

Silicon Flatirons



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

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

Law School Innovation

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In the aftermath of the Great Recession in 2008-09, the structure and economics of the legal profession continue to change.¹ For law schools, the earlier era was one where admissions decisions could be made solely on quantitative credentials (GPA and LSAT), career development consisted largely of developing relationships with law firms and some governmental employers, and professional development and training were largely out-sourced to law firms (or did not exist). Today's emerging legal services landscape requires law schools to take a hard look at how to develop law students in an environment where many are skeptical of the value of a legal education. For the law schools that are grappling with a changing landscape, there is a unique opportunity to innovate and experiment—in effect, developing the framework for today's “new normal” legal education. This report discusses a few key elements of this emerging framework and outlines strategies for law schools to pursue.

I. Introduction and Background

Over the last several years, the University of Colorado Law School and the Silicon Flatirons Center have taken a proactive role in conceptualizing the changing legal environment and its impact on legal education.² Increasingly, law schools are starting to ask how they need to adapt to meet the demands of a changing legal marketplace. To that end, the American Bar Association (“ABA”) recently asked law schools to define and articulate a set of learning outcomes, underscoring that law students need to learn not only legal analysis and reasoning (“how to think like a lawyer”), but more broadly, they need to develop the “skills needed for competent

¹ *The New York Times* recently reported on a Georgetown University Law School report that put the challenges in stark terms: “What once was a seller’s market has now clearly become a buyer’s market, and the ramifications of that change are significant.” Elizabeth Olson, *Law Firms Risking Obsolescence, Report Says*, THE NEW YORK TIMES (Jan. 8, 2016), http://www.nytimes.com/2016/01/09/business/dealbook/law-firms-risking-obsolescence-report-says.html?_r=0.

² Kaleb Sieh, *Law 2.0: Intelligent Architecture for Transactional Law* (Silicon Flatirons Ctr. Aug. 2010), available at <http://www.silicon-flatirons.org/documents/publications/report/SIEHLaw2.0.pdf>; Theresa Kerfoot, *Law 2.0: The New Continuum of Legal Education* (Silicon Flatirons Ctr. Oct. 2012), available at <http://www.silicon-flatirons.org/documents/publications/report/201210Law2.0Report.pdf>; David Bennett, *The New Normal and the Challenge for Legal Education* (Silicon Flatirons Ctr. Apr. 7, 2014), available at <http://www.silicon-flatirons.org/documents/publications/report/201404NewNormalReport.pdf>; Kait Hildner, *Roundtable Discussion on Core Competencies for Effective Lawyers* (May 2014), available at <https://www.colorado.edu/law/sites/default/files/CompetenciesRoundtable2014Final%20.pdf>; Bill Mooz and Andy Evans, *Ongoing Innovation in Legal Education* (Silicon Flatirons Ctr. Jul. 27, 2015), available at <http://www.silicon-flatirons.org/documents/publications/report/201506LawInnovationReport.pdf>; Andy Evans, *Different Shapes, Common Patterns; Emerging Approaches to Teach Innovation Within Higher Education* (Silicon Flatirons Ctr. Sep. 9, 2015), available at <http://www.silicon-flatirons.org/documents/publications/report/201509ShapesReport.pdf>. The Silicon Flatirons Center also hosted a conference on law school innovation that wrestled with these themes. See *The Future of Law School Innovation*, available at <http://www.silicon-flatirons.org/events.php?id=1440>. Dean Phil Weiser has also written about these issues. See, e.g., Philip J. Weiser, *Professionalism in the New Normal*, 42 THE COLORADO LAWYER 49 (October 2013), available at <https://www.colorado.edu/law/sites/default/files/2013-ProfessionalismNewNormal-TheColoradoLawyer.pdf>; Phil Weiser, *Five Initiatives that Legal Education Needs*, ABA JOURNAL (September 26, 2013), available at http://www.abajournal.com/legalrebels/article/five_initiatives_that_legal_education_needs.

and ethical participation as a member of the legal profession.”³ For law schools focused only on traditional classes and end-of-semester exams, the clear message from the ABA requirement is that “thinking like a lawyer” and taking law school exams well is not a sufficient pedagogical strategy for preparing students to practice law. As Cisco General Counsel Mark Chandler reported at a prior Silicon Flatirons roundtable discussion, the challenge for law schools is to develop “lawyers who can think like clients.”⁴

On January 4, 2016, as part of its ongoing commitment to exploring law school innovation, Silicon Flatirons brought together thought leaders from academia, private practice, in-house legal departments, and alternative legal service providers to evaluate what is known about this changing education model and what important work lies ahead. Prior discussions hosted by Silicon Flatirons grappled with different elements of the law school innovation opportunity and the “Law 2.0” movement more generally.⁵ For this session, in order to develop a foundation for a specific set of reforms to legal education, the Roundtable participants focused on ongoing research efforts and data-driven analyses.

Law schools and legal professionals have traditionally failed—outside of grades—to articulate specific learning outcomes that predict professional success. A more rigorous focus on data and testing promises to point the way toward new approaches to legal education that emphasize critical competencies.⁶ To make this change, however, legal educators and members of the profession will need to overcome a series of biases that reinforce the traditional model, including confirmation bias (looking to prove what one already believes, or wants to believe).⁷ By way of illustration, traditional grade-focused approaches to legal education are analogous to the scene in the movie “Moneyball” where an old-school scout concluded of one player, “He can’t be a good player. He has an ugly girlfriend!”⁸ By contrast, Billy Beane, the Oakland A’s General Manager, calls for a relentless focus on data (notably, on-base percentage). In the world of developing and evaluating legal talent, data has not always been available; thus, the Moneyball approach is only just taking shape. In today’s world, however, those who do not collect or analyze data are being willfully ignorant of what matters. Reflecting this approach, Roundtable participants explained how they are working to overcome the “old-school scout” pitfall by

³ AMERICAN BAR ASSOCIATION, MANAGING DIRECTOR’S GUIDANCE MEMO: STANDARDS 301, 302, 314 AND 315 (June 2015).

⁴ Mooz and Evans, *supra* note 2, at 9.

⁵ See *supra* note 2.

⁶ See, e.g., Kristina McElheran and Erik Brynjolfsson, *The Rise of Data-Driven Decision Making Is Real but Uneven*, HARVARD BUSINESS REVIEW (Feb 3, 2016), <https://hbr.org/2016/02/the-rise-of-data-driven-decision-making-is-real-but-uneven>.

⁷ For a discussion of this challenge, see Daniel Kahneman, *Don’t Blink! The Hazards of Confidence*, THE NEW YORK TIMES (Oct. 9, 2011), <http://www.nytimes.com/2011/10/23/magazine/dont-blink-the-hazards-of-confidence.html?pagewanted=all>.

⁸ MONEYBALL (Columbia Pictures 2011).

reviewing hard data that challenges the assumptions of the traditional approach to defining professional success.⁹

The Roundtable participants analyzed four principal data sources.¹⁰ First, Alexia Brunet Marks and Scott Moss, Professors of Law at University of Colorado Law School, discussed their findings on holistic admissions and how new metrics can better predict who will succeed in law school. Second, Gallup presented research assessing which educational experiences lead to law school satisfaction and successful career engagement. Third, participants discussed data from the *Educating Tomorrow's Lawyers* (“ETL”) initiative of the Institute for the Advancement of the American Legal System (“IAALS”) that focused on the importance of professional skills (as opposed to other competencies) to employers. Finally, Bill Henderson, Professor of Law at Indiana University Maurer School of Law, presented a competency model for how lawyers develop and how law firms should recruit and train lawyers.

The research presented at the Roundtable provided several Moneyball-like moments. For instance, the data shared by Gallup (and discussed further in Section III) highlighted the disconnect between the key types of experiences that nurture engaged employees and the types of experiences for which employers screen when hiring, promoting, or paying employees. To be sure, some employers evaluate a broader range of competencies than the ability to do well on traditional law school exams.¹¹ Nonetheless, despite growing evidence that professional skills matter significantly in determining success, too few programs train employees for such skills and too few employers seek to hire employees based on them. As Gallup reported with respect to employees generally, “Only 11 percent of C-level executives strongly agree that college graduates have the skills and competencies their business needs. It’s time for us all to dig beneath the surface of resumes, grades and test scores and look to the elements that matter most to workplace success.”¹²

In short, the research presented and discussed below provides support for the importance of non-GPA-related factors in law school and post-graduation success. Given the importance of experiences that raise the level of professionalism, readiness, and trust with employers, law schools need to think hard about how to design the law school experience. At Colorado Law, even before the ABA’s call for a focus on learning outcomes, students were told to develop four sets of competencies while in law school: (1) rigorous analytical skills, critical thinking, and thinking like a lawyer; (2) practical legal skills; (3) subject matter expertise; and (4) professional skills. The

⁹ For the original explication of “Moneyball,” see Michael Lewis, *Moneyball: The Art of Winning an Unfair Game* (2003).

¹⁰ The discussion followed the Chatham House Rule, meaning that the participants were only quoted with their permission.

¹¹ See, e.g., Phil Weiser, *How Some Law Firms Are Innovating When It Comes to Hiring*, ABA JOURNAL (Jul. 15, 2015), http://www.abajournal.com/legalrebels/article/how_law_firms_are_innovating_when_it_comes_to_hiring.

¹² Brandon Busteded and Sean Seymour, *Many College Graduates Not Equipped for Workplace Success* (Gallup, Inc. Sep. 23, 2015), http://www.gallup.com/businessjournal/185804/college-graduates-not-equipped-workplace-success.aspx?g_source=&g_medium=&g_campaign=tiles.

goal, as Dean Phil Weiser explained to each new 1L class, is for each student to build his or her own portfolio, developing valuable competencies through curricular, extracurricular, and work experiences. In so doing, students can benefit from both assigned academic advisors and mentors from outside the law school. At the Roundtable, a core focus of the discussion was how to ensure that an increasing number of students create and follow through on effective individualized learning plans that develop the core competencies they need to be successful.

This report proceeds in five parts. After this Introduction, Part II reviews the research noted above, highlighting which competencies are most significant in predicting success in law school and the workplace. Part III evaluates strategies for developing key competencies, and Part IV discusses the importance of an ongoing dialogue between law schools and employers. Part V offers a short conclusion.

II. Identifying and Selecting the Right Competencies

A. Skills and Competencies Employers Value Most Today

It is undeniable that the legal profession looks far different today than it did 15 years ago. As Bill Mooz, Visiting Scholar in Residence at University of Colorado Law School, pointed out at the Roundtable, “The pace of change outside of our world is increasing dramatically. We are in the middle of one of the single biggest shifts in history in the way that professional services are delivered.”¹³ A generation ago, a new lawyer could successfully enter practice following three years of learning how to *think* like a lawyer. The lawyer could save learning how to *be* a lawyer until after he or she was on the job and able to connect theory with practical experience. Today’s legal profession no longer works this way. Now, new lawyers must possess a breadth of competencies that were traditionally reserved for learning in the first few years of practice.

There are various approaches to identifying the competencies a twenty-first-century lawyer needs in order to serve as an effective counsel and leader. In a paper published by the Center on the Legal Profession at Harvard Law School, the authors frame the issue in terms of traditional and complementary competencies—traditional competencies include legal research, analysis, and writing; complementary competencies (which are the focus of this report) include skills such as creative thinking and work ethic.¹⁴ Today, clients demand more from their lawyers, including an expanding array of complementary creative, business, and communication skills.¹⁵ Tom Finke, Managing Director of West Region Operations at Axiom, described this phenomena as the need

¹³ See also William D. Henderson, *A Blueprint for Change*, 40 Pepp. L. Rev. 461, 479 (2013) (“Things are getting tougher for law schools because we train our graduates for the legal *services* market. Yet, the legal services market is gradually being upended by new entrants who are offering legal *inputs* and legal *products*...”) (emphasis in original).

¹⁴ Ben W. Heineman, Jr. et al., *Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century* (Center on the Legal Profession at Harvard Law School Nov. 20, 2014).

¹⁵ *Id.* at Section II.C (describing in detail the complementary competencies required of today’s lawyer).

for new lawyers to have emotional intelligence in order to drive exceptional performance in the workplace.

Emerging analyses address which competencies best predict future success. Consider, for example, that several internal law firm studies designed to build success profiles for attorneys indicate that aptitudinal factors (e.g., higher LSAT scores, which translate into attendance at more elite law schools) have little impact as markers of future success.¹⁶ Rather, attitudinal factors (e.g., work engagement and showing up on time, which are positively correlated with higher levels of motivation) fare better as predictors of future success.¹⁷ Roundtable participants' comments reinforced these findings. According to Roxanne Jensen, founder of EvolveLaw, a consulting firm that facilitates strategic law firm development and growth, another “critical competency for anyone entering and leading the New Normal legal market is entrepreneurial initiative—the ability to engage in disruptive innovation.” Colorado Law Professor Brad Bernthal described “being entrepreneurial” in the legal context as the innate ability to tackle traditional problems and navigate uncertain conditions in creative ways that use iterative methodologies. Additional competencies like empathy, project management, and ethical behavior (including respect for confidentiality) are also highly valued and indicative of career success.

ETL reports similar results from its research. Working with law schools, educators, practitioners, and other legal employers, ETL has launched a multi-phase project called Foundations for Practice to:

1. Identify the foundations entry-level lawyers need to launch successful careers in the legal profession;
2. Develop measurable models of legal education that support these foundations; and
3. Align market needs with hiring practices to incentivize positive improvements.¹⁸

For step one of the Foundations for Practice project, ETL created a detailed survey that it sent to over 700,000 lawyers in 37 states. The survey sought to determine the skills, competencies, and characteristics that lawyers need for success, and whether they are necessary when lawyers graduate from law school or can be developed over time. ETL received over 24,000 responses from a diverse group of lawyers in a broad array of employment settings. The results were eye-opening, leading ETL to conclude that attitudinal factors and professionalism were viewed as more necessary upon graduation than legal skills or knowledge. Survey respondents indicated that, at

¹⁶ William D. Henderson, *Solving the Legal Profession's Diversity Problem*, PD QUARTERLY 27 (National Association for Law Placement, Inc. Feb. 2016).

¹⁷ *Id.*

¹⁸ Institute for the Advancement of the American Legal System, *Background on Educating Tomorrow's Lawyers and Foundations for Practice* (2015) (unpublished).

graduation, employers value soft skills (like diligence, conscientiousness, and common sense) more than traditional legal skills (such as trial advocacy, conducting depositions, and contract negotiations). Although soft skills and traditional legal skills are both viewed as important, employers recognized that technical legal skills can be developed over time whereas soft skills are highly desirable from day one.¹⁹

In short, the data suggests that new lawyers must demonstrate certain characteristics, along with both legal *and* professional competencies, to succeed. After all, law school graduates increasingly follow non-traditional career trajectories. With shrinking opportunities in law firms, recent law school graduates are increasingly pursuing in-house legal positions, government jobs, and so-called “JD Advantage” roles that require a mix of legal and professional skills.²⁰ Consequently, law school graduates must adapt their skill set to sector-specific demands to be successful.²¹

B. Recruiting the Most Promising Students

In light of the high value that employers place on professional skills, law schools have an opportunity and obligation to better prepare students for practice. Law schools must recognize that thinking like a lawyer is only one of many skills they must teach.²² Consequently, law schools must take on the additional responsibilities associated with developing students’ professional skills.

To maximize the effectiveness of new innovations, law schools must also reconsider how to attract—and perhaps redefine—the “best” students, particularly those who already show promise in a wide range of competencies. Traditionally, admissions committees placed heavy weight on undergraduate GPA and LSAT scores, due in part to their consideration in U.S. News & World Report rankings.²³ While GPA and LSAT scores remain valuable metrics for assessing aptitude, should admissions committees continue to emphasize them so heavily? Are there other measures that better predict professional success, both in law school and in practice?

New data suggests how law schools should look beyond GPA and LSAT to identify the most promising applicants. In particular, an empirical study by Professor Marks and Professor Moss identifies alternative factors that better predict success in law school and post-graduation

¹⁹ *Id.*

²⁰ See generally University of Colorado Law School, AMICUS (Spring 2016), available at http://www.colorado.edu/law/sites/default/files/Amicus_201604_web.pdf.

²¹ Steven I. Friedland, *Adaptive Strategies for the Future of Legal Education*, 61 *Loy. L. Rev.* 211, 215-16 (2015) (asserting that law school graduates will have less value in the new legal industry when compared to those graduates who learned about the law and formed a professional identity while in school).

²² *Id.* at 214.

²³ See Robert Morse, *Methodology: 2016 Best Law Schools Rankings* (U.S. News & World Report LP March 9, 2015), <http://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology?int=9d0608>.

employment.²⁴ While undergraduate GPA and LSAT scores are useful predictors of a given student's success in law school (as measured by GPA), they vary in their usefulness as predictors for success by the time of graduation.²⁵ LSAT scores, moreover, do a better job of predicting how law students will do in their first year, which heavily stresses test-taking skills, than in the final two years. In terms of success post-graduation, Marks and Moss suggest that other factors, such as leadership, begin to play a decisive role. This echoes an observation by Steven Friedland, an ETL Fellow, who opined that to be successful today, "students must be able to communicate with clients, work on teams, and manage projects."²⁶ Given that undergraduate GPA and LSAT scores do not generally predict these characteristics, law schools are well advised to look for additional indicators that suggest students will succeed in these important areas.

After analyzing data regarding who succeeds in law school, the Marks and Moss study identified several criteria that admissions committees can use to select the most promising applicants. For example, a rising undergraduate GPA, STEM and EAF majors,²⁷ and two to six years of work experience before law school are all statistically significant positive predictors of law-school GPA.²⁸ To be sure, no one predictor is, in isolation, "powerful enough to justify admitting or denying a particular applicant."²⁹ These findings, however, do suggest that admissions committees can use data to distinguish between quantitatively similar candidates and better predict who will be successful.

For law schools, it is significant that these predictors can serve as proxies that can be assessed and assigned quantitative values. "There is nothing in your application that says you are gritty," said Professor Moss, referring to a valued attitudinal factor. Although a rising GPA in undergrad can reflect different circumstances, Professor Moss commented at the Roundtable that "I love this as a proxy because it suggests that someone is capable of growth and doing something differently when things do not work out. It is not that a rising GPA is inherently better than a non-rising GPA; it is a proxy for overcoming something." Mark Smolik, Vice President, General Counsel and Chief Compliance Officer at DHL/Exel Inc., describes a similar point—that certain life experiences can signal a person's willingness to take initiative and to lead by example. "Experiences that demonstrate a person's character and willingness to see a matter through to conclusion, such as leading a project or starting a business to help pay for school, show tenacity and demonstrate leadership." Smolik reported that he has used such non-traditional considerations

²⁴ Alexia Brunet Marks and Scott A. Moss, *What Makes a Law Student Succeed or Fail? A Longitudinal Study Correlating Law Student Applicant Data and Law School Outcomes* 27 (Jul. 6, 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2627330.

²⁵ *Id.*

²⁶ Friedland, *supra* note 21, at 214-15.

²⁷ Science, Technology, Engineering, and Mathematics ("STEM"); and, Economics, Accounting, and Finance ("EAF")

²⁸ Marks and Moss, *supra* note 24, at 31-37.

²⁹ *Id.* at 51.

in hiring decisions—in lieu of, or in complement to, traditional assessment models that would not have provided the same candidate a foot in the door—to identify and recruit top talent.

Developing a framework that reduces the emphasis on GPA and LSAT scores, and takes a more holistic view of admissions decisions, requires an investment on the part of law schools in the infrastructure to recruit students differently. It also requires a willingness to resist pressures created by *U.S. News & World Report* rankings, which emphasize traditional metrics. A benefit of this strategy, as Professor Marks explained, is that admissions committees can minimize the cognitive biases that exist in admission decisions by looking at data-tested factors, rather than allowing overall subjective judgments (e.g., “I like him”) to predominate. Stated differently, a Moneyball-like approach that ties characteristics—grit, initiative, persistence—to specifically demonstrated behaviors (e.g., work experience, rising GPA, etc.) can serve as a valuable policing function against implicit biases.³⁰

Changing law school admissions practices is difficult. Notably, introducing holistic evaluation processes adds to the time and resources that must be dedicated to admissions decisions. Some Roundtable participants questioned whether this process is worth the effort. Randy Milch, the former General Counsel for Verizon, asked whether the additional processes are worth the money. At Colorado Law, Dean Weiser reported that he is confident that the investment in time and money in finding students who are statistically proven to be better prepared for practice and able to find meaningful employment is well worth it, commenting, “I would be willing to spend even more to further improve our processes of identifying promising candidates for admissions who are overlooked by other law schools.”

* * *

In short, professional skills matter for workplace success. Consequently, the legal services industry, including law schools, has the opportunity and obligation to embrace data-driven decision-making to better train new lawyers.³¹ To that end, admissions committees can—if willing to make the investment—move to holistic evaluations that look for indicia of future success that can be statistically measured. The natural complement to this approach is to invest in developing key indicators of success—and the critical competencies associated with them—while in law school. The next Part turns to this challenge.

III. Strategies for Developing Key Competencies

³⁰ The authors state that holistic admissions help to make sense of the heterogeneity of similarly situated candidates. *Id.* at 52.

³¹ See, e.g., Henderson, *supra* note 16, at 23-24 (suggesting that new lawyers already represent a highly-filtered population and continued reliance on marginal gradations of aptitude is an unreliable way to select for who will be a high-performing lawyer).

A. Law Schools' Roles in Competency Development

Improving the admissions process cannot, on its own, ensure that all students will graduate with a robust portfolio of skills. Forty percent of first-year law students come to law school directly from their undergraduate studies. Many of those students will not possess professional skills matching those of students with several years of work experience. For the students with less-developed professional skills, professional skill development while in law school is critical to increasing the likelihood of long-term career success. As noted earlier, law schools must offer programs that develop the relevant skill sets that employers require in today's environment. As Ronald Wheeler, Jr., explained, "soft skills are the ones that enable you to advance, get promoted, and have a successful career."³²

Are law schools capable of teaching soft skills? Many people believe that soft skills are natural talents that one either does or does not have. While some individuals are predisposed for having soft skills like emotional intelligence, these competencies can indeed be taught. Highlighted by Henderson's article,³³ a study conducted at Bell Labs identified a range of work strategies that translated into workplace success.³⁴ Chief among the strategies was taking initiative, followed by other professional skills such as networking, teamwork, and leadership.³⁵ After restructuring the workplace environment to promote these work strategies, some engineers were placed in a six-week training program intended to teach these work strategies. After tracking manager ratings over an eight-month period, program participants improved productivity two-fold over their non-participant colleagues in seven different categories.³⁶

Data from the Daniel Webster Scholar Honors Program ("DWS") at the University of New Hampshire School of Law exhibits similar results within the law school environment. The goal of the program is to shrink the gap between law school and legal practice by producing client-ready lawyers.³⁷ Participants are subjected to an intensive two-year curriculum centered on continual performance assessment and feedback.³⁸ Students who successfully complete the program are

³² Soft skills are one way to assess whether an individual is emotionally intelligent and likely to exhibit high-performance over an extended period of time. These skills include self-awareness, self-management, self-motivation, empathy, and social skills. See Ronald E. Wheeler, *Soft Skills: The Importance of Cultivating Emotional Intelligence*, AALL SPECTRUM (Jan/Feb. 2016), available at <http://www.bu.edu/law/working-papers/soft-skills-the-importance-of-cultivating-emotional-intelligence/>.

³³ Henderson, *supra* note 16, at 31-32.

³⁴ Robert Kelley and Janet Caplan, *How Bell Labs Creates Star Performers*, HARVARD BUSINESS REVIEW (Jul-Aug. 1993), available at <https://hbr.org/1993/07/how-bell-labs-creates-star-performers>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Alli Gerkman and Elena Harman, *Ahead of the Curve: Turning Law Students into Lawyers*, Institute for the Advancement of the American Legal System 4 (Institute for the Advancement of the American Legal System Jan. 2015), available at http://iaals.du.edu/sites/default/files/documents/publications/ahead_of_the_curve_turning_law_students_into_lawyers.pdf.

³⁸ *Id.* at 6.

admitted to the New Hampshire bar without having to take a bar exam (a student's performance in the program is substituted for the bar exam).³⁹ ETL found that students who, beginning in their second year of law school, progressed through continual formative, reflective, and summative assessments of experience-based learning opportunities significantly outperformed lawyers in practice for two years or more in client interactions and retention of important information.⁴⁰ Even after controlling for aptitudinal factors, candidates who had a greater number of applied experiences (with feedback) were better geared for success than those who lacked the same experiences.⁴¹

Building competencies by increasing the focus on individual students and adding programs with realistic experiential learning and mentorship opportunities provides a range of benefits. The Gallup-Purdue Index, initially released in 2014, surveys college graduates and evaluates whether the rising price of post-secondary education is worth the cost and whether graduates today are well equipped for success after graduation.⁴² Controlling for everything from personality type to student loan debt, Gallup concluded that a student who (1) felt that his or her professors cared about them as a person, (2) had at least one professor who made him or her excited about learning, and (3) had a mentor who encouraged him or her to pursue his or her goals and dreams is twice as likely to be engaged in his or her job after graduation.⁴³ For law schools, Gallup found that those students who also had an applied job or internship while in law school were 2.7 times more likely to be engaged in their job after graduation. As Stephanie Marken from Gallup put it, "It is not where you go, but how you go."⁴⁴

Across the various studies, mentoring and feedback surface as common experiences among highly successful people. The earlier in time that skills are cultivated, the quicker an individual is able to execute a skill correctly and become an expert at that skill.⁴⁵ Mentoring and feedback help ensure that students who begin to develop specific competencies early on in law school will maintain a competitive advantage over those colleagues who do not begin skill development until after graduation. This framework helps weave the competency-based learning model directly into the law school pedagogy. While transforming the delivery of education takes time, there are programs that have implemented such measures to produce engaged and successful graduates.⁴⁶

³⁹ *Id.*

⁴⁰ *Id.* at 18.

⁴¹ *Id.*

⁴² Gallup, Inc., *Gallup-Purdue Index 2015 Report: Great Jobs, Great Lives. The Relationship Between Student Debt, Experiences and Perceptions of College Worth 2* (2015).

⁴³ *Id.* at 17.

⁴⁴ The inaugural Gallup-Purdue Index in 2014 indicated that the type of institution an alumnus attended mattered less than what he or she experienced while there. *Id.* at 16.

⁴⁵ For a similar discussion of skill mastery and the effects of deliberate practice, see Geoff Colvin, *Talent is Overrated* Ch. 4 (2009).

⁴⁶ For an in-depth discussion of how micro-innovations help education models respond to changing industry dynamics, see Valerie Hannon, 'Next Practice' in *Education: A Disciplined Approach to Innovation* (The Innovation Unit Feb. 2007), available at <http://www.innovationunit.org/sites/default/files/Next%20Practice%20in%20Education.pdf>.

B. Colorado Law's Programs Geared to Competency Development

Over the past five years, Colorado Law has made significant strides to implement programs intended to advance the four sets of competencies described in Part I (namely, thinking like a lawyer; practical skills; subject matter expertise; and professional skills). Whiting Leary, Senior Assistant Dean for Students, stated, "We have come a long way towards doing all of the things that we are talking about today. We are much more aware of every individual student and are really making an effort to make sure that no student falls through the cracks." At Colorado Law, nearly all graduates enter practice with relevant, applied experience gained during law school (through a range of opportunities that include clinics, externships, and work experiences during the summer or the school year). In this regard, today's experience at Colorado Law is radically different than it was as recently as 15 years ago. Moreover, the faculty and staff are engaged in an ongoing process of experimentation and assessment as they develop and test new courses and extracurricular opportunities, including a range of drafting courses separated by practice area: litigation, transactional, and regulatory. Similarly, Colorado Law's clinical programs have expanded to cover nine different practices, including juvenile law, natural resource and environmental protection, entrepreneurial law, and American Indian law, among others.

Upon acceptance to Colorado Law, every incoming student provides the administration a list of preliminary interest areas. Each student is assigned a faculty advisor who has expertise within that field. The advisor can assist students with course selection and adjusting to the law school environment in a way that best prepares each student for the job that he or she wants after graduation.⁴⁷ Students maintain the same advisor throughout the three years of law school and are encouraged to build that relationship beyond the initial consultations in the fall of 1L year. Additional mentoring opportunities, both formal and informal, allow students to get to know practitioners and receive guidance on different approaches to tackling the difficulties of law school. Students also gain exposure to the Career Development Office ("CDO") early in their first year and work with CDO counselors throughout law school to build their own profiles and apply for appropriate job offerings.

Colorado Law has developed and introduced additional job skills programs within the last couple of years. The Summer Employment Transition program, led by Professor Amy Griffin, provides realistic work assignments to participating students in the student's area of interest. Projects, assigned by practitioners, provide a one-on-one opportunity for students to receive feedback on both legal and professional skills from the assigning attorney, who ideally becomes a mentor to the student. Because the projects are completed before students begin summer

⁴⁷ In the undergraduate context, data has shown that faculty/student mentorship programs not only serve a guiding function, but positively impact academic performance. See Toni A. Campbell and David E. Campbell, *Faculty/Student Mentor Programs: Effects on Academic Performance and Retention*, 38 RES. HIGHER EDUC. 727 (1997).

employment, this opportunity for feedback in a non-threatening environment allows students to understand some of the skills they will need to focus on developing during their first summer.

The Tech Lawyer Accelerator (“TLA”) program is another job-related program that has gained national attention for its innovative approach to legal education and employment.⁴⁸ Groups of students begin their 1L summer in an intensive four-week boot camp, learning from an in-house perspective how a law department functions. Students are then matched with employers in Colorado and California. This opportunity allows students to accelerate what they learned as 1Ls and apply that knowledge in actual projects. In lieu of taking classes for a semester, some students remain with their employer for the fall semester, shaving off one semester of school. Mooz, one of the program’s pioneers, commented. “You can get it down to five semesters, you can be employed for both summers and one other semester and come out with over a year’s work experience.” Accelerated legal education coupled with practical opportunities help prepare students to be engaged and successful practitioners.

Colorado Law has also added new courses that expand beyond the traditional curriculum. In Spring 2016, Dean Weiser and Melanie Kay, the Director of the Daniels Fund Ethics Initiative at Colorado Law,⁴⁹ designed and co-taught a new seminar for first-year students called “Legal Ethics, Professionalism, and Creative Problem Solving.” The course encouraged students to contemplate professional identity and their role as a “trusted advisor” to clients. Through non-traditional reading assignments, reflection papers, and the opportunity to advise undergraduate student “clients” in an ethics competition, law students practiced valuable skills such as empathy, communication, judgment, and professionalism.

Cross-campus movements and private-public partnerships have further expanded the breadth of opportunities available. A growing contingent of first-year law students enroll in an elective “Philosophy of Entrepreneurship” course, a spring class where law students are connected with engineering and business students to tackle projects solicited from local startups. In that course, students gain experience applying their respective knowledge, developing communication skills, working in teams with diverse backgrounds, and delivering work product to clients. Silicon Flatirons sponsors similar cross-campus partnerships: bringing in community leaders, hosting conferences for everything from healthcare to telecommunications, and offering crash courses on cross-disciplinary topics.

⁴⁸ See, e.g., John Schwartz, *This is Law School? Socrates Takes a Back Seat to Business and Tech*, THE NEW YORK TIMES (Aug. 1, 2014), http://www.nytimes.com/2014/08/03/education/edlife/socrates-takes-a-back-seat-to-business-and-tech.html?_r=0; Karen Sloan, *Interns Thrive in ‘Boot Camp’: Colorado Law Trains Them in Tech Business Basics*, THE NATIONAL LAW JOURNAL, <http://www.nationallawjournal.com/id=1202667028622/Interns-Thrive-in-Boot-Camp>.

⁴⁹ The Daniels Fund Ethics Initiative is a program that supports principle-based ethics education at a number of regional business schools. That program brings together these schools as part of a consortium that includes Colorado Law as the sole law school.

* * *

The changes at Colorado Law are part of an emerging set of experiments in legal education. To explain how this opportunity can build momentum, Part IV discusses the development of this new model.

IV. Developing a New Model, Building Trust, and the Value of Driving the Conversation

A. Solving for System Inefficiencies and Empowering Students

We are moving into a competitive marketplace in which lawyers and schools feel pressure to compete aggressively.⁵⁰ Roundtable participants challenged one another to think about how law schools can hold the cost and raise the value of the law school experience. The data and studies discussed in this report highlight opportunities for going forward. Many law schools, however, are facing existential challenges and have yet to question how to adjust to the changing environment. As Paul Lippe, Chief Executive Officer at Legal OnRamp, noted, Colorado Law has capitalized on the stasis of other law schools by working to improve performance in areas where other schools have remained complacent.

Inefficiencies in legal education can be solved in incremental fashion. In his paper, *A Blueprint for Change*, Henderson proposes a competency-based curriculum model that works backwards from the attributes identified in highly successful professionals.⁵¹ After identifying desired traits, schools can implement small changes and measure their impact. The process, as it was presented, proceeds as follows:

1. Identify examples of desired professional competencies in the old and new legal economies.
2. Separate the identified professional competencies into discrete domains of knowledge, skills, and behaviors.
3. Determine the most effective ways to sequence and teach the requisite competency domains.
4. Measure the performance of students who benefit from the educational changes proscribed in Step 3, and compare to students who received a traditional JD education.
5. Build feedback loops on the student, faculty, and employer experiences, evaluate, and repeat.⁵²

⁵⁰ Heineman, *supra* note 14, at 18.

⁵¹ Henderson, *supra* note 13, at 495.

⁵² *Id.* at 496.

Henderson’s model is designed to allow law schools to adapt to changes in the legal labor market. As employers and consumers of legal services desire different competencies from new graduates, law schools can adjust curriculums to align with market demands. Using this model, change does not require a complete overhaul in the delivery of a legal education. Rather, schools can make meaningful reforms step-by-step, evaluating the effectiveness of the relevant change and guiding future efforts.⁵³

Schools also face the challenge of student openness to, and interest in, new programs. Despite an increased number of competency-based programs available, students will not always take advantage of them. As an illustration, the Gallup research clearly identifies mentorship programs as key drivers for long-term success.⁵⁴ Yet at Colorado Law, active student participation in mentorship programs is lacking on occasion. Marci Fulton, Assistant Dean for Outreach, Engagement, and Alumni Relations, hypothesizes that one possible hindrance to participation arises out of the dynamic between student and practitioner. An underperforming student may not feel comfortable reaching out to his or her mentor, a successful practitioner, to ask, “Can you tell me how I’m messing up and how I can fix it?” Professor Moss has experienced similarly low student participation in his litigation drafting course, structured to prepare students to draft pleadings in practice. Despite the applicability this course has for every student who intends to go into litigation, some students fail to take advantage of the opportunity, perhaps because they do not appreciate its value in developing key competencies and/or they think that the course will be too much work.

Going forward, individualized learning plans promise to help students benefit from a range of curricular and extracurricular opportunities tailored to their specific interests. With the benefit of such plans, students will be able to see, for example, the value of specific program offerings toward stated career goals. It is at that point, as Rob Simmons, Assistant General Counsel at Molson Coors Brewing Company, commented, when students can articulate their key competencies and character traits to future employers. Bolstered by advisors and career coaches, students will be able to confidently express how their experiences prior to and in law school can provide value in practice. Empowering students—first to engage in new programs, and second to communicate their experiences to potential employers—promises to mitigate the inefficiency between what students are doing and what employers need from new lawyers.

B. Building Trust and Engaging Employers

⁵³ *Id.* at 503-04 (proposing that an initial change of 12%, equal to one course per year, is enough to produce data capable of tracking changes in non-cognitive effectiveness).

⁵⁴ Gallup, Inc., *supra* note 42, at 17.

One core challenge faced by law schools is communicating to employers the value that new graduates have to offer. Roundtable participants expressed concern over the legal service industry's lack of awareness of academic innovations. Shalini Sharma, Assistant General Counsel and Chief Privacy Officer at Broadridge Financial Solutions, Inc., for example, commented, "We don't hear enough about what it is that schools are doing. I find these conversations very encouraging because I will now hopefully be getting better candidates to look at." All too often, employers remain unaware of new programs designed to build desired professional competencies (like the TLA or Daniels Fund Ethics Initiative) and assume that law schools are structured the way they were 15 years ago. Lacking this understanding, they often fall back on outdated anecdotes, and are skeptical that students can add value from day one.

A second challenge that law schools face is communicating to students the need to develop and convey how they have built a valuable set of competencies. In some cases, unfortunately, students inadequately communicate their marketable skills. As Ryan Howe, General Counsel for Webroot, described, "When I have interviewed a lot of the younger candidates, they say, 'I want to do transactional work.' And I ask, 'What classes are you enrolled in?' They say, 'Admin law.'"

A virtuous cycle can take hold when law schools involve employers in the discussion of the future of legal education. For starters, the employers will appreciate what students have to offer and will be confident of the recommendations the school makes, even when those recommendations don't necessarily track traditional metrics (e.g., grades). Moreover, after students take classes and programs aligned with their given trajectory, schools can solicit feedback from employers, enabling them to improve and supplement their offerings.⁵⁵

An alternative scenario is a vicious cycle for law schools and the traditional employers of their graduates (larger law firms). In that situation, law schools focus only on a shrinking set of employers (traditional law firms) and adhere to the traditional play book (a focus on traditional metrics, e.g., grades). This produces new associates who lack key competencies and are seen by clients as unable to provide immediate value. In this situation, clients are increasingly vigilant about declining to pay for training and large salaries for such associates, leading to decreased hiring over all.

At the Roundtable, the participants spoke about this dilemma and the two alternatives that exist in practice. At Dentons, for example, hiring entry-level associates is a much harder sell today than it was a decade ago. As John Fernandez, US Chief Innovation Officer at Dentons, explained, "Part of the rationale is clients will no longer pay for certain levels of associates." Hiring decisions in law firms are being driven by clients who have not historically found value in legal work performed by first-year associates. As legal budgets are contracting, this trend is increasing. Fernandez continued, "Convincing partners to change practices is easier when the client comes

⁵⁵ This is Step 5 of the Competency-Based Curriculum Model discussed. Section IV.A, *supra*.

into the room and says, ‘I expect you to do it differently.’” Speaking on behalf of the Corporate Legal Operations Consortium (“CLOC”), Connie Brenton confirmed that in fact the CLOC standard billing guidelines do not allow firms to bill for first-year associates. At the same time, Brenton explained, “If you call us and say we have a first-year who is fabulous and will cost you less money, are you okay with approving it? We’ll approve it.” This is the conversation that will solve the dilemma. Law schools are in prime position to drive these types of conversations and use them to continue the innovation process.

Law schools can do more than just engage market participants in conversation. Schools should develop partnerships with employers and find new pathways for law students and recent graduates to gain experience. The old view that everyone needs to (let alone can) first go to a law firm is not realistic in a world where larger law firms are hiring fewer than 50 percent of the entry-level associates they were hiring a decade ago. Unbundled and alternative legal service providers have experienced over 250 percent growth in the last eight years, whereas most big firms have cut back hiring significantly. Part of developing new pathways is finding companies with the bandwidth to develop new graduates. The traditional view that prior work at a law firm is the only way to acquire professional skills may not always be the best way to ensure that an employee has the skills needed for a particular non-firm job. There may be a range of positions, including those related to legal operations, for which new graduates are better prepared. At NetApp, for example, Brenton has used her resources to hire multiple first-year attorneys. Recent graduates are gaining meaningful work experience, providing value, and are far less expensive for the company.

Law firms also face the opportunity—and the imperative—of innovating in a changing environment. For starters, they can develop creative ways for making hiring decisions. Even though firms have cut back on hiring, there is great importance in preserving traditional hiring pathways as a viable track of employment. “There is a lot of data,” Katie DeBord with Bryan Cave pointed out, “that shows if you bring people in as summer associates they are going to be more engaged and are going to be more loyal long-term employees.” To continue recognizing the benefits of this hiring track, Bryan Cave actively forecasts future work needs with clients. This allows the firm to plan proactively for new hires and know the specific projects they will have for new attorneys to complete.

Firm and non-firm employers alike are also positioned to implement the same types of innovations that schools like Colorado Law have adopted. Much like alternative approaches to admissions decisions, employers can consider alternative interviewing techniques. Behavioral interviewing, for example, allows employers to increase their recognition of specific experiences that impact the value a potential candidate will provide. These sorts of interviews ask “questions that map onto a set of predefined skills and competencies” that connect past experiences in a way objective measures alone cannot communicate.⁵⁶ This approach, which requires little training to

⁵⁶ Henderson, *supra* note 16, at 28.

implement, allows employers to hire graduates based on the competencies needed to be successful for a given job. Continuation of professional development programs after employees are hired can further build value and add to the competitiveness of an entire enterprise.⁵⁷

C. Value in Driving the Conversation

As schools and employers improve communication channels, they will build strong relationships and employers will invest added energy in opportunities for recent graduates. Ben Oelsner of Kendall, Koenig & Oelsner PC (“KKO”) had precisely this experience. A few years ago, KKO would not have hired a first-year attorney. KKO’s primary concern was ensuring that every hire would provide value for its clients—a larger gamble on a new lawyer. This fall, Greg Garcia, Colorado Law 2016, will join KKO after completing KKO’s internship and law clerk programs. Oelsner indicated that, “The main reasons we hired Greg were because he went through the TLA and he had stellar recommendations from someone we trust.” Garcia’s initiative to build rapport with his faculty mentor and involvement in the TLA helped him develop an individualized portfolio that highlighted the skills KKO was looking for. “We knew he was the best and he has been. Based on his experiences, Greg will be able to step in like a second-year attorney,” Oelsner continued. Colorado Law aims to replicate these sorts of matches for every student.

From Garcia’s perspective, the experience at Colorado Law is even more profound. No matter how high quality the student body, 90 percent of them will not be in the top ten percent, which will, in turn, discount their eligibility for positions that require such credentials. “Now,” as Garcia pointed out, “you are creating a curriculum that caters to a broader set of students than has traditionally been done.” With new graduates capable of producing value in a range of employment settings, employers can hire confidently in ways that were not thought of before. These pathways are sometimes referred to as the “new normal,” but for the bottom half of the class the “new normal” was always the norm.⁵⁸ Garcia stated that “it is encouraging to know that my law school is thinking about the other ninety percent of students in a really specific way.” There is a higher value proposition in finding ways to provide promising employment for all students who have the backgrounds and competencies needed in today’s legal industry.

Garcia’s positive outcome is not an anomaly. Large in-house legal departments are also finding value in hiring new graduates. For example, DaVita has successfully hired three new graduates by recognizing two primary realities. First, the company has recognized that new graduates are receiving an updated, more innovative education that trains them for success and enables them to take on significant workloads previously handled by more experienced attorneys. Second, the company has changed its expectations and now focuses on providing new hires with exposure to the different parts of the legal department to gain knowledge and skills during their

⁵⁷ *Id.* at 31.

⁵⁸ Chris Gaddis highlighted this reality at a prior roundtable discussion. Bennett, *supra* note 2, at 12-13.

first year of employment. “It’s giving them time to adapt and get the mentoring they need to continue down a career path in a gradual transition,” as Julie DeCecco, Vice President and Associate General Counsel at DaVita, described.

V. Conclusion

With a changing legal landscape, the role of legal education needs to change.⁵⁹ Unfortunately, many law schools remain locked into a traditional model that is starting to break under growing pressure. Advancements and innovations taking place at Colorado Law and elsewhere are an important phase in the process of bringing legal education in step with developments in the marketplace.

The promise of increased data collection and analysis about the critical competencies that best predict successful careers by law school graduates can point the way to data-driven innovations. The data discussed at the Roundtable suggests that law schools and employers can—and, in some cases, are starting to—determine value by using non-conventional indicators. As Henderson commented at the Roundtable, “It takes just as long to do selection badly as it does to do it well. So just do it well.” In the future, law schools will be able to innovate beyond admissions and developing competency-based learning pedagogies, thereby improving on their ability to select and prepare students for post-graduation employment. This process will take time, but over the next 5-10 years, those law schools and employers who move in this direction will be rewarded for getting out in front of a changing landscape.

⁵⁹ For a discussion on changes in the industry and things prospective students must now consider before entering practice, see Friedland, *supra* note 21, at 213-15.