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## Legal Intelligence Through Artificial Intelligence Requires Emotional Intelligence: A New Competency Model for the 21st Century Legal Professional

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# **LEGAL INTELLIGENCE THROUGH ARTIFICIAL INTELLIGENCE REQUIRES EMOTIONAL INTELLIGENCE: A NEW COMPETENCY MODEL FOR THE 21ST CENTURY LEGAL PROFESSIONAL**

**Alyson Carrel\***

## **ABSTRACT**

The nature of legal services is drastically changing given the rise in the use of artificial intelligence and machine learning. Legal education and training models are beginning to recognize the need to incorporate skill building in data and technology platforms, but they have lost sight of a core competency for lawyers: problem-solving and decision-making skills to counsel clients on how best to meet their desired goals and needs. In 2014, Amani Smathers introduced the legal field to the concept of the T-shaped lawyer. The T-shaped lawyer stems from the concept of T-shaped professionals who have a depth of knowledge in their chosen discipline and a breadth of knowledge in other tangentially related disciplines in order to enhance collaboration with other professionals. The concept of a T-shaped lawyer recognizes that lawyers not only need in-depth legal knowledge and skills but an understanding of data, technology, project management, and process improvement to be competent legal professionals. The T-shaped lawyer brought attention to the need for lawyers and law students to expand their training and begin learning about artificial intelligence, design thinking, data analytics, and more. However, the T-shaped lawyer obscures the core competency of

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decision-making and problem-solving. This paper introduces the Delta Model for legal professional competency that not only recognizes the need for lawyers to have deep legal knowledge and skills, as well as an understanding of data and technology, but also recognizes the need for emotional intelligence in decision-making and problem-solving. The Delta Model could reshape how we approach legal education and lawyer training, providing a structure that more accurately reflects the breadth of skills that a twenty-first-century lawyer needs.

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## INTRODUCTION

Every aspect of legal practice has changed in the last twenty-five years: legal education; hiring; client acquisition, communication, and maintenance; court docketing and judicial workflow; and discovery production, to name just a random grab bag of the most obvious. Clients are demanding that lawyers provide faster, cheaper, and better service.<sup>1</sup> One of the most significant forces for innovation in the delivery of legal services is advancing technology.<sup>2</sup> Moreover, with this advancing technology comes the need for legal professionals to acquire new skills and assume new roles. This paper argues that to succeed in this changing landscape of advancing technology, the twenty-first-century lawyer must not only encompass a mastery of the law but build competency in the areas of technology and emotional intelligence as well.<sup>3</sup> A small working group is developing a new competency model called the Delta Model to capture all three of these competencies and provide the industry with a tool for educating, hiring, and assessing legal professionals.<sup>4</sup>

### *I. Changing Nature of Legal Services*

The law, a notoriously risk-averse profession, now faces a transformation in response to emerging technology.<sup>5</sup> In the face of cautionary tales of reply-all Armageddon<sup>6</sup> and meta-data redaction

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1. *Cheaper, Faster, Better: Changing Client Expectations*, LITERA, <https://www.litera.com/the-changing-lawyer/cheaper-faster-better-changing-client-expectations/> [https://perma.cc/3RHT-HN5G] (last visited Mar. 6, 2019).

2. See generally RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2d ed. 2017) [hereinafter SUSSKIND, *TOMORROW'S LAWYERS*]; RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2008) [hereinafter SUSSKIND, *THE END OF LAWYERS?*].

3. See generally SUSSKIND, *THE END OF LAWYERS?*, *supra* note 2.

4. See generally *id.*; Natalie Runyon, *The "Delta" Lawyer Competency Model Discovered Through LegalRnD Workshop*, THOMPSON REUTERS (June 14, 2018), <http://www.legalexecutiveinstitute.com/delta-lawyer-competency-model/> [https://perma.cc/R3RC-D4ZN].

5. See generally SUSSKIND, *THE END OF LAWYERS?*, *supra* note 2; Runyon, *supra* note 4.

6. Gabrielle Orum Hernández, *Attorneys Don't Know the Ethics Guidelines for Reply-All Fails*, LEGAL TECH. NEWS (Jan. 30, 2018, 10:00 AM), <https://www.law.com/legaltechnews/sites/legaltechnews/2018/01/30/attorneys-dont-know-the-ethics-guidelines-for-reply-all-fails/> [https://perma.cc/7KVY-UZJA].

mishaps,<sup>7</sup> some lawyers are realizing the impact and power of technology,<sup>8</sup> embracing it, and imploring others to do the same.<sup>9</sup> Other articles in this symposium explore how technology, and more specifically artificial intelligence, is changing the delivery of legal services.<sup>10</sup> This article does not attempt to replicate the great work of other authors more qualified to describe this impact in depth but will instead focus on how those changes require law schools and professional-development programs to rethink how we train tomorrow's lawyers.

To be sure, lawyers are using technology in a variety of ways to make their work more efficient. Lawyers now rely on apps such as TrialPad<sup>11</sup> to assist in the conduct of trials, and like healthcare providers, attorneys are using online case-management portals that offer clients 24/7 access to their case file, briefs, accounts, and invoices.<sup>12</sup> Some clients even require attorneys to demonstrate proficiency with Microsoft Office before being hired.<sup>13</sup> Law firms, legal aid organizations, and law school clinics use cloud-based

7. Natasha Bertrand, *Manafort's Own Lawyers May Have Hastened His Downfall*, ATLANTIC (Jan. 9, 2019), <https://www.theatlantic.com/politics/archive/2019/01/paul-manafort-lawyers-failed-to-redact-documents/579910/> [<https://perma.cc/EX56-M98N>].

8. See generally SUSSKIND, *THE END OF LAWYERS?*, *supra* note 2.

9. Jason Tubinis, *Dunning-Kruger and You: Evaluating Your Technological Competence with the Legal Tech Audit 5* (Jan. 30, 2015) (unpublished manuscript) (on file with the University of Georgia School of Law), <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1039&context=cle> [<https://perma.cc/7HVE-GC63>]; Catherine Ho, *Lawyers, Could You Pass This Test?*, WASH. POST (Feb. 23, 2015), [https://www.washingtonpost.com/news/capital-business/wp/2015/02/23/lawyers-could-you-pass-this-test/?noredirect=on&utm\\_term=.508a1c989cf9](https://www.washingtonpost.com/news/capital-business/wp/2015/02/23/lawyers-could-you-pass-this-test/?noredirect=on&utm_term=.508a1c989cf9) [<https://perma.cc/94JH-2YF2>]; *Incentivizing Efficient Legal Services*, LEGAL TECH. ASSESSMENT, <http://www.techassessment.legal/> [<https://perma.cc/4WGW-FUZJ>] (last visited Feb. 5, 2019).

10. See, e.g., Tabrez Y. Ebrahim, *Automation & Predictive Analytics in Patent Prosecution: USPTO Implications & Policy*, 35 GA. ST. U. L. REV. 1185 (2019); Harry Surden, *Artificial Intelligence and Law: An Overview*, 35 GA. ST. U. L. REV. 1305 (2019).

11. Jared Rosenblatt, *Courtroom Technology and Advanced Advocacy Syllabus*, HOFSTRA U.L. (2018), <https://law.hofstra.edu/currentstudents/academics/academicresources/readingassignmentsandsyllabi/2018-19/fall/upperdivision/courtroomtechnologyandadvancedadvocacy/rosenblatt/syllabus.pdf> [<https://perma.cc/L4Z9-AFHJ>]; *TrialPad*, LIT SOFTWARE, <https://www.litsoftware.com/trialpad/> [<https://perma.cc/TGZ7-U6UB>] (last visited Feb. 20, 2019).

12. Stephanie L. Kimbro, *The Law Office of the Near Future: Practical and Ethical Considerations for Virtual Practice*, 83 N.Y. ST. B. ASS'N J. 28, 28 (2011); Chad E. Burton, *Launching a Virtual Law Firm*, A.B.A. (June 29, 2017), [https://www.americanbar.org/groups/gpsolo/publications/gp\\_solo/2014/january-february/launching\\_virtual\\_law\\_firm/](https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2014/january-february/launching_virtual_law_firm/) [<https://perma.cc/HU92-69EN>].

13. Hernández, *supra* note 6.

case-management systems such as Clio and Litify.<sup>14</sup> Lawyers are creating and using expert systems to provide self-represented litigants legal information and automated document completion with programs such as A2Jauthor and Neota Logic.<sup>15</sup> Civil rights organizations like the American Civil Liberties Union (ACLU) have created apps for the public (and potential clients) to record video of police interactions as they occur and automatically upload the videos to the agency for protection and enforcement.<sup>16</sup> Lawyers use technology and contract database-management specialists to more efficiently sort through terabytes of information in e-discovery.<sup>17</sup> Technology may significantly impact the industry by reducing the number of young lawyers and paralegals needed to run a firm, but technological enhancement can also expand roles.<sup>18</sup>

Some things will not change. A lawyer using such technology must have the expertise to accurately create parameters and develop protocols to ensure a similarly stringent vetting process for the technology as when the data is collected from witnesses or the public using pens, yellow pads, and index cards. Additionally, a lawyer must demonstrate proficient use of technology to reap the efficiency and cost-saving benefits for which it was purchased while protecting

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14. Jessica D. Gabel, *The Lean Legal Clinic: Cost-Effective Methods of Implementing Experiential Education*, 7 ELON L. REV. 261, 308 (2015); Stephanie Kimbro, *Using Technology to Unbundle in the Legal Services Community*, 2013 HARV. J.L. & TECH. (OCCASIONAL PAPER SERIES) 20; Pamela Bucy Pierson & Emily Kornegay Price, *Small Firms Poised to Thrive in Today's Legal Market*, 77 ALA. LAW. 20, 25 (2016); *Clio Cloud Conference*, LAWYERIST.COM, <https://lawyerist.com/career-goals/conferences/clio-cloud-conference/> [<https://perma.cc/6LW2-TLF4>] (last visited Feb. 20, 2019).

15. *Access to Justice & Technology*, NEOTA LOGIC (Apr. 16, 2014), <https://www.neotalogic.com/2014/04/16/access-to-justice-technology/> [<https://perma.cc/Y3M2-LTR7>]; *CALI Announces a New, Free Website Service*, CTR. FOR COMPUTER-ASSISTED LEGAL INSTRUCTION (Dec. 10, 2018), <https://www.cali.org/content/cali-announces-new-free-website-service%E2%80%A6-a2jorg-and-a2jauthororg-%E2%80%A6-courts-law-schools-non> [<https://perma.cc/6NK9-QS9B>].

16. Danielle Wiener-Bronner, *ACLU Builds a New App to Start Conversations Around Policing*, CNN BUS. (Mar. 15, 2017, 4:25 PM), <https://money.cnn.com/2017/03/15/technology/aclu-blue-app-policing/> [<https://perma.cc/KUZ4-7UDZ>].

17. Maura R. Grossman & Gordon V. Cormack, *Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review*, 17 RICH. J.L. & TECH. 1, 2 (2011).

18. Alli Gerkman & Zachariah DeMeola, *Foundations for Practice: The "Whole Lawyer" and the Path to Competency for New Lawyers*, 87 B. EXAMINER 17, 18 (2018) ("In a 2016 survey, [twenty-one] percent of law firms reported losing business due to clients' use of technology . . .").

privileged information. The American Bar Association's (ABA) Commission on Ethics 20/20 captured this change by stating:

In the past, lawyers communicated with clients by telephone, in person, by facsimile[,] or by letter. Lawyers typically stored client confidences in paper form, often inside locked file cabinets, behind locked office doors[,] or in offsite storage facilities. Even when confidential client information was maintained electronically, the information was stored on desktop computers that remained within the firm or on servers typically located in the same office. Today, lawyers regularly communicate with clients electronically, and confidential information is stored on mobile devices, such as laptops, tablets, smartphones, and flash drives, as well as on law firm and third-party servers (i.e., in the "cloud") that are accessible from anywhere. This shift has had many advantages for lawyers and their clients, both in terms of cost and convenience. However, because the duty to protect this information remains regardless of its location, new concerns have arisen about data security and lawyers' ethical obligations to protect client confidences.<sup>19</sup>

Recognizing the increasing need to protect clients' data and information while ensuring that clients benefited from the technological advances they were using and expected to use in their everyday life and business, the ABA chose to require that attorneys increase their understanding of technology.<sup>20</sup> To do so, the ABA amended Comment 8 to Model Rule of Professional Conduct 1.1 to now require that lawyers must not only maintain their competence by

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19. A.B.A. COMM'N ON ETHICS 20/20, RESOLUTIONS AND REPORTS TO THE HOUSE OF DELEGATES: INTRODUCTION AND OVERVIEW 4 (Aug. 2012), [https://www.americanbar.org/content/dam/aba/administrative/ethics\\_2020/20120508\\_ethics\\_20\\_20\\_final\\_hod\\_introduction\\_and\\_overview\\_report.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_hod_introduction_and_overview_report.authcheckdam.pdf) [<https://perma.cc/NYT5-3H3H>].

20. MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS'N 2018).

staying up to date in the law but in “the benefits and risks associated with relevant technology” as well.<sup>21</sup>

Clients’ utter reliance on technology in their sphere of work will continue agitation for parallels in the delivery of legal services and will redefine the role of the lawyer in society. The law, like many other fields, is grappling with the future of the profession and how advancing technology will impact it. Headlines such as “will robots take your job?” evoke dystopian nightmares of a future where algorithmic automatons rule the world. In reality, technology is and will be more likely to enhance the work of humans, not replace it entirely. Richard Susskind has written many books highlighting the inevitable transformation he sees in the legal profession.<sup>22</sup> Susskind posits that legal work consists of disparate parts, each of which exists on a spectrum from those that require bespoke legal work to those that do not rely on an attorney’s extensive legal experience.<sup>23</sup> He does not argue that a database of online legal documents will replace lawyers but that lawyers need to better understand how their work can be compartmentalized so they can isolate which parts require bespoke legal work and which do not.<sup>24</sup> By separating those disparate parts, lawyers can effectively use technology to handle those replicable aspects of legal work and then focus on the more creative and complex elements of a client’s case.<sup>25</sup>

#### *A. Impact of Artificial Intelligence on the Role of Lawyer*

In addition to using technology to more efficiently conduct the practice of law, some technologies, such as the use of artificial intelligence, “will disrupt not just the world of practi[c]ing lawyers but also our common perception of the legal process.”<sup>26</sup> There are

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21. *Id.* Thirty-five states have now adopted this comment, and California has adopted it by way of an ethics opinion. Robert J. Ambrogi, *36 States Have Adopted the Duty of Technology Competence*, LAWSITES: TECH COMPETENCE, <https://www.lawsitesblog.com/tech-competence/> [https://perma.cc/GY27-8MRH] (last visited Feb. 5, 2019).

22. *See, e.g.*, SUSSKIND, *TOMORROW’S LAWYERS*, *supra* note 2.

23. *Id.* at 27–28.

24. *Id.* at 30–31.

25. *Id.* at 31.

26. *Id.* at 55.



indeed some tasks that computers can (and already do) complete more accurately and efficiently than humans—young lawyers don’t cut their teeth “Shepardizing” cases in the stacks, managers don’t schedule warehouse workers, mechanics don’t decide what is wrong with a car, until the computer takes a crack at it first—but there are plenty of tasks that machines cannot replicate and that require human cognition. One researcher identified the following five steps in the workflow of a typical skilled job:

1. Gather data
2. Analyze the data
3. Interpret the results
4. Determine a recommended course of action
5. Implement the course of action[.]<sup>27</sup>

While there is no doubt that machines outperform humans in the above first step—and increasingly steps two and three—the last few steps require the ability to sit with a client, think about the impact of a particular decision, and think about how that decision will impact other aspects of the client’s business or personal life.<sup>28</sup> “Those that want to stay relevant in their professions will need to focus on skills and capabilities that artificial intelligence has trouble replicating—understanding, motivating, and interacting with human beings.”<sup>29</sup>

As artificial intelligence (AI) increases in power and capabilities, our workflows are likely to refocus the lawyer’s roles into those of

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27. Megan Beck & Barry Libert, *The Rise of AI Makes Emotional Intelligence More Important*, HARV. BUS. REV. (Feb. 15, 2017), <https://hbr.org/2017/02/the-rise-of-ai-makes-emotional-intelligence-more-important> [<https://perma.cc/9SRM-EREP>].

28. *Id.* For example, the everyday artificial intelligence used by Westlaw and Lexis’s natural-language-processing algorithms has totally changed legal research. Ken Kozlowski, *The Internet Guide to AI and Legal Research*, INTERNET GUIDE LEGAL RESEARCHER NEWSL. (Infosources Pub., Teaneck, N.J.) Nov. 2017. Just twenty years ago, attorneys still conducted legal research in books. *Id.* Just ten years ago, attorneys had to use complicated search terms and connectors to retrieve accurate results. *Id.* Today, attorneys do not need books or complicated methods of search terms and connectors but can instead use natural-language questions. *Id.* We are at the precipice of no longer relying solely on legal research in the books or online because of new technology such as CaseText CARA, which allows users to upload a brief and let the algorithm identify relevant cases that the attorney might have missed. *Id.*

29. Beck & Libert, *supra* note 27.

“trainers, explainers, and maintainers.”<sup>30</sup> Lawyers already take on these roles as they train new AI systems on how to do a certain task such as technology-assisted review in e-discovery.<sup>31</sup> Working within the e-discovery software requires that lawyers understand the law and correctly identify examples of privileged and relevant documents as if they were conducting the discovery themselves.<sup>32</sup> Besides, lawyers are increasingly taking on the role of maintainers. Lawyers question the algorithms and data inserted into those algorithms about the potential for bias and built-in mistakes that lead to wrong outcomes.<sup>33</sup> Lawyers must understand the underlying technology enough to ask the right questions and to ensure that data and technology are being used appropriately, ethically, and with an appreciation of the impact on society and clients.<sup>34</sup> However, the more complex and opaque the step between the data input and decision output, the more crucial the lawyer’s role as explainer becomes. “These ‘explainers’ are particularly important in evidence-based industries, such as law and medicine . . . where a machine’s output could be challenged as unfair, illegal, or just plain wrong.”<sup>35</sup> To effectively question the potential bias in decisions that rely on big data, a lawyer must understand the law as it relates to discrimination and the technology as it relates to algorithms. Further, a lawyer must possess the emotional intelligence to understand the impact of the outcome, as well as the nature of inputs and potential to unintentionally embed implicit bias into the data.

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30. H. James Wilson et al., *The Jobs That Artificial Intelligence Will Create*, 58 MICH. INST. TECH. SLOAN MGMT. REV. 14, 14 (2017).

31. Gordon V. Cormack & Maura R. Grossman, *Evaluation of Machine-Learning Protocols for Technology-Assisted Review in Electronic Discovery*, 2014 PROC. 37TH ANN. INT’L ACM SIGIR CONF. ON RES. & DEV. INFO. RETRIEVAL 153, 154.

32. *Id.* at 153.

33. Pauline T. Kim, *Auditing Algorithms for Discrimination*, 166 U. PA. L. REV. ONLINE 189, 191 (2017). “[A]voiding discrimination requires not only attention to fairness in design[] but also scrutiny of how these systems operate in practice.” *Id.* at 196.

34. FRANK PASQUALE, *THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION* 147 (2015); Stephanie Bornstein, *Antidiscriminatory Algorithms*, 70 ALA. L. REV. 519, 523–24 (2018); Anupam Chander, *The Racist Algorithm?*, 115 MICH. L. REV. 1023, 1024–25 (2017); Pauline T. Kim, *Data-Driven Discrimination at Work*, 58 WM. & MARY L. REV. 857, 857–58, (2017); see Kim, *supra* note 33, at 191.

35. H. James Wilson & Paul R. Daugherty, *Collaborative Intelligence: Humans and AI Are Joining Forces*, HARV. BUS. REV., July–Aug. 2018, at 114, 117–18.

In this new paradigm, as the lawyer’s roles shift toward “trainer, maintainer, and explainer,” the profession will need to change traditional education and training models to reflect these changes to ensure law students receive the right training, firms provide the right performance incentives, and clients receive the right services. New competency models must reflect these new roles and focus not only on learning how to think like a lawyer and mastering legal doctrine but on using technology to make decisions and predict outcomes, as well as gaining the emotional intelligence to effectively work with clients and help them understand how those decisions and technology may impact the client’s case.

*B. New Professions within the Law*

Susskind not only predicted that lawyers would take on new roles within the practice but he also argued that integration of technology in the law would spawn new types of jobs such as:

- Legal Knowledge Engineer
- Legal Technologist
- Legal Hybrid
- Legal Process Analyst
- Legal Project Manager
- Legal Data Scientist
- Research & Development
- Online Dispute Resolution Practitioner
- Legal Management Consultant
- Legal Risk Manager<sup>36</sup>

Moreover, we are seeing this change play out as firms announce new programs, such as Reed Smith’s technology summer associate program,<sup>37</sup> and new positions, such as Baker McKenzie’s new

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36. SUSSKIND, TOMORROW’S LAWYERS, *supra* note 2, at 133–44.

37. *Reed Smith Launches Summer Technology Associate Program; Provides Experience at the Intersection of Law and Technology*, REED SMITH (Apr. 19, 2018), <https://www.reedsmith.com/en/news/2018/04/reed-smith-launches-summer-technology-associate-program>.

Director of Legal Operations, Director of Legal Project Management, and Director of Pricing Strategy.<sup>38</sup> We also see firms creating innovation centers, such as Denton's NextLaw Lab<sup>39</sup> and Allen & Overy's Fuse incubator.<sup>40</sup> New organizations are also forming, such as Corporate Legal Operations Consortium (CLOC)—a growing organization that saw its inaugural conference attendance of 500 participants in 2016 grow to 2,000 participants in just two years.<sup>41</sup>

The rise in technology coupled with the widening access-to-justice gap has prompted some jurisdictions to allow individuals without a law degree to work with clients.<sup>42</sup> For instance, Washington State has created positions that attract non-attorneys as Limited Legal Technicians.<sup>43</sup> This changing nature in the delivery of legal services has prompted some schools to develop new degree programs.<sup>44</sup> One example is Northwestern's Master of Science in Law, targeted to a cohort of individuals with science, technology, engineering, and mathematics (STEM) backgrounds who want to understand the law

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38. Roy Strom, *Building out Innovation Team, Baker McKenzie Hires 2 Former Consultants*, AM. LAW. (Jan. 22, 2019, 10:00 AM), <https://www.law.com/americanlawyer/2019/01/22/building-out-innovation-team-baker-mckenzie-hires-two-former-consultants/?slreturn=20190026153206> [<https://perma.cc/X55Y-GV59>].

39. *See generally Innovating Through Nextlaw Labs*, DENTONS, <https://www.dentons.com/en/whats-different-about-dentons/innovating-through-nextlaw-labs> [<https://perma.cc/D2PB-BMQK>] (last visited Feb. 27, 2019) (as an example of firms creating innovation centers).

40. Andrew Messios, *Allen & Overy Tech Incubator Fuse Opens Applications for Next Intake*, LEGALWEEK (Dec. 14, 2018, 4:48 AM), <https://www.law.com/legal-week/2018/12/14/allen-overly-tech-incubator-fuse-opens-applications-for-next-intake/> [<https://perma.cc/VM4Q-TWR3>].

41. Annie Pavia, *CLOC's Legal Operations Institute Rides a Wave of Momentum*, BLOOMBERG: CORP. TRANSACTIONS BLOG (Apr. 27, 2018), <https://www.bna.com/clocs-legal-operations-b57982091602/> [<https://perma.cc/WY9R-37FL>].

42. Patrick McGlone, *Can Licensed Legal Paraprofessionals Narrow the Access-to-Justice Gap?*, A.B.A. J.: DEFENDING JUST. (Sept. 6, 2018, 6:05 AM), [http://www.abajournal.com/news/article/can\\_licensed\\_legal\\_paraprofessionals\\_narrow\\_the\\_access\\_to\\_justice\\_gap](http://www.abajournal.com/news/article/can_licensed_legal_paraprofessionals_narrow_the_access_to_justice_gap) [<https://perma.cc/B86Y-24U3>].

43. Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, A.B.A. J. (Jan. 2015), [http://www.abajournal.com/magazine/article/washington\\_state\\_moves\\_around\\_upl\\_using\\_legal\\_technicians\\_to\\_help\\_close\\_the/?utm\\_content=bufferdd4ef&utm\\_medium=social&utm\\_source=plus.google.com&utm\\_campaign=buffer](http://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the/?utm_content=bufferdd4ef&utm_medium=social&utm_source=plus.google.com&utm_campaign=buffer) [<https://perma.cc/EA6J-X4WU>].

44. Ray Worthy Campbell, *The End of Law Schools: Legal Education in the Era of Legal Service Businesses*, 85 MISS. L.J. 1, 6–7 (2016); MICHELE R. PISTONE & MICHAEL B. HORN, CLAYTON CHRISTENSEN INST. FOR DISRUPTIVE INNOVATION, *DISRUPTING LAW SCHOOL: HOW DISRUPTIVE INNOVATION WILL REVOLUTIONIZE THE LEGAL WORLD* 13 (2016), <https://files.eric.ed.gov/fulltext/ED568678.pdf> [<https://perma.cc/33W8-AZJW>].

but don't necessarily want to practice it.<sup>45</sup> It has also prompted universities to create new partnerships.<sup>46</sup> With the rise of so many new types of legal positions outside the traditional practice of law, some argue that we need to redefine what we think of as a legal professional by broadening the definition to include allied professionals in addition to licensed attorneys.<sup>47</sup>

The next section summarizes the evolution of training and education models for lawyers as the profession reacts to changes over time in the marketplace and then focuses on the most recent changes stemming from advancing technology.

## II. Legal Education Responses

This section looks at how legal training has evolved over the years and assesses current efforts to train the twenty-first-century lawyer in the technology and emotional-intelligence skills necessary to complement traditional legal-analysis roles.

Central to the success of a lawyer has always been the notion that law school needs to teach one how to “think like a lawyer” by instilling the critical-thinking skills necessary to read, analyze, and understand case law.<sup>48</sup> How to “think like a lawyer” has become the basis for traditional legal education focused on doctrine and is prioritized by the first-year curriculum in every law school today.<sup>49</sup> However, over the years, a growing amount of research has

45. See *Master of Science in Law*, NORTHWESTERN, <http://www.law.northwestern.edu/academics/degree-programs/msl/> [<https://perma.cc/XCA6-5JMG>] (last visited Feb. 27, 2019).

46. *American University Washington College of Law Partners with 2U, Inc. to Launch an Online Master of Legal Studies*, AM. U. WASH. C.L. (June 13, 2018), <https://www.wcl.american.edu/news-events/news/american-university-washington-college-of-law-partners-with-2u-inc-to-launch-an-online-master-of-legal-studies/> [<https://perma.cc/RK3P-SKUU>].

47. David Curle, *Integrating Allied Professionals into the Legal Industry*, THOMSON REUTERS: F. MAG. (Sept. 27, 2017), <https://blogs.thomsonreuters.com/answerson/integrating-allied-professionals-legal-industry/> [<https://perma.cc/4RRL-6HX9>]; David Lat, *How In-House Lawyers Can Expand the Role of Non-Lawyers Allied Professionals to Improve Delivery of Legal Services*, ABOVE L. (Oct. 20, 2016, 7:11 PM), <https://abovethelaw.com/2016/10/how-in-house-lawyers-can-expand-the-role-of-non-lawyers-allied-professionals-to-improve-delivery-of-legal-services/> [<https://perma.cc/R9WB-ACWK>].

48. Campbell, *supra* note 44, at 14–15.

49. *What You Can Expect from Your Law School Experience*, L. SCH. ADMISSION COUNCIL, <https://www.lsac.org/discover-law/what-you-can-expect-your-law-school-experience> [<https://perma.cc/HW9D-Y9GZ>] (last visited Feb. 27, 2019).

demonstrated that behavioral skills related to emotional intelligence are just as important—if not more important—to a lawyer’s success in practice.<sup>50</sup> Although some schools have begun to add behavioral-skills courses, very few do across all three years of law school, nor do they integrate these skills throughout the curriculum.<sup>51</sup> Instead, these initiatives are often seen as less important than doctrinal courses and are added piecemeal to the main curriculum. Most recently, there has been a push to add more training in business and technology skills to reflect the growing use of and reliance on technology, data, and artificial intelligence in legal services. Unfortunately, each of these efforts fails to capture the comprehensive set of skills necessary to succeed as a twenty-first-century lawyer or the growing roles available beyond becoming a practicing lawyer, which are developing within the legal-services industry. The singular focus on how to “think like a lawyer” succeeded for nearly two centuries but is insufficient in today’s legal practice.<sup>52</sup> New models must also reflect decades of research on lawyer effectiveness and education pedagogy.

#### A. *Legal Education and Training in the Profession*

The law’s evolution from unregulated and unstructured apprenticeships to standardized entrance exams and education requirements started with the acceptance of the case-study method of legal education introduced by Harvard Law School’s Dean,

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50. ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND CHARACTER QUOTIENT I (July 2016), [http://iaals.du.edu/sites/default/files/documents/publications/foundations\\_for\\_practice\\_whole\\_lawyer\\_character\\_quotient.pdf](http://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf) [<https://perma.cc/CR79-R8HS>]; John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOLEDO L. REV. 323, 323 (2008); Marjorie M. Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQUIRY 620, 621 (2011); Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POLICY & L. 1173, 1174 (1999).

51. Montgomery, *supra* note 50, at 324–25; Silver, *supra* note 50, at 1174.

52. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 22, 2011) <https://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html> [<https://perma.cc/D9FF-6F8J>] (“What they taught us at this law firm was how to be lawyer’ . . . ‘What they taught us at law school is how to graduate from law school.’”).

Christopher Columbus Langdell.<sup>53</sup> This established the tradition of going to law school to learn how to “think like a lawyer” that has not changed in over two hundred years.<sup>54</sup> This method was cemented in 1921 when the Root Committee stated that a lawyer must complete law school to be eligible to practice.<sup>55</sup> The establishment of the first compulsory bar exam followed, in 1928.<sup>56</sup> However, a significant change in the profession calls for a corresponding change in legal education. Examining the moments of change in the profession allows us to see the resulting efforts to move away from the traditional case-study method in law school and its singular focus on how to “think like a lawyer.”

### B. *T-shaped Lawyer*

Because of the growing utilization of technology and the changing nature of legal services described above, there must be a new approach to ensure that lawyers meet client demands for faster, cheaper, and better services. One company has started a summer program for law students, providing training in skills not typically covered by law schools.<sup>57</sup> Some law schools have launched new courses, centers, labs, and degree programs.<sup>58</sup> Bar Associations are

53. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 518 (1991). See generally Thomas C. Grey, *Langdell's Orthodoxy*, 45 U. PITTSBURG L. REV. 1 (1983).

54. Weaver, *supra* note 53, at 518, 549.

55. A.B.A SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 107–12 (1992) [hereinafter MACCRATE REPORT].

56. *Id.* at 112.

57. *Gain the Knowledge and Skills of a Modern Lawyer*, INST. FOR FUTURE L. PRACTICE, <https://www.futurelawpractice.org/law-students> [https://perma.cc/SHB9-ATC7] (last visited Feb. 5, 2019).

58. See generally Jorge Gabriel Jiménez, *Building a Better Lawyer*, LEGAL DESIGN & INNOVATION (July 16, 2018), <https://medium.com/legal-design-and-innovation/building-a-better-lawyer-dffb7b44a2ca> [https://perma.cc/PHY2-RFD2]; Christiane Saad, *The 'Communi-T' Lawyer*, CANADIAN LAW. (June 18, 2018), <https://www.canadianlawyermag.com/author/christiane-saad/the-communi-t-lawyer-15845/> [https://perma.cc/R3ET-VE9C]; *The 21st Century T-Shaped Lawyer: What Is It? Why Is It Relevant to Success?*, OSGOODE PROF. DEV., [https://www.osgoodepd.ca/programs\\_on\\_demand/21st-century-t-shaped-lawyer-relevant-success/](https://www.osgoodepd.ca/programs_on_demand/21st-century-t-shaped-lawyer-relevant-success/) [https://perma.cc/WV74-XQUM] (last visited Feb. 27, 2019); L. WITHOUT WALLS: NEWS, <http://lawwithoutwalls.org/news/> [https://perma.cc/7APV-U6GR] (last visited Feb. 27, 2019). These new curricular initiatives have taken many forms, but one group of researchers categorized them in the following manner: “[1] programs that train lawyers to work with

launching new Continuing Legal Education (CLE) programs in technology and innovation.<sup>59</sup> Researchers and scholars have surveyed practicing attorneys and clients to determine what skills are most important to a new lawyer's success.<sup>60</sup> Moreover, one professor created an index to measure innovation in law schools as a way to drive additional change in legal education.<sup>61</sup> Each of these initiatives takes a slightly different approach to ensure that tomorrow's lawyers (as well as today's) receive the training necessary for success. Driving these initiatives is a new model called the T-shaped Lawyer (see Figure 1).<sup>62</sup>

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innovators; [(2)] programs that train lawyers to be innovators in law practice-related careers; and [(3)] programs that prepare lawyers to be innovative in non-practice careers, including careers in the business, non-profit, governmental[,] or social enterprise sectors.” Stephanie Dangel, Margaret Hagan & James Bryan Williams, *Designing Today's Legal Education for Tomorrow's Lawyers: The Role of Legal Design, Technology and Innovation* (2018) (unpublished manuscript), [https://www.researchgate.net/publication/327546452\\_Designing\\_Today's\\_Legal\\_Education\\_for\\_Tomorrow's\\_Lawyers\\_The\\_Role\\_of\\_Legal\\_Design\\_Technology\\_and\\_Innovati](https://www.researchgate.net/publication/327546452_Designing_Today's_Legal_Education_for_Tomorrow's_Lawyers_The_Role_of_Legal_Design_Technology_and_Innovati) [https://perma.cc/3FGZ-9KQ4] (emphasis omitted); see *Law School Innovation Index*, LEGAL SERVS. INNOVATION INDEX, <https://www.legaltechinnovation.com/law-school-index/> [https://perma.cc/Q6YQ-QAAK] (last visited Feb. 5, 2019); *Leading Law Schools That Produce 'T-Shaped' Graduates with Global Talent*, STUDY INT'L NEWS (Nov. 20, 2018), <https://www.studyinternational.com/news/leading-law-schools-that-produce-t-shaped-graduates-with-global-talent/> [https://perma.cc/A5FA-747Y]; Will Yakowicz, *Law Schools Catch the Startup Bug*, INC. (Aug. 1, 2014), <https://www.inc.com/will-yakowicz/law-schools-catch-the-startup-bug.html> [https://perma.cc/X6MT-FHLJ].

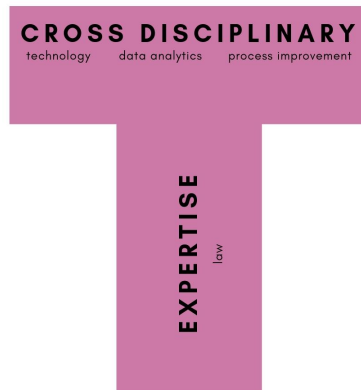
59. Jason Tashea, *North Carolina Bar to Propose Mandatory Technology CLE Credit*, A.B.A. J. (May 21, 2018, 3:26 PM), [http://www.abajournal.com/news/article/north\\_carolina\\_bar\\_to\\_propose\\_mandatory\\_technology\\_cle\\_credit](http://www.abajournal.com/news/article/north_carolina_bar_to_propose_mandatory_technology_cle_credit) [https://perma.cc/2BYE-2G7H].

60. Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST. THOMAS L.J. 6, 8–15 (2013); see Pamela Bucy Pierson, *Economics, EQ, and Finance: The Next Frontier in Legal Education*, 65 J. LEGAL EDUC. 864, 877–82 (2016).

61. LEGAL SERVS. INNOVATION INDEX, *supra* note 58. Jim Sandman, President of the Legal Services Corporation, has suggested that to drive change in the legal industry, rather than ranking law firms on revenue and profit, we should rank and assess law firms on their use of technology. *Id.*

62. Peter Connor, *The T-shaped Lawyer*, IN-HOUSE COMMUNITY (Jan. 8, 2018), <https://www.inhousecommunity.com/article/t-shaped-lawyer/> [https://perma.cc/Z8VG-E9BP].



*Figure 1: The T-shaped Lawyer*

Recognizing the need for a new approach to training lawyers in the twenty-first century, Amani Smathers introduced the concept of a T-shaped lawyer in 2014.<sup>63</sup> The T-shaped lawyer is an adaptation of the T-shaped-professional concept—a term first coined in 1991<sup>64</sup> to describe the need for modern-day business professionals to not only develop a deep understanding in their area of expertise but also a broader, yet more shallow, understanding of complementary professions with whom they will be collaborating.<sup>65</sup> Smathers applied this concept to the legal profession and stated that today’s lawyers need to be T-shaped professionals who demonstrate a deep understanding of law, complimented by a broader but more shallow understanding of complementary areas such data analytics, process improvement, and technology to meet twenty-first-century clients’ demands.<sup>66</sup> In just five years since the publishing of the article, the

63. *Id.*; R. Amani Smathers, *T-Shaped Lawyer*, AMANI SMATHERS: TECHNO[LAW]GIC (Jan. 29, 2016), <http://www.amanismathers.com/technolawgic/2014/2/21/t-shaped-lawyer> [<https://perma.cc/9RXQ-9RY9>].

64. *See generally* D.A. LEONARD-BARTON, WELLSPRINGS OF KNOWLEDGE: BUILDING AND SUSTAINING THE SOURCES OF INNOVATION (1995).

65. Meghan Lazier & Andrew Wilshere, *How to Get Hired: Understand If You’re an I, T, or X-Shaped Person*, DESIGNLAB: BLOG (Sept. 19, 2016), <https://trydesignlab.com/blog/how-to-get-hired-understand-if-youre-an-i-t-or-x-s/> [<https://perma.cc/R7E7-6L6Q>].

66. R. Amani Smathers, *The 21st-Century T-Shaped Lawyer*, 40 L. PRAC., July/Aug. 2014, at 32, 33.

T-shaped-lawyer model has gained much traction.<sup>67</sup> Smathers's article has been cited in numerous academic and practitioner-focused publications, including *Legal Education Review*, *International Journal of the Legal Profession*, and *American Journal of Trial Advocacy*.<sup>68</sup> Smathers's article also sparked Professor Elaine Mak to write the book *T-Shaped Lawyer and Beyond*.<sup>69</sup> Additionally, webinars<sup>70</sup> refer to the T-shaped lawyer as an organizing principle for programming, law professors apply the T-shaped model to course objectives,<sup>71</sup> legal innovation programs use the T-shaped model to underscore the need for new skills, and legal consultants<sup>72</sup> use it to sell their services.

In 2015, organizations such as the Institute for the Advancement of the American Legal System (IAALS) and the Center for Practice

67. See, e.g., *Innovation in Education for 21st Century Lawyers with the Launch of the LexisNexis Law Made Roadshow*, L. MADE: BLOG, <https://lawmade.com/innovation-in-education-for-21st-century-lawyers-with-the-launch-of-the-lexisnexis-law-made-roadshow/> [https://perma.cc/669Q-KCEN] (last visited Feb. 27, 2019); Daniel W. Linna Jr., *Starting a 21st Century Law Firm*, ST. B. MICH.: PRAC. MGMT. RESOURCE CTR., [https://www.michbar.org/file/pmrc/pdfs/UDMbootcamp\\_future\\_lawyring2.pdf](https://www.michbar.org/file/pmrc/pdfs/UDMbootcamp_future_lawyring2.pdf) [https://perma.cc/2FDW-KWSC] (last visited Feb. 27, 2019); *The Law Practice of the Future, Part 2*, CICERO LAWPACK: BLOG (May 18, 2017), <https://www.cicerosoftware.com/en/blog-law-practice-future-part-2/> [https://perma.cc/74KK-CF8Q]; *The T Shape Lawyer Gets Press in LegalBusinessWorld*, L. MADE: BLOG, <https://lawmade.com/articles/the-t-shape-lawyer-gets-press-in-legalbusinessworld/> [https://perma.cc/V9KF-6AFP] (last visited Feb. 27, 2019).

68. Susana Almeida Lopes, *High Performers Are Not Superheroes: Bridging Exclusive and Inclusive Talent Management Approaches for Law Firm Sustainability*, 23 INT'L J. LEGAL PROF. 207, 209 (2016); Ivar Timmer, *Changing Roles of Legal: On the Impact of Innovations on the Role of Legal Professionals and Legal Departments in Contracting Practice*, 2 J. STRATEGIC CONTRACTING & NEGOT. 34, 46 (2016); Kimberly Austin, Elizabeth Chu & James Liebman, *Re-envisioning Professional Education* 5 n.149 (Colum. Univ. Ctr. for Pub. Research & Leadership, White Paper 1, Mar. 2017), [https://cpri.law.columbia.edu/sites/default/files/content/docs/re-envisioning\\_professional\\_education\\_03142017\\_white\\_paper\\_1.pdf](https://cpri.law.columbia.edu/sites/default/files/content/docs/re-envisioning_professional_education_03142017_white_paper_1.pdf) [https://perma.cc/S4KA-V7G8]; Salvatore Caserta & Mikael Rask Madsen, *The Legal Profession in the Era of Digital Capitalism: Disruption or New Dawn?* 13 (Univ. of Copenhagen, iCourts Working Paper Series No. 149, 2019).

69. See generally ELAINE MAK, *THE T-SHAPED LAWYER AND BEYOND: RETHINKING LEGAL PROFESSIONALISM AND LEGAL EDUCATION FOR CONTEMPORARY SOCIETIES* (2017).

70. *Video: Legal Technology and Innovation: A Framework and Skills for Success*, A.B.A. CAREER CTR. (Oct. 16, 2017), <http://www.abalcc.org/2017/10/16/video-legal-technology-innovation-framework-skills-success/> [https://perma.cc/269X-NCH5].

71. Daniel Martin Katz, *Assignment for Class #19*, BUS. L. COURSE, <http://www.businessoflawcourse.com/t-shaped-lawyers-and-the-mit-school-of-law/> [https://perma.cc/8M7H-PU2B] (last visited Feb. 27, 2019).

72. *Building T-shaped Professionals*, INST. FOR FUTURE L. PRAC., <http://www.futurelawpractice.org/bootcamp> [https://perma.cc/8CGS-X8M8] (last visited Feb. 5, 2019) (IFLP Curriculum is based on T-shaped); *Law Firms*, L. MADE, <https://lawmade.com/services/firms/> [https://perma.cc/N2RA-Q6JF] (last visited Feb. 5, 2019).

Engagement and Innovation (CPEI) embarked on surveying practicing attorneys to glean insights into the types of skills and competencies perceived necessary to succeed in this changing landscape. Their initial findings suggest that lawyers believe law students must acquire foundational skills related to decision-making, communication, and emotional intelligence in order to be successful in practice upon graduation. Many of the respondents in the IAALS report stated that competencies and skills related to emotional intelligence and character were necessary to exhibit at the start of one's career—as opposed to legal skills, which were essential for practice but could be learned over time.<sup>73</sup> The research is playing out in changes to law firm hiring as well. Although many law firms still rely on variables such as grades and law review selection to determine a candidate's eligibility, firms are starting to prioritize behaviors such as “an ability to work in teams, empathy, and leadership”<sup>74</sup> when making hiring decisions.<sup>75</sup>

### C. Increase in Experiential Learning and Skills

In the 1980s, growth and change in the industry prompted the ABA to create a task force to analyze the growing gap between the knowledge and skills learned in legal education and knowledge and skills required to be successful in practice.<sup>76</sup> In 1992, the task force published what is now called the “MacCrate Report,” identifying a

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73. GERKMAN & CORNETT, *supra* note 50, at 5.

74. Phil Weiser, *How Law Firms Are Innovating When It Comes to Hiring*, A.B.A. J.: LEGAL REBELS (July 15, 2015, 8:30 AM), [http://www.abajournal.com/legalrebels/article/how\\_law\\_firms\\_are\\_innovating\\_when\\_it\\_comes\\_to\\_hiring](http://www.abajournal.com/legalrebels/article/how_law_firms_are_innovating_when_it_comes_to_hiring) [https://perma.cc/WQ9T-9ARK] (“At Kilpatrick Townsend, a national firm that combines a significant IP practice with general work, the new normal is one where excellence in a predefined set of competencies, including resilience, an ability to work in teams, empathy, and leadership, is central to getting hired.”).

75. *Id.*

76. MACCRATE REPORT, *supra* note 55, at 107. The MacCrate Report summarizes the impact of growth in the legal profession as: (1) increased specialization and division of labor among lawyers; (2) new areas of law and regulation and growth in business; (3) increased number of women with accompanying new areas of law or focus; (4) growing number of minority lawyers; (5) broader range of firm sizes; (6) new providers of legal services (interesting that is the argument now); and (7) changes in MRPC rules for things like pre-paid legal services. *Id.* at 13–102 (summarizing the main contentions from Chapters 1 and 2).

set of skills and values that lawyers<sup>77</sup> (and law schools) should consider. The MacCrate report recognized that firms assessed law student applicants based exclusively on their intellectual power, but in practice, the firms assessed lawyers more on behavioral qualities not typically taught in law school.<sup>78</sup> This report launched a series of efforts to expand law school initiatives beyond the case-study method and learning how to “think like a lawyer” and to begin to include other skills related to how to *be* a lawyer.<sup>79</sup>

About fifteen years later, the Carnegie Foundation for the Advancement of Teaching published a report about the need for additional education reform in the law.<sup>80</sup> The Carnegie report built on the MacCrate report and again implored law schools to match their emphasis on learning how to “think like a lawyer” with an emphasis on “developing ethical and social skills.”<sup>81</sup> Carnegie established three apprenticeships of professional education—intellectual or cognitive abilities, practice, and identity or purpose—and suggested that law schools should place more emphasis on integrating lawyering skills and ethics into courses.<sup>82</sup>

In 2011, Professors Shultz and Zedeck identified the disconnect between the skills that MacCrate and Carnegie described as essential to success in practice and the metrics that law schools continued using to determine admissions decisions.<sup>83</sup> More specifically, they

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77. *Id.* at 135. These skills include: (1) problem solving; (2) legal analysis; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute-resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas. *Id.*

78. See William D. Henderson, *Talent Systems for Law Firms*, PD Q., Feb. 2017, at 5, 9 (citing 2 ROBERT T. SWAINE, *THE CRAVATH FIRM AND ITS PREDECESSORS, 1819–1947*, 266 (1948)). Ironically, the founder of the famed Cravath method for hiring students from top law schools said, “[T]o become a ‘lawyer of affairs’ a student must possess ‘character, industry, and intellectual thoroughness, qualities that do not go to make for charm but go far to make up that indefinable something we call efficiency. Brilliant intellectual powers are not essential.’” *Id.*

79. See generally Thomas M. Steele, *The MacCrate Report: Its Impact on Education in Law Firm Management*, 23 PACE L. REV. 613 (2003).

80. See generally William M. Sullivan et al., *Summary of the Findings and Recommendations from Educating Lawyers: Preparation for the Profession of Law*, CARNEGIE FOUND. FOR ADVANCEMENT TEACHING (2007), [http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary\\_pdf\\_632.pdf](http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf) [<https://perma.cc/KTJ6-H6SB>].

81. *Id.* at 6.

82. See *id.* at 8.

83. See generally Shultz & Zedeck, *supra* note 50.

stated that “current methods focus excessively on predictors of academic performance, ignoring the importance of professional effectiveness as a desirable outcome criterion; and . . . current methods can produce a significant adverse impact on minority group applicants’ chances of admission.”<sup>84</sup> So, Schultz and Zedeck conducted an empirical study to test if noncognitive tests could better predict lawyer effectiveness than could grades and LSAT scores and if they would have an adverse impact on minorities.<sup>85</sup> First, Schultz and Zedeck defined what they meant by “lawyer effectiveness.” In a previous study, Schultz and Zedeck identified twenty-three factors to lawyer effectiveness that included behaviors such as creativity/innovation, problem-solving, providing advice and counsel, building relationships with clients, developing relationships within the legal profession, and self-development.<sup>86</sup> Schultz and Zedeck demonstrated that noncognitive tests made better predictions as to lawyer effectiveness than grades and LSAT scores and that, unlike the LSAT, the behavioral evaluations were also neutral as to race and gender.<sup>87</sup>

Legal education is slowly catching up to this previous body of research. The ABA Section on Dispute Resolution conducted a study in 2010 to capture information about the number of schools teaching these behavioral skills.<sup>88</sup> They identified eight different approaches currently being utilized by law schools to introduce these skills into the law school curriculum.<sup>89</sup> One of the most impactful changes to

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84. *See id.* at 632–33.

85. *See id.* at 633.

86. *Id.* at 630 tbl.1. Shultz & Zedeck identified a full list of twenty-six behaviors including: analysis and reasoning, creativity/innovation, problem solving, practical judgment, researching the law, fact finding, questioning and interviewing, influencing and advocating, writing, speaking, listening, strategic planning, organizing and managing one’s own work, organizing and managing others (staff/colleagues), negotiation skills, able to see the world through the eyes of others, networking and business development, providing advice and counsel and building relationships with clients, developing relationships within the legal profession, evaluation, development, and mentoring, passion and engagement, diligence, integrity/honesty, stress management, community involvement and service, and self-development. *Id.*

87. *See* Shultz & Zedeck, *supra* note 50, at 639, 641.

88. *Legal Education, ADR, and Practical Problem Solving (LEAPS) Project*, A.B.A. SEC. DISP. RESOL., <http://leaps.uoregon.edu/> [<https://perma.cc/CRY8-BUAD>] (last visited Feb. 5, 2019).

89. *Id.*

legal education occurred in 2015, when the ABA adopted new standards (effective in 2017) that mandated schools to both identify institutional learning objectives and require that students enroll in six credits of experiential learning courses.<sup>90</sup> Both of these new ABA requirements bolster the idea of training students in these behavioral skills. However, critics have said that although schools are meeting the ABA requirements, most of the law schools' efforts fail to place the same emphasis on those institutional learning objectives dealing with skills related to emotional intelligence as those associated with the typical "how to think like a lawyer."<sup>91</sup>

In practice, there is an increase in the use of competency models by law firms in promotion and retention decisions but not in hiring decisions.<sup>92</sup> Most large law firms still rely on the Cravath method of recruiting students from the highest ranked law schools with the best

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90. STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHS. 2016–2017, § 303(a)(3) (AM. BAR ASS'N 2016).

91. See Dan DeFoe, *Beyond the "Blue Book"—Emotional Intelligence Training, the Pace of Legal Education, and Suggested Remedies*, PSYCHOLAWLOGY (Apr. 14, 2017), <https://www.psycholawlogy.com/2017/04/14/beyond-the-blue-book-emotional-intelligence-training-the-pace-of-legal-education-and-suggested-remedies/> [<https://perma.cc/2GND-HPEF>] ("From the data gathered in 2014–2015 and cited by Professor Pierson in one of the most recent scholarly commentaries about emotional intelligence and legal education, it seems that most American law schools have not taken the challenge by Dean Montgomery too seriously. Less than half of law schools offer some education and training in the emotional skills that lawyers need have in order to manage their own emotional lives and handle the emotional issues involved in servicing the needs of clients. Another conclusion which flows from her research shows that those schools which do offer such coursework and experiential training do so indirectly by ancillary means. Instruction about emotional intelligence occurs mainly as information tangential to the subject matter of other courses."); Michele Pistone, *CLEA Calls on ABA to Require 15 Credits of Experiential Learning*, BEST PRAC. LEGAL EDUC. (July 1, 2013), <https://bestpracticeslegaled.albanylawblogs.org/2013/07/01/clea-calls-on-aba-to-require-15-credits-of-experiential-learning/> [<https://perma.cc/PBK8-5FCY>] (stating that the Clinical Legal Educators Association (CLEA) suggested that the ABA should adopt a more rigorous standard of requiring fifteen experiential learning credits); Jennifer Romig, *Law-School Learning Outcomes for Communication*, LISTEN LIKE A LAWYER. (June 27, 2018), [https://listenlikealawyer.com/?s=learning+outcome&category\\_name=&submit=Search](https://listenlikealawyer.com/?s=learning+outcome&category_name=&submit=Search) [<https://perma.cc/2NFH-94R8>] (laying out law school efforts on a spectrum from least to most specific). *But see* William S. Blatt, *Teaching Emotional Intelligence to Law Students: Three Keys to Mastery*, 15 NEV. L.J. 464, 466 (2015); Carter Nelson, *Emotional Intelligence: A Different Kind of Smart*, LIFE AT NYU L. (Apr. 16, 2014), <https://blogs.law.nyu.edu/lifeatnyulaw/emotional-intelligence-a-different-kind-of-smart/> [<https://perma.cc/L5C2-M9GQ>]; Course Syllabus, Richard C. Reuben, Univ. of Mo. Sch. of Law, Emotional Intelligence in Law Final Syllabus (2012), [https://www.law.berkeley.edu/files/EISyllabusFall12Final\\_Reuben.docx](https://www.law.berkeley.edu/files/EISyllabusFall12Final_Reuben.docx).

92. Hamilton, *supra* note 60, at 6.

grades.<sup>93</sup> However, once those applicants become employees, firms are investing in talent managers and human resources to identify competency models that capture the skills necessary to increase lawyer success in the firm.<sup>94</sup>

All of these efforts point to the need for a more holistic understanding of lawyering. A holistic understanding of lawyering would not only include skills related to how to think like a lawyer but also the behavioral skills and technological awareness to succeed in the twenty-first century. This holistic model must also recognize that technology is creating new roles for lawyers and new jobs for our allied professionals. Moving forward from understanding the challenges, a new competency model called the Delta Model reflects a more holistic perspective on lawyering and the legal industry itself.

### III. *Delta Model*

The twenty-first-century lawyer needs to demonstrate a mastery of the law, awareness of and ability to utilize emerging technology such as artificial intelligence, and the emotional intelligence necessary to navigate the changing landscape of legal services and provide unique value to clients in light of an increasing utilization and reliance on technology to provide legal services. A model for success in the legal profession must also recognize the changing nature of a career in the law as one that has shifted professional roles from just researching and analyzing the law to someone explaining results generated by AI to a client and helping them sort through and understand these

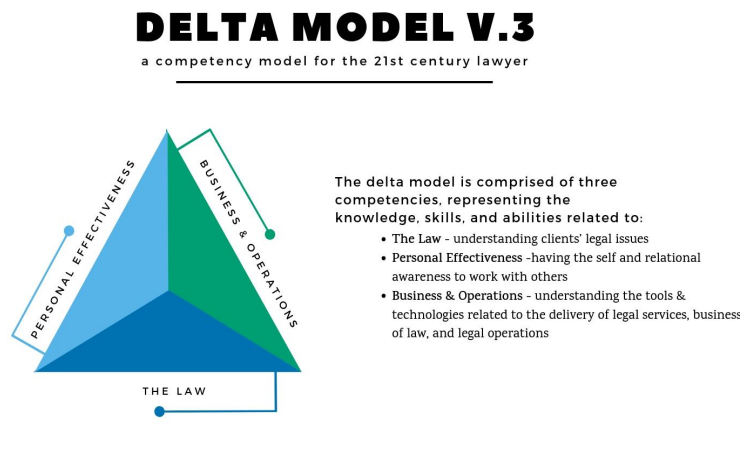
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93. See Henderson, *supra* note 78, at 8–9.

94. H. Russell Cort & Jack L. Sammons, *The Search for “Good Lawyering”: A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397, 406 (1980); Terri Mottershead & Sandee Magliozzi, *Can Competencies Drive Change in the Legal Profession?*, 11 U. ST. THOMAS L.J. 51, 80 (2013). *But see Capabilities & Services*, LAWYERMATRIX, <https://www.lawyermetrix.net/how-we-help-clients/capabilities-and-services> [<https://perma.cc/2U96-X97Q>] (last visited Feb. 5, 2019) (stating that a little more than 700 law firms and 200,000 corporate organizations are using LawyerMetrix’s behavioral interview matrix in hiring); Weiser, *supra* note 74. LawyerMetrix is a company started by Professor Bill Henderson. Debra Cassens Weiss, *Law School Nonprofit Buys Bill Henderson’s Lawyer Metrics Company*, A.B.A. J. (Dec. 21, 2015, 3:40 PM), [http://www.abajournal.com/news/article/law\\_school\\_nonprofit\\_buys\\_bill\\_hendersons\\_lawyer\\_metrics\\_company/](http://www.abajournal.com/news/article/law_school_nonprofit_buys_bill_hendersons_lawyer_metrics_company/) [<https://perma.cc/2727-CDKN>].

results.<sup>95</sup> This model must also reflect new and developing careers in the law—those for licensed attorneys as well as those for individuals in allied professions. A small working group is developing a new competency model called the Delta Model (see Figure 2) to create a more holistic understanding of a successful legal professional.<sup>96</sup> The Delta Model comprises three competencies representing the knowledge, skills, and abilities related to the law; personal effectiveness stemming from emotional intelligence; and the business/operations aspects of practicing law with technology tools.<sup>97</sup>

*Figure 2: The Delta Model*



This Model seeks to highlight the importance of lawyers having competency in all three areas given the increasing use of artificial

95. MACCRATE REPORT, *supra* note 55, at 125.

96. Runyon, *supra* note 4.

97. *Id.*



intelligence and the increasing importance of emotional intelligence.<sup>98</sup>

The Delta Model is designed to shine a spotlight on the importance of all three areas by using a three-sided figure, where each side represents a different competency area.<sup>99</sup> The Model is currently in development and research is being conducted to validate it, but the notion that lawyers need competencies in each of these areas is based on sufficient previous research to warrant discussion. A competency model such as the Delta Model has the potential to reshape discussions about what it means to be a successful legal professional.

The following section explores how the Delta Model (1) presents a more holistic approach to lawyering; (2) presents a model for a variety of legal careers; (3) reflects and adapts to individuals' strengths; and (4) recognizes allied professionals in the law.

#### *A. The Delta Model Presents a Holistic Approach to Lawyering*

The Delta Model incorporates many different competencies needed to be a successful lawyer.<sup>100</sup> It acknowledges that the profession is not replacing emotional intelligence with artificial intelligence but is instead creating complimentary intelligence that relies on both.<sup>101</sup> A successful lawyer knows how to utilize technological advances as well as explain the benefits and risks of using technology to clients and colleagues. A successful lawyer today must know how to demonstrate resilience in the face of rapidly increasing change. Change is happening at an ever-increasing rate. Lawyers must have the skills, knowledge, and resilience to adapt to that change. As the law begins to adopt more and more to

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98. *Id.* Another author similarly recognized the importance of adding emotional intelligence to the T-shaped lawyer and created the “plus-shaped” lawyer by adding a top to the “T.” Fernando Garcia, *The ‘Plus-Shaped’ Lawyer for the 21st Century*, CANADIAN LAW. (Apr. 17, 2017), <https://www.canadianlawyermag.com/author/fernando-garcia/the-plus-shaped-lawyer-for-the-21st-century-3594/> [https://perma.cc/5997-WLYS]. But two years later, this same author is citing to the Delta Model. Fernando Garcia, *New Skill-Enhancing Models to Become Tomorrow’s Lawyer in 2019*, CANADIAN LAW. (Jan. 7, 2019), <https://www.canadianlawyermag.com/author/fernando-garcia/new-skill-enhancing-models-to-become-tomorrows-lawyer-in-2019-16685/> [https://perma.cc/2757-5FB6].

99. Runyon, *supra* note 4.

100. *Id.*

101. *See id.*

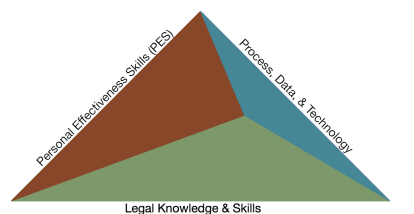
technological advances such as artificial intelligence, lawyers must demonstrate their unique value by having the emotional-intelligence competencies beyond artificial intelligence.

*B. The Delta Model Presents a Model for a Variety of Legal Careers*

The Delta Model has built in more nuance to not only capture the need for lawyers to gain competency in these three areas but also to provide a way to measure the needed competencies for all legal professionals in the law. Once the research verifies which specific attributes belong under each competency area and the metrics by which to measure the knowledge, skills, and abilities within each attribute, the Delta Model could create a whole new system for tailoring legal education, legal training, and professional development to specific persons and their individual career goals. This new approach could increase lawyer happiness,<sup>102</sup> address lawyer/nonlawyer tensions,<sup>103</sup> and shift the legal education model to attract a broader spectrum of people.

*Figure 3: The Delta Model—BigLaw Partner*

**The Dynamic Delta Model**

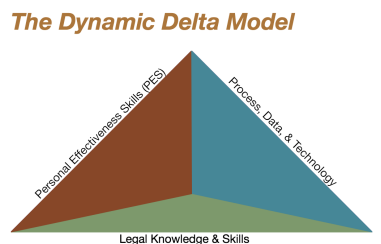


102. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 430 (2005). See generally NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010).

103. Deborah L. Rhode, *The Delivery of Legal Services by Non-Lawyers*, 4 GEO. J. LEGAL ETHICS 209, 209 (1990).

The Delta Model is neither static nor singular. It has the dynamic and pluralistic potential of representing an infinite number of legal careers. By moving the midpoint of the Delta Model, one can change the amount of surface area associated with each competency to represent different depths of skill required for different legal careers. In Figure 3, the midpoint of the model is placed farther to the right, thereby decreasing the surface area associated with the competency: Business & Operations.<sup>104</sup> This figure might represent the Delta Model as it applies to a “BigLaw” partner. A BigLaw partner must have a broad but shallow understanding of the business of law and the role technology can play to enhance the associate’s services, but the BigLaw partner does not necessarily need to know how to code; a partner can rely on the legal operations and Information Technologies departments to provide this support. (This figure might best represent the notion of the T-shaped lawyer as one with in-depth knowledge of the law and shallow knowledge of data, process, and technology.) On the other hand, Figure 4 represents a recent graduate hired in the legal operations department. In this figure, the midpoint is placed slightly lower, representing the greater depth of knowledge the individual will need in legal technology and data analytics and the lesser, but not insignificant, depth of expertise in the law an individual will need to work on legal-technology solutions for a firm.<sup>105</sup>

*Figure 4: The Delta Model—Lawyer in Legal Operations*



104. *See supra* Figure 3.

105. *See infra* Figure 4.

The midpoint can move to reflect all career paths within the legal profession, indicating different career choices that students may make after law school as well as throughout their career. This dynamic and pluralistic version of the Delta Model more accurately reflects the diversity of positions and career paths available in law today.

*C. The Delta Model Reflects and Adapts to Individuals' Strengths*

If we can define different versions of the Delta Model that reflect different career choices, then we can use the Delta Model as a tool to tailor students' legal education to focus more strategically on curricular decisions that will benefit them in their unique career paths.<sup>106</sup> For instance, individuals interested in becoming legal technologists would want to make sure that they not only enroll in a sufficient number of courses in the study of law but also in other courses in coding, data analytics, and process improvement. The Delta Model can help inform these students' curricular choices. Also, if we map individuals' existing skills onto the version of the Delta Model for a legal technologist, we can further tailor the students' individual needs based on where they might already have strengths and where they might have weaknesses. For instance, the Delta Model informs a law student with a humanities background that she will be more successful in her pursuit of a legal-technologist career if she receives sufficient training in coding, data analytics, and process improvement in addition to her course work in the study of law. However, if a different law student came to law school with a background in computer science, she may not necessarily need to

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106. MACCRATE REPORT, *supra* note 55, at 127. The MacCrate report called on law schools to move law students from passive users of legal education to active participants. *Id.* Professor Bill Henderson shared a vision where:

[S]cience would deliver a definitive list of skills and behaviors that resulted in lawyer success. The law schools could teach it, employers would hire for it, and clients and society would be better off. Alas, this is unlikely to happen. The first stumbling block is our inability to agree on an adequate definition of success.

William D. Henderson, *Successful Lawyer Skills and Behaviors*, in *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 59, 59 (Paul A. Haskins ed., 2013).

take the same number of coding and data-analytics courses. In this way, the Delta Model visualizes the different skills necessary to succeed in any given legal profession, as well as a map onto which an individual's unique strengths and weaknesses can be overlaid to determine the specific needs of this person for this specific career goal.

It is necessary to conduct additional research and studies before we can utilize the dynamic and pluralistic aspects of the Delta Model as a differentiation model for legal education. As mentioned previously, the working group is conducting research to validate the model and define the specific attributes necessary under each competency model. After this research is complete, we can move to the second stage of research by identifying the varying maps of the Delta Model that reflect different career paths. To do this, we will need to conduct a survey asking participants from each of these legal professions to prioritize those attributes that they believe are most important to succeed in their specific position. The third stage will be to identify a mechanism in which we can test an individual's proclivity for each of these attributes. Think of it as a Myers-Briggs test for each of these competency areas.<sup>107</sup> If we can create a standardized test that identifies an individual's strengths within each of these three competency areas, we can map the results on the specific version of the Delta Model that aligns with the individual's career goals. Comparing and contrasting the results will provide a guide for that individual as to which areas she needs to pursue additional training and course work and which areas she already seems to have mastered.

These different versions of the Delta Model, along with a corresponding standardized test, can also guide an individual throughout her career. As a student, an individual may plan to pursue a career in BigLaw. However, after three to five years as an associate, the individual may decide she wants to shift to a corporate

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107. See generally *Take the MBTI Instrument*, MYERS & BRIGGS FOUND., <https://www.myersbriggs.org/my-mbti-personality-type/take-the-mbti-instrument/home.htm?bhcp=1> (last visited Mar. 5, 2019).

legal department. The individual, now wanting to make a professional change, can take the standardized test, overlay her results on top of the Delta Model version for corporate legal departments, and see what skills she might need to learn or develop to make a success of the career change. Individuals can reference different versions of the Delta Model to varying points along their career path and compare them to a current result of their standardized test to get the most accurate picture of what they need at that moment.

*D. The Delta Model Recognizes Allied Professionals in the Law*

There are other benefits to a dynamic competency model. The Delta Model is not limited to the competencies of a licensed lawyer but can reflect the competencies of other professionals in the law as well. There is a push in some legal-innovation circles to move away from the notion of referring to individuals in the legal-service industry who do not hold law licenses as “nonlawyers.”<sup>108</sup> Some have called for the field to begin using the phrase “allied professional.”<sup>109</sup> Regardless, there still seems to be a distinct line between those individuals who have a license to practice law and those who do not. And while one can argue that a license is essential to ensure a certain ethical standard and integrity in the profession, it may also be true that individuals across the legal-services industry share a need to have competency in the same three areas we identify in the Delta Model, even if to varying degrees of depth and mastery. The second stage of research on the Delta Model will test this idea; if true, it may help to alleviate the in-group/out-group tension that is currently plaguing the industry.

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108. See generally Campbell, *supra* note 44; Fern Fisher, *Navigating the New York Courts with the Assistance of a Non-Lawyer*, 122 DICK. L. REV. 825 (2018); Gillian K. Hadfield & Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation, and the Quality of Lawyering*, 67 HASTINGS L.J. 1191 (2016); HORN, *supra* note 44.

109. Curle, *supra* note 47.

## CONCLUSION

The delivery of legal services is changing, driven in large part by advancing technologies and innovation. With this change, lawyers face new challenges in client expectations and needs. Current legal education, recruiting, and promotion models do not reflect the totality of skills that lawyers need to be successful in the twenty-first century. Lawyers' increasing use and reliance on artificial intelligence create an increasing complimentary need in emotional intelligence.

Legal education has changed very little over the past 150 years since the advent of the case-study method by Dean Langdell. However, in times of immense change in the profession, some in the field have surveyed the landscape to get a more accurate and updated picture of the skills that lawyers need to succeed. In the 1980s, the ABA surveyed the field and published the MacCrate report, pushing for more experiential and behavioral learning in communication and relationship building. In the early 2000s, Schultz and Zedeck researched the need for skills related to emotional intelligence as a barometer of law student success instead of the LSAT. Most recently, the field has gravitated toward the notion of the T-shaped lawyer to reflect the increasing role that technology is playing in practice.

This article argues that each of these attempts to redefine what skills are necessary to succeed in the law fall short of the totality of skills and competency required in the twenty-first century. A useful competency model must demonstrate a lawyer's need to acquire legal, technology, and operation skills, as well as skills associated with emotional intelligence. The combination of these three areas, in varying degrees depending on someone's background and career choice, is crucial to succeeding in today's changing legal landscape. The Delta Model seeks to provide the field such a comprehensive and holistic understanding of what it means to be a legal professional. The Model provides law students, lawyers, and allied legal professionals a visual for assessing the skills needed in different types of legal careers and recognizes that no matter the type of legal career, every legal professional must possess some amount of

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competency in legal, operational, technological, and emotional intelligence skills.