

Litigation: Editor's Picks



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How Law Schools Are Preparing Students for the 'New Status Quo' of Virtual Litigation

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[Legal Education](#)

Christine Charnosky

Virtual litigation quickly went from being viewed as a temporary solution to an unexpected problem at the start of the pandemic to now establishing itself as the next evolutionary step in how litigators practice.

With that in mind, an increasing number of law schools are taking steps to prepare their students for this new reality.

As Matthew Diller, dean and Paul Fuller professor of law at Fordham University School of Law, and Joseph Landau, associate dean for academic affairs at Fordham Law School, wrote in a [recent commentary piece](#) for The New York Law Journal: “[L]aw schools cannot simply hold our collective breath awaiting a return to a pre-pandemic normal that is unlikely to ever materialize. Instead, we must counter these far-reaching changes to the legal industry with meaningful and lasting adjustments of our own.”

Making those adjustments, Diller told Law.com in an interview, must start with two key questions: “How does our profession rethink advocacy strategies and how do we best prepare our students for both?”

“As these new dynamics influence the courtroom and related dynamics, so too must they permeate any classroom that seeks to prepare students to operate in that courtroom,” Diller and Landau wrote. “Law schools must track evolving (and competing) best practices and incorporate them into our litigation classes. Faced with a dearth of virtual courtrooms for budding lawyers to walk past and observe, we must compensate with other opportunities for students to observe, and simulate, virtual litigation.”

Diller said Fordham has been holding clinics to work with students in tribunals via conference calls to practice these skills.

Fordham Law’s Brendan Moore Trial Advocacy Center was quick to transition trial skills training to an online format, a Fordham spokesperson said.

“We have hosted eight large-scale trial competition tournaments since the pandemic began which translates to literally hundreds of trials over Zoom,” a Fordham Law spokesperson said. “Add to that the countless practice trials, and our students have gained more online litigation skills than 99% of the lawyers practicing today.”

Alison F. Lintal, director of Career Services and Internship Programs at Penn State Dickinson Law, said her school has also set about preparing students for what she describes as the “new status quo.”

“We added a class for how to manage and succeed in the virtual setting,” Lintal said.

The class includes how to learn from a supervisor, how to set up for success, use of technology and engaging with clients and supervisors.

“It requires more structure and intentionality,” Lintal said, adding, “Holding classes on Zoom has been experiential since they’ll be presenting on that format.”

‘A Unique Opportunity’

Several law school leaders said they view the rise of remote litigation as a chance to make much-needed improvements with regard to access to justice, particularly in the realm of criminal law.

“Technology will intersect more than ever,” Camille Nelson, dean of the University of Hawaii’s William S. Richardson School of Law, said, adding that it provides the opportunity to “push the justice system out to people.”

“We have a unique opportunity to leverage this creative thinking and these efficient responses to create long-term and much-needed change for our criminal justice systems,” Bridget Mary McCormack, chief justice of the Michigan Supreme Court and co-chair of the Post-Pandemic Planning Technology Workgroup, said in her opinion piece posted in *The Hill* near the start of the pandemic in June 2020.

“Let’s make sure that the resources we infuse into the system are not just temporary patches,” McCormack wrote. “We have a chance to rebuild what we do from the ground up. Let’s create a 21st century criminal justice system that is effective, transparent, efficient and fair.”

But ensuring that future generations of attorneys are adept at a more tech-based approach to practicing law comes with a number of challenges, beginning with overcoming current technological limitations on campus.

“Preparing by adding more advanced classroom technology is a big part of it,” Nelson said. “We need a lot more resources to ramp up for the next two decades of transformative practice.”

Learning to Connect

And it’s not just about knowing how virtual litigation technology works. It’s about understanding how to practice within that new framework.

Lintal and colleague Lucy J. Johnston-Walsh, assistant professor of law and director of the Children’s Advocacy Clinic and Center on Children and the Law at Penn State Dickinson Law, presented and published “Tele-Lawyering and The Virtual Learning Experience: Finding the Silver Lining for Remote Hybrid Externships & Law Clinics after the Pandemic” as part of the Akron Law Review Symposium called “COVID & The Practice of Law: Impacts of Legal Technology.”

“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,” Johnston-Walsh and Lintal wrote. “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.”

In their paper they state: “We offer several strategies ... for dealing with the three primary challenges of virtual experiences: (1) security and access; (2) communication and engagement; and (3) project management and structure.

“In the virtual practice setting, it is 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 the judiciary so it 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,” Johnston-Walsh and Lintal wrote. “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.”

Johnston-Walsh and Lintal continued: “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.”

“[L]itigators have had the opportunity to rethink a host of practices: When addressing the court, is it appropriate to stand or sit? What advocacy styles translate well to the virtual world and which fall flat? What is more important for the jury to see: Your entire standing body from head to shoes or your eyes?” Diller and Landau wrote in their article.

Diller said that they are finding that “students’ faces being pretty close to camera creates more intimacy,” though it is at the cost of sacrificing nonverbal cues.

“Words become much more important because they can’t communicate in other ways,” Diller said. “Law students are always taught how to be precise in words but it’s extra important now.”

Diller brought up another important point: the use of notes.

Students are tending to use notes on the screen instead of looking at the camera. Diller’s concern is that when students need to appear to court in person, they may have become overly dependent on the use of notes.

Further, while law students are more tech savvy, they are accustomed to using the medium more informally, Diller said.

“Therefore, students are being taught how to write professional emails,” Diller said. “It’s the professors’ job to remind them they will be utilizing those skills in a professional setting. They will be interacting with those who are not of their generation, relating to those who are not as tech savvy.”

Additionally, it’s been found that when testifying, litigators and litigants “can’t garner the same amount of sympathy remotely,” Diller said.

Plus lawyers have found that they can’t assume the client knows how to appear virtually, he said.

“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,” Johnston-Walsh and Lintal wrote.

“Many clients struggle to find secure and confidential locations to participate in the proceeding and therefore would struggle to participate in the hearing and simultaneously communicate with their attorney.”

Johnston-Walsh said, “We have witnessed our students teaching witnesses/providers how to testify.”

Jeremy Fogel, executive director of Berkeley Judicial Institute, told Law.com that it’s “difficult to develop relationships with clients if you don’t have face-to-face contact.”

There is one advantage, though, with family law, it can be helpful to have witnesses, especially children, testifying in an environment in which they feel safe, Fogel said. “In person court is a very intimidating environment,” Fogel said.

Johnston-Walsh supervises law students who act as court-appointed counsel for children in the child welfare system.

“It’s more challenging to engage with young children,” she said. “Students have been using games to engage them on Zoom and having to shed their professional dimension to put a client at ease,” such as wearing a T-shirt or bright colors.

“The law school students have been teaching me techniques,” Johnston-Walsh said.

Lintal said law students also need to learn how to “engage with clients of diminished capacity.”

Getting Ahead in Hybrid

Just as important for new law grads as knowing how to connect with clients and judges in a virtual setting is, of course, knowing how to remotely connect with colleagues and more senior lawyers within their own firms and organizations.

Law schools are seeking to address these uniquely modern problem as well.

“Career planning has changed since needing to prepare students for Zoom interviews, so again considering what to wear, whether to sit or stand, what their background and lighting look like” is important, Diller said.

“Once they get a job, working in a hybrid workplace is hard for new lawyers when they depend on communications like informal interactions,” Diller said, adding that when communicating remotely via email/chat/text, “you lose tone of voice.”

Johnston-Walsh and Lintal also addressed this in their paper: “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 in unplanned interactions in office environment. The richness of the dialogue adds to the learning experience for law students and value to clients as well,” Johnston-Walsh and Lintal wrote. “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.”

“This is the new status quo: Learning how to supervise interns remotely,” Lintal said. “It was a sharp learning curve that has leveled out and is continuing to evolve. This is here to stay.”

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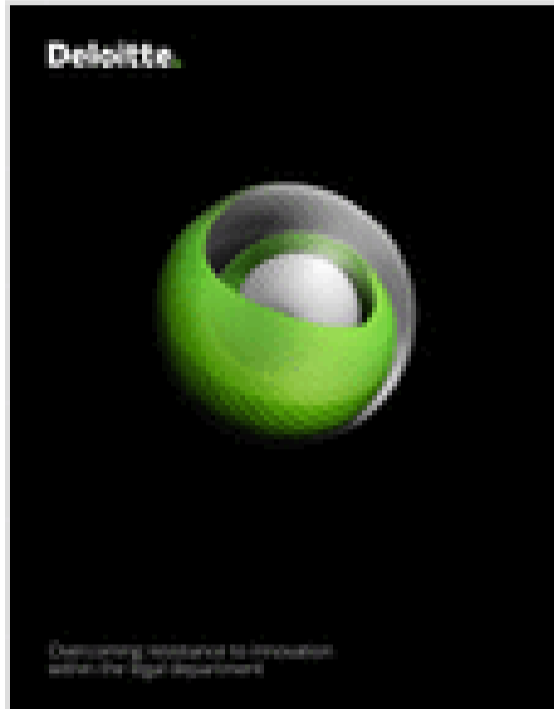
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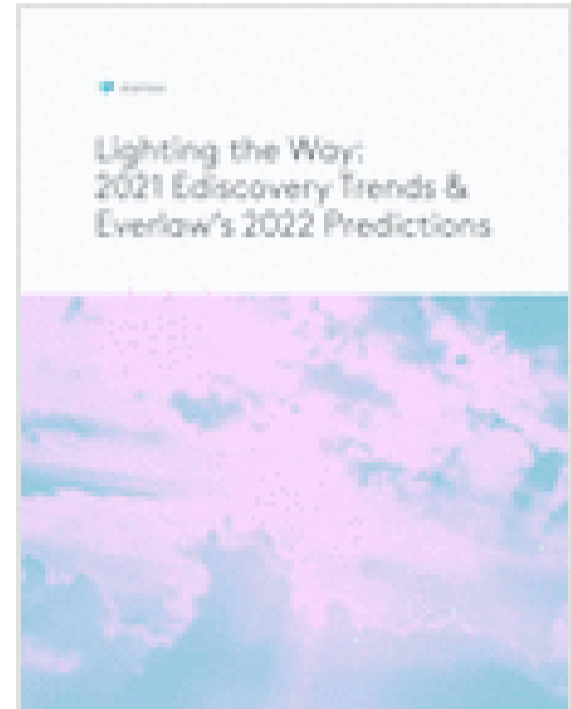
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