

Certainly Uncertain: Facilitating Law Student Professional Growth and Well-Being Through Supervision in Light of COVID-19

Sarah Fishel, Kellie Wiltsie, and David DeMatteo

I. Introduction

2020's preparations for the fall semester of legal education in the United States looked unlike those of any previous year. By the time this article was submitted, COVID-19 had infected over four million people and claimed over 200,000 deaths nationwide.¹ The novel coronavirus pandemic had claimed more American lives than World War I,² and the numbers have risen far further since then. The changing landscape of the virus dramatically altered life as we knew it: Schools closed; graduations were canceled; employees are working from home; Americans abroad were called home; we stopped going to the grocery store, to the park, to visit our friends and families; and after several months, we are now collectively wondering "what comes next?"

The answer? Uncertainty. Prior to the fall 2020 semester, law schools took different approaches to reopening. Some of the top-ranked schools announced that they would continue remote-learning protocols through the end of the calendar year, while others announced that they would resume face-to-face learning; most adopted a hybrid model involving a combination of remote and face-to-face teaching that could quickly be transitioned if the virus took a

Sarah Fishel is a 7th-year JD/PhD student at Drexel University. **Kellie Wiltsie** is a 5th-year JD/PhD student at Drexel University. **David DeMatteo** is a Professor of Law and Professor of Psychology at Drexel University, and Director of Drexel's JD/PhD Program in Law and Psychology. We are extremely grateful to the following people for their consultation and assistance with this manuscript: Erica Briant, the Community Engagement Unit Supervising Attorney with Legal Aid of Southeastern Pennsylvania; Professor Richard H. Frankel, the Director of the Federal Litigation and Appeals Clinic at Drexel University Thomas R. Kline School of Law; Angelys Torres and Logan Cole, Drexel University Thomas R. Kline School of Law Class of 2021.

1. *United States COVID-19 Cases and Deaths by State*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/covid-data-tracker/#cases> (last visited Oct. 17, 2020).
2. Carol R. Byerly, *War Losses (USA)*, INT'L ENCYCLOPEDIA OF THE FIRST WORLD WAR (2014), https://encyclopedia.1914-1918-online.net/article/war_losses_usa/2014-10-08. Of course, since the article was submitted, the COVID-19 death toll has continued to rise at an astronomical rate, passing many other events and diseases that have led to mass casualties.

turn for the worse as flu season approached.³ Meanwhile, legal educators across the country were faced with the task of balancing quality legal education with safety.⁴ Although online learning may mitigate the risk of exposure to the virus, a survey of over 1600 law students revealed that forty percent were considering taking a break from their legal education “until things return to normal,” and fifty-six percent thought that their disrupted spring 2019 semester rendered their education “less effective” than in the traditional classroom setting.⁵

However, the Fall 2020 semester offered a unique opportunity for innovation. In the spring, schools were forced to close with little notice, little training, and little guidance. For the fall, all of that changed. Law schools were able to learn from the pandemic’s first few months to encourage technological literacy and experimentation. Legal educators were able to model resilience and adaptability in the face of uncertainty, teaching students important lessons about fiduciary duty, collaboration across different platforms, professional responsibility, and caring for the physical and emotional health of others more than the bottom line.⁶ William Widen, a professor at the University of Miami School of Law, aptly reflected: “[D]istance learning now contributes to future professional success. It is not a question of preparing for change. Change is here.”⁷

For law students, the changes they experienced in school reflected a new job market waiting for them after they graduate. In addition to the effects COVID-19 has had on the bar exam and the renewed debate regarding diploma privileges,⁸ the traditional field of law has been forced to transform itself—and fast. What began as makeshift home offices are turning into semipermanent ones as many “Big Law” offices remain remote.⁹ Fewer people are making the daily commute to commercial workspaces, even in areas where restrictions have been lifted.¹⁰ Working from home has blurred the already nearly invisible line many lawyers

3. Amanda Robert, *Coronavirus and Law Schools: Numerous Schools Cancelling In-Person Classes*, ABA J. (Mar. 11, 2020, 10:15 AM), <https://www.abajournal.com/news/article/At-least-seven-law-schools-to-close-or-cancel-classes-because-of-coronavirus>.
4. Karen Sloan, *‘Doused With a Bottle of Bleach’: A Vision of How Law Schools Will Reopen in the Fall*, LAW.COM (May 27, 2020, 2:37 PM), <https://www.law.com/2020/05/27/doused-with-a-bottle-of-bleach-a-vision-of-how-law-schools-will-reopen-in-the-fall/?slreturn=20200626221703>.
5. Richard Vedder, *Is a Law School Meltdown Coming?* FORBES (June 8, 2020, 9:00 AM), <https://www.forbes.com/sites/richardvedder/2020/06/08/is-a-law-school-meltdown-coming/#5edf2fea3b36>.
6. William H. Widen, *The Only Question for Law School Re-Openings*, JURIST (June 29, 2020, 4:56 PM), <https://www.jurist.org/commentary/2020/06/william-widen-law-schools-reopening/>.
7. *Id.*
8. Valerie Strauss, *Why This Pandemic Is a Good Time to Stop Forcing Prospective Lawyers to Take Bar Exams*, WASH. POST (July 13, 2020, 2:45 PM), <https://www.washingtonpost.com/education/2020/07/13/why-this-pandemic-is-good-time-stop-forcing-prospective-lawyers-take-bar-exams/>.
9. Debra Cassens Weiss, *More BigLaw Firms Close or Require Remote Work Because of Coronavirus Threat*, ABA J. (Mar. 16, 2020, 12:10 PM), <https://www.abajournal.com/news/article/more-biglaw-firms-close-or-require-remote-work-because-of-coronavirus-threat>.
10. Clark Twiddy, *The New Normal: Adapting to a Changed Reality*, VRM INTEL (June 11, 2020), <https://vrmintel.com/the-new-normal-adapting-to-a-changed-reality>.

draw between their work and personal lives, and the forced isolation, loneliness, and added stressors of family life have affected lawyer well-being.¹¹ Despite these challenges, a recent survey of lawyers across legal settings revealed that ninety-two percent believe that their firms have been adequately meeting client needs, and sixty-seven percent would like to maintain some form of remote work after their offices reopen.¹²

The nature of legal work is also changing. The legal industry has adapted changes in its billing, mailing, and communication technologies.¹³ The American Bar Association (ABA) has created a new resource to guide professional practice and development in response to the pandemic.¹⁴ Even the most conservative of our legal institutions has been revolutionized. In May 2020, the Supreme Court of the United States held remote hearings that were livestreamed for the public, and as of mid-June 2020, many more than forty courts followed similar practices.¹⁵ Still, many courts remained closed, at least to the public, and the already lengthy legal process has been further stalled for many criminal defendants and litigants.¹⁶ This has led to the rapid implementation of policies previously deemed “experimental,” such as a reduction in the use of cash bail and an increase in diversion programs.¹⁷

If the role of legal education is to prepare future lawyers for the world on the other side of the bar, then it too must change. Uncertainty became the new normal as 2020 surged forward as a year shrouded in chaos.¹⁸ As we look forward

11. This phenomenon is called “home office syndrome.” Graham K. Bryant, *Maintaining Young Lawyer Well-Being in a Pandemic*, 8 VA. B. ASS’N YOUNG LAW. DIVISION 6, 6 (2020).
12. Brenda Sapino Jeffreys, *Legal Professionals Want to Keep Working From Home, but Will That Last?*, AM. LAW. (June 11, 2020, 4:36 PM), <https://www.law.com/americanlawyer/2020/06/11/legal-professionals-want-to-keep-working-from-home-but-will-that-last/>.
13. Lyle Moran, *Will the COVID-19 Pandemic Fundamentally Remake the Legal Industry*, ABA J. (Aug. 1, 2020, 12:00 AM), <https://www.abajournal.com/magazine/article/will-the-covid-19-pandemic-fundamentally-remake-the-legal-industry>.
14. *Practice Forward: The New Normal*, ABA, <https://www.americanbar.org/initiatives/practice-forward/> (last visited Feb. 4, 2022).
15. Nina Totenberg, *Supreme Court Arguments Resume – But With A Twist*, NPR (May 4, 2020, 5:01 AM), <https://www.npr.org/2020/05/04/847785015/supreme-court-arguments-resume-but-with-a-twist>; *Audio Streaming Pilot*, UNITED STATES COURTS, <https://www.uscourts.gov/about-federal-courts/judicial-administration/audio-streaming-pilot>; Allie Reed & Madison Alder, *Zoom Courts Will Stick Around as Virus Forces Seismic Change*, BLOOMBERG LAW (July 30, 2020, 4:50 AM), <https://news.bloomberglaw.com/us-law-week/zoom-courts-will-stick-around-as-virus-forces-seismic-change>.
16. Sarah Jarvis, *Coronavirus: The Latest Court Closures and Restrictions*, LAW 360, <https://www.law360.com/articles/1252836/coronavirus-the-latest-court-closures-and-restrictions> (last updated July 1, 2021, 5:17 PM).
17. Philadelphia Dist. Attorney’s Off., *District Attorney Krasner Announces Acceleration of DAO Reforms in Response to COVID-19 Emergency*, <https://medium.com/philadelphia-justice/district-attorney-krasner-announces-acceleration-of-dao-reforms-in-response-to-covid-19-emergency-e2340f587f25> (Mar. 16, 2020).
18. In 2020, we have seen Australian bushfires, impeachment trials, the brink of a third world war, a global pandemic, and civil unrest after the murders of George Floyd, Breonna Taylor,

to future academic years and beyond, clinical supervision stands out as an area of underutilized potential for modeling ethical and responsive lawyering within the realm of legal education. The inspiration for this piece developed out of a four-way collaboration on a larger project on enhancing experiential education supervision with Professor Susan L. Brooks, associate dean for experiential learning at Drexel University Thomas R. Kline School of Law, and Professor Marjorie A. Silver, director of externship programs at Touro College Jacob D. Fuchsberg Law Center. First, this article will offer an overview of the literature on modern clinical legal supervision within the context of legal education. Next, it will discuss the changes that other helping professions have made to adapt to the events of 2020, including the move to an online, physically distanced format. Finally, it will offer evidence-based considerations informed by these other fields for adapting these strategies to the practice of supervising law students, keeping in mind the recent focus on fostering well-being as a component of professional development.

II. A Brief Overview of Modern Clinical Legal Supervision

A growing body of literature has emphasized effective supervision as the most essential element of law student training in an experiential education setting.¹⁹ In fact, the absence of effective supervision for new lawyers led to recommendations that licensing authorities require a period of supervised practice before granting full admission to the bar.²⁰ However, without specific guidelines for effective supervision, the quality of such experience can vary widely. To establish some stability within the supervisory relationship, practitioners and educators have proposed numerous models for the effective supervision of law students in a clinical setting.²¹ Although a full review of these models is beyond the scope

Ahmaud Arbery, and others. Lauren Frias, *April 9 Marked 100 Days into 2020. Here are 26 Shocking Things That Have Happened So Far*, INSIDER (Apr. 11, 2020, 1:38 AM), <https://www.insider.com/shocking-things-that-have-happened-this-year-100-days-2020-4>; Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES, <https://www.nytimes.com/article/george-floyd-protests-timeline.html> (last updated Nov. 5, 2021).

19. See, e.g., Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611, 612 (2004); Ann Shalleck & Jane H. Aiken, *Supervision: A Conceptual Framework*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 169 (Susan Bryant, Elliot S. Milstein & Ann C. Shalleck eds., 2014).
20. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 13 (2007).
21. Although a complete review of the literature on models of supervision is beyond the scope of this article, the following are a handful of examples: Peter Hoffman's Three Stages of Learning Model (recognizes the fluid dynamics of a healthy student-supervisor relationship, and that the dynamics will inevitably change over time as the parties' roles and needs change); Liz Ryan Cole's Model for Mentor Training (adds the requirement that an effective supervisor should also be a mentor to the student, trained by the law school in effective mentorship, and invested in the educational goals of the law school); Mary Jo Eyster's Self-Directed Learning Theory (students take primary role in creating learning objectives and are trained to address deficits in supervision themselves); GLACE model (emphasizes developing the skills of com-

of this article, generally they have envisioned students as active participants in their legal education;²² empowered to learn that effective action comes from thought and judgment;²³ able to demonstrate skills in real-world contexts;²⁴ and provided an opportunity to offer feedback in a manner that acknowledges the potentially problematic power dynamics inherent in supervisory relationships.²⁵

A. Relational Aspects of Clinical Legal Supervision

The modern emphasis on supervised experiential learning has created opportunities for students to develop core competencies and hone interpersonal skills necessary for professional identity development and competent lawyering.²⁶ These competencies are integral to effective lawyering: When asked what makes an effective twenty-first-century lawyer, clients emphasized communication, attentive listening, and responsiveness.²⁷ The difference between a good lawyer and a great lawyer was not how much case law they retained from their doctrinal classes, but rather how they made their clients feel.

Similarly, the difference between a good supervisor and a great supervisor can be how you make your students feel. In an effort to reflect upon the changing landscape of supervisory pedagogy, Harriet Katz interviewed thirty-nine students enrolled in the Rutgers-Camden Law School Externship Program in fall term 2004, asking them to reflect on how they learned best in their externship.²⁸ Specifically, (1) how frequently students encountered five briefly defined models of teaching (modeling, feedback, collaboration, directive supervision, nondirective supervision); and (2) how valuable those experiences were.²⁹ The students ranked modeling, feedback, and collaboration as the most valuable components of supervision. To develop a more student-centered model of

communication, reflection, and self-assessment in students involved in an experiential education placement, including journaling, reflection assignments, and checklists). See generally Blanco & Buhai, *supra* note 19 (for a review of the models); Shalleck & Aiken, *supra* note 19 (for an example of a modern framework).

22. Blanco & Buhai, *supra* note 19, at 614.
23. Jane H. Aiken & Ann Shalleck, *The Practice of Supervision*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 205, 205 (Susan Bryant, Elliot S. Milstein & Ann C. Shalleck eds., 2014).
24. Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315, 334-5 (2006).
25. Nancy M. Maurer & Robert F. Seibel, *Addressing Problems of Power and Supervision in Field Placements*, 17 CLINICAL L. REV. 145, 145 (2010).
26. Susan L. Brooks, *Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students' Professional Identity Formation*, 14 U. ST. THOMAS L. J. 412, 421 (2018); Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLINICAL L. REV. 335, 355 (2009).
27. Neil Hamilton, *The Gap Between Foundational Competencies Clients and Legal Employers Need and the Learning Outcomes Law Schools are Adopting*, 89 U. MO. KAN. CITY L. REV. 1, 8 (2020).
28. Katz, *supra* note 24, at 330.
29. *Id.*

supervision based on these results, Katz advocated for a supervisory model that incorporates these components.

Fletcher and Weinstein likewise assert that an effective model of clinical legal supervision requires that the supervisor “not only provid[es] substantive law training and carefully review[s] legal work product but also attend[s] to the issues regarding students’ emotional experiences engendered by and reactions to their legal work.”³⁰ The role of the supervisor is conceptualized as one that supports the students and corrects problematic behavior, rather than prescribing or proscribing a course of action or directing the student to adopt a particular attitude or behavior.³¹

Relationship-Centered Lawyering, based in social work principles, places emphasis on both the supervisor-student and student-client relationships. This model identifies three broad areas of competency for effective lawyering: “(a) understanding theories about the person-in-context, (b) promoting procedural justice, and (c) appreciating interpersonal, cultural, and emotional issues.³²” Through supervision the lawyer is encouraged to engage in reflection regarding microlevel constructs³³ (e.g., modeling, boundaries and limit-setting, transference and countertransference, partialization) and macrolevel constructs³⁴ (e.g., mutual interaction, shared responsibility, and cultural competence) that may influence the relationship.

This model is not alone in emphasizing extralegal factors in legal practice. The Adaptive Clinical Teaching (ACT) framework builds on multidisciplinary supervision models and integrates strategies from the fields of social work, medicine, psychology, and teacher education.³⁵ Employing ACT, supervisors model the cognitive steps involved in effective lawyering, engage students in their own professional development, and encourage discussion of the client or case that goes beyond the traditional work product focus of supervision by considering extralegal factors that may influence the students’ lawyering.

30. Laurel E. Fletcher & Harvey M. Weinstein, *When Students Lose Perspective: Clinical Supervision and the Management of Empathy*, 9 *CLINICAL L. REV.* 135, 147 (2002).

31. *Id.* at 155.

32. Susan L. Brooks, *Using a Communication Perspective to Teach Relational Lawyering*, 15 *NEV. L. J.* 477, 480 (2015). The model also emphasizes communication and offers five competencies for effective communication: (1) recognizing the importance of context, (2) focusing on awareness and clarity of communication, (3) encouraging kindness, curiosity and mindfulness, (4) creating shared meaning and generative dialogue, and (5) demonstrating to others that they matter. *Id.* at 477.

33. *See generally* Susan L. Brooks, *Using Therapeutic Jurisprudence to Build Effective Relationships with Students, Clients and Communities*, 13 *CLINICAL L. REV.* 213 (2006) (for a detailed discussion on the micro- and macrolevel constructs adopted from social work principles).

34. *See generally id.*; Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 *FLA. COASTAL L. J.* 219 (2002) (for further discussion on macrolevel constructs).

35. Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 *CLINICAL L. REV.* 517, 517-19 (2013).

B. The Role of the Clinical Supervisor

When discussing supervision within the context of legal education, it is also important to identify and clarify the role of the supervisor in educating the student. In an off-campus field placement such as an externship, the supervisor is a licensed practitioner and, as such, “the primary concern of the supervising attorney is on the work of the agency or judicial chambers.”³⁶ When the placement is an in-house legal clinic, often the supervisor is a lawyer who is also adjunct faculty, a clinical professor at the law school, or otherwise closely tied to the law school as a contract employee.³⁷ The importance of the distinction lies with each supervisor’s conceptualization of the role: A supervisor who is tied closely to the law school is more likely to have a vested interest in both the educational mission of the law school—and thus in facilitating the student’s professional identity development—and in the legal mission of the clinic to provide competent services to clients.³⁸

In addition, an in-house legal clinic supervisor is also more likely to have resources to devote to student supervision. Oftentimes, practitioner supervisors lack the time and billable hours to devote to a student supervisee’s professional development. A school-affiliated supervisor’s “billable hours” include time devoted directly to student supervision. Recognizing the growing importance of adequate supervision in clinical settings, the field has begun to emphasize early training on effective supervision.³⁹ For example, Georgetown University has offered “An Introduction to Clinical Pedagogy” as a law course since 1998;⁴⁰ Yale Law School houses a Law Teaching Program;⁴¹ and American University created a practitioner-in-residence program to “prepare [] accomplished lawyers to be clinical teachers.”⁴²

Regardless of affiliation and training experience, the legal clinical supervisor plays an essential role in the professional development of the law student. For many students, legal clinics and externships are the first chance they have to interact with a client. Thus, this is a critical developmental period wherein good habits can be modeled, practiced, and reinforced, and bad habits can be identified, examined, and remedied. Supervision can provide a framework whereby

36. Blanco & Buhai, *supra* note 19, at 611.

37. *Id.* at 612.

38. *Id.*

39. Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned from New Clinicians*, 11 CLINICAL L. REV. 49, 49 (2004).

40. Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 509 (2012).

41. *Law Teaching Program*, YALE L. SCH., <https://lawyale.edu/studying-law-yale/areas-interest/law-teaching/law-teaching-program> (last visited Oct. 17, 2020) (“Our Law Teaching Program provides outstanding training, resources, and support for JD students [...] interested in pursuing a career in law teaching including [...] clinical positions.”).

42. *Clinical Practitioner-in-Residence Program at AUWCL*, AM. U. WASH. C. L. (2021), <https://www.wcl.american.edu/academics/experientialedu/clinical/practitioners/>.

students are equipped to represent clients *and* learn from that representation for the benefit of future clients.⁴³ However, many approaches to legal clinical supervision, traditional or modern, were turned on their heads with the spread of the COVID-19 pandemic and the swift turn to online educational experiences.

III. The Pedagogical Response to COVID-19 in Psychology

The United States confirmed its first COVID-19 infection in February 2020; by March, all fifty states, Washington, D.C., and four of the U.S. territories reported cases of the virus.⁴⁴ In response, undergraduate and graduate students were required to stay away from campuses as schools began to pivot toward a remote-learning model of education.⁴⁵ For graduate students, this brought a new question: What are they supposed to do about their experiential placements? Given the relatively short time frame in which graduate students must amass academic and clinical experiences, losing a semester (or summer, or year, etc.) of work can derail professional development. However, after initial closures and adjustments to coursework and experiential learning opportunities, the response to COVID-19 differed substantially among the helping professions. Some students, particularly those in “essential” roles, such as graduate students in medicine and psychology, saw a swift return to some form of their previous roles through the introduction of telehealth services.⁴⁶ This also led to a proliferation of publications, discussed below, on the topic of supervising psychology trainees in light of COVID-19.

A. Comparing the Experiential Training of Student Psychologists and Lawyers

In light of the impact of COVID-19 on the mental health and wellness of both law students and their clients, it is imperative that clinical legal education continue to borrow from other helping professions to inform our pedagogy. Although legal clinics are not substantively the same as clinics that provide psychotherapy services, the structures are notably similar. Specifically, with regard to the structure of supervision, the actors involved are the same: the student, the supervisor, and the client. Furthermore, because of the continued care offered to clients throughout the pandemic, helping professions, like the

43. Shalleck & Aiken, *supra* note 19, at 172.

44. CDC COVID-19 Response Team, *Geographic Differences in COVID-19 Cases, Deaths, and Incidence—United States, February 12–April 7, 2020*, 69 MORBIDITY & MORTALITY WKLY. REP. 465, 465 (2020).

45. Anemona Hartocollis, ‘An Eviction Notice’: Chaos After Colleges Tell Students to Stay Away, N.Y. TIMES (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/us/colleges-cancel-classes-coronavirus.html>.

46. Telehealth services encompass a number of technologies that allow patients to remotely contact their providers for care. *Using Telehealth to Expand Access to Essential Health Services during the COVID-19 Pandemic*, CNTRS FOR DISEASE CONTROL & PREVENTION (updated June 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/telehealth.html>.

field of psychology, have seen an abundance of literature on best practices for supervising students during a pandemic.⁴⁷

Additionally, psychology training clinics “serve the dual function of treating patients with mental health disorders and training professional psychology doctoral students.”⁴⁸ In a similar fashion, legal clinics and externship placements serve the dual function of providing legal services to clients in the community and training law students. Because of these similarities in structure and purpose, a review of the changing pedagogy surrounding student supervision in psychology training clinics in the wake of COVID-19 can directly inform how legal clinics can adapt and continue to serve their students and clients competently and effectively.

To effectively orient the reader, it is necessary to first summarize how clinics train and supervise psychology doctoral students. Psychology doctoral students prepare for their career through a combination of coursework, research, and practicum training.⁴⁹ Practicum placements are required field experiences that typically take place over the course of one year, providing supervised training in clinical work and the opportunity for the doctoral trainee to develop the core competencies that are needed by psychologists.⁵⁰

Much like law students, doctoral students are expected to develop and refine common clinical competencies, including awareness of individual and cultural diversity, communication and interpersonal skills, supervision, and interprofessional/interdisciplinary skills.⁵¹ However, unlike law students, psychology graduate trainees must undergo experiential learning through structured supervision; as a component of both graduation and licensure, the American Psychological Association (APA) and state psychology licensing boards mandate doctoral students to attend and track supervision sessions with licensed clinical supervisors.⁵² Thus, supervision in psychology has a mandated structure to facilitate the development of professional competencies.

47. See, e.g., *Advice for Psychology Supervisors and Trainees on Caring for Patients During the COVID-19 Crisis*, AM. PSYCH. ASS'N (Mar. 17, 2020), <https://www.apaservices.org/practice/news/psychology-training-covid19> (for the association’s collection of resources).

48. Alisha Desai et al., *With Crisis Comes Opportunity: Building Ethical Competencies in Light of COVID-19*, 30 ETHICS & BEHAV. 401, 403 (2020).

49. *Id.* at 402.

50. Nadya A. Fouad et al., *Competency Benchmarks: A Model for Understanding and Measuring Competence in Professional Psychology Across Training Levels*, 3 TRAINING AND EDUC. PRO. PSYCH., S5-S26 (2009).

51. *Id.*

52. See, e.g., Melissa Dittman, *What You Need to Know to Get Licensed*, GRADPSYCH MAG. (Jan. 2004), <https://www.apa.org/gradpsych/2004/01/get-licensed> (requiring “supervised hours . . . rang[e] from 1,500 to 6,000 hours, depending on the state”).

B. Basic Principles of Supervision in Psychology

Supervision in the field of psychology takes on many forms, modeled after various psychological and psychosocial philosophies (e.g., psychodynamic, cognitive-behavioral, feminist), the specific training of the supervisor, and the developmental level of the student.⁵³ Despite these differences, most models of student supervision in the mental health fields involve a clinical or client-centered component, an organizational or administrative component, and a component of personal or professional support.⁵⁴ The structure of supervision therefore follows the following general outline: (1) presentation of a work sample from the student, such as a case presentation, written report, or video review of a session; (2) feedback and discussion of the work product; (3) training in a skill or concept through didactics or modeling from the supervisor; and (4) practice and self-reflection on the part of the supervisee.⁵⁵

Traditionally, a doctoral degree in the field of psychology was linked with “the construct of entry level to practice.”⁵⁶ The criterion composing “entry level to practice” was simply documentation of completion of required coursework, including, as previously noted, a requisite number of hours of supervised training.⁵⁷ Though licensure required separate study and examination,⁵⁸ psychology trainees who completed their basic coursework were considered practice-ready. As is the case in legal practice, however, practitioners routinely found that students who excelled in their coursework did not necessarily develop a commensurate intrinsic competency in their experiential work. To provide some consistency in quality of training across clinical sites and institutions, the field of psychology identified “a need for a better, competency-based definition, of readiness for entry to practice.”⁵⁹

In response, the field has seen a movement toward a competency-based model of supervision, wherein students are evaluated against specific benchmarks for development. Fouad and colleagues proposed a three-dimensional model of supervision called the “competency cube,” which describes foundational and

53. For an in-depth review of over fifty different models of psychological supervision, see Chloe Simpson-Southward et al., *How Do We Know What Makes for “Best Practice” in Clinical Supervision for Psychological Therapists? A Content Analysis of Supervisory Models and Approaches*, 24 *CLINICAL PSYCH. & PSYCHOTHERAPY*, 1228 (2017).

54. Susan H. Spence et al., *Clinical Supervision in Four Mental Health Professions: A Review of the Evidence*, 18 *BEHAV. CHANGE* 135, 137–38 (2001).

55. *Id.* at 138.

56. Carol A. Falender et al., *Defining Competencies in Psychology Supervision: A Consensus Statement*, 60 *J. CLINICAL PSYCH.* 771, 773 (2004).

57. *Id.* at 777.

58. Dittman, *supra* note 52 (“All U.S. states and Canadian provinces whose boards are members of [the Association of State and Provincial Psychology Boards] ASPPB—except Quebec and Prince Edward Island—require applicants to pass the [Examination for Professional Practice in Psychology] EPPP, a 225-question multiple-choice test developed by ASPPB on core areas of psychology, such as assessment and diagnosis, and social and biological bases of behavior.”).

59. Fouad et al., *supra* note 50, at S7.

functional competencies while considering the trainee's stage of professional development.⁶⁰ The fifteen competencies proposed by the authors are divided into concrete benchmarks for students beginning their clinical training, in the last stages of their clinical training, and at entry to individual practice.⁶¹ Of note, not only does the competency cube provide supervisors an easily accessible structured assessment for trainee skill level, it also dedicates an entire competency to the development of supervision skills in psychologist trainees.

C. COVID-19-Related Changes to the Practice and Supervision of Student Psychologists

As previously noted, the response to COVID-19 from psychology training clinics has been widespread, and it has required necessary changes to supervision and expectations of student trainees. The APA responded to the outbreak of COVID-19 by implementing extensive procedures⁶² to ensure continuity of care while complying with the Centers for Disease Control and Prevention's safety precautions, including shelter-in-place orders.⁶³ The primary response of psychologists was to transition clinical services to a telehealth model, through which psychotherapy is conducted using secure videoconferencing or phone services.⁶⁴ Beginning as early as March 2020, the APA created a repository of resources for practicing psychologists.⁶⁵ In addition to guidance on the national level, practitioners in the field responded to calls for articles on best practices in telepsychology across an array of psychological disciplines.⁶⁶ To expedite training related to telepsychology, the APA offered a four-part training seminar free to all providers through the end of September 2020.⁶⁷

60. *Id.* at S5-S26.

61. *Id.* at S6. The fifteen competencies are as follows: (1) professionalism, (2) reflective practice/self-assessment/self-care, (3) scientific knowledge and methods, (4) relationships, (5) individual and cultural diversity, (6) ethical legal standards and policy, (7) interdisciplinary systems, (8) assessment, (9) intervention, (10) consultation, (11) research/evaluation, (12) supervision, (13) teaching, (14) management-administration, and (15) advocacy. *Id.* at S9-S25.

62. See, e.g., Zara Abrams, *Ethical Guidance for the COVID-19 Era*, AM. PSYCH. ASS'N (Apr. 2, 2020), <https://www.apa.org/ethics/covid-19-guidance>.

63. Desai et al., *supra* note 48, at 402.

64. *COVID-19 and Psychology Services: How to Protect Your Patients and Your Practice*, AM. PSYCH. ASS'N (Mar. 5, 2020), <https://www.apaservices.org/practice/news/covid19-psychology-services-protection>.

65. *Office and Technology Checklist for Telepsychological Services*, AM. PSYCH. ASS'N <https://www.apa.org/practice/programs/dmhi/research-information/telepsychological-services-checklist> (last visited July 30, 2020); *Telehealth Continuing Education Resources*, AM. PSYCH. ASS'N, <https://www.apa.org/ed/ce/telehealth> (last visited July 30, 2020); *Telehealth Guidance by State during COVID-19*, AM. PSYCH. ASS'N (June 11, 2020), <https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>.

66. See, e.g., Robert M. Bilder et al., *Inter Organizational Practice Committee Recommendations/Guidance for Teleneuropsychology in Response to the COVID-19 Pandemic*, 35 ARCHIVES CLINICAL NEUROPSYCH. 647 (2020); David M. Corey & Yossef S. Ben-Porath, *Practical Guidance on the Use of the MMPI Instruments in Remote Psychological Testing*, 51 PRO. PSYCH.: RSCH. AND PRAC. 199 (2020); Jana N. Martin et al., *Telepsychology Practice: Primer and First Steps*, 5 PRAC. INNOVATIONS 114 (2020).

67. See *Telepsychology Best Practice 101 Series*, AM. PSYCH. ASS'N, <https://apa.content.online/catalog/>

After COVID-19 was declared a pandemic in March 2020, directors of ninety-three psychological training clinics indicated that their academic institutions were moving to virtual learning, and as a result the vast majority (eighty-six percent) of clinics that were remaining open were doing so by moving to a telehealth format.⁶⁸ Despite an initial dip in their ability to provide services, by mid-April 2020, ninety-four percent of clinic directors indicated that their clinics were providing “some” or “most to all” of their pre-COVID-19 services.⁶⁹ This rapid transition to telehealth services has presented psychology supervisors with many unique challenges related to student training and patient care. Namely, supervisors have had to navigate the ethical and legal obligations of learning many of these systems themselves while modeling for the student trainees how to maintain continuity of care for clients who are unsuitable for telehealth services, cope with personal stressors, educate clients on technology to provide telehealth services, and work through concerns about privacy and confidentiality when conducting therapy via videoconferencing.⁷⁰

Of direct relevance to the legal field, psychology training clinics have also had to consider the jurisdictional and licensing requirements of student trainees to practice via telehealth, provide information on risk-reduction strategies for client crises, ensure student access to necessary tools such as computers and the internet, discuss new methods of collecting client payment and signatures, brainstorm how to discuss with clients the importance of maintaining confidentiality while not in a secure location, assess client competencies with the technologies employed, consider any cultural barriers to continuity of care, and, of course, develop new strategies for supervising student practitioners.⁷¹

In two separate studies of graduate supervisees conducted before the COVID-19 pandemic, researchers found minimal quantitative differences in supervisee assessment of overall satisfaction with the supervision modality or working alliance with the supervisor between in-person and telehealth supervision.⁷² In follow-up qualitative interviews with the supervisees, they reported experiencing minimal disruption to their supervision after the switch to telesupervision.⁷³ In one of the studies, each of the students interviewed noted the importance of an effective and engaged supervisor in making the telesupervised student

product.xhtml?eid=15132 (last visited July 29, 2020).

68. Jennifer L. Hames et al., *Navigating Uncharted Waters: Considerations for Training Clinics in the Rapid Transition to Telepsychology and Telesupervision During COVID-19*, 30 J. PSYCHOTHERAPY INTEGRATION 348, 350 (2020).

69. *Id.*

70. Desai et al., *supra* note 48, at 402–413.

71. Hames et al., *supra* note 68, at 352.

72. Kevin R. Tarlow et al., *Comparing In-Person Supervision and Telesupervision: A Multiple Baseline Single-Case Study*, 30 J. PSYCHOTHERAPY INTEGRATION 383, 387 (2020); Shiloh E. Jordan & Erika M. Shearer, *An Exploration of Supervision Delivered via Clinical Video Telehealth (CVT)*, 13 TRAINING & EDUC. PRO. PSYCH. 323, 326 (2019).

73. Tarlow et al., *supra* note 72, at 388; Jordan & Shearer, *supra* note 72, at 327.

comfortable. They described an effective supervisor as one who is open, supportive, and communicative and has a familiarity with the technology utilized.⁷⁴ Of note, in Tarlow’s study, all three students surveyed noted that if given the option, their preference would be in-person supervision;⁷⁵ however, in Jordan and Shearer’s study, all twelve students surveyed reported that they would recommend telesupervision to other trainees.⁷⁶

The field of psychology is still working through many of the logistical issues related to a monumental and almost immediate paradigm shift in traditional supervisory pedagogy. Furthermore, most student clinicians rotate their training experiences each summer. In March 2020, supervisors and training sites had the benefit of changing their approach to supervision and client care with supervisees with whom they had more than six months of face-to-face experience. They could rely on that relationship and rapport to bridge the physical gap, the missed interpersonal cues, and the inevitable awkward glitches and glimpses into others’ personal lives. Now they will have to start the supervisor-supervisee relationship completely online. Despite these challenges and the uncertainty of what comes next, legal clinical educators can use these lessons learned to overcome some of the challenges inherent to telesupervision and those unique to telesupervision in the legal clinical context.

IV. Considerations for Adapting Clinical Legal Supervision

The concept of learning from other professions, and specifically psychology, is not new—legal educators have borrowed and adapted strategies from many different fields to help develop competent, effective lawyers.⁷⁷ Additionally, the idea of embracing indeterminacy and uncertainty in clinical legal education has been emphasized in the field.⁷⁸ Clinics have often provided teachers the space to instruct law students on escaping “their oft misleading assumptions,” distrusting “the quest for certainty,” and embracing “doubt as the first step to creativity and good lawyering.”⁷⁹ We are not suggesting that clinical supervisors pursue degrees in psychology or engage in extensive telehealth trainings to effectively supervise their clinical students; rather, we suggest that this esteemed practice of relying on interdisciplinary strategies to advance the field can be particularly useful in the face of unprecedented circumstances.

The Council of Chairs of Training Councils, which oversees doctoral and other training programs for psychologists, provided a set of principles that

74. Tarlow et al., *supra* note 72, at 387–88.

75. *Id.* at 388.

76. Jordan & Shearer, *supra* note 72.

77. Deborah L. Borman and Catherine Haras, *Something Borrowed: Interdisciplinary Strategies for Legal Education*, 68 J. LEGAL EDUC. 357, 367–73 (2019).

78. Robert D. Dinerstein & Elliott S. Milstein, *Learning to Be a Lawyer: Embracing Indeterminacy and Uncertainty*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 327, 327 (Susan Bryant, Elliott S. Milstein & Ann C. Shalleck eds., 2014).

79. *Id.* at 346.

should guide decisions regarding trainees in light of the uncertainty brought by COVID-19. The four principles are: (1) *balance*—keep in mind the various obligations to students, patients, legal and ethical authorities, and personal and public safety; (2) *developmentally sensitive trainee focus*—recognize the trainee’s base level of competency under normal circumstances and under the shifting expectations and responsibilities brought by COVID-19; (3) *flexibility and creativity*—best practices may not always be achieved under these circumstances, so supervisors should utilize creative thinking to meet the personal and professional needs of the trainee and the clients served in an ethical and efficacious manner; and (4) *social responsiveness*—supervisors should aim to practice multicultural humility when considering the needs of their trainees and clients, including an understanding of the power differential ingrained in the supervisor/supervisee dyad.⁸⁰

Legal clinical supervisors can apply these four overarching principles (balance, developmental sensitivity, flexibility, and social responsiveness) to their changing supervision strategies in the wake of COVID-19. Adapting the lessons learned in other helping fields—particularly the field of psychology—will help strengthen the response of legal educators to the uncertainties brought by COVID-19 and the shift to a virtual learning format. Given that the supervisory relationship contains a sort of “false dyad”—really the relationship exists among the supervisor, the student trainee, and the client—the following section aims to synthesize the literature and offer considerations for legal clinical supervision given the additional challenges presented by COVID-19.

A. Reconceptualizing the Role of the Clinical Supervisor

With the move to a physically distanced world, gone are the days of the “open-door policy” for supervisors, at least in the traditional sense. Supervisors must provide a more structured approach to supervision and feedback; whether that be through weekly check-ins,⁸¹ more written feedback, or virtual office hours, supervisors may need to demonstrate to students *how* they expect communication to proceed. This necessitates a certain level of comfort with technology: Students may get distracted if their supervision is spent staring at the top quarter of the supervisor’s head, or with the video frozen half of the time. Being able to quickly solve a technological problem and jump among

80. See *Statement on Education and Training Considerations During COVID-19 Pandemic*, COUNCIL OF CHAIRS AND TRAINING COUNCILS (Mar. 23, 2020), <https://pr4tb8rrj317wdwt3xlfag2p-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/CCTC-Stmt-Education-and-Training-Considerations-during-COVID-19-Pandemic-3-23-20.pdf>. The council also provides specific recommendations: “(1) Limit in-person contact, (2) Adjust educational and licensing requirements, (3) Minimize adverse impact on trainee finances and program completion, (4) Pursue access to training beyond distance education, (5) Minimize critical resource disparities, (6) Use consultation to address challenges.” *Id.* at 1.

81. One supervisor consulted for this paper, Erica Briant, Esq., holds weekly meetings for her team to provide accountability for the students and also allow for a central space to discuss issues that may arise. She also instituted “Feedback Fridays” in which the supervisor and the student provide feedback to each other to further facilitate communication.

platforms (video versus email versus phone conversations) is integral to the success of the student-supervisor relationship.

Supervisors may also have to stretch their own competencies to help bridge the gap among student members of their team. There is a balance to be struck between overloading supervisors with new responsibilities and little direction and overloading supervisees with new responsibilities and little direction. Borrowing from models of supervision with roots in interpersonal psychology, such as relational lawyering, can help direct supervisors' behavior as they attempt to create a community among their supervisees remotely.

Accomplishing these tasks in the face of uncertainty requires a certain degree of flexibility. Supervisors must still act in their role as gatekeeper, ensuring that the students operating under them are doing so in an ethical and effective manner. However, they may also have to be more understanding of the stressors placed on themselves, their supervisees, and their clients. Personal boundaries may be pushed—operating virtually offers the individual on the other end of the video camera unfiltered access to the views and sounds of the supervisor's home life. Although it may help students to recognize that supervisors are people too and are faced with similar challenges (working from home, navigating child care, and experiencing some of the most chaotic events of the century), supervisors must also model professionalism for their students and set appropriate boundaries.

Finally, supervisors should seek training and educational opportunities where available to inform their practice.⁸² Professors who supervise law students in in-house legal clinics may have an advantage over external supervisors when it comes to accessibility of resources in this area. Law schools should provide assistance to external supervisors in whatever form they can, whether that be continuing education credits, roundtable talks, or the dissemination of competency checklists and other electronic resources.⁸³ Increased structure and clear expectations for supervisors and supervisees is more important than ever to provide concrete action steps in the face of global uncertainty.

82. For example, Lextern, a website that compiles resources for legal externships, has compiled training materials from CalEx, the Denver Law Legal Externship Program, and Roger Williams on the topic of remote supervision and supervisor training in light of COVID-19. *COVID-19 Policies and Teaching Materials*, LEXTERNWEB, <https://www.lexternweb.org/covid-19-teaching-materials> (last visited Oct. 17, 2020).
83. Some law schools have responded to this need by hosting conferences and roundtable discussions on this subject. For example, Drexel University Thomas R. Kline School of Law hosted a planning summit for legal educators titled "Leaning into Uncertainty: Ensuring Quality Legal Education During Coronavirus." *Kline Law Convenes Nation's Law Schools for Coronavirus Planning Summit*, DREXEL U. THOMAS R. KLINE SCH. L. (June 26, 2020), <https://drexel.edu/law/about/news/articles/overview/2020/June/leaning-into-uncertainty/>. The Association of American Law Schools has also created a repository of resources for legal educators. *Legal Education in the Time of COVID-19*, ASS'N AM. L. SCH., <https://www.aals.org/covid19/> (last visited July 30, 2020).

B. Responsive Supervision of Law Students

Strategies employed by supervisors should be responsive to the needs of the law students they train. For many students, COVID-19 has disrupted their career plans. Some students may now be living with parents or other family members or away from their peer support networks, and some may have lost summer internships or other job opportunities due to COVID-19; and none can really say whether the legal institutions they have prepared to enter will exist in any recognizable form by the time they graduate.

The ABA's Task Force on Lawyer Well-Being provided two relevant recommendations for law schools: (a) Recommendation 27, or the creation of best practices for detecting and assisting students experiencing psychological distress, and (b) Recommendation 33, or the provision of educational opportunities on topics related to well-being.⁸⁴ Particularly for law schools that are transitioning to a remote or majority-remote learning environment for the fall semester, clinical supervisors may be the only direct contact a student has with faculty. As such, supervisors should be cognizant of the impact of COVID-19 on the mental health and general well-being of their students. Faced with uncertainty, isolation, and financial hardship, students can develop loneliness, depression, and other mental health symptoms.⁸⁵

Supervisors should also be aware of the power dynamic that exists within the supervisory relationship and provide space for honest feedback and communication between the supervisor and the student, especially concerning student safety. For example, students may not feel comfortable going to a court session out of concern for their own health or that of close family members, or general worry regarding the pandemic. However, they may also feel pressure to participate in a court session to get a positive letter of recommendation or prove themselves in some way to their supervisor. Supervisors should normalize discussions surrounding safety and comfort, providing for flexibility and allowing for students to set their own boundaries as well.

Similarly, supervisors and legal clinics must demonstrate flexibility in their assignments to students. Students who are uncomfortable going to the courthouse may be able to contribute to research on the case, advance policy projects, or work on appeals or other legal products that do not require the same face-to-face interactions. Additionally, legal clinics closely affiliated with the law students may need to assist students whose internships or externships have changed or been eliminated because of COVID-19 to ensure that students are not unduly disadvantaged through circumstances beyond their control.⁸⁶

84. A.B.A. NAT'L TASK FORCE ON LAW. WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 1, 36-40 (2017).

85. See Bryant, *supra* note 11.

86. See Bryant, *supra* note 81 (for a discussion regarding pro bono work for students who need to meet graduation requirements).

C. Special Considerations for Client Interactions

Although the main focus of this article is within the context of the supervisor-supervisee relationship, it is also important to briefly consider the impact that COVID-19 has had on the clients served by the legal profession. Supervisors should counsel their students to consider the impact of COVID-19 and other major events on their clients' mental health, financial situation and stability, and general safety. When faced with uncertainty, individuals want concrete answers, so clients may be less inclined to accept the famous legal phrase "it depends," pushing instead for promises of outcomes that students cannot and should not provide. Supervisors and supervisees may also have to be flexible in accounting for logistical or administrative tasks that need to be completed, as clients may not feel comfortable coming in to the office to meet or sign paperwork or, alternatively, may not feel comfortable with the technology required to accomplish those tasks remotely.

V. Conclusion

The year 2020 was unlike any other, and it is yet to be seen what the following decade will bring. Most notably, the global COVID-19 pandemic brought some of the most stalwart legal institutions—law schools and the court system—to a screeching halt in many jurisdictions. As the legal community collectively looks to the future, the only certain thing is uncertainty. Professor Brian Clarke once wrote that regardless of the individual experiences law professors bring to their interactions with students, all professors can start a dialogue "about the importance of mental health, the dark side of being a lawyer, and the need for students to make conscious, intentional and meaningful choices regarding their futures."⁸⁷

Legal clinical supervisors have a unique role in helping students form their professional identities, and though there is still a long way to go in terms of helping students prioritize their well-being, no time is more important to do so than in the midst of a global pandemic and subsequent revolution in teaching and practice. When even the bar exam is undergoing thorough re-evaluation,⁸⁸ supervision may provide an alternative avenue for developing and measuring law student professional competencies. Borrowing from other helping professions, particularly the field of psychology, can help inform best practices for moving forward through the other side of COVID-19 and provide students the support they need to succeed throughout their legal careers and face whatever challenges come next.

87. Brian S. Clarke, *Coming Out in the Classroom: Law Professors, Law Students and Depression*, 64 J. LEGAL EDUC. 403, 415 (2015).

88. Strauss, *supra* note 8.