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Tele-Lawyering and the Virtual Learning Experience: Finding the Silver Lining for Remote Hybrid Externships & Law Clinics After the Pandemic

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**TELE-LAWYERING AND THE VIRTUAL LEARNING
EXPERIENCE:
FINDING THE SILVER LINING FOR REMOTE HYBRID
EXTERNSHIPS & LAW CLINICS AFTER THE PANDEMIC**

Lucy Johnston-Walsh¹ and Alison Lintal²

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I. INTRODUCTION

This Article explains that the coronavirus pandemic will forever transform the way that we practice law and will likely have a lasting impact on the delivery of legal education. With the appropriate tools and technology, both the legal profession and legal academia can thrive in a virtual work environment and may even come to embrace tele-lawyering. The legal education system has historically been reluctant to embrace remote learning, especially in an experiential learning context. When designing learning outcomes to ensure that law graduates have the necessary skills and knowledge to succeed in 21st century practice, remote clinical and externship experiences can serve as important tools to fill that knowledge gap. Experience matters when hiring³ and educational

3. Alli Gerkman & Logan Cornett, *Foundations for Practice, Hiring the Whole Lawyer: Experience Matters*, IAALS 1, 7 (2017), https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_hiring_the_whole_lawyer.pdf [https://perma.cc/QN3C-L4UK] (concluding out of the top ten most helpful hiring criteria, participation in an externship was listed as #3 and participation in a law school clinic was listed as #6).

training in the virtual workplace is integral to that experience in a post-COVID-19 marketplace.

II. THE LEGAL PROFESSION'S RESISTANCE TO REMOTE WORK

Working from home or working remotely has often held a negative connotation in the legal industry, conjuring up images of disconnection, separation, or otherwise being outside the fray; remote work suggested isolation and unproductivity.⁴ Historically, the perception was that you needed to be physically present in the office, in the courthouse, or with your colleagues in order to successfully practice as an attorney. Yet advances in technology continue to challenge the traditional norms of office face time, and certainly the COVID-19 pandemic changed everything work-related. A survey was completed in March of 2020 of 3,000 knowledge workers, and the results were analyzed according to industry.⁵ More than half of those surveyed in the legal profession responded that they could work from home with little or no difficulty, and only a small percentage indicated that their job cannot be done from home.⁶ One aim of this article is to suggest that connection and engagement can be maintained in a virtual work environment. Furthermore, providing law students with the virtual work experience provides an opportunity to build professional skills in this new work paradigm. These remote working experiences will undoubtedly be valuable for law students in their future careers as lawyers. Please note, the authors use the terms remote and virtual interchangeably in this article but acknowledge that it is more accurate to speak in terms of virtual rather than remote operations when there is effective technology that enables us to connect and collaborate from home environments.

A. *The Legal Academy's Resistance to Remote Learning*

Law schools have historically valued a pedagogical design of Socratic teaching in a formal in-class doctrinal environment. Law schools' accrediting body, the American Bar Association (hereinafter ABA), has required in-person instruction through its accreditation rules and required law schools to seek special waivers for any form of remote/distance learning. ABA Standard 306 sets out parameters for distance education.

4. *Remote*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/remote> [<https://perma.cc/29NV-NJ5Y>].

5. *Report: Remote Work in the Age of Covid-19*, SLACK, <https://slackhq.com/report-remote-work-during-coronavirus> [<https://perma.cc/KJD2-Q7UM>].

6. *Id.*

Perhaps these strict guidelines were focused on appropriate concerns related to quality of education, or financial motivations, or old-fashioned ideas of learning. Yet non-law school academic institutions have pursued and advanced various forms of distance learning for many years prior to when the global pandemic hit the world in the spring of 2020. The coronavirus pandemic forced the ABA to make necessary recommendations supporting remote learning in legal education considering extraordinary and emergency conditions.⁷

In addition to Socratic-style doctrinal classes where the faculty probes the student with questions as compared to providing answers, the legal academy has favored an “in the trenches” approach to experiential learning. This approach emphasized the learning that takes place in-person in a legal office, which includes first-hand observation of lawyering skills in action. Legal educators and the ABA recognized the value of getting out of the classroom and into the courtroom to learn about what it means to be a lawyer. While experiential learning within the field of law has a long history, recent changes to the ABA law school standards mandate that law students must have a minimum of six credits of experiential learning courses in order to graduate from law school.⁸ The experiential learning standards do not explicitly address distance or remote experiential learning options.⁹ Until recently, many schools were reluctant to permit remote externships or clinics, due to the requirement in ABA Standard 304 that the experience include a “substantial lawyering experience” that involves representing clients or engaging in other lawyering tasks.¹⁰ Traditionally, these experiential learning opportunities did not include remote lawyering experiences.

7. Stephanie Francis Ward, *Expanded Online Law School Classes Could Continue Under Plan Endorsed by ABA Legal Ed Council*, ABA J. (May 15, 2020), <https://www.abajournal.com/news/article/ABA-Legal-Ed-approves-motion-for-rule-change-regarding-short-term-emergencies-nixes-request-to-suspend-bar-pass-standard> [<https://perma.cc/B2WX-7JSE>].

8. MANAGING DIRECTOR’S GUIDANCE MEMO: STANDARDS 303(a)(3), 303(b), & 304, ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, (AM. BAR ASS’N March 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf [<https://perma.cc/U9EC-75B2>].

9. *Id.* See ABA STANDARD 303(a): “A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement.”

10.

PROGRAM OF LEGAL EDUCATION, ABA 304(c)–(d) 2020–2021 STANDARDS FOR APPROVAL OF LAW SCHOOLS, (AM. BAR ASS’N 2020–2021), <https://www.americanbar.org/content/dam/aba/administ>

1. A Brief History of Experiential Learning in Legal Education

In the United States, until the end of the 19th century, lawyers were educated primarily through apprenticeships in law offices as well as self-directed reading of legal texts.¹¹ More formal law schools, developed at the end of the 19th century, utilized a casebook method for teaching.¹² It was not until 1921 when the ABA developed standards for legal education.¹³ The initial accrediting standards did not compel nor encourage experiential learning.¹⁴ By the middle of the 20th century, several formalized experiential learning programs developed across the country, providing law students the opportunity to practice their skills while simultaneously offering free legal assistance to low income clients. Also, in 1921 the Carnegie Foundation for the Advancement of Teaching identified important components of preparing students for the practice of law, which included practical skills training.¹⁵

By the end of the 20th century (1980), nearly every law school in the country had at least one clinical course.¹⁶ The MacCrate Report published in 1992 recommended that law schools develop or expand their lawyering skills offerings and urged changes to the ABA Standards.¹⁷ In 2007, *Best Practices for Legal Education* noted that “it is only in the in-house clinics and some externships where students’ decisions and actions can have real consequences and where students’ values and practical wisdom can be

rative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf [https://perma.cc/G5P7-MH24].

11. J. P. “Sandy” Ogilvy, *Celebrating CLEPR’s 40th Anniversary: The Early Development of Clinical Legal Education and Legal Ethics Instruction in U.S. Law Schools*, 16 CLINICAL L. REV. 1, 3 (2009) <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1025&context=scholar> [https://perma.cc/L966-8V6X].

12. Peter Joy & Robert Kuehn, *Evolution of ABA Standards for Clinical Faculty*, 74 TENN. L. REV. 183, 184 (2008) https://www.researchgate.net/publication/228188942_The_Evolution_of_ABA_Standards_for_Clinical_Faculty [https://perma.cc/V76S-VDG9].

13. *The American Bar Association’s Role in the Law School Accreditation Process: A Report of the ABA Section of Legal Education and Admissions to the Bar*, 32 J. LEGAL EDUC. 2, 195 (1982) <https://www.jstor.org/stable/42897042?seq=1> [https://perma.cc/D2LY-M4MT].

14. Joy & Kuehn, *supra* note 14 at 187.

15. ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNTS OF CONDITIONS IN ENGLAND AND CANADA (1921). This early Carnegie study of legal education is referred to as the Reed Report.

16. *Id.* at 15.

17. Joy, *supra* note 4, at 570. (See also *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development – An Educational Continuum*, ABA (1992)) [hereinafter MacCrate Report].

tested and shaped before they begin law practice.”¹⁸ The goal of experiential learning opportunities is to provide students with much needed practical skills training, and to allow students the opportunity to apply theories learned in the classroom to a practice-based setting. Allowing students to participate in remote experiential learning will provide them with the real-world application of serving clients in the current legal market and working with colleagues in today’s virtual legal workforce.

2. Overview of the ABA Experiential Learning Standards

Although the ABA Standards for Legal Education were promulgated first in 1921, it was not until 1996 that ABA Standards specified that law schools had to provide opportunities for experiential education for all students.¹⁹ Then, approximately twenty years later, the ABA council met and revised the Standards to require at least six credits of experiential courses.²⁰

While many law students seek employment during law school for both income and experience, the experiential learning component of law school is a distinctly different experience. Experiential learning through credit-based externships or clinical courses are an academic program with identified learning goals, supervision, assessment, and reflective learning. Clinical teachers are most typically members of law school faculty and generally organize clinical programs to integrate theory with a substantial lawyering experience. Externship supervisors collaborate with law schools by agreeing to provide an educational experience for extern students. Both externships and clinical programs have navigated to remote platforms during the pandemic and can continue to provide an enriching academic experience in the following ways: teaching students professional responsibility skills, oral advocacy, legal research and writing, client interviewing, etc. Students earning academic credit can still have enriched learning in virtual experiential settings.

B. The Court Systems’ Resistance to Remote Operations

Court systems have traditionally placed great value on in-person proceedings. A law review article from 1999, describes how “technology

18. Roy Stuckey, *Best Practices for Legal Education: A Vision and a Road Map*, 114 (2007), https://www.cleaweb.org/Resources/Documents/best_practices-full.pdf [https://perma.cc/3632-D68Q].

19. Joy, *supra* note 4 at 572–73.

20. MANAGING DIRECTOR’S GUIDANCE MEMO, *supra* note 10.

largely sidestepped the courtroom,” yet references the trend towards high-technology courtrooms.²¹ The article goes on to report that as of 1999, an increasing number of courtrooms were developing capability for remote, two-way testimony via videoconferencing.²² Yet video conferencing courts date back to the 1970s, for example, when Illinois courts began experimenting with video conferencing in 1972.²³ Concerned about the future of technology in the court room, a Working Conference on Technology-Augmented Litigation was developed in 1998 and concluded that adoption of courtroom technology was unstoppable. Since September 11, 2001, federal and state governments have taken steps to ensure continuity of government in the event of a disaster.²⁴ Hurricane Katrina certainly demonstrated the need for courts to have a plan for functioning in case of disaster,²⁵ yet many court systems still struggled to solidify plans for smooth remote operations.

Courts have routinely employed multiple technology products for conducting their operations²⁶ but not all courts were ready to transition to complete remote operations in March of 2020. Despite the lack of planning on the part of some court systems, many forms of legal practice had effectively moved to remote technology decades ago. For example, “televideo” was introduced to immigration courts in the 1990s.²⁷ Online dispute resolution took root in 1996 and spread in various directions, fueled by alternative dispute resolution’s reputation for fostering efficiency and cost-savings for courts and disputing parties.²⁸ Research indicates that Adjudicatory Online Arbitration which focuses on evidentiary submissions and provides disputants with the opportunity to

21. Jack B. Lederer, *The Road to the Virtual Courtroom? A Consideration of Today’s—And Tomorrow’s—High-Technology Courtrooms*, 50 S.C. L. REV. 799, 801 (1999) <https://scholarcommons.sc.edu/cgi/viewcontent.cgi?article=3544&context=sclr> [<https://perma.cc/P37P-KADU>].

22. *Id.*

23. See Michael D. Roth, *Laissez-Faire Videoconferencing: Remote Witness Testimony and Adversarial Truth*, 48 UCLA L. REV. 185, 192 (2000) (noting that judicial experimentation with remote testimony began in Illinois) https://www.researchgate.net/publication/295388433_Laissez-Faire_videoconferencing_Remote_witness_testimony_and_adversarial_truth [<https://perma.cc/G9JR-647Z>].

24. Carol R. Flango, Chuck Campbell, & Neal Kauder, *Future Trends in State Courts*, NAT’L CENTER FOR STATE COURTS 2 (2006), <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/004000/004857/unrestricted/20071754e.pdf> [<https://perma.cc/F9TK-W5AJ>].

25. *Id.*

26. *Id.* at 4.

27. Ingrid V. Eagly, *Remote Adjudication in Immigration*, 109 NW. U. L. REV. 933, 945 (2015), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1217&context=nulr> [<https://perma.cc/2EDA-4DCR>].

28. Amy J. Schmitz, *“Drive-Thru” Arbitration in the Digital Age: Empowering Consumers through Binding ODR*, 62 BAYLOR L. REV. 178, 181 (2010), <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1601&context=facpubs> [<https://perma.cc/JY5X-LQBB>].

present their cases and obtain a substantive determination on their claims, provides finality to help provide quick access to remedies.²⁹ Furthermore, online dispute resolution has been touted for its convenience, speed, low-cost, and travel and paper savings.³⁰ Research has demonstrated additional benefits to online arbitration, such as consumer empowerment related to the anonymity and comfort of communicating from one's home or office.

In-court litigation can often be very traumatic and stressful for everyone, and especially for consumers and other individuals unfamiliar or intimidated by the courtroom experience. Even well-seasoned attorneys can get nervous walking into a courtroom. The trauma can be tenfold for individuals who may have never even been inside of a courthouse, particularly if they are not represented by counsel.³¹ Judges, court staff, and lawyers say they have discovered a surprise upside of going virtual during the pandemic: technology can make the justice system much more accessible for abuse victims.³² More specifically, the Supreme Court has ruled that alleged child victims of sexual abuse can testify via one-way closed circuit television without violating criminal defendants' right to confront their witnesses.³³ Remote victim testimony is not new, as Congress passed the Child Witnesses Rights Act in 1994 to give child witnesses the ability to testify through a two-way closed-circuit television or taped deposition. Remote proceedings have allowed child victims to testify on camera, rather than facing their perpetrators inside an imposing courtroom. Research on the benefits of using video conferencing for crime victims is the subject of much research and is well covered in other articles.³⁴ Despite some reticence and technology delays, the move to virtual lawyering is spreading and law students must be ready to adapt to virtual practice.

29. *Id.* at 193.

30. *Id.* at 200.

31. *Id.* at 202.

32. Jerome Ashton, *Remote Court Hearings Can Ease Stress for Kids, Abuse Victims*, BLOOMBERG LAW (JULY 23, 2020), <https://news.bloomberglaw.com/us-law-week/remote-court-hearings-can-ease-stress-for-kids-abuse-victims> [<https://perma.cc/Z6NR-WBDY>].

33. *Maryland v. Craig*, 497 U.S. 836, 860 (1990).

34. Daniel Devoe & Sarita Frattaroli, *Videoconferencing in the Courtroom: Benefits, Concerns, and How to Move Forward*, 1, 1–4, 21 (2015), https://socialaw.com/docs/default-source/judge-william-g.-young/judging-in-the-american-legal-system/04devoe-sarita-paper.pdf?sfvrsn=cd8bee19_6 [<https://perma.cc/S9QA-DMHZ>].

III. HOW COVID-19 CHANGED DELIVERY OF LEGAL EDUCATION AND OPERATIONS OF THE COURT SYSTEM

The coronavirus pandemic disrupted the delivery of legal services and legal education by a sudden and dramatic closure to the standard in-person operations, while converting delivery to an online format. Law schools turned to the ABA as the accrediting body for guidance. Court systems scrambled to adjust, perhaps with less uniformity and standards than academia. Both institutions, legal academia and the courts, continued to serve their constituents albeit in new ways and perhaps not seamlessly at first. Hopefully both institutions have taken the time and effort to develop and incorporate best practices to sustain online operations going forward.

A. *Law School Operations in the Time of the Coronavirus*

Law schools across the country quickly developed remote teaching operations in March of 2020. Traditional class sessions were conducted virtually. As higher education institutions transitioned from in-person classroom teaching to online instruction due to the coronavirus pandemic, new challenges were presented for experiential learning programs. For example, as internship site offices were closing to public, many internship supervisors struggled to provide learning experiences for interns. With court closures, litigation clinics had to pivot the learning experience for students. The American Bar Association provided guidance to law schools to deal with the “emergency departure from normal operation.”³⁵ Yet ABA guidance did not offer specific suggestions for adaptations related to experiential learning courses.³⁶ Students began adjusting to the virtual

35. ABA STANDARD 107(a)(1), 2019–2020 STANDARDS FOR APPROVAL OF LAW SCHOOLS, ABA (2020) (providing for variances from the requirements of the Standards in “. . . extraordinary circumstances in which compliance . . . would create or constitute extreme hardship for the law school and/or its students.” If a disaster or emergency requires a substantial disruption to the law school’s academic programs in a way that implicates compliance with the ABA Standards, the law school should seek a variance when possible. For example, in the wake of an emergency, a law school may conclude that it needs a variance for the time needed to return to normal operation); See MANAGING DIRECTOR’S GUIDANCE MEMO, EMERGENCIES AND DISASTERS, ABA LEGAL EDUCATION AND ADMISSIONS TO THE BAR (Feb. 2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/20-feb-guidance-on-disasters-and-emergencies.pdf [<https://perma.cc/YES4-L5XZ>] (discussing the August 2018 ABA updates, in which the ABA updated its Standard 306 and expanded to 30 the number of online-course credits that law students may apply towards their J.D. degree—with a maximum of ten such credits in the first year of law school); See ABA STANDARD 306(e), 2019–2020 STANDARDS FOR APPROVAL OF LAW SCHOOLS, ABA (2019).

36. ABA STANDARD 306, 2019–2020 STANDARDS OF APPROVAL OF LAW SCHOOLS, ABA (2019) (discussing how the Standard does not specifically address experiential learning and instead

classroom, while experiential learning faculty scrambled to address remote operations of clinics and externships.

B. The Impact of COVID-19 on the Court System

Prior to the COVID-19 pandemic, some courts were resistant to embracing remote operations. For centuries, litigation-based law practice has involved meeting with clients in person, reviewing their cases, drafting documents, filing paper pleadings, and arguing your case standing in a suit before the bench. Not until the late 1980s did courts begin to revolutionize law practice through electronic case management.³⁷ Slowly court jurisdictions began to allow electronic filing of pleadings. While the ability to electronically file court pleadings fundamentally changed law practice, attorneys continued to show up in person for client meetings, courtroom arguments, and other proceedings. Only rare circumstances allowed for deviation from this practice, such as natural disasters as in Hurricane Katrina. The COVID-19 pandemic initially shut down many court operations, including the U.S. Supreme Court.³⁸ After a period when only emergency hearings were being held, courts developed procedures for remote operations to address the scheduling backlog. Court administrators struggled with re-scheduling previously cancelled hearings, issuing of administrative orders, and implementing a secure virtual operation system. For courts without an electronic filing system, this created additional administrative issues with limited access to closed court buildings. As with any new venture, court systems struggled with initiating virtual hearings to address issues such as litigant's access to internet, computers, and delays in proceedings. Over time, court systems

focuses on distance learning as response to emergencies or disaster. The standard discusses whether the course can be easily adapted to remote delivery and whether faculty has experience and training for remote teaching. An ABA-approved law school may grant up to one-third of the credit hours required for the J.D. degree for distance education courses (*see* Definitions 7 and 8, and STANDARD 311)).

37. *25 Years Later, PACER, Electronic Filing Continue to Change Courts*, U.S. COURTS (Dec. 9, 2013), <https://www.uscourts.gov/news/2013/12/09/25-years-later-pacer-electronic-filing-continue-change-courts#:~:text=25%20Years%20Later%2C%20PACER%2C%20Electronic%20Filing%20Continue%20to,pioneers%20in%20adopting%20the%20online%20PACER%20information%20service> [<https://perma.cc/CAH4-XCHP>] (discussing how in September 1988, the Judicial Conference of the United States approved a new way of opening information to the public, through a service known as PACER—Public Access to Court Electronic Records).

38. *Press Release*, UNITED STATES SUPREME COURT (Mar. 16, 2020), https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_03-16-20 [<https://perma.cc/VW3K-38JP>].

worked to address the kinks in the process and developing solutions to common impediments.³⁹

IV. VIRTUAL EXPERIENTIAL LEARNING IS ESSENTIAL TRAINING FOR THE MODERN LAW STUDENT

During this global pivot to remote education, law schools across the country rushed to embrace online learning as a new means of educating law students. Change is sometimes painful and at a minimum uncomfortable, but it is essential for growth. This is often advice we share with students as they develop their own professional identity in practice. This advice is also what we as clinical and externship faculty took seriously as we adapted during the crisis. There are various challenges to transitioning to a virtual externship or clinic setting. Challenges include the type of experiential setting (litigation vs. non-litigation), proficiency and technological skills of the instructor, office preparedness for remote adjustment, etc. Once these challenges are identified and addressed, they can serve as opportunities to develop remote work competencies necessary for lawyers to succeed in the current legal marketplace.

Moving beyond crisis mode, it was important for us to learn from the challenges presented so that we could implement best practices for remote clinics and externships going forward. Post-pandemic, we plan to continue to utilize a hybrid approach, incorporating some remote learning and instruction in the experiential learning curriculum. We believe it to be essential to modern lawyer development and training.⁴⁰

A. Thesis: Virtual and Hybrid Practice is Here to Stay

Tele-lawyering, or “technology-enabled access to legal assistance”⁴¹ is not new. As previously mentioned, remote practice has been embraced

39. Anecdotally, Professor Johnston-Walsh participates in a litigation-based clinic in Pennsylvania. She observed the court system where she practices offering rooms for litigants to use in the courthouse where the court participants could have access to computers and internet.

40. Alli Gerkman & Logan Cornett, *Foundations for Practice the Whole Lawyer and the Character Quotient*, IAALS (Jul. 2016), https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf [https://perma.cc/42HU-VQ2X] (providing that when asked about the importance of technology and innovation to success in the legal profession, 58% of legal practitioners indicated that it is necessary in the short term to learn and use relevant technologies effectively).

41. Nola M. Ries, Briony Johnston & Shaun McCarthy, *Technology-Enabled Legal Service Delivery for Older Adults: What Can Law Learn from Telehealth?: Findings from an International Review of Literature*, 10 ELDER L. REV. 1, 1 (2016), [https://www.thefreelibrary.com/_/print/cite.aspx?url=https%3A%2F%2Fwww.thefreelibrary.com%2FTechnology-enabled%2Blegal%2Bservice%2Bdelivery%2Bfor%2Bolder%2Badults%253a%2Bwhat%2Bcan...-](https://www.thefreelibrary.com/_/print/cite.aspx?url=https%3A%2F%2Fwww.thefreelibrary.com%2FTechnology-enabled%2Blegal%2Bservice%2Bdelivery%2Bfor%2Bolder%2Badults%253a%2Bwhat%2Bcan...)

successfully in the arbitration context⁴², but less smoothly in other contexts such as immigration removal proceedings.⁴³ With the globalization of legal practice, lawyers have had access to both formal and informal networks across states, office locations, and even internationally.⁴⁴ Since the start of the coronavirus pandemic, virtual legal practice expanded exponentially out of necessity due to the global health crisis. Many signs suggest that some form of virtual or hybrid practice will be here to stay.⁴⁵ As many firms consider the pandemic's impact on their bottom line (and their ability to return to a socially-distanced office environment), physical office space is a significant cost to justify when many lawyers have proven their ability to perform the tasks of their job remotely. As one example, Husch Blackwell, an Am Law 200 Law Firm with 622 attorneys, announced that 50 employees and 40 attorneys will permanently work-from-anywhere in a virtual office branded "The Link."⁴⁶

a0501719360&author=Ries,+Nola+M.;+Johnston,+Briony;+McCarthy,+Shaun&title=Technology-enabled+legal+service+delivery+for+older+adults:+what+can+law+learn+from+Telehealth?+Findings+from+an+international+review+of+literature.&artId=501719360&pubDate=2016-01-01 [https://perma.cc/P7LR-5PGY].

42. See [Press Release] Seoul Protocol on Video Conferencing in International Arbitration is Released, KCAB INT'L (Mar. 18, 2020), http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do?BBS_NO=548&BD_NO=169&CURRENT_MENU_CODE=MENU0025&TOP_MENU_CODE=MENU0024 [https://perma.cc/G9DW-X92B].

43. See Frank M. Walsh & Edward M. Walsh, *Effective Processing or Assembly-Line Justice – The Use of Teleconferencing in Asylum Removal Hearings*, 22 GEO. IMMIGR. L.J. 259, 271 (2008), https://heinonline-org.ezproxy.uakron.edu:2443/HOL/Page?public=true&handle=hein.journals/geoilj22&div=18&start_page=259&collection=journals&set_as_cursor=0&men_tab=srchresults [https://perma.cc/8BKP-NG6R] (finding that virtual proceedings impacted the outcome of asylum cases); see also Mark Federman, *On the Media Effects of Immigration and Refugee Board Hearings via Videoconference*, 19 J. REFUGEE STUD. 433 (2006), <https://academic.oup.com/jrs/article-abstract/19/4/433/1510170?redirectedFrom=fulltext> [https://perma.cc/4BB5-GMA3].

44. See generally Laurel S. Terry, *Global Networks and the Legal Profession*, 53 AKRON L. REV. 137 (2019), <https://ideaexchange.uakron.edu/akronlawreview/vol53/iss1/5> [https://perma.cc/64XH-K524].

45. Lauren Gibbons, *Virtual Court Hearings Could Continue Past Pandemic, but Questions of Connectivity, Constitution Arise*, MLIVE (July 14, 2020), <https://www.mlive.com/public-interest/2020/07/virtual-court-hearings-could-continue-past-pandemic-but-questions-of-connectivity-constitution-arise.html> [https://perma.cc/768K-SALE]; Shalini Nangia & Julia A. Perkins, *The Pros and Cons of Zoom Court Hearings*, THE NAT'L L. REV. (May 20, 2020), <https://www.natlawreview.com/article/pros-and-cons-zoom-court-hearings> [https://perma.cc/MYG8-BDPS].

46. Roy Strom, *This Big Law Firm Has Permanent Plans for Remote Working*, BLOOMBERG L. (July 16, 2020, 4:56 AM), <https://news.bloomberglaw.com/business-and-practice/this-big-law-firm-has-permanent-plans-for-remote-working> [https://perma.cc/GM2H-S3V9].

B. Teaching about Virtual Practice will Help Law Students Thrive in a New Practice Environment

If we look to Professor David I.C. Thomson's definition of experiential learning, it has three essential elements: (1) an emphasis on the student learning experience; (2) placement of students in the role of attorneys; and (3) a focus on professional identity formation.⁴⁷ It follows that as legal practice adapts to changing times, clinic and externship curricula must also adapt accordingly to ensure that students are taught about new and evolving practice environments in which attorneys operate — such as the virtual setting. The skills necessary to operate effectively in a virtual setting are not dissimilar from skills that legal employers already seek in entry level lawyers: communication skills, professionalism, personal discipline and accountability, and workload management.⁴⁸ However, these skills take on a new dimension in a virtual environment because they are practiced differently. Those students who might excel in an in-person experience where they can drop-by their supervisor's office door at a moment's notice, may struggle to maintain connection, support, and motivation while working remotely. Networking in a virtual environment is much different than in-person and requires more intentionality and advance planning. Trust, accountability, and an outcomes-based management strategy are essential. Clinical faculty and internship directors should dedicate class time to discussions surrounding: virtual office communication; professional presentation; virtual networking; seeking feedback; virtual communication with clients; etc. The American Academy of Appellate Lawyers recently released a report recommending the importance of practice sessions for lawyers and judges as they adapt to remote practice.⁴⁹ Providing law students with these "practice sessions" as part of their experiential learning opportunities in virtual practice environments is an important tool for preparing for their future careers.

47. David I.C. Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 20 (2015), <https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=1002&context=jel> [<https://perma.cc/4F33-2HHS>].

48. See Gerkman & Cornett, *supra* note 42 (noting that these skills are listed in the top 10 foundations necessary for young lawyers to master in the short term. Workload management appears twice in the top 10 foundations necessary to be acquired over time).

49. *American Academy of Appellate Lawyers Task Force on Remote Oral Argument Recommendations for Courts Hearing Oral Argument Remotely*, APPELLATE ACAD. (2020), <https://www.appellateacademy.org/publications/AAAL-Remote-Task%20ForceCourt-Recs.pdf> [<https://perma.cc/RCT3-VET6>].

C. The Elements of a Successful Hybrid Legal Practice

Remote work arrangements are not new, although the legal profession has been slower to embrace virtual practice than other industries. The federal government has been a strong proponent of hybrid telework arrangements (including for agency attorneys) and through the U.S. Office of Personnel Management has provided annual reports to Congress since the passage of the Telework Enhancement Act of 2010.⁵⁰ According to data from 2018, 42% of federal employees were eligible to telework and of those who were eligible to telework, 51% teleworked in 2018.⁵¹ The Telework Enhancement Act of 2010 is instructive in that it provides some structural and procedural requirements for establishing a telework program at the federal government level. Participation in a federal telework program requires a written agreement signed by the employee and supervisor that outlines the specific work arrangement⁵², interactive telework training⁵³, and security guidelines⁵⁴. Many of these requirements are best practices for virtual work arrangements and are also recommended in a legal practice setting.

Additionally, in a hybrid virtual and in-person legal practice, the transferability, accessibility, and security of resources and equipment becomes of utmost importance. A lawyer may have a designated home work space where they are able to connect remotely to the cloud or a secure server to access client files. The lawyer may choose to come into the office to utilize shared meeting space for client or team strategy meetings. In the virtual office, structure and schedule are important elements as well. Communication with supervisors, clients, colleagues, and interns remains of utmost importance so transparency and consistency of schedule can be helpful. In many circumstances, virtual work may rely on the use of alternative means of communication through What's App, text, Google Hangouts, or other chat communication tools. With commuting eliminated, availability and time efficiency may increase. However, setting boundaries and expectations regarding responsiveness

50. See Telework Enhancement Act of 2010, 5 U.S.C. §§ 6501–6506; See also *Background & History*, U.S. OFF. OF PERSONNEL MGMT. <https://www.telework.gov/reports-studies/reports-to-congress/background-history/> [<https://perma.cc/DGY7-9XHA>] (describing how this law was designed to address transportation issues and assist with recruitment and retention of federal government workers).

51. *Status of Telework in the Federal Government, Report to Congress Fiscal Year 2018*, U.S. OFF. OF PERSONNEL MGMT. (Mar. 2020), <https://www.telework.gov/reports-studies/reports-to-congress/2019-report-to-congress.pdf> [<https://perma.cc/3RJX-R4V8>].

52. 5 U.S.C. § 6502(b)(2) (2018).

53. 5 U.S.C. § 6503 (2018).

54. 5 U.S.C. § 6504(c) (2018).

remain important, especially when many attorneys feel pressured to stay connected and respond 24 hours per day, 7 days per week.

A virtual practice or hybrid practice requires adjustments in the way that lawyers have typically interacted with the judicial system or their clients. Many legal practices already utilize online forms and online document collection. Sometimes this can present challenges for clients who lack access to a reliable internet source, yet many smartphones have document scanning apps and capabilities. Additionally, electronic signatures, e-documents, and e-filing have become increasingly popular and were relied on more significantly during the pandemic.⁵⁵ Lastly, maintaining professionalism in the virtual office also requires additional foresight to set up an appropriate space for video conference calls, remote depositions, and other virtual court proceedings and to take extra care to set up the camera to allow for direct engagement while on video.

V. TEACHING VIRTUAL PRACTICE EFFECTIVELY

Clinical classroom teaching and learning, either through in-person classes or through online distance learning requires a distinct set of competencies. Learning to practice law virtually utilizes another similar, yet distinct skill set. Best practices in the virtual classroom and best practices for conducting legal work in a virtual setting are distinguishable and should be separately addressed in order to ensure that the clinic or externship experience remains a robust educational experience. In this section we will discuss some virtual experiential education challenges and how to adapt experiential pedagogy to compliment to the student's virtual practice experience.

A. *Common Challenges of Virtual Experiential Education*

Experiential learning programs are generally divided into two categories: in-house clinical programs directed by faculty members and external programs of varying models where students are supervised by practicing attorneys and faculty supervisors, commonly referred to as externships. The three major challenges inherent within the virtual work environment for students regardless of practice environment or experience

55. See *How to Execute Contracts Electronically While Working from Home*, BAKER MCKENZIE (Mar 30, 2020), <https://www.bakermckenzie.com/en/insight/publications/2020/03/how-to-execute-contracts-electronically> [<https://perma.cc/M4X2-69RB>]; see also Judith A. Archer, Jeremy A. Hushon & Lisa Schapira, *Using Electronic Signatures and Notarizing Documents under New York Law: What You Need to Know*, NORTON ROSE FULLBRIGHT (Mar. 2020), <https://www.nortonrosefulbright.com/en-us/knowledge/publications/5a69aae3/using-electronic-signatures-and-notarizing-documents-under-new-york-law-what-you-need-to-know> [<https://perma.cc/8STD-QT97>].

type are: (1) access to necessary resources and appropriate security to preserve confidential client information; (2) communication and engagement with clients, colleagues, and supervisors; and (3) project management skills, structure and motivation. In Appendix 1 that follows this article, we offer a Virtual Clinic and Externship Checklist that includes on-boarding and orientation questions to address these challenges as well as engagement strategies to promote inclusion and limit social isolation.

1. Security and Access

Remote work requires that students have complete access to the technology and resources to complete their work such as a designated workspace, internet access, cloud computing capability, shared drives, and case management software necessary for maintaining client confidentiality. Many state bars continue to reinforce that attorneys have a duty of technological competence which extends to ensuring client confidentiality while working in a remote setting.⁵⁶ In the home office setting, managing both electronic and paper confidential client documents becomes a concern. Student externs or clinic students who are completing their experience for academic credit are often working on a part-time basis and do not have access to the same resources as employees such as organization-issued lap-tops. Instead, students are forced to rely on their personal lap-tops, cell phones and wi-fi connections in order to work virtually. Furthermore, students are less likely to have a formal dedicated workspace or home office, or they may need to share a home workspace with a roommate, partner, or entire family unit. Especially in shared workspaces, it is important for students to understand the importance of preserving confidential client conversations and client information.

2. Communication and Engagement

There are unique challenges to forming close connections with colleagues, supervisors, and clients from a distance. When connecting remotely, there is value in being able to virtually “see” those with whom you are working.⁵⁷ Telemedicine literature includes information on the importance of eye contact when developing trusting patient

56. See FORMAL OPINION 2020-300, PA BAR ASS’N (2020) (addressing ethical obligations for lawyers working remotely).

57. Elizabeth S. Veinott, Judith Olson, Gary M. Olson, Xiaolan Fu, *Video Helps Remote Work: Speakers Who Need to Negotiate Common Ground Benefit From Seeing Each Other*, ACM DIGITAL LIBRARY (May 1999), <https://doi.org/10.1145/302979.303067> [<https://perma.cc/B9FG-R69V>].

relationships.⁵⁸ In the midst of the “zoom-boom”, there have been concerns about the security and privacy of videoconference technology. When deciding what interactive collaboration tools to use, the National Security Agency has issued a useful guidance sheet on evaluating and selecting collaboration technology.⁵⁹

The virtual experience directly impacts the student-supervisor relationship, the student-client relationship, and the student-student relationship. In an in-person office setting, “water cooler talk”, open-door policies, and informal bonding opportunities present a critical aspect of how students learn about office culture and develop their own sense of professional identity. This type of informal interaction and camaraderie can be hard to replicate online, although it is still possible despite being different. For example, clinics or legal offices can offer social events through on-line platforms such as a “zoom coffee hour” when office personnel can provide time for socialization. Depending upon the type of organization and practice area, access to clients may also be limited in a virtual office practice. Likewise, students may miss out on the opportunity to problem-solve and informally discuss cases with other externs if they are not intentionally connected with them while working remotely. Furthermore, constant screen-time and communicating via videoconferencing can lead to fatigue.⁶⁰ If social isolation and inclusion are not addressed early in the remote externship or clinic experience, it can lead to lack of motivation and disengagement from the educational

58. David Ben-Arieh, Neil Charness, Kathy Duckett, Elizabeth Krupinski, Gilbert Leistner, & Lesley Strawderman, *A Concise Guide for Telemedicine Practitioners: Human Factors Quick Guide Eye Contact*, AM. TELEMEDICINE ASS'N (Feb. 2016), https://www.telemedicine-360.com/wp-content/uploads/2019/02/2016-ATA-Eye-Contact-Quick-Guide.final_.pdf [<https://perma.cc/AG2F-2DSX>].

59. *Cybersecurity Information, Selecting and Safely Using Collaboration Services for Telework*, NAT'L SECURITY AGENCY (June 2, 2020), <https://media.defense.gov/2020/Jun/03/2002310066/-1/-1/0/CSI-SELECTING-AND-USING-COLLABORATION-SERVICES-SECURELY-SHORT-20200602.PDF> [<https://perma.cc/K9FB-KL7J>].

60. Libby Sander & Oliver Bauman, *Zoom Fatigue is Real—Here's Why Video Calls Are So Draining*, IDEAS.TED (May 19, 2020), <https://ideas.ted.com/zoom-fatigue-is-real-heres-why-video-calls-are-so-draining/> [<https://perma.cc/4KMM-8HQC>]; Liz Fosslie & Mollie West Duffy, *How to Combat Zoom Fatigue*, HARV. BUS. REV. (Apr. 29, 2020), <https://hbr.org/2020/04/how-to-combat-zoom-fatigue> [<https://perma.cc/X8KC-JXZH>].

opportunity.⁶¹ Online student engagement is critical to student learning.⁶² Virtual experiential learning can provide that opportunity for critical student engagement, as compared to more traditional lecture courses.

3. Project Management and Structure

By now, many of you have seen a cartoon circulated which ponders “I can’t remember – do I work at home or do I live at work?”⁶³ Creating boundaries between personal time and professional time while working and living out of the same space can be challenging. Historically, many professional workers could leave their work duties at the office, but when work is taking place at home there are less obvious boundaries and work life infuses into home life. Establishing daily rituals and a daily schedule can help. At the same time, appearing from our home environment can be a great equalizer in that it diminishes some of the traditional hierarchy that exists between a faculty member and students in a formal classroom setting or supervisor and students in a workplace setting.⁶⁴

An important skill for new lawyers to gain is “organization and management of legal work.”⁶⁵ These skills can best be gained through clinic or externship experiences as they offer a setting in which students can learn a framework of self-directed learning, which includes “teaching students goal-setting, managing time and resources, and working collaboratively.”⁶⁶ In a virtual environment, students must be intentional about self-monitoring their progress and implementing individual strategies to achieve their goals as there can be more distractions in a virtual work environment than when they are confined to an office cube or desk in a physical location.

61. See Caroline A. Bartel, Amy Wrzesniewski, & Batia M. Wiesenfeld, *Knowing Where You Stand: Physical Isolation, Perceived Respect, and Organizational Identification Among Virtual Employees*, 23 *ORG. SCI.* 743 (2012), <https://www.jstor.org/stable/23252086?seq=1> [<https://perma.cc/59ZA-2AWT>] (finding that “physical isolation was negatively associated with respondents’ perceived respect in the organization and their organizational identification.”).

62. Marcia Dixson, *Measuring Student Engagement in the Online Course: The Online Student Engagement Scale*, 19 *ONLINE LEARNING* 9 (2015), <https://files.eric.ed.gov/fulltext/EJ1079585.pdf> [<https://perma.cc/4WKW-XC27>].

63. David Sipress, *I Can’t Remember – Do I Work at Home or Do I Live*, *NEW YORKER CARTOONS* <https://condenaststore.com/featured/i-cant-remember-do-i-work-at-home-or-do-i-live-david-sipress.html> [<https://perma.cc/WK3D-6Q9E>].

64. See Jeannie Suk Gersen, *Finding Real Life in Teaching Law Online*, *THE NEW YORKER* (Apr. 23, 2020), <https://www.newyorker.com/culture/personal-history/finding-real-life-in-teaching-law-online> [<https://perma.cc/XK7F-H8XB>].

65. See MacCrate Report, *supra* note 19 at 76–79.

66. Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 *MICH. ST. DCL L. REV.* 447, 468 (2003).

4. Virtual Externship Challenges

Supervision of remote externs requires more structure, intentionality, and involvement to ensure that the educational objectives of the externship program are being met. Virtual externships present a professional development opportunity not just for students, but also for externship site supervisors. In most instances, supervision remains a management challenge rather than a technology issue. In a fully remote environment (especially during a time of crisis), students could benefit from regularly scheduled meetings with a supervisor due to the inability of students to just stop by their supervisor's office with questions. The virtual environment lends itself to greater autonomy for the extern, which is great practice for handling their own caseload in the future. It can be easy for supervisors to fall into micro-management mode rather than taking an approach that is goal-oriented and results driven.

In the externship setting there is a tripartite relationship between the externship site supervisor, the extern, and the faculty program supervisor. In a virtual experience, the faculty supervisor and the externship site supervisor must also engage remotely to ensure that the educational objectives of the academic program are being met.⁶⁷ This communication could occur through email, videoconference calls, phone calls or other means. Additionally, the faculty supervisor will have to conduct virtual site visits or other alternative arrangements instead of in-person site visits to facilitate connections between the school and the placement site. One benefit of embracing the virtual work environment is that it could lead to greater engagement and collaboration with externship site supervisors as part of regular group virtual "remote supervision conversations". Law school internship administrators could work to pull together internship supervisors to discuss the challenges, rewards, and best practices of remote supervision as it is a new form of management and supervision for them. It also provides an opportunity for the law school faculty supervisor to provide additional training and resources to its program partners and also work with other departments within the law school such as alumni relations to engage supervisors in relevant CLE programs.

Some externship site placements are more conducive to remote work than others. For example, in an advocacy placement such as a District Attorney's Office or a Public Defender's Office, students have self-selected these types of opportunities for the in-court litigation experience or direct exposure to clients. In instances where remote court proceedings are not possible or permitted, limiting the scope of the placement to legal

67. ABA STANDARD 304(d)(ii), *supra* note 8.

research and writing may not be sufficient to meet the students' educational goals and the organizations' needs. In situations where it is necessary for students to be present in court, an in-person or hybrid experience may be the best option. Alternatively, new externship site opportunities may be available for remote placements outside of the geographic footprint of the law school, opening up the possibility for students to get substantive experience in a different practice area or with a different organization or mentoring attorney.

5. Virtual In-House Clinic Challenges

Clinical faculty, as compared to externships supervisors (practicing attorneys), may possibly have an easier adaptation to remote operation based upon experience from their distance learning environment at their law schools during COVID-19 pandemic. However, many challenges remain for clinical programs. Perhaps most taxing is the immediate impact the pandemic has had on the clinic clientele. Most often, clinic programs provide free legal representation for low-income clients. The COVID-19 pandemic has dramatically and disproportionately impacted low-income communities of color.⁶⁸ Similarly, adults with low incomes are more likely to have higher rates of chronic conditions compared to adults with high incomes, which could increase their risk of serious illness if infected with coronavirus. Many pop-up clinics formed across the country to respond to the increasing legal needs of these vulnerable populations.⁶⁹ Clinical faculty and law students pivoted in their programs to adjust their work focus and consequently their learning experience.

Many law schools and courts were well situated to adjust to remote experiential learning regarding electronic case management of documents. Prior to the pandemic, many, if not all, law clinics already utilized an electronic, cloud-based legal practice management software, such as CLIO. Clinic students could smoothly and effortlessly transition to logging into the software program from home, instead of the clinic office.

68. Wyatt Koma, Samantha Artiga, Tricia Neuman, Gary Claxton, Matthew Rae, Jennifer Kates, & Josh Michaud, *Low-Income and Communities of Color at Higher Risk of Serious Illness if Infected with Coronavirus*, KFF (May 7, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/low-income-and-communities-of-color-at-higher-risk-of-serious-illness-if-infected-with-coronavirus/> [https://perma.cc/D24T-E254] (“More than one in three (35%) non-elderly adults with household incomes below \$15,000 are at higher risk of serious illness if infected with coronavirus, compared to about one in seven (16%) adults with household incomes greater than \$50,000.”).

69. Karen Sloan, *Law School Clinics Across the Country Offer Coronavirus Help*, LAW.COM (Apr. 9, 2020 at 1:55 p.m.), <https://www.law.com/2020/04/09/law-school-clinics-across-the-country-offer-coronavirus-help/> [https://perma.cc/B5QM-UUBF].

One of the biggest hurdles for both clinic programs and externships during a pandemic is developing a new mechanism for meeting with clients. Often low-income clients do not have internet access, nor computers, which would be necessary for virtual attorney client meetings. While students learn a great deal from interviewing their clients in-person, the pandemic forced a shift to alternative forms of communication. For clinics that serve low-income clientele who have technology challenges, students and attorneys must develop creative methods for client interactions. For clients without computer or internet access, new methods of communication must be developed to include texting applications for phone communication. Other creative methods to in-person contact with appropriate social distancing could be arranged to allow for client contact.

As court proceedings came to an immediate and grinding halt mid-March 2020, adaptations to litigation-based clinic programs shifted their modus operandi. Many clinics across the country responded by providing new services to cover pandemic related legal representation, while other clinics worked to address their current clientele's special needs during the pandemic. Court systems scrambled to offer remote proceedings in a secure manner. Participating in remote court proceedings presented unique challenges to the student and supervisor relationship. Typically, clinical faculty provide advice on whether to make an objection to testimony or admission of evidence. Student practice rules, i.e., Pa. Rule 322, require the supervising attorney to be personally present throughout the proceeding where the legal extern is practicing under the faculty member's license. Traditionally, a law student sits closely by a supervisor in court to receive advice throughout the proceedings. Advice between a clinical supervisor and clinic student comes in the form of a quiet whisper out of judicial earshot, or a scribbled note on paper. Switching to remote proceedings impacted the ability of the law student and supervisor to sit side-by-side, requiring creative communication techniques during the court hearing. Students and supervisors can switch to text messaging or google chats to correspond during the court hearing and create another avenue of communication between client, student, and supervisor. Alternative communication techniques between client and lawyer may be challenging if the client does not have access to a phone, or a separate screen during the proceedings. The disparity between individuals who have access to information technology and those who do not, known as the "digital divide,"⁷⁰ is well documented to more significantly impact

70. Tony Wilhelm, Delia Carmen, & Megan Reynolds, *Connecting Kids to Technology: Challenges and Opportunities*, KIDS COUNT SNAPSHOT (June 2002), <https://eric.ed.gov/?id=ED467133> [<https://perma.cc/4FAT-FRCS>].

low-income individuals.⁷¹ The digital divide impacts low-income clients' ability to adeptly participate in virtual court proceedings, while being able to simultaneously communicate with their attorney.⁷²

Remote experiential learning opportunities provide yet another unique opportunity for students to develop their professional identity and professional responsibility skills as a future practicing attorney. Students who are participating in either clinics or externships will need to consider issues such as: professional attire to participate in remote proceedings, professional backgrounds or virtual computer backgrounds, and professional name identity which appears on screens, to name just a few.⁷³ Student and faculty may not have a professional office setting in their home environment, which could impact their professional appearance. Furthermore, attorneys and students working from home must address issues related to client confidentiality, record storage, etc. Students will need to establish procedures for secure access to client confidential records and information, which may present challenges in a home environment if living in a residence with other people. While offices may have established electronic case management systems decades ago, students may have only accessed the files from office space before the pandemic. Students and lawyers alike must develop methods for securing client information confidentially in the home office environment but also must develop methods for confidential client calls.

One classic clinical learning experience is a mock hearing event. Clinical faculty commonly develop a mock hearing for students to have the opportunity to practice their direct and cross examination skills, admission of evidence, etc. very early in their learning experience. Through practice, a nervous law student can work out the kinks of simple acts like handing a piece of evidence to a witness prior to doing this for the first time in a real case proceeding. Remote office operations would impact the ability of students to practice these techniques in a mock courtroom setting. However, law students may be uniquely adept at adapting to remote hearings. Furthermore, a clinical or externship

71. Monica Anderson & Madhumitha Kumar, *Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption*, PEW RESEARCH CTR. (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/> [https://perma.cc/3DPY-5V6D].

72. *Id.* If low-income individuals are more likely to use a smart-phone instead of larger screen computer as described in the article, this could impact the individual's ability to simultaneously text their lawyer during the proceeding. *Id.*

73. Tucker Higgins, *Can You Argue in Pajamas? Lawyers Get Ready for First-Ever Supreme Court Oral Arguments by Phone*, CNBC (Apr. 16, 2020), <https://www.cnbc.com/2020/04/16/coronavirus-supreme-court-virtual-oral-arguments.html> [https://perma.cc/TN7Y-ZQPT].

experience that provides the law student with the opportunity to participate in remote proceedings adds the additional necessary skills to students' toolboxes of skillsets. Clinical faculty could discuss each of these issues with students as part of the reflective learning process.

For clinics that operate an interdisciplinary office environment that allows law students to interact with members of other professions, the shift to remote learning presented an additional impact on those spontaneous or planned interactions. Often interdisciplinary collaboration occurs in person through planned, or perhaps even more likely, unplanned interactions in office environment. The richness of the dialogue adds to the learning experience for law students and value to clients as well.⁷⁴ Transitioning to remote operations does not necessarily limit those valuable learning experiences but creativity is needed to allow for continued interactions across disciplines. For example, students can arrange google hangouts for chat sessions, organize a special Microsoft Teams channel or set-up private meeting rooms in forums such as zoom.

B. Shifting Pedagogy to Include Best Practices for Virtual Experiential Education

We propose shifting existing experiential learning pedagogy to be inclusive of best remote practices to train law students in essential skills for the virtual workplace, which include workflow efficiency, technology adeptness, project management, communication skills, and professionalism. There are two components to externship and clinic courses: (1) the substantial lawyering experience in a practical legal setting which may include assisting clients, performing legal research and writing, conducting hearings, etc.; and (2) the academic classroom component where students assess performance and reflect on experience. Transition of the academic classroom component to a virtual platform is relatively seamless. Experiential learning pedagogy already includes many of the best practices of the virtual classroom including smaller class sizes of 10–20 students⁷⁵, multiple modes of student participation such as student presentations, case rounds, small group discussion, and various

74. See generally Rose Voyvodic & Mary Medcalf, *Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor*, 14 WASH. U. J. L. & POL'Y 101 (2004); Lucas A. Gerber, Yuk C. Pang, Timothy Ross, Martin Guggenheim, Peter J. Pecora, & Joel Miller, *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 102 CHILD. & YOUTH SERV. REV. 42 (2019), among other articles.

75. See Jacqueline D. Lipton, *Distance Legal Education: Lessons from the *Virtual* Classroom*, 60 IDEA 71, 88 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491427 [<https://perma.cc/645G-7CCZ>].

forms of assessment through the semester in the form of evaluations and reflective journals or essays.

The focus of this article is not a comprehensive overview of best practices for online legal education. Instead we will discuss some important elements to incorporate into an online clinic or online externship class as well as best practices for structuring the virtual student practice experience. When developing a completely virtual or hybrid experiential learning class, it can be very effective to blend both asynchronous and synchronous components. Live or synchronous teaching lends itself well to dialogue⁷⁶ and discussion which is essential for learning from practice and the development of assessment and reflective lawyering skills. Asynchronous or pre-recorded class components can help clinicians explain technical aspects of the clinic or externship course such as time log entry or case management note systems. This has the added benefit of allowing students to return to view those “how-to” videos later once students have had a chance to apply the learning in practice by actually completing and submitting their time log into the case management software.

Many synchronous legal education classes are held via zoom or other videoconference software and for good reason. “When all students are on webcam, faculty can read body language and organically call on students (whether that be cold-call or using volunteers) much as they would in a residential classroom.”⁷⁷ Virtual classroom platforms such as zoom generally work well for “circle” and small group discussion through breakout rooms. Ensuring that students feel comfortable bringing their whole identity into the virtual teaching platform is important to creating an inclusive learning space where all students feel invited to participate. This starts by fostering a sense of connection and belonging online. In the experiential learning space, vulnerability is a key component of learning from practice and moving on from misconceptions, mistakes, and failures (as well as celebrating successes). As one externship colleague Nadiyah Humber suggested, it can be helpful to ask students to bring an object they identify with or feel represents them to class to share as part of initial introductions.⁷⁸ This reinforces that students should bring their whole selves and identities to practice and helps to foster personal connections

76. Nina A Kohn, *Teaching Law Online: A Guide for Faculty*, J. LEGAL EDUC. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3648536 [<https://perma.cc/TB6Y-NAUJ>].

77. *See id.* at 13.

78. Conference Call: AALS Externship Committee/Lextern Call (May 1, 2020) https://www.dropbox.com/sh/o4tl2jaa49wuiimt/AAAaMM_EwAQvK12zBnUqRRJoa/2020-May-1-Call?dl=0&preview=May1AALSConferenceCall.docx&subfolder_nav_tracking=1 [<https://perma.cc/79YP-NLWA>].

among the students. For adult learners with access to the appropriate technology, videoconference technology has the potential to reduce participation inequities that occur in a formal classroom setting. Zoom and other videoconference platforms allow for multiple modes of participation whether through polling, annotation, the chat function or by offering live comments. For example, students who may be fearful to speak out during class may be more likely to use the chat feature that does not require them to use their audible voice.

Most pedagogical challenges for clinics and externships occur in relation to the legal setting itself. Once these challenges are identified and addressed, they can serve as opportunities to develop remote work competencies necessary for lawyers to succeed in the current legal marketplace. A complete shift to the virtual workplace environment in the context of a global health pandemic may cause additional challenges for students (and vulnerable client populations). Concern for the health and safety of friends and family members appropriately took precedence over academic priorities.⁷⁹ Additionally, in a non-pandemic context where social distancing guidelines are eased, the perceived social isolation of working remotely may not carry the same challenges as students are free to continue engaging with the world in their “typical” social, recreational and other settings. One key lesson learned from the pandemic has been the importance of our social connection.⁸⁰ The pandemic has brought attention to the importance of these personal connections for our mental health.⁸¹ Incorporating one or more classroom sessions on resilience tools, self-care and well-being practices are useful in the experiential learning curriculum, as it helps students learn how to put self-care into practice when they need it most.

We offer several strategies below for dealing with the three primary challenges of virtual experiences: (1) security and technology access; (2) communication and engagement; and (3) project management and structure. These strategies are also summarized in Appendix 1 in a Virtual Clinic and Externship Checklist. In the virtual law practice setting, it is

79. Nicole Hadler, *Coping with the COVID-19 Pandemic as a College Student*, U. OF MICH. MED. SCH., <https://medicine.umich.edu/dept/psychiatry/michigan-psychiatry-resources-covid-19/adults-specific-resources/coping-covid-19-pandemic-college-student> [https://perma.cc/Q6S3-8YV5].

80. Julianne Holt-Lunstad, *The Double Pandemic of Social Isolation and COVID-19: Cross-Sector Policy Must Address Both*, HEALTHAFFAIRS (June 22, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200609.53823> [https://perma.cc/4APC-K9UZ].

81. Esteban Ortiz-Ospina & Max Roser, *Loneliness and Social Connections*, OUR WORLD IN DATA (Feb. 2020), <https://ourworldindata.org/social-connections-and-loneliness> [https://perma.cc/4X2S-2KQ2].

important to spend time discussing the student's designated workspace. This is important for several reasons. It will be the site of virtual professional interactions with clients, colleagues, supervisors, as well as possible judicial officers. The designated workspace should be a private space with a professional (even virtual) backdrop that is free from all electronic listening devices or family members, partners or roommates who are not participating in the experience. It may be a shared space, but ground rules for use and participation in the space should be discussed. This is essential for ensuring client confidentiality, but also for instilling the student with confidence to perform as a professional. If the designated workspace is not free from background distractions or if the student does not feel comfortable sharing insight into their private home space through video, they can consider using a virtual background. Professional dress is also important. Students may fall into the trap of wearing comfortable clothing since they are working from home, but in all cases, students should continue to dress in professional business attire just as they would at the office. For some students, professional dress and a morning ritual can have a huge impact on setting the stage for a productive workday:

For example, Yvette was an extern with a state agency. Initially, she found it difficult to stay motivated while working from home. She soon discovered the importance of a ritual for getting herself into the mindset of transitioning from home space to workspace. In the morning, she would get dressed in a suit, have her breakfast and then physically leave her apartment space to walk around the block. When she returned, she was now "at work" and was more focused on the day's tasks that were assigned to her.

Once the student has set up and discussed their designated workspace with their supervisor, the next step to establishing a successful virtual practice is to discuss what equipment the student will be using. Externship sites and clinics must address how students will access the necessary resources to review client files, conduct research, save work product and receive feedback on work product. There is no one-size fits all solution, as each clinic and externship office has their own policies and procedures related to data, security, and privacy. In an externship or clinic environment, it is most often the case that the student is using their own personal laptop to connect remotely to a cloud server or shared case management software. To receive security clearance and address access issues, it may be necessary for students participating in a hybrid experience to do some in-person onboarding in the office so that their email credentials and other security information can be set up in advance.

Not unlike an in-person clinic or externship experience, students should create a set schedule of office hours and communicate them to their supervisor. Especially for part-time experiences during the semester (10–12 hours/week), consistency in schedule is helpful for ensuring engagement and maintaining that virtual connection. A student's set schedule or office hours can be shared on a group calendar, via a shared personal calendar function or included as part of the participating student's email signature block as a reminder to the supervisor and their colleagues. In addition to knowing when students are available, students and supervisors should prepare for more frequent meetings in a virtual or hybrid experiential setting. Regular planned meetings are often necessary to ensure communication and maintain connection when not working in close physical proximity. As previously discussed, videoconference meetings are best, but students and supervisors should also discuss other forms of communication that are acceptable such as text, email, chat functions, etc. As part of the student's professional development, supervisors can place responsibility on the student to schedule and run daily or weekly virtual check-in meetings, including the development of a meeting agenda.

If time demands on externship or clinic supervisors do not permit daily meetings, then consider alternative attorney or staff members who may be available to engage with students. It does not always have to be the main supervising attorney who exclusively engages with the student. In fact, assigning a mentor or junior attorney as well as a staff member to meet regularly with the student can provide them with an additional perspective on the workplace culture and the role of additional employees within the organization. Additionally, regular drop-in office hours that are hosted on a virtual platform can be attended by a rotation of different attorneys from the externship office or the clinic, giving students a more informal chance to “check-in” in a lower pressure setting. Furthermore, consider connecting other externs or clinics students with one another and require them to meet, even for informal brainstorming or sharing sessions. In an in-person setting, externs often bounce ideas off one another. However, in a virtual space, their schedule may not overlap or if they are not working on the same assignment, they may not interact with other students, thus losing out on a joint learning opportunity. In externship placements that only have one extern, the faculty supervisor should consider pairing externs from different placements together as a type of accountability partner to offer ongoing encouragement and support.

Creating a supervisor-student relationship that is built on trust is key to the virtual or hybrid externship or clinic experience. Autonomy has

been linked to greater lawyer happiness⁸² and supervisors should resist the urge to micro-manage students' schedules. At the same time, it is important to give students a variety of both short-term and long-term projects so that students have a variety of tasks that they can draw upon to work on during downtime while they are awaiting a new assignment. There should still be a central repository or supervisor who is tasked with receiving and collecting individual attorney feedback on the students' work product to ensure that it is received by the student. Establishing a formal mechanism by which students' work will be evaluated and critiqued helps to set expectations for the students and leads to improved work product. In addition, supervisors should continue to invite students to engage in regular office or team meetings, client meetings, court proceedings, strategy sessions, and any other collaborative events that are held virtually. Lastly, do not forget about opportunities for informal engagement that allow the student and supervisor to get to know each other on a personal level. Brown Bag Lunch sessions (across a spectrum of externship placements can even work) or virtual coffee chats are a few suggestions. Students might even consider recording an e-introduction video and sending it out to everyone in the office.

1. Virtual Clinic Best Practices

Students participating in a remote clinical program can benefit from the same learning opportunities as in-person including developing client relationships, problem solving, research and writing and even courtroom advocacy in a virtual courtroom. Clinical faculty must review their learning objectives for the clinic program and identify new methods to accomplish the teaching goals. Clinical faculty should be very clear and direct in setting expectations for clinic students yet allow for spontaneity in responding to ever-evolving world and learning circumstances. Best practice methods for virtual clinics include: (1) setting clear expectations of learning objectives at the beginning of the semester; (2) holding frequent, scheduled student/supervisor interactions; (3) hosting virtual office hours; (4) scheduling regular case/project review meetings; (5) arranging virtual chat sessions for students to interact without a supervisor present for bonding and learning; (6) coordinating one-on-one meetings to prep for court hearings; and (7) developing a mechanism for

82. See generally Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015), <https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1093&context=articles> [<https://perma.cc/QQN3-VKCW>].

student/supervisor conversations during court proceedings, etc. A key to success for virtual clinical programs is finding a method to support the community-feel that would normally spontaneously develop in the clinic office space. Effort on the part of the clinical faculty can help to ensure that students can develop a similar clinic community feeling virtually. More experienced clinic students can assist faculty members by taking a leading role in developing and mentoring the new clinic students:

For example, certified legal intern and clinic student Caroline, participated in a virtual court hearing along with her supervisor in the legal representation of teenage client. She developed mechanisms to communicate with her supervisor during court (zoom chat), and to communicate with her client and supervisor during court (google hangout) while maintaining a professional presence and serving as strong advocate in the courtroom. Caroline then moved home for the summer and interned in a legal services office. Attorneys in that office had not yet developed all the communication techniques and Caroline was able to share her learned expertise from her clinic experience. Caroline will carry those learning moments throughout her career.

2. Virtual Externship Best Practices

The remote externship setting (and with it the remote supervision environment) is a professional development opportunity for both the student and the supervisor. It allows for unique learning objectives to be met such as self-directedness, project management, and communication skills. In the midst of the last economic recession, William Henderson wrote about the need for the legal industry “to adopt a more system- and process-oriented approach to legal problems.”⁸³ This shift towards training lawyers to be project managers has implications in today’s legal market as well. Specialized knowledge remains important, but this knowledge training must be coupled with supervisory practices that are outcomes and goal-oriented rather than micro-management based. Completely virtual or hybrid externship experiences, give students the opportunity to manage their own workload, to structure their schedule for individual productivity and success and to train themselves in the discipline of self-accountability. In order to ensure that students can still learn about office culture and avoid social isolation in a virtual setting, it is necessary for faculty and externship site supervisors to embed opportunities for social interaction within the program, including

83. William D. Henderson, *Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers*, 70 MD. L. REV. 389 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809866 [<https://perma.cc/3VUP-Z3GJ>].

communicating face-to-face via videoconference technology whenever possible.⁸⁴ Maintaining a well-rounded experience with opportunities for observation, collaboration, client/supervisor/colleague interaction are essential to the virtual experience which should not simply be limited to conducting legal research and writing remotely from home.

VI. THE BROADER LESSONS: VIRTUAL WORK IN THE EXPERIENTIAL SETTING CAN LEAD THE WAY FOR TRANSFORMING MODERN LEGAL EDUCATION POST-PANDEMIC

COVID-19 has facilitated what has been called “the greatest work from home experiment in our nation’s history.”⁸⁵ When the pandemic ends, it will have forever altered our sense of normal operations. As a result of this global experiment, many have hypothesized that the practice of law will continue in a completely virtual or hybrid virtual and in-person fashion.⁸⁶ The experience has shown that attorneys can remain productive working from home and continue to meet their clients’ expectations.⁸⁷ Sixty-seven percent of respondents surveyed from 25 private firms indicated that they would like their job to stay remote (or partially remote) even after the pandemic ends.⁸⁸ To stay in pace with current market practices, law schools should continue with some form of virtual legal training to better prepare lawyers for future practice. Just as medical schools are integrating telemedicine training into undergraduate medical education, law schools should begin integrating tele-lawyering

84. Angela Even, *The Evolution of Work: Best Practices for Avoiding Social and Organizational Isolation in Telework Employees* (Feb. 23, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3543122 [<https://perma.cc/7GDD-LPUB>].

85. David Campbell & Heinan Landa, *Preparing for Re-Entry: The Most Important Takeaways from COVID-19 Quarantine*, AM. BAR ASS’N (June 5, 2020), <https://www.americanbar.org/events-cle/ecd/ondemand/400745419/#aba-main-content-anchor> [<https://perma.cc/GVT4-H23E>].

86. David Lawson, *The Coronavirus Pandemic Could Mark the Dawn of the Virtual Office Revolution in the Legal Industry*, A.B.A. BUS. L. TODAY (Apr. 2, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/04/virtual-office-revolution/ [<https://perma.cc/AW7P-QKDS>]. See also *Many Facebook Employees to Work from Home Permanently*, N.Y. TIMES (May 21, 2020), <https://www.nytimes.com/2020/05/21/business/coronavirus-stock-market-today.html> [<https://perma.cc/GZ9F-XCUS>].

87. See *The Legal Industry’s Handling of the Disruption Caused by COVID-19: The Findings Report*, LOEB LEADERSHIP (May 2020), <https://static1.squarespace.com/static/5c26b8695b409b7ffc6ca248/t/5ed7f8e8b7a089356dfd20ff/1591213033267/Legal+Industry+Survey+-+May+2020.pdf> [<https://perma.cc/BS44-W7XL>].

88. *Id.* Interestingly, when broken down by demographic role, 100% of associates were interested in continuing some form of remote work, while only 54% of managing partners responded affirmatively, indicating generational differences in preference. *Id.*

experiences in their curriculum as well.⁸⁹ Experiential learning classes such as externships and clinics, serve as the perfect laboratory for continuing to educate law students on the technology and innovation necessary for practice.

Experiential legal education might be best suited for an online format as it uses an active pedagogy and does not rely solely on lecture and the Socratic method. Instead, it flips the classroom towards a student-driven and student-centered experience that allows for enhanced engagement in a virtual setting. Many of the common best practices for online synchronous education, are already incorporated into experiential learning courses as a baseline including small group discussion, clinical case rounds,⁹⁰ reflective papers or journals,⁹¹ self-assessments and evaluations, group projects and presentations, in-class group breakouts, and scenario discussions.

A. *Advocating for a Hybrid Model*

Experiential learning should reflect practice. As the legal profession moves towards acceptance of a hybrid work model where attorneys have the flexibility to work from home part of the time and work in the office or attend court hearings the other half of the time, it makes sense for schools to adapt their educational programming to embrace this model as well. The Federal Bar Association surveyed its membership and found that 45% of respondents indicated that they are considering or have implemented a reduction in their physical office footprint as a result of the pandemic.⁹²

Historically, the legal profession has valued “facetime” in the office to show your dedication to the work and to be presented with the best assignments and opportunities for mentorship. This model has long disadvantaged women, lawyers of color, working parents, and those attorneys with other competing caretaking or personal health

89. See Shayan Waseh & Adam P. Dicker, *Telemedicine Training in Undergraduate Medical Education: Mixed-Methods Review*, 5 JMIR MED. EDUC. (2019), <https://pubmed.ncbi.nlm.nih.gov/30958269/> [<https://perma.cc/KHD3-BTGR>].

90. Elizabeth B. Cooper, *The Case for Structured Rounds*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 151 (Susan Bryant, Elliot S. Milstein, & Ann C. Shalleck eds., 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2776729 [<https://perma.cc/64CW-8QP6>].

91. J.P. “Sandy” Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55 (1996), <https://scholarship.law.edu/scholar/264/> [<https://perma.cc/VZ2Z-75VB>].

92. Fedbarblog, *Legal Practice in the COVID-19 Era Survey Findings*, FED. BAR ASS’N (June 25, 2020), <https://www.fedbar.org/blog/legal-practice-in-the-covid-19-era-survey-findings/> [<https://perma.cc/V6S7-BVPG>].

obligations.⁹³ As millennials demand more “work-life blend”, they are demonstrating that hybrid models are not just important for mental health, but they provide the autonomy and flexibility that this generation of lawyers demands in the workplace.⁹⁴ Known for switching jobs regularly and showing less loyalty to companies, the flexibility of hybrid arrangements and work-life balance could address the attrition concerns that many employers fear.⁹⁵ Additionally, lessened productivity and lack of availability are other concerns that employers share when their employees work from home. However, a randomized control study of 1,000 call-center workers from a Chinese travel company revealed that productivity increased by 13% and attrition rates decreased by 50% when employees were permitted to work virtually 4 days per week.⁹⁶

It is important to note that the Chinese teleworkers who participated in the telework study were required to work from a dedicated home office space and also worked in-person one day per week. Nicholas Bloom, one of the co-authors of the study, reveals his belief that some form of in-person collaboration (even if it is only one day per week) is necessary for fostering creativity and innovation and keeping staff motivated.⁹⁷ Indeed,

93. See Qian Julie Wang, *Insight: Pandemic Debunks Three Myths, Teaches Lessons on Diversity*, BLOOMBERG L. (June 3, 2020), <https://news.bloomberglaw.com/us-law-week/insight-pandemic-debunks-three-myths-teaches-lessons-on-diversity?context=search&index=6> [<https://perma.cc/GF7W-X3HR>].

94. “Importantly, work-life blend is *not* about working less; rather, a blended environment allows each individual to access their highest achieving self in the most productive place at the most productive time.” J.P. Box, *Navigating the Pandemic by Embracing the Wisdom of Millennials*, LAW PRAC. TODAY (June 15, 2020), https://www.lawpracticetoday.org/article/navigating-pandemic-embracing-wisdom-millennials/?utm_source=Jun20&utm_medium=email&utm_campaign=Jun20LPTemail [<https://perma.cc/7NCS-HRWB>].

95. Donna Fuscaldo, *Managing Millennials in the Workplace*, BUS. NEWS DAILY (Jan. 22, 2021), <https://www.businessnewsdaily.com/15974-millennials-in-the-workplace.html> [<https://perma.cc/L7ZK-BK3K>]; Sophia Bernazzani, *What Millennials Want from Work: Flexibility, Not Salary*, THE PREDICTIVE INDEX, <https://www.predictiveindex.com/blog/why-flexibility-is-a-better-perk-than-salary/> [<https://perma.cc/SY7C-HTEA>]; see also Aaron DeSmet, Bonnie Dowling, Mihir Mysore, & Angelika Reich, *It's Time for Leaders to Get Real About Hybrid*, MCKINSEY QUARTERLY (Jul. 9, 2021), <https://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/its-time-for-leaders-to-get-real-about-hybrid> [<https://perma.cc/3W9H-4AJ4>].

96. Nicholas Bloom, James Liang, John Roberts, & Zhichun Jenny Ying, *Does Working from Home Work? Evidence from a Chinese Experiment*, 130 Q. J. ECON. 165 (2015), <https://nbloom.people.stanford.edu/sites/g/files/sbiybj4746/f/wfh.pdf> [<https://perma.cc/7PVY-W6X8>].

97. Adam Gorlick, *The Productivity Pitfalls of Working from Home in the Age of COVID-19*, STANFORD NEWS (Mar. 30, 2020), <https://news.stanford.edu/2020/03/30/productivity-pitfalls-working-home-age-covid-19/> [<https://perma.cc/7WQP-URVE>].

another criticism of fully remote work is that it creates social or organizational isolation, loneliness and burnout.⁹⁸

B. Addressing Social Isolation and Inclusion

In many ways, remote work strips away some external factors and brings students face-to-face with intrinsic factors related to their success: personal motivation, discipline, and self-management. Law faculty should dedicate instruction time to focus on the value of self-reflection. Reflective practice involves the “conscious and deliberate analysis of lawyering performance,” which is a critically important part of experiential education.⁹⁹ Students should use the experiential learning experience to reflect upon what is going on inside themselves, while learning resilience and self-care strategies necessary to succeed in the profession. Cultivation of reflective thinking also allows students to understand how we are influenced by our relationships, our connections, our environment, and our own internal states. Reflective learning also helps students examine their habits and assumptions – all things we seek to explore through experiential learning.

Strategies for countering the social isolation and loneliness that workers experience in a virtual setting have been studied in the telemedicine space. In a small Australian study of tele-nurses, researchers proposed a framework for how remote nurses can cultivate a sense of belonging through technology. Informal communication mechanisms, which the authors dub “communication out of character” such as group chat functions allowed tele-nurses to connect with their colleagues in a non-official role, which aided in their ability to cope with difficult situations, learn their profession, plot progression by seeking advice during ongoing situations, and reassert their role within the organization. This type of “water cooler talk” that happens outside the daily tasks and assignments is important for giving us insight into our co-worker’s personal identities and allows for greater connection.

Experiential learning can create the essential opportunities to allow for informal communication and relationship-building as part of an inclusive virtual work environment. Both formal and informal programs create multiple avenues of access to allow the student to obtain insight

98. Jennifer Moss, *Helping Remote Workers Avoid Loneliness and Burnout*, HARV. BUS. REV. (Nov. 30, 2018), <https://hbr.org/2018/11/helping-remote-workers-avoid-loneliness-and-burnout> [<https://perma.cc/YQA4-49E2>]; see also Even, *supra* note 86 at 11 (finding after a review of 20 studies that social and organizational isolation is worst in high frequency teleworkers).

99. Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317, 319 (2014).

into the office culture and interact with a variety of people. This includes (1) more frequent daily or weekly check-ins, (2) invitations to participate in team or client meetings, (3) virtual videoconference “drop-in” office hours where students can ask a supervisor informal questions or workshop an idea with peers, and (4) virtual brown bag presentations or virtual coffee with other attorneys in the office. In a hybrid externship or clinic, students may utilize their one day in-person at the office to spend time expanding their professional networking by inviting attorneys to coffee or lunch or by scheduling a problem-solving session with other externs.

C. *Creating New Opportunities for Access to Justice*

While not the primary focus of this article, it bears mentioning that an increase in virtual externship and clinics presents an opportunity for law schools and law students to help fill the access to justice gap by providing legal services to underserved or rural communities. Since work is not linked to place in a virtual experience, experiential programs can expand beyond the geographic footprint of the law school and employ their human capital in areas with unmet needs. Serving these “legal deserts”¹⁰⁰ through tele-lawyering is a possibility but does require clients to have phone or internet access. According to the Pew Research Center, 96% of Americans own a cell phone and nearly 75% own a laptop or desktop computer.¹⁰¹ Virtual externships and clinics also offer an opportunity for easier collaboration across physical office branches or locations, allowing students to team up with different attorneys (and different clients) across the country.

For clients who may be resistant to or unfamiliar with certain types of technology, it can be helpful to remind them of the familiarity they do have with certain tools they may use in other contexts such as online appointments, email messaging, and videocalls through cell phone functionality like FaceTime rather than videoconference tools.¹⁰² In the direct-to-consumer telehealth space, researchers have found that although the cost-per visit is lower for the telehealth visit versus an in-person

100. Lisa R. Pruitt, Amanda L. Kool, Lauren Sudeall, Michele Statz, Danielle M. Conway, & Hannah Haksgaard, *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL’Y REV. 15 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3198411 [<https://perma.cc/S6XW-Y3BK>].

101. *Mobile Fact Sheet*, PEW RES. CTR. (April 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/mobile/> [<https://perma.cc/AUN7-7QDQ>].

102. Annie Arbenz & Shantelle L. Argyle, *Loving the Luddites: Serving Tech-Adverse Clients*, TECHSHOW 2020 (Jan. 3, 2020), https://www.scbar.org/media/filer_public/d1/07/d10730b1-674d-409e-8f5c-5d3031413d06/loving_the_luddites_-_serving_tech_adverse_clients.pdf [<https://perma.cc/38Z5-ZZCJ>].

appointment, increased utilization of the telehealth service modality resulted in greater spending rather than cost-savings for the telehealth companies and health plans.¹⁰³ In the legal space, the convenience of tele-lawyering services has the potential to encourage greater utilization of legal services (whether in a nonprofit or for-profit setting) which could have an impact on clients health, safety, and well-being as social determinants of health are addressed in a legal setting.¹⁰⁴

Virtual externships and clinics also present a practical solution for part-time law students, commuter law students or law students with caretaking or parenting obligations. Since the ABA lifted the prohibition on paid externships for academic credit in 2016¹⁰⁵, virtual externships offer students with financial need a flexible option to pursue their educational goals in a practical legal setting.

VII. CONCLUSION

Tele-lawyering and virtual or hybrid law practice is here to stay. Clinical and externship faculty are accustomed to using challenges in practice as learning opportunities to educate students. Experiential learning faculty should utilize the COVID-19 crisis as an opportunity to reflect on the realities of remote work and to develop best practices for future hybrid virtual legal practice experiences. While there may be some circumstances where virtual practice is no substitute for in-person work, in many situations virtual practice can indeed be beneficial and convenient for clients and lawyers alike. Furthermore, as the legal profession continues to operate in a hybrid format, it is incumbent upon legal educators to consider how to continue teaching effectively online in order to ensure that law students have the necessary skills to succeed in a virtual or hybrid legal practice. Medical schools have embraced clinical training in tele-medicine as an essential element of medical education.¹⁰⁶ Law schools should follow suit with clinical training in tele-lawyering.

103. J. Scott Ashwood, Ateev Mehrotra, David Cowling, & Lori Uscher-Pines, *Direct-To-Consumer Telehealth May Increase Access to Care but Does Not Decrease Spending*, 36 HEALTH AFF. 485 (2017), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2016.1130> [https://perma.cc/MU5H-VBLK].

104. Hazel Genn, *When Law is Good for Your Health: Mitigating the Social Determinants of Health Through Access to Justice*, 72 CURRENT LEGAL PROBS. 159 (2019), <https://academic.oup.com/clp/article-abstract/72/1/159/5522522?redirectedFrom=fulltext> [https://perma.cc/X93S-WR4J].

105. See Karen Sloan, *ABA Approves Pay for Law Students' For-Credit Externships*, LAW.COM (Aug. 8, 2016), <https://www.law.com/sites/almstaff/2016/08/08/aba-approves-pay-for-law-students-for-credit-externships/> [https://perma.cc/X9MX-4EC7].

106. See Waseh & Dicker *supra* note 91.

Furthermore, in some areas of the law, virtual lawyering practices are not new although some have been more successful than others.¹⁰⁷ Law students need to learn how to maintain communication, how to stay accountable, how to manage their duties to themselves, their clients, their supervisors and their families – all while operating in a virtual environment. All of these are important skills that are essential to the formation of law student professional identity. The upside of remote clinical and externship work is that it promotes the development of self-directness and project management skills in law students—skills that are essential to the modern lawyer operating in the virtual office.

107. See Paul D. Carrington, *Virtual Arbitration*, 15 OHIO ST. J. DISP. RESOL. 669 (2000), https://scholarship.law.duke.edu/faculty_scholarship/214/ [<https://perma.cc/T9K2-QL4L>]; see also Sami Kallel, *Online Arbitration*, 25 J. INT'L ARB. 345 (2008); compare Johnston-Walsh, *supra* note 41.

APPENDIX 1: VIRTUAL CLINIC AND EXTERNSHIP CHECKLIST**On-Boarding & Orientation Questions****I. Designated Workspace**

- What is the student's designated workspace?
- Is it free of electronic listening devices (such as Alexa or Google Assistant)?
- Is it shared with others?
- How will sensitive conversations be protected in the space?

II. Necessary Resources and Equipment

- Will the student use their personal computer or one from the externship/clinic site?
- Will the student use their personal email or work email?
- Does the student have internet access? Is it a secure network?
- Does the student have access to a work voicemail or phone number?
- If the student is required to make calls will they use their personal cell phone? (Recommend a Google Voice Number or other private number)
- How will the student access the case file(s) or other relevant materials?
- Where will the student save and share their work product?
- Is there a written work from home protocol or data privacy and security policy that outlines how to ensure confidentiality of materials and how resources are permitted to be used?

III. Structure & Schedule

- Has the student identified their regularly workdays and hours? (Recommend that the student include their "office hours" in their email signature block)
- Is the supervisor comfortable with the student having flexible starting and ending times?
- How often will supervisor and student meet? What communication platform will they use for regularly scheduled meetings? For informal check-ins?

- What will be the student's and supervisor's primary means of communication? (Phone calls, chat, text, video, email, etc.)
- Will the supervisor hold informal open "office hours" via a drop-in videoconference communication platform?
- How will the student receive feedback on their work product?

Engagement Strategies to Promote Inclusion

- Weekly meetings are a must, and daily check-ins by the student about their progress are helpful
- Videoconference technology is best for fostering virtual connection (but consider privacy issues)
- Supervisors or other mentor attorneys can hold virtual drop-in office hours for impromptu "open door" informal questions and feedback
- Assign both short and long-term projects for downtime
- Supervisors should include the student in opportunities to observe court proceedings and participate in client/staff/strategy meetings virtually
- Assign a mentor or junior attorney to serve as an attorney point-of-contact and resource when the main supervisor is not available
- If the externship or clinic site hosts multiple students, consider pairing students up to be accountability partners
- Create virtual brown bag lunches or virtual coffee events where students can learn from experts in the office (or outside the office) in particular subject matter areas
- Conduct a virtual office tour and/or virtual introductions to staff and other attorneys