

THE FUTURE OF LEGAL EDUCATION: GAME-CHANGING ABA-APPROVED ONLINE LAW SCHOOLS MAKE BECOMING A LAWYER EASIER AND MORE AFFORDABLE

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INTRODUCTION

Access to justice for everyone is part of our Catholic commandment to love one another as we love ourselves. Fairness is an intricate part of who we are, and helping our brothers and sisters get the opportunity to air their grievances and seek the protection of the law is a natural implication of our faith. Saint Thomas Aquinas explained that:

the good of any virtue, whether such virtue direct man in relation to himself, or in relation to certain other individual persons, is referable to the common good, to which justice directs: so that all acts of virtue can pertain to justice, insofar as it directs man to the common good.¹

As legal educators, our mission is to teach our students and assist our profession and our community with the intricacies of our justice system. We aim to teach students about the law and to help as many people as we can through them, because it is done for the common good. Becoming licensed attorneys is the best way that our students can make a difference in our society. Teaching as many students who want to help our communities face the challenges of today is limited by the current American Bar Association (ABA)

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1. ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, Pt. II-II, Q. 58, Art. 5 (Fathers of English Dominican Province trans., Christian Classics 1981).

standards that generally require in-person instruction.² We believe that the lessons learned during this terrible COVID-19 Pandemic add impetus to the creation of part-time programs as well as the expansion of fully online legal education offerings in the near future.³

The current legal education industry is overseen by the American Bar Association for the Department of Education. Students apply for federal student loans to pay for tuition and living expenses every year for three years. Law schools continue to face the increasing costs of buildings, equipment and personnel, and related costs that get passed down to the students and the consumers. We propose that allowing law schools to expand via part-time and full-time online programs will enable mission-oriented schools to assist students to complete their legal education at a fraction of the cost. Students will not incur as many living expenses when they can stay home, continue to work and help their families, borrow less money, and thus be able to assist their less privileged brethren in their communities. Pro bono work is hard for recent graduates saddled with high student loans to pay and often young families to provide for. Making online legal education available will let our students and recent graduates afford the time to help non-profit organizations that render legal aid.

Despite the interest from prospective students and law schools, legal education generally remains an in-person academic pursuit. There are few current ABA-approved Distance Education J.D. programs⁴ in the United States, and non-ABA correspondence schools' graduates can only take the bar exam in California, Maine, Minnesota, New Mexico, Oregon, and Vermont, which allow individuals to take the bar exam upon graduation from law schools approved by state bodies but not accredited by the ABA.⁵ “An ABA-

2. If a law school wishes to offer a Distance Education J.D. Program, they must submit a request for a substantive change to the law school's offerings and receive acquiescence from the ABA Council before implementing such a program. See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURES FOR APPROVAL OF LAW SCHOOLS 2021–2022, at 7 (Standard 105(a)(12)), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure.pdf.

3. As of April 2022, a handful of law schools offer a Distance Education J.D. Program. See *ABA-Approved Law Schools with Approved Distance Education J.D. Programs*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/distance_education/approved-distance-ed-jd-programs (last visited Apr. 28, 2022).

4. *Id.*

5. See AM. BAR ASS'N & NAT'L CONF. ON BAR EXAM'RS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 9–10 (Judith A. Gundersen & Claire J. Guback eds., 2020), https://www.ncbex.org/pdfviewer/?file=%2Fassets%2FBarAdmissionGuide%2FCompGuide2020_021820_Online_Final.pdf.

approved law school may only grant up to one-third of the credit hours required for the Juris Doctorate (J.D.) degree for distance education courses.”⁶

Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR:

- (a) A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.
- (b) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.
- (c) A law school shall not permit a student to be enrolled at any time in coursework that exceeds 20 percent of the total credit hours required by that school for graduation.
- (d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school’s J.D. program of study, except for credit that may be granted pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.
- (e) A law school may grant up to 10 credit hours required for the J.D. degree for distance education courses during the first one-third of a student’s program of legal education.⁷

“If a law school wishes to grant more than one-third of the credit hours required for the J.D. degree for distance education courses, it must apply for a substantive change under Standard 105 and Rule 24.”⁸ Some law schools have

6. *A Guide to ABA Approved Distance Education*, AM. BAR ASS’N (Oct. 13, 2021), https://www.americanbar.org/groups/legal_education/resources/distance_education (“An ABA-approved law school may grant up to one-third of the credit hours required for the J.D. degree for distance education courses (see Definitions 7 and 8, and Standards 311 and 511). If a law school wishes to grant more than one-third of the credit hours required for the J.D. degree for distance education courses, it must apply for a substantive change under Standard 105 and Rule 24.”).

7. ABA STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. ch. 3, Standard 311 (AM. BAR. ASS’N 2020).

8. AM. BAR ASS’N, *supra* note 6.

designed hybrid curricula that provide the maximum amount of online education with some in-person component for a few days during the year to complete the two-thirds in person and one-third online requirements. The ABA warns students that “[e]arning an education completely via distance education may limit your ability to sit for the bar in many states.”⁹

Dozens of schools have been meeting the pent-up demand for online legal education by providing master’s in legal studies programs, and paralegal, or public notary courses completely online. However, these programs do not provide a path towards the actual practice of law. These programs are marketed as an option for working professionals seeking the legal education that they believe can get them jobs and promotions. These alternative legal education programs have resulted in an explosion of unauthorized practice of law¹⁰ in fields such as real estate and immigration law.¹¹

Some ABA-approved hybrid programs that mix combinations of weekend courses or residency requirements to stay within the current ABA rules.¹² Further, as of April 2022, there are only a few ABA-approved Distance Education J.D. programs.¹³ Unfortunately, the high cost of obtaining a law degree under current rules require people to relocate and dedicate themselves to three years of investment with a high degree of risk when it comes to obtaining a job that will compensate the expense. Even those that obtain J.D. degrees from highly ranked law schools face severe challenges finding jobs that will compensate them for their investments. A recent article from the Wall Street Journal analyzed federal data on earnings for students who graduated in 2015 and 2016, citing information from Law School Transparency, which reports that average annual tuition at private law schools nearly tripled to \$49,000, adjusted for inflation, between 1985 and 2019. Median pay a year after graduation for 2019 law graduates was only \$72,500

9. *Id.*

10. *Unauthorized Practice of Immigration Law (UPIL): A State-by-State Overview of Legal Mechanisms to Combat These Deceptive Practices*, CATH. LEGAL IMMIGR. NETWORK, INC., <https://cliniclegal.org/upil> (last visited Nov. 8, 2021) (“Unauthorized practitioners of immigration law are often referred to as ‘notarios,’ which means notary public in Spanish and notary publics in civil law societies have the authority to provide certain limited legal services. . . . In reality, these immigration consultants or notarios lack the credentials and authority to prepare immigration documents and to represent noncitizens in immigration proceedings.”).

11. *See, e.g., Fight Notario Fraud*, AM. BAR ASS’N, https://www.americanbar.org/groups/public_interest/immigration/projects_initiatives/fightnotariofraud (last visited Sept. 10, 2021).

12. 2U Inc., *Online Juris Doctor Degree Programs for 2021*, ONLINE MASTER OF L. STUD. PROGRAMS, <https://onlinemasteroflegalstudies.com/law-degrees/juris-doctor> (last visited Nov. 8, 2021) (“Online Juris Doctor (J.D.) degree programs are a combination of online courses and on-campus instruction ideal for working professionals through an online hybrid or a weekend-based format.”).

13. *ABA-Approved Law Schools with Approved Distance Education J.D. Programs*, *supra* note 3.

the following year, the article said, citing information from the National Association for Law Placement.¹⁴

On the other hand, Michael Simkovic of the University of Southern California Gould School of Law insists that it is the result of national economic downturns, not the value of legal education that is to blame. He explains: “During this time period [2010 through 2013], law graduates continued to perform relatively well compared to their same-age cohorts facing the same economy. Law graduates were less likely to be unemployed, were more likely to be employed, earned significantly more money, and had lower student loan default rates.”¹⁵

The legal industry has experienced major changes in the last several months clearly due to the ongoing pandemic, but also because of trends that were taking place even before the COVID-19 Pandemic. These changes include the growth of non-attorney competition,¹⁶ the spread of virtual lawyering and online meetings as the accepted form of communications between clients and counselors, and the generational nature of contemporary practitioners and clients getting used to the technology that they have been forced to learn in the last eighteen months.

Law school admission applications have also increased, and the profile of the incoming student has as well.

14. See Andrea Fuller et. al., *Law School Loses Luster as Debts Mount and Salaries Stagnate*, WALL ST. J. (Aug. 3, 2021, 8:01 AM), <https://www.wsj.com/articles/law-school-student-debt-low-salaries-university-miami-11627991855> (“Only a dozen of the nation’s law schools leave students earning annual salaries two years after graduation that exceed their debts, according to the Education Department data covering roughly 200 programs.”).

15. Michael Simkovic, *Wall Street Journal Blames Law Schools for COVID Economy*, BRIAN LEITER’S L. SCH. REPS.: L. PROFESSOR BLOGS NETWORK (Aug. 3, 2021), <https://leiterlawschool.typepad.com/leiter/2021/08/wall-street-journal-blames-law-schools-for-covid-michael-simkovic.html> (citing Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 209, 249–89 (2014); Frank McIntyre & Michael Simkovic, *Timing Law School*, 14 J. EMPIRICAL LEGAL STUD. 255, 258–300 (2017)); see also Michael Simkovic, *Wall Street Journal Analysis Overlooks Increased Diversity and Lower Interest Rates (Michael Simkovic)*, BRIAN LEITER’S L. SCH. REPS.: L. PROFESSOR BLOGS NETWORK (Aug. 5, 2021), <https://leiterlawschool.typepad.com/leiter/2021/08/wall-street-journal-blames-law-schools-for-covid-michael-simkovic.html> (“After controlling for law graduate characteristics, the percentage law earnings premium has remained relatively constant over many decades (or at least statistically not distinguishable from constant). That’s across cohorts, not just for recent graduates, although the same is true for recent graduates.”).

16. See Sam Skolnik, *Big Four Said to Sidestep U.S. Law Firm Competition, For Now*, BLOOMBERG L. (June 9, 2021, 5:26 AM), <https://news.bloomberglaw.com/business-and-practice/big-four-said-to-sidestep-u-s-law-firm-competition-for-now> (“Legal industry deregulation efforts in Arizona, Utah, and California long have been seen as potentially giving the Big Four the means to compete head on with the country’s largest law firms, something existing state rules have prevented.”).

The LSAT [Law School Admission Test] scores of those being accepted to law school are going up. Between fall 2016 and fall 2019, the percentage of matriculants with scores above 150 increased each year. Between 2018 and 2019, the median LSAT score rose from 155.9 to 156.4, and the percentage of matriculants with scores above 160 reached 36%.¹⁷

As compared to Fall 2019, Fall 2021 applications were up 30.5% from 360,122 applicants. As compared to Fall 2018, Fall 2021 applications are up 27.2% from 369,239 applicants. As of June 3, 2021, there were 469,795 applications submitted by 68,086 applicants for the 2021 enrollment year.¹⁸

According to the Department of Labor,

[e]mployment of lawyers is projected to grow 9 percent from 2020 to 2030, about as fast as the average for all occupations. About 46,000 openings for lawyers are projected each year, on average, over the decade. Many of those openings are expected to result from the need to replace workers who transfer to different occupations or exit the labor force, such as to retire.¹⁹

It seems like only a few years ago when the reverse was true.²⁰ Even before the decline in jobs due to the COVID-19 Pandemic, the best years on record were around 30,000 jobs and that was consistent for more than twenty years. Law schools are currently at 38,000 first year (1L) enrollment with the most recent Law School Admission Council (LSAC) data. Despite the surplus, more than 90% of 2019 law school graduates landed jobs after finishing

17. Victoria Langley, *Law School Admissions Trends You Should Know About*, NAT'L JURIST: PRELAW (Dec. 16, 2020), <https://www.nationaljurist.com/prelaw/law-school-admissions-trends-you-should-know-about>.

18. *Five Year U.S. Volume Comparison*, L. SCH. ADMISSION COUNCIL, <https://report.lsac.org/ThreeYearComparison.aspx?Format=PDF> (last visited June 4, 2021) (“As of 12/13/2021, there are 189,017 applications submitted by 27,825 applicants for the 2022 enrollment year. As compared to one year ago, current year applicants are down 4.9% from 29,268. As compared to two years ago, current year applicants are up 30.9% from 21,254. As compared to one year ago, current year applications are down 4.2% from 197,326. As compared to two years ago, current year applications are up 50.0% from 125,979.”).

19. Archive of U.S. Lawyer Employment Statistics, *Occupational Outlook Handbook*, U.S. DEP'T OF LAB.: BUREAU OF LAB. STAT., <https://www.bls.gov/ooh/legal/lawyers.htm> (last visited Dec. 3, 2021).

20. See *Employment Summary Report*, AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, <https://abarequireddisclosures.org/EmploymentOutcomes.aspx> (last visited Sep. 24, 2021) (choose “2015” under the “Compilation-All Schools Data” section and then select “Download Complete Employment Data”) (demonstrating that almost 40% of 2015 law graduates did not secure full-time jobs requiring a law license, and only 70% of 2015 graduates landed a full-time job that either required a law license or gave a preference to candidates with a juris doctor. Also demonstrating that one in four 2015 graduates did not report having any type of job, even a non-professional job, after law school).

school, according to preliminary findings by the National Association for Law Placement (NALP), which collected data from 196 schools in mid-March of 2020. That percentage of employed graduates was the highest recorded by NALP in the twelve years since the Great Recession. It seems that many attorneys have branched out into other occupations such as real estate, entrepreneurship, teaching, or other areas after suffering from the burnout that legal professionals have been known to suffer from.²¹

The 90.3% rate was up from 89.4% for the class of 2018, but down slightly from 91.9% for the class of 2007.²² Law school admissions had plummeted as potential applicants pursued careers with a more certain percentage of success within the field. Now, things are on the rise in the legal world, as the number of jobs available slowly increases while the number of graduates, and law school applicants, is also increasing. The overall size of the incoming J.D. class for 2020 was substantially like 2019, although the applicant pool was larger. “For 2020, there are 38,202 incoming J.D. students at 197 ABA-accredited law schools, compared to 38,282 incoming J.D. students at 199 ABA-accredited law schools in 2019.”²³

[T]he total number of J.D. applicants is up 38.2% compared to this time last year. For some demographic groups, the increase is even larger—Black/African American applicants are up 45.1% percent [sic] compared to

21. See Justin Anker & Patrick R. Krill, *Stress, Drink, Leave: An Examination of Gender-Specific Risk Factors for Mental Health Problems and Attrition Among Licensed Attorneys*, 16 PLoS ONE 1, 13 (2021), <https://doi.org/10.1371/journal.pone.0250563> (last visited Sep. 24, 2021).

22. Danielle A. Taylor, *Class of 2019 Attains Highest Employment Rate in 12 Years as Uncertainty Looms for the Class of 2020: A Summary of the Findings*, in *JOBS & JDS: EMPLOYMENT FOR THE CLASS OF 2019: SELECTED FINDINGS* (2020), <https://www.nalp.org/uploads/Classof2019SelectedFindings.pdf> (showing the class of 2019 experienced the highest employment rate in the dozen years since the start of the Great Recession, as “[t]he overall employment rate for the Class of 2019 was up 0.9 percentage points to 90.3% of graduates for whom employment status was known, compared to 89.4% for the Class of 2018[;]” marking “the highest employment rate recorded since the 91.9% rate for the Class of 2007.”).

23. Kellye Y. Testy, *Starting Law School Amid a Pandemic: The Incoming Class of 2020*, L. SCH. ADMISSION COUNCIL (Dec. 18, 2020), <https://www.lsac.org/blog/starting-law-school-amid-pandemic-incoming-class-2020>. Additionally, maximum reporting captures diversity more comprehensively than single reporting for minoritized groups because it most accurately reflects the understanding that the lived experiences of individuals who self-identify as being of more than one race or ethnicity are based on all of their identities, not just one. ELIZABETH BODAMER ET AL., L. SCH. ADMISSION COUNCIL, *UNDERSTANDING AND INTERPRETING LAW SCHOOL ENROLLMENT DATA: A FOCUS ON RACE AND ETHNICITY* 6, 11 (2020), <https://www.lsac.org/data-research/research/understanding-and-interpreting-law-school-enrollment-data-focus-race-and>. Also, contrasting how single reporting forces those analyzing data to assign primacy to one racial or ethnic identity, making it more difficult to understand the impact of multiple racial and ethnic identities on all aspects of life. *Id.*

this time last year[,] [a]nd applicants are applying to more schools, on average, so far this year compared to last.²⁴

The numbers indicate a continued and sustainable need for legal practitioners, especially in rural communities and under-represented segments of our society. We must continue to seek ways to reduce the cost and difficulty of obtaining a legal education to meet that demand and fulfill our mission.

This Article proposes that the solution is to encourage law schools to provide completely online J.D. programs that will meet the demand and provide the public with professionally trained legal professionals that can handle their legal problems properly, especially in rural and underserved communities.²⁵ Online courses reduce the expense of having to relocate to a law school community. They allow individuals to work and advance their professional pursuits and make earning a law degree much more affordable. This Article looks at positive outcomes from such a program, as well as addresses key hurdles to any online program's overall success.

I. THE BENEFITS OF AN ONLINE LEGAL EDUCATION PROGRAM

Legal education in the United States has been slow to embrace online education. But in recent years, the American Bar Association (ABA) has indicated that it is more willing to embrace online legal education. For example, the ABA increased the number of credits a student may take online

24. Testy, *supra* note 23 (“There are many factors which may help to explain such dramatic increases. The number of applicants tends to go up during down economies, as people try to ride out a slow job market and invest in their skills. Additionally, the enormous societal challenges and opportunities of this moment may be inspiring more people to pursue a career in law. When you look at the world through the eyes of our candidates, they see so many issues—COVID-19, systemic racism, economic inequality, political polarization, climate change—that they are inspired to dive in and make a difference. I call it the ‘RBG Moment,’ in honor of Ruth Bader Ginsburg. Our candidates have ‘Really Big Goals,’ and they see the law as the way to make an impact.”).

25. See CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, *INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2012*, at 13 (2013); see also Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, AM. BAR ASS’N (July 1, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america (“The lack of attorneys living and practicing in rural communities is an acute access to justice issue because it means low-income individuals in those communities are more likely not to have access to their most basic needs. Rural America is disproportionately poor. In 2012, 46.5 million people in the United States lived in poverty, defined as a family of four with an income of \$23,850 or less.”).

from twelve to fifteen and removed the previous limit of four credits of online education per term.²⁶

Part-time or distance law schools tend to have evening and weekend classes, allowing students to earn a degree while maintaining daytime work and family commitments. Many professionals in law enforcement, compliance, insurance, and various industries obtain a direct benefit from online options for their legal education. Government workers base pay depends on two factors—the General Schedule Paygrade of their job (Grades are based on Rank), and the Paygrade Step (Steps are based on time in service) they have achieved (depending on seniority or performance) and legal courses and certificate programs add points.²⁷ Part-time and distance education programs may be easier to pay for, with tuition and other costs being spread out over four or more years rather than the three years of a traditional, full-time program. Traditional law students are unable or unwilling to work during their first year because the first-year courses are critical to passing the bar exam. The ABA used to restrict full-time law students to working no more than twenty hours per week and some law schools still restrict students from working while enrolled. Non-traditional applicants may also find that part-time and online program admissions evaluate more letters of recommendations, look for service to community experience and put more emphasis on the applicants' potential, as well as their professional experience and accomplishments, and less on the recognized factors like LSAT scores and GPAs.²⁸

For many years, the ABA has been trying to improve diversity in the legal industry by disseminating information and surveys to incentivize law firms to hire more women and minorities.²⁹ However, at the same time, the ABA and

26. Kenneth R. Swift, *The Seven Principles for Good Practice in [Asynchronous Online] Legal Education*, 44 MITCHELL HAMLINE L. REV. 105, 107, 161 (2018) (“A well-organized and properly developed online course can be an effective offering in a law school’s overall curriculum and fulfill many of the Seven Principles. While not a substitute for personal, in-class interaction between professors, students, and amongst classmates, the online course has many advantages over brick-and-mortar. . . . In particular, advantages can be found in the critical principles of active learning, cooperative learning, and formative assessment.”).

27. See *General Schedule (GS) Payscale Table for 2021*, FEDERALPAY.ORG (2021), <https://www.federalpay.org/gs/2021>.

28. See *Top Part Time Law Schools*, JDADMISSION.COM, <https://jdadmission.com/part-time-law-schools> (last visited Sept. 4, 2021) (“Part-time programs may be easier to pay for, with tuition and other costs being spread out over four or more years rather than the three years of a traditional, full-time program. Older applicants may also find that part-time program admissions put more weight on their professional experience and accomplishments and less on factors like LSAT scores and GPAs.”).

29. AM. BAR ASS’N, 2020 ABA MODEL DIVERSITY SURVEY 3 (2021), https://www.americanbar.org/content/dam/aba/administrative/racial_ethnic_diversity/aba/credp_2020_mds_report.pdf.

the Department of Education have made standardized test results the main indicator for admission into law schools.³⁰ “Median LSAT scores increased at 97 law schools between 2018 and 2019, decreased at 10 schools, and remained the same at 92. Similarly, median GPA increased at 146 law schools, decreased at 45, and remained the same at 8.”³¹ The rising LSAT scores are supposed to ensure that those individuals who enter have the cognitive ability to complete the program successfully. Schools that want to help individuals who have lower scores but fit profiles of service to the community or the profession simply cannot afford to admit them. Their higher likelihood of failure makes it seem as though schools are deliberately letting in risky students for tuition money when in fact the school is searching for “do-gooders” that will help the sick, the needy, and the poor as we are commanded to do so by our religion and sense of purpose. Distance education programs can take a more holistic approach to the person applying and help non-traditional and first-generation law students attend when most law schools are being much more focused on admitting only the top LSAT and GPA students in the country.

A. *Flexibility for Non-Traditional Students*

Let’s face it, life takes unexpected turns for many of us on a quest to a degree and profession.

An online course requires just as much work as an on-ground format, and the amount of time you dedicate is also about the same. However, the online format—just as a virtual workplace—affords you more flexibility. As long

30. James Lorié, *How Our Test Contributes to Comprehensive and Fair Law School Admissions*, L. SCH. ADMISSION COUNCIL (June 19, 2019), <https://www.lsac.org/blog/how-our-test-contributes-comprehensive-and-fair-law-school-admissions>.

31. Kellye Y. Testy, *Sizing Up the 2019 Incoming Class – What Do the Numbers Tell Us?*, L. SCH. ADMISSION COUNCIL (Dec. 12, 2019), <https://www.lsac.org/blog/sizing-2019-incoming-class-what-do-numbers-tell-us>; see generally Susan L. Krinsky, *Reflections on the 2021 Admission Cycle*, L. SCH. ADMISSION COUNCIL (July 8, 2021), <https://www.lsac.org/blog/reflections-2021-admission-cycle> (“We are also seeing more highly qualified candidates, with higher LSAT scores across all racial/ethnic groups. Overall, applicants with high scores (160-180) are up 35% compared to this time last year. African American applicants with high scores are up 50%. Hispanic/Latinx applicants with high scores are up 44%. Candidates from historically underrepresented communities with high scores are up 45% overall.”).

as you meet your deadlines and communicate with your instructor and peers, it doesn't matter where or when you fulfill the requirements.³²

Distance legal education allows a parent or relative of someone who depends on them to continue to provide for them while pursuing their dreams. The current brick and mortar model forces students to leave their homes, families, jobs, and friends for a three-year period of intense learning, often far away from the very same network that could help them establish a law firm upon graduation. Part-time or online law school students will be able to take courses at the pace and place that best fits their current life conditions. Let's say that the student becomes an unexpected parent or ill in the second year, the student can elect to take fewer classes and dedicate themselves to child rearing or the pursuit of better health without the types of interruptions the current system requires. Students currently must request for a temporary withdrawal or even drop out for a year or so and try to come back in afterwards, which is much harder with additional responsibilities. Distance education, both full-time and part-time, gives students more flexibility for life because they can simply reduce their coursework or add more to their plate depending on their needs. The three or four year expected graduation rate is not relevant; students can take longer or accelerate their studies if it is what they prefer.

Further, many potential law students may forego the opportunity due to the high cost of tuition and the decreased opportunity to work through law school to offset that cost because they have to relocate or leave their current jobs. A flexible online education option allows these potential students to make law school a reality by offering them an education at a lower cost with the flexibility to continue working to provide for their needs and their educational expenses. Often, these students need their income to survive during school, and an online education allows them to continue working.³³

Additionally, successfully navigating an online education demonstrates skills that are valuable to future employers, such as time management, virtual communication skills, advanced technical skills, and demonstrable self-motivation.³⁴ An online education taught asynchronously requires students to effectively balance their work, home, and educational responsibilities in order

32. Kelsey Miller, *The Benefits of Online Learning: 7 Advantages of Online Degrees*, NE. UNIV.: GRADUATE PROGRAMS (Sept. 25, 2019), <https://www.northeastern.edu/graduate/blog/benefits-of-online-learning>.

33. See *The Advantages of Online Learning for You and Your Career*, PONGO, <https://www.pongoresume.com/articles/513/the-advantages-of-online-learning-for-you-and-your-career>.cfm (last visited Sept. 11, 2021).

34. See Miller, *supra* note 32.

to succeed. By navigating the online platforms and largely communicating with their professors via email or video conferencing, these students develop technical abilities that are increasingly important in today's society where the need for virtual communication grows exponentially. Finally, these students also develop an understanding of several technologies that will benefit them in their professional life after graduation.

B. *Increased Work Opportunities Due to Being Nationwide As Opposed to Geographically Located*

As studies show repeatedly, rural communities are being underserved because most ABA-approved law schools concentrate on the biggest markets such as the western and eastern bigger cities. Enabling law schools to provide distance legal education in those rural areas can help create a pipeline for interested law students to finish school and stay in service to their communities. Instead, the rising cost of tuition and living expenses forces recent graduates to seek better paying jobs away from the communities that need them most.

Nearly 20% of the country's residents live in rural areas, but only 2% of attorneys nationwide practice in rural areas or small towns, according to a 2014 study published in the *South Dakota Law Review*. Some rural counties have no lawyers at all. In Nebraska, for example, 11 of the state's 93 counties lack any attorneys, according to the Nebraska State Bar Association. . . . In New York state, for instance, a survey of 900 rural lawyers found that 74.3% were 45 or older, and more than 46% said they planned to retire within 10 years, according to an April 2019 report by the Government Law Center at Albany Law School. . . . Bucking the broader trend, some law students and new attorneys say they very much want to practice in remote parts of the country—provided they can sustain a law practice.³⁵

Allowing for a distance education program would give these aspiring attorneys the opportunity to remain in their local communities and serve their neighbors, even if they have a lower income, because the overall cost of their legal education would decrease due to the virtual aspect of the education and the cost savings of staying home rather than moving to another locale for three years.

35. Wendy N. Davis, *No Country for Rural Lawyers: Despite Incentives, Small-Town Attorneys Still Find It Hard to Thrive*, 106 A.B.A. J. 32, 33–37 (2020).

C. *Additional Source of Revenue for Law Schools, Especially Ones That Are Struggling to Keep Enough In-Person Enrollment*

The Department of Education and the ABA have placed significant emphasis on financial viability of law schools with severe financial repercussions including suspension or expulsion from the Federal Student Aid Program for those schools that fail to meet their requirements.³⁶ Law schools were seen as “cash cows” for many years and even private corporations, such as Infilaw, got into the action. When the market turned, these institutions not only failed to deliver a return for their investors but became constant revenue losers.³⁷ ABA-approved distance legal education programs would allow for law schools to deliver quality education that will allow students the opportunity to sit for a bar exam and begin to practice wherever they choose. The schools would teach more students at a reduced per capita cost to them; the more students they enroll, the more the cost of technology and qualified professors can be spread out. For example, creating and maintaining multiple state of the art classrooms is expensive. The threat of viral infections, and social distancing reduces classroom space significantly. One professor can only teach the number of students allowed in the classroom, and the more students, the more work to provide feedback and grade. Distance education drastically lowers those limitations and expenses with a high-quality course management system (CMS). Many of the more tedious tasks can be designed and automated such as interactive exercises, grading multiple choice or true and false quizzes and even bar exam-like final examinations. Some professors have mastered apps, such as Annotate, that enable them to provide detailed feedback in just a few clicks to many students. Say a particular point was missed in a lecture, and the responses on that material’s quizzes reflect that. The professor can use these apps to send the students corrective insights and fix the misunderstanding before they go through the final exam.

Overall, the benefits to law schools in being able to maximize the use of its professors and equipment to a wider market audience at reduced costs can be total game changers. Law schools would find it a natural transition to expand online offerings such as Master of Laws (LLM), Master in Library Science (MLS), and even certification programs for international students.

36. See Scott Johnson & Carianne Luter, *Ruling Deals Setback to Florida Coastal School of Law*, NEWS4JAX (Aug. 11, 2021, 6:47 PM), <https://www.news4jax.com/news/local/2021/08/11/ruling-deals-setback-to-florida-coastal-school-of-law>.

37. See, e.g., Max Marbut, *Florida Coastal School of Law Could Close in August*, JACKSONVILLE DAILY REC. (Jul. 1, 2021, 5:24 PM), <https://www.jaxdailyrecord.com/article/florida-coastal-school-of-law-could-close-in-august>.

The sky is the limit because, for the first time in history, students would be able to study law from anywhere and at any time within the program's constraints and become an ABA-approved J.D. ready for the bar exam.

II. ISSUES TO CONSIDER IN ESTABLISHING A SUCCESSFUL ONLINE LEGAL EDUCATION PROGRAM

Overall, a recent survey on the experience of online legal learning during the COVID-19 Pandemic showed major problems:

[R]esults highlight the strain law students have experienced since the transition to emergency remote learning. While the majority (59%) of surveyed students believe their law school successfully responded to the challenges created by the pandemic, less than half of students who took classes predominantly online during this period rate their education as "excellent" or "good." Moreover, non-1L students were significantly less pleased with their education during the pandemic, compared with their pre-pandemic experiences. Only 43% deem it "excellent" or "good," compared with 88% when asked about their pre-pandemic education.³⁸

The experience of distance education during COVID-19 Pandemic shutdowns left behind an overall more negative than positive impression for distinct reasons. Law schools duplicated what they did in person to teaching via Zoom. Professors delivered their lectures online and asked students questions with the Socratic method, giving assignments and quizzes online instead of in person. The students attended the lectures at specific times and interacted with each other sporadically at best. However, many lessons were learned that need to be highlighted.³⁹ According to a recent Gallup survey, 48% of online law students rated their program as "good" or "excellent" despite the COVID-19 Pandemic-induced rapid structure. Students who experienced a more typical online designed course were most satisfied. Diverse teaching methods improved perceptions of online programs. Online, in-person students participated similarly in extracurriculars.⁴⁰

38. Aaron N. Taylor, *Foreword* to GALLUP, INC., *LAW SCHOOL IN A PANDEMIC: STUDENT PERSPECTIVES ON DISTANCE LEARNING AND LESSONS FOR THE FUTURE 2* (2021), https://www.accesslex.org/sites/default/files/2021-06/Law%20School%20in%20a%20Pandemic_Student%20Perspectives%20on%20Distance%20Learning%20and%20Lessons%20for%20the%20Future.pdf.

39. See generally Zach Hrynowski & Margaret Carlson, *Law Schools' Forced Shift Online Offers Insights for Future*, GALLUP (June 16, 2021), <https://news.gallup.com/poll/350351/law-schools-forced-shift-online-offers-insights-future.aspx>.

40. See GALLUP, INC., *supra* note 38, at 13–14, 19.

We must keep in mind that there is a major difference between shifting to an online format for business continuity purposes as we did during the COVID-19 Pandemic and developing distance education courses based on the most modern techniques and technologies. Predesigned online courses include now ten-year old, flipped classroom techniques⁴¹ and new tools such as Zoom, Microsoft Teams, Google Workspaces, Slack, and others for audio/video instruction and interactive communication, active learning exercises/activities, and asynchronous and synchronous components as desired. Even in online classes with synchronous components,

[c]lass time is primarily reserved for problem-solving exercises, small-group discussions, and making sure students understand the materials and lectures they covered at night. The course is supported not only by a binder of collected readings, but also a website that allows [the professor] to post materials, administer quizzes and participate in online discussion forums.⁴²

Comprehensive instructional design principles incorporated into the school's course management system that are consistent, easy to follow, and easy to evaluate enhance the online course experience immensely. A combination of productivity tools should be used to complement the course management system such as appointment apps for video meetings, digital spaced repetition flash cards, grammar correcting tools, screen capturing and sharing, plagiarism prevention software, premium or advanced versions of expensive software, etc.

In addition, one significant benefit for students is the direct access to academic tools such as the library catalog online, eBooks, digital articles, newspapers, and multi-volume legal encyclopedias and secondary sources. Most of these tools are available for students at a fraction of the cost of purchasing yearly revised textbooks at unaffordable prices. Law school textbook prices vary from \$1,500 to \$3,000 per year in books.⁴³ A well-designed online course can incorporate the most important lessons that a normal textbook would have and break them down into smaller, more digestible portions. The method of learning changes because the student can review a lecture, study the chapter or the PowerPoint slides, view the suggested readings and study aids, or all the above. Most law students have

41. See Mary Wood, *Flipped: Prof Models New Way of Teaching*, UVA LAWYER: THE PATENT PUZZLE (Fall 2012), at 5, https://issuu.com/uvalawschool/docs/uvalawyer_f12.

42. *Id.*

43. Stephen Metellus, *How Much Do Law School Books Cost?*, THE ART OF L. SCH., <https://theartoflawschool.com/how-much-do-law-school-books-cost> (last visited Dec. 15, 2021).

been assigned a large and expensive textbook only to cover less than half of its contents during a semester. A well-designed course can provide access to library materials and study aids better than the traditional classroom model.

Pre-recorded lectures supplemented with CALI (The Center for Computer-Assisted Legal Instruction) lessons, court video clips, Oyez Supreme Court audio recordings, news clippings, and educational materials at low or no cost to our students are remarkably effective. Helping our students reduce their book expenses during law school by implementing multiple digital resources into our course modules will continue to make earning a law degree much more affordable. Online learning can also help with some of the most common issues confronted in law schools.

A. *Issues with Basic Understanding of the Legal System*

The practice of law is an art form, conducted within the confines of a specific system, which varies to some degree by jurisdiction. To successfully navigate this system, lawyers must understand the system, their place in it, and the tools needed to help their clients. Essentially, lawyers must know how to take a client from start to finish in their case, analyzing the best possible approach while competently representing them. This is a skill that lawyers should begin developing while still in law school; however, many obstacles must be dealt with to succeed. Because clients seek attorneys online and communicate with them mostly via phone, text messaging and email, the attorney-client component can be easily met online. The practical learning of the court system in the area that the student lives in and the connections between lawyers, and their communities are best learned by internships and externships in the same location where the students plan to practice after graduation. Online education combined with local mentoring by means of internships can provide a much better learning experience and a direct line of communication between students and their potential employers and clients.

First, most students cannot identify the relevant issues in a fact pattern. Often, they read an entire page without stopping to think of what is and is not important. As future attorneys, they should teach themselves to answer the question: “What am I being asked to do?” Then, they can formulate a mental outline of what is relevant to the task at hand. Briefing the fact pattern will reveal the question presented and the appropriate jurisdiction and venue as well as other important matters.⁴⁴ Learning about jurisdiction and venue in the

44. See generally JOHN H. LANGBEIN, WRITING LAW EXAMINATIONS 5 (2010), <https://law.yale.edu/sites/default/files/documents/pdf/Faculty/Langbein-WritingLawExaminations.pdf>.

same area where the students intend to practice makes a lot of sense. In law school, we teach about federal court rules, state court rules, and local court rules. However, we are at a distinct disadvantage teaching students from different jurisdictions what those rules are really like in practice. Online legal education combined with local practical training and experience will provide the best in theoretical and practical legal education and is another great reason for allowing more part-time and distance learning opportunities.⁴⁵

Next, the student must evaluate the issues. They must find the applicable rule quickly and extract the elements as interpreted by authoritative cases to compare them to the case at hand. They must next evaluate the case by searching prior verdicts, isolating their current issue while taking the settlement or awarded figures into account. Any law student can learn to do these tasks with ease, especially if they take the initiative to utilize the tools available. The library has resources that can help with these tasks, and legal databases have sophisticated versions that can speed up the process. However, the difference between jury verdicts in various parts of the country can be significant. Learning who the area experts are is crucial for many trials and knowing what the settlements and verdicts in your area typically range from, enable a legal practitioner to make sound decisions and to give more accurate advice than from a law graduate coming from somewhere else.

Once a student masters the art of case analysis, the litigation process requires a basic understanding of how the legal world works by formulating a strategy based on other cases. The library is the best place to find practitioner tools that explain the steps cases tend to take. Students usually have no experience thinking this many steps ahead. They need to know the applicable court rules, what opposing counsel's next moves may be, and how to respond appropriately within the allotted timeframe. These decisions are impossible to make on the fly when the litigation process is in full force. Graduates should prepare for future litigation by understanding the costs involved. This requires them to ask relevant questions. Legal professionals tend to keep this information close to their vests. Participation in clinics and externships can reveal these lessons to students, as will directed study. The best way for a law student to get to know these intricacies is by submerging oneself in the process,

45. Having an internship increases your chances of a job offer, and a local internship would be more advantageous to future lawyers than one geographically near their school. See Penny Loretto, *Survey Says Paid Internships Lead to Full-Time Job Offers*, THE BALANCE CAREERS (Sept. 13, 2019), <https://www.thebalancecareers.com/paid-internship-full-time-1987131>. And see, e.g., NATIONAL ASSOCIATION FOR LAW PLACEMENT, PERSPECTIVES ON 2020-21 LAW STUDENT RECRUITING 9 (2021), https://www.nalp.org/uploads/NALPPerspectiveson2020_21LawStudentRecruiting.pdf (proffering 97% of summer interns received a job offer from their firm).

talking to the experts, debating with local attorneys and being a part of the local state bar association. This is no doubt much easier and more practical for someone who lives in the area rather than by someone who graduated in another location and does not understand the surroundings.

B. *Issues with Legal Research*

Information literacy⁴⁶ is the basis for lifelong learning. It is the ability to determine the information needed: how to find, evaluate, assimilate, and then use it effectively. Today, however, the question, “why can’t I just Google it?” runs rampant. Google is seen as the be-all, end-all of knowledge gathering. Its natural language search and fancy algorithms convince users they do not need to search elsewhere. Students should not despair, however, nor should they simply rely on Google or using Google-type skills in the databases.

[U]se Google to [your] advantage by playing off this familiar tool. Do comparison searches using Google and library databases or one-search platforms. . . . Start with the basic search and show them how to use that before talking about advanced searching. Digital natives are trained to click on the first or second link they see. They don’t usually go beyond that. Their technology proficiency doesn’t equate to being information literate.⁴⁷

As students strive to prepare themselves for practice, they face different challenges than students in the past. Discipline, effort, and focus are harder to achieve with diminished attention spans.⁴⁸ Students expect quick results with minimal effort that are incompatible with quality results. The temptation to slip into the “I can look it up later” or “that’s not important right now” mentality is incredibly attractive. This type of attitude is induced by the detachment between the law student and the community that needs them. It is much harder to ignore a local client or person in need of your legal knowledge. Distance programs combined with local practical training reduces the

46. See ASS’N OF COLL. & RSCH. LIBRS., INFORMATION LITERACY COMPETENCY STANDARDS FOR HIGHER EDUCATION 2–3 (2000), <https://alair.ala.org/bitstream/handle/11213/7668/ACRL%20Information%20Literacy%20Competency%20Standards%20for%20Higher%20Education.pdf> (Information Literacy is the set of skills needed to find, retrieve, analyze, and use information.).

47. Carla Pfahl, *Can’t I Just Google It?: Informational Literacy and the Digital Native*, MINITEX NEWS (Apr. 6, 2015, 9:52 AM), <https://news.minitex.umn.edu/news/reference-outreach-instruction/can%E2%80%99t-i-just-google-it-informational-literacy-and-digital-native>.

48. See Kevin McSpadden, *You Now Have a Shorter Attention Span Than a Goldfish*, TIME (May 14, 2015 5:09 AM), <https://time.com/3858309/attention-spans-goldfish>.

academic feel of this profession and makes it much more personal and important.

Students must develop a clear vision of future employer and client expectations. They do that better by mixing with potential employers and clients in their area. Clients pay law firms because they want favorable results with complicated matters and often having the right connection can make legal troubles much easier to deal with. Law firms hire attorneys who understand the bigger picture and demonstrate proficiency in the subject matter, but they also make things much better when they know the lawyers and judges involved. This requires the law graduate to understand the context of their law school experience in their own locality, which is priceless. It is more than just taking classes, passing tests, graduating, and hanging a shingle. It is about building trust, reputation, and skills by being present in our communities. It is gathering the skills and knowledge harbored in the law library and made available online to become a true professional on the go. The client expects and pays for a hero of sorts who can fix their problems. They do not have patience for someone charging them while still trying to learn their craft in some faraway land.

A visible deficiency arises when graduates cannot engage with their clients or supervisors without checking their phones or other devices for approval. Because the pressure for productivity is so high on a typical law school graduate concerned with growing the firm and paying the debt, young graduates choose to work for big firms with high billable hour requirements. Online education reduces the cost of obtaining a legal education and allows for the student to remain loyal to their reasons for entering the field of law. Otherwise, pushing oneself to produce more to achieve material goals is never ending. This is the myth of “good” multitasking.

Take an everyday activity like driving. When you look at the MRI of someone who is in driving mode, see how much of their brain is activating there? Now if you just layer in one more thing—if [a] person is listening while they are driving—and all of a sudden the amount of attention, the amount of brain bandwidth going toward driving decreases by about 37%. So you’re not multi-tasking, you’ve in fact reduced the amount of attention you’re now paying to your driving.⁴⁹

49. Sanjay Gupta, *Your Brain on Multitasking*, CNN (Aug. 1, 2016, 10:25 AM), <http://www.cnn.com/2015/04/09/health/your-brain-multitasking> (citing Marcel Adam Just et al., *A Decrease in Brain Activation Associated with Driving When Listening to Someone Speak*, 1205 BRAIN

If this happens to us when performing mundane tasks, imagine what happens while conducting in-depth, focused legal work or engaging with those seeking our undivided attention. Modern society suffers from the delusion that multitasking is a desirable skill. According to recent neuroscience research, “the brain doesn’t really do tasks simultaneously . . . we just switch tasks quickly. . . . That start/stop/start process is rough on us. Rather than saving time, it costs time. . . . It’s less efficient, we make more mistakes, and over time, it can sap our energy.”⁵⁰ In fact, “people who chronically multitask show an enormous range of deficits. They’re basically terrible at all sorts of cognitive tasks. . . .”⁵¹

Lawyers who fail to ground themselves in a particular area of law and in a particular community pretend to multitask; lawyers who simplify their lives by practicing in an area of expertise and in a particular region gradually become better and more satisfied.

In legal research, mere access to a database cannot provide the researcher with the necessary context in which to organize results and present a successful case. Having the potential to do anything does not really matter at the end, it is what the researcher does with it that really matters. While students learn how to find items, they also need to learn how those items come together. Putting the research process to work with local statutes, ordinances and rules will make the local practitioner obviously more efficient. While professors and other resources in law school will help even those working in another jurisdiction, students can take the initiative and accept that just getting by is not good enough, learning who and what works best in local courts matters just as much. Clients and employers seek conscious, heroic, competent, skilled professionals who understand the local context and have the presence of mind to see the future better than others by becoming truly information literate. Students can achieve this by taking a purposeful approach to their legal studies.

C. *Utilizing the Best in Technology*

Technology opens new possibilities in the world of education by affording schools with the opportunity to reach students in other geographic locations

RSCH. 70, 74 (2008), https://kilthub.cmu.edu/articles/journal_contribution/A_decrease_in_brain_activation_associated_with_driving_when_listening_to_someone_speak/6613097.

50. Nancy K. Napier, *The Myth of Multitasking*, PSYCH. TODAY (May 12, 2014), <https://www.psychologytoday.com/blog/creativity-without-borders/201405/the-myth-multitasking>.

51. *The Myth of Multitasking*, NPR, at 3:22 (May 10, 2013), <http://www.npr.org/templates/transcript/transcript.php?storyId=182861382>.

that they would not otherwise be able to reach. By utilizing tools such as video streaming, virtual office hours, online course management software, and much more, faculty can offer their courses to students near and far. Law schools can offer distance courses, both synchronous and asynchronous, to students so long as the total number of credits taken does not exceed those limits imposed by the current ABA Regulations.⁵² Recently, the ABA Regulations expanded to allow law schools to submit a detailed application for a substantive change to offer an entirely remote legal education.⁵³ To stay abreast of nationwide changes and demand, a law school should invest in quality distance education courses, especially if they wish to create a Distance Education J.D. Program.⁵⁴ If a law school has already established a quality offering of various courses online, it will be that much easier for them to expand their course offerings in the future.

Amidst the COVID-19 shutdowns and mass migration of schools to virtual learning during 2020 and 2021, schools discovered multiple technological issues or concerns with offering quality online education.⁵⁵ High costs and adequate funding were the number one issue.

- The affordability of Internet access is the biggest barrier to robust connectivity for the second year in a row (named by 58% of school districts).
- The cost of connectivity in rural districts is even higher. For example, 10% of rural districts pay over \$250 per Mbps per month, at times up to a staggering \$800 per Mbps. By contrast, 37% of rural districts pay \$10 or less per Mbps per month, while 49% of urban/suburban districts pay \$10 or less per Mbps.

52. See AM. BAR ASS'N, *supra* note 6.

53. AM. BAR ASS'N, *supra* note 2, at 87.

54. To establish such a program requires acquiescence from the ABA for a “substantive change in its program of legal education . . . including . . . instituting a Distance Education J.D. Program The Council shall grant acquiescence only if the law school demonstrates that the change will not detract from the law school’s ability to remain in compliance with the Standards.” AM. BAR ASS'N, *supra* note 2, at 7–8. “The decision of the Council granting acquiescence in a substantive change to institute a Distance Education J.D. Program under Rule 24(a)(12) may be for a term certain and can be extended once, with the extension being for either a further term certain or indefinite, but subject to revocation.” *Id.* at 65.

55. See generally *Strengthening Online Learning When Schools Are Closed: The Role of Families and Teachers in Supporting Students During the COVID-19 Crisis*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (Sept. 24, 2020), <https://www.oecd.org/coronavirus/policy-responses/strengthening-online-learning-when-schools-are-closed-the-role-of-families-and-teachers-in-supporting-students-during-the-covid-19-crisis-c4ecba6c>.

- Capital or up-front, non-recurring expense is the second biggest barrier (38%) to increasing robust Internet connectivity in school districts.
- Funding is the biggest obstacle (60%) to meeting the FCC's short-term goal of 100 Mbps/1,000 students.
- 60% of the districts surveyed reported using consortium buying services for bandwidth/Internet access, up from 44% last year. Many districts participate in more than one purchasing cooperative, and rural districts are more likely to participate than urban and suburban districts.⁵⁶

Other major concerns include connectivity, audio/video issues with live webinar teaching, supplementing online course content to offer students the opportunity to cover the material more thoroughly, and discovering ways to simulate in-class participation by utilizing some discussion in live classes as well as discussion forums or small groups in the course management platforms.⁵⁷ As many universities move back to in-person teaching for the 2021–2022 academic year, they may be grateful that these technology concerns and headaches are behind them; however, the reality is that distance education is here to stay,⁵⁸ and these schools, including law schools, should welcome the opportunity to take the knowledge gained during the COVID-19 virtual education time and use it to develop a high standard of excellence in their distance course offerings to people in their own communities.

Online learning is a necessary, but not sufficient, ingredient to creating more social equity. . . . Our “new normal” where I can get skilled to do a job without leaving my community, and I can get the job and do the job and get paid for doing the job without leaving my community, I believe that this will create more economic opportunity than anything we’ve seen before,

56. THE CONSORTIUM FOR SCH. NETWORK, ET AL., COSEN'S 2ND ANNUAL E-RATE AND INFRASTRUCTURE SURVEY 4 (2014), https://cosn.org/sites/default/files/pdf/CoSN%202nd%20Annual%20E-rate%20and%20Infrastructure%20Report,%2010-15-2014_2.pdf [https://web.archive.org/web/20200927190957/https://cosn.org/sites/default/files/pdf/CoSN%202nd%20Annual%20E-rate%20and%20Infrastructure%20Report,%2010-15-2014_2.pdf].

57. Cathy Li & Farah Lalani, *The COVID-19 Pandemic Has Changed Education Forever. This is How*, WORLD ECON. F. (Apr. 19, 2020), <https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning>.

58. See Natasha Singer, *Online Schools Are Here to Stay, Even After the Pandemic*, N.Y. TIMES (Apr. 14, 2021), <https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html> (noting that the reasonings behind virtual education opportunities for K-12 students apply to higher education as well).

affirms one of the world's largest online platform's president, Mr. Jeff Maggioncalda, CEO of Coursera.⁵⁹

To offer a reputable and reliable online legal education program of any scale, a law school would need its professors to have access to excellent audio/visual equipment as well as an information and technology (IT) department to assist with editing pre-recorded videos and adding robust content to the course pages. Online courses can be taught synchronously, asynchronously, or in a hybrid model.⁶⁰ All these methods can utilize additional teaching tools such as discussion forums, quizzes, writing assignments, and group projects to supplement and enhance the educational experience. Gallup survey “[r]esults suggest that digital learning tools are meeting needs in many ways to engage students, personalize instruction and support schools in their requirement to align content with state standards and district initiatives.”⁶¹ Synchronous classes are live online seminar sessions where the professor and students join the same video conferencing call at a specific date and time for a lecture and/or discussion. Asynchronous classes utilize pre-recorded lectures from the professor that the students can watch at their convenience, usually within a specific period. A hybrid model utilizes a mix of live and pre-recorded sessions, which gives students some flexibility while also allowing for a closer representation of a virtual “in-person” lecture as well.

Some pitfalls with adopting a synchronous approach are the unreliability of technology, both on the professor's end and the student's end. Often, video calls will drop out or become static or jumbled if the internet connection is not strong enough, or the device cannot handle the streaming software. However, there is reason to believe that internet connectivity will continue to improve as individual students get access to faster broadband at more affordable prices as public education has experienced.

In 2013, 30 percent of U.S. schools were on track to reach the Federal Communications Commission's objectives for providing classroom WiFi that is sufficient to support digital learning, according to a 2018 report by EducationSuperHighway, a nonprofit that focuses on upgrading internet capability in schools. By 2019, that share had risen to 99 percent. During

59. Abigail Johnson Hess, *Google Announces 100,000 Scholarships for Online Certificates in Data Analytics, Project Management and UX*, CNBC (July 14, 2020, 11:20 AM), <https://www.cnbc.com/2020/07/13/google-announces-certificates-in-data-project-management-and-ux.html>.

60. See Swift, *supra* note 26, at 107–08.

61. GALLUP INC. & NEWSCHOOLS VENTURE FUND, *EDUCATION TECHNOLOGY USE IN SCHOOLS 59* (2019), <http://www.newschools.org/wp-content/uploads/2019/09/Gallup-Ed-Tech-Use-in-Schools-2.pdf>.

that same period, the number of students with access to high-speed school internet increased elevenfold, from 4 million to 46 million, EducationSuperHighway found.⁶²

Further, even if a professor has sufficient technology on their end, students joining may have poor connectivity or software to fully participate in a live online class session. Conversely, an asynchronous approach tends to leave students feeling detached from their professor and more like they are in a self-education program versus having access to a professor to ask questions or seek clarification on content taught. Both approaches have their pros and cons, which is why considering a hybrid model where the course is largely taught asynchronously using quality edited video recordings for lectures (like bar prep lectures) and utilizes synchronous class time for question/answer or review of quizzes may be the best of both worlds. In the hybrid approach, students have the flexibility of time commitment to view their lectures at their convenience, but they also have regularly scheduled live sessions with the professor to review course content, go over quiz results, and ask questions. Further, a professor should offer virtual office hours when teaching online so that students can join the session and ask questions as needed.

1. Types of Technology to Consider

An online course requires multiple technologies to be successful. These include the audio/visual component, such as the web conferencing software chosen, as well as a course management software for dispersal of course assignments, readings, and discussion and supplemental resources, such as websites, recorded videos, and more.

1.i. Audio/Visual for Live Classes

“Web conferencing is a real-time, ‘face-based’ meeting, conference, or training among people in different locations. . . . While web conferencing tools are best suited for meetings, webinar technologies are best suited to simulate physical classrooms and accommodate large groups of people across dispersed locations.”⁶³ These services exploded in demand during the COVID-19 shutdowns when schools strove to continue teaching their students

62. EDUCATIONSUPERHIGHWAY, STATE OF THE STATES 7–8 (2019), <https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/2019%20State%20of%20the%20States.pdf>.

63. Mary Burns, *Taking It Online: Virtual Teaching with Webinars*, ELEARNING INDUS. (Mar. 26, 2020), <https://elearningindustry.com/online-virtual-teaching-webinar-technologies>.

remotely. There is a plethora of services available, including GoToMeeting, Zoom, Verizon's BlueJeans, Demio, and Webex. When a school looks for an appropriate service for their educational needs, they should consider which service will accommodate most of their needs the best. Most services offer trial runs where an institution can test the service before deciding. Above all else, the chosen service must afford the faculty the means to share content, both in the class and from their desktop, and allow for audio/video sharing of all participants. Further, the chosen service should give the moderator the authority to mute/unmute participants, call on people, and otherwise conduct a comparable in-person course lecture or discussion.

1.ii. Recording Software for Pre-Recorded Lectures

If faculty teach asynchronously, they will create pre-recorded lectures as part of the course content. These lectures should be robust and well-made in order to uphold a standard of excellence with virtual learning. A highly competent IT department is vital in making this happen since they tend to have insight and knowledge about the best software available to the school for recording lectures, as well as the ability to assist faculty with recording the lectures and then editing as needed before dispersal to the students. In the legal field, the law changes somewhat year by year, so it is important that faculty maintain their recorded lectures and update them as needed. While a few faculty members may be able to handle their own lecture recordings, for a school to maintain the same standard of excellence across the board with their virtual course offerings, it is recommended that even those technologically-inclined faculty members utilize the same tools and assistance as their colleagues when creating their recordings.

If a school does not have access to robust technology at the outset, they can still maximize their quality of recording by the following:

In a quiet, well-lit environment, you should get good enough audio and video from the native microphone and camera in your laptop. Some things to watch out for when recording lecture videos outside the classroom:

- **Backlighting:** If there is a lot of light behind you, or you sit in front of a window, you run the risk of looking like a shadow in a webcam video.
- **Low lighting:** Webcams have small sensors and tend to make video look choppy and grainy in low light.

- Loud fans and other background noise: Air conditioners, machines that hum, computers with loud fans, and even voices from outside the room can compromise the audio in your lecture video.
- Visible clutter behind you: Avoid sitting in front of anything that can be busy or [a] distraction to your viewers.⁶⁴

Ideally, an online course would utilize these tips in all their recorded lectures and would seek to create a uniform offering across the different courses so that there is continuity as students move from course to course.

1.iii. Course Management Software

Many law schools were induced to adopt course management systems because they came as part of the contracts for their legal research databases. Westlaw offers their widely used West Education Network (TWEN), which is an online extension of their law school classroom system. LexisNexis offers Blackboard Classroom that many law professors have been using for decades because of its ease of use and many popular features. Both of these systems have the advantage of being linked to their research databases, but they also have major limitations. One solution is the acquisition of the school's very own CMS, such as Canvas, that allows us to customize the experience and utilize many more resources unavailable due to restrictions imposed by the research database providers. We are now able to configure apps and features that help our faculty and staff provide a customized, quality experience. Our work product is also protected, and we have a proprietary interest in all the materials that faculty members upload into the system. Having our very own CMS allowed us to provide high quality legal education during the COVID-19 Pandemic much better than if we would have relied on the database versions.

D. *A Technologically Proficient Faculty*

Access to excellent technology is not enough on its own to make a quality online education. The faculty must also fully understand how to utilize that technology and have the support from their school to learn the software. Many traditional faculty members are hesitant or resistant to teaching online due to several factors, including personal preference, lack of familiarity, and having years of expertise delivering a solid education the traditional way. Online legal

64. *The Best Way to Record Class Lectures Online*, PANOPTO (Oct. 2, 2019), <https://www.panopto.com/blog/how-to-record-class-lectures-with-lecture-capture-software-and-apps>.

education is an emerging field, so a law school would need to either train them to teach both in-person and online or hire a secondary faculty to teach the distance courses. This leads to the second major hurdle any school faces when growing its online course offerings.

1. Preparing Engaging Recorded Lectures

It is difficult for students to pay attention to a long, recorded lecture for multiple reasons, including lack of engagement, limited visual content, or a boring topic. Difficult topics require mental strain to comprehend and subjects like law build on multidisciplinary understanding over time. Students show up to class hoping and praying to not be called to answer a question or explain an issue; they do not really concern themselves with the bigger picture. Because a typical law school class will go over the cases in the chapter, students are asked to brief these cases by clearly defining the parties involved, the questions presented, relevant law, and the court's application in the cases. Doing this every class, every week for almost every subject begins to mix the cases in students' memories. The student begins to glaze over as the professor tries to explain the reasoning behind the cases and their relevance to the course. Inevitably, students who are not accustomed to prolonged concentration, delayed satisfaction, and independent learning will need to relearn those important subjects before taking the bar exam. To alleviate these issues, faculty can incorporate various tricks and tools into their recorded lectures to heighten engagement with their students.

Structure your presentation content in order to help your audience retain more of the material, and prune down content in your slides by eliminating anything that duplicates what you are saying in your lecture—use your slides to enhance your key points, not repeat them. Students will be more likely to pay attention to your lecture and watch it all the way through to the end.⁶⁵

In addition to prepared slides as visual aids, a professor teaching online should outline their lectures ahead of time so that the recording is as smooth as possible. This helps the student follow the content and stay engaged.⁶⁶ Additionally, a key factor in engagement during recorded lectures is the length of the lecture. Studies suggest that videos of fifteen minutes or less in length

65. *Id.*

66. See Ketki Athavale, *7 Ways to Make Recorded Video Lectures More Engaging*, INVOLVIO (Apr. 12, 2021), <https://www.involvio.com/blog/7-ways-to-make-recorded-video-lectures-more-engaging>.

tend to be far more engaging than an hour-long lecture.⁶⁷ While each day's content may need to be an hour or more in length in order to comply with ABA regulations regarding time commitment for a course,⁶⁸ the professor can break the content into multiple videos as appropriate to aid in engagement.

E. *Discerning and Marketing to the Student Need*

Many students prefer learning in-person, and they may have issues with distance learning for their entire course work; however, they may also appreciate the flexibility, especially if it is largely a recorded asynchronous course study, and the opportunity to take law school over more years by only taking a few classes at a time versus the strenuous three-year program makes the challenge much less daunting. Students can take advantage of online materials that allow them to read them over again, switch to an audio format, or more of a visual experience.

For many years now, the myth that legal research can be accomplished solely online without a library has been rejected by law schools that understand the difference between a limited vision created by paid subscription databases and the actual practice of law, especially for the average lawyer on Main Street, USA.

The idea that access to the state bar's database can get one the tools to battle against a major law firm with law librarians/knowledge management experts that can provide every material available in the subject matter for their attorneys is unrealistic. The local law libraries at the courthouse can barely keep with the prices. It is imperative for law libraries to continue developing digital libraries and services. It may be true that as self-checkout machines have replaced friendly librarians, it is now technically-capable librarians that can make those machines run well that are needed.

Law librarians have become experts in finding alternative delivery methods for different audiences as one can see from the multiple platforms in the market like study-aid packages, digital libraries, legal news aggregators, etc. Learning may be best for someone by listening to an audiobook or study aid than by reading it in casebooks. Law librarians curate these types of items and provide them in several types of media for students these days.

Law schools have been teaching with casebooks and the Socratic method by asking strategic questions of students to stimulate critical thinking.

67. See Richard Berg et al., *Leveraging Recorded Mini-Lectures to Increase Student Learning*, ONLINE CLASSROOM, Feb. 2014, at 5, 8, https://www.academia.edu/6778520/Leveraging_Recorded_Mini_Lectures_to_Increase_Student_Learning.

68. AM. BAR ASS'N, *supra* note 2, at 22.

However, many students find the method intimidating at best. Casebooks rely on the illustration of a particular area of law, delivering lessons using cases that have applied the law in different circumstances. Most of these are known as precedent-setting cases. However, cases can have multiple issues going on at the same time, and the lesson's objective may not be achieved, or the message diluted and confused to an ordinary law student. These same students may flourish in a distance education setting because it allows for all types of learners, including introvert inclined types, to learn at their preferred and most productive time in their days, and with different methods. Instead of relying solely on casebooks, students can search through multiple titles that study the issue at various levels and best of all explain the law of the land and its accepted principles or what is also known as "black letter law." Online educational tools can include interactive learning lessons that give a brief overview on a particular topic and then present the students with fun and rewarding exercises that give them points or recognition when done correctly.

CONCLUSION

As the ABA allows law schools to implement a distance education program for legal education, opportunities for potential lawyers will grow due to numerous factors, including lower costs and more versatility of when and how they complete their education. This group of future lawyers will be better able to serve their local communities because they can remain at home rather than moving away for three years to go to law school, which allows them to remain more active in their community and in touch with the legal needs of their neighbors and city. Further, these lawyers will be better off financially post-graduation because their legal education will cost less due to the distance aspect and their living expenses will cost less due to remaining at home versus moving away. Thus, they will be better able to focus on the why of practicing law versus the need for income to pay off debt weighing more important than anything else.

Legal education in general needs to adapt to better instruct students about the workings of the legal system, especially through internships or externships and practical experience. A virtual education program would permit students more flexibility in pursuing these practical experience opportunities, and it would also let them pursue such opportunities where they plan to practice, rather than where their school happens to be geographically located. Additionally, even though the ABA allows for an online program of legal education, many schools may be apprehensive about committing to one due to multiple concerns, especially regarding technical difficulties, faculty

participation, and ability. The COVID-19 Pandemic revealed that the virtual education experience struggles with many strains, all of which would need to be addressed for a successful online program; however, an online legal education program would be planned out. It would not be the result of necessity, but of calculated planning and decisions. Such a program would take advantage of the many tools available, including video conferencing, course management platforms, and more, to deliver a quality education. For the faculty, some current law school professors can and will adapt and utilize the online technology to deliver their knowledge via quality distance education courses. Alternatively, additional faculty may be hired by a law school specifically for their distance education program, leaving the current faculty free to focus on the in-person students. Either way, the faculty should receive support and training from their IT department and library in order to provide the best quality education possible.

Finally, such a distance education program would need to market to the correct group of potential attorneys, namely ones who want to practice law but are unable to leave certain commitments at home to travel for school, cannot afford to move for school, or will not have the employment opportunities post-graduation to offset the extensive costs of such a move and in-person education. Further, a distance education program can be appealing to students who learn best via alternative methods rather than just the Socratic method present in in-person law school education.

A distance education program offers many distinct advantages to a law school, and such a program strives to meet the technological wishes of the modern age where many people want their educational opportunities available at the click of a button wherever they may be. Such a program could have remarkable success if it was built with quality equipment and taught by a faculty who know both the law that they are teaching and the technology they are using to teach it. Other fields of study, such as medicine and engineering, have been teaching online for decades; it is time for legal education in the United States to become modernized.