

Education & Practice

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Lessons Learned and Looking Ahead

In the spring of 2015, as I was about to end my one-year term as president of the Virginia State Bar, I wrote a column for Virginia Lawyer entitled “Passing the Baton...” In that piece, I reflected on some of the challenges and successes the VSB had experienced over the past year, looked to the future with great optimism and commented that “we’ve got a good thing going here in the commonwealth.”

Suffice it to say, I never expected that we would have to go through a pandemic a few years down the road, and I doubt that any of you did either.

As difficult as it was for practicing lawyers, legal educators and judges to adjust to pandemic conditions and restrictions that lasted for over a year and are only now finally winding down in the United States, I think that we learned some important lessons that we should carry forward and promote. This is my list.

1. Legal professionals can adapt very quickly.

When the pandemic hit a crisis level in March 2020 and society began to shut down, law schools, the courts and legal professionals everywhere were faced with serious and burdensome new restrictions, and we were all forced to adapt. Our law schools found a way to continue educating students, courts developed safety protocols and rules to allow essential proceedings and filings to go forward, and lawyers found a way to get comfortable with remote working, video conferencing, and other new ways of doing business. The Supreme Court of Virginia issued a series of orders relating to COVID-19, and our federal and state courts around Virginia also issued orders and updates as necessary for dealing with the particular conditions in each location. While change does not often come to the legal profession rapidly, we should take heart in knowing that when required to adjust in a hurry, we have demonstrated that we are up to the task.

2. Some change is here to stay, and that’s a good thing.

I have been practicing law for nearly thirty years, and I have long wondered about some of the inefficiencies I have seen in our profession. As merely one example, many jurisdictions have historically required in-person hearings for routine matters such as scheduling trials and related deadlines. Attorneys traveled to courthouses to participate in an uncontested exercise that usually takes about 10 to 15 minutes.

Why? Because “that’s the way we’ve always done it”. COVID-19 and backed-up dockets forced courts to make decisions about what hearings truly needed to be in-person. As a result, many hearings shifted to video conferencing, and judges and lawyers previously uncomfortable with that type of technology were forced to figure it out and make it work. I predict that the emergence of Zoom, Webex, Microsoft Teams, and related technologies will continue to be used for holding many hearings, receiving testimony from witnesses located far away, conducting some aspects of legal education for both law students and lawyers, and so on. In the end, it seems doubtful that emerging from a pandemic will cause everyone to give up on newly discovered technologies and efficiencies. We will not revert back to doing everything in a way that takes more time and costs more money.

3. Mental health and wellness are critically important.

Well before the pandemic hit the United States, there were already serious efforts underway to address the mental health and wellness crisis that exists in our profession, including with law students, judges and other legal professionals. The tragedies, fears and restrictions associated with COVID-19 simply amplified the problems and the need to implement solutions and coping strategies. Law schools worked on reducing their students’ worries about stigma and ramped up the availability of resources. The Virginia Judges and Lawyers Assistance Program (www.vjlap.org) went to herculean efforts to ensure that all legal professionals would have the ability to access mental health and wellness resources even during lock-down conditions. As with the other adaptations we were forced to make very quickly, we should feel good about the progress we made in this arena and keep the positive momentum going. While in-person interactions are important to make available, it seems clear that virtual meetings are here to stay as a way of delivering services when necessary.

4. Patience is a virtue.

While we were successful in making a lot of changes in a hurry, we also dealt with deep frustration associated with clogged court dockets, aggravated clients, law students who wanted to learn in-person, staffing and administrative challenges in law firms

and various units of government, etc. In short, everyone wanted the pandemic to end promptly so that we could return to a more normal way of living and doing our business. Hopefully, we’ve all learned to be significantly more patient regarding the things that we simply cannot change overnight. In the past year-plus, we have certainly been tested, and I hope that we have all improved in that area. As professional problem-solvers, we need to set an example for everyone else.

5. Disaster planning is a must.

In recent years, there has been a lot of discussion about law firm succession planning, preparing for major storms and other natural catastrophes, preventing cyber attacks, and otherwise making efforts to prevent being caught off-guard by anything problematic that could have been mitigated with better foresight. Now we can add pandemic preparation to our list. The simple fact is that the better prepared law schools, courts, lawyers, office administrators and governmental entities were able to deal with the pandemic faster, cheaper, more safely and more calmly than those who were caught flat-footed and had no idea what to do. We like to regard our profession as being one that emphasizes “problem solving”, but it is equally important that we sharpen our skills of “problem preventing”. That applies not only for the benefit of our clients, but it is also for our own good, as the pandemic demonstrated dramatically.

* * * * *

So these are my five major lessons learned and forward-thinking takeaways from the COVID-19 experience. I hope that we all find ways to improve as the restrictions are lifted and we try to return to more normal conditions. Every difficult situation presents an opportunity to gain wisdom and do things better moving ahead, and this is certainly true with what we all just experienced.

Finally, this is my last column as chair of the Education of Lawyers Section Board of Governors. I am about to “pass the baton” to Dean B. Keith Faulkner, and I am sure that he will do outstanding work for the benefit of this section. I would like to thank VSB liaison Mallory J. Ralston for all of her assistance and guidance over the past year, and I also want to thank all of the members of the VSB who are part of this section and work to improve our

profession by supporting and advancing legal education in Virginia and elsewhere. It has been a privilege to serve and work along with you. Let's keep a good thing going.

Kevin E. Martingayle, Chair

Business Design & Legal Innovation at Richmond Law

The University of Richmond School of Law's new program on legal innovation and entrepreneurship launched in Fall 2020 with the announcement of the Legal Business Design Challenge. Under the leadership of new program director and faculty member Josh Kubicki, the program seeks to advance design-driven innovation and entrepreneurship capabilities in students, lawyers, faculty, and researchers. Its goal is to accelerate and instigate the building of new business ventures and forward-thinking solutions designed to address critical challenges facing the future of our legal systems, services, and businesses.

The Legal Business Design Challenge is the cornerstone of the first course offered within the new program. The course, Practice Design & Innovation, equipped students with the two critical skills of building a successful professional service offering: 1) defining an actionable evidence-based strategy, and 2) designing an operating model to execute it.

"This new program will have a 'bias towards action' wherein we reach beyond the walls of the school to directly engage in the market," said Kubicki. "The Legal Business Design Challenge is a real-world situation wherein a legal services business, we call the "innovator-in-residence," presents the class with an actual strategic and/or operational challenge that it is currently considering," he explained. "Students are expected to conduct research, apply critical thinking and analysis, and use business design methods to develop an actionable and evidence-based recommendation to the innovator-in-residence leadership team."

The Legal Business Design Challenge is a unique approach to design innovation in legal services, one

Jeannie P. Dahnk Receives the William R. Rakes Leadership in Education Award



"Jeannie has devoted her professional life to developing and implementing innovative concepts to improve and enhance the state of legal education, as well as enhancing relationships and professionalism among members of the bench and bar of the legal profession in Virginia" wrote Irving M. Blank in his nomination letter.

Read about Ms. Dahnk's many contributions [here](#).

The award was presented to Ms. Dahnk at the Awards Reception on June 17 as part of this year's VSB Annual Meeting.

that is based on creativity and business rigor. Students work in teams throughout the course and actively collaborate with their innovator-in-residence mentors.

Baker Donelson was the inaugural innovator-in-residence. Both the chairman and CEO, Tim Lupinacci, and the chief client solutions group officer, David Rueff, served as executive sponsors, with members of the firm's Client Solutions Group working as mentors to the students. Bold Duck Studio, a leading legal business design agency, served in an advisory role to Baker Donelson as well as the Challenge overall.

"We are truly excited and honored to have this opportunity," said Rueff. "It fits perfectly with our firm's commitment to advancing our client service approach which always seeks to add quality and value through improvement, innovation and creativity," he added. "Working together with Prof. Kubicki's class allows us to tap into the energy and creativity of second- and third-year law students while directly advancing their education regarding the business of law and the current state of the market. Also, exposing our teams to the power of business design is an immensely valuable attribute of this program."

Submitted by:
University of Richmond School of Law

Virginia Law School Deans Push for Bar Exam Change

Dean Brant J. Hellwig of Washington and Lee University School of Law summarizes a letter he and the other deans of law schools in Virginia recently submitted to the Virginia Board of Bar Examiners recommending adoption of the Uniform Bar Examination.

The deans of all Virginia law schools have written to the Virginia Board of Bar Examiners pushing for change in the manner in which the state tests lawyer competency.

In particular, the law deans are recommending that Virginia join the prevailing national trend by

adopting the Uniform Bar Examination (UBE) prepared by the National Conference of Bar Examiners (NCBE) as the basis upon which to assess professional competency to practice law. According to their proposal, the unique features of Virginia procedure would continue to be tested in a stand-alone component.

In their letter, delivered in March, the law deans acknowledge that their proposal would be a break from long-standing practice in Virginia, but they argue in detail why the time for change has arrived.

Responding to the Calls of the Legal Profession

The legal profession consistently calls on law schools to emphasize the development of professional skills and competencies that will enable graduates to transition more quickly to the practice of law. Likewise, law students have expressed interest in similar non-doctrinal offerings, such as courses focused on the business of the legal profession and the incorporation technology in legal practice. However, the deans note that there is only so much room in the law school curriculum, and that offering such courses to law students in Virginia is not without risk due to the range of subjects available for testing on the Virginia Bar Exam.

"By holding applicants responsible for having the specifics of 21 subjects of law (with some subjects containing multiple topics, such as the Uniform Commercial Code) at their immediate disposal, the existing bar exam in Virginia incentivizes the memorization of considerable legal doctrine over the development of other professional competencies," the deans wrote.

In contrast, on the essay portion of the exam, the UBE tests five subjects (Business Associations, Conflict of Laws, Family Law, Secured Transactions, and Trusts and Estates) in addition to the seven topics tested on the Multistate Bar Exam (MBE) portion of the exam (Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts). The deans argue that the subject-matter breadth of the UBE provides an ample basis upon which to assess an applicant's knowledge of and facility with core legal principles. At the same time, the UBE's more focused topic list would allow law schools to responsibly emphasize the development of

professional skills and competencies in the curriculum to better equip graduates for the demands of the modern profession.

Preference of Performance-Based Assessment

Another advantage of the UBE, the law deans say, is the inclusion of the Multistate Performance Test (MPT), which accounts for 20 percent of the overall score on the exam. The MPT requires applicants to analyze a set of legal authorities—provided to the applicant as part of the exercise—in the context of a factual scenario, and to concisely communicate the product of that analysis. Rather than testing doctrinal knowledge, the goal of the MPT is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills are applied.

“We believe these exercises are equally if not more probative of an applicant’s ability to practice law, given that few practitioners advise clients on the basis of the memorized understanding of a broad range of legal topics,” the deans wrote.

Many other states that have yet to adopt the UBE nevertheless use the MPT to test the analytical skills of entry-level lawyers. Indeed, Virginia is one of just four jurisdictions nationwide that does not include a performance-based component as part of its bar examination.

Lawyer Well-Being

The deans also argue that implementing the UBE may help alleviate at least in part the tremendous stress and anxiety recent graduates face in preparing for the bar exam. While still a rigorous test, the UBE’s narrower scope reduces the need to devote time to rote memorization of doctrinal law. In contrast, preparing for the Virginia Bar Exam requires two months of nearly full-time preparation, usually aided by costly bar courses.

“The current system significantly favors those who have the financial means to focus on preparation for the bar,” they wrote. “This approach does not advance the goals of broadening access to the legal profession to underrepresented minorities or to those individuals who represent the first in their families to attend college and law school.”

Some financial stresses are ameliorated because the NCBE produces a number of free study aids for applicants, including sample multi-state essay questions and sample analyses.

“While the licensing procedure inevitably will be demanding and therefore will generate a considerable degree of stress, it is worth exploring whether the bar exam can be made more manageable while serving its critical function,” they wrote.

Enhancing Employment Prospects

It is no secret that the job market for lawyers continues to be challenging, especially for those interested in public interest careers, where offers of permanent employment are not extended until an individual has passed the bar exam. Proponents of adopting the UBE argue that this move would benefit law students in their professional and career development by broadening their job opportunities.

If Virginia were to join the increasing number of states that have adopted the UBE, students could take the Virginia examination without having to foreclose the prospect of finding initial job opportunities in neighboring states – including all of the states bordering Virginia.

“Given the profession’s interest in seeing as many law graduates employed as possible, the broadening of initial job opportunities that would result from the adoption of the UBE is sufficient reason alone to adopt this approach,” the deans wrote.

And recent graduates would not be the only ones to gain from the adopting the new test, the law deans argue. Members of the Virginia bar similarly would benefit by having access to a broader pool of law graduates—that is, those who took the bar in one of the majority of states that have adopted the UBE—from which to recruit.

Benefits to the Board of Bar Examiners

Finally, the law deans argue that the adoption of the UBE would offer a host of benefits to the Virginia Board of Bar Examiners. Rather than devoting considerable time and energy to developing and vetting questions that test an applicant’s knowledge of a given topic in a fair, accurate, and reliable manner, this labor-intensive exercise of question

formation would be undertaken by the NCBE. The essay questions would be drafted by NCBE committees comprised of professors, judges, and practitioners that are constituted for this purpose.

Furthermore, the UBE essay questions are vetted by external experts for validity and fairness, which will ensure the level of quality the Board of Bar Examiners has worked hard to achieve. The Board therefore would be provided more time to devote to grading the questions and determining the appropriate passing score – all matters that would remain within its province.

As noted above, the law deans recommend that Virginia continue to test the particulars of Virginia procedure through a stand-alone component. Indeed, many states that have adopted the UBE maintain a limited state-specific aspect to their licensing

process, one that typically is administered outside of the primary bar examination process.

“Given the importance of Virginia procedure in the civil and criminal litigation fields and the peculiarities of this aspect of Virginia law, we believe that Virginia procedure would be an appropriate candidate for any state-specific component,” they wrote.

The deans closed the letter by expressing their appreciation for the professional manner in which the Board of Bar Examiners discharges its duties to the legal profession and the public more broadly, and by expressing their desire to continue working with the Board as it contemplates reforms to the bar examination process.

Submitted by:
Washington & Lee University School of Law

82 ANNUAL MEETING

VIRGINIA STATE BAR | JUNE 14-18 2021 | HYBRID EVENT

Mentoring During and After the COVID Era: How to Set Up a Program and Make it Work

As part of the VSB’s 82nd Annual Meeting, the Education of Lawyers and Family Law Sections, along with the Young Lawyers, Senior Lawyers, and Diversity Conferences sponsored a showcase CLE on mentoring. The panel, consisting of **Jay B. Myerson, Anita O. Poston, Ra Hee Jeon, Prof. Blake D. Morant, Leslie A.T. Haley, and Hon. Rossie D. Alston, Jr.**, had a robust discussion regarding the background of mentoring and the benefits from both the perspective of the mentee and the mentor, focusing on professionalism. Discussion followed on the many different models in which mentoring occurs, starting with pre-law school, during law school and entering the practice of law and dialoguing into informal and formalized models of mentoring.

The ethical considerations of mentoring were discussed, identifying the differing issues of ethical concerns when mentoring is done under the umbrella of a unified firm model versus outside mentoring programs and informal models. Look forward to the VSB starting a link to the more formalized mentoring programs for all to take advantage of some great opportunities to mentor or to find mentors to advance your practice. Everybody wins with great mentoring!

Together and Apart in an Online Classroom: Collapsing the distinction between “real” and “virtual.”

Like many law professors across the country, I taught my classes remotely this semester via Zoom, after half a semester doing so in the spring. One class this fall consisted of about 70 first-year students, for whom a remote law school education was the only one they knew; the other class the same number of upper-level students, some of whom had spent, by the end of the semester, as much time learning the law remotely as they had in the classroom. I wondered whether this experience would feel like a simulation — that, in the end, we had provided something sufficiently akin to, but not quite the same as, a real law school experience.

What many of us had known as the “real” experience took place in the bounded space of a physical classroom. When students entered the room at 3:30 p.m., we saw them, for the next 75 minutes, as Torts students, the walls separating them from the students learning Criminal Law next door. Their assigned seats created a fixed mini-community of the students surrounding them — the beneficiaries of pre- and post-class chatter, the hushed whisper or scribbled note asking what page we were on. We professors stood at the front of the room, behind the podium that held our notes, and while we did our best to move around the room, every attempt to position ourselves to face some students inevitably resulted in our turning away from others. The physical space, it seemed, united us through geography in a shared, if not always optimal, experience.

On Zoom, that physically bounded space became disaggregated into 70 different digital spaces, each in its own little frame, brought together on a single computer monitor. We were at once part of the same experience and attending 70 variations of the same class. For some students, my questions sounded against the backdrop of a construction worker jackhammering outside their house or a child asking for help with a school assignment. For others, their slower Internet connections meant that they heard everything half a beat later. Some were sitting in comfortable desk chairs; others were on the floor, leaning against a bed; still others shared their learning spaces with pets, children, roommates, or

family members. As Jeannie Suk Gersen [has thoughtfully observed](#), there was no front of the room anymore to set me apart — my window was the same size as everyone else’s, all in proximity to others at any given moment only by the happenstance of Zoom’s arrangement.

The nature of a Zoom teaching space came with its own constraints. Our practice of staying muted when we weren’t speaking meant that we couldn’t hear shared laughter or notes of puzzlement when a comment didn’t land the way the speaker thought it might. And although I tried to glean facial reactions across two screens, it was decidedly not the same as looking around a classroom in a single swoop of my head. But in some ways, the discussions were even better once we were released from the confines of the physical space. When I was talking, I was looking at my camera, directly at each student, my back turned to no one. Freed from constantly scanning the room looking for encouraging nods, worried about filling the space to reach the students in the back row, I was able to introduce difficult conversations more thoughtfully. Students who might have been fearful of speaking up in a large lecture hall could likewise look directly at the camera and forget about how many faces were staring back at them. Our individual solitude often caused us, I think, to become more reflective.

I was fortunate in several respects. While our house isn’t huge, I was able to use our guest room as a dedicated teaching space with no distractions beyond the occasional motorcycle revving on the street outside. My computer is only a year old, I had all the technology I needed, and our Internet connection was consistently strong. My students were not all equally fortunate, and a few of them faced considerable struggles this semester.

Nonetheless, there were times when, even with these inequities, the technology enabled conversations that likely would not have happened in a physical classroom. Students could engage in thoughtful, candid discussions without feeling as if they were on stage. The beats of silence that accompany a student’s gathering their thoughts seemed to weigh less heavily online. A student who confessed during one class session that he doubted his analytical abilities immediately saw a stream of supportive messages in the chat. Students who were feeling vulnerable could participate in class discussions with

their cameras off, when, in a physical classroom, they might have chosen to miss class altogether. Students whose quieter voices might have become lost in a large physical classroom could now be heard just as well as their louder classmates. And when I saw a bunch of stressed faces at the midpoint of the semester, I asked the students to set the chat to private message me with one word that described how they were feeling at that moment. I saw an immediate string of adjectives — everything from “hopeful” to “unsure” to “anxious” — that I was then able to convey back to the class so that they knew they weren’t alone as they felt.

One session particularly stands out: We were talking in the first-year class about the challenges of assigning a monetary value to the psychic harm of having unwittingly been made to undergo something strictly forbidden by one’s religious beliefs, such as consuming a prohibited food or receiving an unwanted blood transfusion. For many of the students who were participating in the discussion, their comments were respectful but hypothetical — these kinds of religious tenets were not something with which they (or I) had direct experience. And then, wonderfully, a student posted in the chat that they *could* speak to such beliefs from family experience if anyone had any questions. Seeing that comment during the discussion enabled me to invite the student to contribute to what immediately became a richer conversation for us all. In a physical classroom, I’m not sure that hand would ever have been raised.

I don’t know what it will feel like when we return to the physical classroom — what used to feel like the “real” classroom experience. At the very least, I had thought that when we were all in a physical classroom together, we were having something of a shared experience. But, of course, we were always having 70 variations of the same experience, brought together in a single frame.

Laura A. Heymann
William & Mary Law School

Welcome, New Board Members



Laura A. Heymann
Chancellor Professor of Law
William & Mary Law School



**Hon. Manuel A.
Capsalis**
Judge, Fairfax County
General District Court



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