

Creating Legal First Responders: Requiring Service Hours for Admission to the Bar

By Christine E. Cerniglia¹

ABSTRACT

When Covid-19 created unprecedented medical needs in 2020, the medical profession swiftly responded by creating pathways for medical students to graduate early and become first responders. The medical profession quickly adapted and students asked to enter the profession early in order to serve. As frontline responders to the pandemic, the medical profession cultivated a deeper understanding of their responsibility and integrity to serve the larger community.

Meanwhile, the legal profession wrestled with how to maintain the *unnecessary* barriers to enter the profession instead of focusing on the unprecedented legal needs created by the pandemic. Decisions to safely administer a bar exam or allow entry through diploma privilege were important concerns but did not focus on the needed legal response for lawyers to address the access to justice gap. The heavy dependence on the National Conference of Bar Examiners became evident as many jurisdictions waited for NCBE's decisions when states could release the standardized exams, while bar applicants were at the mercy of decision-makers and unable to enter the profession.

This article highlights the disruption to bar admissions during the summer of 2020 and advocates that supervised practice and a service requirement is now possible for admission into the profession. The article proposes a 500-hour service requirement for admission to cultivate service leadership and create legal first responders to address the rising legal needs in the community. The supervised practice rules adopted this past summer by thirty-one jurisdictions showcases the ability to implement such a requirement and allow the profession to come together to implement change.

I. INTRODUCTION

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At the end of February 2020, the CDC reported the first case of community spread of Covid-19.² Around the same time, Washington State reported the first death and the governor declared a state of emergency.³ By the first week of March, both Florida⁴ and New York⁵ reported their first cases. By March 7th, New York's governor declared a state of emergency.⁶ Two days later, Florida's governor declared an emergency.⁷ By the second week of March, the country began to see historic cancellation of events; the St. Patrick's Day parade in New York,⁸ The National Basketball Association⁹ as well as The National Hockey Association¹⁰ suspended their seasons. On March 13th the president declared a national emergency.¹¹ Around this same time, schools and universities began to prepare for an extended spring break and a transition into an online format.¹² Teachers scrambled to redesign their

² PRESS RELEASE, CENTERS FOR DISEASE CONTROL AND PREVENTION, CDC CONFIRMS POSSIBLE INSTANCE OF COMMUNITY SPREAD OF COVID-19 IN U.S. (February 26, 2020), <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>.

³ WA. PROCLAMATION NO. 20-05 (Feb. 29, 2020), <https://www.governor.wa.gov/sites/default/files/20-05%20Coronavirus%20%28final%29.pdf>.

⁴ PRESS RELEASE, FLORIDA HEALTH, DEPARTMENT OF HEALTH ANNOUNCES TWO PRESUMPTIVE POSITIVE COVID-19 CASES IN FLORIDA (Mar. 1, 2020), <http://www.floridahealth.gov/newsroom/2020/03/030120-two-presumptive-positive-covid19-cases.pr.html>.

⁵ PRESS RELEASE, OFFICE OF N.Y. GOVERNOR, GOVERNOR CUOMO ISSUES STATEMENT REGARDING NOVAL CORONAVIRUS IN NEW YORK, (March 1, 2020), <https://www.governor.ny.gov/news/governor-cuomo-issues-statement-regarding-novel-coronavirus-new-york>.

⁶ N.Y. EXEC. ORDER NO. 202 (Mar. 2, 2020), https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.pdf.

⁷ FLA. EXEC. ORDER NO. 20-52 (Mar. 9, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-52.pdf. For a chronology of Florida executive orders see <https://www.flgov.com/2020-executive-orders/> (last visited February 22, 2021).

⁸ PRESS RELEASE, NYC SAINT PATRICK'S DAY PARADE, *Parade Postponed* (March 12, 2020), <https://www.nycstpatriksparade.org/2020/03/12/press-release-parade-postponed/>.

⁹ PRESS RELEASE, NBA, *NBA to suspend season following Wednesday's game* (March 11, 2020), <https://www.nba.com/article/2020/03/11/nba-suspend-season-following-wednesdays-games>.

¹⁰ PRESS RELEASE, NHL, *NHL statement on coronavirus* (March 12, 2020), <https://www.nhl.com/news/nhl-coronavirus-status/c-316155530>.

¹¹ PROCLAMATION NO. 9994, 85 F.R. 15337 (Mar. 18, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05794.pdf> <https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05794.pdf> (“Declaring a National Emergency Concerning the Novel Coronavirus Disease (Covid-19) Outbreak”).

¹² Vic Micolucci, *Florida universities move online to avoid coronavirus*, NEWS 4 JAX (March 11, 2020), <https://www.news4jax.com/health/2020/03/10/uf-recommends-faculty-move-classes-online-amid-coronavirus-outbreak/>; see also Lauren Camera, *SUNY, CUNY Move to*

classes to an all-online format.¹³ By this time, the pandemic was unfolding upon the world.

During this timeframe, one of the most iconic images was the U.S. Navy ship, USNS Comfort, built for international humanitarian medical relief.¹⁴ By the end of March, medical students especially those in New York City¹⁵ As nicknamed, the “super-acting interns” were provided resources to orient them into the current Covid-19 treatment plans and proper use of personal protective equipment.¹⁶ An online learning community was created to provide additional resources like guidelines, videos, and webinars on the current challenges in treatment options and health care protocols. The earlier “match day” in March allowed for medical students to enter the field based on their placements.¹⁷ Essentially, the medical profession was able to uphold the Hippocratic oath in one of the most historical times of need for medical care in the country.

In contrast, the legal profession hesitated to make decisions whether state bars should go forth with an in-person exam, how to safely administer

Online Courses Amid Coronavirus, US NEWS (March 11, 2020), <https://www.usnews.com/news/education-news/articles/2020-03-11/suny-cuny-move-to-online-courses-amid-coronavirus>.

¹³ University of Richmond, *Legal Education and Remote Learning: Law Schools in the State of Pandemic*, JOURNAL OF LAW AND TECHNOLOGY: BLOG POSTS (March 28, 2020), <https://jolt.richmond.edu/2020/03/28/legal-education-and-remote-learning-law-schools-in-the-state-of-pandemic/>; see also Florida Department of Education Press Office, *Florida Department of Education Compiles Resources During Extended Spring Break*, FDOE (March 20, 2020), <https://www.fldoe.org/newsroom/latest-news/florida-department-of-education-compiles-resources-during-extended-spring-break.stml>

¹⁴ Bill Chappell, *Hospital Ship USNS Comfort Arrives in New York to Ease Coronavirus Pressure*, NPR (March 30, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/30/823826987/hospital-ship-usns-comfort-arrives-in-new-york-to-ease-coronavirus-pressure>.

¹⁵ Brendan Murphy, *How a med school in a COVID-19 hot spot is deploying early graduates*, AM. MED. ASS'N (April 17, 2020), <https://www.ama-assn.org/residents-students/residency/how-med-school-covid-19-hot-spot-deploying-early-graduates>; see also M.R.F. Buckley, *An option to serve in COVID-19 fight, Graduating med students given early degree chance to help in hospitals*, THE HARVARD GAZETTE (MAR. 30, 2020), <https://news.harvard.edu/gazette/story/2020/03/med-students-offered-early-degree-option-to-help-in-covid-19-fight/>; Abigail Abrams & Jamie Ducharme, *Meet the Medical Students Becoming Doctors in the Middle of a Pandemic*, <https://time.com/5820046/medical-students-covid-19/>.

¹⁶ See AMA, *COVID-19 and early medical school graduation: A primer for M4's*, (April 7, 2020), <https://www.ama-assn.org/residents-students/residency/covid-19-and-early-medical-school-graduation-primer-m4s>; see also John S. Andrews, et. al., *AMA Innovations in Medical Education Webinar Series*, AM. MED. ASS'N (April 15, 2020), <https://www.ama-assn.org/system/files/2020-04/april-15-2020-covid-19-webinar.pdf>.

¹⁷ Murphy, *supra* note 15.

in person exams or whether the exam should be delayed or canceled.¹⁸ By early April, some law students petitioned for diploma privilege.¹⁹ Some schools faced lawsuits by angry students demanding a return of their tuition because services were no longer provided on campus.²⁰ School administrators and state bar examiners felt pressure and many bar takers continued to study with uncertainty about test-taking conditions, structure or content.²¹ Many purchased bar review materials unsure whether the exam would even take place.²²

By April, the rising legal issues were apparent and legal aid lawyers were needed from housing to employment law issues, estate planning and bankruptcy; Small business owners needed assistance to understand, access and comply with the guidelines of the recently-enacted CARES Act and some law schools responded to the need²³. Disaster declarations were present in all states, but funding not provided for disaster legal services²⁴. Sadly, as the summer of 2020 unfolded and legal needs continued to rise, a collective professional response to *serve* was not present in the same manner as the medical profession.

The legal profession is now at a crossroads with the ability to shift admission to required service hours. Law students should understand the profession's culture of service and a call to respond to legal needs, especially

¹⁸ Marsha Griggs, *The Epic Fail*, 64 How. L.J. 1 (Fall 2020) (describing in great detail the events leading up to the bar exam and the lack of preparation, inability to adapt and respond to such a crisis). (Available at Griggs, Marsha, <https://ssrn.com/abstract=3657379> or <http://dx.doi.org/10.2139/ssrn.3657379>).

¹⁹ Joe Patrice, *Law School Student Governments Petitioning for Diploma-Privileged Admission*, ABOVE THE LAW (April 3, 2020), <https://abovethelaw.com/2020/04/law-school-student-governments-petitioning-for-diploma-privileged-admission/>; see also Kelsey J. Griffin, *Harvard Law School Students Advocate for Licensing Without Bar Exam*, The Harvard Crimson (April 4, 2020, 4:26 PM) <https://www.thecrimson.com/article/2020/4/3/Harvard-coronavirus-law-school-petition-bar-exam/>.

²⁰ Hailey Konnath, *Students Say U of Miami, Drexel Should Refund Tuition Fees*, LAW 360 (April 9, 2020, 6:23 PM), <https://www.law360.com/classaction/articles/1262184/students-say-u-of-miami-drexel-should-refund-tuition-fees>.

²¹ Griggs, *supra* note 18, at 14.

²² *Id.* at 12.

²³ See Robert Bartlet, *CARES Act and Small Businesses*, BERKELEY LAW, <https://www.law.berkeley.edu/research/business/cares-act-and-small-businesses/> (last updated Jan. 14, 2021).

²⁴ Governmental Affairs Office, *COVID-19 National Emergency Declared: FEMA Should Act Now to Activate ABA Disaster Legal Services*, ABA WASHINGTON LETTER (Sept. 29, 2020)(available at https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/sept-2020-wl/fema-wl-0920/).

for those who are unable to afford access to an attorney.²⁵ A requirement to pass an exam does not cultivate service, however, a 500-hour service requirement would create a cultural shift in the profession, create an army of attorneys prepared for pro bono service and better equip new lawyers for practice. Most importantly, such a service requirement would return the profession to the principle of a governing class of lawyers dedicated to the public good and service toward the common good.²⁶

II. A BRIEF HISTORY OF ADMISSION INTO THE PROFESSION, EXAMINATION AND THE NEED FOR A SERVANT-LEADER MODEL

In the early 1800's, supervised practice was the model for entry into the profession with most lawyers trained by a mentor-attorney.²⁷ Peter Joy's article, *The Uneasy history of Experiential Education* describes the American Bar Association's and academic institutions' influence upon shaping entrance into the profession to the modern admission requirements: three years of law school and a bar examination. Founded in 1878, the ABA pushed for a certification process for the profession.²⁸ Academic institutions embraced the call to improve the quality and consistency in legal training and by the 1890's the casebook method advanced by Harvard became the new standard.²⁹ While apprenticeship was part of the formation process during this timeframe, such practice requirements changed to ensure uniformity and quality in the apprenticeship and also open access for those without mentors necessary to meet the practice requirement.³⁰ Prior to the ABA's involvement, a free market reigned, and many states allowed anyone to practice law without regard to professional training or education.³¹ As time progressed, more case study and less supervised practice became the norm,

²⁵ For example law students as first responders to legal needs. See Melissa Gibson Swain & JoNel Newman, *Helping Haiti in the Wake of Disaster: Law Students as First Responders*, 6 INTERCULTURAL HUM. RTS. L. REV. 133 (2011).

²⁶ Russell Pearce, *Lawyer and Public Service, The Historical Perspectives on Pro Bono Lawyering*, 9 AM. U.J. GENDER SOC. POL'Y & L. 171, 175 (2001) (describing the special duties attorneys have to the public and how a survey of elite lawyers in the 1960's reflected the obligations of duty as a governing class, whereas a more recent survey reflects obligations as "hired mouthpieces" for clients rather than "special obligations to the common good").

²⁷ Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools* 122 DICK. L. REV. 551, 552 (Feb. 2018) (describing this apprenticeship style learning with close supervision from an attorney but also lacking uniformity among attorneys for best practices).

²⁸ *Id.* at 557. "The ABA's interest in standards for entrance into the legal profession was directly related to the general attack on the legal profession that had occurred primarily from 1836-1870." *Id.*

²⁹ *Id.* at 553.

³⁰ *Id.* at 552.

³¹ *Id.* at 558 (describing some states as allowing any person with "'good moral character' the right to practice law").

eliminating the requirement to serve the community.³² The apprenticeship requirement was relegated to the responsibility of academic institutions.³³

The profession slowly descended into a model of self-interest or hired legal counsel rather than a larger notion of service; The idea that lawyers are a governing class, leaders in the community and “above self-interest, and accordingly . . . uniquely able to discern and pursue the common good.”³⁴ The past several decades showcases a prevalent view that lawyers are hired mouth pieces with the ability to win arguments rather than steer the larger community to just principles under the law,³⁵ and the perception of lawyers as moral leaders guiding society to just or righteous causes.³⁶

A service requirement for admission into practice would transform the profession and foster a servant-leadership model. Minimal changes have occurred since the turn of the century in relation to admission to practice. As law schools grew in number and size, the disconnect between learning and training to practice has become a norm.³⁷ The collaboration between bar admission and legal education ultimately challenges how the profession is able to come together to move the needle toward a supervised practice and service requirement. In 2015, in a subtle but bold move, the New York bar pushed forward to reformat pathways to admission.³⁸ The change to require fifty hours of pro bono service as part of the bar admission was an endorsement toward a practice requirement to serve.³⁹ The New York court also explicitly endorsed experiential education.⁴⁰

³² Tulane Law School was the first to require pro bono hours for graduation. Caroline Durham, *Law Schools Making a Difference—An Examination of Public Service Requirements*, 13 MINN. J. L. & INEQUALITY 39, 39 (1995).

³³ Joy, *supra* note 27, at 553.

³⁴ Pearce, *supra* note 26, at 171.

³⁵ *Id.* at 175.

³⁶ *Id.*

³⁷ Joy, *supra* note 27, at 555 (discussing the de-emphasis on experiential education in U.S. law schools as a “curious phenomenon” when compared to other countries with a practice requirement).

³⁸ 22 N.Y.C.R.R. § 520.18 (2015); see N.Y. Ct. App., Notice to the Bar, New Skills Competency Requirement for Admission to the Bar (Dec. 16, 2015), <https://www.nycourts.gov/ctapps/news/nottobar/nottobar121615.pdf>.

³⁹ 22 N.Y.C.R.R. § 520.16; see also Steve Grumm, *New York’s 50 hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons*, ABA STANDING COMM. ON PRO BONO AND PUB. SERV. (October 2013), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_p_b_preadmission_pro_bono_requirement_white_paper.pdf.

⁴⁰ ADVISORY COMM. ON N.Y. ST. PRO BONO ADMISSION REQUIREMENTS, REPORT TO THE CHIEF JUDGE OF THE ST. OF N.Y. AND THE PRESIDING JUSTICES OF THE FOUR APP. DIV. DEP’T 8 (Sept. 2012), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-03/ProBonoBarAdmissionReport.pdf>.

In that same year, the ABA adopted several new standards for legal education including one important standard which imposed on law schools a six-credit experiential requirement.⁴¹ This experiential learning standard was born from compromise, as California schools originally pushed to require fifteen experiential credits with a specific call to connect students to real cases and practical training.⁴² Instead, the six-credit compromise was approved to also allow for simulation courses to count rather than solely through externships and clinics.⁴³ Simulation course design caused further questions about what counts as experiential credit.⁴⁴

In a 2014 article, the data indicates “84% of law schools already have the capacity to provide a clinical experience to every law student without adding courses or faculty.”⁴⁵ In the recent C-SAL study, twenty-three percent of schools now require either a law clinic or field placement experience.⁴⁶ The median participation rate for clinics is around half of the law student population.⁴⁷ Beyond clinics and field placement courses, other innovations are now part of law school curricula, such as, labs⁴⁸ or practicum courses⁴⁹ although not defined in the ABA’s experiential standard. This new era of legal education however is not without tension, as students feel pressure to

⁴¹ ABA, LEGAL EDUCATION AND ADMISSIONS TO THE BAR (Standards Archives 2014), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standard_s/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_book_marked.pdf

⁴² TASK FORCE ON ADMISSIONS AND REGULATION REFORM, PHASE II IMPLEMENTATION, The State Bar of California (Nov. 7, 2014), <http://www.calbar.ca.gov/About-Us/Who-We-Are/Board/Task-Force-on-Admissions-Regulation-Reform>.

⁴³ *Id.*; see ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 303(a)(3).

⁴⁴ See ABA Managing Director’s Guidance Memo 3–4 (March 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf.

⁴⁵ Allison Korn & Laila L. Hlass, *Assessing the Experiential (R)evolution*, 65 VILLA L. REV. 713, 763 (2020) (citing Robert Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 43 (2014)).

⁴⁶ Robert R. Kuehn, Margaret Reuter & David Santacroce, *2019–20 Survey of Applied Legal Education* 12, Center for the Study of Applied L. Ed. (Sept. 11, 2020), https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f8e46e59e39d4dc82e70a54_Report%20on%202019-20%20CSALE%20Survey.10.19.20.pdf.

⁴⁷ *Id.* at 13.

⁴⁸ Korn & Hlass, *supra* note 45, at 745 (showcasing lab courses as a new innovation between the years 2012–2018).

⁴⁹ *Id.* at 764.

enroll in bar preparation courses and many law schools now offer a semester course dedicated to bar exam review.⁵⁰

A service requirement for admission into the profession would foster curricular changes and endorse a larger value for the profession. Explicitly, a required service component would set a collective value within the profession that the role of lawyers as servant-leaders is necessary during this time of crisis and transformation in our country and to restore faith in our systems of justice and the rule of law. Boldly stated, the servant-leader model should be the future for the profession. This model of leadership is one focused on the needs of others or the organization as the highest priority with a clear lens on those in our society most vulnerable or least privileged.⁵¹ The servant leader views and treats their neighbor as they do themselves with stewardship and humility as an inherent part of this leadership style.⁵² The core values of this type of leader is someone who knows thyself, who questions and reflects on the purpose of their life.⁵³ These "core values are developed through study, introspection, and consultation and discussion with others."⁵⁴ During this time of unparallel economic crisis, the need for more servant leaders could not be greater. Organizations with servant leadership tend to be more efficient and outperform.⁵⁵ Government and non-profits benefit from this type of leadership model.⁵⁶ In a client relationship, the servant leader's strength in empathy and listening encourages strong relationship centered lawyering.⁵⁷ This type of lawyer becomes a trusted advisor to a client, a model in the government setting and someone to help shape future policy or create synergy within an organization. To cultivate more lawyers as servant leaders should be a value goal for the profession.

Growth toward servant leadership occurs principally through a feedback loop in which the lawyer who aspires to be a servant leader focuses in any period of time on one or two of the virtues, qualities, or skills of a servant leader and practices them, subject to reflection and feedback from others.⁵⁸

⁵⁰ David L. Hudson Jr., *Schools Add Bar Exam Class to Curriculum and Find Success*, ABA J. (April 1, 2016, 1:40 AM), https://www.abajournal.com/magazine/article/schools_add_bar_exam_class_to_curriculum_and_find_success.

⁵¹ Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. OF ST. THOMAS L. J. 358, 383 (2009), <https://ir.stthomas.edu/ustlj/vol6/iss2/5/>.

⁵² *Id.* at 383–384.

⁵³ *Id.* at 387.

⁵⁴ *Id.*

⁵⁵ *Id.* at 390.

⁵⁶ *Id.* at 391.

⁵⁷ *Id.*

⁵⁸ *Id.* at 393.

Law schools, especially clinical education and post graduate mentor programs are the best incubators for such transformation. Clinical pedagogy is founded upon teaching reflective practice and introspection. Moreover, clinical education is dedicated to the principal to serve those most vulnerable and least privileged with many classroom discussions engaging students to understand their place of privilege, as a lawyer. Many clinical students express how the experience transformed them to find their calling or purpose in life. While clinical education engages students in this type of learned practice, not all law schools have the resources to provide such in-depth clinical experiences. A service requirement for entry into the profession would transform curricula and possibly create funding sources through federal or state grants to align with post-graduate supervised practice. The time for a servant leadership transformation could not be more critical at this juncture in American history, but evolution is slow and the bar exam is an expected norm for entry despite the disruption last summer.

IV. THE DISRUPTION TO THE BAR EXAM IN THE SUMMER OF 2020

As the spread of Covid-19 increased, safety concerns for an in-person exam became a pressing issue for both examiners and administrators. All law schools transitioned to some type of online or hybrid teaching format by the beginning of April.⁵⁹ In Marsha Griggs' article, *The Epic Fail*, she documents the events surrounding the summer of 2020 and the inability of bar examiners to adapt.⁶⁰ The article provides great detail about the timeline to an online format and issues regarding grading standards.⁶¹ In April, an in-person bar exam presented many health concerns which resulted in a series of protests and resistance.⁶² During the height of uncertainty, law professors advocated for immediate action listing six options for admission to the profession which includes supervised practice and counting clinical courses.⁶³ The article highlights the need for legal services and the importance of admissions for a new class of lawyers to serve; the authors specifically highlight how legal aid offices rely on a new class of attorneys entering the profession to then work

⁵⁹ Taylor DiChello, *Coronavirus Conversion: Will Online Law School Classes Become a Permanent Change?*, ABA FOR LAW STUDENTS: STUDENT LAWYER BLOG (March 26, 2020), <https://abaforlawstudents.com/2020/03/26/will-online-law-school-classes-become-a-permanent-change/>.

⁶⁰ Griggs, *supra* note 18, at 12–19 (documenting many moments over the summer as state bars adjusted but ultimately did not adequately adapt).

⁶¹ *Id.* at 7.

⁶² *Id.* at 7-9.

⁶³ Claudia Angelos, et. al., *The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action*, 1284 SCHOLARLY WORKS (2020), 2-6 <https://scholars.law.unlv.edu/facpub/1284>.

in their offices.⁶⁴ One option detailed includes the requirement of 240 hours of supervised practice with an affidavit submitted by the supervising attorney.⁶⁵ However, little transformation occurred to the state bar exams despite the diligence in advocacy.

As the summer of 2020 progressed, the heavy reliance of state bars upon the National Conference of Bar Examiners (NCBE) to administer exam became apparent.⁶⁶ At the end of March, the NCBE announced they would release their decision in early May about the administration of the July bar exam, thus leaving many states waiting for the May announcement.⁶⁷ Likely due to push back, the NCBE announced they would administer two fall bar exams in September.⁶⁸ This decision created further turmoil for many applicants who questioned whether their state would hold steadfast to administer a July bar exam. On May 5th, the NCBE confirmed they would make the July bar exam available and on June 1st the NCBE announced they would provide a smaller bar for those jurisdictions in need of an emergency remote option.⁶⁹ Again, state bars were hinged to the decisions of the NCBE rather than to boldly transform, innovate and create new pathways. This dependency upon the NCBE paralyzed states and prevented them from adapting to circumstances changing in the field, again showing a disconnect between practice and entrance into the profession. The decision by each state bar changed over the course of the summer and best depicted in the below visual published in The Bar Examiner article, *Covid-10 and the July 2020 Bar Exam*.⁷⁰

⁶⁴ Angelos, *supra* note 62 (highlighting how Covid-19 “will dramatically increase the need for legal services, especially among those who can least afford those services”); *see also* Claudia Angelos, et al., *Licensing Lawyers in a Pandemic: Proving Competence*, HARVARD L. R. BLOG (April 7, 2020), <https://blog.harvardlawreview.org/licensing-lawyers-in-a-pandemic-proving-competence/>.

⁶⁵ Angelos et al., at 5.

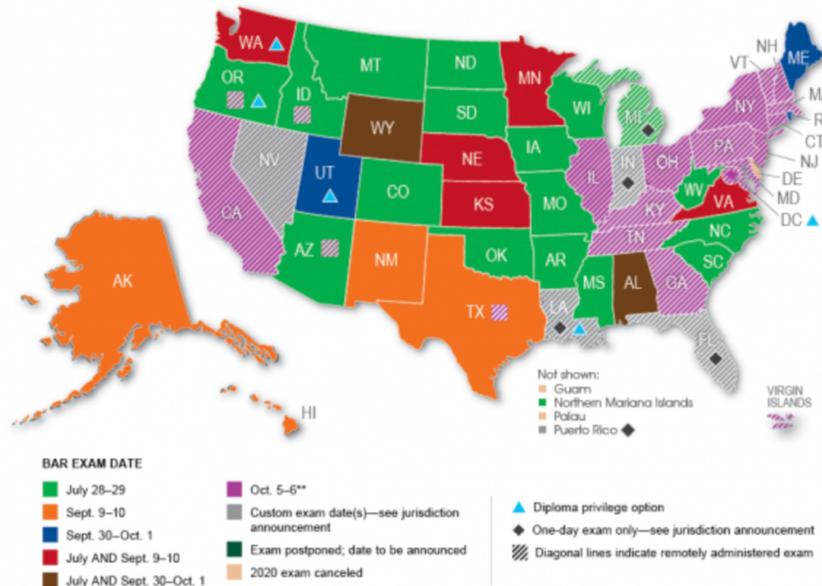
⁶⁶ Griggs, *supra* note 18, at 9 (citing Stephanie Francis Ward, *Decision About Releasing July Bar Exam Materials Will Come in May, NCBE says*, ABA J. (Mar. 27, 2020, 1:43 PM), <https://www.abajournal.com/news/article/ncbe-decision-about-releasing-july-barexam-materials-will-come-in-may>).

⁶⁷ *Covid-19 and the July 2020 Bar Exam*, 89 THE BAR EXAMINER 12 (Fall 2020), <https://thebarexaminer.org/article/fall-2020/covid-19-july-bar-exam/> (showing a visual timeline of NCBE decisions).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See* Visual Chart & Data, *July 2020 Bar Exam: Jurisdiction Information*, NAT’L CONF. OF BAR EXAMINERS, <https://www.ncbex.org/ncbe-covid-19-updates/july-2020-bar-exam-jurisdiction-information> (maps last updated Sept. 24, 2020, 11:34 AM).



**The October 5-6 exam is a remotely administered exam consisting of 100 MBE questions, 3 MEE questions, and 1 MPT question. Jurisdictions may choose which of these test materials to use. Scores earned on the remotely administered exam will not qualify as UBE scores.

Note: Jurisdictions continue to monitor the COVID-19 situation closely. While the information provided here is current as of the posting date, this information is subject to change as jurisdictions adjust their plans according to the evolving situation. You are strongly advised to consult with the jurisdiction's bar admissions agency directly for the most current information.

To state simply, the summer was an emotional roller-coaster for many test-takers who scurried to find pathways to licensing.⁷¹ Law schools and bar administrators felt pressure between those who wanted an in-person experience dismissing concerns around Covid versus those who feared contracting the virus. Each jurisdiction's decision to go forth in some manner likely balancing pressures which included safety, mask-mandates, remote exam options and the additional costs of facilitating multiple exams. Bar officials consulted with health care experts as safety protocols rapidly changed and eventually each state made a decision to either hold steadfast to the traditional exam format, implement an online remote option, waive the exam requirement and allow for diploma privilege or provide a new option for entry. Notably, many states allowed supervised practice either as a criteria for admission or temporarily until the next bar administration. In reflection, the challenges and disruption demonstrated the ability to implement change to bar admissions. Ultimately, each jurisdiction chose either the traditional in-person format, a remote exam, cancelling the exam entirely, granting diploma privilege or allowing supervised practice.

A. The majority of states chose to administer the traditional in-person exam format

The impact of the virus in each jurisdiction occurred at various times with climbing or waning positivity rates. Thus, exam administration

⁷¹ Griggs, *supra* note 18, at 11.

decisions unfolded based on state's respective needs over the summer. Thirty-two states administered an in-person exam and four of those states allowed⁷² The in-person option posed safety concerns, additional cost, and liability issues. To ensure safe social-distancing, bar administrators had to find additional sites and lease venues to host the exams which required additional costs, additional personnel or volunteers and personal protective equipment protocols to administer the exam.

B. The uncharted and harmful territory of administering a remote exam

Online remote exams were administered with new artificial intelligence, eye monitoring and facial recognition software which caused several issues.⁷³ Bar examiners were in new uncharted territory as they never relied on this type of technology in such a widespread manner and had to monitor exam quality and ensure integrity in the administration.⁷⁴ The administration of a remote option was in reliance on the NCBE's announced October 5-6th testing dates for an emergency remote option. Again, each state's reliance on the NCBE was critical with twenty states opting to use NCBE's emergency remote testing date.⁷⁵ Only five states drafted their own questions rather than rely on NCBE's remote exam.⁷⁶ Michigan was the only state to offer a remote one-day administration of an exam.⁷⁷ Three states, Arizona⁷⁸ Idaho⁷⁹ and Oregon⁸⁰ offered a remote exam in the summer of 2020 as an option and those same states continued to offer a remote exam for the February 2021 bar exam along with several other states.⁸¹ Texas also allowed for a remote option for the October 5th administration in addition to their scheduled September exam and also allowed remote testing for⁸²

⁷² *July 2020 Bar Exam: Jurisdiction Information*, supra note 68; see also *Covid-19 and the July 2020 Bar Exam*, supra note 65.

⁷³ See, e.g., Stephanie Francis Ward & Lyle Moran, *Thousands of California bar exam takers have video files flagged for review*, ABA JOURNAL (Dec. 18, 2020, 2:15 PM), <https://www.abajournal.com/web/article/thousands-of-california-bar-exam-takers-have-video-files-flagged-for-review>.

⁷⁴ *Id.*

⁷⁵ *Covid-19 and the July 2020 Bar Exam*, supra note 67.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *July 2021 UBE Remote FAQ*, ARIZONA JUDICIAL BRANCH, <https://www.azcourts.gov/cld/Attorney-Admissions/Admission-by-UBE-testing-in-Arizona/October-2020-Remote-Bar-Exam-FAQs> (last visited June 29, 2021).

⁷⁹ *Bar Exam*, Idaho State BAR, <https://isb.idaho.gov/admissions/bar-exam/> (last visited Apr. 4, 2021).

⁸⁰ *Oregon State BAR*, <https://www.osbar.org/admissions> (last visited Apr. 4, 2021).

⁸¹ *February 2021 Bar Exam: Jurisdiction Information*, NAT'L CONFERENCE OF BAR EXAMINERS (March 3, 2021, 9:13 AM), <https://www.ncbex.org/ncbe-covid-19-updates/feb-2021-bar-exam-jurisdiction-information/>.

⁸² *All Announcements*, Texas Board of Law EXAMINERS, <https://ble.texas.gov/allnews.action> (last visited Apr. 4, 2021).

Four states chose custom dates outside of the NCBE offering,⁸³ which proved to create more harm. Nevada, Indiana, and Florida relied on ILG Technologies to assist with the online exam administration and that technology failed causing mass disruption. For example, the Indiana Supreme Court in early May issued an order to administer a one-day remote bar exam scheduled on July 28th,⁸⁴ but four days before the exam, the Court issued another order delaying the remote exam to August 4th due to technological issues.⁸⁵ On July 29th the board announced the exam would be re-formatted as an open-book where test-takers would receive the questions and submit responses via email.⁸⁶

Those test-takers in Florida experienced a similar chronology of disruption that inevitably led to a one-day online remote option. The Florida exam was originally scheduled for an in-person exam on July 28th and 29th in Tampa.⁸⁷ Traditionally, the exam is administered either in Tampa or the Orlando convention centers, but on May 5th, the Florida Board of Bar Examiners (FBBE) announced the exam would be administered both in Orlando and Tampa with proper social-distancing and required masks.⁸⁸ At the time, an executive order from Governor DeSantis required those coming into the state to quarantine for fourteen days.⁸⁹ Test-takers practiced wearing masks while studying under simulated test conditions and those from out-of-state scrambled to figure out how to travel to the state fourteen days beforehand to quarantine.⁹⁰ On July 1st, the Florida Board of Bar Examiners

⁸³ *Covid-19 and the July 2020 Bar Exam*, *supra* note 68 (specifically naming the following states: Florida, Indiana, Louisiana, and Nevada).

⁸⁴ Stephanie Francis Ward, *Indiana changes online bar exam again after 'repeated and unforeseen technical complications'*, ABA JOURNAL (July 29, 2020, 2:37 PM), <https://www.abajournal.com/news/article/state-changes-online-bar-exam-due-to-tech-issues>.

⁸⁵ In the Matter of the July 2020 Indiana Bar Examination, Case No. 20S-CB-300 (May 7, 2020), <https://www.in.gov/courts/files/order-other-2020-20S-CB-300.pdf>.

⁸⁶ Ward, *supra* note 84.

⁸⁷ <https://www.floridasupremecourt.org/News-Media/Court-News/Florida-Bar-Exam-Moves-to-On-Line-Format-in-August-2020-due-to-Pandemic>

⁸⁸ *Florida Board of Bar Examiners Moves Forward with July 2020 Bar Exam*, THE FLORIDA BAR (May 5, 2020), <https://www.floridabar.org/the-florida-bar-news/florida-board-of-bar-examiners-moves-forward-with-july-2020-bar-exam/>.

⁸⁹ Fla. Exec. Order No. 20-82 (Mar. 24, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-82.pdf; *see also*, Fla. Exec. Order No. 20-86 (Mar. 27, 2020), https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-86.pdf.

⁹⁰ Abigail Johnson Hess, *'Literal hell' - how the pandemic made the bar exam even more excruciating for future lawyers*, CNBC (Aug. 19, 2020), https://www.cnbc.com/2020/08/19/literal-hell-the-pandemic-has-made-the-bar-exam-more-excruciating.html?fbclid=IwAR2lZ7fty_PPSO4IuwAF6o-rcRHe42GYA5rtjBrzTq165fECDEIOb44qMCQ (describing story of out of state exam taker who reserved an Air B&B and the cost associated with the change in plans on the exam).

(FBBE) cancelled the in-person July bar exam,⁹¹ and provided a new exam date of August 19th as a remote online one-day exam.⁹² Two days later they pushed the exam back to August 19th so as to not interfere with Florida's state primaries.⁹³ In the meantime, test-takers experienced hardship when they downloaded the software with reports that hackers accessed bank accounts of applicants after the download;⁹⁴ others reported easy access to hack the exam,⁹⁵ which undoubtedly questioned the integrity of the bar exam. Overall, the Florida experience was harmful for both the test-takers, the FBBE and the integrity of the exam. Undoubtedly, the profession must question whether a different type of requirement such as supervised practice would restore integrity.

The majority of other states opted for the October 5th and 6th NCBE's emergency remote format. However, students in rural communities or with unstable or shared internet or those with older technology or who lack access to quiet testing spaces were especially challenged by an online remote exam.⁹⁶ Students with medical conditions also faced issues as the software would flag their activity.⁹⁷ In contrast, some test-takers had the privilege of

⁹¹ *Florida Board of Bar Examiners Cancels In-Person July Exam; Moves to an Online Format in August*, THE FLORIDA BAR (July 1, 2020), <https://www.floridabar.org/the-florida-bar-news/florida-board-of-bar-examiners-cancel-in-person-july-exam-move-to-an-online-format-in-august/>.

⁹² *Id.*

⁹³ *Florida Bar Exam Date Changed to Avoid Primary Election Day*, THE FLORIDA BAR (July 3, 2020), <https://www.floridabar.org/the-florida-bar-news/florida-bar-exam-date-changed-to-avoid-primary-election-day/>.

⁹⁴ Carolina Bolado, *Fla. Bar Exam Software Sows Chaos for Grads*, LAW 360 (Aug. 10, 2020, 10:14 PM), <https://www.law360.com/articles/1299950/fla-bar-exam-software-sows-chaos-for-grads>.

⁹⁵ Joe Patrice, *Software that Could Allow Applicants to Cheat on Bar Exam Available for about \$100*, ABOVE THE LAW (Sept. 29, 2020, 11:43 AM), <https://abovethelaw.com/2020/09/software-that-could-allow-applicants-to-cheat-on-bar-exam-available-for-about-100/>.

⁹⁶ An Open Letter from Public Interest Legal Organizations Supporting Diploma Privilege, PUBLIC RIGHTS PROJECT (Aug. 11, 2020), <https://publicrightspjct.medium.com/an-open-letter-from-public-interest-legal-organizations-supporting-diploma-privilege-20390dd50a8e>. See also Karen Sloan, *First Day of National Online Bar Exam Goes Off – With Some Hitches*, LAW.COM (Oct. 5, 2020, 3:22 PM), <https://www.law.com/2020/10/05/first-day-of-national-online-bar-exam-goes-off-with-some-hitches/>; <https://www.law.com/2020/10/05/first-day-of-national-online-bar-exam-goes-off-with-some-hitches/> (“On the equity side of things, critics have said an online exam disadvantages test takers who don’t have a quiet place to take the exam, or who lack reliable internet.”)

⁹⁷ Allie Yang, *Law Grads Faced Financial, Medical Challenges to Take the Bar This Year*, ABC NEWS (Dec. 4, 2020, 2:02 PM), <https://abcnews.go.com/US/law-grads-faced-financial-medical-challenges-bar-year/story?id=74511388>; see also Shac Swauger, *Software that*

law firm or school space with access to a designated quiet physical space or were provided computers or highspeed internet⁹⁸ while others struggled in rural communities with unstable internet or shared wifi connections or noisy households. The most egregious issue is the disparity in facial recognition software demonstrating an underlying racial bias impacting test-takers of color.⁹⁹ This type of disparity impacts the reputation and integrity of the legal profession's admission process especially when there is a significant difference in test-taking conditions.

C. The decision and impact to cancel the exam

To cancel the exam entirely was one of the most extreme decisions. Delaware, Guam, and Palau were the only three jurisdictions to cancel their scheduled exams and postpone until the next administration in 2021.¹⁰⁰ The Delaware Supreme Court's decision to cancel the exam was based on the percentage of students from out-of-state who were registered to take the bar exam and some of who were coming from areas with a high positivity rate.¹⁰¹ Delaware, however, did allow for many students to temporarily participate in supervised practice which was "designed to ameliorate the hardships."¹⁰² The limited practice privilege for Delaware bar applicants only temporarily allowed graduates to practice under a supervising attorney until the next administration of the bar exam.¹⁰³ Test-takers were left with the decision to wait or scamper and take the exam in another jurisdiction. While frustrated

monitors students during tests perpetuates Inequality and violates their Privacy, MIT TECHNOLOGY REVIEW (Aug. 7, 2020), <https://www.technologyreview.com/2020/08/07/1006132/software-algorithms-proctoring-online-tests-ai-ethics/>.

⁹⁸ Stephanie Francis Ward, *Amid claims online bar exam went well, some test-takers have a different view*, ABA JOURNAL (Oct. 20, 2020, 9:28 AM), <https://www.abajournal.com/web/article/amid-claims-that-online-bar-exam-went-well-some-test-takers-have-a-different-view>; *see also* Yang, *supra* note 97.

⁹⁹ *See* Letter from ACLU to Chief Justice and Justices of the Supreme Court of California (October 1, 2020), https://www.aclunc.org/sites/default/files/ACLU_Opp_to_Remote_Proctoring_CA_Bar_Exam_2020.10.01.pdf.

¹⁰⁰ *Covid-19 and the July 2020 Bar Exam*, *supra* note 67. When Oregon cancelled the administration of the bar exam, both Guam and Palau were left without an exam option because they relied on the Oregon exam.

¹⁰¹ Kyliegh Panetta, *Delaware cancels bar exam, candidates Left in limbo*, 47ABC (July 27, 2020), <https://www.wmdt.com/2020/07/delaware-cancels-bar-exam-candidates-left-in-limbo/>.

¹⁰² Press Release, *Delaware Supreme Court adopts limited practice, Privilege for 2020 Bar Applicants* (August 12, 2020), <https://courts.delaware.gov/forms/download.aspx?id=123138>.

¹⁰³ Supreme Court of the State Delaware Order Regarding Certified Limited Practice Privilege for 2020 Delaware Bar Applicants, (August 12, 2020), <https://courts.delaware.gov/rules/pdf/OrderCertifiedLimitedPracticePrivilege2020.pdf>.

with the impact of cancelling the exam, test-takers did not feel comfortable speaking out against the decision for fear of future licensing.¹⁰⁴

D. The compassionate decision to allow Diploma privilege and the spectrum of requirements.

Admission based on ‘diploma privilege’ is essentially admission based on the recognition of successful completion of law school; however, states chose a spectrum of options for this type of entrance.¹⁰⁵ Wisconsin, one of the few states to allow for diploma privilege, did not suffer from the disruption to the bar like the majority of states, in-state graduates from two universities simply entered the profession.¹⁰⁶

To better understand the spectrums, “[a] pure diploma privilege would make graduation from an ABA –accredited law school sufficient evidence of competence to practice law, with no requirement that the graduate take a bar exam.”¹⁰⁷ The middle spectrum requires more than a diploma, which may include a requirement to complete particular courses in law school or additional training.¹⁰⁸ For example, this diploma privilege would “add a requirement that the graduate have[sic] studied a specified set of core subject areas, completed a clinical program, or satisfied other educational prerequisites.”¹⁰⁹ The more stringent ‘diploma plus’ standard requires any number of additional steps such as, supervised practice, specific state CLE’s or trainings, or completion of a “Bridge the Gap Program.”¹¹⁰ Regardless of the type of diploma privilege, the requirements for character and fitness remain.

In the summer of 2020, five states allowed for diploma privilege: Utah, The District of Columbia, Washington, Oregon, and Louisiana.¹¹¹ Washington was one of the few states to allow for pure diploma privilege¹¹² at the urging of at least one law school dean who explained how students were impacted from the virus; thus, Washington admitted over 570 graduates

¹⁰⁴ *Id.*

¹⁰⁵ Claudia Angelos, et al., *Article: Diploma Privilege and the Constitution*, 73 SMU L. REV. F. 168, 170 (2020). At the two ends of the diploma privilege spectrum are the less restrictive ‘pure diploma’ versus the more stringent ‘diploma plus.’ *Id.* These standards vary in degree and additional requirements. *Id.*

¹⁰⁶ WIS. STAT. § 757.282 (repealed 1979).

¹⁰⁷ Angelos, *supra* note 105, at 170.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (citing examples of Bridge the Gap programs in three states).

¹¹¹ *Covid-19 and the July 2020 Bar Exam*, *supra* note 67.

¹¹² Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules, Order No. 25700-B-630 (Wa. June 12, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%20Granting%20Diploma%20Privilege%20061220.pdf>.

to register to practice law.¹¹³ Some speculate this type of open admission may have a stigma on the new class of attorneys.¹¹⁴ Oregon also granted a pure diploma privilege, in a narrow 4-3 vote by the Oregon Supreme court.¹¹⁵ The Court limited entrance to the three Oregon law schools and out of state law school graduates from schools who had a minimum of 86% pass rate on the 2019 bar exam.¹¹⁶ The decision about the pass rate for out of state schools was questioned by a law professor since not all Oregon law schools met this same threshold percentage¹¹⁷ and questions remain why the Court set the pass rate differently for out of state applicants.¹¹⁸

Louisiana as one of the few states in the country who does not rely on the NCBE, cancelled their July exam. On July 22, 2020, the Louisiana Supreme Court granted a diploma plus privilege¹¹⁹ but limited to qualified candidates who were registered for the July or October bar exams and who had not sat for a bar exam in another state.¹²⁰ The Court's order required completion of twenty-five hours of continuing legal education and enrollment in the Louisiana State Bar Association's "Transition into Practice" mentoring program.¹²¹ This decision was not met without push back by many licensed

¹¹³ Chad Sokol, *Hundreds become Lawyers in Washington state without taking bar exam Due to COVID-19 Exemption*, THE SPOKESMAN-REVIEW (updated July 30, 2020), <https://www.spokesman.com/stories/2020/jul/30/hundreds-become-lawyers-in-washington-state-without/>.

¹¹⁴ Stephanie Francis Ward, *How are things working out? 3 Utah Law grads seeking diploma privilege*, ABA JOURNAL (Sept. 1, 2020, 9:08 AM), <https://www.abajournal.com/web/article/how-are-things-working-out-for-3-utah-law-grads-seeking-diploma-privilege> [[hereinafter 3 Utah Law Grads](https://www.abajournal.com/web/article/how-are-things-working-out-for-3-utah-law-grads-seeking-diploma-privilege)]; see also John Murph, *Legal Community Responds to D.C. Court's Diploma Privilege Order*, DC BAR (Oct. 2, 2020), <https://www.dcbar.org/news-events/news/legal-community-responds-to-d-c-court%E2%80%99s-diploma-pr>.

¹¹⁵ Supreme Court Order No. 20-012 (Or., Order Approving 2020 Admissions Process June 30, 2020), <https://www.courts.oregon.gov/rules/Documents/SCO20-012Order2020BarExam.pdf>.

¹¹⁶ *Id.* § 2(a).

¹¹⁷ Derek T. Muller, *Three Curiosities of Oregon's Diploma Privilege Rule for the 2020 bar Exam*, EXCESS OF DEMOCRACY BLOG (June 30, 2020), <https://excessofdemocracy.com/blog/2020/6/three-curiosities-of-oregons-diploma-privilege-rule-for-the-2020-bar-exam> <https://excessofdemocracy.com/blog/2020/6/three-curiosities-of-oregons-diploma-privilege-rule-for-the-2020-bar-exam> (insert parenthetical Professor's Muller is a law professor at University of Iowa College of Law).

¹¹⁸ *Id.*

¹¹⁹ La. S. Ct. Order (July 22, 2020), https://www.lasc.org/COVID19/Orders/2020-07-22_LASC_BarExam.all.pdf; see also Press Release, Louisiana Supreme Ct., Announcement Regarding 2020 Bar Examination (July 22, 2020), https://www.lasc.org/Press_Release?p=2020-20.

¹²⁰ *Id.*

¹²¹ LOUISIANA STATE BAR ASSOCIATION, TRANSITION INTO PRACTICE HANDBOOK (2014), <http://files.lsba.org/documents/Mentoring/TIPHandbook.pdf>.

attorneys arguing the bar exam was not cancelled after Hurricane Katrina.¹²² The last time Louisiana waived the bar exam was in 1953 due to the Korean War.¹²³

Utah, one of the first states to decide early allowed for a diploma plus privilege¹²⁴ and emergency admission.¹²⁵ The Utah Supreme Court provided an explicit requirement of 360 hours of supervised practice stating the purpose is to “provide [graduates] with supervised training in the practice of the law and to assist the Bar and the judiciary in discharging their responsibilities to help create a just legal system that is accessible to all.”¹²⁶ Notably, Utah’s hourly requirement is more than the 250 of hours suggested by the law professors advocating for pathway options, but less than the 500 hours suggested by this article. The amount of time for supervised practice varies without precision with the most rigid promulgated by the District of Columbia.

The District of Columbia adopted a diploma plus standard which required an additional three years of supervised practice before admission.¹²⁷ The Court weighed the extraordinary circumstances and determined the three-year requirement “protects the public as consumers of legal services.”¹²⁸ The order caused confusion and many graduates felt like they were starting law school again if they chose the supervised practice pathway. The Court order also did not approve clerking for a judge as supervised practice despite the many clerkships in the District of Columbia.¹²⁹ The court specifically said, “clerking is not practice.”¹³⁰ Judicial clerkships however provide many opportunities for practical skills training and invaluable

¹²² Associated Press, *Recent Louisiana Law Grads Don’t Need Bar Exam Due to Virus*, BIZ NEW ORLEANS (July 23, 2020), <https://www.bizneworleans.com/recent-louisiana-law-grads-dont-need-bar-exam-due-to-virus/>.

¹²³ For perspective, in the Korean war 33,739 service members died. *America’s Wars*, DEP’T OF VETERANS AFFAIRS (Nov. 2020), https://www.va.gov/opa/publications/factsheets/fs_americas_wars.pdf.

¹²⁴ Stephanie Francis Ward, *Utah is the first state to grant diploma privilege during novel coronavirus pandemic*, ABA J. <https://www.abajournal.com/news/article/utah-first-state-to-grant-diploma-privilege-during-the-coronavirus-pandemic>.

¹²⁵ Order for Temporary Amendments to Bar Admission Procedures During COVID-19 Outbreak (Utah April 21, 2020), <http://www.utcourts.gov/utc/rules-approved/wp-content/uploads/sites/4/2020/04/Signed-2020.04.21-Bar-Waiver-Order-final.pdf>.

¹²⁶ *Id.*

¹²⁷ District of Columbia Court of Appeals, Order No. M-269-20 (Sept. 15, 2020), <https://www.dccourts.gov/sites/default/files/2020-09/M-269-20.pdf>.

¹²⁸ Murph, *supra* note 114 (quoting D.C. Ct. App. Chief Judge Anna Blackburne-Rigsby).

¹²⁹ D.C. App. R. §§ 46-A, 49(C)(8A).

¹³⁰ District of Columbia Court of Appeals, Order No. M-269-20.

learning experiences,¹³¹ but restrictions in state court budgets likely impacts law clerk hiring further minimizing post-graduate training opportunities.¹³² Overall, the District of Columbia's order was the most extreme under diploma privilege and the supervised practice requirement.

To implement diploma privilege was difficult requiring balance between all interests: the unprecedented deaths in our country, risk of exposure to COVID-19 in administering a bar exam and analysis of whether the integrity of a remote exam would uphold professional standards. The diploma plus privilege implemented in Utah and the mentoring program in Louisiana offer future guidance for other states to adopt similar requirements and expand supervised practice orders.

E. *Supervised Practice as a future model for entry into the profession is possible.*

The most positive movement this summer was the implementation of supervised practice rules by thirty-one states.¹³³ This is a significant moment for both legal educators, courts, and members of the bar to understand how the profession may work together to implement change through an apprenticeship supervised practice model. In analysis of the thirty-one states,¹³⁴ the majority allowed temporary provisional admission to practice with some specifically recognizing the hardship caused by delayed bar exams.¹³⁵ Some states relied on already existing student practitioner rules utilized in clinical legal education.¹³⁶

Most orders required supervision by an attorney with an active license in the state who is in good standing and without disciplinary history. Many states required the attorney to assume full professional responsibility. A majority of states required some type of certification that the supervising attorney and applicant understand the process or requirements and

¹³¹ Adele Bernhard, *Should Skills Training Be Required for Licensing?*, N.Y. ST. B.J. (Sept. 2013) (analyzing the California Task Force proposal to include practical skills training to include "Bar-approved clerkship or apprenticeship program of at least six months in duration....")

¹³² Matthew Rich, *A Wasted Opportunity: How Deferred Associates Could Have Solved Massachusetts's Need for Judicial Clerks*, 23 GEO. J. ETHICS 765, 781 (Summer 2010).

¹³³ *Covid-19 and the July 2020 Bar Exam*, *supra* note 67.

¹³⁴ An appendix to this article showcasing the research with links to each state order was compiled and analyzed as part of this article but not provided for publication. Available upon request.

¹³⁵ See Supreme Court of Georgia, *In re: Provisional Admission to the Practice of Law*, (April 17, 2020), <https://www.gabaradmissions.org/SCOrder> (recognizing the "postponement of the bar examination may limit the employment prospects and impair the livelihoods of persons who recently have graduated from law school . . .").

¹³⁶ *Covid-19 and the July 2020 Bar Exam*, *supra* note 67 (referencing Alabama, Alaska, Connecticut, Idaho, Nebraska, and South Dakota); see also Appendix, *supra* note 134.

acknowledge the agreement to supervise;¹³⁷ and some states required an understanding that the supervising attorney assumes all professional responsibility.¹³⁸ Only two states required the applicant to secure their own malpractice insurance.¹³⁹ A few states placed the responsibility on the applicant to submit the information about the supervising attorney.¹⁴⁰ Some states limited the number of applicants/mentees an attorney could supervise.¹⁴¹ Many states did not specify the years for practice experience of the supervising attorney; For those states who specified a number of years the minimum number was two¹⁴² of practice and eleven states required five years in practice before allowing supervision¹⁴³. Some jurisdictions easily adopted a supervised practice rule based on previous rules that allowed admission through supervised practice.¹⁴⁴

Those states with longstanding office study pathways for admission without the bar exam easily implemented supervised practice orders. Vermont with one of the most organized four-year law office study programs based on an apprenticeship model and required certification at each stage of study is a model to study for further expansion of supervised practice.¹⁴⁵ Both California and New York provide a pathway for entrance through an apprenticeship in a law office.¹⁴⁶ Also notable is a model previously adopted by Washington, the limited legal license technician program was relied upon

¹³⁷ Most jurisdictions require an affidavit or form either filed with the applicant's materials or submitted to the Court by the supervising attorney.

¹³⁸ Most of the thirty-one states require that the supervising attorney expressly confirm assumption of all professional responsibility. Some states however require that the supervising attorney is present or available for all proceedings or sign all documents filed with the court or approve all actions.

¹³⁹ Montana and Vermont require applicants secure their own professional liability insurance. Illinois requires the supervising attorney to maintain malpractice coverage that includes the graduate.

¹⁴⁰ Kentucky, Tennessee and Kansas require the applicant to file or submit certification.

¹⁴¹ Arkansas, Idaho, Illinois, Maryland, Pennsylvania limits supervision to two students. Washington limits supervision to three and Texas limits supervision to four students.

¹⁴² Arizona requires at minimum two years of practice before an attorney may supervise.

¹⁴³ Arkansas, Delaware, District of Columbia, Florida, Georgia, Guam, Idaho, Illinois, Maryland, Montana, and Pennsylvania explicitly require five years minimum years in practice.

¹⁴⁴ Alabama, Idaho, Massachusetts, Nebraska, and South Dakota acknowledged their student practitioner rules in adoption of supervised practice.

¹⁴⁵ See *Admission to the Vermont Bar*, VERMONT JUDICIARY, <https://www.vermontjudiciary.org/attorneys/admission-vermont-bar>.

¹⁴⁶ Legal Education, *Law Office or Judge's Chamber*, THE STATE BAR OF CALIFORNIA, <https://www.calbar.ca.gov/Admissions/Requirements/Education/Legal-Education/Law-Office-or-Judges-Chamber> (last visited April 4, 2021); *Bar Exam Eligibility*, THE NEW YORK STATE BOARD OF LAW EXAMINERS, <https://www.nybarexam.org/eligible/eligibility.htm> (last visited April 4, 2021).

to allow 2020 bar applicants who did not qualify for diploma privilege to gain access.¹⁴⁷ Notably, many states limited temporary practice to certain cases or types of court appearances,¹⁴⁸ and Illinois particularly noted the importance of service encouraging the supervising attorney to take more pro bono cases.¹⁴⁹

Ultimately, there is much to study in the thirty-one states supervised practice orders which provide great details about the parameters Courts are willing to use to allow new lawyers to enter the profession. Collectively, this summer majority of states created a cultural shift which allows for more innovation and pathways to enter the profession. Hopefully, such innovation is a launching moment for a service requirement to help address the rising legal needs of local communities and foster a culture for lawyers to take more pro bono cases.

V. THE TIME AND NEED TO CHANGE ADMISSION TO A LEGAL SERVICE REQUIREMENT HAS NEVER BEEN GREATER.

The legal needs prior to the pandemic were already at a crisis point, according to the 2017 LSC Access to Justice report, “86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help.”¹⁵⁰ The 2017 report cites that “[i]n the last year, 71% of low-income households experienced at least one civil legal problems including problems with domestic violence, veterans’ benefits, disability access, housing conditions, and health care.”¹⁵¹

The most recent surveys reflect how legal needs have skyrocketed due to the pandemic.¹⁵² Usually, in times of disaster there is a protocol for legal response in an official declaration of disaster issued by the executive branch and funding then flows into the impacted community. Funds for disaster legal services are approved and legal aid offices hire additional attorneys to

¹⁴⁷ Order Temporarily Modifying Admission and Practice Rules (May 15, 2020), <http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%20Temporarily%20Modifying%20APR.PDF>.

¹⁴⁸ See e.g., Order dated April 28, 2020, re: July 2020 Uniform Bar Examination (Mo. 2020), <https://www.courts.mo.gov/page.jsp?id=155613>.

¹⁴⁹ Illinois specifically stated under supervision in private practice that the supervisor “commit to involve the covered graduate in pro bono work.” See In re: Ill. Courts Response to Covid-19 Emergency/ Temp. Performance of Legal Servs. by Law Graduates, M.R. 30370, 2020 Ill. LEXIS 548, at *4 (Ill. July 2, 2020) (par. (g)(6)(E)).

¹⁵⁰ *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*, LSC REPORT, p. 6 (June 2017) available at <https://www.srln.org/system/files/attachments/TheJusticeGap-FullReport.pdf>.

¹⁵¹ *Id.*

¹⁵² Press Release, Legal Services Corp., *LSC Survey Finds Major Impact of Covid-19 Pandemic on Legal Aid* (July 24, 2020), <https://www.lsc.gov/media-center/press-releases/2020/lsc-survey-finds-major-impact-covid-19-pandemic-legal-aid> [hereinafter Legal Services Corp.].

address the community needs. For the first time in American history, every state had an active declaration of disaster due to the pandemic however, funding for disaster legal services was not granted despite multiple requests.¹⁵³ Legal aid offices were unable to hire attorneys to assist with the rising need. Simply stated, legal needs went unmet in the summer of 2020 and continue to be unmet. The time is ripe to create a moment for the legal profession to unite and serve.

While post-pandemic legal needs are still eerily unknown, the understanding is best described as a tidal surge not quite felt by the profession.¹⁵⁴ The emerging class of impoverished citizens who have never experienced food insecurity or housing instability foreshadows the increased demand upon civil legal services. In a recent survey by LSC, “[n]inety-four percent of grantees surveyed said they are seeing clients who are newly eligible for LSC-funded legal aid[.]”¹⁵⁵ and of those legal offices surveyed, they reported a “17.9% increase in the number of eligible clients[.]”¹⁵⁶ In a recent ABA survey specifically asking about legal needs arising from the pandemic the respondents identified a substantive list of legal issues.¹⁵⁷

¹⁵³ Letter from ABA President Judy Perez Martinez to House and Senate Appropriations Committees (Apr. 8, 2020), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/lsc-second-supplemental-request.pdf?logActivity=true; Letter from ABA President Patricia Lee Refo to President-elect Joseph R. Biden Jr., (Jan. 8, 2021), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-letter-to-president-elect-biden.pdf; Letter from ABA President Patricia Lee Refo to House and Senate Judiciary Committees (Feb. 4, 2021), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-lsc-eviction.pdf?logActivity=true; Governmental Affairs Office, *supra* note 24.

¹⁵⁴ See Megan L. Evans, Margo Lindauer & Maureen E. Farrell, *A Pandemic Within a Pandemic—Intimate Partner Violence during Covid-19*, 383 N. ENG. J. MED. 2302 (Dec. 10, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>. Examples include intimate partner violence where some domestic-violence hotlines have experienced a 50% drop in calls. See also *Task Force on Legal Needs Arising Out of the 2020 Pandemic, Summary Report: Survey Regarding Legal Needs Arising from the Covid-19 Pandemic*, AMERICAN BAR ASSOCIATION, (May 2020), [https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/covid/aba_taskforce.pdf_\[hereinafter Survey Summary Report\]](https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/covid/aba_taskforce.pdf_[hereinafter%20Survey%20Summary%20Report]); see also the National Children’s Alliance reporting a 21% drop in calls regarding child abuse with a report of 40,000 fewer children served from January and June by child abuse centers.

¹⁵⁵ Legal Services Corp., *supra* note 152.

¹⁵⁶ *Id.*

¹⁵⁷ Survey Summary Report, *supra* note 154 (naming “Assistance with navigating government forms; accessing government benefits (including CARES Act; Economic Impact Payments; Unemployment Insurance Benefits); confusion over interaction between the CARES Act and state unemployment law requirements; small business loans[;]” employment related issues including unemployment benefits, employment advice on layoffs

When asked, “Do you anticipate additional legal needs arising from the COVID-19 pandemic in the future?” an overwhelming 91.23% responded – “YES.”¹⁵⁸

Not surprisingly, housing and employment law are two areas deeply impacted by the pandemic. The “Kentucky Legal Aid reports that the number of unemployment claims filed since the start of the COVID-19 crisis is 3,471% higher than last year.” Some jurisdictions are reporting unprecedented increases. “Southeast Louisiana Legal Services has seen a 670% increase in requests for legal help with unemployment issues and an almost 200% increase in evictions.”¹⁵⁹ Ninety-five percent of the LSC legal aid offices reported “clients have been requesting assistance with evictions, including lockouts, utility shutoffs and foreclosures.”¹⁶⁰ The National Housing Law Project reports that of their 100 legal aid offices and civil rights attorneys surveyed, “91% said illegal evictions are [occurring] in their area.”¹⁶¹ Some legal needs were unknown when stay-at-home orders were in place and schools were remote. For example, intimate partner violence and child abuse or neglect are two crucial areas for advocacy and study.

The need for more legal aid lawyers is understated; To address the rising legal issues for those unable to hire an attorney requires an *army* of lawyers. A service requirement to enter the profession would help create legal first responders to assist with known areas of need, such as, the series of evictions, deciphering landlord/tenant issues or starting eviction mediation programs, assistance to many consumers facing debt collectors and the increase in bankruptcy cases, outreach to vulnerable populations such as

including insurance coverage; “Consumer issues including scams; price gouging; debt collection; bankruptcy/restructuring and counseling; Contract issues; Housing issues; landlord/tenant issues” including evictions; illegal lockouts; foreclosures; in-home care services; “Domestic Violence; child sexual abuse; elder abuse;” “increased racial discrimination; Family law matters; custody and parenting time; divorce; Immigration Issues (employment difficulties and government-imposed moratoriums on visa issuance); language access advocacy; detention centers are in remote rural areas, the need for interpreters; Lack of safe shelter access for people experiencing homelessness; Need for guardianship for those severely ill with COVID-19; Advanced directives/estate plans; increased interest in wills, trusts and estate matters; Nursing home protections; Voting Rights issues; access to polls; mail-in ballots; Insufficient protection rights of people incarcerated in jails and prison (both in state and federal institutions; Education (accessibility and accommodations); Force Majeure; Providing reasonable accommodations in new laws and regulations for people with disabilities (example, everyone needs to wear masks - creates difficulties for the hard of hearing).”

¹⁵⁸Survey Summary Report, *supra* note 154, at 7.

¹⁵⁹ Legal Services Corp., *supra* note 152.

¹⁶⁰ *Id.*

¹⁶¹ *Covid-19 Resources*, NATIONAL HOUSING LAW PROJECT, <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/> (last visited June 24, 2021).

victims of domestic violence or foster youth, counseling or advice to small businesses in need of access to government funds but unable to understand the confusing compliance issues, and the probate needs for the many estates now open due to Covid related deaths or the increased number of those with disabilities post Covid. Government attorneys could equally benefit from a service requirement for admission into the profession, as local government and criminal justice systems also face unprecedented legal issues and the need to advocate for compassionate release for those in overpopulated prison systems and a backlog in court dockets.¹⁶² Municipal mask ordinances and protests also overloaded local government legal counsel during the summer of 2020.

Unlike the medical profession, the legal profession did not directly or collaboratively answer the call to serve. The time to innovate and change admission standards to create legal first responders is now. Such change would foster a service leader model and build integrity and trust within the profession and the served communities.

IV. A 500 HOUR SERVICE COMPONENT FOR BAR ADMISSION IS AN IDEALISTIC BUT NOW PRACTICALLY POSSIBLE.

In theory, the proposal to create a service requirement is straightforward. Simply, require all applicants to complete 500 hours of fieldwork serving a pro bono goal articulated by the state bar. The practical application may cause hesitation, but it is not impossible and the ability to implement the requirement under now existing supervised practice rules for the necessary structure. The 500-service requirement proposal includes steps for change:

1. Adopt a 500-hour service requirement as some form or component to bar admission.
2. Applicants would dedicate 40 hours a week for 12.5 weeks to serve the pro bono mission in the state.
3. The first two weeks of required hours include training modules through an online learning platform with forms required to certify the training.
4. The remaining ten weeks of service include fieldwork under supervised practice.
5. Access to field hours is organized through an online “match program” where applicants know their placement office by April

¹⁶² Romy Ellenbogen, *The pandemic hit Florida prisons hard. A bill would let some sick inmates out early*, TAMPA BAY TIMES (Feb. 5, 2021), https://www.tampabay.com/news/health/2021/02/05/the-pandemic-hit-florida-prisons-hard-a-bill-would-let-some-sick-inmates-out-early/?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axioslocal_tampa&stream=top.

and may begin to develop a relationship with the office immediately after graduation.

6. Completion of service hours is through a certification process required by filing affidavits from supervising attorneys and the applicant answering reflective questions to identify development of specific learning outcomes.
7. Supervising attorneys may be from both the private, public, government and nonprofit sectors with specific requirement adopted by the state.
8. Applicants may earn field hours on any area of substantive law with only one limitation: The service is related to the state's pro bono practice mission statement and the service hours provide representation to those unable to access legal services as defined by the state.
9. Supervising attorneys earn CLE credit for the hours committed to the 10-week program.
10. Funding is provided by the state bar, possibly federal allocation and grant money to provide stipends and build resources for assessment.

The five hundred hourly requirement is a more than the 350 hours of Utah's supervised practice rule and much less than the District of Columbia's of three additional years. Five hundred hours is reasonable using a backward design theory based on the widely accepted 10,000-hour rule well-known through Malcom Gladwell's work.¹⁶³ If 10,000 hours over ten years is an accepted theory to develop an expertise, then the start of that journey begins with the first 1000 hours. A 500-hour requirement is a halfway point for the start of that journey and cultivate incentives for future pro bono service in certain areas of law possibly providing additional incentives for newly licensed attorneys to complete further 500-hours to a 1000-hour goal toward a pathway to take pro bono cases. Some of the newly licensed Utah attorneys earning hours through supervised practice have commented about the exposure to the work and the practical application of what they learned in law school.¹⁶⁴ Essentially, a practice requirement allows graduates a culmination of all they have learned in law school and endorses larger goals for the profession – serving community, pro bono, and servant leadership.

The requirement to invest forty hours a week over the course of 12.5 weeks or longer possibly with staggering timelines. This practical training requirement is manageable and possible to integrate with traditional bar exam study. As the proposal suggests, two weeks should include a training portal where applicants may choose one area of law and are required to study during

¹⁶³ MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS*, (Little, Brown & Co., 2008).

¹⁶⁴ 3 *Utah Law Grads*, *supra* note 114.

the first two-weeks so they have practical knowledge before entering a field office and build their pro bono practice. This online training requirement is important so as to not burden supervising attorneys to teach an area of law but instead mentor. Also important is staggering timelines where graduates may earn their field hours at varying times so as to create a rotating army of graduates assisting throughout the year. Ideally, the online training will allow the graduate to now assist the supervising attorney through an elbow-to-elbow experience and outreach to community and service.

To ensure enough variety in placements, some applicants may find their own placement to earn hours as many may have developed a network or relationships in clinics and field placements or employment. A match program however is still necessary to ensure equality and access for students who may not have a network of lawyers or employment offers. The legal profession could move toward a much anticipated ‘match day’ as important to the medical profession. Connecting students and professionals to come together on a particular day to think about the future and align in professional goals is a powerful moment. Other than a state swearing in ceremony, the legal profession lacks a collective day to similarly anticipate the future and focus on a unified goal.

Certainly, supervision is a key component and variation in the level or type of supervision is inherently part of human nature. To provide some consistency, a certification process is necessary to monitor and ensure both short and long-term objectives are satisfied. Many law schools have developed training for field placement supervisors in externship programs.¹⁶⁵ Collaboration is important to develop a certification process and consistency in mentoring in different areas of practice. A culture of learning to strengthen instruction for supervision should be incorporated into CLE’s and possibly a requirement for supervisors. A shared collaborative learning platform similar to the medical profession is fostered through continued dialogue and learning to supervise is inherently part of professional development and continued legal education. Collaboration may result in new synergies in the profession on specific areas which may inspire attorneys to take additional pro bono cases, learn a new area of law, reenergize fatigued lawyers and create energy around service toward the common good.

While the proposal may seem idealistic, the call is not new.¹⁶³ In such unprecedented times, this call for change to bar requirements offers a critical urgency and opportunity for transformation. At some point the legal profession must respond to change rather than react to events or be intertwined in the disruption caused by administration of the bar exam. The legal profession needs a vision and courage to evolve forward to help rebuild

¹⁶⁵ See Lextern Web, A Legal Externship Resources Website, Supervisor Training Materials, <https://www.lexternweb.org/site-supervisor-materials-1>.

communities across the country; How the profession answers the call may determine the profession's future.