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## From Crisis Springs Opportunity: Using Virtual Learning to Develop More Effective Lawyers

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**FROM CRISIS SPRINGS OPPORTUNITY: USING VIRTUAL  
LEARNING TO DEVELOP MORE EFFECTIVE LAWYERS**

ANITA M. SINGH\*

ABSTRACT

*The increase in virtual, distance, and remote learning necessitated by the COVID-19 pandemic has presented new challenges to law school faculty and students. But at the same time, increased virtual interactions provide us with a unique opportunity. In particular, increased virtual interactions allow us to test and stress students' "virtual intelligence," a suite of more intangible skills that also promotes lawyer effectiveness. These skills include traditional project management tasks and conventional social engagement, but on a heightened level given the challenges inherent in virtual interactions. Legal employers place these skills at a premium, yet at the same time report that graduating law students traditionally have been ill-equipped in these areas. By heading online, we can break the law school mold and create a more immersive, realistic, and challenging experience for our students—one that will make them more effective lawyers and better equip them for the practice of law.*

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## INTRODUCTION

*“In a crisis, be aware of the danger—but recognize the opportunity.”*

*John F. Kennedy*

In my past life, while serving as a senior national security executive,<sup>1</sup> I worked on issues related to crisis management and continuity of operations for nearly a decade. We planned for a host of disasters, exercised and tested those plans, and routinely trained officials to ensure that when the crises we hoped would never hit inevitably did, we would be prepared.

As a professor of legal practice skills for the past four years, my crisis preparation days seemed long behind me. That is, until mid-March 2020, when the COVID-19 pandemic threw law schools into crisis mode—most, if not all, without an existing playbook.

In all candor, the response from higher legal education was not perfect, but it was impressive. For methodical and thoughtful institutions that are often plodding and at times stubbornly resistant to change, law schools were able to identify and resolve issues quickly to ensure continuity of operations.

Also impressive? In summer 2020, law schools engaged in a form of after-action review. In the wake of disruption, there was a tremendous—if not unprecedented—amount of collaboration, knowledge sharing, and brainstorming. As law school faculty and administrators, we learned what went well in our shift to online learning, what went wrong, and what we needed to improve going forward. Today, we better understand technology concerns, privacy concerns, student anxieties, and faculty anxieties, and have begun to develop best practices for effective online instruction. Our playbook has taken shape.

But in the scramble to adapt with little notice to a new way of doing business, we risked overlooking a critical opportunity. As we built our online learning planes mid-flight, we were rightly focused on how we can be most effective when called upon to deliver our content in a new way. How can we engage our students? How long are their attention spans? What is the right distribution of asynchronous and synchronous learning? Who are we going to “be” when we are communicating from across town or even across the globe?

But lost in all of this were other key questions: What *new* skills will our students need to thrive in a post-pandemic world, and does teaching online give us exciting and novel ways to incorporate these new learning objectives into our curriculum?

But now, in our “new normal,” when we are no longer merely trying to head off learning loss or bridge the gap between the “before time” and some hypothetical day when everything might return to the way it always was, we

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1. Prior to joining the faculty of George Washington University Law School, I served at the Department of Justice (“DOJ”) and at the White House on the National Security Council Staff.

have the chance to look for opportunities to leverage technology to teach our students even more effectively than ever before.

This essay explores why we—and our students—should not be satisfied that we “shifted to virtual instruction” or successfully “moved our courses” online. Instead, it is our obligation to think critically about the unique opportunities this disruption presents for us to deliver a new kind of value to our students in the long term. As the ground underneath us continues to shift, we must innovate to better serve our key stakeholders: law students and legal employers.

This is a moment for us to go far beyond what we formerly did in person, to stop looking forward to the day that things return to what they used to be (spoiler—they won’t and shouldn’t), but to remake what we do entirely. And that is a tremendously exciting prospect.

So, what *should* we teach our students that we have not strategically focused on in the past? And what opportunities might our “new normal,” and the new tools and resources associated with it, provide us to do that in innovative ways?

The answers, I believe, are simple and related. First, online instruction gives us a unique chance to teach, discuss, model, test, and stress the importance of “virtual intelligence”—the cognitive mechanism underlying “the overall process of individual adaptation to virtual work.”<sup>2</sup> And it just so happens that there is a significant overlap between the characteristics and habits that comprise virtual intelligence and those that relate to lawyer effectiveness.

Second, by identifying ways to promote virtual intelligence, we can begin down the long road of identifying structural changes to our classes that will better immerse students in the experiences necessary to develop the traits most highly valued by employers, many of which transcend lecture or assignment. Teaching online is not a prerequisite for doing this; however, designing virtual courses may provide necessary inspiration to accomplish this goal much more quickly. By leveraging online and asynchronous content, we can effectively break down the walls of our classrooms, giving our students more opportunities to practice their effectiveness skills more independently in a greater variety of circumstances, and, more importantly, we can give them a chance to learn by striking out on their own and failing (with a safety net).

Undoubtedly, the professional world that our current and future students enter will be different from that which came “before,” and it is our duty to prepare them for that new world. But doing so effectively will require deliberate and strategic incorporation of new concepts into our learning objectives and teaching plans.

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2. Erin E. Makarius & Barbara Z. Larson, *Changing the Perspective of Virtual Work: Building Virtual Intelligence at the Individual Level*, 31 ACAD. MGMT. PERSPECTIVES 159, 159 (2017).

## I. VIRTUAL INTELLIGENCE AND LAWYERING EFFECTIVENESS

Before I go further, I should be clear—virtual intelligence is a critical skill for our students to learn, *regardless* of whether their schooling or future employment remains remote or virtual long into the future.

Before the pandemic, even when most lawyers still reported to their offices and client sites in person, virtual work, defined broadly, had become ubiquitous—integrated into day-to-day communications with everyone from co-workers working across the globe, to colleagues down the hall.<sup>3</sup> A few years ago, Barbara Larson and Erin Makarius found that “people tend to significantly underestimate the proportion of their work that is virtual, largely because they believe virtual work occurs outside the office.”<sup>4</sup> But the reality is that our high-tech, global, interconnected world calls on all of us to be virtually intelligent—capable of reliably building trust, effectively communicating, and working in ways that were not contemplated even five or ten years ago.

So, while the debate rages on as to whether the forced introduction of remote working has effectively killed the office,<sup>5</sup> or whether, as Mark Twain might say, reports of the office’s death are greatly exaggerated,<sup>6</sup> the reality is that regardless of whether our students enter a new world in which they work from home, they *all* will work virtually.

Our students already know that. In fact, professors know that they use virtual interactions to discuss among themselves during in person classes. I have found that students crave opportunities to hone their virtual intelligence.

As one example—in late February 2020, when all of us were just beginning to better understand how COVID-19 might take hold in the United States, my crisis management roots began to show: I announced that all of my scheduled in-person student conferences in early March would be held online, to help us prepare in the event that our ability to meet in person for the remainder of the semester was impacted by the pandemic in any way. I also brought home everything from my office that I could possibly need to work effectively for the

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3. For a more in-depth discussion of how virtual work transcends remote working, and how “virtual work also encompasses how we are turning to technology to conduct business with *nearby* colleagues, sometimes within the same building or campus,” see Barbara Z. Larson & Erin E. Makarius, *The Virtual Work Skills You Need — Even If You Never Work Remotely*, HARV. BUS. REV. (Oct. 5, 2018), <https://hbr.org/2018/10/the-virtual-work-skills-you-need-even-if-you-never-work-remotely> [<https://perma.cc/8ZZV-4ZFD>].

4. *Id.*

5. Paul Davidson, *Will The Remote Work Craze Sparked by COVID-19 Sound a Death Knell for Office Buildings?*, USA TODAY (July 13, 2020, 9:11 AM), <https://www.usatoday.com/story/money/2020/07/13/jobs-home-more-people-telecommute-office-market-could-shrivel/5410812002/> [<https://perma.cc/YDL9-424Y>].

6. Javier Espinoza, *‘Death of the office’ exaggerated despite homeworking boom*, FINANCIAL TIMES (June 30, 2020), <https://www.ft.com/content/1e86dc36-907b-11ea-bc44-dbf6756c871a> [<https://perma.cc/VM5S-SQHL>].

next 12 months. My goal was to use our conferences as a no-risk time to fail—to identify individual technology or connectivity issues, to see what worked and what didn't, and to make a contingency plan in the event we could not meet in person later in the year. In essence, I wanted to treat our conference week like a tabletop exercise. From a preparedness standpoint, it worked: we uncovered a number of vulnerabilities. By the end of conference week, I knew who needed more training, who needed to download apps they were unfamiliar with, and who might struggle to communicate virtually. We all felt ready, just in case.

But I was not so sure that the value would be obvious from a student's perspective. When I announced that I was preemptively moving conferences to a virtual format, I told my students that there would be value in both preparing for a potential online end of semester and in learning virtual communication skills. Nonetheless, I was concerned that I might be seen as paranoid or overreacting, and that the potential benefits might not translate well.

However, in conversation after conversation with my students (all held one-on-one), they expressed their gratitude for being given the chance to practice skills that they knew they needed—and in some cases, skills that were already required. Some had interviewed for their summer internships via Skype, long before the pandemic was on our radars. Others recalled pre-law school videoconferences where they would have welcomed the chance to try their hand at virtual communication before jumping into the virtual fray.

For all of these encounters, and so many more, virtual intelligence is critical. So, what exactly is it? Broadly defined, virtual intelligence is a suite of skills and behaviors that help build trust and improve performance when interacting with others remotely.<sup>7</sup> The architects of this concept suggest four key skills that support virtual intelligence: establishing behavioral guidelines, developing trust, coordinating information, and using media.<sup>8</sup>

Larson and Makarius suggest that virtual work “demands a different set of social and interpersonal skills and behaviors than face-to-face work.”<sup>9</sup> However, perhaps this is more a question of degree than difference. Once we attempt to map virtual intelligence skills with skills generally considered required for lawyer effectiveness,<sup>10</sup> it becomes clear that virtual intelligence is more accurately an *enhancement* of the skills and behaviors required face-to-face. The

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7. Larson & Makarius, *supra* note 3 (“Research consistently indicates that virtual work skills — such as the ability to proactively manage media-based interactions, to establish communication norms, to build social rapport with colleagues, and to demonstrate cooperation — enhance trust within teams and increase performance.”).

8. Makarius & Larson, *supra* note 2, at 161–64.

9. Larson & Makarius, *supra* note 3.

10. For one significant exploration of lawyer effectiveness factors, see Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 629, 630 tbl.1 (2011); discussed further, *infra* note 15 and accompanying text.

authors themselves recognize that “to be effective, social interactions—including etiquette, cooperation, conflict management styles, and other interactional behaviors—must be made *more explicit* than they would in a comparable face-to-face interaction.”<sup>11</sup>

Virtual intelligence requires individuals to expertly engage in, among other things: traditional project management tasks like meeting deadlines and setting goals, deliverables, and milestones; conventional social engagement such as demonstrating enthusiasm and developing ways to overcome communication hurdles<sup>12</sup>—technical or otherwise; and taking actions to earn both “ability-based trust, such as demonstrating competence on tasks and highlighting skills” and “relational trust from others through active participation and timely responses, in-depth feedback, open communication, delivering agreed results, and cooperative behavior.”<sup>13</sup>

These are all traditional professional skills—their significance, and the challenge of mastery, are merely heightened in a virtual environment.

Stepping back, there is significant overlap between these skills of virtual intelligence and the factors that bear specifically on lawyer effectiveness. One of the most prominent explorations of lawyer effectiveness, undertaken by Marjorie Shultz and Sheldon Zedeck, identified 26 factors that I have divided into the following three categories:<sup>14</sup>

1. Intellect and Cognitive Capacity
2. Technical and Practical Skills (Legal and Professional)
3. Elements of Professionalism that Transcend Assignment

Assuming the first is immutable, and the second is the traditional focus of legal pedagogy, I want to focus primarily on the third. Coincidentally, this is also where many of the elements of virtual intelligence fall.

Shultz and Zedeck identified a number of factors that are not true technical or practical skills in the same way that knowledge of the law, ability to effectively research, write, and speak, or the art of negotiation are. These other, more intangible factors include problem solving, thinking “outside the box,” relationship development, active listening, strategic planning, organizing, and

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11. Makarius & Larson, *supra* note 2, at 161 (emphasis added).

12. *Id.*

13. *Id.*

14. These categories are my attempt to reorganize the 26 effectiveness factors so that professors may focus in on our areas of strength and greatest opportunity. My categories rely upon commonalities among what these factors are and how they can be taught. They represent a hybrid of the eight Shultz and Zedeck umbrellas and the categories created by the Institute for the Advancement of the American Legal System. See Alli Gerkman & Zacharia De Meola, *Foundations for Practice: The “Whole Lawyer” and the Path to Competency for New Lawyers*, THE BAR EXAMINER (Summer 2018), <https://thebarexaminer.org/article/legal-profession/foundations-for-practice/> [<https://perma.cc/7X72-FA3J>].

managing workload, organizing and managing teamwork, stress management, and self-development, among many others.<sup>15</sup>

Look familiar? This bucket of skills resembles much of what comprises virtual intelligence.

Larson and Makarius suggest that virtual intelligence is rarely the subject of formal training despite its necessity;<sup>16</sup> the same is true for these similar lawyer effectiveness skills.<sup>17</sup> But I believe that law school is the place to introduce that formal training, and that these skills are our area of biggest opportunity in creating more practice-ready graduates.

I have long been interested in how we can be more strategic in delivering stakeholder value to our two most valuable clients—law students and legal employers. Our students go to law school, and choose their specific institution, for a multitude of reasons—in fact, a recent study shows there may be market segmentation even within current J.D. applicants. Bottom line—job placement always ranks high.<sup>18</sup> Law students want jobs.

So, if we can identify and target employer wishes, we will (to some degree) satisfy student demands. But as of today, employers are not so confident that our students are prepared to face the challenges of their offices.<sup>19</sup>

I write from the lens of a recent practitioner and a professor of practice skills, and with that experience, I understand why this perception exists. In my former life, I had the opportunity to hire and manage hundreds of attorneys, ranging from other Senior Executives to entry-level Attorney General Honors Program Attorneys to summer interns. In that capacity, I witnessed first-hand how many

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15. See Shultz & Zedeck, *supra* note 10, at 630 tbl.1.

16. Larson & Makarius, *supra* note 3 (“Our surveys indicate that only about 30% of companies train employees in virtual work skills, but when they do, the training is more likely to focus on software skills and company policies than on social and interpersonal skills. Our findings are similar to those of a 2006 survey of HR leaders on training of virtual teams, suggesting that while technology and virtual work itself has advanced dramatically in recent years, our preparation to work virtually has not.”).

17. It bears mentioning that many law schools have started familiarizing students with these concepts in the form of lecture—and exercise—based classes on leadership or co-curricular modules. For example, at my institution, GW Law, the award-winning Inns of Court Program covers a wealth of important topics ranging from being a better listener, to strategic planning, to stress management and mindfulness, to marketing your own competencies. However, there is very little documentation showing how schools strategically and systematically insert background experiential opportunities for students in their doctrinal or required coursework to capture these skills.

18. Scott Jaschik, *Survey shows varying priorities of applicants to law schools*, INSIDE HIGHER ED (March 4, 2019, 3:00 AM), <https://www.insidehighered.com/print/admissions/article/2019/03/04/survey-shows-varying-priorities-applicants-law-schools> [<https://perma.cc/VW25-PBHE>].

19. Gerkman & De Meola, *supra* note 14 (illustrating a perceived “skills gap” and reporting findings from a survey that said 95 percent of hiring attorneys believed that recent law graduates they hired “lacked key practical skills at the time of hiring.”).



recent (and sometimes even not-so-recent) law graduates were at once brilliant, technically competent, and talented, yet light-years from “practice-ready.” A recently minted law graduate could possess an understanding of substantive law, and even perhaps the ability to research, write, and speak about an issue with skill and clarity, but at the same time lack the judgment, autonomy, resourcefulness, professional maturity, or emotional intelligence to contribute to their fullest potential. From my vantage point on the hiring side of the equation, it often appeared that many law schools, having more than capably fulfilled their responsibility to teach students how to “think like a lawyer,” expected employers to bear the full burden of teaching students how to *be* a lawyer.

This observation is not novel—many have articulated that today’s law graduates may know very well *what* they are supposed to do as a lawyer, but not *how* to do it effectively. In fact, we have studied the problem extensively, and amassed a wealth of data about what legal employers expect of our law graduates. In a 2016 report detailing the results of the Institute for the Advancement of the American Legal System (IAALS)’s Foundations of Practice survey, more than 24,000 lawyers discerned what “foundations” entry-level lawyers needed to succeed in the practice of law, and *nowhere* in the top ten responses was legal knowledge, or any traditional “legal” skill, found.<sup>20</sup> The top two “foundations” were the ability to keep information confidential, and punctuality.<sup>21</sup> Foundations ranked sixth through eighth covered listening attentively, being responsive, and being diligent.<sup>22</sup> And paying attention to detail was number ten.<sup>23</sup> Essentially, the entire top ten list was a mix of non-legal professional skills and what the survey designers refer to as “characteristics.”<sup>24</sup>

As it turns out, what is most important to legal employers is not technical mastery and legal prowess, but rather that law school graduates are more reliable, more professional, more autonomous, more responsive, and more detail oriented. Essentially, employers want graduates to be better able to manage their time, manage others, and manage their own work. Put simply, they want better employees, who are more capable of contributing to the workplace on day one. And they believe there is a significant gap between their expectations and what we are delivering to them in our recent graduates.

So, why are we as law schools falling behind in these areas? Because, in my categorization of effectiveness, these elements of professionalism that employees want most transcend assignments in the traditional sense. Reading, writing, and talking about them are not enough. Trying to master these skills must be *experienced*.

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20. Gerkman & De Meola, *supra* note 14.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

Although lecture, doctrinal classes, and skills classes all exist on these topics, for students to truly understand them, they must be immersed in them. This requires some small structural changes to the way we teach. Outside of a true simulation, how can we really *teach* law students to pay attention to detail? To be on time? To own their mistakes and accept responsibility? To be confident in the choices they make and willing to speak up when they need to? These skills all play into lawyer effectiveness (and virtual intelligence), yet our graduates do not leave our halls fully prepared in these areas.

Because virtual interactions demand virtual intelligence, which in essence is enhanced or supersized effectiveness, remote learning's reliance on virtual interactions will provide all of us with a strategic opportunity to expressly and honestly talk about these skills on day one, model them ourselves, and create a learning environment that constantly tests and assesses students' strengths in this area. I see online delivery as a forcing function that can and should help us close our skills gap.

Virtual classes by their nature will require clear expectation management, deadlines, division of labor, autonomy, and resourcefulness. Remote learning will require that students become experts at giving and receiving feedback and learn to gain trust in an environment where ordinary social graces may no longer carry the day—because “judgment of ability is a more salient factor in building trust when interactions are mostly virtual, as the other kinds of cues needed for assessing benevolence and integrity are more difficult to obtain.”<sup>25</sup> We can design our classes to give students opportunities to say no, set boundaries, and find ways to succeed in environments in which they have never before operated.

So, how do we expressly add virtual intelligence and the associated lawyering skills into the list of topics we want to proactively teach? The answer is in the whole-of-school experiential learning, in which we all set out deliberately to teach these skills. We can capitalize on the hardships inherent in virtual work to enhance our students' ability to excel in both face-to-face interactions and the office of the future. To do so, we can and must allow students to virtually fail and learn from their “professional” mistakes repeatedly, which will ingrain in them a heightened level of effectiveness and serve them well during and after the pandemic.

## II. BREAKING OUT OF THE CLASSROOM

If we want our students to truly experience success and failure in tests of effectiveness, we must better mimic office pace and culture. Of course, we have simulations and coursework on these topics, but *all* of our classes can be more experiential, and the virtual environment may make that surprisingly easier.

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25. Makarius & Larson, *supra* note 2, at 161.

Before talking about the virtues of virtuality, let me provide a very rudimentary example of how we can more generally (1) immerse students in what it is like to be an employee (not just a lawyer) and (2) do it in the background while teaching them the core skills of each course, putting it all into context.

For example, practicing attorneys may be all too familiar with situations such as being stuck on a reply-all chain when the initial email requested reply to sender only or trying to filter data files that require a particular format or naming convention (e.g., last name, first) only to find that a junior attorney glossed over those details.

To help students come to value responsiveness and accuracy in following instructions, I provide clear requirements regarding email subject lines and formats for all assignment submissions. I tell them precisely why—that I create inbox rules that route their submissions to a folder in my email inbox. I also tell them that failure to comply with the rule will result in their submission being skipped by my email service which results in a penalty for non-submission (on minor assignments), though I still give feedback (at least the first time a student makes this error).

On the first few assignments in the fall, multiple students failed to follow these instructions, but by mid-semester I had 100 percent compliance. By December, when I failed to provide instructions, the class *respectfully pointed out my error and asked me for them*.

In my courses we do this over and over again—not merely in exploring technical skills, but in real world, practical issues. Never through a formal lesson, and always in the background.

Another example—after setting a quick baseline for attention to detail by deliberately leaving attachments off of an email, seeing how many students noticed, and how they raised the issue (they all did), I introduced a more “lawyerly” test.

For their first written assignment, I provided my students with an email dated September 23, 2019, from a landlord to a tenant alleging lease violations and providing a notice to vacate within 30 days.

The next assignment was a supervisor email. I asked the students to email me, as their supervisor, by October 13, 2019, with the high points of their preliminary legal analysis and any anticipated issues, concerns, or things I need to be aware of that might crop up within the next two weeks.

Based on my students’ universal recognition of missing email attachments, I had expected that a sizable portion of the class would flag that our client would be forced to vacate their property within the next two weeks if we didn’t request an extension from the landlord or provide evidence that we had cured the breach.

To my surprise, not a single one did.

When asked, my students said they did not miss the issue because they had assumed we were writing on a fictional timeline—they knew we were not. They

missed the issue because they missed the letter's date entirely, or they failed to take the time to calculate the date on which the client would be required to vacate.

The next assignment on our syllabus was a client letter. Knowing that I was going to try this experiment, I had planned two different versions to follow—and I was prepared to let students in the same class write different assignments based on whether or not they had individually spotted the issue. In one, the student would simply have to provide a client update on timing for the legal analysis in light of the extension they requested. In the other, the student would have to take responsibility for the oversight, extend apologies, and present an action plan for the future. I told my students that their assignment would have been shorter and easier had they identified the issue in the first instance, and they understood why it was not.

In short, I gave my students a chance to fail, and then I attempted to tie it to real-world consequences—in particular by demonstrating how much more (and more difficult) work could be created (for them) by this kind of oversight.

Having prepped them, I tried again.

Within another set of documents on the same assignment, in a consecutively paginated file, where each page stood alone (in other words, no sentence or section bled from one page to the next), I simply removed the fourth page, which contained a critical email from the client to the landlord. Reading along, no content was obviously missing, and there was nothing to indicate that the students needed additional information; however, the pagination of the file, with no blank pages, was very clear—1, 2, 3, 5, 6, 7, 8. Administrative issues like this happened regularly when I was in practice.

Surely, now that they were wise to my games, I would be flooded with questions about this, right?

No.

Among all of my law students presented with the record, not one flagged the missing page four. In fact, after two weeks had passed, when I flagged the omission for them, all but one said they did not even notice it.

The only student who reported that they noticed the missing page said they thought it was a typo and did not want to raise the issue to me.

I was truly flabbergasted. My students are exceptionally intelligent and talented. Not once have I doubted their ability to research and analyze the law or deliver outstanding written product. Prior to attempting this in my classroom, I expected at least one-quarter, and likely closer to half of my class, to flag the issue. But I assumed a level of attention to detail and professional judgment that was unfair to expect of the students without first ensuring that they had it, or otherwise teaching it to them. And there is no one to blame—not them, nor their undergraduate institutions. Any missing skills that they need to be effective lawyers are my responsibility to identify and deliver.

And where—as here—I find something unexpected, such as a deficiency in an area of critical importance to lawyer effectiveness, competent representation, and employer expectations, I must take every step I can to get my students to a place where low hanging fruit will not be their downfall. By teaching them skills that no one set out to teach them before, I can have a greater impact than focusing solely on the skills I have traditionally taught. And by weaving these opportunities throughout the structure of my courses, I can do it all at the same time. By immersing students in what it is like to be an employee, not just a lawyer, in the background while I am teaching the core skills of my course, puts these valuable skills into context.

To do this I created a five-step process: assess the baseline, test the skills, let students fail, test them again, and measure our progress.

If we all do this, we can help our students become more effective, self-directed learners.

So, what does virtual learning have to do with any of this? The virtual learning environment is the ideal environment for self-directed learning in two key ways: (1) students will, by necessity, be placed more in the driver's seat of their own success, and (2) we can create a borderless classroom that does not merely consist of in-class and out-of-class time, but which structurally resembles a working environment.

As to the first point—proponents of virtual intelligence suggest that “the role and agency of individual workers in determining their own virtual work performance and outcomes needs to be more prominently recognized.”<sup>26</sup> Virtual workers need support, but the virtual worker is in charge of her own destiny. And so must be our students.

Thus, professors need to communicate to students early that they are going to steer their own virtual learning. Not because we are abdicating responsibility for their success, but because this is the best way for them to succeed in the long run. These are tough times—and students need to learn how they can best gain the trust of their peers, their professors, and even themselves under difficult circumstances. Only the students can identify what will work best for them in this strange new world, and we must expressly acknowledge that and teach them just how important this process will be.

After scene-setting, more specifically we can give the students chances to work both autonomously and in small groups. We know that their virtual attention spans will be short, so by responding to that new demand and allowing for more interactions to take place asynchronously in smaller chunks, we can give our students more independence and more freedom than ever before. And a longer leash means more chances to err, to forget to ask for needed information, and to look up for clarification only to realize the professor is not there with you in that moment (but to be clear, is there for you in the course).

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26. *Id.* at 166.

Less work directly under our watchful eyes empowers students to take control of their own education. Exercises that we might have previously used with students sitting in a classroom, on a clock, and with us hovering nearby, should now be self-scheduled, completed with impartial information that requires resourcefulness, and performed in breakout groups with their peers that require expert negotiation, conflict resolution, and interpersonal skills. When students run into speedbumps in these independent engagements, professors can test how they persevere. What do they report back? What do they resolve themselves? When do they think they may give up?

This dovetails with the second key benefit of the virtual environment—not flipping the classroom, but expanding or even destroying it. Given that many faculty members are exploring ways to incorporate a blend of synchronous and asynchronous learning into their courses, it is no longer wise to think of education as time in class and out of class. Instead, maybe “class time” does not exist, but is a continuum. Just like work no longer stops at the office door, we professors must ask our students to set their own boundaries, be self-disciplined, and manage their work like a professional.

Critics may say that these are difficult enough times without making law school all-consuming. But therein lies one other great benefit: we can use this potential free-for-all, with less formally structured time, to help students understand how to create some sense of order and balance for themselves. Unlike law school, the practice of law (or any form of employment) does not always segment itself into neatly organized blocks of time. As soon-to-be professionals, our students can use the virtual school experience to come to understand work-life balance. We can talk to them candidly about the fact that only some portion of our work together may be confined to class time and homework. The rest may be spread out in various windows and interactions, and we can help them manage that: by first modeling and then letting them practice protecting their time, setting clear expectations regarding their own responsiveness, and meeting the expectations they set. These are all elements of virtual intelligence that professors can better test and assess in this virtual environment than ever before.

We must acknowledge that there will be significant blurring between the classroom and home. For many, the two spaces will be one and the same. But this is a critical lesson as our students move into the working world because, as some have recognized, “[t]he WFH Forever revolution promises to liberate workers from the chains of the office. In practice, it will capitalize on the total collapse of work-life balance.”<sup>27</sup> And even without working from home, in an

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27. Charlie Warzel, *You Are Not Working From Home*, N.Y. TIMES (May 26, 2020), <https://www.nytimes.com/2020/05/26/opinion/work-from-home.html> [https://perma.cc/HQ2X-N62K].

increasingly interconnected world, virtual demands on time are potentially limitless.

So, by breaking open the classroom and empowering our students to engage in planned interactions with their peers on their own schedule in lieu of lecture or class time, professors can help students avoid “Zoom fatigue” and trauma and instead develop virtual intelligence, self-discipline, coping skills, and flexibility. We will help students be more effective employees, better communicators, and more resourceful. And we can help them learn to set better boundaries and establish better balance, which, in the end, will build more effective, resilient, and happier lawyers. But these things will not just happen—we must be deliberate in our approach and keep these priorities front-of-mind when planning our courses, objectives, and teaching tactics.

#### CONCLUSION

I think we all suspect that the post-pandemic work environment may look quite different from today’s. And with those shifts, our students’ skills gap could grow if we do not adapt. But by deliberately addressing and teaching skills that are critically important in virtual environments, we will have another opportunity to close the perceived skills gap in both real-world and virtual interactions.

In shifting to online modalities, we have the opportunity not only to continue delivering outstanding instruction that satisfies all of our pre-COVID learning objectives, but in fact to meet new learning objectives that will better prepare our students for post-pandemic life.

So, we must not merely think about what novel exercises we can use to be more engaging online, or what technical tools we have at our disposal to improve the student experience. We must think about how we can take this strange new universe and leverage it to help students become more effective, and to strategically and proactively (not merely by chance) help students better expect the unexpected and know how to react when things go wrong.

If we do this right, and truly emphasize our students’ virtual intelligence and effectiveness in new ways, they have the chance to become more practice-ready, more empathetic, more resilient, and better equipped to handle frustration, maintain flexibility, and demonstrate enthusiasm.

Of course, teaching online is still new to many of us, and mastery will take more than a couple of weeks. This will not be perfect and some ideas will fail, but deliberately thinking of ways to demonstrate and test virtual intelligence and break apart the classroom are simple charges that may pay dividends for our students.

And perhaps, looking forward, we can expand virtual and distance learning under the ABA Standards—not to provide asynchronous, recorded content, but to provide new, more practical, and more realistic opportunities for law school

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faculty to interact and engage with students in a way that more closely resembles the working world.



