

Silicon Flatirons



A Center for Law, Technology, and Entrepreneurship at the University of Colorado

*Roundtable Series on Entrepreneurship, Innovation,
and Public Policy**

The New Normal and the Challenge for Legal Education

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OVERVIEW

On Tuesday, October 8, 2013, Silicon Flatirons convened a Roundtable of leaders from the legal, academic, and corporate communities to discuss the New Normal for legal education. The concept of a “New Normal” reflects the view that the changes now taking place are structural, not cyclical. The New Normal, in other words, is a state of affairs driven by globalization, technological change, and the pressure to do more for less. Reflecting the consensus that these structural changes have altered legal education, Roundtable participants called on law schools to provide their students with a strong value proposition and to adapt to today’s realities.

For law schools, the fundamental challenge of the New Normal involves demonstrating that a legal education is worth the investment. On that point, Roundtable participants agreed that the training provided by a traditional legal education remains relevant in the New Normal. An effective legal education in today’s world, however, requires an additional set of new competencies. Notably, today’s graduates must understand other domains (e.g., finance and accounting, the technology industry, etc.), be creative problem solvers, and possess the professional skills necessary to build and leverage relationships—a key factor for success in the New Normal.

Emphasizing the difficulty of teaching new competencies, Roundtable participants provided several frameworks for delivering this training effectively. These frameworks recognized that building a legal curriculum for the New Normal does not require a wholesale reinvention, but rather supplementation to teach additional competencies. Roundtable participants proposed several experimental approaches to teaching skills, developing a system for measuring competencies, and providing students with work experience before, during, and after law school. In short, curriculum change will be an ongoing process of experimentation.

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I. Introduction

Over the last 30 years, globalization, technological change, and the pressure to do more with less all have dramatically reshaped the global economy. In the aftermath of the Great Recession, the impact of these forces on the legal profession has become apparent. For law firm clients, who have driven this change over the last two decades, the New Normal represents a positive change that provides clients with greater efficiencies and increased control over the price of legal services. For law firms, today's New Normal presents a challenge that continues to reverberate.¹

The business model for legal services is in the midst of a significant transformation. Corporations are tightening or slashing legal budgets, prompting in-house counsel to seek ever-increasing value for each dollar of legal spend. A new array of alternative service providers now uses technology, process, and/or low-cost labor to offer a variety of legal services at dramatically lower costs. These entrepreneurs make it easier than ever to automate legal tasks or outsource them to someone other than law firms.

Consider, for example, the case of discovery. In the Old Normal, large-scale discovery projects typically involved legions of first- and second-year associates, billing out at high rates and sifting through thousands of pages of documents to find the handful of documents that actually might be presented at trial.² Lawyers that are more senior would then review the fruits of this first-pass review. Today, data productions are largely electronic and measure in the terabytes. Clients now insist that first-pass reviews be handled using a mix of computer-assisted searches, automated processes and contract reviewers, many of whom may be located offshore.

This shift—and similar shifts in other areas of legal practice—means less work for unseasoned lawyers, which has caused firms to scale back their hiring of new associates. With fewer entry-level jobs at large law firms, prospective law students are questioning the historic value proposition of going to law school and law schools now face significant pressure to deliver enhanced value propositions that play better in the New Normal.

To understand the impact and opportunities that the New Normal presents to law students and law schools, the Silicon Flatirons Center for Law, Technology, and Entrepreneurship hosted a roundtable on October 8, 2013 on [The](#)

¹ For an in-depth discussion of these changes, see Richard Susskind, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 31* (1st ed. 2013); James W. Jones ET AL., *THE CTR. FOR THE STUDY OF THE LEGAL PROFESSION, 2014 REPORT ON THE STATE OF THE LEGAL MARKET* (2014), available at https://peermonitor.thomsonreuters.com/wpcontent/uploads/2014/01/2014_PM_GT_Report.pdf.

² Richard Susskind, *supra* note 1, at 31.

[*New Normal and the Challenge to Legal Education*](#) (the “Roundtable”). Phil Weiser, Dean of Colorado Law, moderated the discussion, which followed the Chatham House Rules. The Roundtable brought together general counsels from major corporations, managing partners of large firms, law faculty, legal entrepreneurs, academics, and others.³ Notably, the discussion focused most intently on how the changes facing large law firms highlighted a range of challenges for the profession; it did not drill down on how other employers—most notably, governmental and non-profit ones—were affected by the trends driving today’s New Normal.

This report, which captures the themes discussed at the Roundtable, proceeds in six parts. After the Introduction, Part II examines the changing legal marketplace, the challenges it poses to legal education, and the emerging opportunities for graduates in today’s environment. Part III evaluates the importance of non-traditional competencies—at least from the perspective of what legal education has historically valued—in the New Normal. Part IV suggests several frameworks for teaching these competencies and evaluating a new lawyer’s educational and professional development. Part V proposes practical ways of delivering these new competencies through curriculum changes and new pathways to experience. Part VI provides a short conclusion.

II. The Changing Legal Marketplace

The New Normal has had a significant impact on legal education. Enrollment in the first-year class across the United States is now on a par with 1977 levels, when there were around 40 fewer law schools.⁴ The Roundtable began with a short discussion of the changing dynamics facing today’s job market, observing that they are driving a national conversation about the value proposition of law school and an increased skepticism about whether law school is worth the investment. In so doing, it discussed the emerging opportunities, including so-called “JD Advantage” positions, in today’s New Normal.

A. The Changing Job Market for Legal Services

Roundtable participants agreed that today’s changes are structural, not cyclical—that is, there is no going back to the old model. Consequently, it is likely that we are witnessing the unwinding of the traditional model of legal employment. Participants also agreed that, because of the structural changes to the legal market, law schools should rethink how they approach legal education in the New Normal.

³ See Appendix A for a full list of participants.

⁴ See Jennifer Smith, *First-Year Law School Enrollment at 1977 Levels*, THE WALL STREET JOURNAL (Dec. 17, 2013, 1:12 PM), <http://blogs.wsj.com/law/2013/12/17/first-year-law-school-enrollment-at-1977-levels/>; Bernard A. Burk, *What’s New About the New Normal: The Evolving Market for New Lawyers in the Twenty-First Century*, 55 (UNC Legal Studies Research Paper No. 2309497), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2309497.

Bill Mooz, Scholar in Residence, Colorado Law, opened the Roundtable by offering a brief history of the modern legal profession. For centuries, lawyers (usually working in law firms) served as the exclusive provider of any sort of legal service, with unauthorized practice of law regulations serving as a moat around their domain. The perception existed—often with the encouragement of lawyers—that legal matters universally were complex and required the skills of a learned legal professional. In reality, the tasks lawyers perform span a wide spectrum of complexity. At the top end are the “thinker” tasks that require the lawyer to handle issues of first impression, create new legal models and templates, or provide “bespoke” solutions.⁵ Below the thinker tasks sit “doer” tasks that are less complex and typically require the fairly standard application of Black Letter rules to solve basic legal problems.

Within the large law firm context, the roles within the legal services industry traditionally mapped to the different levels of task complexity. Under that model, junior associates would perform the doer tasks (e.g., document review, legal research, etc.) and develop their legal skills and judgment in the process. If they developed sufficiently, they would be promoted into a thinker role (notably, be made a partner), perform thinker tasks, and help train the new hires who replaced them in the doer roles.

A variety of forces over the past 25 years have caused this traditional model to crumble. Clients now know how the black box of legal services operates and realize that a multitude of alternative providers can perform doer tasks better, faster, and cheaper than law firms. They also realize that legal tasks can be disaggregated into their various components, taking what used to be a pure thinker task and turning it into a mix of thinker tasks and doer tasks, which could now be assigned to less-costly providers.⁶ These realizations coincided with the Internet boom that spawned a host of new legal IT tools and offered near seamless connectivity across the globe. As a practical matter, clients now had meaningful access to a broad array of alternative service providers.⁷

The Great Recession dropped a match into this combustible mix. The shrinking global economy meant that companies saw their revenues decline. The companies responded by cutting costs, with cost centers such as law departments being impacted most significantly. In short, clients now had a compelling incentive to change their buying patterns and the means to do so.

Faced with these economic realities, clients started using law firms more selectively. As shown in Exhibit A, many tasks previously performed by lawyers (and law firms) were either automated out of existence or moved to lower-cost

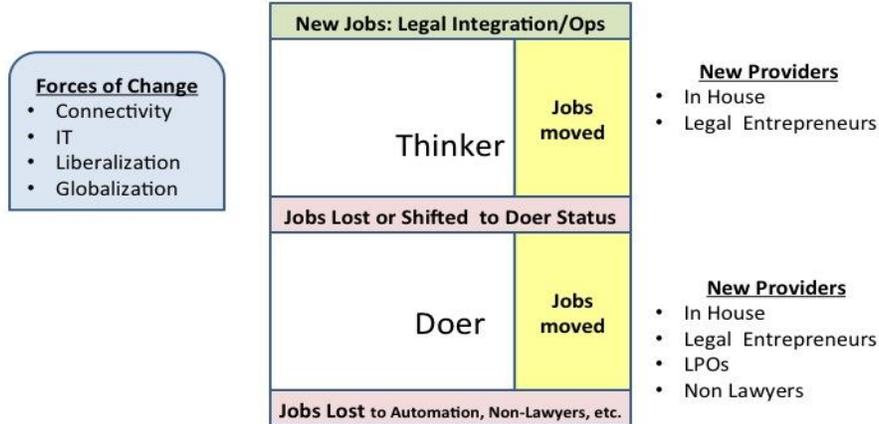
⁵ The term “bespoke” conjures up images of Savile Row where expert tailors hand make suits to clients’ exact measurements. Susskind, *supra* note 1, at 24.

⁶ Kaleb A. Sieh, *Law 2.0: Intelligent Architecture for Transactional Law*, SILICON FLATIRONS CTR., 5 (2010), <http://www.siliconflatirons.org/documents/publications/report/5Law2.0.pdf>.

⁷ See generally Susskind, *supra* note 1.

providers. The heaviest impact fell on the doer tasks, held largely by junior lawyers, impacting entry level hiring as a result.

Exhibit A Traditional Law Jobs



To appreciate the impact of this dynamic, consider, for example, the recent actions of Weil, Gotshal & Manges LLP. This 1,200-lawyer firm, which has been one of America’s most profitable,⁸ recently laid off 60 or 7% of its associates, reporting that the layoffs were “essential . . . to enable our firm to . . . retain its historic profitability in the new normal.”⁹ The firm’s managing partner further reported that, “If we thought this was a cycle and our business was going to pick up meaningfully next year, we would not be doing this.”¹⁰ In short, the New Normal—for many Big Firms—will continue to affect hiring even as the economy recovers.¹¹

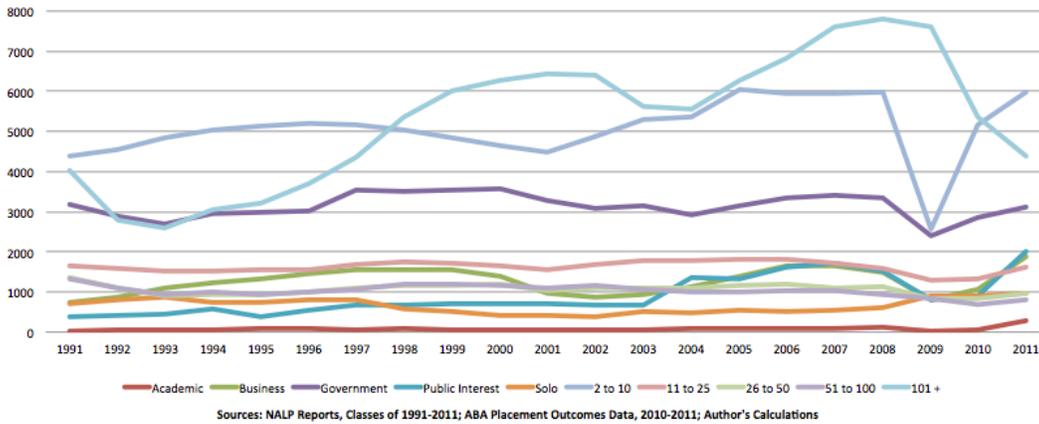
⁸ Burk, *supra* note 4, at 52

⁹ *Id.*

¹⁰ *Id.*

¹¹ A 2012 study conducted of AmLaw 200 firms revealed that 80% of those firms’ managers expected that new associate hiring would not increase in the next year. The Altman Weil Lawyers in Transition survey, which focuses on firms of fifty or more lawyers, also showed similar results. In 2009, only 11% of Big Firm managers, responding to the survey, considered the shrinking associate-hiring classes to be an enduring phenomenon. In comparison, the 2013 survey revealed that 62% believe smaller hiring classes are the new normal. Burk, *supra* note 4, at 52-53.

Exhibit B
Law Jobs By Employer Type
1991-2011
(Bar Passage Required Only)



As Exhibit B depicts, the greatest loss of jobs (in both percentage and overall numbers) has been from firms of 100 lawyers or more.¹² The number of graduates going to Big Firms has fallen by 33% during this time.¹³ By comparison, during the same period, non-law-firm jobs (e.g., judicial clerkships, public interest, etc.) fell by only 5%.¹⁴ The primary effect of these cuts is the loss of high paying jobs and erosion of the well-worn pathway to learning the practice of law. A secondary effect has been that many of the most qualified graduates now search for jobs in less sought after practice areas and locations—thereby displacing other, less well-credentialed graduates.¹⁵ As William Henderson explains, the overall effect of this dynamic is fewer pathways to learning the practice and a growing number of graduates who are not realizing a strong return on their investment.¹⁶

The Roundtable participants all confirmed that they are seeing these trends in their daily activities. They also identified three factors that they consider to be underlying root causes of these trends. First, many participants highlighted the expanded options available to them, describing how they had moved work to lower-cost providers, including in-house counsel, legal process outsourcers (LPOs), and alternative legal service providers.

Second, multiple Roundtable participants noted that the pricing of legal services by the lawyer-hour has hampered the ability of law firms to adapt to the cost pressures felt throughout the economy. As a result, these firms have lost their competitiveness and are losing work to more nimble providers. There are,

¹² *Id.* at 30-32.

¹³ *Id.* at 32.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 477 (2013).

however, a small number of firms that have adapted their business models away from pure hourly billing to something that better aligns with their clients' needs. These firms remain a small minority and many are boutiques that hire only seasoned lawyers.

Third, several Roundtable participants opined that the market for entry-level lawyers faces a supply and demand problem. "There are simply too many law students, faculty, and schools," said Randal S. Milch, Executive Vice President, Public Policy and General Counsel, Verizon Communications Inc., "We should treat this like we treat any other supply and demand problem . . . and have fewer law schools."

This correction is already underway. In 2004, roughly 100,000 people applied to law school¹⁷; in 2013, applications were around 59,426.¹⁸ This decline threatens the economics of the current system and indicates a waning belief among potential applicants in the value proposition of legal education. Roundtable participants agreed that the number of law schools likely would decline, with those making the necessary adjustments coming out on top.

B. Law School's Changing Value Proposition

Roundtable participants agreed that law schools must change in order to provide their students with a strong value proposition in the New Normal. In the Old Normal, students went to law school to develop basic competencies like legal reasoning and often expected to find employment at law firms upon graduation.¹⁹ Under that model, students expected the law firms to provide them with the skills, training, and professional development they needed to be successful and to pay them handsomely while they learned their craft. With the changed patterns of law firm hiring (particularly at Big Firms),²⁰ however, many graduates no longer have a clear pathway to learn the practice of law (or to pay off their debts).

In light of the changing landscape, law schools need to justify why the legal education they offer is worth the investment. In other words, are particular law schools enabling their students to develop the competencies and experiences that enable their graduates to obtain meaningful, viable employment in today's economy?²¹ This question must be answered by looking at today's (and tomorrow's) opportunities, not by what worked in the past.

¹⁷ Burk, *supra* note 4, at 55.

¹⁸ Staci Zaretsky, *Law School Applications Plummet*, ABOVE THE LAW (Aug. 20, 2013, 11:08 AM), <http://abovethelaw.com/2013/08/law-school-applications-continue-to-tumble/>.

¹⁹ See Henderson, *supra* note 16, at 477; *Working Paper ABA Taskforce on the Future of Legal Education* (ABA Task Force on the Future of Legal Educ., Working Paper August 1, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/aba_task_force_working_paper_august_2013_authcheckdam.pdf; Sieh, *supra* note 6, at 4.

²⁰ See Section II.A. for a discussion of the structural changes that have led to the New Normal in law firm employment.

²¹ See Section III.A. for a discussion of competencies.

The mix of opportunities available to new law graduates today differs from the past, but not entirely so. As shown in Exhibit A above, traditional law firm jobs continue to exist, albeit in smaller relative numbers than in the past. Many participants commented further that obtaining and succeeding at these jobs in the future will require lawyers to have additional skills beyond those that law schools have taught traditionally.

While many have chronicled the loss of legal jobs flowing from the New Normal, the dynamics of the New Normal have also produced at least two categories of new opportunities for law school graduates who possess the appropriate skill sets. First, as captured in Exhibit A above, is the “legal integrator,” or “legal operations manager.” The fact that legal projects are now being disaggregated into their constituent tasks, assigned to differing providers and re-aggregated into an integrated work product, gives rise to a need for managers with the skills “to manage and operate the divergent array of disaggregated tasks and heterogeneous suppliers,” said Bill Mooz. These “legal integrators” are in high demand and short supply as a number of Roundtable participants attested.

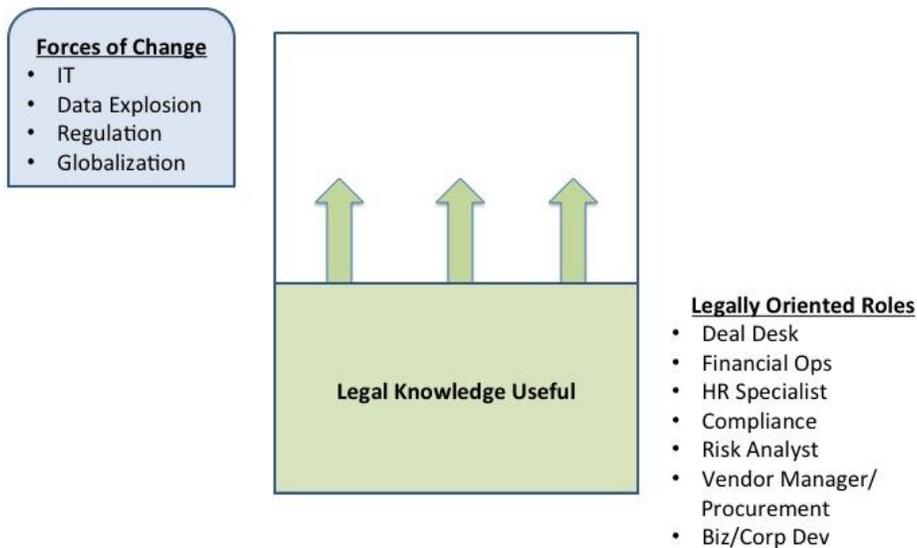
Second, the advent of globalization and expanded governmental regulation means a growing number of traditional business roles now require some level of legal training. These nontraditional opportunities present intriguing possibilities for many law school graduates if they possess the right set of additional competencies. Such roles exist in roles in financial operations, sales operations, human resources, compliance and risk management, procurement, and business and corporate development. Indeed, in 2001, the ABA officially recognized these “JD Advantage” jobs,²² for which the JD degree provides “a demonstrable advantage in obtaining or performing,” or for which employers seek to fill the position with JD degree holders or even require a JD.²³

²² Burk, *supra* note 4, at 16.

²³ ABA Section of Legal Education and Admission to the Bar, 2013 EMPLOYMENT QUESTIONNAIRE (FOR 2012 GRADUATES): INFORMATION & DEFINITIONS 4 (2013), available at <http://employmentsummary.abaquestionnaire.org>.

Exhibit C

Non-Legal/JD Advantage Jobs



In addressing the value of a JD for JD Advantage positions, Randy Milch discouraged attempts by law schools to expand the number of available jobs through an increased focus on JD Advantage jobs. “If the class of jobs requiring a JD is shrinking, then we should provide different educational tracks that more accurately reflect the demand for a JD,” he said. Others differed with Milch, explaining that part of the value of the JD degree remains in the long-term career profile offered by the degree.

On the topic of long-term career profiles, Mark Chandler, General Counsel, Cisco Systems Inc., said that there is a continuum for legal services and students need to know where they fit on that continuum. Someone with a 1 year masters of law degree will not have the same career profile as someone with a JD. Thus, law schools need to provide their graduates with a value proposition that allows them to thrive in the New Normal while still preserving the long-term career profile traditionally offered by the JD.

Law school’s value proposition for the New Normal retains much of the classical value of a law degree and seeks to develop new competencies that graduates need to thrive. Doing so must begin with a systemic effort to identify these competencies and evaluate how they can be developed. Part III turns to that very issue.

III. The Competencies that Students Need for the New Normal

The Roundtable highlighted the needs and challenges of equipping graduates for practicing in an evolving marketplace. This Report does not offer a comprehensive list of the desirable competencies, but instead frames the contours of this discussion by offering the thoughts of the Roundtable participants as to competencies they found to be most important. Indeed, many employers themselves are at a loss to define the critical competencies with care or rigor, underscoring how this whole topic remains a work-in-progress.

A. Core Competencies

To provide a starting point for discussing competencies, Helen Norton, Associate Dean for Academic Affairs and Associate Professor of Law, Colorado Law, and Deborah Cantrell, Associate Professor of Law, and Director of Clinical Programs, Colorado Law, provided a list of 26 competencies for successful lawyering developed by Marjorie M. Shultz and Sheldon Zedeck.²⁴ Roundtable participants used the list as a jumping off point for the discussion, focusing on the competencies that they believed would be the most important for success in the New Normal.

To frame the discussion of key competencies, Brad Bernthal Associate Professor of Law, Colorado Law, introduced what he calls the quad framework. Stated simply the four categories are: (1) doctrinal and theoretical analysis - the traditional way that law school classes are organized by subject matter, (2) skills - basic competencies of a lawyer such as writing and negotiation, (3) domain expertise - non-legal knowledge and insight that is required to thrive in an area of law, and (4) professionalism - capabilities suited to effective interaction in a workplace. As Bernthal explained, these categories are not comprehensive, but serve as an initial framework for mapping legal education.

i. Doctrinal and Theoretical Analysis

Although Roundtable participants did not highlight doctrinal and theoretical analysis, several participants emphasized the importance of the classic legal education in the New Normal. The first year of law school focuses on this area, both feeding traditional legal doctrine such as contracts, torts, and property as well as skills learned through the case method (e.g., analytic reasoning, critical reading, problem solving).

²⁴ Marjorie M. Shultz & Sheldon Zedeck, *Identification, Development, and Validation of Predictors for Successful Lawyering*, 26-27 (2008), <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.

Over 100 years ago, the case method was born from purposeful debates about how law schools should teach the law.²⁵ The case method teaches students how to think critically not through teaching them the logic behind the decisions, but through involving them in testing out those decisions and the judge's assumptions made when writing the opinion.²⁶ The case method not only teaches students the law it also teaches them second-order skills like analytical reasoning, critical reading, and problem solving. These skills serve as the minimum requirement for entering the profession, and offer a valuable entrée into many other fields.

ii. Skills

The New Normal requires skills that add value to legal services and remain adaptable to marketplace changes. Skill competencies include fundamental skills like persuasive writing and contract drafting, as well as modern practice skills. Another key set of skills that the Roundtable participants emphasized is the importance of process and project management, and utilizing technology.

As Connie Brenton, NetApp's Chief of Staff/Director of Legal Operations explained, "a paradigm shift is taking place. The legal services industry and legal education needs to prepare its students for twenty-first-century lawyering." Picking up on that theme, Darryl C. Hair, Vice President Legal Operation, DaVita HealthCare Partners Inc., said that when making outside hiring decisions, clients are looking for experts in process and project management.

Project management is the application of industrial methods like Six Sigma to make the execution of a project more efficient. These methods use data and discipline to improve efficiency and reduce the number of mistakes. Many lawyers increasingly are becoming project managers even though they lack this training.²⁷ When making outside hiring decisions, clients in the New Normal are looking for lawyers with expertise in these methods. Thus, a graduate with such training will be valuable to clients and firms alike.

A recent technology audit administered by Kia Motors to its outside counsel illustrates the growing emphasis in-house counsel are placing on using technology to deliver legal services more efficiently.²⁸ The test required associates to perform basic tasks like using Word to format a motion or Excel to build an index of arbitration exhibits, testing their ability to accomplish the tasks

²⁵ See Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 2 (1951).

²⁶ *Id.* at 2-3.

²⁷ Susskind, *supra* note 2, at 32.

²⁸ D. Casey Flaherty, *Could You Pass this In-House Counsel's Tech Test? If the Answer Is No, You May Be Losing Business*, ABA JOURNAL: LEGAL REBELS (Jul. 17, 2013, 7:30 AM), http://www.abajournal.com/legalrebels/article/could_you_pass_this_in-house_counsels_tech_test.

quickly and correctly by utilizing technology.²⁹ None of the associates tested passed. The audit demonstrates not only the need to master current technology, but also the importance of adopting new technology to improve efficiency and accuracy. Mindful of the importance of utilizing technology in the New Normal workplace, law schools need to ensure their students are developing critical technical competencies.

iii. Domain Expertise

One point that came through in the Roundtable and relates to the need to specialize is that today's lawyers must understand other domains (e.g., finance and accounting, the technology industry, human resources, etc.) to deliver legal counsel effectively. Participants agreed, for example, that even for a new lawyer, the ability to understand finance and accounting could add substantial value.

John Ryan, Chief Legal Officer, Level 3 Communications LLC, illustrated this value add through a story about a third-year law student who was working as a legal intern at Level 3. During the discussion of structuring a deal, the intern voiced concern whether the structure they were discussing would satisfy generally accepted accounting principles. The intern's accounting background allowed him to spot a critical issue in the deal and saved the legal team considerable time by avoiding the accounting department's pushback. With a basic understanding of finance and accounting, the intern was able to add tremendous value.

iv. Professionalism

Effectively building and leveraging relationships is critical to success in today's New Normal. In using the concept of "professionalism," Bernthal explained he is referring to the set of competencies necessary to be an effective professional. On this point, Roundtable participants saw both emotional intelligence and relationship skills (including the ability to empathize, listen, and work well in teams) as key aspects of professionalism.

Summarizing the few studies available on what makes an effective lawyer, Neil Hamilton found that clients value relationship building as a core competency—even beyond technical competency. In the legal services context, relationship competency has four different factors: "(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."³⁰ In all four

²⁹ Casey is currently working with Suffolk University Law School to automate the tech audit and provide it to law students as a technology competency-building tool. *Id.*

³⁰ Neil W. Hamilton, *Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism* 15 (U. of St. Thomas (Minn.) Legal Studies Research Paper No. 13-22), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271410.

factors, the relationship focus is toward serving clients' needs. To offer clients exceptional service, lawyers need to understand their clients' businesses as well as their expectations. "A real service mindset means doing your work so that the job of the person who you work for is easier," said Jason Lynch, Partner, Reilly Pozner LLP. As Deborah Cantrell highlighted, being "client-centered" is not the same thing as being a "hired gun"; that is, lawyers must maintain their own ethical compass to counsel clients on how to identify and pursue appropriate (and ethical) solutions.

Jason Lynch went on to say that lawyers should look to someone like Danny Meyer, a New York restaurateur, as an example of a pioneer in exceptional customer service. In the article *Masters Touch*, Meyer said, "Everyone supports each other – the GM takes care of the managers, the managers take care of the staff, and therefore the staff has no worries except to take care of the guests."³¹ One of Meyer's competitors noted that Meyer and his teams "have incredible empathy with their guests." Law firms and lawyers can learn from this model in both how they take care of clients and how to structure firms to facilitate attorneys in meeting their clients' needs.

Lee Reichert, Deputy General Counsel, Molson Coors Brewing Company, provided another example of exceptional service in European firms' practice of temporarily sending junior associates to clients. Through this practice, firms accomplish a number of things. First, by carrying the cost of the associates, the firms provide no cost personnel to their clients, building connections and loyalty between the firms and the clients. Second, the experience affords junior associates additional training opportunities and a better understanding of the clients' business models and objectives. Third, the associates build relationships with those clients, further strengthening the firm/client bonds. Lastly, when clients look to hire for their legal staff, they look first at those associates, and this in turn builds stronger ties between the clients and the firm.

Many participants stressed that law schools need to develop an entrepreneurial mindset in their students, meaning that students take ownership of their career path and consciously develop the competencies necessary to add value and succeed wherever they work.³² An entrepreneurial mindset is not new for many law graduates. Chris Gaddis, Head of Human Resources, JBS USA Holdings, Inc., said the New Normal looks a lot like the old normal that many graduates faced a decade ago. As Gaddis put it, the need to be more entrepreneurial is not new. To be sure, he acknowledged, "it may be the new normal for the top of the class, but for those in the middle and the bottom of the

³¹ *Masters Touch*, WINE SPECTATOR (May 31, 2012).

³² Phil Weiser, *Five Initiatives that Legal Education Needs*, ABA JOURNAL: LEGAL REBELS (Sep. 26, 2013, 7:30 AM), http://www.abajournal.com/legalrebels/article/five_initiatives_that_legal_education_needs. See Phil Weiser, *Professionalism and the New Normal*, 42 THE COLO. LAWYER 49 (Oct. 2013), available at <https://www.colorado.edu/law/sites/default/files/2013-ProfessionalismNewNormal-TheColoradoLawyer.pdf>.

class, we did not have Big Firm offers and had to figure it out as we went.”

Finally, a number of Roundtable participants stressed the importance of adaptability and resiliency. “The professionals who can adapt to change,” explained John Ryan, Chief Legal Officer, Level 3 Communications, “are the ones who will succeed.” Given the structural changes in how legal services are delivered (moving away from bespoke service), many argued that law schools must both develop adaptable professionals and develop their specific areas of specialization.

Although there are many different legal competency models available (developed by the industry and academics), there is substantial convergence on the professionalism competencies that make a successful and effective lawyer. Neil Hamilton reduced an extensive study of successful associates in AmLaw 100, showing that high-performers exhibited strengths in three areas: “(1) their mindset and philosophy; (2) managing the work environment and results; and (3) working and collaborating with others.”³³ As for whether and how professionalism can be taught, Part IV addresses this very point.

IV. Frameworks for Teaching and Measuring Competencies

A. Teaching Competencies

Considering how law schools should re-evaluate their teaching and curricula to teach critical competencies, the Roundtable discussed a number of possible approaches. In so doing, participants distinguished between competencies that are easy to teach but absent from the law school curriculum (e.g., project management and finance and accounting) and professional competencies (e.g., persistence, resilience, adaptability, etc.) that are harder to teach. Even as to the latter category, the discussion highlighted a few approaches that merit explanation.

As for an overall strategy, Michigan State Professor Daniel Katz suggested a shift in the law-school paradigm from a liberal arts college to a polytechnic institute. The polytechnic approach would teach the law as a set of technical subjects, focusing on the technical execution and delivery of legal services.³⁴ Because a high percentage of successful lawyers now have doctrinal, technology, design, and delivery competencies, the polytechnic approach would produce graduates with better career trajectories. “If MIT had a law school, clients and law firms would be interested in hiring from that school. MIT could compete immediately with Harvard and Yale,” said Katz.

³³ Hamilton, *supra* note 30, at 15.

³⁴ See *Definition of Polytechnic in English*, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/american_english/polytechnic (last visited Jan. 7, 2014).

Second, Jason Lynch mentioned looking to experts in their field outside law. He suggested, for example, that restaurateur Danny Meyer had much to teach lawyers about professionalism. As Lynch sees it, lessons from industry experts would provide the faculty with a jumping-off point for adding to the curriculum.

Finally, for areas like finance or project management, which already have distinguished academics teaching a well-defined curriculum, law schools should look to integrate some of these professors into the faculty. For subjects like finance and accounting outside faculty immediately provide domain expertise. Because these are already highly developed disciplines, outside faculty are often in the best position to develop best practices for teaching law students and paring down the curriculum to meet law students' specific needs.

The Roundtable participants generally agreed that law schools should not try to identify and develop these competencies on their own. Rather, the participants recognized that building the new competencies and having them lead to post-graduate employment stands a much better chance of success if individual law schools work closely with the entire ecosystem of clients, law firms, and other law schools.³⁵ Within each individual law school, as William Henderson argues in *A Blueprint for Change*, the faculty need not be united on such a mission; in his view, a critical mass of 20% of a faculty devoted to developing these competencies and delivering them to the students would be sufficient.³⁶ As Henderson concludes, the opportunities for law schools are to develop analytical thinkers capable of collaboration and leadership, skilled professionals who can gather and process data effectively, and creative problem solvers with the requisite emotional intelligence and objectivity to succeed.³⁷

Some Roundtable participants voiced concern over whether law schools are the right place to teach professional competencies and whether these competencies are even teachable. Rich Baer, Senior Vice President and General Counsel, Liberty Media Corporation and Liberty Interactive Corporation, expressed concern that while character is an essential quality for a legal professional, it is not something that law schools can teach well. Kendall, Koenig & Oelsner Partner David Kendall echoed this sentiment, saying that these competencies should be a focus of the law school admissions process. Others disagreed and the discussion produced a few suggestions for teaching these competencies.

Other Roundtable participants disagreed and highlighted the important ways that law schools can and do help students develop their character. In

³⁵ See Connie Brenton, *Law Schools Implement Corporate Product Development Methodologies to Produce 'Practice Ready' Lawyers*, INSIDE COUNSEL 2 (Jan. 1, 2014), <http://www.insidecounsel.com/2014/01/01/law-schools-implement-corporate-product-development?t=technology>.

³⁶ Henderson, *supra* note 16, at 506.

³⁷ See *id.* at 504-05.

particular, Deborah Cantrell explained how “practical wisdom,” a concept explained by Barry Schwartz and Ken Sharpe,³⁸ is teachable. To be sure, Cantrell acknowledged, “Whether law schools currently are doing a good job at such teaching is an entirely separate question.” Brad Bernthal picked up this theme; explaining how “deliberate practice” can develop professional skills like practical wisdom and creative problem solving. Deliberate practice is a psychology term of art; it involves breaking a skill into its parts and improving on those parts through practice and feedback.³⁹ Law school clinics are particularly significant in this regard because they provide students with opportunities to interact with clients, counsel them on their choices, and reflect on how they approached their client interactions.

Others picked up the theme of guided experience as an important pedagogical method. Robert Novick, Co-Managing Partner, Wilmer Cutler Pickering Hale and Dorr LLP, added to the praise about clinics by suggesting how students can also benefit from the opportunity to take a semester to work in an in-house legal department. This experience would allow students to develop both their emotional intelligence in a business setting as well as build relationships with particular clients. As Novick put it, knowing how a company works is worth much more than what students learn in the final year of law school.

The key challenge for law schools is to help their students recognize the importance of these competencies for future professional success.⁴⁰ Part of this challenge is educating students about how to “use all the experiences of law school to achieve [the goal of developing the core competencies], including the required and elective curriculum, clinics, externships, simulations, clerkships through pro bono service, and student organizations.”⁴¹ The students who make the most of this opportunity will be equipped to thrive in the New Normal.

B. Measuring Competencies

In addition to defining the competencies that underlie the value proposition that law schools can provide in the New Normal, Roundtable participants emphasized the importance of developing a system for measuring students’ proficiencies in each competency. The Roundtable participants generally agreed that developing an effective measurement system requires input from both industry and academia. Jane Salance, Director of Legal Affairs, Biodesix, Inc., remarked, “Codifying competencies is essential to helping both employers and students know where a potential hire fits on the professional spectrum.” Without employer buy-in, Salance explained, students will be justifiably skeptical of the value of any system.

³⁸ Barry Schwartz and Kenneth Sharpe, PRACTICAL WISDOM: THE RIGHT WAY TO THE RIGHT THING (1st ed. 2011).

³⁹ *Practice (Learning Method)*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Practice_\(learning_method\)](http://en.wikipedia.org/wiki/Practice_(learning_method)) (last visited March 30, 2014).

⁴⁰ Hamilton, *supra* note 30, at 22.

⁴¹ *Id.*

Building an effective system includes input from employers with well-established metrics along with those with a less systematic approach. Mark Chandler, General Counsel, Cisco Systems, Inc., explained that Cisco uses the acronym CLEAD (which stands for collaborate, learn, execute, accelerate, and disrupt) to measure for leadership competencies. Cisco uses this measurement in both hiring decisions and performance evaluations, which are the basis for promotions. For employers who do not have a system in place, law schools need to understand those employers' needs. By distilling this input and developing established metrics, law schools can develop a deliverable that is valuable to educating students and guiding employers during the hiring process.

Like the use of sabermetrics popularized by “Moneyball,” competency models can help students better understand their strengths and weakness and find programs that can help them improve. Brad Bernthal provided the National Tennis Rating Program (“NTRP”) as an example of classifying skill levels and helping participants get the most out of the sport.⁴² The system consists of .5 increments on a scale of 1.0 to 7.0 with 7.0 being a world-class player. NTRP provides guidelines for self-evaluation, which are then tested based on the results of match play. A similar approach, like Vail Corp’s former General Counsel used for evaluating in-house lawyers could help students understand where they sit on the spectrum of professional development. Such a competency model would need to do two things: provide an objective measure of where one sits on the competency spectrum and correlate course offerings with the competencies that each course develops.

V. Creating New Pathways and Programs to Meet the Changing Legal Marketplace

In light of the challenges and opportunities presented by the New Normal, law schools need to offer new pathways for students to thrive. Roundtable participants suggested several changes. In particular, participants stressed the importance of work experience, providing several creative solutions that could aid today’s students in a difficult job market.

Roundtable participants agreed that work experience was essential to the future success of law school graduates. Jason Mendelson, Managing Director of the Foundry Group, highlighted that doer jobs, when done well, are an excellent place to develop sound judgment—the foundation of an attorney’s value to the client.⁴³ Moreover, Roundtable participants highlighted how work experiences can enable students to develop emotional intelligence and domain expertise. In light of its importance, Roundtable participants proposed several experimental

⁴² *About NTRP & Self-Rating*, USTA LEAGUE, http://www.usta.com/Adult-Tennis/USTA-League/Information/About_NTRP/ (last visited Jan. 3, 2014).

⁴³ *See also* Sieh, *supra* note 6, at 4.

approaches to providing students with work experience before, during, and after law school.

A. Working Prior to Law School

Roundtable participants emphasized the importance of admissions seeking out candidates with previous professional experience. As an alternative, Chris Gaddis suggested an arrangement where law schools and companies could enter into partnerships whereby companies would provide prospective students with two years of work experience before they enter law school. Participants could demonstrate their purpose in attending law school and develop core competencies without taking on additional student loans. Students, after the two years, could make an informed choice about entering law school.

B. Working during Law School

Roundtable participants agreed that working during law school builds relationships and domain expertise, which future employers (both law firms and in-house counsel) value. Many of the Roundtable participants stressed the importance of incorporating work experience into the curriculum. For law schools with robust clinical programs, this call is currently being heeded, as students are afforded real-world settings to practice what they learn, make mistakes, and benefit from guided supervision.

In addition to clinics, law schools can develop a range of other creative programs to integrate work experience into the curriculum. One creative example is Colorado Law's ICT summer institute, which will be inaugurated in Summer 2014. This program seeks to complement the traditional first-year curriculum with a variety of the competencies necessary to succeed as a lawyer in the Information & Communications Technology (ICT) industry. It does so through a two-part program that combines classroom sessions and paid internships with technology companies.

The institute begins with a four-week boot camp in core competencies for the New Normal, covering: (i) business fundamentals (e.g., finance, accounting, project management), (ii) an overview of the ICT industry, (iii) skills needed to meet the legal needs of the ICT industry, and (iv) efficient delivery of legal services using technology and process. After the boot camp, the program places students with tech companies for between ten weeks and seven months. Students will meet regularly over the summer to debrief on what they have been learning in their jobs and to explore various aspects of professionalism (e.g., managing client expectations, communicating effectively, etc.). By the end of the summer, students will gain valuable work experience and build domain expertise within the ICT industry. This experience likely will help students make the most out of their second and third years of law school, choosing courses based on their growing understanding of clients' needs. It also should help them deliver value faster to clients once they graduate from law school.

Programs like the summer institute enable law schools to help their students become skilled practitioners through supervised work experience. The institute also provides an opportunity to test curriculum changes, and if it is successful, a short-term win needed to drive further change.⁴⁴ The summer institute is an example of one of many experiments that law schools are running to equip their students for the New Normal.⁴⁵

C. Working after Law School

Traditionally, students gained work experience as associates, developing legal judgment in doer jobs.⁴⁶ Because fewer associate positions are available, graduates need to be more creative than ever in finding entry-level opportunities. One option, which many students pursue, is to take a JD Advantage job and continue to look for traditional firm work.⁴⁷ Unfortunately, to many in the legal community, anything other than a traditional legal job tarnishes the employee with a stigma of not being a real lawyer. Roundtable participants discussed two experimental approaches to overcoming the potential stigma of such jobs where they provide pathways for graduates to develop core competencies.

In considering the stigma associated with JD Advantage jobs, Bill Mooz noted that judicial clerkships do not suffer from the same stigma—in fact, judicial clerkships and a range of post-graduate fellowship programs (like the Skadden Fellowship) are quite prestigious. Mooz suggested that law schools should use the judicial clerkship model as a springboard to create equally prestigious transactional clerkships. A clerkship where the recent graduate serves as a contract manager in a corporate legal department is one example. Such a position could enable recent graduates to negotiate 50+ deals in the space of a year, and do so from a foundation of templates, playbooks, and escalation paths. At the end of his/her term, the clerk likely will know more about structuring, drafting and negotiating agreements than most second year associates.

Another option is the Legal Residency Model developed by Colorado Law and the University of Denver Sturm College of Law.⁴⁸ In discussing the value of this program for both graduates and employers, Lee Reichert, Deputy General Counsel, Molson Coors Brewing Company, remarked that he has found graduates “turning down firm jobs to be a part of the program.” They recognize the program as a natural transition out of law school and an excellent avenue for developing

⁴⁴ See John P. Kotter, *Leading Change: Why Transformation Efforts Fail*, HARV. BUS. REV., Jan. 2007, at 102.

⁴⁵ Brenton, *supra* note 35, at 2.

⁴⁶ The reliance on Big Firms to provide training is misplaced in some cases. Reviewing documents has a short learning curve—only a few hours—and over the course of two years, associates devoting substantial time to document review projects learn very little about practicing law. See Susskind, *supra* note 1, at 141-42.

⁴⁷ Burk, *supra* note 4, at 18.

⁴⁸ *Legal Residency at Colorado Law*, COLORADO LAW, <http://www.colorado.edu/law/careers/information-employers/legal-residency-colorado-law> (last visited March 20, 2014).

their skills. The upshot for corporations is not having to hire outside counsel to staff these doer jobs. Reichert went on to say their outside counsel has embraced the program and has even taken on some of the burden for training these legal residents.

Both the legal residency and the transactional clerkship are examples of new pathways where students can gain legal experience. The crux of the experiments is whether graduates can develop core competencies in alternative jobs without the negative stigma of holding a non-firm job. As a beneficiary of a similar program, recent graduate Frank Morroni related that he is not only learning legal skills but he is also learning about Legal OnRamp's business. In the short term, these programs promise to validate such alternative pathways for gaining experience and developing core competencies such as judgment, emotional intelligence, and domain expertise.

VI. Conclusion

The Roundtable discussion provided an opportunity for lawyers, general counsel, law professors, and others to grapple with a set of questions that cut to the core of the challenges facing the future of legal education in today's New Normal. One clear point of consensus was that law schools needed to adapt their curriculum to equip graduates with a set of competencies not nurtured by the traditional curriculum. Moreover, the Roundtable participants highlighted the need for students to gain work experience before, during, and after law school. In doing so, law schools can also seek to measure their students' competencies during the course of law school, enabling them to understand and address their strengths and weaknesses. As the Roundtable participants discussed, law schools that effectively execute on these efforts and produce graduates with a long-term advantage in the job market will continue to provide a strong value proposition.

Appendix A
New Normal – Roundtable Participants
(Alphabetical by Roundtable participants' last name)

Adam J. Agron	Shareholder, Brownstein Hyatt Farber Schreck, LLP
Rich Baer	Senior Vice President and General Counsel, Liberty Media Corporation and Liberty Interactive Corporation
David Bennett	Dean's Office Fellow, Colorado Law
Brad Bernthal	Associate Professor of Law, Colorado Law
Connie Brenton	Chief of Staff/Director of Legal Operations, NetApp Inc.
Deborah Cantrell	Associate Professor of Law and Director of Clinical Programs, Colorado Law
Mark Chandler	Senior Vice President, General Counsel and Secretary, and Chief Compliance Officer, Cisco Systems, Inc.
Dan Fredrickson	Attorney, Kendall, Koenig & Oelsner PC
Marci Fulton	Assistant Dean for Outreach, Engagement, and Alumni Relations, Colorado Law
Christopher Gaddis	Head of HR, JBS USA Holdings, Inc.
Hugh Gottschalk	Partner and President, Wheeler, Trigg O'Donnell LLP
Darryl C. Hair	Vice President Legal Operations, DaVita HealthCare Partners Inc.
William Henderson	Professor of Law, Indiana University Maurer School of Law
Roxanne Jensen, J.D.	Managing Director, Catapult Growth Partners
Daniel Martin Katz	Associate Professor of Law, Michigan State University College of Law
David J. Kendall	Partner, Kendall, Koenig & Oelsner PC
Whiting Dimock Leary	Senior Assistant Dean of Students, Colorado Law
Paul Lippe	Founder and CEO, OnRamp System Inc.
Timothy Loomis	Vice President, Chief Patent Counsel, Qualcomm Incorporated
Jason Lynch	Partner, Reilly Pozner LLP
Jason Mendelson	Managing Director, Foundry Group
Randal S. Milch	Executive Vice President, Public Policy and General Counsel, Verizon Communications Inc.
Bill Mooz	Visiting Scholar in Residence, Colorado Law

Helen Norton	Associate Dean for Academic Affairs and Associate Professor of Law, Colorado Law
Robert T. Novick	Co-Managing Partner, Wilmer Cutler Pickering Hale and Dorr LLP
Paul Ohm	Associate Professor of Law, Colorado Law
Scott Peppet	Professor of Law, Colorado Law
Lee Reichert	Deputy General Counsel, Molson Coors Brewing Company
Blake Reid	Assistant Clinical Professor, Colorado Law
Todd Rogers	Assistant Dean for Career Development, Colorado Law
John Ryan	Chief Legal Officer, Level 3 Communications, LLC
Jane Salance	Director of Legal Affairs, Biodesix, Inc.
Harry Surden	Associate Professor of Law, Colorado Law
Phil Weiser	Dean, Colorado Law
Nicholas White	General Counsel, JBS USA Holdings, Inc.

Appendix B Roundtable Reading List

Bernard A. Burk, *What's New About the New Normal: The Evolving Market for New Lawyers in the Twenty-First Century* (UNC Legal Studies Research Paper No. 2309497), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2309497.

John P. Kotter, *Leading Change: Why Transformation Efforts Fail*, HARV. BUS. REV., Jan. 2007, at 96.

Neil W. Hamilton, *Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism* (U of St. Thomas (Minn.) Legal Studies Research Paper No. 13-22), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271410.

William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461 (2013).

William D. Henderson, *Law School 4.0: Are Law Schools Relevant to the Future of Law?*, EMPIRICAL LEGAL STUD. (July 2, 2009, 11:58 AM), http://www.elsblog.org/the_empirical_legal_studi/2009/07/are-law-schools-part-of-problem-or-the-solution.html.

Richard Susskind, *Tomorrow's Lawyers*, LAW PRACTICE, July/Aug. 2013, http://www.americanbar.org/publications/law_practice_magazine/2013/july-august/tomorrows-lawyers.html.

Bryn Vaaler, *Codifying Competencies*, LAW FIRM PARTNERSHIP AND BENEFITS REPORT (Law Journal Newsletters), Jan. 2005, at 1.

Phil Weiser, *Five Initiatives that Legal Education Needs*, ABA JOURNAL: LEGAL REBELS (Sep. 26, 2013, 7:30 AM), http://www.abajournal.com/legalrebels/article/five_initiatives_that_legal_education_needs.

Working Paper ABA Taskforce on the Future of Legal Education (ABA Task Force on the Future of Legal Educ., Working Paper August 1, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/aba_task_force_working_paper_august_2013.authcheckdam.pdf.