

# Education & Practice

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## Legal Education and Mental Health During a Pandemic

Stigma, shame, and fear. These obstacles frequently play a major role in an individual's decision not to seek help when suffering from mental health and substance use disorders. Too often, lawyers, judges, and law students find themselves wrestling privately with frustration and despair as an addiction or mental health problem dominates their real life and threatens their career.<sup>1</sup>

In recent years, there has been a dramatically intensified focus on well-being issues and concerns in legal education and the legal profession in general.<sup>2</sup> The result has been the creation and publication of a nearly overwhelming volume of reports and information designed to explain the challenges faced by law students, lawyers, judges and other legal professionals, and provide resources to those in need.<sup>3</sup>

The first step toward solving a problem is to acknowledge its existence, and it is clear that across the nation and in Virginia, there is an unprecedented level of acceptance of the reality that legal education and the profession of law have a lot of work to do when it comes to mental health and wellness.

While many studies have been done, support structures put into place and information distributed widely, the next important step is overcoming fear and the reluctance to seek treatment because of the stigma associated with mental health and addiction issues. Law students, in particular, have concerns about revealing problems and seeking treatment because of the "character and fitness" aspects of admission to the Virginia State Bar and the bars of other jurisdictions, which is understandable in light of the probing nature of that process.<sup>4</sup>

To make matters worse, law students are contending with new stresses and strange circumstances associated with COVID-19 pandemic that is affecting the way legal education is being delivered now and likely will be for most or all of this academic year.<sup>5</sup>

So, what can law school leaders and practicing lawyers do to help law students (and each other) through these difficult times? I have a few modest and basic suggestions.

First, continue the discussion about mental health and wellness. The more discussion we have, the more the stigma will be eroded away. On this point, I have shared with law students I teach at William & Mary Law School the story of my own children, all three of whom are college athletes, when they were being recruited as distance runners. During each campus visit, one of the resources routinely showcased as an important asset was the availability of mental health counseling with a sports psychologist or another mental health professional. If it is widely accepted that high-level athletes benefit from various forms of mental health counseling and treatment, it should be equally accepted and recognized that such services are a benefit to law students and not a sign of weakness.

Second, make sure that law students are aware that there are many counseling options. Each of Virginia's eight law schools provides information and access to mental health services, and for individuals who are still apprehensive about utilizing services in any way associated with a law school or university, there is also free, confidential and first-rate support and services available from the Virginia Judges and Lawyers Assistance Program ("VJLAP", formerly called "Lawyers Helping Lawyers").<sup>6</sup>

Third, emphasize that seeking treatment will not block admission to the Virginia State Bar<sup>7</sup>, nor is it likely to have that effect in other jurisdictions.<sup>8</sup> However, ignoring problems is almost certain to make them worse.

Fourth, be creative, ask for input and ideas from the law students, and admit freely that we are all in uncharted waters. None of us has ever attended school or attempted to practice law during a pandemic before having to deal with the realities of COVID-19. While it is important to give law students and each other the confidence associated with smart planning and strong leadership, it is also important to acknowledge that there are a lot of unknowns and plenty of individuals have good ideas to offer. This pandemic presents opportunities for innovation and improvement in education if we pay attention and are willing to get rid of the "that's the way we've always done it" thinking.

Seattle Seahawks quarterback Russell Wilson, who was born and raised in Richmond and graduated

from the same high school I attended, wrote this for "The Players Tribune" in 2014<sup>9</sup>:

"If we start being honest about our pain, our anger, and our shortcomings instead of pretending they don't exist, then maybe we will leave the world a better place than we found it."

He wasn't talking about legal education or the practice of law, but his words apply with equal force to those subjects. If we approach and respond to the COVID-19 pandemic the right way, and if we acknowledge our vulnerabilities, we will come through this stronger and better for the experience. Let's make sure that our law students understand that.

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*Kevin E. Martingayle, Chair*

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1. Patrick Krill and Bree Buchanan, American Bar Association's "[Anti-Stigma Campaign](#)" (last viewed August 31, 2020).
2. *See generally*, Lauren Henderson and Bill Henderson, "[What needs to change to improve mental health in the legal profession?](#)" (last viewed August 31, 2020); "[Mental Health Resources for the Legal Profession](#)" (last visited August 31, 2020); "[Lawyer Well-Being](#)" (last viewed August 31, 2020).
3. *Id.* *See also*, Virginia State Bar's "[The Occupational Risks of the Practice of Law](#)", May 2019 (last viewed August 31, 2020).
4. *See*, Hemant Chauhan, "[Understanding the Bar Exam Character and Fitness Process](#)", BARBRI, March 15, 2019, (last viewed August 31, 2020); Virginia Board of Bar Examiners' "[Character & Fitness Overview](#)" (last viewed August 31, 2020).
5. *See generally* The Association of American Law Schools' "[Legal Education in the Time of COVID-19](#)" (last viewed August 31, 2020).
6. *See* <https://vjlap.org/> (last viewed August 31, 2020).
7. Justin Mattingly, "[Virginia panel scraps mental health question after law school student push.](#)" Richmond Times-Dispatch, February 8, 2019 (last viewed August 31, 2020).
8. David Jaffe and Janet Stearns, "[Conduct Yourself Accordingly: Amending Character and Fitness Questions To Promote Lawyer Well-Being.](#)" American Bar Association, January 22, 2020 (last viewed August 31, 2020).
9. *See* Tyler Brooke, "[Russell Wilson Claims He Used to Be a Bully in Story about Domestic Violence.](#)" Bleacher Report, October 2, 2014 (last viewed August 31, 2020).

## VBBE Adapts the Virginia Bar Exam

Faced with the restrictions and concerns of COVID-19 the Virginia Board of Bar Examiners decided to move forward in unprecedented ways to allow our newly graduated students to gain admittance to the Virginia State Bar. Due to these concerns, the Board authorized an additional 2020 exam date option. All timely-filed applicants for the July 2020 bar exam were given the option to sit for the July exam, take a one-day essay-only exam in Richmond on September 10, or carry forward (without fee) to the February 2021 exam. Out of 705 total applicants, 441 selected July, 232 selected September, and 32 carried forward to February 2021. The September option of the one-day exam was provided for those who were not comfortable or otherwise not prepared to sit for the July exam.

The July bar exam took place at three locations in Roanoke. Of the total number registered, 431 applicants actually sat for the exam (a few carried forward to February at the last minute or did not show up). Anyone who did not show was automatically carried forward to the February 2021 exam.

In preparation for the unique circumstances surrounding the July exam, the Board consulted with the Virginia Department of Health and followed CDC guidelines and state government restrictions. Each applicant was required to follow health and safety protocols or was denied entry to the exam. This included, but was not limited to, wearing a cloth face mask at all times, having their body temperature checked before entering the exam area, maintaining social distance of at least six feet at all times possible, and not attending the exam if exposed to COVID-19 or exhibiting symptoms. They were also required to complete a COVID-19 screening survey before the exam, and reaffirm their responses at the exam each day. Multiple test locations were utilized for the July exam: the Berglund Center, the Hotel Roanoke, and the local Holiday Inn. Multiple entrances were used, staggered arrival and departure times, and applicants were seated at least six feet apart to maintain safety protocols.

The July exam actually went very smoothly and without any incidents. Many applicants expressed their appreciation for having the exam given as usual and provided compliments on the planning and execution. VBBE staff did a phenomenal job of creating a safe environment and administering the exam under less than optimal circumstances. All of the applicants came prepared and no one had to be turned away for health or other reasons. Both the health department and the local police were very helpful with the expert assistance.

The September 10, 2020 exam will be in person at the Greater Richmond Convention Center with the same health and safety protocols. This one day exam will include nine Virginia essay questions and ten multiple choice questions but will not include the Multistate Bar Examination component. Looking forward, the February 2021 exam is anticipated to be the traditional two-day Virginia bar exam in person in Norfolk, Va. The filing deadline for the February 2021 exam is December 15, 2020.

24 jurisdictions administered an in-person bar exam in July. Currently, 15 jurisdictions plan to administer an in-person bar exam in September, and 4 plan to administer an in-person exam in October. 4 jurisdictions administered a remote exam in July. As of now, 20 jurisdictions plan to administer a remote exam in October. The Board declined to adopt a remote exam option in Virginia due to the unmitigated security risks and inequitable access issues inherent in a remote exam.

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*Catherine Crooks Hill*  
*Secretary-Treasurer, Virginia Board of Bar Examiners*

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# Getting the Most Out of Your Judicial Internship

Legal training has changed greatly over the past several decades, in large part as a result of what became known as the MacCrate Report. In July 1992, the ABA Task Force on Law Schools and the Profession, chaired by renowned attorney Robert MacCrate, issued a 414-page report that criticized the state of American legal education and called for a practice-oriented approach—as opposed to a theory-oriented approach—to legal education in order to narrow the gap between law school and the practice of law. Among other things, the MacCrate Report suggested mandatory externships with government agencies, judges, and *pro bono* legal assistance clinics to ensure that graduating law students are ready to actually *practice* law. In other words, the Report proposed that law schools focus not only on their graduates merely passing the bar exam, but on ensuring that graduates are prepared to actually interact with clients, with other attorneys, and with the courts. Although there was much controversy associated with what amounted to a recommendation to fundamentally change how legal education is delivered, most law schools eventually agreed that additional practical training would benefit both their students and the practice of law generally. The question was how to incorporate practice-oriented activities without sacrificing the traditional substantive law subjects. After all, there were only so many credit hours a law student could reasonably take in a semester. One suggestion—that law schools add a fourth year, what might be called a “practicum” year—was entertained briefly but received little traction for obvious reasons. A few law schools converted their 3L year into purely practical training, but that forced students to learn a great deal of substantive law material on their own. Most law schools responded to the Report’s recommendations by increasing the availability of accredited clinics, externships, and internships. In many cases, these options were offered without grades—or even credits—to help reduce the stress associated with an overloaded schedule. There is little dispute that today’s law school students graduate with a much better appreciation of the practice of law than their predecessors, and the trend toward increased practice-based legal education continues.

The opportunity to serve as a judicial intern is one of the best ways to prepare law students to enter the practice of law. Judicial interns interact with judges, with attorneys, and with court clerks. They see the practical aspects of filing complaints, arguing dispositive and pretrial motions, and resolving discovery disputes. If they are in a circuit court or an appellate court, they see the persuasive briefs attorneys file to support their positions. Judicial interns observe actual trials with real attorneys and, if in circuit court, with real jurors. They get to see judges hand down rulings, decide cases, and sentence criminals. The confluence of the various aspects of practicing law in large part occurs in the courthouse, and justice plays out in the courtroom. What a wonderful opportunity, one that most judges did not have when they were in law school. With that in mind, I offer five suggestions to assist law students in getting the most out of their judicial internship experience.

1. Determine What You Want to Get Out of Your Judicial Internship. If you were asked when you showed up on the first day of your internship what your goal for the summer or semester was, it likely would be something like, “to do whatever the judge wants me to do” or “to keep the judge happy.” And that’s fine. But if you have not done so already, you should formulate some personal goals for your internship. Do you want to hone your research and writing skills? Are you looking to develop a writing sample for possible future employment? Would you prefer to focus on criminal or civil cases to the extent you have some say? Do you want to make specific contacts as you explore post-law school job opportunities? Would you like to watch a jury trial? Do you want to spend some time in the Clerk’s Office developing a better understanding of what actually goes on there? Do you want to visit other courts or law enforcement facilities in your city or county? In short, figure out what *you* want to get out of the internship experience to the extent you are given the flexibility to pursue some of those goals. And if you discuss with your judge what it is that you would like to do, he or she most likely will be happy to assist to the extent possible.

2. Look for Opportunities to Research and Write. For most attorneys, the success of their practice is tied directly to their ability to persuade, to advocate for their clients, and to convince the

factfinder that their position is correct. This includes the ability to research applicable law and then apply that research to the facts of a given case. As a judicial intern, you will likely have the opportunity to prepare bench memoranda, to draft orders, or perhaps to draft letter opinions. Take advantage of these opportunities. Don't be afraid to ask the judge to clarify an assignment or explain a case that does not seem to make sense; judges, at least most of them, remember all too well what it was like to be a law student. Ask for feedback once you complete an assignment, and learn from that feedback. The written product you provide to the judge is the kind of work new law firm associates perform, and the more you practice—and the more you incorporate prior feedback—the better your writing will become. You also will have the opportunity to view briefs from opposing sides, and you will quickly recognize what is persuasive and what is not. Too often briefs from attorneys are poorly written and improperly cited (if there are cites at all), fail to focus on the determinative issues, or—perhaps most disturbing—make *ad hominem* attacks on opposing counsel. When judges see this kind of work, they undoubtedly wonder whether the same inattention to detail, shallowness of research and analysis, or unprofessionalism will carry over into other areas of the attorneys' practice, including in the courtroom. And don't make the mistake of thinking that judges don't talk amongst themselves about attorneys; they do. They talk about the good attorneys as well as those who, politely stated, need some improvement. Do not underestimate the importance of your reputation. Take advantage of the opportunity to research and write.

3. Don't Underestimate the Value of Observing Court Proceedings. As a judicial intern, you almost certainly will have the opportunity to observe court proceedings. Your tendency will be to focus on the substantive law aspects of the case, based on what you have learned at law school, which is fine. But also make sure that you view the proceedings from a few other perspectives. Watch the attorneys. How do they interact with the in-court clerk and the bailiff before the judge enters the courtroom? How do the lawyers treat one another? Do they cut off each other? Are they professional? Do they act like they might be friends outside the courtroom? How do the attorneys interact with the judge? Are they properly deferential? Do they appear to look forward to questions from the judge, or do

they do everything they can to avoid them? Are they persuasive when they argue? Do they concede points that are unwinnable? Are they reading from a script or conversing with the judge more freely? How do the attorneys relate to jury members? Do they adequately explain issues, or do they rely on legalese and bloated words? What attorney styles seem to work best, and what aspects do you plan to adopt into your own practice? You will be surprised at how easy it is to identify good lawyering and bad lawyering. Absorb as much as you can from your court observation time.

4. Look for Opportunities to Interact with Attorneys. Once you graduate from law school and pass the bar exam, you will join an elite group of professionals. Practicing law can be very stressful, and one of the best ways to minimize the inevitable stress is to get to know other attorneys with whom you will be practicing. When you take the time to get to know people, and perhaps break bread with them, you eventually will be able to trust them as fellow professionals, and they will be able to trust you. You will not have to worry that they will intentionally make you look bad, or take advantage of your inexperience, or talk ill of you behind your back. So, to the extent you can, try to meet as many attorneys as you can while a judicial intern. Go to young lawyer bar association events to which you are invited. Spend time with any law clerks in your courthouse. Look for opportunities to meet with attorneys who graduated from your law school, as you will have a common bond. With permission of your judge, talk to the attorneys at the conclusion of a hearing or a trial. Introduce yourself, give them some positive feedback regarding their performance, and ask them about some of the tactical decisions they made in court. Ask whether you might be able to seek them out when they have some free time to find out more about their area of practice or what advice they might have for new attorneys. Demonstrating such an interest might even lead to job prospects in the future. So look for opportunities to interact with attorneys.

5. Try to Learn How to "Think Like a Judge." One of the reasons, if not the primary reason, law firms value attorneys who have interned with a judge is that you will have had the advantage of seeing things from a judge's perspective. You hopefully will learn how a judge thinks. And make no mistake about it; judges think differently than 5

lawyers. Their job demands it. An attorney's job is to present one side of a dispute as passionately as possible, to find the cases that support his or her position, and to be an advocate for his or her client. The judge's task, by contrast, is to discern what is legal or equitable when presented with the positions of the two advocates, two versions of the same scenario that often are diametrically opposed. As a judicial intern, you will likely see opposing briefs from attorneys and have the opportunity to distill the facts and the law for the judge. You will see how the judge sorts through those briefs—and your memoranda—and how he or she relies on specific portions of the documents. You will hear attorneys advocate for their clients in the courtroom and see what the judge finds persuasive. You will hopefully have the opportunity to discuss various cases with the judge and gain an appreciation for how the judge ultimately will rule, which facts are relevant and which are red herrings, how the judge applies the law to a given set of facts, and how the judge approaches the difficult task of sentencing. Maybe you will even get to the point where you can predict how the judge will rule. Firms value your internship experience because they want you to be able to guide them regarding these very issues. So take the time to establish a good rapport with your judge, look for opportunities to discuss cases and the law, ask him or her what it was like to be an attorney and how the judge's experiences prepared him or her to don the robe, and explore with him or her the privilege of upholding the rule of law. Try to learn how to think like a judge.

Judges who agree to take on judicial interns want their interns to have a good experience. They want their interns to succeed. They want their interns to research, to write, to observe, to interact, and to pick their brains. They want their interns to see what happens in the courtroom and what happens on the metaphorical judicial side of the bench. And they hope, and most likely expect, that their interns will be better attorneys because of their internship experience.



*The Honorable  
David W. Lannetti*

*Norfolk Circuit Court*

*The views advanced in this Article represent commentary “concerning the law, the legal system, [and] the administration of justice” as authorized by Virginia Canon of Judicial Conduct 4(B) (permitting judges to speak, write, lecture, teach, and otherwise participate in extrajudicial efforts to improve the legal system). These views, therefore, should not be mistaken for the official views of the Norfolk Circuit Court or the opinion of the authors in the context of any specific case.*

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- CLE ideas or programs of interest
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Direct submissions to the newsletter editor, Leslie Haley, at [lath@parkhaley.com](mailto:lath@parkhaley.com)



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