
November 2020

Lawyer Leadership in the Practice of Law

Donald J. Polden

Follow this and additional works at: <https://ir.law.utk.edu/tjlp>

Recommended Citation

Polden, Donald J. (2020) "Lawyer Leadership in the Practice of Law," *Tennessee Journal of Law and Policy*: Vol. 14: Iss. 2, Article 7.

DOI: <https://doi.org/10.70658/1940-4131.1046>

Available at: <https://ir.law.utk.edu/tjlp/vol14/iss2/7>

This Article is brought to you for free and open access by Volunteer, Open Access, Library Journals (VOL Journals), published in partnership with The University of Tennessee (UT) University Libraries. This article has been accepted for inclusion in Tennessee Journal of Law and Policy by an authorized editor. For more information, please visit <https://ir.law.utk.edu/tjlp>.

TENNESSEE JOURNAL OF LAW AND POLICY

VOLUME 14

WINTER 2020

ISSUE 2

ARTICLE

LAWYER LEADERSHIP IN THE PRACTICE OF LAW

*Donald J. Polden**

I. Lawyers as Leaders: A Reality Check	444
II. Lawyer Skills and Competencies; Leadership Traits and Skills	448
A. “MacCrate Report” on Lawyering Skills and Values	449
B. The Carnegie Report: Educating Lawyers for the Profession of Law	452
C. “Next Generation’ Articulations of Essential Lawyering Abilities: Post-Recession Environment	455
III. Conclusion	464

* Dean Emeritus and Professor of Law at Santa Clara University School of Law. He is a graduate of The George Washington University and Indiana University (McKinley) School of Law. Professor Polden was a speaker at the Leadership Conference held at University of Tennessee on April 4-5, 2019. He is a member of the Executive Committee of the Section on Leadership of the Association of American Law Schools and has been teaching leadership courses to law students and lawyers for 15 years.

A longstanding question, going back to the turn of the last century, among lawyers, law professors and their professional organizations is what skills and values should lawyers have to successfully and ethically practice law and, more significantly, perform the public functions that lawyers perform in our society. This discussion has evolved over the years as the roles and responsibilities of lawyers have changed and the practice and business of law has changed. In Abraham Lincoln's time, lawyers were often thought to largely perform private dispute resolution functions in solo or small practice settings.¹

Today, lawyers function in major corporate and government positions, in thousand-lawyer international firms, in small "county seat" law firms and in boutique specialized law organizations. This evolution of law practice and lawyer roles as advisors and advocates has not resolved the ongoing discussion about skills, values and competencies necessary for today's lawyers, although the skills and knowledge that today's lawyers must possess are very different than those of lawyers in Abraham Lincoln's time.

This Article addresses the important question concerning the necessary lawyering skills and professional values and, in particular, whether leadership and other contemporary law practice competencies are fundamental attributes of being an exemplary attorney. To the degree that the answer is "yes," then law schools and law firms should focus more attention on education and development to young lawyers' leadership skills. Conversely, if the answer to the question is "no," then we need to continue our long

¹ See James Willard Hurst, *Lawyers in American Society 1750-1966*, 50 MARQ. L. REV. 594, 596 (1967); Rachel F. Moran, *The Three Ages of Modern American Lawyering and the Current Crisis in the Legal Profession and Legal Education*, 58 SANTA CLARA L. REV. 453, 460 (2019).

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

search for definitional certainty on the issue of what are essential skills, competencies and attributes of exceptional lawyers.²

This Article will consider how development of leadership skills, competencies and attitudes are central to success in the practice of law, especially since the last decade's economic recession when many of the beliefs and assumptions of essential lawyer abilities were challenged. This focus of the Article is on an examination of several expert reports on fundamental or necessary lawyering skills that preceded the recession and, then, on post-recession examination of necessary skills. The Article also serves as a reminder to law schools, law firms, mentors for young lawyers, and professional coaches that the competency landscape has changed in law schools and law practice and it is critical to the success of lawyers, especially new lawyers, that they are focused on these post-recession lawyer skills and abilities.

The first section considers some of the contemporary arguments about the relationship between leadership by lawyers and leadership by other

² The analysis in this Article intentionally considers the relationship between exemplary lawyering and exemplary leadership because of the belief that average or mediocre lawyering—just getting by in performing work for the client—is not a sufficient goal of either legal education or law practice organizations. Rather, the goal must always be aimed at exceptional lawyering competencies because the ethical representation and counseling of clients demands that level of competence and commitment by attorneys. In the Preamble to the ABA Rules of Professional Responsibility, it states that: “A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.” MODEL RULES OF PROF'L CONDUCT: PREAMBLE (2019).

professionals (in business, government and politics, for example), and it examines various myths about how leadership development is not a goal or aspiration applicable to the work or responsibilities of lawyers. The Article then considers how the fundamental lawyering skills and abilities have changed—really, evolved—in the last 30 years and the practice of law has changed and with it the core skills and abilities that lawyers need to be able to demonstrate for their professional development, for their success in representation and service to clients, and to the success of their law practice organizations. The Article surveys some leading scholarship that evaluates the evolution of legal education and its training of lawyer competence beginning in early 1900s to the present time. Particular emphasis is placed on the research on contemporary lawyering competencies and skills that has been published in the last decade. The Article concludes with a call for law schools, law firms and other law organizations that educate, train and mentor lawyers in the practice of law to develop leadership skills and values more broadly.

I. Lawyers as Leaders: A Reality Check

In recent years, a significant movement has occurred in legal education—to develop leadership skills and abilities in law students in order to prepare them for the roles and responsibilities they will face in the practice of law.³ This imperative may come as a surprise to some

³ This movement has been documented in the growth of leadership courses being taught in American law schools, the significant increase in legal scholarship about leadership development and lawyers, and by conferences on teaching leadership at the University of Tennessee, Santa Clara University, and Stanford Law School. See Deborah L. Rhode, *Preparing Leaders: The Evolution of a Field and the Stresses of*

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

lawyers who believe that good lawyering requires one to be a follower and a “drone” to billable time requirements. To those lawyers, the notion of “lawyer as leader” is paradoxical since lawyers’ counseling clients have an ethical duty to provide advice, not to lead them, and clients are not followers of the attorney.⁴ However, this paradox does not prevent lawyers from exercising forms of leadership to the clients they advise; indeed serving clients’ representation and advising needs calls for skills in leading the client through the critical and overarching decisions that the clients must make.⁵

Leadership, 58 SANTA CLARA L. REV., 411, 415–17 (2018); Leah Witcher Jackson Teague, *Training Lawyers for Leadership: Vitally Important Mission for the Future Success (and Maybe Survival) of the Legal Profession and Our Democracy*, 58 SANTA CLARA L. REV. 633, 636 (2018); Deborah Rhode, Phillip Fulmer, Chief Justice Lee to Speak at UT Law Leadership Symposium, U. TENN. C. L. (Mar. 7, 2016), <https://law.utk.edu/2016/03/07/leadership-symposium/> [<https://perma.cc/5PH8-E9W3>]; *Symposium: Advancing Leadership Development in the Legal Profession: Addressing Challenges in Legal Education and the Practice of Law*, SANTA CLARA U. SCH. L., <https://law.scu.edu/event/symposium-advancing-leadership-development-in-the-legal-profession-addressing-challenges-in-legal-education-and-the-practice-of-law/> [<https://perma.cc/M9VH-LE2M>].

⁴ See Neil Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358, 364–65, 367–68 (2009) (describing the relationship between attorney and client as leading “from a position of influence”)

⁵ *Id.* at 381–87 (discussing servant and adaptive leadership in the context of lawyers advising clients on decisions that clients must make); see also Susan P. Sturm *Lawyering Paradoxes: Making Meaning of the Contradictions* (Columbia Law Sch. Pub. Law Research Paper No. 14-642 (2019)), https://scholarship.law.columbia.edu/faculty_scholarship/2579/ (cited with permission of the author) [<https://perma.cc/MK32-MNPE>].

According to a recent report, the number and types of leadership for lawyers courses and programs in American law schools has dramatically increased.⁶ This is undoubtedly a good thing because lawyers are asked to, and expected to, provide leadership in many different capacities—in their professional roles and in their personal lives. However, there still remains either the obstinate refusal to recognize that lawyers need to be able to lead others or the lack of understanding—the myths—about leadership and lawyers. Professor Barry Posner of Santa Clara University’s Leavey School of Business wrote an insightful article for a symposium on leadership skills and lawyers’ skills in which he mentioned several myths about leadership development and the importance of leadership—generally and with respect to lawyers and law students.⁷ He identifies some of the major myths about the roles and functions of leadership education and professional leadership development including the misguided beliefs that:

- That people come with leadership abilities already imbedded, or genetically imbued, and that training is not necessary to get better leadership out of them;⁸
- That leadership happens by status, rank or title, but rather, he argues, it “happens in dealing one-on-one with a client, working on tactical and strategic matters with association, in addressing juries, and in

⁶ Teague, *supra* note 2, at 650–56 (reporting on her survey that found leadership courses are now being taught at two dozen American law schools and that several other schools have other forms of leadership development being offered).

⁷ Barry Z. Posner, *Leadership Development in Law Schools: Myths, Principles, and Practices*, 58 SANTA CLARA L. REV. 399, 400–04 (2018).

⁸ *Id.* at 401–02.

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

striving to find solution that are nobler than what exists right now.”⁹

- That people should only take on tasks that play to their strengths and skip the areas that are weaknesses; rather, he argues, people need to extend themselves because that is where personal growth and real learning take place.¹⁰
- That leadership is a “solo” activity when, really, it requires collaboration and inclusiveness to make great things happen.¹¹
- That leadership comes naturally to some people when, in reality, exemplary leadership requires training and effort to really make a difference.¹²

Posner’s insightful reflections on the myths and the realities of demonstrated leadership and the lawyer’s capacity to lead permit us to understand how leadership is critically important to lawyers. The core leadership competencies—or practices of exemplary leadership, as Jim Kouzes and Barry Posner formulate them¹³—can be learned and developed, are important to the work we all do with our organizations and clients, and can permit us to achieve an extraordinary level of success and enjoyment in our work as lawyers.

The next section of the Article extends Professor Posner’s contention that leadership is for everyone,

⁹ *Id.* at 402.

¹⁰ *Id.* at 402–03.

¹¹ *Id.* at 403.

¹² *Id.* at 403–04.

¹³ See JAMES M. KOUZES & BARRY Z. POSNER, *THE LEADERSHIP CHALLENGE: HOW TO GET EXTRAORDINARY THINGS DONE IN ORGANIZATIONS* xii (6th ed. 2017).

including lawyers.¹⁴ It argues that lawyers are fundamentally no different than political leaders, business CEOs, military officers and others in their capacity to lead and in the need for leadership skills in the performance of their roles as lawyers, judges, and public servants.

II. Lawyer Skills and Competencies; Leadership Traits and Skills

In this section, I describe some of the contemporary perspectives on how lawyers competently represent their clients, lead their organizations, and serve as civic leaders in their communities through their acquired skills and attitudes. This section describes how interested educators and legal profession experts engaged in efforts to document and describe what skills are needed to practice law and describe what legal education should be preparing students for.¹⁵ Over the past 40 years, there have been various attempts to define and describe the essential competencies of lawyers, notably the *MacCrate Report*,¹⁶ published in 1992. Then,

¹⁴ See Posner, *supra* note 7, at 399 (noting that his mantra – along with his co-author Jim Kouzes – is “[l]eadership is everyone’s business.”).

¹⁵ See, e.g., ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA 3–4 (1921); HERBERT L. PACKER & THOMAS EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION xv–xvi (1972).

¹⁶ AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter *MacCrate Report*].

a subsequent section of the Article examines and explicates more contemporary articulations of the panoply of skills, abilities and values that, according to experts, lawyers must have to meet the demands of the contemporary practice of law.

A. “MacCrate Report” on Lawyering Skills and Values

In 1992, a task force assembled by the American Bar Association published a major report providing a comprehensive look at what lawyers needed to be able to do in the modern practice of law and how law schools, law firms and the organized bar were preparing young lawyers for careers in law practice.¹⁷ More significantly, the report also stressed how legal education and the practicing bar could, and should, assist law students and young lawyers in learning how to perform those key skills and possess fundamental values.¹⁸ The study group included law professors, major law firm lawyers, such as its Chairman, Robert MacCrate, who identified ten vital skills for lawyers entering the practice of law following law school.¹⁹ The skills identified by the task force were:

1. Problem solving,
2. Legal analysis,
3. Research skills,
4. Factual investigation,
5. Communication,
6. Counseling,
7. Negotiation,
8. Alternate Dispute Resolution,
9. Organization and management, and
10. Ethical reasoning.²⁰

¹⁷ *Id.* at 6–7.

¹⁸ *Id.* at 8.

¹⁹ *Id.* at 135.

²⁰ *Id.* at 138–40.

According to the authors, these are skills that are necessary for successful attorneys to learn while in law school, or to be trained to do when entering the practice of law.²¹ The *MacCrate Report* was produced to inform students, law schools and law practice organizations about the importance of training and learning the critical lawyering skills identified and described in the Report.

The *MacCrate Report* also identified progress and innovation in the legal field that has increased the productivity and efficiency of legal practitioners.²² The Report looked at legal trends from the early 1900's until 1992, the year the report was published. Some of the innovations that law firms have embraced are pro bono client representation, specialization in the work that attorneys perform, and the expanding and broad scope of practice settings, from national law firms to solo practice.²³ The Report also identified the progress of corporations as they increase their reliance on in-house counsel to manage the fee structures charged by large national law firms.²⁴ The Report successfully recounted the innovations and progress in the legal profession while predicting the future of the legal profession and what would be important to future generations of lawyers.

The *MacCrate Report* was enormously useful in starting a conversation among lawyers, judges, and law professors about what lawyers do and what young lawyers need to be able to do and the important role that law schools, in particular, and the Bar played in that educational and development process.²⁵ In significant

²¹ *Id.* at 331–32.

²² *See generally id.* (including brief examples and a discussion of how the practice of law has evolved).

²³ *Id.* 35–85.

²⁴ *Id.* at 34.

²⁵ *See, e.g.,* Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should See to*

part, the Report encouraged law schools to consider providing a broader educational program of instruction that featured more clinical and experiential learning opportunities for law schools.²⁶

Today, many of the curricular revisions envisioned by the *MacCrate Report* authors have been established at law schools and most law schools now provide instruction in the broad array of professional skills and values identified in the Report. Clinical and experiential learning opportunities in law school are now required by law accreditation standards,²⁷ and most law schools provide a variety of “skills courses” and clinical education programs.²⁸ However, as the growth of enrollment in law schools increased in the 1990s and early 2000s, there was concern that new lawyers were not really prepared for the realities of law practice.²⁹ This led

Narrow, 8 CLINICAL L. REV. 109, 116–17 (2001) (discussing the profession’s reaction to the report’s release); Thomas M. Steele, *The MacCrate Report: Its Impact on Education in Law Firm Management*, 23 PACE L. REV. 613, 623–650 (2003) (discussing the impact of the *MacCrate Report* on various parts of legal education).

²⁶ *MacCrate Report*, *supra* note 16, at 234–35.

²⁷ AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 2019-2020 standard 303(a)(3) at 16 (2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf [<https://perma.cc/3D9E-AND4>].

²⁸ See Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 576–77 (2018).

²⁹ *Id.* at 574–75; see also Todd A. Berger, *Three Generations and Two-Tiers: How Participation in Law School Clinics and the Demand for “Practice Ready” Graduates Will Impact the Faculty Status of Clinical Law Professors*, 43 WASH. U. J.L. & POL’Y 129, 152–54 (2013).

to a second major report, by the Carnegie Foundation, on legal education and preparing for the practice of law.

B. The Carnegie Report: Educating Lawyers for the Profession of Law

The Carnegie Foundation initiated a long term project to investigate how professionals in several fields acquire the core skills, perspectives and values needed to be an excellent practitioner in those fields.³⁰ One of the first learned professions investigated was law and the research on professional education in all fields was premised on two key areas of inquiry: (1) that all fields of professional education would benefit from the insights of modern learning research and (2) that comparison of approaches toward educating for those professions would yield important insights for each profession.³¹

In its initiative on lawyers' professional development, the Carnegie Report authors examined the ways the legal education system developed and attempted to capture the strengths and weakness' inherent to legal education. The report makes important observations about legal education and the process of educating lawyers for the practice of law and then offers several recommendations that would advance legal education to a more modern educational standard.³² The report recommends that a more integrated model of legal

³⁰ William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331, 333 (2018) (explaining that the report on lawyers and legal education was part of a larger set of investigations into education for various professions, including engineers, clergy, nurses, physicians and others).

³¹ *Id.* at 333.

³² WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 185–90 (2007) [hereinafter EDUCATING LAWYERS].

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

education is necessary to enhance the education of lawyers and their preparation for careers in law practice.³³ The legal education system understands that there is an opportunity to augment its competency. The authors state that legal education must do more to unite the two sides of legal knowledge: formal knowledge necessary to be an effective practitioner and the acquisition of the experience of professional practice.

Some of the main observations made by the authors of the Carnegie Report are: First, law schools are incredibly effective institutions in educating a large number of students in a fiscally prudent way, but there is still room to improve.³⁴ Second, they observed that law schools are dependent on one type of teaching, the case-dialogue method, where other professional educational programs use multiple teaching methods and approaches.³⁵ Third, the case-dialogue method has valuable strengths but also unintentionally takes non-legal issues (such as cultural or societal considerations for example) out of the student's mindset.³⁶ Next, the report observes that American legal education struggles to assess student learning, relying too much on rankings and end-of-semester tests providing summative assessment.³⁷ Finally, the authors observed that legal education is not a comprehensive process, but rather an additive one, which is not the most pedagogically sound way of teaching for professional competency.³⁸ The main observations went to the heart of the process of teaching law by American law schools and it generated controversy in the law school community because, in

³³ *Id.* at 194.

³⁴ *Id.* at 185–86.

³⁵ *Id.*

³⁶ *Id.* at 187.

³⁷ *Id.* at 188–89.

³⁸ *Id.* at 189–90.

large part, the observations were perceived as criticisms of the ways in which law had been taught for years.

The authors made several recommendations to improve the process and craft of teaching law students. The first recommendation is that law schools should offer an integrated curriculum, which would better prepare students for the variety of legal fields.³⁹ Second, the authors recommended that law schools stress legal analysis and professionalism at the start of law school, allowing more time for students to engage in those subjects.⁴⁰ Third, the report recommends improving the use of the latter two years of law school, and, in particular, using the third year as a capstone year that develops student's law practice skills.⁴¹ Fourth, the report recommends law schools employ more support faculty and disperse them throughout the curriculum.⁴² Fifth, the authors recommend developing curricula that weave together disparate kinds of knowledge and skill, allowing students with different learning abilities to take advantage of all the classes of law school.⁴³ Sixth, the report recommends that the legal education community recognizes a common purpose and pursue that purpose.⁴⁴ Finally, the Carnegie Report recommends that legal educators working together within and across institutions to implement integrated curricula that are organized similarly throughout the legal education system.⁴⁵

The importance of the Carnegie Report was its evaluation of contemporary legal education through the

³⁹ *Id.* at 194.

⁴⁰ *Id.*

⁴¹ *Id.* at 195.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

lenses of higher education's methods of preparing students for professional engagement. The Report emphasized that all professional education had the common task of "preparing students for the complex demands of professional work—to think, to perform, and to conduct themselves like professionals."⁴⁶

C. "Next Generation" Articulations of Essential Lawyering Abilities: The Post-Recession, Mid-Pandemic Environment

The MacCrate and Carnegie Reports, together with other major evaluations of legal education,⁴⁷ created, in the legal profession and in legal education, an urgency and energy about understanding what contemporary lawyers needed to be educated and trained for, what legal education should be training and educating students for, and what law firms and other law offices needed to do to develop the talent in their offices. "Lawyering competencies and skills" became an important discussion at many local, state and national bar association gatherings, and at legal education groups.⁴⁸ Law schools responded by building into their curricula courses on skills identified in MacCrate Report and emphasizing educating their students for the apprenticeships described in the Carnegie Report.⁴⁹ Gradually, legal education began to educate for the contemporary practice of law and to prepare students for more rapid engagement in law practice.

The economic recession of 2005–2008 had devastating effects on legal education, the practice of law,

⁴⁶ *Id.* at 27.

⁴⁷ See generally ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).

⁴⁸ See Engler, *supra* note 25, at 116–17; Joy, *supra* note 28, at 571–72.

⁴⁹ Joy, *supra* note 28, at 576–78.

and the career goals and objectives of law students and recent law school graduates.⁵⁰ Law firm lay-offs, large numbers of unemployed or underemployed lawyers, and dramatic changes to the practice of law were consequences of the recession.⁵¹ During that time, there were an unprecedented number of law firm failures, often attributed to poor leadership of the firms, but also to the significant changes in how law was being practiced in the wake of the recession and stresses on law firms due to client demands and the growth of alternative legal services providers.⁵² The recession's impact on legal education and the practice of law resulted in the realization that the skills and abilities of new lawyers had changed in significant respects and that different talents and abilities were needed in the post-recession era.

The Covid pandemic beginning in winter of this year created a new wave of challenges to the legal profession, law practice organizations, and legal education. Obviously, the pandemic did not affect just lawyers and the law business, but rather exerted a devastating impact on most communities and countries. Again, the effects of the pandemic will require lawyers and law students to adapt to a very different environment with new skills and attitudes.

⁵⁰ Donald J. Polden, *Lawyers, Leadership, and Innovation*, 58 SANTA CLARA L. REV. 426, 441–44 (2019) (describing the impact of the recession on law firms) [hereinafter Polden, *Lawyers Innovation*].

⁵¹ *Id.* at 441–44.

⁵² *Id.* at 442–44; see also Thomas S. Clay & Eric A. Seeger, *2018 Law Firms in Transition: An Altman Weil Flash Survey*, ALTMAN WEIL, INC. ii–iii (2018), http://www.altmanweil.com/dir_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F86CDB8223_document.pdf [hereinafter *2018 Firms in Transition Report*].

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

Research done by Roland Smith of the Center for Creative Leadership and Paul Marrow underscores the critical importance of leadership skills in today's law practice environment.⁵³ They report that in the current state of complex challenges to law firms and organizations, lawyers need to develop the following critical skills:

- Building strategic leadership skills, including how to lead and developing the tools for leadership.
- Managing talent and promoting the sustainability of their organizations, including the task of finding attorneys who can promote the new economic model of law firms.
- Making decisions and setting strategic directions for the firm and law organizations.
- Retaining clients and promoting client satisfaction.
- Managing growth and developing new and existing markets and legal practice areas.⁵⁴

Drilling even deeper, the authors describe results of a survey of independent law firms, managing partners and other law practitioners who were asked to identify the key competencies for effective participation in the contemporary practice of law. The list includes the following competencies and abilities that are needed by today's law practitioners:

- Adaptability

⁵³ Roland B. Smith & Paul Bennett Marrow, *The Changing Nature of Leadership in Law Firms*, 80 N.Y. St. B. A. J. 33, 33 (2008) [hereinafter *Changing Nature*].

⁵⁴ *Id.* at 34–35.

- Building and mending relationships
- Building effective teams
- Change leadership
- Coaching
- Collaboration (working across boundaries effectively)
- Credibility
- Decisiveness
- Driving innovation
- Influence
- Leveraging differences⁵⁵

Importantly, the authors stress the concept of “emotional intelligence” as a differentiator in today’s law practice. They state:

This research is consistent with other historical studies on leadership impact. It confirms that, although technical excellence and intellect are critical factors for success as a lawyer, emotional intelligence is the differentiating factor for successful leadership.⁵⁶

Harvard’s Daniel Goleman has produced path-breaking research on the importance of emotional intelligence to success in many fields and, as Smith and Morrow point out, success as a practicing lawyer is no different.⁵⁷ According to Goleman, the key driver of effective performance is emotional intelligence and he cites to numerous studies that have documented what personal capabilities lead to outstanding performance.⁵⁸ The components of emotional intelligence are: self-awareness

⁵⁵ *Id.* at 36.

⁵⁶ *Id.*

⁵⁷ See, e.g., Daniel Goleman, *Leadership That Gets Results*, HARV. BUS. REV. (Mar.–Apr. 2000); Daniel Goleman, *What Makes a Leader*, HARV. BUS. REV. (2004) [hereinafter *Makes a Leader*].

⁵⁸ *Makes a Leader*, *supra* note 57, at 2.

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

(the ability to recognize and understand your own emotions and drives); self-regulation (the ability to control disruptive impulses or suspend good judgment); motivation (having a passion for the work you do); empathy (the ability to understand others' emotional makeup and to act in line with that recognition); and social skills (to manage relationships with others).⁵⁹

An important dimension to today's successful lawyer is competence in business and technology. It is not enough to be a highly skilled and knowledgeable student and practitioner of the law; rather highly competent lawyers much know the "business" of running a successful law firm or organization and must know the business of their clients. "Client development" has long been an essential talent that lawyers are hired for, groomed for, promoted to partner for, and generally expected to be able to perform.⁶⁰ But, today, much more is necessary for success as a lawyer than well-developed base of legal knowledge (even such knowledge in his or her practice specialty area) and excellent lawyer skills.

In a recent and very thoughtful study, the authors argue for a more multi-dimensional competency foundation for today's lawyers, including the possession of strong foundations in legal knowledge and skills, personal effectiveness skills and "process, data and technologies" abilities.⁶¹ These three foundational

⁵⁹ *Id.* at 3.

⁶⁰ See Donald J. Polden, *Leadership Matters: Lawyers' Leadership Skills and Competencies*, 52 SANTA CLARA L. REV. 899, 913–19 (2012).

⁶¹ Natalie Runyon & Alyson Carrel, *Adapting for 21st Century Success: The Delta Lawyer Competency Model*, THOMSON REUTERS LEGAL, <https://legal.thomsonreuters.com/en/insights/white-papers/delta-model?gatedContent=%252Fcontent%252Ffewp-marketing-websites%252Flegal%252Fgl%252Fen%252Finsights%252Fwhite-papers%252Fdelta-model&gatedContent=%252Fcontent%252Ffewp-marketing-websites%252Flegal>

abilities by lawyers produce what the authors call a “Delta Lawyer.”⁶² Personal effectiveness skills, the authors contend, include leadership abilities, emotional intelligence, strong character development and highly effective communication skills.⁶³ These fundamental contemporary lawyer competencies and attitudes mirror the Smith/Marrow identified traits and skills needed by effective lawyers today and the Goleman components of emotional intelligence in important ways. In addition, the authors add another critical foundation, “business & operation,” including skills in law firm technology as well as clients’ technology, data analytics, fundamental understanding of business (of the law firm and of the lawyer’s clients) and project management.⁶⁴ The lack of understanding of basic business concepts, transactions and skills leave young lawyers at a disadvantage in working with their clients.⁶⁵ This is a major shortcoming of legal education in that it doesn’t adequately prepare its students for the business realities of the practice settings that their students will go to. Clearly, many students prefer a practice setting that includes

%252Fgl%252Fen%252Finsights%252Fwhite-papers%252Fdelta-model [https://perma.cc/THK2-5M7A] [hereinafter *Delta Lawyer*].

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ There is no definite list of those fundamental business knowledge and skills that law students need to have in order to effectively represent clients. Most efforts to create a list include basic accounting concepts, introductory microeconomics, managerial relationships and organizational structures (e.g., proprietorships, partnerships). Transactional strategies (e.g., mergers, vertical acquisitions), basic finance theory, labor relations within the organization, and government regulation (antitrust and securities law for example)

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

representation of low income individuals, rather than handling major M&A transactions, but fundamental business knowledge is essential for nearly all client representation and engagements.

The importance of these three foundations for lawyer competencies is described in the report and the source of their findings stem from their research survey on the top competencies that law firms and law practice organizations. These include the following survey findings:

- 92% of the survey respondents cited “relationship management” as a top 10 competency;
- 83% named “communication” as a top 10 competency;
- 66% of the respondents named “entrepreneurial mindset” as a top 10 competency, especially in solving firm and client problems;
- 75% reported that emotional intelligence is a top 10 competency, especially the ability to management oneself, to take responsibility for his or her own behaviors and to guide their conduct in an appropriate manner.⁶⁶

The survey results described in the Delta Lawyer and the Smith/Morrow articles are especially pertinent in light of studies of the grave difficulties facing law firms and legal departments in recent years.⁶⁷ Law practice organizations have reported great challenges in retaining talent, understanding and managing technology (both the clients’ technology and the law firms’ technology

⁶⁶ *Delta Lawyer*, *supra* note 61.

⁶⁷ *See, e.g., 2018 Firms in Transition Report*, *supra* note 52; *Delta Lawyer*, *supra* note 61.

needs), serving clients in a more cost-efficient manner, and fostering innovation in the practice of law.⁶⁸ These challenges have been magnified exponentially by recent economic and public health catastrophies.

The Smith/Morrow survey results, together with Goleman's typology of effective traits and skills that he terms "emotional intelligence," reveal the key attributes of successful lawyering and successful leadership as becoming a "leading lawyer."⁶⁹

- Technical competence. People will not follow someone who doesn't know what they are doing.⁷⁰
- Able to envision change, the need for change, and why the "status quo" is clearly insufficient. This refers to the belief that leaders are needed when positive change (and often positive, ethical change) is needed.⁷¹
- Clear judgment and the ability to make smart decisions promptly and as needed. Judgement is important in every industry

⁶⁸ Polden, *Lawyers Innovation*, *supra* note 50, at 442–51.

⁶⁹ These attributes and skills are what should be taught in a well-designed course in leadership for lawyers. See *2018 Firms in Transition Report*, *supra* note 52; *Makes a Leader*, *supra* note 57, at 3.

⁷⁰ See *Delta Lawyer*, *supra* note 61 ("Clients increasingly demanded that their lawyers use technology tools and process improvement to enhance delivery of their legal services.").

⁷¹ The concept of a "leading lawyer" is rooted in the notion that effective lawyers and effective leaders share some traits and skills but there are other traits and attributes that in tension. See ROBERT W. CULLEN, *THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP* (2010); Polden, *supra* note 60, at 902–04.

LAWYER LEADERSHIP IN THE PRACTICE OF LAW
14 TENN. J.L. & POL'Y 439 (2020)

or occupation, but in law, it is what their clients pay for.⁷²

- The ability to influence, persuade and establish credibility. People will not follow someone if they don't trust them; this is without question true for lawyers.⁷³ Whether working with juries, colleagues or judges, a leading lawyer makes his living by his ability to convince, ethically and genuinely, others of the value, merit and importance of the lawyer's "case" or position.⁷⁴
- Self-regulation and self-awareness. These are two of the key pillars of emotional intelligence and they take on particular importance for lawyers because of the public calling of the law and the "statesmanship" that is often called for among lawyers.⁷⁵ Attorneys need to be in control of situations involving clients and others who depend on them for advice, direction and leadership.
- Empathy. Being able to feel compassion for another person is essential to healthy

⁷² See *Delta Lawyer*, *supra* note 61 (naming "Legal Judgment" competency as a key insight of the study).

⁷³ *Makes a Leader*, *supra* note 57, at 1.

⁷⁴ See also JAMES M. KOUZES & BARRY Z. POSNER, *CREDIBILITY: HOW LEADERS GAIN AND LOSE IT, WHY PEOPLE DEMAND IT* xi (2011).

⁷⁵ For a discussion of concept of the "lawyer-statesman," see ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 12 (1995). See also Ben W. Heineman, Jr., *Law and Leadership*, 56 J. LEGAL EDUC. 596, 596 (2006) (analyzing Kronman's "lawyer-statesman ideal").

living and in a business-like law, this is absolutely critical.⁷⁶

- Entrepreneurial. This refers to the ability to be creative and adaptive in solving problems and in planning for the future. This too is a critical skill of new lawyers today.⁷⁷

The possession of these lawyer-leader abilities does not guarantee that a lawyer will win all his or her cases; there is no matrix of skills and talents that can promise absolute success. However, these skills and attributes will, over the long haul of one's career as a lawyer, lead to a highly satisfying and rewarding career and one that includes the respect of others with whom the lawyer works in the practice of law. And, perhaps, it is just another in a growing list of fundamental skills and abilities that today's lawyers need to serve their clients and have positive relationships within the practice of law. More empirical research will be needed to determine whether any of the lists of skills, competencies and values—McCrate, Carnegie, Smith/Morrow, Delta Law, or the one offered in this article—is the best, most helpful articulation of what lawyers need to be able to do. In the meantime, law schools, law firms and law organizations should be educating and developing law students and young lawyers for these highly relevant and current lawyering skills and abilities.

III. Conclusion

⁷⁶ See *Makes a Leader*, *supra* note 57, at 1.

⁷⁷ See *Delta Lawyer*, *supra* note 61 (adding “entrepreneurial mindset” to the make-up of the “personal effectiveness” analysis).

The Article promotes the idea of self-sufficiency of lawyers who are asked to lead or who wish to lead. Today, leadership by lawyers requires a skill set that equals the set of skills, competencies and abilities that lawyers need in order to address client needs in the current environment. It is not enough simply to be prepared to practice law, with requirements that one understand the law, the rules of procedure, and some of the others practical requirements to be a lawyer today. Instead it is necessary for today's lawyers to have a more comprehensive set of skills, abilities and values in order to navigate the practice of law. This Article has surveyed some of recent literature on the topic of necessary competencies and skills of today's lawyers, while also drawing on the history of literature on the topic, to articulate a composite, yet comprehensive set of fundamental lawyering skills for today's lawyers. I hope that the summary of literature on this important subject and observations about relevant skills needed in today's practice of law will be useful in advancing leadership education in law schools and in contributing to the literature on the competencies that are needed in the practice of law.

