

WHAT LAWYERS DO

A Guide to the Skills Required to be a Great Lawyer



WESTERN MICHIGAN UNIVERSITY
Cooley Law School

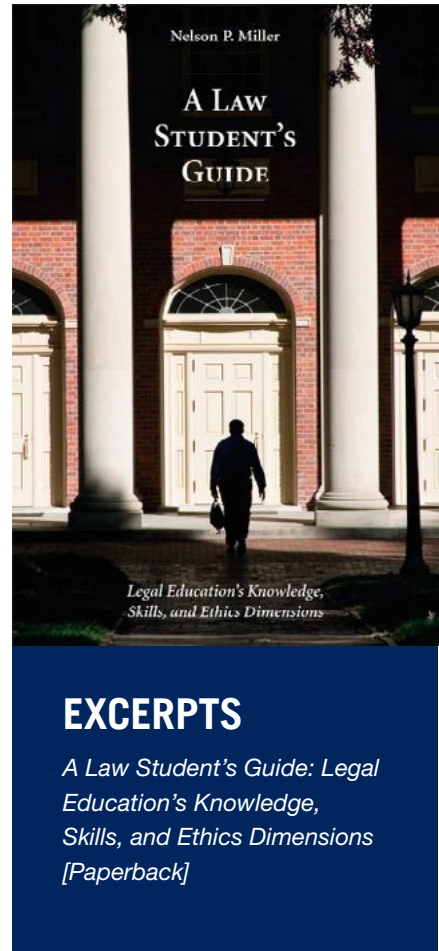
Founded in 1972, Western Michigan University Cooley Law School is a private, nonprofit, independent law school accredited by the American Bar Association and the Higher Learning Commission. Cooley prepares its graduates for entry into the legal profession through an integrated program with practical legal scholarship as its guiding principle and focus.

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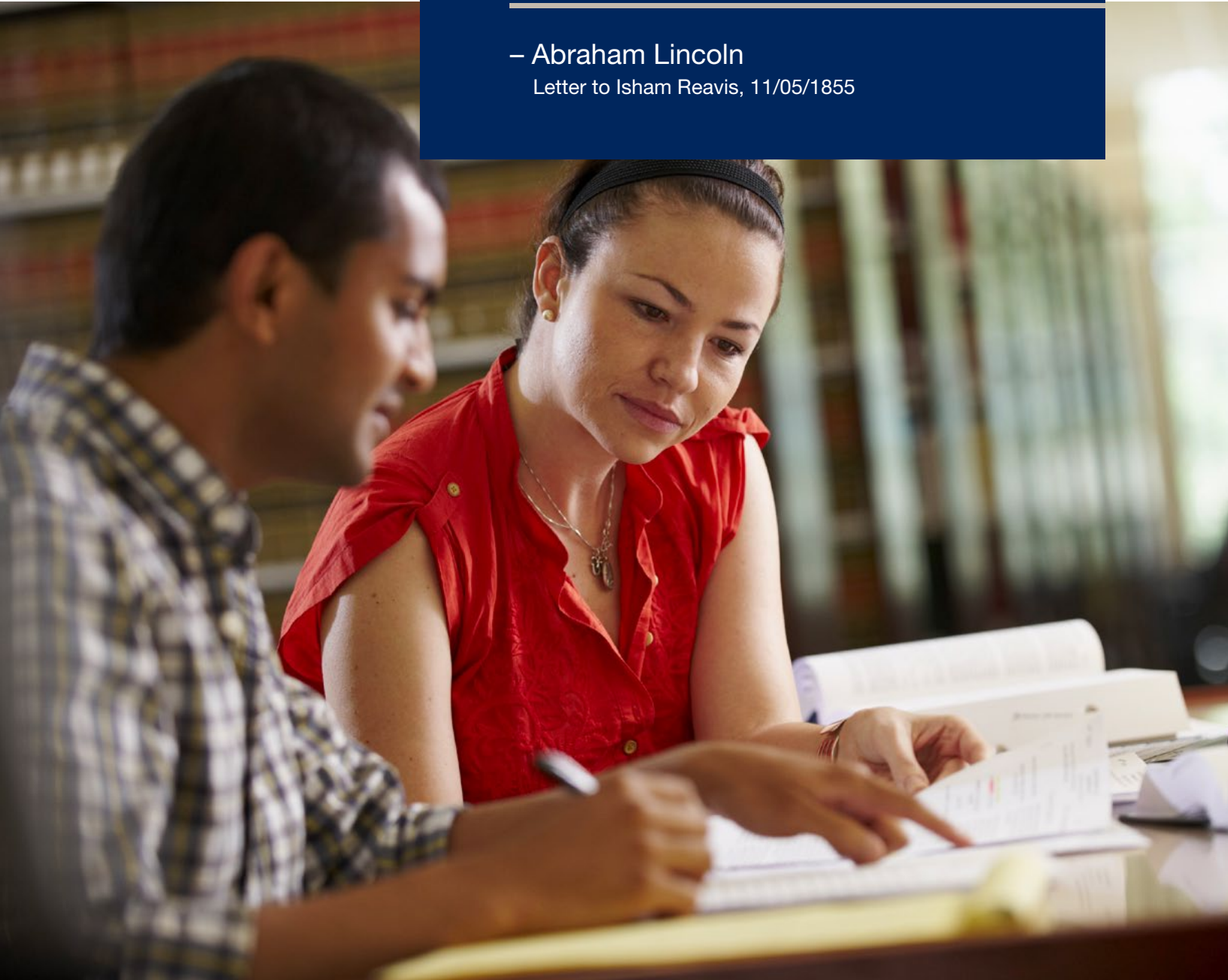
In law practice, research and writing are only two of many skills that lawyers depend upon and routinely exercise. Other skills include interviewing, counseling, negotiating, investigation, advocacy, and relationship and practice management. Consider those skills here.



**“Always Bear in
Mind That Your Own
Resolution to Succeed
Is More Important Than
Any Other One Thing.”**

– Abraham Lincoln

Letter to Isham Reavis, 11/05/1855



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A LAW STUDENT'S GUIDE: LEGAL EDUCATION'S KNOWLEDGE, SKILLS, AND ETHICS DIMENSIONS - Nelson P. Miller
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Introduction

The skills that lawyers exercise are many, rich, comprehensive, subtle, and useful. Interestingly, they may not be unique. Experts in many fields reason critically and analogically, much like lawyers reason.

They develop cognitive structures and protocols to guide their practice, much as lawyers do. They express their expertise on grounds recognized as authoritative within and outside of their professions, in a way familiar to and associated with lawyers.

What may be most distinct about the way that lawyers exercise their skills is the concentration of these special forms of expert reasoning around social problems.

While other professions have science, biology or botany, physical and mental healing, spirituality, or some other subject or material at their core and around which they employ critical reasoning, lawyers place critical reasoning itself at the core of their practice, with the whole of human enterprise arrayed around it.

While other professions employ reasoning to justify and further their enterprises, lawyers employ reasoning to challenge, constrain, and guide the whole of human enterprise including those other professions.

Those who have not practiced law might guess that research and writing are a lawyer's primary skills. They would not be far wrong in thinking so. Lawyers must know when there is a need to research a legal issue.

They must be able to plan for that research. They must then implement those plans (do the research) using a variety of print and electronic media.

They should be able to assess their research progress against timelines and research goals, and modify their plans to respond to their assessment.

Lawyers must then memorialize their research results in appropriate forms, such as court briefs, office memoranda, or client correspondence.

In law practice, research and writing are only two of many skills that lawyers depend upon and routinely exercise.

Other skills include interviewing, counseling, negotiating, investigation, advocacy, and relationship and practice management. Consider those skills here.

Conducting Interviews

How Do Lawyers Interview?



Fundamentally, lawyers represent clients. The nation's economic system is primarily one of private rights. Individuals and the corporate entities that they create and manage often need legal services to survive, participate, and prosper within that vast system of private rights. That need means hiring or otherwise obtaining and accepting the services of a lawyer.

Every lawyer-client relationship has a beginning. Most of the time, that beginning includes a client interview. The interview settings can widely vary. Most often, interviews take place in the lawyer's office, but interviews may also take place in the client's home or a hospital room, jail or prison, homeless shelter, or coffee shop. From this variety of settings, you begin to get a better sense of how important and challenging the initial client interview can be. Getting off on the right foot can be critical to the success of a relationship.

Often, the client will have chosen the lawyer, meaning that there is already a sense of loyalty and trust. Yet it is also often the case in criminal, family law, and probate matters that the client has not chosen the lawyer. A court may instead have appointed the lawyer. In either case, whether chosen or assigned, lawyers depend on interviewing clients and others to obtain the information and establish the relationships through which they will provide effective legal services.

Lawyers are good at interviewing. A successful interview depends on preparation. Lawyers know how to anticipate interview opportunities and challenges, and use available skills and information to improve interview results. They must discern the interview's purposes, which may include obtaining a signed fee agreement, specific information in support of possible claims or defenses, and authorizations for release of confidential information.

Conducting Interviews

How Do Lawyers Interview?

Lawyers also know reliable communication practices and principles, such as how to listen, ask openended questions that generate more information, demonstrate compassion, and increase trust.

As the intercultural skills section near the end of this guide further explains, lawyers recognize communication styles and preferences, and adapt their own communication to the persons they interview. They watch reactions and use their observations to adjust the course and tenor of the interview.

Lawyers also know how to document interview outcomes and use interview results. The documentation may be a dictated summary for the client to confirm and initial for accuracy, or it may be a simple memorandum to the file.

It may be correspondence to an insurer, or it may be notes to use in a direct or cross-examination. Even as the interview proceeds, lawyers develop action items, perhaps records to obtain, individuals to subpoena and depose, or counts or defenses to plead.

At the end of an initial client interview, an attorney may confirm with the client the steps the attorney and legal-assistant staff will immediately take to further the client's matter, and get the client's signature on any necessary authorizations.

An attorney may end a client interview by establishing a communication strategy, for instance by confirming the client's need and preference for information from the attorney, including both content (opinions, estimates, factual updates) and form (telephone, correspondence, email).

Attorneys follow interviews with immediate action usually involving assignments to staff.

Watching a skilled lawyer prepare for, perform, and conclude an interview will convince the observer that interviewing is a valuable and richly complex skill.

Course Work

Law School Classes that Teach You Effective Interviewing

The curriculum aim is that you be able to interview clients and others involved in legal matters, to provide effective legal services, through courses like:

- Pre-Trial Skills
- Interviewing and Counseling
- Law Office Management
- Public Sector Law Project
- The WMU-Cooley Innocence Project
- Public Defender Clinic

Providing Counsel

What Kind of Counsel Do Lawyers Give?

Lawyers are counselors. You will commonly see phrases like “Attorney and Counselor at Law” on attorney business cards, letterhead, signs, and other marketing. Lawyers are both advocates and counselors.

In their advocacy, they direct their skills out from the client relationship toward those who have the authority and discretion to affect clients’ fate or control resources from which clients could benefit.

In their counsel, they pour their skills into the client relationship. They do so in part by helping the client discern goals, objectives, interests, options, and outcomes that the client may not have previously discerned.

The skill and experience of a lawyer helps the lawyer see opportunities and challenges that clients do not see.

Lawyers help clients better see their own situation. Lawyers then help clients prioritize interests and evaluate options, so that clients can pursue the best outcomes.

Lawyers are respectful of client autonomy. The public may misperceive their role. By their conduct rules, lawyers must not make decisions for and control their clients. Lawyers do more, though, than strategize with clients over legal matters.

Lawyers may and constantly do communicate with their clients in ways that affect positively their clients’ futures.

Lawyer conduct rules explicitly authorize lawyers to give not only legal but also moral, financial, political, and social counsel.

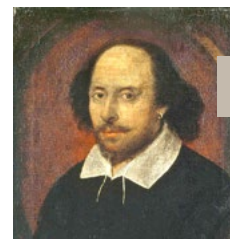
Lawyers know that legal problems are often embedded within, affected by, and likely to affect those other non-legal interests.

For their legal counsel to be effective, lawyers must also exercise a social worker’s skill, communicating how actions related to a legal problem may effect the client’s job, family, community, and future. Clients retain lawyers for more than their legal service. Clients seek their lawyers’ wisdom through counsel.

Course Work

The curriculum aim is that you be able to counsel clients regarding their legal matters in a manner that they accept as competent, through courses like:

- Pre-Trial Skills
- Law Office Management
- Interviewing and Counseling
- Externship Course
- Public Sector Law Project
- The WMU-Cooley Innocence Project
- Public Defender Clinic
- Client Counseling Competition



*Good counselors
lack no clients.*

–Shakespeare

Investigating Cases

What Do Lawyers Investigate?

Lawyers are also expert at investigation. Lawyers may depend on others to do portions of the actual investigation.

They retain and work closely with private investigators, accident reconstructionists, medical examiners, and other experts who gather, testify as to, and interpret evidence.

Yet it remains the lawyer's skill to recognize when investigation is needed, what form the investigation should take, and to what use to put the information an investigation generates.

Using their abductive-reasoning skills, lawyers recognize when they need investigation. They plan and budget for investigation.

They identify what evidence is needed to prove or defend claims, and they determine by what means they can lawfully obtain that evidence, even when others may hope and plan that they not do so.

Lawyers are skilled at the several forms of discovery that court rules and procedures permit, like depositions (oral examination under oath before a court reporter), interrogatories (written questions that must be answered under oath), and document requests.

They know how to use subpoenas to compel individuals and entities to appear, testify, and produce records.

Lawyers are increasingly expert in the means by which electronic evidence is stored and gathered. Once lawyers obtain evidence, they evaluate its credibility, the effect it is likely to have on their client's matter, and what experts they should retain to help others understand and interpret it.

Investigation is a fascinating process of reconstructing client events, experiences, and circumstances, in which lawyers must be and are expert.

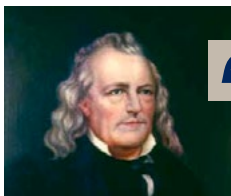
Course Work

Law School Classes that Teach You Effective Investigating

The curriculum aim is that you be able to investigate legal matters, taught through a variety of courses including:

- E-Discovery
- Pre-Trial Skills
- Interviewing and Counseling
- Externship Course
- The WMU-Cooley Innocence Project
- Public Defender Clinic

You can also learn more about investigation by observing and assisting your professors conduct pro-bono service.



And I would sooner trust the smallest slip of paper for truth, than the strongest and most retentive memory, ever bestowed on mortal man.

—Joseph Henry Lumpkin

Negotiating Problems

How Do Lawyers Negotiate?



Lawyers may have the reputation of troublemakers, but in fact they are negotiators and problemsolvers. Even in the most contentious of arenas where important rights and interests are at stake, and perhaps especially in those arenas, lawyers employ their skills to illustrate the public and private interests at stake, discern opportunities, foster compromise, and bring about resolution.

There are alternative negotiation models. One such model at which lawyers are expert is interestbased negotiation.

Lawyers know their own clients' goals while they also see and help their clients recognize the goals and interests of others. They know when and how to obtain client authority to negotiate, and to recognize when others have or do not have that authority.

Lawyers know how parties typically conduct negotiations, including the various forms of alternative dispute resolution (mediation, case evaluation, arbitration). They help their clients choose the most favorable dispute-resolution forum.

Course Work

The curriculum aim is that you be able to negotiate and resolve legal matters to clients' satisfaction, taught through courses like:

- Alternative Dispute Resolution
- Negotiation & Confrontation
- Negotiation Competition

Lawyers are expert at giving and reading the signals that sides send, as if in code, to move negotiations forward without making unauthorized or unwise disclosures.

They know how to prepare for and conduct negotiations, while also knowing how and when to conclude them. Lawyers are expert at documenting settlements in ways that ensure that all parties have agreed on all material issues and are bound by their agreement.

Negotiation is a fascinating skill that lawyers exercise effectively and wisely.

Confronting Issues

What Do Lawyers Confront?



The reputation that lawyers have among some for contentiousness may be due in part to the role of lawyers as truth-tellers.

While lawyers are expert at negotiated resolutions, those resolutions often require that parties recognize interests and accept terms that, while just, they would rather deny.

Lawyers are expert at helping others confront what must be confronted. Lawyers are skilled at a special kind of confrontation that generates helpful change and peaceful resolution.

Lawyers sometimes exercise confrontation skills when counseling their own clients, some of whom need to confront situations and change behaviors.

Lawyers help clients generate positive change in their adversaries and others, first by raising and documenting claims, and then if necessary through court representation. [Continued on next page.]



*If a man will make
a purchase of a
chance he must
abide by the
consequences.*

—Sir Richard Richards



Confronting Issues

What Do Lawyers Confront?

Parties litigate with the same purpose they negotiate, but after having failed to resolve their differences voluntarily outside of litigation. For many or most parties, lawyer skill is critical to successful litigation.

Lawyers know the court rules and procedures necessary to bring and defend claims toward just resolutions. They know how to prepare pleadings and court papers. They know how to offer evidence and test an opposing party's evidence.

Lawyers advocate, not generally, as a public relations expert might, but for specific resolutions based on specific reasons.

They are expert in preparing jury instructions that state the law in simple and compelling terms.

They know how to draft findings of fact and present and challenge proposed orders and judgments. Lawyers know how to take appeals.

At each step of their court representation, lawyers are helping the parties confront what the law requires of them, toward an order that will produce peace, comfort, recovery, remedy, restitution, and restoration.

Lawyers are contentious for one goal only, to work a harvest of justice in the lives of their clients, allies, and adversaries.

Course Work

The curriculum aim is that you be able to speak to clients and others with candor, in ways that help them recognize truths affecting their legal matters, taught through courses like:

- Pretrial Skills
- Trial Skills
- Alternative Dispute Resolution
- Negotiation & Confrontation
- Externship Course
- The WMU-Cooley Innocence Project
- Public Defender Clinic
- Moot Court
- Mock Trial

Managing Work

What Do Lawyers Manage?

While practicing the above skills, lawyers are also skilled managers. They manage client relationships, law-firm expectations, case loads, and calendars. They manage the requirements of courts through procedural rules and of bar associations through conduct rules. They manage relationships with opposing counsel, with cocounsel, and with lawyers who appear before them or before whom they appear in mediations, arbitrations, and case evaluations.

A lawyer's practice-management skills include knowing how to set broad professional goals such as to earn good reputation, increase one's specialty skills, broaden practice areas, and improve the justice system and profession.

They also know how to plan intermediate objectives to reach those broad goals, such as to take continuing legal education, volunteer for bar committees, accept pro-bono assignments, and research and write for bar journals.

Lawyers know to develop and implement marketing plans to ensure that the public knows the availability and value of their services. Lawyers maintain scheduling systems and find ways to use those systems to increase their productivity and efficiency. They certainly know how to prioritize work including both to do what is due and to do what should be done.

Lawyers know how to record the work that they do in accurate and meaningful ways so as to be able to bill fairly and efficiently for their services. They know how to structure relationships and price services so that their clients have equitable compensation arrangements. They know how to meet their law-firm's and partners' expectations for billable hours while simultaneously ensuring that each client receives full value for billed services.

Lawyers know how to memorialize events and communications so that the lawyer, client, and others have reliable ways to understand and confirm opportunities, agreements, and obligations. It is not surprising that lawyers have a professional competence about them unique to their profession.

Practicing law is among the most engaged, humane, and responsible of vocations one could possibly choose. Watching lawyers work is fascinating. To become a practicing lawyer is to enter a properly venerated, essentially noble, and immensely rewarding profession.

Course Work

The curriculum aim is that you be able to manage law practice, taught through courses like:

- Law Office Management
- Pre-Trial Skills
- Trial Skills
- Pathway to Success
- Externship Course
- Public Sector Law Project
- Estate Planning Clinic
- The WMU-Cooley Innocence Project
- Public Defender Clinic
- Professionalism Portfolio

Learn more about practice management from observing and assisting your professors conduct pro bono service, extra-curricular events like the Integrity Lecture Series, and interviewing mentors.

Reflection & Learning

Questions to Help You Engage

Consider the Professional Identity You Will Form From Your Law Studies

Conducting Interviews

- Think of a time when you interviewed someone. What did you do to prepare?
- How did you adjust the interview as it proceeded?
- What action items did you develop from the interview?

Providing Counsel

- Think of a time when you had formal or informal counsel, perhaps from a school or career counselor. Did you recognize and value the counselor's wisdom?
- Did the counselor see a path or opportunity for you that you had not seen?
- Did the counselor warn you of an obstacle or challenge that you had not seen?

INVESTIGATING CASES

- Recall a matter personal to you that you investigated. It may have been a family history, tree, or genealogy, or the origin of jewelry, a painting, or other personal property someone gave to you or you found or acquired. How successful were you in the investigation you just recalled?
- What affinity do you feel you have for discovering information?
- Do you like mystery novels? If so, are you very good at predicting "who dunnit"?
- Have you ever participated in treasure hunts, road rallying, or other games and recreations that use clues, investigation, and discovery?

Negotiating Problems

- Recall a matter personal to you that required you to negotiate a resolution with another person. How successful were you in the negotiation you just recalled?
- What affinity do you feel you have for negotiation?
- Do you like resolving disputes?
- Have you had any training in negotiation?

Confronting Issues

- Have you ever confronted someone about a behavior that needed to change? Were you successful?
- How did your demeanor influence the outcome?
- Were you able to propose positive solutions, suggest resources, illustrate positive and negative consequences, and give examples of success?
- What other skills were you exercising?
- Did you have any outside forum, perhaps a community board, dispute-resolution center, or mediation panel, to which you could take the matter if necessary?

Managing Work

- Give yourself a ranking of 1 to 5 (with 1 being the best) in each of these areas of management: (a) personal and family relationships; (b) school responsibilities; (c) work responsibilities; (d) fitness, health, and wellness; (e) finances, taxes, and investments; and (f) faith-organization or other community participation.
- Are you better in some areas than in others? Why?

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About the Author



The sure way to miss success is to miss the opportunity.

Nelson P. Miller

Professor Emeritus

Nelson Miller practiced civil litigation for 16 years before joining the WMU-Cooley faculty. He has argued cases before the Michigan Supreme Court, Michigan Court of Appeals, and U.S. Court of Appeals for the Sixth Circuit, and filed amicus and party briefs in the U.S. Supreme Court.

Dean Miller taught Torts I and II, Professional Responsibility, Civil Procedure II, No-Fault Insurance Law, Advanced Professional Ethics, Tax-Exempt Organizations, Health Law, and Employment and Workplace Discrimination Law.

Publications

What the Best Law Teachers Do (Harvard University Press, 2013) named Nelson Miller and Professor Phillip J. Prygoski as two of the 26 “best law teachers” in the United States.

Education

B.A., highest honors, Indiana University, 1984

J.D., cum laude, University of Michigan Law School, 1987



(Left to right) Professor Emeritus Nelson P. Miller, author Michael Hunter Schwartz, and the late Professor Phillip J. Prygoski.