

Silicon Flatirons



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

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

Law 2.0: The New Continuum of Legal Education

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October 2012



*The Silicon Flatirons Roundtable Series on Entrepreneurship, Innovation, and Public Policy sponsored is by Brad Feld, Managing Director of the Foundry Group. Over a dozen Silicon Flatirons Roundtable Reports—on topics including private equity, internet governance, cloud computer, angel investing, and many more—can be found at <http://www.siliconflatirons.org/publications.php?id=report>. Roundtable and Summit discussions further Silicon Flatirons' goal of elevating the debate around technology policy issues. Special thanks to the Association of Corporate Counsel for sponsoring this Roundtable event.

† Silicon Flatirons Research Fellow. Thanks also to Ian Kuliasha and Dave Mangum for additional edits and comments.

Executive Summary

Today's legal educators aim at a moving target. Education invariably prepares students for a future that is different from the present. But fundamental change in the legal profession today occurs at an unusually rapid pace.

Dynamism within the legal landscape is notable in itself. Law is traditionally conceived of as a slow moving, incremental, and conservative profession. Regulation, such as the regulatory structure that superintends legal services, typically attenuates the rate of industry change. Yet the characterization of a stable, slow moving professional business models is no longer accurate within law. Instead, this is a period in which creation and destruction occur at a brisk clip.

One way to understand shorter periodicity of change in the legal business is that law, like other information industries, is experiencing a digital disruption. As detailed in a 2010 Silicon Flatirons Report, entitled *Law 2.0: Intelligent Architecture for Transactional Law* (2010) (herein, "Law 2.0"),³ law is undergoing a transition similar to the shifts seen in journalism, music, video, and other information industries. Many traditional law firm business models are under stress due to this digital transition and other causes.⁴ Relationships between company clients and traditional legal service providers are shifting toward new billing models. As corporate counsel and tech-savvy legal vendors seek to reduce legal costs and increase efficiency, new opportunities open for novel technology solutions and non-traditional service providers.⁵

Today's dynamic legal landscape poses challenges to legal educators. After all, how does a professional school prepare students when the very nature of the roles, services, and tools of the profession are changing? Diagramming this new and shifting legal landscape is its own challenge. Even more fraught is predicting what it will look like in 5, 20, or 35 years – *viz.*, the time frame in which today's students will work as professionals. For those involved in law school education and post-JD training, the core challenge involves how to teach to a moving target.

To understand and consider how to better educate and train individuals for the "new normal" of a dynamic legal marketplace, the Silicon Flatirons Center at Colorado Law hosted a Roundtable discussion on February 16, 2012 (herein, the "Continuum Roundtable" or the "Roundtable"). The Association of Corporate Counsel's Colorado Chapter provided generous support for the effort, which focused primarily upon transactional law needs of companies. Roundtable participants included industry leaders from law firms and corporate legal departments, representatives from non-traditional services providers such as legal process outsourcing companies and legal consultants, and members of the academic community.⁶ The discussion was co-moderated by Bill Mooz, Senior Director and Associate General Counsel at VMware Inc., and Brad Bernthal, Associate Professor of Law at the University of Colorado Law School. This report, entitled *Law 2.0*:

³ Kaleb A. Sieh, *Law 2.0: Intelligent Architecture for Transactional Law*, SILICON FLATIRONS CTR., <http://www.silicon-flatirons.org/documents/publications/report/SIEHLaw2.0.pdf>.

⁴ Industry change is rarely welcome and often obstructed by incumbents favoring the status quo. To the rest of the industry, however, change brings new ideas, products, methods, and processes that create efficiencies and cost savings. JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 82 (Harper 1975).

⁵ William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A. J., July 1, 2011 4:40 AM CDT, http://www.abajournal.com/magazine/article/paradigm_shift/.

⁶ A complete list of Roundtable participants is included as Appendix A.

The New Continuum of Legal Education (the “Report”), builds upon the insights of the 2010 *Law 2.0* Report and arises from the February 2012 Roundtable discussion.

This Report explains how law school and post-JD training should be reconceived as a continuum of legal education better tailored to a digital and disaggregated legal environment. Disruption within the legal marketplace leaves many attorneys unprepared to succeed in evolving legal roles. These lawyers find themselves in need of skills and professional mindsets that legal education and other professional training – such as continuing legal education – struggle to provide. This educational gap affects law students and practicing lawyers alike. Law students entering the profession are often ill prepared for such an evolving landscape. In short, there is opportunity to better adapt legal education offerings to today’s evolving roles.

At the same time, however, dynamism in the legal profession merits some modesty among educators concerning what attorney traits will be most important in the future. Law schools must strike a tricky balance by producing graduates who are immediately productive post law school, yet not solely optimized for today’s environment. Rapid change in the legal profession militates in favor of graduates equipped to adapt over the course of their careers. Along these lines, attorneys will increasingly need opportunities for retraining and post-JD learning.

Three points underscore the need for a new continuum of legal education.

First, the changing legal environment provides impetus for this effort. Companies no longer fill their legal needs by acquiring an end-to-end bundle of legal services from a single law firm. Rather, they increasingly look to disaggregate their portfolio of legal work into its underlying components and assign each component to the most efficient provider. The range of options available to companies is ever expanding and now includes traditional large law firms, boutique law firms, in-house lawyers and contract managers, contract lawyers, legal process outsourcers – both domestic and off-shore –, and automation tools including deal contract management systems, self-help tools, wikis, deal rooms, etc. Each of these options has a differing cost profile and differing strengths and weaknesses. Competition among all of these alternate providers is fierce, offering corporate clients better choices, lower prices, and increased service.⁷ As a result, the leverage has shifted toward corporate clients and away from providers, and traditional law firms now find themselves increasingly limited to a diminishing segment of highly-specialized work that cannot be standardized and automated or outsourced to a lower-cost provider. Conversely, in-house legal departments now require growing numbers of sophisticated lawyers who have the skill sets necessary to manage and operate the divergent array of disaggregated tasks and heterogeneous suppliers.

Second, in order for attorneys to succeed in the changing legal marketplace, new skills and mindsets are required, some of which attorneys are ill-prepared to develop. Roundtable participants acknowledged that fundamental legal skills, including critical reasoning and analysis, judgment, effective and persuasive communication ability, as well as substantive legal knowledge, remain a necessity that legal education should focus upon. But the participants also agreed that these skills are not enough today. Successful and sophisticated lawyers, whether practicing law or working in business, must also possess certain complementary skills, such as business acumen and digital

⁷ COMPETITION BENEFITS EVERYONE, COMPETITION AUTHORITY 2 (2009).

literacy. The emerging value of two such skill sets, project management and quantitative fluency, merit special elaboration.

Among emerging needs for attorneys, an ability to organize and manage *process* is critical to effective disaggregation of legal tasks. This is an area where neither law schools nor continuing legal education programs traditionally provide training. Understanding process requires more than an attorney's grasp of the rules of civil procedure. It requires the ability to separate out and unpack the various elements of legal activities; an understanding of how the activities fit within corporate policy, goals, and culture; and an ability to manage tasks distributed across multiple organizations. By appreciating process in light of business needs, corporate counsel can effectively design and manage disaggregation and re-aggregation (*viz.*, reassembling, in a coherent and digestible way, the project elements separated through disaggregation).

Moreover, other new skills become valuable in a disaggregated legal world. For example, Roundtable participants identified a pressing need to quantify an outside legal services provider's value. Information asymmetries exist in many professional services contexts that stymie client efforts to readily evaluate performance or compare service provider alternatives. The Roundtable identified that sabermetrics – that is, greater use of data in lieu of hunches and conventional wisdom – would facilitate improved evaluation of legal service providers. Much like professional athletes, attorneys consider their value intangible and unique.⁸ Sabermetrics would help counsel identify measurable elements of expert performance by which value – as opposed to cost – can be evaluated. In a world of big-data in which clients can demand greater information about legal services, clients will increasingly use technology to compare the results of similar types of services over time using set criteria. This ability to evaluate value among service providers suggests another emerging need – i.e., quantitative fluency – among attorneys.

Third, a new continuum of legal education should be crafted to more seamlessly respond to the changing legal landscape and emerging skills gap. Many law school graduates and seasoned lawyers never developed a business mindset in law school or learned the skills needed in a disaggregated digital legal world. They instead expected to learn on the job in a law firm. Although such opportunities were prevalent in the past, today's large law firms are cutting training budgets in an effort to cut costs, and few, if any, viable alternative training options exist. Smaller law firms and legal departments are worthy training grounds, but they cannot afford to pay new associates as much as large law firms do. This puts graduates saddled with an average debt load close to \$100,000 at a significant disadvantage.⁹ Moreover, experienced practitioners face a training gap when they attempt to change fields or re-tool their skill-set. As law firms downsize and merge, many attorneys are looking for new employment in and outside of the legal field. Traditional continuing legal education, although valuable, rarely provides enough information or training to sufficiently prepare an attorney for a change, especially if she intends to change careers.

Roundtable participants agreed that law schools, law students, and employers must work together to fill the training gaps for students and practitioners, and they proposed several solutions. Students, they agreed, must consider themselves entrepreneurs who need to build their own brand equity, mentorship relationships, and legal and practical skills. Law firms and companies also have a

⁸ Paul Lippe, *Allen Iverson and the Value of Legal Services*, A.B.A. J., Mar. 14, 2011 9:22 AM CDT, http://www.abajournal.com/legalrebels/article/allen_iverson_and_the_value_of_legal_services1/.

⁹ Briana A. Tamanaha, *How to Make Law School Affordable*, N.Y. TIMES, May 31, 2012, http://www.nytimes.com/2012/06/01/opinion/how-to-make-law-school-affordable.html?_r=1.

duty to the profession and society to teach lawyers the skills they need to become effective practitioners.

Most immediately, law schools can revitalize their admissions criteria, curricula, and continuing legal education offerings to help fill the gap. Participants suggested that law schools should offer increased experiential opportunities. They should also infuse the doctrinal and practical curricula with pedagogies that teach students the importance of developing and maintaining general business acumen. Rigorous re-training continuing legal education for seasoned lawyers, which includes opportunities to learn business concepts, is also important. Other structural solutions proposed included modifying the length of law school, offering abbreviated legal programs for those who do not aspire to “big law” positions, and condensing the JD/MBA dual degree program to three years.

In summarizing this discussion, the Continuum Roundtable Report, supported and supplemented by outside research, contributes to the larger dialogue on the future of legal education by describing the disaggregated landscape and the skills lawyers must possess to be effective in it. The Report also explains that a training gap exists for both new and experienced attorneys, especially with regard to process management, business acumen, and digital literacy. These emerging needs remain largely underappreciated by legal educators, despite being critical components of the effective attorney’s toolkit. As provided by Roundtable participants, this Report concludes by suggesting ways lawyers, students, and law schools can adapt to succeed. To accomplish this, the Report proceeds in four parts: Part I considers the nature of today’s new disaggregated legal landscape. Part II discusses the skills, mindsets, and capabilities lawyers need to succeed in the new legal marketplace. Part III discusses the methods and modes by which legal education can meet those needs. It also calls into question the fundamental structure of the legal education and proposes creative solutions. Part IV provides concluding thoughts.

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Part I. A New Disaggregated Legal Landscape

To frame the Continuum Roundtable discussion, Bill Mooz described today's in-house legal department as increasingly disaggregated. He explained how corporate counsel, in their search for creative ways to restructure and reduce expenses, to improve the consistency of results, and to becoming increasingly competitive, have disaggregated core legal activities and fundamentally changed the legal field.¹⁰ Disaggregation, the process by which various legal services are broken into their constituent components, allows corporate legal departments to identify activities and tasks that can be automated, standardized, or that require less specialized expertise. These elemental tasks can then be individually allocated to the most efficient and cost-effective provider.

Mooz divided in-house activities into three distinct tiers: highly-specialized activities, partially-standardized activities, and highly-standardize activities. Law firms have been displaced from each of these tiers and many tasks in the second two tiers are now either automated or performed by non-lawyers. This change threatens to jeopardize the traditional value of a legal education.

As the effects of disaggregation grow, attorneys and law students will only remain competitive by learning the skills necessary to provide new profit-generating services. Maintaining the status quo is not an option. Instead, attorneys, law students, and law schools must reconsider their roles in the industry. By understanding why they must change, and toward what end, they can remain competitive.

A. A Three-Tiered Approach to Disaggregation Underscores the Need for Industry Change.

Mooz illustrated the effects of disaggregation by dividing legal department activities into three tiers – ranging from the highly specialized to the standardized.

The top tier of activities has three key components: (i) sophisticated transactional work, (ii) the creation of standard legal forms that get used on a one-to-many basis, and (iii) process management.

Not all aspects of transactional work lend themselves to standardization. For example, while one can standardize the process for conducting due diligence in a significant M&A transaction, structuring, negotiating, and documenting such a deal typically requires sophisticated, tailored, and specialized legal work. Other examples of such transactional work include joint ventures, strategic alliances, and complex intellectual property relationships. These transactions tend to be relatively low in volume and of great import to companies. Accordingly, most companies find the value added by outside counsel to be high and remain willing to pay for it.

The second component of highly specialized activities involves the development and updating of the standard agreement templates and playbooks that companies use to run their higher

¹⁰ When processes are decomposed, they become modular. Modular architectures facilitate innovation and creativity by allowing individual components to be mixed and matched in unique ways. As a result, companies can be “fast, flexible and responsive.” Joseph Farrell & Philip J. Weiser, *Modularity, Vertical Integration, and Open Access Policies: Towards a Convergence of Antitrust and Regulation in the Internet Age*, 17 HARV. J.L. & TECH. 86, 95-95, n.44 (2003) (citing Clayton M. Christensen, *The Rules of Innovation*, TECH. REV., June 2002, at 33, 36).

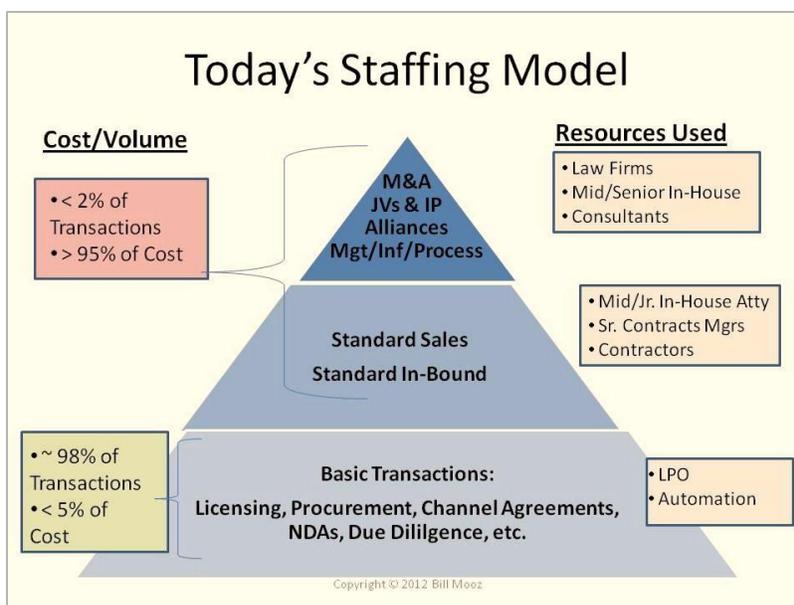
volume transactions. Examples of this include the form license contracts that get “click accepted” by thousands of a software company’s licensees and the playbooks that contract managers use to negotiate a high volume of larger deals. Since these documents get deployed many times over, any mistake in them can have a huge multiplier effect. Accordingly, developing these documents remains the province of legal experts. Sometimes these documents are drafted entirely by outside counsel; sometimes they are drafted by seasoned in-house counsel with guidance from outside counsel on specialized points of law.

Finally, highly specialized activities include process management. Disaggregating an activity into discrete tasks requires that the company’s legal department have appropriate processes in place for disassembling the activity, defining the boundary of each component, allocating the components to either the lowest cost provider or an automated solution, and then reassembling them into a coherent whole. This “process management” includes hiring and managing traditional and non-traditional legal providers, selecting and implementing tool sets, managing quality control, etc. Process management is typically handled by sophisticated in-house attorneys who have a specialized skill set, but in-house departments increasingly are looking to non-legal employees and, in some cases, external providers, to assist with this area. Moreover, a growing group of non-traditional providers will take on a significant portion of the process management associated with the tasks a company outsources to them.

The second tier encompasses those transactions that can largely, but not entirely, be standardized. Examples of these include sales agreements and purchase agreements that start with a standard template, but are negotiated. These transactions are high volume, when compared to tier-one transactions, and complex. Many of the issues raised in the negotiation of these transactions can be handled by reference to playbooks that contain pre-approved fallback clauses and other guidance. This allows companies to handle these transactions using contract managers (who typically are not lawyers) and junior attorneys (who are either employed by the company or retained as contractors during peak periods), with supervision coming from more senior in-house lawyers. This approach also tends to generate more consistent results and risk profiles as commonly negotiated issues get handled in the same way from transaction to transaction. Many legal process outsourcers now offer to take on entire areas of tier-two transactions using domestic and/or offshore resources.

The final tier includes those transactions, and components of transactions, that can be highly standardized. The quintessential example of a tier-3 transaction is the contract that an attorney never sees because the customer click accepts the agreement, signs it in standard form without review, accepts via shrink wrap, etc. These agreements often account for up to 95% + of a company’s total number of contracts – a percentage which stands to increase as contract management systems give sales forces an increasing ability to generate a wider variety of standard agreements that have a custom look and feel.

In addition to no-touch agreements, tier three also includes high-volume, low complexity tasks such as due diligence, document management, document review and summarization, etc. Once used to train new associates how to perform basic legal tasks, the unspecialized and repeatable nature of these tasks now causes them to be treated like commodities, with companies outsourcing them to non-traditional providers that make heavy use of automated solutions and off-shore resources.



In the past, a single large law firm often served as the “one stop shop” for all legal department needs. However, as today’s companies compartmentalize transactions by breaking them down into separate and discrete parts, technologies increase efficiency and alternative service providers disrupt traditional legal business models. Independent legal contractors can prepare legal documents at per-project rates. Non-traditional legal service providers, like document review and legal process outsourcing companies, capably manage automated and standardized legal tasks. Non-legal service providers (technology professionals, tax professionals, consultants, and the like) also can perform activities within their specialties.¹¹

Because these alternative service providers lack specialized expertise, gain efficiencies through economies of scale, or have lower overhead costs, they can often charge substantially less than large law firms. Furthermore, small and mid-sized law firms (those with fewer than 50 attorneys) often have highly skilled lawyers and lower overhead structures that enable them to provide sophisticated legal advice and analysis at a more compelling rate. And even they have difficulty competing with the rates that the growing populations of seasoned, unaffiliated lawyers charge as independent contractors. With so many suitable alternatives, companies rarely see the benefit in paying high rates for second and third tier activities, a development that promises to displace, or at the very least, disrupt the large law firms’ business model.

B. Increased Competition and New Technologies Drive the “Make versus Buy” Decision Faced by Corporate Counsel.

Today more than ever businesses are extremely cost-sensitive. In an effort to reduce internal spending, legal budgets are declining. As one commentator has noted, “the easiest way to [decrease legal spending] is by managing outside counsel expenditures, which constitute the majority of any legal department’s budget.”¹² Corporate counsel, therefore, must decide which technologies or

¹¹ Richard Granat, *Automated Document Assembly as a Disruptive Legal Technology*, ELAWYERING BLOG, Dec. 30, 2008, <http://www.elawyeringredux.com/2008/12/articles/change/automated-document-assembly-as-a-disruptive-legal-technology/>.

¹² Melissa Maleske, *How to Cut Outside Counsel Spend*, INSIDE COUNSEL, July 1, 2011, <http://www.insidecounsel.com/2011/07/01/how-to-cut-outside-counsel-spend>.

service providers are best equipped to perform legal services at the lowest cost, or whether the activity is best completed in-house. The two key factors that affect corporate decision-making in this regard are (1) how easily the activity can be broken into component parts and (2) the cost of outsourcing.¹³ Increased competition among service providers and innovative technologies has made this “make versus buy” decision applicable to an increasingly broad range of activities. Consequently, corporate clients use law firms less, rely on internal resources and technology more, and continue to outsource basic activities to low-cost providers.

Some activities lend themselves to disaggregation, which is made easier and more successful with a deep understanding of the overall process. Highly complex legal activities, like implementing joint venture arrangements, are difficult to disaggregate because the steps necessary for completion are heavily intertwined. More straightforward activities, like a lawsuit, can be decomposed into discrete parts including case strategy, dispute resolution, depositions, discovery preparation, due diligence, etc. Yet, regardless of the activity’s complexity, corporate counsel must understand the process by which the activity is accomplished to properly disaggregate. As Mooz explained, “process makes disaggregation, automation, and outsourcing possible.” Understanding the process requires more than just knowledge of the elements of the activity – the discrete tasks necessary to complete the activity – but also how the activity fits within the corporate policy, goals, and culture. By appreciating the process in light of business needs, corporate counsel can effectively design and manage disaggregation and re-aggregation of the component parts.

In-house attorneys are cost effective for companies because they understand the business very well—a key advantage over outside counsel—and their annual salary is often less than the hourly billing rates of outside counsel.¹⁴ Additionally, innovative processes and technologies that streamline complicated activities and simplify sophisticated legal concepts allow processes to remain in-house and facilitate increased collaboration with legal and non-legal service providers. Innovative processes include industry standard contracts, which decrease the cost of reaching an agreement and the likelihood of litigation by using terms and contractual arrangements commonly understood and mutually accepted by the industry.¹⁵ Commonly used technologies include standardization and automation software, self-help tools, legal wikis, and deal rooms. Technology, and the information distribution it enables, also facilitates increased competition among service providers, giving companies many more options when they decide to outsource activities. The natural market effect is higher quality services provided at increasingly lower cost. Each of these effects – increased in-house capacity and more lower cost providers – challenges the traditional legal business model.

C. Quantifying the Value and Quality of Attorney Services is a Challenge We Will Overcome.

Bespoke legal services will always be in demand due to the effort and time needed to develop sophisticated legal expertise. Corporate counsel, who often spend many years in private practice before moving in-house, must typically be generalists in order to address the many issues that they face. Therefore, it is more efficient for them to turn to their law firm colleagues than

¹³ Regan Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2137, 2143 (2010) (these factors in the make versus buy decision are based on economist Oliver E. Williamson’s expansion of Ronald Coase’s *The Nature of the Firm*).

¹⁴ Maleske, *supra* note 12.

¹⁵ D.C. Toedt, *The Virtues of Using Industry-Standard Terminology in Contracts*, TECHLAWNOTES, Aug. 12, 2011, <http://www.techlawnotes.com/the-virtues-of-using-industry-standard-terminology-in-contracts/>.

attempt to become experts in a particular area. When deciding which attorneys or firms to retain, it is often difficult to determine who will do the best job. Conventional legal wisdom dictates that an attorney's experience or a firm's brand name indicate a low risk of opportunism and high quality results. Yet, with many new competitors entering the legal marketplace, most clients are no longer happy with such "rules of thumb," especially when factors such as hourly rate or firm prestige do not always correlate with success. To drive home this point, Carrie Schiff, a Partner at Sage Law Group and former General Counsel at MWH Global, stated that hiring a law firm for its brand is the worst thing a company can do. Instead, it is important to tangibly determine the value-add an attorney can provide. Roundtable participants agreed that quantifying an outside counsel's value is extremely difficult, but sorely needed. Fortunately, technology is likely to provide a solution to this problem in the near future.

The difficulties associated with quantifying an attorney's value and quality are seen in many professional services industries. Quantifying cost alone is a straightforward task. The more important question, however, is one of value – determining, for example, the benefit over costs. Quantifying value and quality could have disruptive implications for the legal industry by allowing corporate counsel to more accurately compare legal service providers. Although not a "one size fits all" task, the ability to compare service providers would sort the best from the average, incentivizing the less qualified to work harder and justifying premium fees.¹⁶ "It all comes down to results," said Stanton Dodge, Executive Vice President, General Counsel, and Secretary of Dish Network. John Howard, an attorney who specializes in corporate turnarounds, agreed that successful results are priceless.

And companies are willing to pay a lot for success, but very little, if at all, for failure. Although Roundtable participants disagreed as to the definition of success – forming strong corporate relationships or getting into foreign markets may be more important than winning a case – they agreed that metrics for the value and quality of legal service providers are gravely needed. The "I know success when I see it" instinct is hard to justify to a CEO or CFO, said Bill Ojile, Chief Legal Counsel and Compliance officer of Westwood College.

Although quantifying the value of unique and intangible attributes is difficult, many industries are finding ways to do so. Brad Bernthal stated that the challenge today is for the legal profession to take advantage of the "sabermetric" moment. The book *Moneyball* by Michael Lewis popularized Billy Beane's use of sabermetrics (*viz.*, the use of data instead of hunches and conventional wisdom) to compare the intangible qualities of professional baseball players.¹⁷ A similar opportunity exists in the legal space. Much like professional athletes, attorneys consider their value intangible and unique.¹⁸ The challenge is to identify measurable elements of expert performance by which value can be evaluated. After all, if technology and appropriate metrics can evaluate the value and quality of professional athletes, there is no reason to believe the same cannot be done for lawyers.

In fact, a recent article by Paul Lippe of LegalOnRamp offers methodologies for capturing data and quantifying value. Lippe explains that value will become transparent if consumers of legal

¹⁶ Lippe, *supra* note 8.

¹⁷ Janet Maslin, *Books of the Times; Three Strikes You're Out at the New Ballgame*, N.Y. TIMES, May 12, 2003, <http://www.nytimes.com/2003/05/12/books/books-of-the-times-three-strikes-you-re-out-at-the-new-ballgame.html?pagewanted=all&src=pm>.

¹⁸ Lippe, *supra* note 8.

services compare the results of similar types of services using set criteria over time.¹⁹ For example, one could compare firms that provide sales contracts using criteria like speed, cost, and successful outcomes.²⁰ The fastest, cheapest, and most successful firm will eventually stand apart. As data becomes available in electronic form, the ability to track this information increases. Today, e-billing software allows corporate counsel to electronically track and evaluate law firm efficiency.²¹ As a result, it is easy to compare firm cost on similar projects and determine who is providing the best results.²² This type of transparency can be very helpful not only to corporate counsel, but also to law firms because it allows corporate clients to provide specific feedback. As companies evaluate outside counsel activity and provide constructive criticism, attorneys can increase the quality of their services.²³ As Lippe notes, “systematic feedback leads to higher performance” and better solutions for the entire industry.²⁴

With new and innovative technologies, as well as increased competition, good attorneys will want to develop and hone the skills they need to not only provide quality services, but to remain competitive. Appropriate adaptation, however, is not easy. As the long-term implications of the new disaggregated legal marketplace become evident, law firms, corporate clients, attorneys, and law schools must learn the skills necessary to provide and manage new industry activities. These competencies, as identified by Roundtable participants, include process management, business acumen, and digital literacy.

Part II. Preparing Lawyers for a New Legal Environment

Disruption is a process, not an event.²⁵ Today’s disrupted legal marketplace is the product of fundamental institutional flaws. The hourly billing rate, law firm partnership model, law school structure, and student loan offerings are all called into question as students leave law school with high debt and few employment opportunities. Yet, despite these difficulties, students and lawyers creatively applying their legal education can still provide significant value. With effective training and re-training options, attorneys can add value across a range of industries and fields, from law, to “management consulting, investment banking, and venture capital.”²⁶

Setting aside the broader implications, the Roundtable discussion primarily focused on the skills, mindsets, and training opportunities needed for success in the legal environment. Participants identified the continuing need for strong fundamental legal skills, as well as complementary competencies that include process management skills, a general business mentality, and digital

¹⁹ Paul Lippe, *Measuring Quality- Yes We Can*, THE DAILY RAMP, Feb. 2012, <http://www.legalmanagement.com/wp-content/uploads/2012/02/The-DailyRamp.pdf> (Lippe also describes current attempts to evaluate quality i.e., the ACC’s Value Challenge and Jeff Carr’s ACES pay-for-performance model).

²⁰ *Id.*

²¹ Danielle Ullman, *E-Billing Helps Corporate Counsel Track Spending on Outside Law Firms*, THE DAILY RECORD, Oct. 2, 2011 6:00 PM, <http://thedailyrecord.com/2011/10/02/e-billing-helps-corporate-counsel-track-spending-on-outside-law-firms/>.

²² *Id.*

²³ Shannon Green, *In Law Department Spending, Efficiency Trumps Cost*, CORPORATE COUNSEL, Nov. 30, 2011, <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202533821631>.

²⁴ Lippe, *supra* note 19.

²⁵ CLAYTON M. CHRISTENSEN & MICHAEL E. RAYNOR, *THE INNOVATOR’S SOLUTION: CREATING AND SUSTAINING SUCCESSFUL* Growth 109 (2003).

²⁶ Menachem Wecker, *In Tough Job Market, Law Grads Use J.D.s for Non-Legal Work*, U.S. NEWS & WORLD REPT., Sept. 30, 2012, <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2011/09/30/in-tough-job-market-law-grads-use-jds-for-nonlegal-work>.

literacy. With heavy competition in the legal field, it is imperative that law schools help students and practicing attorneys develop, redevelop, and hone these skills and mindsets.

A. Fundamental Legal Skills are Necessary but Not Sufficient for Success.

In an effort to identify the skills needed in today's legal marketplace, Brad Bernthal asked the Roundtable participants to identify those they thought necessary for success. With diverse backgrounds represented at the Roundtable, a broad variety of skills and mindsets were suggested. Most notably, process management acumen, general business aptitude, and digital literacy were identified as critical for success in the transactional world. Other common skills needed include technical literacy, emotional intelligence, and good judgment.

The group began by identifying basic legal skills as fundamental to effective lawyering, but they also agreed that these skills are not enough. Critical reasoning and analysis, effective and persuasive communication ability, and substantive legal knowledge – without these skills, Roundtable participants strongly agreed that attorneys will not succeed. But, in a transactional world largely driven by corporate needs, successful and sophisticated lawyers, whether practicing law or in business, must also possess necessary complementary skills.

As projects increasingly disaggregate, the ability to manage the moving parts to achieve client objectives will add significant value. Effective project managers will efficiently disassemble projects into component tasks, distribute the tasks as appropriate, facilitate communication between the parties, modify the scope of the project as necessary, and ensure the timely completion of the individual tasks and overarching project. They will also streamline projects and processes, incorporate lean techniques,²⁷ and eliminate waste. Most importantly, they will re-combine the various elements into a final product that meets the client's objectives, but also takes into account important non-legal factors, i.e., public perception, company culture, and employee morale. As discussed in Part I.B. above, this requires “both analysis – in-depth knowledge of specific process steps and operations – and synthesis – a higher-level understanding of the process as a whole.”²⁸ As Roxanne Jensen, a Senior Partner at Catapult Growth Partners, noted, clients place a premium on this type of skill and its value cannot be overstated.

Yet, effective project management is difficult for many attorneys, especially those unfamiliar with specialized service providers and untrained in managing complex projects in a flexible and dynamic manner.²⁹ It is also difficult for attorneys who lack the general business aptitude that would otherwise allow them to understand a client's overarching policies and business needs. Roundtable participants most commonly cited this need – knowledge of substantive business concepts and an ability to understand the client or employer's business and core competitive advantage – as missing from the repertoire of students and attorneys. The role of the corporate lawyer or general counsel is primarily that of a relationship- and solution-oriented “counselor focused on facilitating the strategic goals of the corporate client from a business and legal perspective.”³⁰ Accordingly, the attorney must be able to understand the business and communicate business-effective solutions. As one

²⁷ Originally applying to manufacturing, lean techniques apply to any industry and represent increasing customer value with fewer resources. *What is Lean?*, LEAN.ORG, <http://www.lean.org/whatslean/> (last visited Sept. 1., 2012).

²⁸ Regan & Heenan, *supra* note 13, at 2151.

²⁹ *Id.* at 2155-56.

³⁰ *The Role of a Corporate Lawyer – The Relationship*, CORPORATE LAWYER, July 11, 2009, <http://www.wabet.com/the-role-of-a-corporate-lawyer-the-relationship/>.

commentator noted, the attorney must know the business as well as or better than the client, and she must anticipate developments in light of “ever changing business realities.”³¹

A thorough understanding of substantive business concepts, like finance, accounting, and economics, is fundamental to the corporate counselor role. Mooz said these concepts allow attorneys to perform financial analysis, specifically with regard to profit and loss statements, and understand a business’s bottom line. Good communication skills, separate from legal research and writing ability, also fall into the business acumen category. Businessmen who are not attorneys are often overwhelmed by or get lost in legal memos and case law. They have little patience for information in this form and therefore can miss valuable advice.³² Attorneys with business acumen can more effectively communicate concrete solutions in a clear, concise, and solution-oriented manner.³³

Moreover, an effective counselor must firmly grasp the products and services the company provides, as well as the role employees play to keep the company successful. This requires the ability to understand the technology of the business and the tools used to support it. Chris Allyn, General Counsel and Chief Privacy Officer of Ricoh Production Print Solutions, explained that the ability to understand the business and develop good relationships with the owners and officers helps counselors identify what really matters, appropriately define the client’s problem, and suggest solutions in line with corporate financial goals.³⁴ Only with a firm grasp of substantive business concepts, paired with a deep understanding of the client’s business, can attorneys provide specific, tailored, meaningful, and effective legal and strategic advice.

Participants also emphasized the need for digital literacy in today’s technological environment. Digital literacy is “a person’s ability to perform tasks effectively in [the] digital environment”³⁵ that is pervasive today. Technology structurally influences the legal profession in ways to which students and attorneys are accustomed, but it also creates demands to which they are not. An attorney who does not know how to effectively and ethically manage today’s digital world will quickly fall behind. When interacting with clients, for example, technology provides constant connectivity through many mediums that range from email to video chats to website newsletters. And when communicating with clients, attorneys must be careful about appropriately documenting communication and updating client information.

Technology also gives attorneys the opportunity to get up to speed quickly on important issues by making case law, statute, legal commentary, law review articles, and other information readily available any hour of the day. Yet, with such a potential flood of available information, one must be more thoughtful about locating and identifying reliable sources. Failure to do so could result in wasting valuable time or using incorrect information. Many also argue that the overwhelming amount of information at one’s fingertips makes it increasingly difficult to focus or think deeply.

³¹ Peter Fontaine, *GC School Studies*, OLD BAILEY ADVISORS, July 2, 2012, <http://oldbailey.com/1/post/2012/7/gc-school-studies.html>.

³² *Id.*

³³ *Id.*

³⁴ Alina Dizik, *Law Firms Embrace Business School 101*, WALL ST. J., May 20, 2009, <http://online.wsj.com/article/SB124277243918636539.html> (many law firms are sending their attorneys to executive MBA classes to teach them these skills).

³⁵ Barbara R. Jones-Kavalier & Suzanne L. Flannigan, *Connecting the Digital Dots: Literacy of the 21st Century*, EDUCAUSE, Jan. 1, 2006, <http://www.educause.edu/ero/article/connecting-digital-dots-literacy-21st-century>.

Although this raises potentially far-reaching societal consequences,³⁶ the legal profession is particularly vulnerable because it is a contemplative one, inherently mindful of client needs and future developments. Without the ability to shut out distractions and think deeply, carefully, and strategically, a lawyer will inevitably miss an important issue or opportunity.

Finally, participants identified a need for emotional intelligence, or “soft skills.” Emotional intelligence can be defined as “the ability to sense, understand, and effectively apply the power and acumen of emotions as a source of human energy, information, connection, and influence.”³⁷ In other words, strong interpersonal skills give lawyers the ability to be “flexible, adaptable, creative, empathetic, self-aware, optimistic, confident, self-motivated, and the ability to persevere, exert self-control, display good judgment, influence and get along with others[.]”³⁸ Most importantly, these skills help clients trust, understand, and listen to an attorney’s advice.³⁹ Pure cognitive ability may allow for rapid information processing, but, as one commentator noted, on average, “90 percent of high performers’ success in leadership is attributable to emotional intelligence.”⁴⁰ In today’s world, where successful team projects or collaborative client relationships can define a person’s success, the ability to understand and respond to the emotions of others while facilitating a productive work environment is exceedingly valuable.

B. A Training Gap Exists for New and Seasoned Lawyers.

As Roundtable participants discussed the skills, mindsets, and capabilities necessary to succeed in the new legal environment, it became abundantly clear that a training gap exists for new attorneys (and many practicing ones). Traditionally, law firms provided the training and experience needed to develop those skills. Today, on-the-job training opportunities are few and far between. Those that are available often do not pay enough money to allow graduates to manage their high debt load. To make matters worse, seasoned attorneys have difficulty obtaining sufficient training to stay competitive. As a result, many question the value of today’s legal education. Roundtable participants agreed that students, employers, and law schools must work together to change the structure of legal education and continuing training.

Although legal education today is often critiqued for its emphasis on legal theory and legal doctrine, that was not always the case. Legal training began as an apprenticeship. Eventually the exclusively practical education was criticized for its failure to include training on the law (instead of just the trade) or in sophisticated legal analysis.⁴¹ In response, universities began offering training on English common law and modern American legal doctrine and theory as a way to *supplement*, but not replace, practical training.⁴² Subsequent changes motivated by a more scientific study of law included lengthening legal education to three years, adopting the case law method, and incorporating the

³⁶ See e.g., Nicholas Carr, *Is Google Making Us Stupid?*, THE ATLANTIC, July/Aug. 2008, <http://www.theatlantic.com/magazine/archive/2008/07/is-google-making-us-stupid/6868/>, compare Malcolm Gladwell, *Brain Candy*, THE NEW YORKER, May 16, 2005, http://www.newyorker.com/archive/2005/05/16/050516crbo_books?currentPage=all.

³⁷ ROBERT K. COOPER & AYMAN SAWAF, EXECUTIVE EQ: EMOTIONAL INTELLIGENCE IN LEADERSHIP AND ORGANIZATIONS xiii (1998).

³⁸ Alison Bernard & Niki Kopsidas, *How High is your ‘EI?’*, N.Y.L.J., Apr. 26, 2010, at 17.

³⁹ Fontaine, *supra* note 31.

⁴⁰ Alison Bernard & Niki Kopsidas, *Show Off Your ‘Emotional Intelligence’ During the Legal Recruiting Process*, LAW.COM, July 20, 2010, <http://www.law.com/jsp/law/article.jsp?id=1202463689800#1>.

⁴¹ John O. Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 309, 321 (2007); A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, WASH. & LEE L. REV. 69.4, 10 (2012).

⁴² Spencer, *supra* note 41, at 15-16.

Socratic Method.⁴³ These changes intentionally reduced practical training in favor of teaching law students to “think like lawyers.”

Consequently, graduates leave law school with a strong theoretical and doctrinal foundation but little hands-on experience, making them ill-prepared to practice law immediately. Schiff stated that new lawyers cannot be specialists without practice and hard work. “You can’t learn to use the knife well by looking at a study or data,” she explained. Until recently, this did not present a problem because graduates left the classroom for practical training at a large law firm. After five or six years applying their legal education in a supervised “battlefield,” most were experienced enough to practice independently. Large law firms offered this training, critical to sophisticated lawyering, because they had the budget to swallow the cost.

Today’s law firms, by and large, do not or cannot afford to do this. Many will hire lateral associates with 1-2 years of practice. Colorado Law’s employment numbers corroborate this change. In 2009, 44% of the graduating class went to work at law firms, 37.5% of which went to law firms with more than 50 attorneys. In 2011, 37% of the graduating class went into private practice, but only 13% went to firms with more than 50 attorneys. At the Roundtable, Lucy Stark, a Partner at Holland & Hart, confirmed that large firms are reevaluating their business models in light of diminished client spending and are much more selective when hiring recent graduates.

Yet, despite a decreasing number of law firms willing to train new graduates, established alternatives to the traditional training model do not yet exist. Although students could receive quality training in smaller firms or in corporate legal departments, high student debt frequently renders these options unrealistic. Many smaller firms do train recent graduates, but at entry-level salaries. Ojile commented that few other professions pay more than \$60,000 a year to someone who has never had a job before. Regardless, many participants agreed that small firms offer valuable substantive and practical training, especially because the attorneys are often knowledgeable and interested in the success of their employees. Small firm training could even be preferable to larger firms because new associates receive significant attention on a wider variety of substantive projects. With debt averaging over \$80,000, however, many law students cannot afford to take these opportunities.

Corporate legal departments are also rich with training opportunities for recent graduates, especially larger legal departments that can afford the cost. Yet few provide them. The corporate environment offers an appealing diversity of issues and endless opportunities for practical legal experience. In-house issues range from employment law to intellectual property and can provide both transactional and litigation experience. From the corporate perspective, hiring and training a new associate at \$80,000 to \$100,000 per year might be more cost-effective than paying law firm rates. Allyn disagreed with this notion, however, and stated that without substantial resources, companies cannot afford to train inexperienced graduates. Although anecdotal evidence indicates that some companies are beginning to hire and train recent graduates, most will still only hire lawyers with at least five to seven years of experience.

This discussion highlighted the direct tension between training opportunities and law school debt. Roundtable participants frequently reminded each other of the impact this reality has on post-graduate employment decisions. “In 2010, 85 percent of law graduates from ABA-accredited schools

⁴³ *Id.* at 16-20.

boasted an average debt load of \$98,500, according to data collected from law schools by *U.S. News & World Report*.⁴⁴ Although government, small firms, and even non-legal positions exist, the “golden handcuffs” of debt prevent graduates from taking many of these opportunities. A recent study concluded that a graduate must make \$96,000 a year to pay back loans on an education costing \$48,000 per year.⁴⁵ Yet, even with that salary, the graduate would still have only limited financial resources.⁴⁶

But, as the Roundtable discussion made clear, that salary is difficult to come by immediately out of law school. Although law schools could lower tuition (which has risen significantly in the last decade⁴⁷) and increase scholarships or other funding subsidies,⁴⁸ a change must happen at the federal level. Federal loans for tuition and living expenses are incredibly easy to come by,⁴⁹ and in 2010, law students borrowed approximately \$3.7 billion.⁵⁰ If loans remain readily available to students irrespective of tuition costs, law students will find themselves forced to take jobs on the basis of paying off debt, as opposed to seizing lower paid training opportunities that could help them to succeed over the long term.

Saddled with personal debt, seasoned lawyers are also hard pressed to find substantive retraining options to obtain basic skills or retool their careers. As law firms downsize and merge, many attorneys are finding themselves looking for new employment both in and outside of the legal field.⁵¹ Many practicing attorneys graduated from law school with the same basic theoretical framework that law students and recent graduates possess, and they also lack experience in process management, business mindsets, or digital fluency. Although Roundtable participants spent little time on this topic, the need for retraining options to prepare seasoned lawyers for these challenges is apparent. Continuing legal education, although valuable, rarely provides enough information or training to sufficiently prepare an attorney for a change, especially if she intends to change careers.⁵² Therefore, it is important that law schools and other educational providers consider seasoned lawyers as well as law students when they offer training and retraining opportunities.

C. Law Schools, Law Students, and Employers Must Fill the Training Gap.

⁴⁴ William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will it Last if Law Grads Can't Pay Bills?*, A.B.A. J., Jan 1, 2012 6:20AM CDT. Colorado Law's 2011 graduates had an average of \$78,894 in law school debt, making the school a relative bargain for law school students. *Who Are Our Students?*, COLORADO LAW, <http://www.colorado.edu/law/details/> (last visited Aug. 28).

⁴⁵ Jim Chen, *A Degree of Practical Wisdom: The Ratio of Educational Debt to Income as a Basic Measurement of Law School Graduates' Economic Viability*, 38 WM. MITCHELL L. REV. 1185, 1203 (2012).

⁴⁶ *Id.*

⁴⁷ Brian Z. Tamanaha, *How to Make Law School Affordable*, N.Y. TIMES, June 1, 2012, at A27.

⁴⁸ Some even argue that law schools should pay students to quit. Akhil Reed Amar & Ian Ayres, *Paying Students to Quit Law School*, SLATE, Nov. 18, 2011, at 2:53 PM ET.

⁴⁹ David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1.

⁵⁰ Henderson & Zahorsky, *supra* note 44.

⁵¹ Celia Paul, *The Career Transition Process in CHANGING JOBS: A HANDBOOK FOR LAWYERS* (Carol Kanarek ed., 1989); Marci Alboher, *When it Comes to Careers, Change is a Constant*, N.Y. TIMES, May 1, 2001, <http://www.nytimes.com/2007/05/01/business/smallbusiness/01webcareers.html> (citing a study explaining that New York professionals expected, on average, to change careers three times in their lifetimes).

⁵² For one commentator's perspective, see Scott Greenfield, *Continuing Legal Education: Fail*, SIMPLE JUSTICE, Aug. 16, 2012, 6:25 AM, <http://blog.simplejustice.us/2012/08/16/continuing-legal-education-fail.aspx>.

As attorneys and professionals build toward mastery of their fields, they need significant training (arguably 10,000 hours worth of practice).⁵³ Less than half of those hours can be obtained during law school, and Roundtable participants agreed that law schools, law students, and employers must work together to provide sufficient training opportunities.

Stafford explained that law schools can do this by providing more practical, real-world experiences for students. As it becomes clear that new attorneys must enter the workforce with broadly applicable skills allowing them to understand various industries and adopt new technologies, educational institutions have no choice but to support and facilitate these changes. Some law schools are changing their curricula to meet these needs. Adjunct professors, experiential opportunities (like hands-on clinics), business-focused course offerings (i.e., accounting and corporate finance classes), and even classes teaching technical skills like developing software code are more frequently offered.⁵⁴ Although significant, these changes might not be enough to effectively provide students and the community with a sufficient and valuable legal education. Yet, by most accounts, law schools are slow to respond to industry changes and remain entrenched in purely theoretical and doctrinal education.⁵⁵ Paul Lippe argues that law schools by and large remain disengaged from the profession.⁵⁶

In addition to law schools increasing experiential opportunities, students must take it upon themselves to be entrepreneurial about their professional development. Roundtable participants consistently emphasized that a focus on learning fundamental legal skills is very important, but students must go further by proactively developing their practical expertise. This means taking on any available learning opportunity or job, and working harder than ever before, said Schiff. Developing legal skills demands hard work, said Jensen and Dodge, but so does building relationships with mentors, another key part of professional development.

But law students and law schools cannot eliminate the training gap alone. Employers such as law firms and companies have a duty to the firm, the profession, and society to train new lawyers. Jensen and Stark agreed that failing to provide excellent training to new attorneys will produce a legacy gap, meaning that some firms may not exist in 20 years because they lack young, well-trained attorneys. Mooz commented that a similar duty exists for general counsel to put a succession plan in place so the company can continue to be led by competent attorneys. Nick Budor, Vice President, Associate General Counsel, and Corporate Secretary of Rally Software Development Corp., suggested that perhaps the duty extends to an ethical or moral responsibility to the profession and even society. Lawyers today must ensure that future attorneys are “well equipped to carry on the profession in a way that maximizes service” and maintains its integrity.⁵⁷

Employer training options are not limited to law firms and legal departments, but also include non-traditional legal service providers. These providers, like LPOs or automation services,

⁵³ K. Anders Ericsson et al., *The Role of Deliberate Practice in The Acquisition of Expert Performance*, 100 PSYCHOLOGICAL REV. 363, 389, 400 (1991).

⁵⁴ *Legal Education Reform*, N.Y. TIMES, Nov. 26, 2011, at A18, http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html?_r=1.

⁵⁵ *Id.*; see also Dean Larry Kramer, *From the Dean*, STANFORD LAWYER, Oct. 28, 2011, <http://stanfordlawyer.law.stanford.edu/2011/10/from-the-dean-5/>.

⁵⁶ Paul Lippe, *New Normal for Law Schools?*, A.B.A. J., Dec. 1, 2011, http://www.abajournal.com/legalrebels/article/the_gray_lady_and_the_matrix/.

⁵⁷ Rachel Littman & Christine Mooney, *Training New Lawyers: Post-Graduate Partnerships Between Law Schools and the Legal Profession*, N.Y. LAW SCHOOL, Apr. 15-16, 2011.

perform the low-level training activities new associates often use to learn the basics of the trade. Susan Nevelow Mart, Director of the William A. Wise Law Library and Associate Professor at the University of Colorado Law School, commented that those trained by LPOs or automation services may not learn the legal skills necessary for easy transition to more traditional legal positions. Ram Vasudevan, Founder and CEO of Quislex, a leading Indian Legal Process Outsourcer, countered that the potential legal opportunities in the LPO field may not be extensive, but his employees develop practical expertise and hone their emotional intelligence, preparing them well for positions in business or the legal field.

Part III. Changing the Landscape to Meet the New Environment

As the legal industry undergoes this existential change whereby alternative and non-legal service providers increasingly perform core legal activities, the methods and modes of effective legal education and training must change to provide the necessary skills described above. In considering the need for law school graduates to enter the workforce as productive individuals, and for practicing attorneys to remain successful, Roundtable participants proposed several solutions law schools could offer. They proposed a revitalization of admissions criteria, modified curricular training for law students, and improved continuing legal education offerings for attorneys after law school. Other proposed structural solutions include modifying the length of law school, offering abbreviated legal programs for those who do not aspire to “big law” positions, and developing a condensed dual degree programs for JD/MBAs.

A. Increased Admissions Screening will Identify Law School Applicants with the Right Qualities.

In playing gatekeeper to the legal profession,⁵⁸ law schools can limit the pool of attorneys to those with the skills, attributes, and qualities needed for success. As part of the admission process, participants suggested that law schools assess interpersonal skills through interviews, require substantive pre-law school experience, and admit only those with a true passion for the law. Admittedly, this last trait could be a stretch for people who are not yet lawyers or even yet law students, so other indicia of passion may be important to look for. In any event, these traits will either accompany the skills and mindsets identified as necessary to success, or they will allow the law student to easily adopt them.

Although conducting applicant interviews is time-consuming and resource-intensive, the process can reveal important information about the skills attorneys need, including interpersonal and communication skills, and good judgment. Northwestern Law School, known for its applicant interview requirement,⁵⁹ relies on staff and alumni to meet with and weed out applicants unlikely to do well in employment interviews or workplace settings.⁶⁰ Roundtable participants agreed that Northwestern’s applicant interview process should be a key feature in the admissions process for all law schools.

⁵⁸ Although seven states allow individuals to pass the bar without a law school diploma, the tract is not easy and significantly limits potential opportunities. As a result, very few chose this option.

⁵⁹ David E. Van Zandt, *The Evolution of J.D. Programs—Is non-Traditional Becoming More Traditional?: Keynote Address of the Southwestern Law Review Conference*, 38 SW L. REV. 607, 612 (2009).

⁶⁰ *Id.*

Roundtable participants also maintained that substantive pre-law school work experience is crucial for desirable law school applicants. Prior work experience gives applicants a sense of how demanding professional environments can be. It also teaches them fundamental skills like leadership, time-management, punctuality, maturity, and teamwork.⁶¹ Experience in the business world will also help students understand the need for and the ability to develop business aptitude. Howard commented that he believes military service makes applicants particularly competitive, because servicemen and women learn strong organizational skills, self-discipline, diligence, persistence, critical thinking, and risk-tolerance. Evidence also indicates that military training breeds an entrepreneurial mind-set well suited for the legal industry.⁶²

Finally, participants vigorously expressed the need for what Stark coined “fire in the belly,” or a true passion. The passion can be for the practice of law generally or for a specific field, subject matter, or activity. Each Roundtable participant looks for passion in their employees because it is accompanied by the desire and drive to work hard and perform well. As one commentator put it, “if you don’t have passion, you’re useless.”⁶³ Many Roundtable participants believed law schools are in a position to screen out the students without passion by looking for those who head to law school for want of a better alternative or to delay entering the workforce. By interviewing applicants, seeking out those with prior work experience, and identifying those with a “fire in the belly,” law schools can ensure that an increasing number of lawyers will be happy and successful post-law school.

B. The Law School Curriculum Must Incorporate Experiential Training and a Fundamental Business Aptitude.

Roundtable participants strongly agreed that the law school curriculum should help students develop the skills and mindsets needed for success today. These can be taught through a mix of doctrine and practical experience that encourages, and even incentivizes, basic business sense. Although the group did not agree on the optimal relationship between traditional theoretical opportunities and practical training, they did agree that practical experience and strong business acumen are keys to success.

All top tier law schools provide a quality doctrinal and theoretical legal education, as offered by tenured faculty. First-year law students learn contracts, torts, civil procedure, property law, constitutional law, criminal law, and legal writing. Although the following two years can be spent building upon those courses to develop the ability to “think like a lawyer,” fundamental, traditional legal training is insufficient to prepare law students for a career in transactional law after graduation. Practical experience in law school prepares students to “hit the ground running” when they enter the workforce. Experiential classes such as contract drafting, law practice management, and business transactions, can supplement (but not replace) fundamental legal coursework. Clinical offerings and externship opportunities bridge the gap between theory and practice by allowing students to apply their in-class education to real world problems under the tutelage and mentorship of a supervising professor or outside attorney.

⁶¹ Admissions Consultants, *The Advantage of Pre Law Work Experience*, Sept. 25, 2012, http://www.admissionsconsultants.com/lawschool/work_experience.asp.

⁶² Dave Gowel, *5 Reasons the Military is the Best Training for Entrepreneurs*, SMARTBLOGS, Mar. 1, 2012, <http://smartblogs.com/leadership/2012/03/01/5-reasons-the-military-is-the-best-training-for-entrepreneurs/>.

⁶³ Video: *Barry Diller Keynote*, DIGITAL BROADBAND MIGRATION (Feb. 13, 2012), <http://lawweb.colorado.edu/events/mediaDetails.jsp?id=3459>.

Colorado Law is at the forefront of many proposed curricular changes, evincing a recognition of and desire to respond to the changing legal market. Colorado Law faculty, staff, and students represented approximately one third of the participants in attendance at the Roundtable. Their goal was to listen to industry perspectives, ask questions, and receive feedback on current initiatives and class offerings. Some of the changes Colorado Law has implemented represent a unique variety of experiential classes, which include accounting for lawyers, advanced contracts, commercial transactions, business planning, business transactions, contract drafting, corporate finance, corporate tax, deals, income tax, international tax, legal negotiation, mergers, acquisitions, and reorganizations, securities regulation, transactional drafting, and venture capital and private equity.⁶⁴ In addition to these classes, students are encouraged to participate in clinics (like the entrepreneurial law clinic), externships, and internship opportunities offered each semester. The Telos Project, started in 2010, provides an opportunity for students to understand what practicing law means. The seminar takes a small group of first year students and engages them “in conversation about the behavioral and ethical dimensions of their legal training and [prepares] them for the legal profession[.]”⁶⁵

Roundtable participants championed practical training coupled with an excellent doctrinal education as a recipe for success in the transactional world. Many schools, like Colorado Law, continue to make the necessary curricular changes to incorporate these two elements. Missing from the equation, however, is the guidance needed to convey the importance of developing and maintaining a general business aptitude throughout one’s career. By developing educational strategies and tactics focused on instilling a business mindset, and fully integrating it into existing doctrinal and experiential curriculum, law schools can help students understand the need to cultivate their business acumen during and after law school. As a result, students will take courses that teach fundamental business concepts, like finance, accounting, economics, and management. They will also seek to understand the business world by reading trade journals, magazines, and newspapers that will reflect what their clients are thinking about. Although this business-oriented mindset is not necessary for success in law school, it is imperative for success in the transactional world. If law schools can incorporate it into their curriculum, their students will possess the theoretical, practical, and psychological components they need to succeed.

C. Post-Law School Training for New and Experienced Attorneys is Necessary.

While law schools can provide training during law school, new and experienced attorneys looking to retool their careers or stay up to date on developments in their field are in need of continuous training throughout their careers.⁶⁶ Experienced attorneys often look for more substantial training than traditional continuing legal education (CLE), often offered as a short session or a conference, which provides high level information about a topic with which the attorney is already familiar. A bankruptcy attorney, for example, would attend a CLE to stay up to speed on changes in the Bankruptcy Code. Unfortunately, most continuing education does not offer in-depth information that would allow that bankruptcy attorney to learn project management. Therefore, continued training opportunities provided by the law school can help smooth the transition to the workforce for new attorneys, or augment the career of an experienced professional.

⁶⁴ A complete listing of class offerings can be found at *Course Listing*, COLORADO LAW, <http://lawweb.colorado.edu/courses/courses.jsp?show&sortBy=TITLE> (last visited Sept. 17, 2012).

⁶⁵ Andrew Evans, *A Trend in Going to Law School*, NEW ERA NEWS, Dec. 5, 2010 at 7:49 PM, <http://neweranews.org/blog/a-trend-in-going-to-law-school>.

⁶⁶ Shaila Dewan, *To Stay Relevant in a Career, Workers Train Nonstop*, N.Y. TIMES, Sept. 22, 2012, at B1.

Roundtable participants suggested apprenticeships as a way to begin training new attorneys. As proposed, these would be post-graduate joint arrangements between the law school and a company or government office, or a company and a law firm. Although not strictly necessary, law school involvement would allow the graduate to receive specific training in the classroom, while providing an opportunity to apply it in the practical setting provided by the company or government office. This continuing education arrangement would warrant reduced compensation – making the position feasible for a company or government office – with the anticipated outcome of an eventual full-time position at compensation commensurate with the attorney’s skill level.

The company-law firm apprenticeship, on the other hand, is designed to allow the two entities to split the time and cost of training the graduate, while offering broader training opportunities. The apprentice would benefit from the rigorous law firm training combined with a deep understanding of the company’s business. In the end, graduates would be well trained at a low cost and ready to be productive members of the profession.

Colorado Law offers numerous continuing legal education (CLE) opportunities for experienced lawyers in the community. A “hot topic”⁶⁷ series reflects the traditional CLEs format of short, yet informative, sessions. Topics presented in 2012 provided training on e-discovery methods, how to think like an entrepreneur, alternative billing methods, and many more. Other post-graduate training opportunities include multi-day programs providing business knowledge at the executive and associate level. Executives have the opportunity to attend a three-day course covering the basics of corporate strategy, economics, finance, and accounting from the law firm management perspective. A two-day professional development workshop for associates provides training on the inner workings of firms through a curriculum based around law firm processes, business development, and customer service. With these efforts in place, and many others anticipated in the near future, Colorado Law will help students, alumni, and the legal community prepare for and navigate the evolving legal marketplace.

D. Unconventional Solutions May be Necessary to Accomplish Change.

In responding to today’s existential change, moderate changes – revising the admissions process and curriculum offerings – may be insufficient, and considering unconventional measures is often a worthwhile exercise. Roundtable participants, recognizing the urgency needed in responding to these changes, suggested creative and fundamental structural solutions by modifying the length and types of degrees offered.

In a disaggregated legal market, numerous opportunities along the service spectrum exist. Mooz suggested that an online law school, costing significantly less than the traditional model, could provide basic legal training for those not interested in practicing law. Business professionals or high-level paralegals, for example, would be the target audience. Legal process outsourcers or others performing standardized document review or basic contract preparation would also benefit from such a service.

For those wanting to practice law, Rebecca Askew, CEO of Circuit Media, proposed a stratified approach to the traditional law school offering. Similar to Mooz’s suggestion, the law

⁶⁷ *Law Points*, COLORADO LAW, Jan. 2012, <http://www.colorado.edu/law/deansoffice-enevs/CULawPointsJan2012.pdf>.

school program could be reduced in length and intensity for those who do not anticipate becoming specialists. This sort of “practitioner” program might be two years (instead of three), and would offer less training at a lower cost. Those wanting to specialize in sophisticated transactions could still take, and pay for, the traditional three-year law school offering. Askew did note the information asymmetries that would likely arise if a practitioner’s legal license did not reflect a lower level of preparation and education.

Finally, although not suggested at the Roundtable, some have proposed a condensed JD/MBA dual degree. Currently, most programs offering a juris doctorate and a masters in business administration require four years to complete the dual degree. Spending four years out of the workforce (and often relying on loans) can have long-term employment implications that many students are unwilling to accept. Therefore, law students are often unlikely to take graduate-level business courses. Shortening the program might increase the likelihood that students would develop fundamental business knowledge while in law school. Schools like Northwestern University, University of Pennsylvania, and Yale University are playing with modified dual degree programs of this nature.⁶⁸

Part IV. Conclusion

Educators must prepare law students and attorneys to succeed in legal or business roles today and in the future. This presents a distinct challenge because (1) the disaggregated legal environment destroys many traditional notions of legal services and who provides them; (2) many students and attorneys do not possess and are ill-prepared to develop the new skills and mindsets required in this new environment; and (3) traditional training opportunities have diminished or are insufficient to prepare attorneys for a change. In describing the new legal environment and identifying the skills needed to succeed in it, the Continuum Roundtable Report paves the way for educators, students, and the legal profession to adapt. In suggesting solutions, the Report does not attempt to be comprehensive, but to offer a starting point for experimentation and further analysis.

⁶⁸ Diana Middleton, *Creating a Shorter Path to a J.D./M.B.A.*, WALL ST. J., May 20, 2009, <http://online.wsj.com/article/SB124277262053136545.html>.

Appendix A

Continuum of Education- Roundtable Attendees

Sarah	Abelson	University of Colorado- Student
Chris	Allyn	Ricoh Production Print Solutions
Rebecca	Askew	Circuit Media
Brad	Bernthal	University of Colorado
Heather	Bias	Le Pain Quotidien
Sarah	Boulden	University of Colorado- Student
John	Boyd	University of Denver
Nick	Budor	Rally Software Development Corp.
Melinda	DelMonico	Gibson Arnold
Steve	Dietz	Oracle
Stanton	Dodge	Dish Network
Victor	Fleischer	University of Colorado
Jim	Franklin	SendGrid
Cory	Helton	University of Colorado- Student
Harry	Horowitz	University of Colorado
John	Howard	
Peter	Huang	University of Colorado
Roxanne	Jensen	Catapult Growth
Whiting	Leary	University of Colorado
Karin	Lindgren	Reed Group
Paul	Lippe	Legal OnRamp
Jason	Lynch	Reilly Pozner
David	Mangum	Silicon Flatirons
Bill	Mooz	VMware
Susan	Nevelow Mart	University of Colorado
Paul	Ohm	University of Colorado
Bill	Ojile	Westwood
Carrie	Schiff	Sage Law Group
Rebekah	Stafford	Axiom
Lucy	Stark	Holland and Hart
Ram	Vasudevan	Quislex
Mimi	Wesson	University of Colorado
David	Wolf	BSW Wealth Partners