students may not immediately like to experience. Students will need help to understand that in this challenging employment market, it is in the students' enlightened self-interest to develop a wider range of competencies that legal employers and clients want in order to differentiate themselves from other graduates.

Legal employers, particularly the large firms, have historically screened applicants for associate positions based first on the ranking of the applicant's law school and then the applicant's class rank in the first year. In essence this strategy uses law school ranking and high first-year grades as predictors of strong legal analysis, doctrinal law knowledge, and legal research and writing skills. These are all important competencies for success in the practice of law, but there are a number of other competencies that are also very important. Legal employers will need education about how law schools would be able to provide valid and reliable educational assessments of the other important competencies necessary for effective lawyering.

Finally, the empirical research presented here on the competencies that legal employers and clients want is at an early stage, and there are many unanswered or partially-answered questions that need additional research. These include: (1) While there is some research on what competencies corporate clients want, what are the competencies that individual clients want in a lawyer? (2) To what degree are the competencies that legal employers are assessing for associate attorneys the same or different from the competencies that most influence different legal employers to hire a new graduate? and (3) What are the differentiating competencies in hiring and assessment for both legal employers and clients?

95. Many law professors hold skeptical views about adult moral formation of an ethical professional identity that are thirty years out of date. See Neil Hamilton & Verna Monson, *Answering the Skeptics on Fostering Ethical Professional Formation (Professionalism)*, 9 U. St. Thomas L.J. 325, at 330 (2011); Neil Hamilton, *Changes in Legal Education and Ethics: Fostering Professional Formation (Professionalism): Lessons From the Carnegie Foundation's Five Studies on Educating Professionals*, 45 CREIGHTON L. REV. 763, 765-66 (2012).

96. See Hamilton & Monson, *supra* note 93, at 384; Henderson, *supra* note 1, at 502, 505.

97. Henderson, *supra* note 1, at 505.

We can be sure of rapid change in the markets for legal services, employment for new graduates, and applications for law school. Legal employers, law students, and law schools can choose to respond to these changes and grow, or hold course and move toward less relevance as so many industries have done in the past. These challenges are an opportunity for each student and each law school to find new ways to answer Dennis Monroe's question about what value does a student bring beyond technical legal skills to help the client toward success.