
SEISMIC SHIFTS: POST-COVID LEGAL EDUCATION AND THE
PROFESSION

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The 2020-2021 COVID-19 pandemic created significant upheaval in the legal profession.¹ Courts closed, cases were delayed, and law firms and other legal institutions rapidly moved their employees and operations to a virtual forum.² And among this disruption, law schools made unprecedented changes to their curricula and pedagogy as students attended classes over Zoom, through asynchronous means, or in a hybrid fashion that split their learning between in-person and online.³ These rapid developments have sparked new discussions

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¹Michelle Foster, *The Effects of the Pandemic on the Legal Industry*, FORBES, (Nov. 8, 2021, 10:15 AM), <https://www.forbes.com/sites/forbesbusinesscouncil/2021/11/08/the-effects-of-the-pandemic-on-the-legal-industry/?sh=73bf4ee57f77>.

²*Id.*; Melissa Chan, *'I Want This Over.' For Victims and the Accused, Justice Is Delayed as COVID-19 Snarls Courts*, TIME, <https://time.com/5939482/covid-19-criminal-cases-backlog/> (last updated Feb. 23, 2021, 10:12 AM).

³See Roy Martin Simamora et al., *Practices, Challenges, and Prospects of Online Learning During Covid-19 Pandemic in Higher Education: Lecturer Perspectives*, 1 STUD. LEARNING & TEACHING 185, 185–86 (2020).

regarding the future of legal education.⁴ Specifically, law schools and the American Bar Association (ABA) are now re-examining their approach to determine the appropriate balance between in-person and remote learning and what best practices should be used in a remote law school classroom.⁵ This examination has revealed a deeper interest in online learning in general, with a number of law schools seeking to provide entirely online or hybrid J.D. programs in the post-pandemic world.⁶

This article examines the history of seismic shifts in legal education, including the adoption of the case recitation method of learning,⁷ the adoption of clinical and practical training,⁸ and, finally, the shift towards increased online education.⁹ The Article begins by examining earlier disruptions in legal education, specifically the abandonment of the apprenticeship model of learning in favor of case recitation,¹⁰ and then the much-needed adoption of practical training in law schools.¹¹ Each of these earlier shifts were preceded by similar crisis moments in society—for example, the war on poverty and the creation of federal funding for law schools to step in and provide low cost and pro bono representation for clients without access to traditional legal services.¹² The Article examines these earlier shifts and the crises that created them, their impact on curricular practices, and how they compare to the impact of COVID-19 on the approach to legal education. Specifically, the Article determines that, like earlier shifts, the shift in legal education as a result of COVID-19 is the result of both internal pressure within law schools and external changing forces that mandate a new approach, including adapting to remote work and remote court proceedings.

⁴ See *Law Schools Plan Virtual Learning Expansion Post-Pandemic*, AM. BAR ASS'N, <https://www.americanbar.org/news/abanews/aba-news-archives/2022/02/law-schools-plan-virtual-expansion/> (last visited Jan. 7, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ See discussion *infra* Part I.A.

⁸ See discussion *infra* Part I.B.

⁹ See discussion *infra* Part I.C.

¹⁰ See discussion *infra* Part I.A.

¹¹ See discussion *infra* Part I.B.

¹² See Barbara L. Bezdek, *To Forge New Hammers of Justice: Deep-Six the Doing-Teaching Dichotomy and Embrace the Dialectic of "Doing Theory,"* 4 MD. L.J. RACE, RELIGION, GENDER, & CLASS 301, 303 (2004).

The Article then examines online legal education, tracing the development of pedagogical approaches and their inspiration from other disciplines. Remote learning in law schools has roots deeper than the era of Zoom, with recorded lectures and other distance educational tools having been in operation for decades.¹³ However, new pedagogical approaches developed during the COVID-19-era focus on gamification of content, the use of remote lectures, and the importance of assessment and community-building in remote classrooms.¹⁴ Finally, the Article concludes that major shifts in legal education have largely been productive for students and the profession, with COVID-19 ushering in a new era that is more focused on student flexibility and changed practice realities.

I. PREVIOUS SHIFTS IN LEGAL EDUCATION – CASES, CLIENTS, AND CODE

Legal education has demonstrated that it is capable of extraordinary shifts in approach,¹⁵ even though core components of its pedagogy and techniques have proven unshakeable for decades.¹⁶ It is also constantly the subject of critique, with contemporaries frequently arguing for change in approach.¹⁷ The earliest forms of American legal training occurred in law offices themselves, with students becoming an apprentice to a practicing lawyer in order to learn the realities of legal practice.¹⁸ While many today might herald an apprenticeship model as desirable for its abilities to convey practical skills training and one-on-one mentorship, the model was actually criticized at the time for being unable to prepare students to "think like lawyers" (i.e., learn legal analysis and synthesis), not providing a standardized approach, and being haphazard and uneven in quality

¹³ See, e.g., Michele Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading*, 64 J. LEGAL EDUC. 586, 592–93 n.25 (2015).

¹⁴ Francisco Nieto-Escamez & Maria Roldan-Tapia, *Gamification as Online Teaching Strategy During COVID-19: A Mini-Review*, 12 FRONTIERS PSYCH. 1, 1–3 (2021).

¹⁵ See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1959 (2012); see also Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L.Q. 597, 598 (1982).

¹⁶ See Spencer, *supra* note 15, at 1958–59.

¹⁷ *Id.* at 1956 ("[O]ver the past 130 years we have heard from many sources that law schools are not truly fulfilling their obligation to prepare students for legal practice.").

¹⁸ Brian J. Moline, *Early American Legal Education*, 42 WASHBURN L.J. 775, 779 (2004); see also Spencer, *supra* note 15, at 1961–62.

of experience.¹⁹ The university lecture model of teaching law developed as a reaction to these critiques, with the dominant principles of the case method being developed at Harvard Law School in the late 1800s.²⁰ This new approach was considered scientific, intellectually engaging, and desirable for developing student responsibility and rational thinking.²¹ But it did not take long for critique to again develop—this time focused on the lack of professional skills²² in the curriculum (a critique which, in many ways, brought us entirely full circle back to the early 1800s).²³

As such, it is safe to say that legal education is both changeable and responsive.²⁴ In order to explore the nature of these changes, it is helpful to look back to previous shifts in approach including the use of the case method, the proliferation of clinical programs and pro bono opportunities in law schools, and now the move to remote learning.²⁵ Each of these shifts is accompanied by a background of significant critique and changing societal forces that altered the way we perceive the role of legal education.²⁶ The move to remote, or online, legal education is no different.²⁷

¹⁹ See Susannah Furnish, *The Progression of Legal Education Models: Everything Old Is New Again* . . ., 6 NE. U. L.J. 7, 8 (2013); see also Spencer, *supra* note 15, at 1962–63 (noting Blackstone's critique of the apprenticeship model, including that students who studied under this model could not comprehend "arguments drawn a priori, from the spirit of the laws and the natural foundations of justice"); Suzanne Valdez Carey, *An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice*, 51 U. KAN. L. REV. 509, 510–11 (2003) ("[C]ritics of apprenticeship programs viewed them as uneven, inconsistent, and potentially exploitive.").

²⁰ Carey, *supra* note 19, at 511; *The Case Study Teaching Method*, HARV. L. SCH., <https://casestudies.law.harvard.edu/the-case-study-teaching-method/> (last visited Jan. 7, 2023).

²¹ See Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 598 (2007).

²² Spencer, *supra* note 15, at 1972 ("[L]egal education gave no attention to practical skills, focusing purely on instruction in legal principles and doctrines"—an approach which was supposed to be followed-up by a post-university apprenticeship that would then educate on skills and practice realities).

²³ Furnish, *supra* note 19, at 9.

²⁴ *Eg.*, *Four Ways Law Schools are Adapting to a Changing World*, U. BUFF. SCH. OF L., <https://www.law.buffalo.edu/blog/170104.html> (last visited Jan. 7, 2023).

²⁵ David H. Getches, *What's New in Legal Education – Experiential Learning*, 38 COLO. LAW. 13, 13–14 (2009); *The Case Study Teaching Method*, *supra* note 20.

²⁶ See Carey, *supra* note 19, at 511–12.

²⁷ Max Huffman, *Online Learning Grows Up – And Heads to Law School*, 49 IND. L. REV. 57, 64–65 (2015); Yvonne M. Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, 96 DENV. L. REV. 493, 494–96 (2019).

A. Cases – the Case Law Method

Perhaps one of the biggest seismic shifts in legal education occurred in the late 1870s with the introduction of the case method of teaching.²⁸ This method, promulgated by Harvard Law School Dean Christopher Columbus Langdell,²⁹ has come to be the cornerstone of legal education pedagogical practice and is familiar to law students across the country.³⁰ Its primary goal was to develop a student's critical thinking and rationality, which could then be applied across situations and even disciplines.³¹ It's a method which was met with skepticism at the time of its adoption and has been consistently critiqued by scholars ever since.³²

Dean Langdell first used the case method in his own Contracts class at Harvard.³³ The method required students to read case opinions before their class and have the facts, reasoning, and holding prepared in advance.³⁴ In class, the professor would lead an investigative discussion on the assigned cases, with the class and professor working together to synthesize the law.³⁵ Langdell's method focused heavily on case opinions and the common law, in keeping with his belief that common law was the basis of the legal system and provided a coherent structure to historical legal principles.³⁶

²⁸ *The Case Study Teaching Method*, *supra* note 20; Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 518 (1991).

²⁹ For a brief and interesting overview of Langdell's life, see Christopher Tomlins, Book Review, 59 J. LEGAL EDUC. 657 (2010) (reviewing BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C. C. LANGDELL, 1826–1906* (2009)).

³⁰ Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643, 646–47 (2013) (noting that the case method of teaching was actually controversial when it was first adopted but that it quickly spread across the legal academy).

³¹ Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 643–45 (2007).

³² Tomlins, *supra* note 29, at 657–58; Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 455–56 (1996).

³³ Jennison, *supra* note 30, at 646.

³⁴ *Id.* at 647.

³⁵ *Id.* ("These nuggets of law could then be evaluated in light of treatises and texts, and, in this way, the students would be able to learn the law in a more individual and investigative manner.").

³⁶ Rubin, *supra* note 31, at 623.

In many ways, the case method, or so-called "Langdellian method," was a revolution in legal education.³⁷ And contemporaries viewed it accordingly, treating Langdell's approach with suspicion or outright hostility.³⁸ The case method deviated significantly from former approaches to legal education.³⁹ Legal education in the 18th century was centered around the study of English treatises and commentaries, including works such as Blackstone, Coke on Littleton, and the King's Bench Reports.⁴⁰ This solitary study was accomplished during a placement in a law office under the tutelage of a practitioner and focused on practical skills training in an apprenticeship model.⁴¹ The law was considered a "craft," and aspiring lawyers would become an apprentice under a practicing lawyer to learn the ins and outs of legal practice.⁴² The student served as a clerk to the lawyer, and the lawyer in turn provided exposure to the practice of law, direct instruction on practice, and guidance through readings needed to understand the law.⁴³

This model was heavy on skills and exposure to legal practice settings but did not teach how the law developed or how to synthesize the law.⁴⁴ Additionally, many clerks spent most of their time on tedious office tasks rather than study, and many practitioners lacked complete sets of legal books that could be used for educating young lawyers.⁴⁵ Practitioners also had limited time to devote to education. As an instructor, future Supreme Court Justice James Wilson was described to his apprentice students as being "useless to those who were under his direction. He would never engage with them in professional discussions; to a direct question he gave the shortest

³⁷ Weaver, *supra* note 28, at 521–22.

³⁸ David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 115–16 (2003).

³⁹ Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 1 (1951).

⁴⁰ Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547, 553–55 (1997).

⁴¹ *Id.* at 553; Stropus, *supra* note 32, at 451–52; Furnish, *supra* note 19, at 8; Moline, *supra* note 18, at 780 ("The system was basically a contract whereby a practicing lawyer agreed to provide instruction in the law, and perhaps board and lodging, in return for a negotiated fee and the student's services as clerk and general assistant.").

⁴² Stropus, *supra* note 32, at 451.

⁴³ Moline, *supra* note 18, at 780–81.

⁴⁴ *See id.*; *Cf.* Jennison, *supra* note 30, at 647.

⁴⁵ Moline, *supra* note 18, at 781.

possible answer and a general request for information was always evaded."⁴⁶

It was rare for a university in the early 1800s to have a dedicated law faculty, with professorships in law few and far between.⁴⁷ As law faculty and programs did develop, teaching was primarily based entirely on lectures from treatises or the published comments of Blackstone and other leading authors.⁴⁸ Harvard Law School, which had opened in 1815, utilized a teaching method focused on student recitations, debate, and written lectures, although the school did benefit from the publication of American law treatises to replace or supplement English works.⁴⁹ Lectures were largely faculty monologues of general legal principles.⁵⁰ Students rarely, if ever, read cases, and to the extent they were discussed, it was in conjunction with the accompanying distillation of rules in a treatise.⁵¹ As such, education was focused on passive listening and memorization as opposed to active engagement.⁵² The lecture format was highly beneficial to law schools themselves—unlike the previous apprentice model, it allowed one teacher to reach large groups of students at one time, even if the student would probably benefit more from hands-on skill training in the previous model.⁵³

⁴⁶ Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. LEGAL EDUC. 185, 191 (2001) (quoting CHARLES WARREN, *A HISTORY OF THE AMERICAN BAR* 167 (Boston, 1911)).

⁴⁷ See Sheppard, *supra* note 40, at 567–69 (describing early legal professorships at the College of William and Mary, Transylvania University, and Dartmouth University).

⁴⁸ See *id.* at 567–68, 572–73.

⁴⁹ *Id.* at 574–78.

⁵⁰ *Id.* at 579. The case method, focused on discussion, has won out over this monologue lecture style of legal learning. In 1995, a survey was distributed by the ABA to determine how much time in law classes was spent in monologue versus dialogue. *Id.* at 592–93. The results showed that "no respondent used monologue exclusively; 11% (46) were 'mainly monologue;' 38% (160) were 'roughly equal;' 45% (190) were 'mainly dialogue;' 3% (13) responded 'all dialogue.'" *Id.* Additionally, very few law classes in modern times use a treatise as the primary text; instead, faculty largely assign casebooks. See *id.* at 593.

⁵¹ See *id.* at 573–83, 596 ("Even so, between the death of Edward Coke [in 1634] and 1870, no author or teacher expected students to prepare for law lectures relying exclusively on readings of judicial cases.").

⁵² K.K. DuVivier, *Goodbye Christopher Columbus Langdell?*, 43 ENV'T L. REP. NEWS & ANALYSIS 10,475, 10,476 (2013).

⁵³ See *id.*

Dean Langdell viewed the study of law differently—he desired that the study of law be scientific and believed that a scientific inquiry could unveil the universal structures of law.⁵⁴ And as such, he believed that the study of law must focus on the source of the law—cases.⁵⁵ "A student would thus read and consider case opinions on a given topic, and then class discussion of that topic would develop the relationship of the principles of law reflected in the case to other points of law."⁵⁶ Further, professors would no longer deliver monologue lectures from prepared notes.⁵⁷ Instead, they would lead discussion in class to help students uncover legal principles from cases.⁵⁸ This would also make the student a more active and responsible learner.⁵⁹ The student had to come to class prepared and ready to explore the cases and to derive the legal principles from the professor's questioning.⁶⁰

Langdell's scientific approach to legal education was probably driven in part by a larger societal shift to professionalization in the sciences.⁶¹ The scientific community in the mid-1800s was becoming

⁵⁴ Nancy Cook, *Law as Science: Revisiting Langdell's Paradigm in the 21st Century*, 88 N.D. L. REV. 21, 22, 25 (2012) ("[S]cience was the rage in intellectual circles, and law, as a profession and an academic discipline, was anxious to be admitted to the university academy.").

⁵⁵ Weaver, *supra* note 28, 526–28; *The Case Study Teaching Method*, *supra* note 20.

⁵⁶ Sheppard, *supra* note 40, at 597–98.

⁵⁷ *Id.*; Weaver, *supra* note 28, at 526–27; Charles W. Eliot, *Langdell and the Law School*, 33 HARV. L. REV. 518, 523–24 (1920).

⁵⁸ See Sheppard, *supra* note 40, at 597–98. An interesting excerpt from the first Contracts class Langdell taught using the case method shows that the dialogue could be dropped into most modern law school classrooms with ease:

"Mr. Fox, will you state the facts in the case of *Payne v. Cave*?"

Mr. Fox did his best with the facts of the case.

"Mr. Rawle, will you give the plaintiff's argument?"

Mr. Rawle gave what he could of the plaintiff's argument.

"Mr. Adams, do you agree with that?"

Id. at 598. A contemporary wrote that "dismay filled the school.' . . . 'Most of the class could see nothing in his system but mental confusion and social humiliation.'" *Id.* at 599 (quoting Samuel F. Batchelder, *Christopher C. Langdell*, 18 GREEN BAG 437, 440 (1906)). On this final point, modern criticism of the Langdellian method does focus on the social and psychological distress caused by the method in the law school classroom. *E.g.*, Suzanne Dallimore, *The Socratic Method – More Harm than Good*, 3 J. CONTEMP. L. 177, 182–85 (1977).

⁵⁹ Sheppard, *supra* note 40, at 598–99.

⁶⁰ DuVivier, *supra* note 52, at 10,476.

⁶¹ G. Edward White, *The Impact of Legal Science on Tort Law, 1880–1910*, 78 COLUM. L. REV. 213, 215, 217 (1978). According to Professor White:

increasingly professionalized, with the American scientific community becoming increasingly distinct from its European counterpart.⁶² As part of this professionalization, science programs in American universities took on more rigorous standards through the formation of scientific societies and standards for scientific research.⁶³ The scientific method was seen as an objective, neutral, and rational manner of acquiring knowledge about the world, especially for professional disciplines.⁶⁴ This was part of a larger cultural shift away from explanation of the world through a religious lens, and Americans were interested in empirical observation and the ability to organize and classify the world through objective analysis.⁶⁵ Additionally, the Industrial Revolution had created a sense that experimentation and the application of scientific principles could significantly improve outcomes in real world applications, perhaps tying the idea of a scientific method of legal study and analysis to positive outcomes in real practice situations.⁶⁶

Langdell himself believed in adherence to a scientific method, or natural science, of legal study.⁶⁷ He stated that, "Law, considered

After the Civil War . . . [a]n ideal of the "liberal gentleman" for educated Americans was replaced with an ideal of the specialized professional. A mode of conveying information that stressed the recapitulation and memorization of a finite body of knowledge was replaced with a mode—widely labeled "scientific"—that assumed knowledge to be complex and infinite but capable of orderly classification and analysis through the use of proper methodological techniques.

Id. at 215.

⁶² Paul Lucier, *The Professional and the Scientist in Nineteenth-Century America*, 100 *ISIS* 699, 700, 714 (2009).

⁶³ White, *supra* note 61, at 217–18.

⁶⁴ Cook, *supra* note 54, at 26.

⁶⁵ White, *supra* note 61, at 215–17.

⁶⁶ See generally Julian Reiss & Jan Sprenger, *Scientific Objectivity*, *STAN. ENCYC. OF PHIL.* (2020), <https://plato.stanford.edu/entries/scientific-objectivity/> (describing the use of objectivity and the scientific method across multiple academic disciplines); see also Jason Crawford, *What Was the Relationship of the Scientific Revolution to the Industrial?*, *THE ROOTS OF PROGRESS* (Oct. 29, 2017), <https://rootsofprogress.org/relationship-of-the-scientific-and-industrial-revolutions> (discussing the link between the Scientific and Industrial revolutions).

⁶⁷ Cook, *supra* note 54, at 30. Langdell would have learned logic and scientific method when he studies as an undergraduate at Harvard:

Harvard students were led to organize their thoughts in a particular way. The raw material of any inquiry consisted of the things described as intuitive evidence—what we see, hear, and feel. The next step involved cleaning up the raw material by subjecting it to thorough inspection and analysis. The

as a science, consists of certain principles or doctrines. To have such mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer[.]”⁶⁸ To Langdell, the scientific method could be applied to the common law as contained in written appellate judicial opinions—students would learn by first reading cases and then arranging the holdings of those cases into a synthesis of general principles of law.⁶⁹ The dialogue in which students and the professor engaged while in the classroom was a search for these known general principles, and only a trained researcher was appropriate to guide students in this quest to discover legal structure through the analysis of case opinions.⁷⁰

The Langdellian method became popular over time, totally disrupting the established apprentice style of teaching and wholly replacing the dominant pedagogical approach⁷¹ by the mid-20th century.⁷² A rash of casebooks catering to this method grew alongside it.⁷³ In many ways, it was a huge improvement because the discussion-centric nature of the approach was more effective for retention, analytical

final step was logic. Inferences could be drawn in accordance with a number of approved methods. This included deduction, induction, analogy, probability theory, and "reasoning from facts."

Catharine Pierce Wells, *Langdell and the Invention of Legal Doctrine*, 58 BUFF. L. REV. 551, 590 (2010). This approach can be seen in Langdell's ultimate legal methodology, which emphasized the student reading/observing appellate case opinions, preparing the facts, reasoning, and holding, and then making logical decisions about the outcome, structure, and application of the law. Weaver, *supra* note 28, at 527–29, 531–33.

⁶⁸ C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, vi (Boston, Little, Brown, and Co. 1871).

⁶⁹ Cook, *supra* note 54, at 29–30.

⁷⁰ *Id.* at 30–31; see Romantz, *supra* note 38, at 105–06 (“The law, Langdell suspected, could be reduced to a finite number of universal propositions that scientists and students could reveal through observation, experimentation, and critical study of primary legal data—the body of judge-made law, or the common law.”).

⁷¹ McManis, *supra* note 15, at 598; Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 184–85 (2008) (“As academic legal education expanded rapidly starting in the 1890s, the apprenticeship system essentially disappeared as a way to enter the legal profession.”).

⁷² Sheppard, *supra* note 40, at 614.

⁷³ *Id.* at 614–15.

thinking, and transferring knowledge.⁷⁴ Langdell's vision was a world where students learned the science of legal study⁷⁵ and legal thought in the classroom by emulating the behavior of judges thinking through a case, while practical concerns would be addressed during a student's first legal job—much like a medical residency.⁷⁶

In 2007, the *Carnegie Report* assessed the case method of legal education and found that, in terms of teaching legal analysis, it appeared to be a successful model;⁷⁷ specifically, the report noted that law schools were effectively imparting the ability to "think like a lawyer" through the case method.⁷⁸ The Report noted that:

In a relatively short period of time, they are able to impart a distinctive habit of thinking that forms the basis for their students' development as legal professionals. Visiting schools of different types and geographical locations, the research team found unmistakable evidence of the pedagogical power of the first phase of legal education. Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning, in the parlance of legal education, to "think like a lawyer."⁷⁹

In making this observation, the *Carnegie Report* also noted the heavy reliance of law schools on the case method, which is relatively

⁷⁴ DuVivier, *supra* note 52, at 10,476–77 ("Cognitive psychology shows that if new knowledge is processed more deeply and actively, it is much more likely to be retained and retrieved.")

⁷⁵ Spencer, *supra* note 15, at 1975 ("Langdell believed that law was a form of natural science in that it consisted of a coherent system of rules derived from general principles that could only be discerned through the study of observable phenomena—the judicial opinions in which the principles were manifested.")

⁷⁶ Stropus, *supra* note 32, at 454–55 ("The Langdellian method assumed that a legal apprenticeship after law school would then provide law students with the practical skills necessary for practicing law."); *see also* W. Barton Leach, *Property Law Taught in Two Packages*, 1 J. LEGAL EDUC. 28, 32 (1948); Spencer, *supra* note 15, at 1972 ("[A]cademic legal education and subsequent practical training through apprenticeships were necessary partners in the effort to prepare well-qualified lawyers for practice.")

⁷⁷ *See* WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 3–5 (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf.

⁷⁸ *Id.* at 5–6; Jennison, *supra* note 30, at 658.

⁷⁹ SULLIVAN ET AL., *supra* note 77, at 5.

standard through the legal education curriculum.⁸⁰ And, unlike other fields, legal education adopted a model that did not use a variety of teaching styles or methods, preferring to rely almost entirely on the case method.⁸¹ The report noted that the positive aspects of the case method involved its accuracy in teaching what many would call "legal analysis"—"abstracting from natural contexts, then operating upon the 'facts' so abstracted according to specified rules and procedures, and drawing conclusions based upon that reasoning."⁸²

However, the method was not as effective in exposing students to real-world, holistic, and complex situations involving real people, like the clients students would ultimately represent, and it lacked the ability to fully explore social issues or concepts of justice.⁸³ And, as to be explored further in the next section, the *Carnegie Report* also noted that law schools tended to focus heavily on "thinking like a lawyer," but less on the development of practical skills or direct professional training—those items prevalent in early apprenticeship models⁸⁴ before lecture took hold.⁸⁵ Critics⁸⁶ have also discussed its lack of focus on statutory law,⁸⁷ use of a single method despite

⁸⁰ *Id.* at 5–6.

⁸¹ *Id.*

⁸² *Id.* at 6.

⁸³ *Id.*

⁸⁴ *Id.* As stated by Attorney Furnish:

In the past two decades, a series of critiques, reviews, and studies have challenged the legal academy to improve legal instruction by placing greater emphasis on professional skills The irony, of course, is that the prevailing approach to legal education, housed in a university setting and employing the case method in large classes, evolved in the late 1800s as a reaction to an apprenticeship model focusing on skills, ethics, and competencies.

Furnish, *supra* note 19, at 7.

⁸⁵ SULLIVAN ET AL., *supra* note 77, at 5–6. The report summary noted that "[t]he relatively subordinates place of the practical legal skills, such as dealing with clients and ethical-social development in many law schools, is symptomatic of legal education's approach to addressing problems and framing remedies." *Id.* at 7. However, it did provide a recommendation for this problem by suggesting that "law schools should offer an integrated, three-part curriculum: (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth; (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession." *Id.* at 8.

⁸⁶ For a good overview of critiquing scholarship on the Langdellian method, see Stropus, *supra* note 32, at 449 n.3.

⁸⁷ See Sheppard, *supra* note 40, at 621–22.

differences in subjects,⁸⁸ failure to discuss ethics,⁸⁹ transition to more of an interrogatory-style format rather than a true class discussion,⁹⁰ reliance on an auditory learning style,⁹¹ and a number of other objections.⁹² It was at least some of these objections that formed the basis for the second major revolution in legal education—the incorporation of pro bono work and practical skill training.⁹³

B. Clients – Pro Bono and Practical Skills

As noted above, the case method was a revolution in legal education that occurred quickly and did not let go.⁹⁴ But it was not the last shake-up in the legal academy.⁹⁵ The philosophical and pedagogical approaches to teaching law students have been in constant flux and often change with the times and larger societal concerns.⁹⁶

The case method approach discussed above was premised on the idea that law schools should teach students to think like lawyers—i.e., give them a toolkit of analytical and rational thinking skills that could be applied in legal practice.⁹⁷ This academic and analytical work was to be conducted within the halls of the law school, with practitioners still providing some form of apprenticeship when students exited the university and entered the workforce.⁹⁸ This would create a seamless blend of academic rigor and skills education that would produce a successful legal thinker and attorney.⁹⁹

⁸⁸ See *id.* at 621.

⁸⁹ See *id.*; Furnish, *supra* note 19, at 13.

⁹⁰ Sheppard, *supra* note 40, at 620.

⁹¹ DuVivier, *supra* note 52, at 10,477.

⁹² Sheppard, *supra* note 40, at 621–22.

⁹³ See Furnish, *supra* note 19, at 10–11 (“The current trends toward a more experiential approach to legal education find their roots in these longstanding critiques of Langdell’s models and approaches.”); Jeremiah A. Ho, *Law as Instrumentality*, 101 MARQ. L. REV. 131, 138 (2017).

⁹⁴ Weaver, *supra* note 28, at 594.

⁹⁵ Hous. Bar Ass’n, *Legal Education 2020*, HOUS. LAW, Sept./Oct. 2000, at 31, 32 (2000) (“If history is any lesson in predicting the future of legal education, law schools have been very slow to embrace change. Yet, change has occurred in the past quarter of this century in legal education, perhaps too slow for some, and not fast enough for others.”).

⁹⁶ *Id.* at 32–33; see also *Four Ways Law Schools are Adapting to a Changing World*, *supra* note 24.

⁹⁷ Weaver, *supra* note 28, at 549–51.

⁹⁸ Stropus, *supra* note 32, at 454–55, 460.

⁹⁹ See *id.* at 454–55.

However, this is not always the case for every student, and it relies on a system of apprenticeship that is probably not realistic in current job markets.¹⁰⁰ As such, there have long been calls to inject experiential learning and practical skills into legal education.¹⁰¹ These calls for reform have resulted in two major additions to the law school experience—pro bono work and clinical education.¹⁰² This development also dovetailed with larger social concerns about providing additional opportunities for free or low-cost legal services.¹⁰³

The 1930s saw the first serious calls for practical or clinical education in law schools, although legal clinics had existed even before that.¹⁰⁴ During this time, scholars continued criticisms of the Langdellian method that had been present since its inception and used these critiques to advocate for a system of legal education that exposed students, once again, to the craft of practicing law.¹⁰⁵ Indeed, a 1921 study by the Carnegie Foundation for the Advancement of Teaching found that law schools lacked craft-based education and that legal education was entirely theoretical in nature.¹⁰⁶ It specifically noted that the educational approach to teaching only rationality and critical thinking without any practical training "constitutes a remarkable

¹⁰⁰ See Denison Ray, *The Need for Apprenticeship in the Quest for Excellence*, 13 CLEARINGHOUSE REV. 246, 247–50 (1979).

¹⁰¹ See Furnish, *supra* note 19, at 10.

¹⁰² See *The History of Lawyer Pro Bono Services*, ROGER WILLIAMS U. SCH. OF L. (Oct. 18, 2019), <https://law.rwu.edu/library/blog/history-lawyer-pro-bono-services>; Sue Bentsch, *A History of the Law Clinics at St. Mary's University School of Law*, 46 ST. MARY'S L.J. 285, 286–90 (2015).

¹⁰³ See 42 U.S.C. § 2996; *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVS. CORP. (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>; Vanita Saleema Snow, *The Untold Story of the Justice Gap: Integrating Poverty Law into the Law School Curriculum*, 37 PACE L. REV. 642, 643 (2017); Martha F. Davis, *The Pendulum Swings Back: Poverty Law in the Old and New Curriculum*, 34 FORDHAM URB. L.J. 1391, 1395 (2007).

¹⁰⁴ Carey, *supra* note 19, at 513; Joy & Kuehn, *supra* note 71, at 186 (discussing early versions of the legal clinics in the late 1800s and early 1900s).

¹⁰⁵ Joy & Kuehn, *supra* note 71, at 186–87; Carey, *supra* note 19, at 513 (noting that an early advocate of clinical education, Jerome Frank, advocated for a system that would combine clinical education with the Langdellian method, and ensure "law students would learn to develop relationships with clients, observe the behavior of witnesses, judges, and juries, and develop skills in negotiation and litigation.").

¹⁰⁶ ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA 281 (Carnegie Foundation for the Advancement of Teaching 1921).

educational anomaly.¹⁰⁷ Practitioners joined in this cry as well, asking that graduating law students be exposed to the practice of law before they left law schools.¹⁰⁸ They also noted, in addition to the lack of practical skills training, that law students were not being forced to deal with the type of real world situations in which issues of ethics, social concerns, and justice were present.¹⁰⁹ These cries worked, and law schools began the concerted process of creating clinical programs or practice courts that exposed students to real or hypothetical legal issues.¹¹⁰ By the late 1950s, thirty-five law schools offered clinical experiences, with fifteen of them offering some academic credit for clinical work.¹¹¹

An additional force helped shaped this reform—the need to provide access to justice and legal services for those that could not afford traditional legal services.¹¹² Starting in the 1950s, the Ford Foundation provided significant funding to law schools to help establish clinical programs for individuals who could not afford traditional legal services.¹¹³ This funding enabled the start of over one hundred clinical programs at American law schools with the Ford Foundation's goals being to help develop practical legal skills in law school curricula and to provide a larger societal benefit as well,¹¹⁴ specifically the benefit of providing additional legal services to populations that could not afford attorneys.¹¹⁵

¹⁰⁷ *Id.*

¹⁰⁸ *See id.* at 281–83.

¹⁰⁹ *Id.*; Joy & Kuehn, *supra* note 71, at 187 (“In 1951, Robert Storey, then Dean of Southern Methodist University School of Law, praised the ‘clinical method’ for exposing ‘the student to actual problems by confronting him with actual people who are in actual trouble.’”) (quoting Robert G. Storey, *Foreword, Law School Legal Aid Clinics*, 3 J. LEGAL EDUC. 533 (1951)).

¹¹⁰ Carey, *supra* note 19, at 516–19.

¹¹¹ Joy & Kuehn, *supra* note 71, at 187 (citing Joseph W. McKnight, *Report of Committee on Legal Aid Clinics*, 1959 ASS'N AM. L. SCHS. PROC. 121, 121–22).

¹¹² Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 997 (2004) (“[L]aw schools do have some obligation to contribute to the solution of the crisis in access to justice, and it seems obvious that the obligation is best accomplished by law school clinics assisting low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems.”).

¹¹³ *Id.* at 998 n.7.

¹¹⁴ Davis, *supra* note 103, at 1396–97.

¹¹⁵ Deborah Maranville et al., *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y. L. SCH. L. REV. 517, 521–22 (2011/2012)

The 1960s saw a renewal interest in ensuring that underserved communities had access to legal services,¹¹⁶ and law schools were called on to provide in-house clinics that would help meet the demand for legal services,¹¹⁷ which spurred additional growth and funding in clinical programs.¹¹⁸ The Civil Rights Era of the 1960s also contributed to a strong student desire to use their legal skills to help others in a practice setting while still in law school.¹¹⁹ This was a particularly potent motivation, with increased numbers of law students pursuing their J.D. in order to engage in public service and pursue social justice goals,¹²⁰ and they demanded training to help them achieve these objectives.¹²¹

("[T]he first programmatic models for clinical education were grounded in the imagery of litigation and courtroom representation on behalf of subordinated populations."); As stated by Professors Wizner and Aiken:

[C]linics began at many law schools primarily as programs to enable law students to provide free legal services to the poor or to bring important impact litigation, under the supervision of practicing attorneys. An important by-product of that service was an increased awareness on the part of law students of the needs of the poor and oppressed. Clinics were about skills training, providing service, influencing policy, and developing future legal aid and civil rights lawyers.

Wizner & Aiken, *supra* note 112, at 998.

¹¹⁶ AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 51 (1992) [hereinafter MCCRATE REPORT], <https://www.cor-teidh.or.cr/tablas/28961.pdf> ("[I]n the decade of the 1960s there was increasing public scrutiny of the legal profession and the adequacy of its performance in distributing legal services, including legal services to those unable to afford a lawyer.").

¹¹⁷ This process actually dated back to the 1800s, during which time the first legal aid society was established. Douglas A. Blaze, *Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 944–45, 950 (1997) (noting that the first legal aid society was established in the 1800s, and that "the earliest clinical programs were an outgrowth of the legal aid movement.").

¹¹⁸ *Id.* at 941–42.

¹¹⁹ Furnish, *supra* note 19, at 11; Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer, Part II: A Case Study of Accomplishments, Challenges and the Future of Clinical Legal Education*, 16 NW. J.L. & SOC. POL'Y 47, 48 (2020) ("The 1950s and 1960s were a time of upheaval and change in many aspects of American life. Because law was central to issues such as the fight for civil rights and the growth of new areas of public policy, including environmentalism and consumer protection, the ranks of law school clinics swelled as the study of law, for many, became viewed as a vehicle for social change.").

¹²⁰ Robert Cranfield, *Institutionalizing Public Service in Law School: Results on the Impact of Mandatory Pro Bono Programs*, 54 BUFF. L. REV. 1355, 1369 (2007).

¹²¹ Geraghty, *supra* note 119, at 48 ("The newly named 'Northwestern Legal Assistance Clinic' was established at the behest of Northwestern Law faculty and students who

Law school (or legal education) reform, however, has always been part of the goal. The 1992 McCrate Report, officially titled *Legal Education and Professional Development – An Educational Continuum*, was authored by the ABA's Section of Legal Education and Admissions to the Bar and addressed this concern.¹²² Even though legal clinics had existed since the mid-20th century,¹²³ the McCrate Report reinforced the need for clinical education for modern law students.¹²⁴ Its recommendations addressed the clinical setting as a vehicle for teaching legal analysis, skills, ethics, and management of legal work.¹²⁵ The Report led to a revision in ABA accreditation standards, which required law schools to maintain educational standards that would "prepare graduates for the [actual] practice of law."¹²⁶

Today, clinical education exists with a set of impressive goals: "teaching law students the skills necessary to practice law, providing quality legal services to the indigent, imparting in students a sense of professional responsibility, and engaging in litigation for the purpose of reforming the law."¹²⁷ While the American Association of Law Schools has indicated that the primary objective of clinical programs is to educate students, the initial goals of providing additional legal services and serving the community remain firmly in place.¹²⁸ Today, every law school in the country offers some type of clinical

thought . . . that more emphasis should be given to practical training in the school's curriculum.").

¹²² See MCCRATE REPORT, *supra* note 116, at 3–4.

¹²³ Joy & Kuehn, *supra* note 71, at 187.

¹²⁴ See MCCRATE REPORT, *supra* note 116, at 6 ("Today, clinical courses, both in a simulated and live-client setting, occupy an important place in the curriculum of virtually all ABA-approved law schools.").

¹²⁵ See *id.* at 330–34 (where the ABA recommended law schools provide externships, clinicals, and other supervised experiences to assist students with developing and refining professional skills).

¹²⁶ Carey, *supra* note 19, at 530. This period saw a significant growth in clinical offerings, with 147 ABA-accredited law schools offering in-house law school clinical programs. Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 20–21 (2000).

¹²⁷ Carey, *supra* note 19, at 517.

¹²⁸ *Id.* at 518; see also MCCRATE REPORT, *supra* note 116, at 54 ("The role of the law schools in legal services to the poor is of a special character. While law schools could never be major providers of services to low income clients and fulfill their basic educational mission, their contribution today is highly significant.").

experience,¹²⁹ with faculty members who serve as administrators for the program and help oversee the work of law students.¹³⁰ Research in the area of clinical education has shown that this approach is largely working, with students being more prepared for the practice of law and generally reporting a positive experience with clinical education.¹³¹ And, with the positive proliferation of clinical programs, it seems clinical education is now a bedrock of American legal education.¹³²

A similar bedrock is seen in the history of pro bono service in law schools—another initiative with dual motivations and a long history.¹³³ Like clinical education, pro bono service in law schools comes from a background of external societal pressure (similarly, to provide much needed legal services to those that cannot afford it), while serving a simultaneous mission of education and skills development.¹³⁴ Mandatory pro bono programs in law schools are another revolution in legal education, one that is largely the product of pressures in the 1990s for law schools to help remedy the gap in pro bono services and provide additional legal services to those in need.¹³⁵ The late 1980s saw reduced funding for legal aid organizations¹³⁶ and a subsequent push for law schools to help make up the deficiency in these areas.¹³⁷ The ABA also became involved, passing a suggestion

¹²⁹ Joy & Kuehn, *supra* note 71, at 188 ("Today, every ABA-approved law school offers in-house clinical courses, externships, or both.").

¹³⁰ Sandra A. Hansberger, *The Road To Tomorrow: How Much Practical Skills Instruction Should Law Students Get?*, OR. STATE BAR BULL., May 1997, at 9, 10–11.

¹³¹ Carey, *supra* note 19, at 527–28 ("Some empirical evidence indicates that today's law school graduates are more prepared for the practice of law than law graduates thirty years ago. . . . [S]tudent support for the clinical experience appears to be overwhelmingly positive.").

¹³² See Barry et al., *supra* note 126, at 15–16, 3–4 n.6.

¹³³ Cynthia F. Adcock, *Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum*, 62 J. LEGAL EDUC. 566, 566–67 (2013) (noting that the first pro bono project at an American law school started in 1893 at the University of Pennsylvania).

¹³⁴ See Laurie Barron et al., *Don't Do It Alone: A Community-Based, Collaborative Approach to Pro Bono*, 23 GEO. J. LEGAL ETHICS 323, 325–26, 328 (2010).

¹³⁵ Jennifer Murray, Comment, *Lawyers Do It for Free?: An Examination of Mandatory Pro Bono*, 29 TEX. TECH U. L. REV. 1141, 1167–68 (1998).

¹³⁶ Barron et al., *supra* note 134, at 327.

¹³⁷ See Murray, *supra* note 135, at 1168, 1171 ("[T]he premise that law schools bear the blame for the increase in the shortage of legal support for the poor and as a result, bear the responsibility for remedying that problem is a flawed absolutism. The shortage

that lawyers do fifty hours of pro bono services a year,¹³⁸ and amending law school accreditation standards to encourage students to participate in pro bono activities (with law schools required to provide substantial opportunities for pro bono involvement).¹³⁹

This push was generally successful with a number of schools adopting mandatory pro bono programs for their students, usually as a requirement for graduation.¹⁴⁰ These mandatory programs do three major things. First, they expose students to additional skill development and practice readiness, thus addressing the Langdellian critique.¹⁴¹ Additionally, they, hopefully, instill in students a culture of pro bono service in relation to their time as a practicing attorney.¹⁴² Finally, they help provide additional services in unmet areas.¹⁴³ Like clinical education, this revolution seems here to stay—spurred by the desire to reform legal education and to provide additional legal services, “[n]early all law schools throughout the country currently have some type of organized pro bono program.”¹⁴⁴

of legal support for the poor is a community problem, for which no one group bears responsibility.”).

¹³⁸ Barron et al., *supra* note 134, at 327.

¹³⁹ *Id.* at 329; Granfield, *supra* note 120, at 1356.

¹⁴⁰ Murray, *supra* note 135, at 1168–69 (“Among the first to implement [mandatory pro bono] programs were the University of Pennsylvania Law School, Tulane University School of Law, Valparaiso University School of Law, and Florida State University College of Law.”).

¹⁴¹ See Sydney Howe-Barksdale, *Do Unto Others: Widener Law School Using Pro Bono Service as an Educational Access Outreach Strategy Within the Constraints of Recession Policies*, 19 TEMP. POL. & C.R. L. REV. 5, 13 (2009). A committee report from a Widener Law School Ad Hoc Committee found that pro bono opportunities not only allow students to develop lawyering skills but also mold students’ future legal practices. *Id.*

¹⁴² Murray, *supra* note 135, at 1170; Sabrina A. Hall & Tammy R. Wavle, *A Vision for the Future: Mandatory Pro Bono Programs in Texas Law Schools*, HOUS. LAW. Jan./Feb. 2001, at 18, 19 (discussing a survey from the American Association of Law Schools [AALS] to law school deans and noting that “[f]ully 95 percent of all deans responding to the AALS survey agreed that ‘it is an important goal of law schools to instill in students a sense of obligation to perform pro bono work during their later career.’”); David Hall, *The Law School’s Role in Cultivating a Commitment to Pro Bono*, 42 BOS. BAR J. 4, 20 (1998) (“Since legal education embodies more than just practical skills, but also embraces certain fundamental values, it is not inconsistent for a law school to require that students fulfill a pro bono or public interest experience while in law school.”).

¹⁴³ See, e.g., Howe-Barksdale, *supra* note 141, at 22–29.

¹⁴⁴ Granfield, *supra* note 120, at 1370.

C. Code – Remote and Online Learning

Last, and most pressing in the journey of evolution in legal education, is the topic of the hour—remote and online learning in the law school space. Any research into this topic will reveal a number of themes—that legal education has been slow to embrace remote learning,¹⁴⁵ that there are serious pedagogical concerns about converting legal education to a remote format,¹⁴⁶ and that there are questions as to whether legal employers would accept coursework completed in a remote or online format for J.D. candidates who choose to pursue an education in this way.¹⁴⁷

But the reality is that legal education—that bastion of the in-person learning experience—has conceived of distance learning for decades.¹⁴⁸ In the law school space specifically, a distance learning course using the internet and video conferencing was used for the first time in 1996.¹⁴⁹ The technology involved in remote education courses has only been further improved over time—Microsoft Teams, Zoom, WebEx, and a large variety of other videoconferencing solutions have made videoconferencing efficient, simple, and affordable.¹⁵⁰ These solutions have allowed online courses taken in law school to include both asynchronous and synchronous content in the course.¹⁵¹

¹⁴⁵ Ronald J. Colombo, *Teaching a Synchronous Online Business Organizations Course to J.D. Students: A Case Study*, 48 HOFSTRA L. REV. 873, 881 (2020).

¹⁴⁶ Huffman, *supra* note 27, at 61.

¹⁴⁷ See Blake A. Klinkner, *Will Online Law Degrees Be the Future of Legal Education?*, WYO. LAW. APR. 2016, at 48, 49.

¹⁴⁸ See Colombo, *supra* note 145, at 882–83.

¹⁴⁹ Helen Leskovic, *Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L. J. SCI. & TECH. 305, 311 (1998); Arturo Lopez Torres & W. Clinton Sterling, *Will Law Schools Go the Distance? An Annotated Bibliography on Distance Education in Law*, 91 LAW LIBR. J. 655, 674–75 (1999). Interestingly, the first remote legal conference was held in 1992, with 20 law faculty and attorneys conducting a conference by e-mail. *Id.* at 674. The participants called it a success and suggested email could be a productive way to conduct a short law school course in the future. *Id.*

¹⁵⁰ Mike Walsh, *The 7 Best Video Conferencing Software Platforms for 2023*, DGI COMMCSNS, <https://www.dgicommunications.com/video-conferencing-software/> (last visited Jan. 7, 2023).

¹⁵¹ A good description of these various approaches, such as purely asynchronous, purely synchronous, blended, flipped, web-facilitated, and a number of other formats, can be found at Dyane L. O'Leary, *Flipped Out, Plugged in, and Wired Up: Fostering Success for Students with ADHD in the New Digital Law School*, 45 CAP. U. L. REV. 289, 293–97 (2017). The St. Mary's approach to online learning, as well as generally accepted best practices, are discussed in more detail below.

Despite the availability of remote learning to law schools, the model of legal education has been slow to embrace these options.¹⁵² At least part of this reluctance is reflected in ABA accreditation standards.¹⁵³ The ABA's evolution of distance learning standards proceeded as follows: For ABA-accredited law schools, remote or distance learning was initially prohibited.¹⁵⁴ To the extent any deviation was allowed, a law school must pursue a waiver from the ABA's Section on Legal Education and Admission to the Bar.¹⁵⁵ Temporary Distance Education guidelines were then adopted in 1997¹⁵⁶ and ultimately captured in ABA Standard 306.¹⁵⁷ Standard 306 historically provided limitations on the number of credit hours a law student could earn

¹⁵² In 1997, the ABA's Distance Learning Subcommittee of the Technology Committee conducted a survey on distance learning. It received only a 43% return rate. Torres & Sterling, *supra* note 149, at 673.

¹⁵³ Colombo, *supra* note 145, at 882 ("Regardless of its causes, resistance to distance learning in legal education historically asserted itself through the ABA—the organization deputized by the U.S. Department of Education to accredit law schools in the United States."). However, it is also worth noting that the individual state boards of law examiners are also probably to blame for the reluctance of law schools to adopt distance learning or online education programs. As noted by the ABA, "[e]arning a J.D. degree in a distance education program may limit your ability to sit for the bar in some states." *A Guide to ABA Approved Distance Education*, AM. BAR ASS'N. (Jan. 21, 2022), https://www.americanbar.org/groups/legal_education/resources/distance_education/. Indeed, when St. Mary's University was given permission by the ABA to operate a fully online J.D., the ABA required disclosure regarding the potential for bar admission—for example:

The St. Mary's Law online J.D. program is approved by the American Bar Association. Applicants should confirm the legal education requirements for the jurisdiction in which they intend to seek admission to the bar and can find information for each jurisdiction through the National Conference of Bar Examiners. St. Mary's Law is accredited by the ABA, but jurisdictions may have restrictions regarding online degree programs.

Online J.D. Program, ST. MARY'S UNIV. SCH. OF L., <https://law.stmarytx.edu/academics/programs/jd/online-j-d-program/> (last visited Jan. 7, 2023). For a listing of states that allow bar exam applicants to sit for the bar exam with an online law degree, see AM. BAR ASS'N, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 12–13 (Judith A. Gunderson & Claire J. Guback eds., 2021), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2021-comp-guide.pdf.

¹⁵⁴ Leskovic, *supra* note 149, at 308 ("American Bar Association Standard 304(g) specifically prohibits the oldest form of distance learning, correspondence study, and thus, by implication, technology-based distance learning as well.").

¹⁵⁵ Colombo, *supra* note 145, at 882.

¹⁵⁶ Torres & Sterling, *supra* note 149, at 671.

¹⁵⁷ Colombo, *supra* note 145, at 882.

online towards a J.D. degree.¹⁵⁸ This language allowed significant online learning, even in a "face-to-face" program of legal education, by giving students the option to complete a full year of traditional J.D. course work (one-third of the curriculum) in an online capacity.¹⁵⁹

Standard 306 was ultimately deleted from the ABA Standards in August 2020 with accompanying changes that moved the definitions and substantive rules on distance learning to other standards.¹⁶⁰ For example, Standard 306(a), which had addressed "distance education," was deleted and its definitional language moved to the definitions section of the standards.¹⁶¹ Section (8) of the definitions section now states that a "Distance Education J.D. Program" means a program where a law school grants a student more than one third of the credit hours required for the J.D. degree for distance education courses.¹⁶² The limits on credit hours for distance education were moved to the definitions section¹⁶³ and to Standard 311, which now

¹⁵⁸ AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 19 (2014–2015), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf (last visited Jan. 7, 2023). This link provides the 2014-2015 version of Standard 306, which at the time stated, "A law school shall not grant a student more than four credit hours in any term, nor more than a total of 12 credit hours, toward the J.D. degree for courses qualifying under this Standard." *Id.* at 116. The Standard was later amended in 2018 to allow a law school to grant one-third of total credit hours towards the J.D. and still be in compliance with Standard 306. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018, Ch.3 Program of Legal Education*, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.pdf (last visited Jan., 7, 2023).

¹⁵⁹ *ABA Accreditor for Law Schools Recommends Expanding Distance Learning Opportunities*, AM. BAR ASS'N (Feb. 12, 2018), https://www.americanbar.org/news/abanews/aba-news-archives/2018/02/aba_accreditor_for1/.

¹⁶⁰ Stephanie Francis Ward, *Law Schools Should Have Flexibility in Responding to 'Extraordinary Circumstances,' ABA House of Delegates Says*, A.B.A. J. (Aug. 3, 2020, 4:18 PM), <https://www.abajournal.com/news/article/various-legal-ed-proposals-approved-by-aba-house-of-delegates>.

¹⁶¹ AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS ix (2021–2022), 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 [hereinafter ABA STANDARDS FOR APPROVAL].

¹⁶² *Id.*

¹⁶³ *Id.* According to Council Chair Bosse and Managing Director Currier:

states, "A law school may grant up to ten 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."¹⁶⁴

Since the 2020 deletion of Standard 306, the rules on distance education remain as follows: law schools can award credit for up to one-third of total credit hours required for the J.D. for distance education courses, with ten credit hours earned through distance education allowed in the first third of the law school curriculum (i.e., the traditional "1L" year).¹⁶⁵ If a law school would like to pursue a distance education program that allows more than one-third of the credit hours to be earned online, the law school can apply for a substantive change, which is governed by Standard 105 and Rule 24.¹⁶⁶ Mitchell Hamline College of Law received the first variance from distance education requirements in 2013 in order to offer a hybrid J.D.—i.e., one with a mix of in person and online instruction.¹⁶⁷ For

The language currently in Standard 306(d) addresses when distance education may count toward the 64 credit hours of regularly scheduled classroom sessions under Standard 31I, including that learning outcomes are consistent with Standard 302. . . . The language currently in Standard 306(e) regarding the amount of credit that can be granted for distance education has been included in the new definitions for distance education.

Memorandum from Diane Bosse, Council Chair of the Section of Legal Educ. & Admissions to the Bar, & Barry A. Currier, Managing Dir. of Accreditation & Legal Educ., to Interested Persons & Entities, AM. BAR ASS'N 2 (Mar. 17, 2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/3-17-20-notice-and-comment-memo-distance-ed-hearing-cancellation.pdf [hereinafter Bosse Memorandum].

¹⁶⁴ ABA STANDARDS FOR APPROVAL, *supra* note 161, at 23; see Memorandum from The Standards Comm., to The Council, AM. BAR ASS'N 6 (Nov. 11, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov21/21-nov-council-notice-and-comment-stds-rules.pdf [hereinafter Council Memorandum]; Bosse Memorandum, *supra* note 163, at 2.

¹⁶⁵ *A Guide to ABA Approved Distance Education*, *supra* note 153; ABA STANDARDS FOR APPROVAL, *supra* note 161, at 23.

¹⁶⁶ *A Guide to ABA Approved Distance Education*, *supra* note 153; Timothy Casey, *Reflections on Legal Education in the Aftermath of a Pandemic*, 28 CLINICAL L. REV. 85, 93 (2021).

¹⁶⁷ Victor Li, *Law School's Online-Hybrid Degree Program Gets First-Ever Approval from ABA*, A.B.A. J. (Dec 19, 2013), https://www.abajournal.com/news/article/william_mitchell_online-hybrid_law_school_program. The variance approval came with some conditions, like a limit on the number of students and entering classes that could be admitted, and the requirement to provide final annual reports on "applications and admissions, attrition, course evaluations and skills training." *Id.*

Mitchell Hamline's program, a student could attend 50% of the J.D. through online education.¹⁶⁸ In 2022, 11 law schools had received ABA permission for distance education programs:

- University of Dayton School of Law
- Loyola Law School (Los Angeles)
- Mitchell Hamline College of Law
- University of New Hampshire School of Law
- Northeastern University School of Law
- St. Mary's University School of Law
- Seattle University School of Law
- South Texas College of Law-Houston
- Suffolk University Law School
- Syracuse University College of Law
- Vermont Law School¹⁶⁹

Additionally, the ABA had adopted standards that allow faculty to incorporate significant amounts of online instruction into an in-person law school course.¹⁷⁰ The definition of a distance education course is "one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously."¹⁷¹ This indicates that in a traditional law school course, faculty are free to utilize up to one-third of their classroom minutes on online education.¹⁷²

¹⁶⁸ *Id.*

¹⁶⁹ *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 Jan. 7, 2023).

¹⁷⁰ See ABA STANDARDS FOR APPROVAL, *supra* note 161, at 23.

¹⁷¹ *Id.* at ix.

¹⁷² O'Leary, *supra* note 151, at 301. ("For example, if a Criminal Law course traditionally occurs once a week for 12 weeks, then that professor can choose not to hold an in-

But despite ABA standards, what have law schools actually done in the online learning space? Perhaps the fairest thing to say is that online learning was steadily increasing before the COVID-19 pandemic, and the use of at least some kind of online learning in law schools was a given.¹⁷³ In 1998, Concord Law School, an law school based in California but not accredited by the ABA,¹⁷⁴ offered the nation's first totally online law degree.¹⁷⁵ Its mission, to provide flexibility and access to students for whom a traditional law school experience is not possible, speaks to the very reasons many students seek out online learning in the first place—it is more convenient, more flexible, and is especially helpful for those who have work or family commitments that are not conducive to a three-year full time J.D. program.¹⁷⁶ And, the Concord experience has shown that motivated students can be very successful in online programs.¹⁷⁷ According to Concord's Chief Operating Officer in 2001, "Concord's first group of Juris Doctor candidates sat for the California state-mandated First Year Law Student Examination (FYSLE) . . . Concord's overall pass rate was more than one third higher than the average of those other schools whose students are required to take the FYLSE."¹⁷⁸

In brick-and-mortar law schools, there has been similar success with online learning.¹⁷⁹ Professor O'Leary commented in 2017 that law students were receiving "more legal education online than ever before. . . . The 'virtual' law school train may not have arrived yet, but it has departed the station full steam ahead."¹⁸⁰ Even before the COVID-

person class session up to four times. Instead, the professor may require the students listen to a video lecture or complete an online module and electronic quiz").

¹⁷³ *Id.* at 300 ("In the midst of the evolving discussion about the future of legal education, online learning's 'inevitability [as] . . . part of the instructional mix' seems, well, inevitable." (alteration in original) (quoting THE WORKING GRP. FOR DISTANCE LEARNING IN LEGAL EDUC., DISTANCE LEARNING IN LEGAL EDUCATION: A SUMMARY OF DELIVERY MODELS, REGULATORY ISSUES, AND RECOMMENDED PRACTICES 12 (2013), https://www.law.berkeley.edu/files/Harvard_Report_on_Distance_Learning_in_Legal_Education_2011.pdf)).

¹⁷⁴ Martin Pritikin, *Concord Becomes One of the First Online Law Schools to Earn State Bar Accreditation*, CONCORD L. SCH. (Aug. 28, 2020), <https://www.concordlawschool.edu/blog/news/concord-earns-state-bar-accreditation/>.

¹⁷⁵ Andrew S. Rosen, *Concord University School of Law's On-Line Law Degree Program*, 15 ST. JOHN'S J. LEGAL COMMENT. 311, 311, 313 (2001).

¹⁷⁶ *See id.* at 312–13.

¹⁷⁷ *See id.* at 315.

¹⁷⁸ *Id.*

¹⁷⁹ *See* O'Leary, *supra* note 151, at 300–303.

¹⁸⁰ *Id.* at 289–290.

19 pandemic brought online legal education into the forefront of thought, schools were using the permissions of former Standard 306 to create legal education programs with significant online instruction, including shortened J.D. programs, reduced residency J.D. programs, and hybrid J.D. programs.¹⁸¹ These programs utilize synchronous and asynchronous online learning approaches to create more flexibility for students seeking an experience outside the traditional three-year, face-to-face program.¹⁸²

In addition to these distance education programs, law schools also adopted online courses as parts of their regular curricula.¹⁸³ First, many professors use online learning tools in their in-person classrooms.¹⁸⁴ For example, many use course management systems, like TWEN or Canvas, or give online quizzes, videos, online reading assignments, games, message boards, or a variety of other tools to add engagement and assessment to in-person classes.¹⁸⁵ Some professors may even record lectures or do video reviews of their course coverage.¹⁸⁶ Additionally, law schools have offered classes that are blended—meaning that the course combines in-person instruction with online content.¹⁸⁷ These courses can be a mix of in-person instruction with asynchronous online content, or synchronous online instruction (for example, lectures or class discussion done through a virtual platform) and asynchronous online instruction.¹⁸⁸

In 2019, Professors Dutton, Ryznar, and Long published a study on online learning in law schools to assess the effectiveness of online learning in legal education.¹⁸⁹ Their research, entitled *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, examined

¹⁸¹ George Critchlow et al., *The Call For Lawyers Committed to Social Justice To Champion Accessible Legal Services Through Innovative Legal Education*, 16 NEV. L.J. 251, 269 (2015) (discussing Elon Law School's shortened J.D. program and residency, as well as William Mitchell College of Law's hybrid J.D. program from 2015); see also Gerald F. Hess, *Blended Courses in Law School: The Best of Online and Face-to-Face Learning?*, 45 MCGEORGE L. REV. 51, 52–55 (2013).

¹⁸² See Hess, *supra* note 181, at 52–58.

¹⁸³ See O'Leary, *supra* note 151, at 293–301.

¹⁸⁴ *Id.* at 294–95.

¹⁸⁵ See *id.* at 294–95, 300–01; See MIKE CASEY ET AL., *ONLINE TEACHING: TOOLS AND TECHNIQUES TO ACHIEVE SUCCESS WITH LEARNERS* 8–13 (2018).

¹⁸⁶ See Hess, *supra* note 181, at 54; See CASEY ET AL., *supra* note 185, at 14.

¹⁸⁷ O'Leary, *supra* note 151, at 294–96.

¹⁸⁸ See Hess, *supra* note 181, at 53–54; CASEY ET AL., *supra* note 185, at 1.

¹⁸⁹ See Dutton et al., *supra* note 27, at 493.

student perceptions of online learning quality and experience.¹⁹⁰ Their study showed an intense, pre-COVID-19 pandemic interest in online learning by students, with at least 74% of students in each surveyed section stating that they would take another online course beyond the one involved in the study if given the opportunity.¹⁹¹ One of the primary reasons reported by students for seeking additional online opportunities was tied to flexibility—in terms of scheduling, learning, and family or other commitments.¹⁹² Students also indicated that, from their perspective, the quality of an online course was tied to its faculty member¹⁹³—supporting Dean Patricia Roberts’ assertion in 2021 that “[l]egal education can be done well virtually, but it takes intentionality to make up for the benefits lost by having students collaborating with each other and their professors in person; [and] [g]reat teachers are great teachers no matter the modality.”¹⁹⁴

II. THE IMPACTS OF COVID-19

Law schools came to the COVID-19 pandemic of 2020 and 2021 with a more solid footing than many have articulated—remote learning had long been part of the legal academy, but it had never been at the forefront, nor was it required to be.¹⁹⁵ But COVID-19 changed that.¹⁹⁶ Indeed, “[t]he historical fluidity of the larger structure of American legal education shows that law schools are capable of

¹⁹⁰ *Id.* at 493, 519.

¹⁹¹ *Id.* at 521 (indicating that the students’ preferences centered around things like flexibility, family commitments, reducing commute burdens, and learning style preferences).

¹⁹² *Id.*

¹⁹³ *Id.* at 529.

¹⁹⁴ Joan R. M. Bullock, *A Learning Experience: Texas Law Schools Respond and Adjust to the Coronavirus Pandemic*, 84 TEX. BAR J. 298, 299 (2021). Dean Roberts’s comments seem particularly important in terms of building community and engagement in the online classroom, and they support the notion that students are eager to engage and get to know their faculty in all classes (whether in person or online). *See id.* In the *Assessing Online Learning in Law Schools* article, the study authors did note student comments such as a desire for “spontaneous interaction” with faculty members and the lack of ability to ask instantaneous follow-up questions. Dutton et al., *supra* note 27, at 524–25.

¹⁹⁵ *See* Huffman, *supra* note 27, at 57–58.

¹⁹⁶ Catherine J. K. Sandoval et al., *Legal Education During the Covid-19 Pandemic: Put Health, Safety and Equity First*, 61 SANTA CLARA L. REV. 367, 370, 374 (2021) (“This coronavirus pandemic challenges the model of in-person teacher-student pedagogy characteristic of American legal education since 1784.”).

substantial change in short order.¹⁹⁷ The COVID-19 pandemic rapidly upended the current status quo and forced legal education to quickly adapt to a method of online learning overnight.¹⁹⁸

SARS-CoV-2 was first identified in the United States in January 2020 and quickly became a global pandemic event.¹⁹⁹ The virus was contagious and quickly posed a risk of overwhelming hospital systems.²⁰⁰ In response, social distancing, the use of face masks, and stay-at-home orders were rolled out as attempts to minimize the spread of the virus, decrease fatalities, and preserve hospital capacity.²⁰¹ To facilitate these goals, businesses, government offices, and universities turned to remote operations in order to limit the gathering of people in their facilities.²⁰² Law schools joined this social distancing by

¹⁹⁷ James E. Daily, *Embracing New (and Old) Ideas*, 53 WASH. U. J.L. & POL'Y 157, 163 (2017).

¹⁹⁸ See Joshua Aaron Jones, *Building A Community of Inquiry Through Interactive Materials: The Interactive Syllabus*, 45 NOVA L. REV. 353, 367 (2021). Perhaps, though, this shouldn't have been such a shock given the focus in the bar and practice on technological competency for attorneys and the use of online learning for some time in legal education. *Id.* at 367–68 ("Given the long history of distance learning throughout the world . . . , it is baffling that any professor was unprepared or challenged with the technology to convert classes for online learning. In fairness, the pandemic created an unexpected shift from in-person classrooms to online classrooms.").

¹⁹⁹ See *First Travel-Related Case of 2019 Novel Coronavirus Detected in the United States*, CDC (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>; Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020); Sandoval et al., *supra* note 196, at 371.

²⁰⁰ See *Attacks on Health Care in the Context of COVID-19*, WHO (July 30, 2020), <https://www.who.int/news-room/feature-stories/detail/attacks-on-health-care-in-the-context-of-covid-19>; CHRISTI A. GRIMM, DEPT OF HEALTH & HUM. SERVS., OFF. OF INSPECTOR GEN., HOSPITAL EXPERIENCES RESPONDING TO THE COVID-19 PANDEMIC: RESULTS OF A NATIONAL PULSE SURVEY MARCH 23–27, 2020, at 15, <https://www.oig.hhs.gov/oei/reports/oei-06-20-00300.pdf>.

²⁰¹ See, e.g., *Use and Care of Masks*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html> (last updated Sept. 9, 2022); *Transmission of SARS-CoV-2: Implications for Infection Prevention Precautions*, WHO (July 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>; Lisa Lockerd Maragakis, *Coronavirus, Social and Physical Distancing and Self-Quarantine*, JOHN HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine> (last updated July 15, 2020); Jiachuan Wu et al., *Stay-At-Home Orders Across the Country*, NBC NEWS, <https://www.nbcnews.com/health/health-news/here-are-stay-home-orders-across-country-n1168736> (last updated Apr. 29, 2020).

²⁰² See Michael Dalton & Jeffrey A. Groen, *Telework During the COVID-19 Pandemic: Estimates Using the 2021 Business Response Survey*, 2022 MONTHLY LAB. REV. 1 (Mar. 2022);

adopting remote learning.²⁰³ Moving to online learning posed one of the safest ways for students to continue their education while minimizing risk.²⁰⁴

As noted above, ABA accreditation standards limit the amount of credit hours a J.D. student can earn through remote education without the school seeking a specific variance—specifically, up to one-third of the credit hours across the J.D., with no more than ten remote credits earned in the first one-third of the program (i.e., what many would consider to be the "1L year").²⁰⁵ In offering credits through remote means, the ABA, in 2020, required law schools to possess the "technological capacity, staff, information resources, and facilities necessary to assure the educational quality of distance education."²⁰⁶

With the quick move to online learning across all law schools, the ABA had to adapt. In March 2020, the ABA gave accredited law schools the option to offer emergency online courses for health and safety reasons.²⁰⁷ For the returning semester of Fall 2021, law schools had the option to petition the ABA for an emergency variance to continue to offer online courses in excess of the traditional

Sean Gallagher & Jason Palmer, *The Pandemic Pushed Universities Online. The Change Was Long Overdue*, HARV. BUS. REV. (Sept. 29, 2020), <https://hbr.org/2020/09/the-pandemic-pushed-universities-online-the-change-was-long-overdue>; U.S. OFF. OF PERS. MGMT., 2021 GUIDE TO TELEWORK AND REMOTE WORK IN THE FEDERAL GOVERNMENT: LEVERAGING TELEWORK AND REMOTE WORK IN THE FEDERAL GOVERNMENT TO BETTER MEET OUR HUMAN CAPITAL NEEDS AND IMPROVE MISSION DELIVERY (Nov. 2021), <https://www.telework.gov/guidance-legislation/telework-guidance/telework-guide/guide-to-telework-in-the-federal-government.pdf>.

²⁰³ See Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 CONN. L. REV. ONLINE 1, 4–5 (2020) ("Faculty, administrators, and students were forced to abruptly transition from more traditional teaching methodologies (such as in-person instruction with generally limited online course opportunities) to remote-learning platforms (both synchronous and asynchronous) in the middle of the spring 2020 semester.").

²⁰⁴ See Sandoval et al., *supra* note 196, at 374.

²⁰⁵ *A Guide to ABA Approved Distance Education*, *supra* note 153; *Law Schools Plan Virtual Learning Expansion Post-Pandemic*, *supra* note 4; ABA STANDARDS FOR APPROVAL, *supra* note 161, at 23.

²⁰⁶ Bosse Memorandum, *supra* note 163, at 2.

²⁰⁷ *Law Schools Plan Virtual Learning Expansion Post-Pandemic*, *supra* note 4.

standards.²⁰⁸ The same was true for Spring 2022.²⁰⁹ And the ABA loosened its standards on bar passage in light of the pandemic.²¹⁰ Usually, ABA Standard 316 requires that a law school maintain a 75% bar passage rate for graduates within two years of law school graduation.²¹¹ However, in Fall 2020, the ABA issued a memo noting that law schools could use the pandemic to explain lower passage and that the ABA would take into account the impact of the pandemic on a school's bar passage rate.²¹²

The online learning approach taken by law schools across the country was both similar and varied.²¹³ In Spring 2020, almost all law schools, compelled by student concerns, state and local health orders, and the desire to create a safe environment for students and faculty, transitioned their curricula to online learning.²¹⁴ This was a shock to the system—faculty who had never taught online before were suddenly scrambling to deliver an effective education in the midst of this sudden shift, significant (and understandable) student anxiety, and the fear of the global pandemic.²¹⁵ Schools with previous online experience were understandably in a stronger position than those being exposed to distance education for the first time.²¹⁶

²⁰⁸ See *id.*; *Applications for Variances*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/public-notice/applications-for-variances/ (last visited Jan. 7, 2023).

²⁰⁹ *Extension of Existing Variances to Spring 2022*, AM. BAR ASS'N (Dec. 2, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2021/2021-nov-pandemic-variance-extensions.pdf.

²¹⁰ See Questionnaire and Template Committee, *Memorandum: 2021 Bar Passage Questionnaire*, AM. BAR ASS'N (Nov. 11, 2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/nov20/bpq-memo-to-council.pdf.

²¹¹ *Revisions to Standard 316: Bar Passage*, AM. BAR ASS'N 1 (May 6, 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may19/may-7-19-316-memo.pdf.

²¹² Questionnaire and Template Committee, *supra* note 210.

²¹³ See THE WORKING GRP. FOR DISTANCE LEARNING IN LEGAL EDUC., *DISTANCE LEARNING IN LEGAL EDUCATION: DESIGN, DELIVERY, AND RECOMMENDED PRACTICES* 14–24 (2015 ed.).

²¹⁴ See Yvonne M. Dutton & Seema Mohapatra, *Teaching Law Online: Covid-19 and Law Teaching: Guidance on Developing an Asynchronous Online Course for Law Students*, 65 ST. LOUIS U. L.J. 471, 472–73 (2021).

²¹⁵ Sundquist, *supra* note 203, at 5–6.

²¹⁶ See, e.g., Doug Lederman, *Preparing for a Fall Without In-Person Classes*, INSIDE HIGHER ED (Apr. 1, 2020), <https://www.insidehighered.com/digital-learning/article/2020/04/01/preparing-quietly-fall-semester-without-person-instruction> (noting that

By Fall 2021, law schools were taking varied approaches to online education. A group of law schools instituted fully online learning plans for the academic year,²¹⁷ while others adopted a model, where first year courses would be given in person (usually incorporating hybrid content or social distancing), while upper-level courses would continue to be online.²¹⁸ Others offered students the option of in-person or online attendance, or condensed courses so that students were only taking one course at a time.²¹⁹

This rapid shift made several things clear. First, critics of online learning and distance education had long pointed to the inability of professors to adequately engage with their students through this kind of platform.²²⁰ The sudden shift to online learning proved that this doesn't need to be the case.²²¹ Thanks to technology like Zoom, professors and students had the ability to have interactions that involved office hours and class participation.²²²

Second, it was also clear that students appreciate the flexibility of online learning.²²³ A traditional law school degree requires three years of full-time study with the majority of instruction occurring in-person.²²⁴ In Professors Dutton, Ryznar, and Long's 2019 study on online learning referenced above, one of the major student motivations for online learning was the increased flexibility of distance

University of Florida's vast pre-existing online curricula allowed it to more effectively pivot to total online learning compared to other universities).

²¹⁷ *Many Law Schools Are Going Completely Online In 2021*, CAL. DESERT TRIAL ACAD. COLL. L. (Feb 15, 2021), <https://cdtalaw.com/online-law-school/many-law-schools-are-going-completely-online-in-2021/> (identifying Harvard Law School, the University of California, Berkeley School of Law, the University of California, Irvine School of Law, and Vermont Law School).

²¹⁸ See Sundquist, *supra* note 203, at 6–9.

²¹⁹ *Id.*; Sandoval et al., *supra* note 196, at 434–35.

²²⁰ Dutton & Mohapatra, *supra* note 214, at 481–82 (discussing challenges professors face on Zoom, including how to monitor and address lagging attention spans, privacy, and student confusion).

²²¹ See Linda D. Jellum, *Did the Pandemic Change Legal Education for Better or Worse?*, 69 DEP'T JUST. J. FED. L. & PRAC. 67, 69–71 (2021).

²²² *Id.*

²²³ See Jellum, *supra* note 221, at 74.

²²⁴ *Prospective Law Students: FAQ*, ASS'N AM. L. SCHS., <https://www.aals.org/prospective-law-students/faqs/> (last visited Jan. 7, 2023); ABA STANDARDS FOR APPROVAL, *supra* note 161, at 22.

education.²²⁵ Put simply, a three-year, full-time degree is simply not attainable, or is extremely challenging, for a number of potential law school applicants.²²⁶ Students with family commitments, who need to work full time, who have military service obligations, with certain medical issues, or who live in geographic regions without a law school would all benefit from flexible options that online learning provides.²²⁷

Third, the pandemic highlighted the need to fully train faculty on online learning and pedagogy.²²⁸ In February 2020, the ABA had adopted a guidance memo indicating that distance learning was a potential solution in emergency situations where law school facilities are unavailable.²²⁹ Current Standard 107 states that a law school may receive a variance from the ABA standard "in extraordinary circumstances in which compliance . . . would create or constitute extreme hardship for the law school and/or its students."²³⁰ The memo also noted that because a J.D., by nature, signals a stamp of rigorous academic preparation, law schools should generally not alter the requirements of the degree and should keep their programs of legal education as intact as possible, even during emergencies.²³¹ To facilitate this goal, the memo identified distance learning as a possibility, but with some warnings:

Distance learning often may be a good solution to emergencies or disasters that make the law school facilities unavailable or make it difficult or impossible for students to get to the law school. A law school that explores that way of delivering its J.D. program to accommodate students in response to an emergency or disaster must consider whether the distance learning is appropriate for that course, whether the course was designed for or can easily be adapted to that method of delivery, whether the faculty member has the experience and training needed to deliver a distance education course meeting the requirements of the Standards, whether the school has the technological capacity (in general and in the context of the disaster or emergency) to support that form of instruction,

²²⁵ Dutton et al., *supra* note 27, at 521.

²²⁶ See Andy Strauss, *To Make Law School Truly Accessible, Bring It Online*, HIGHER ED DIVE (Jan. 29, 2019) <https://www.highereddive.com/news/to-make-law-school-truly-accessible-bring-it-online/547029/>.

²²⁷ See *id.*

²²⁸ See Lisa L. Walsh et al., *Training Faculty as an Institutional Response to COVID-19 Emergency Remote Teaching Supported by Data*, 20 CBE—LIFE SCI. EDUC. 1, 10 (2021).

²²⁹ *Managing Director's Guidance Memo: Emergencies and Disasters*, AM. BAR ASS'N (Feb. 2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/20-feb-guidance-on-disasters-and-emergencies.pdf.

²³⁰ ABA STANDARDS FOR APPROVAL, *supra* note 161, at 5, 9.

²³¹ *Managing Director's Guidance Memo*, *supra* note 229.

and whether students have or can be provided with the technology needed to access the course.²³²

Perhaps most important in this language is the concept of faculty training.²³³ The COVID-19 pandemic may very well not be the last pandemic to impact legal education,²³⁴ and, certainly, it is unlikely to be the last emergency situation that law schools face.²³⁵ As such, law schools should have programs for faculty training on online pedagogy, even in non-emergency situations.²³⁶ Such training will allow more nimble responses to changing situations, but it will have another benefit as well. It will put faculty in the position of having greater pedagogical knowledge in general and expose them to new techniques that will inform in-person teaching as well.²³⁷ Parts of online pedagogy, like being responsive to learning styles, accessibility, and gamification, have practical applications outside of the online space.²³⁸ And, there is no question that modern students, who have been frequently exposed to online learning, will expect these kinds of techniques in law school classrooms.²³⁹

²³² *Id.*

²³³ Patricia Leighton & Tom Mortimer, *How Important Is Teaching to Law Teachers?*, 29 L. TCHR. 152, 152–55 (1995).

²³⁴ See Sandoval et al., *supra* note 196, at 375.

²³⁵ See *id.*; see *Managing Director's Guidance Memo*, *supra* note 229.

²³⁶ See Ira Steven Nathenson, *Teaching Law Online: Yesterday and Today, but Tomorrow Never Knows*, 65 ST. LOUIS U. L.J. 607, 633–37, 639 (2021).

²³⁷ See Dutton et al., *supra* note 27, at 523–25; Nathenson, *supra* note 236, at 631–32, 636–37. St. Mary's had a positive experience transitioning to online learning during the pandemic, and that was in part due to its previous experience with faculty training in the online space. The law school has maintained a fully online MJur program since 2017. As a result of that experience, the school had robust training in place for faculty members. Specifically, St. Mary's provides an online teaching certification program (OTCP) that is mandatory for any faculty member who is teaching online. The modules of the OTCP include content on best practices in online pedagogy, universal course design, accessibility, and online course buildout. Additionally, the program trains faculty in best methods of instruction in keeping with the Quality Matters (QM) standards. At the start of the COVID-19 pandemic, a number of full-time faculty were already certified to teach online through this program. At the start of the pandemic, over the summer of 2020, all faculty completed the course in preparation for fall teaching.

²³⁸ See Dutton et al., *supra* note 27, at 507–08, 520; see generally *How Online Education Prepares Students for Real-World Careers*, ACAD. OF ART UNIV. (2020), <https://blog.academyart.edu/how-online-education-prepares-students-for-real-world-careers/>.

²³⁹ See Dutton et al., *supra* note 27, at 520, 525–29; see also Stephanie Francis Ward, *Law Students Want More Distance Education Classes, According to ABA Findings*, A.B.A. J. (July 21, 2022, 1:28 PM), <https://www.abajournal.com/web/article/law-students-want-more-distance-ed-classes-according-to-aba-findings>.

The lingering effects of the COVID-19 pandemic may well be in the external pressure it has created on reform in legal education generally.²⁴⁰ It is interesting to assess the shift to online education and its enduring application in the context of the prior shifts in the legal academy.²⁴¹ When we examine the move to the case method in the late 1800s and the move to practical skills training from the 1960s-1990s (and beyond), several patterns become clear.²⁴² Both moves were first precipitated by calls for reform inside legal education.²⁴³ With regards to the move to the case method, the former method of legal education by apprenticeship had been the subject of strong critique—namely, that the experience was highly variable depending on the attorney involved in the apprenticeship, that the situation could be abusive to the apprentices, and that it lacked the ability to convey important analytical and thinking skills that would develop a successful legal mind.²⁴⁴

Against these critiques, there began to be calls for reform—specifically, to professionalize legal education and bring it into the academic space where more students could be taught using standardized methods and curricula.²⁴⁵ This internal pressure for reform was then matched by external pressures as well—the professionalization and academicization of other fields (like science) and our changing views in how information should be analyzed.²⁴⁶ Americans, at the

²⁴⁰ See Mark A. Cohen, *Post-Pandemic Legal Education*, FORBES (Aug. 13, 2020), <https://www.forbes.com/sites/markcohen1/2020/08/13/post-pandemic-legal-education/?sh=64ec1c4275d2>.

²⁴¹ See *supra* Part I; see generally Huffman, *supra* note 27, at 59–62 (discussing prior models of legal education and the Socratic method's adaptability to online education).

²⁴² See generally Weaver, *supra* note 28, at 520–41 (discussing legal education's shift to the Langedellian method); Charles D. Kelso & M. Jane Kelso, *The Future of Legal Education for Practical Skills*, 1977 BYU L. REV. 1007, 1009–16 (1977) (discussing legal education's shift to include practical skills training); Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L & SOC. JUST. 23, 28–33.

²⁴³ Stropus, *supra* note 32, at 449–51; see Kelso & Kelso, *supra* note 242, at 1011; William Michael Treanor, *The Crisis in Legal Education*, AM. ACAD. ARTS & SCI, (2016), <https://www.amacad.org/news/crisis-legal-education>.

²⁴⁴ See Moline, *supra* note 18, at 780–81; see Spencer, *supra* note 15, at 1961–64.

²⁴⁵ See Christopher G. Wren & Jill Robinson Wren, *The Teaching of Legal Research*, 80 L. LIBR. J. 7, 28, 30 (1988).

²⁴⁶ Laura I. Appleman, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENG. L. REV. 251, 252–53; White, *supra* note 61, at 216–18.

time, were in the throes of the Industrial Revolution and a shifting mindset about how to approach the world.²⁴⁷ Gone were previous approaches of assessing the world in conformance with religious principles; instead, reform in legal education collided with a larger social movement to analyze the world in a neutral, deductive, and objective manner akin to the principles of the scientific method.²⁴⁸ This heady collision brought us Christopher Columbus Langdell and his "scientific" case law method, changing the face of legal education forever.²⁴⁹

A similar pattern can be seen in the renaissance of practical skills training in law schools.²⁵⁰ The first vein of change came in calls for legal education reform.²⁵¹ Critics, including academics and practitioners, attacked a wholly "academic" method of legal education that did not provide the skills training that students would need in practice.²⁵² As such, these reformers urged law schools to adopt experiences that would expose students to real practical skills, clients, and complicated situations of justice and ethics.²⁵³ These reforms would leave students better able to tackle the real world practice of law.²⁵⁴ But, like the shift to the case law method, this reform was accompanied by an external pressure in the larger society—namely, the need to provide additional legal services to those in need.²⁵⁵ Starting in the 1960s, and continuing through the 1980s and 1990s, law schools faced calls to participate in combating poverty and providing legal aid

²⁴⁷ See 9 KEVIN HILLSTROM & LAURIE COLLIER HILLSTROM, *THE INDUSTRIAL REVOLUTION IN AMERICA: OVERVIEW/COMPARISON* 214 (Cami Cacciatore et al. eds., 2007).

²⁴⁸ Appleman, *supra* note 250, at 273–74, 285–86; White, *supra* note 61, at 216–18.

²⁴⁹ See *The Case Study Teaching Method*, *supra* note 20; Weaver, *supra* note 28, at 527–31.

²⁵⁰ See Kelso & Kelso, *supra* note 242, at 1008–16 (discussing the re-incorporation of practical skills training in legal education).

²⁵¹ See A. Kenneth Pye, *Legal Education in an Era of Change: The Challenge*, 1987 DUKE L. J. 191, 197, 203 (1987).

²⁵² See Timothy P. Terrell, *What Does and Does Not Happen in Law School to Prepare Students to Practice Law: A View from Both Sides of the Academic/Practice Dichotomy*, 83 L. LIBR. J. 493, 494 (1991); Weaver, *supra* note 28, at 529.

²⁵³ See generally Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 554–55, 567–70 (2018) (discussing the rise and fall of experiential learning in legal education, beginning with apprenticeships and ending with the modern system).

²⁵⁴ See, e.g., Carasik, *supra* note 242, at 29.

²⁵⁵ See *id.* at 24–25.

services.²⁵⁶ As a result, organizations like the Ford Foundation and the U.S. government, allocated significant funding to law schools to set up clinics and pro bono programs and experiences, both to provide educational opportunities to law students and to help alleviate the need for legal services in local communities.²⁵⁷ Again, the combination of internal desire for legal education reform and external forces resulted in significant change, and the outcome for almost all American law schools has been significantly increased pro bono and clinical offerings.²⁵⁸

The move to online education in law school appears to be no different in its motivations.²⁵⁹ Even before COVID-19, critics have suggested that online education can solve a number of law school woes—access, flexibility, technological competency, and admitting a greater diversity of students.²⁶⁰ Additionally, online education dovetails nicely with the need for technologically competent attorneys.²⁶¹ The ABA and several state bars currently consider technological competence to be a key part of lawyering and a skill lawyers must be prepared to display in practice.²⁶² As such, proponents of online education say that having students engage in the online space is a way to expose them to technologies that they will be expected to use in practice.²⁶³ This is particularly important with increasing use of online court hearings and online legal proceedings.²⁶⁴

²⁵⁶ See *id.* at 28–33; See Frederick J. Martin III, *Law School's Pro Bono Role: A Duty to Require Student Public Service*, 17 FORDHAM URB. L.J. 359, 361 (1989).

²⁵⁷ Wizner & Aiken, *supra* note 112, at 998–99, 998 n.7.

²⁵⁸ See Carasik, *supra* note 242, at 29–33; Margaret Meriwether Cordray, *Expanding Pro Bono's Role in Legal Education*, 48 IDAHO L. REV. 29, 33–34 (2011).

²⁵⁹ See Strauss, *supra* note 226; Huffman, *supra* note 27, at 57–58.

²⁶⁰ Jellum, *supra* note 221, at 74; Huffman, *supra* note 27, at 57–58.

²⁶¹ See Daniel W. Dylan, *Virtual Legal Education: How Students Can Maximize Online Learning*, LAW'S DAILY (Sept. 2, 2020, 12:14 PM), <https://www.thelawyersdaily.ca/articles/20774/virtual-legal-education-how-students-can-maximize-online-learning-daniel-w-dylan>.

²⁶² See Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199, 221–24. (2013).

²⁶³ Lucy Johnston-Walsh & Alison Lintal, *Tele-Lawyering and the Virtual Learning Experience: Finding the Silver Lining for Remote Hybrid Externships & Law Clinics After the Pandemic*, 54 AKRON L. REV. 735, 737 (2021).

²⁶⁴ See, e.g., ROBERT C. PRATHER, SR. & JOHN P. PALMER, TEXAS PRACTICE GUIDE ALTERNATIVE DISPUTE RESOLUTION § 8:l. Mediation is a learned skill (Nov. 2021) (“As a result of the COVID-19 pandemic, many mediators, attorneys, and parties are mediating by videoconference on online platforms such as Zoom, Webex, and Skype. While the basic

Combined with these internal motivations, COVID-19 served as an additional external pressure to create a seismic shift in legal education.²⁶⁵ With all faculty now having online teaching experience, students expecting increased online offerings, and the ABA changing its approach to distance education, the time seems ripe for permanent change in the legal education space.

III. ONLINE LEARNING AND THE IMPACT OF COVID-19

As discussed above, distance education has a long history in the legal academy,²⁶⁶ but the larger whole of legal academia has been slower to embrace it as a primary tool of learning.²⁶⁷ Indeed, as noted by Professor Colombo in the *Hofstra Law Review* in 2020:

[T]he traditional reticence of the legal educator would, of course, preclude the taking of those first steps needed to generate a body of evidence. Thus, pioneers are needed: individuals and faculties willing to take thoughtful, reasonable, calculated risks with the hope of achieving genuine progress in the field of legal education, while at the same time ready to accept the disappointment of a lesson learned in what *not* to do.²⁶⁸

Online learning satisfies a need that has been present even before the pandemic—to make legal education "faster, cheaper, more accessible, connected, interdisciplinary, and international."²⁶⁹ The pandemic created external pressure, forcing these changes to happen in a faster and more stressful way than anticipated.²⁷⁰ However, these

tenets of mediation process remain the same in both settings, there are some modifications in preparation and process."). *See also* Dylan, *supra* note 261 (discussing the prevalence of court proceedings operating in virtual settings and "the importance and practical value of learning how to engage with legal concepts, arguments, judges, lawyers, court personnel and other professionals virtually, while still in law school. . . .").

²⁶⁵ Sundquist, *supra* note 203, at 3.

²⁶⁶ *See* Pistone, *supra* note 13, at 587–88; Jellum, *supra* note 221, at 72.

²⁶⁷ *See* THE WORKING GRP. FOR DISTANCE LEARNING IN LEGAL EDUC., *supra* note 213, at 9.

²⁶⁸ Colombo, *supra* note 145, at 876.

²⁶⁹ Daily, *supra* note 197, at 166.

²⁷⁰ *See* Meera E. Deo et al., *The Covid Crisis in Legal Education: 2021 Annual Survey Results*, IND. U. CTR. FOR POSTSECONDARY RES. 1, 6–7 (2021), <https://lsse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-10.28.21.pdf>.

internal needs for reform in legal education remain.²⁷¹ So where do we go from here? It is becoming clear that the experience law schools have had with online learning over the last few years has destigmatized online learning and created the opportunity for additional experimentation.²⁷² Significant in this experimentation is the nation's first fully online J.D.²⁷³

As noted above, law schools since 2015 have experimented with variances to the traditional ABA limitations on credit hours for distance learning.²⁷⁴ A number of law schools prior to the pandemic had successfully achieved variances from the ABA that would allow them to offer programs of legal education that limited students' time on a physical campus.²⁷⁵ However, the ABA had never allowed a law school to offer a program of legal education where all credits towards the J.D. could be earned online.²⁷⁶

However, in September 2021, St. Mary's University School of Law announced that it had received the nation's first ABA approval for a fully online J.D. program—a J.D. in which 100% of credit-bearing work could be conducted online.²⁷⁷ The "limited-enrollment, part-time program" was premised on a mission of access.²⁷⁸ St. Mary's is one of the most diverse law schools in the nation with a goal of serving the population of South Texas, a region in need of additional lawyers

²⁷¹ See Sarah Boonin & Luz E. Herrera, *From Pandemic to Pedagogy: Teaching the Technology of Lawyering in Law Clinics*, 68 WASH. U. J.L. & POL'Y 109, 117 (2022); Strauss, *supra* note 226.

²⁷² See Vincent R. Johnson, *The End of the Golden Age of American Legal Education: My Year as Interim Dean*, 52 U. TOL. L. REV. 289, 303–04 (2021) ("[D]uring the past three-and-a-half decades, online instruction played only a minor role in American legal education. However, virtually all law professors were forced by the pandemic to develop online teaching skills It seems unlikely that online instruction will ever again play only a minor role in the education of new lawyers."); Boonin & Herrera, *supra* note 271.

²⁷³ *St. Mary's Law Launches the Nation's First Fully Online J.D. Program Approved by the ABA*, ST. MARY'S U. SCH. OF L. (Sept. 14, 2021), <https://www.stmarytx.edu/2021/online-jd-launch/>.

²⁷⁴ See *Law Schools Plan Virtual Learning Expansion Post-Pandemic*, *supra* note 4.

²⁷⁵ See *Online Juris Doctor Degree Programs for 2022*, 2U INC., <https://onlinemasteroflegalstudies.com/law-degrees/juris-doctor/> (last visited Jan. 7, 2023).

²⁷⁶ See *id.*

²⁷⁷ *St. Mary's Law Launches the Nation's First Fully Online J.D. Program Approved by the ABA*, *supra* note 273.

²⁷⁸ *Id.*

and legal services.²⁷⁹ Dean Patricia Roberts noted that the online J.D. would "provide the increased affordability of being able to obtain a legal education without a move to San Antonio [And] it will expand opportunities for those in South Texas and beyond who need to stay closer to home while pursuing an excellent legal education."²⁸⁰

The fully online J.D. will consist of instruction through both synchronous and asynchronous methods, with IL courses having an equal mix of synchronous and asynchronous instruction.²⁸¹ The program operates on a part-time block schedule, with students earning the J.D. over 4 years of part-time study.²⁸² The program also provides participation in academic support services, career services, registered student organizations, library resources, pro bono work, experiential learning, technological competency, and student-run journals.²⁸³ The first incoming class will be welcomed in Fall 2022.²⁸⁴ After the announcement of the St. Mary's online J.D. program, additional law

²⁷⁹ *Id*

²⁸⁰ *Id.* St. Mary's is a Hispanic-serving institution and the only law school servicing all of south Texas. *Id.* The law school enrolls many students from this region but is limited by geography to enrolling only full-time students from this region. *See id.* This deprives many residents of south Texas, some of whom are financially challenged or responsible for multigenerational households, of the opportunity to gain a legal education. This in turn limits the provision of legal services in south Texas. An online program provides a path, not otherwise available, to a Juris Doctorate. This would benefit not just south Texas, however, but also those who live in communities just out of reach of being able to commute efficiently to the St. Mary's campus, but who cannot leave their current job or family responsibilities. Being able to work while attending law school and reducing the cost by eliminating the need to commute are important to many of our students with other financial obligations and families. Providing a fully online experience will expand the number of people given the opportunity to obtain a legal education while also reducing the cost of attendance through the elimination of commute times. *See id.*; see *Our Mission and Tradition of Legal Excellence*, ST. MARY'S U. SCH. OF L., https://sl8875.pcdn.co/wpcontent/uploads/2021/11/Law_US_News_Voters_Piece_1021_FNL.pdf.

²⁸¹ Mike Stetz, *St. Mary's to Break New Ground with Fully Online J.D. Program*, PRELAW (Sept. 15, 2021) <https://nationaljurist.com/prelaw/st-marys-break-new-ground-fully-online-jd-program/>; *Online J.D. Program*, ST. MARY'S U. SCH. OF L., <https://law.stmarytx.edu/academics/programs/jd/online-j-d-program/> (last visited Jan. 7, 2023).

²⁸² Frank Garza, *St. Mary's Law Launches the One and Only Fully Online J.D. Program Accredited by the ABA*, ST. MARY'S UNIV. (Mar. 15, 2022), <https://www.stmarytx.edu/2022/only-online-jd-program/>; *Online J.D. Program*, *supra* note 281.

²⁸³ *See Online J.D. Program*, *supra* note 281.

²⁸⁴ Karen Sloan, *First-Of-Its-Kind Online Law School Draws Big Applicant Pool*, REUTERS (Oct. 19, 2022, 5:18 PM), <https://www.reuters.com/legal/legalindustry/first-of-its-kind-online-law-school-draws-big-applicant-pool-2022-10-19/>.

schools have petitioned the ABA for a variance to offer either a fully online or hybrid program.²⁸⁵ As such, it seems that the move to online learning in legal education was not transient and is here to stay.²⁸⁶

As noted above, this is generally a very good thing for students.²⁸⁷ Even for a student who prefers a traditional, in-person law school experience, having law schools with greater depth of experience in online learning will have a number of positive benefits.²⁸⁸ Training in online education exposes faculty to pedagogical discussions and considerations.²⁸⁹ For example, in preparing its faculty for online education, St. Mary's requires training in learning objectives, creating accessible classroom and online content, and the Quality Matter standards for online education.²⁹⁰ There is also increasing scholarship on online pedagogy and best practices for law schools to utilize when planning online curricula.²⁹¹ Indeed, one impact of COVID-19 seems to be a greater interest in the legal academy for exploring this topic and creating a sense of best practices.²⁹² Several commentators have pointed to the ability for guest lecturers to join classes through Zoom as a fantastic bonus that emerged during the pandemic—and that they could continue to incorporate in their classes going forward.²⁹³ Similarly, others have indicated that using asynchronous content, or flipped classroom models, is a strategy that they intend to use post-pandemic.²⁹⁴

²⁸⁵ *Law Schools Plan Virtual Learning Expansion Post-Pandemic*, *supra* note 4.

²⁸⁶ *See* Johnston-Walsh & Lintal, *supra* note 263, at 736, 769.

²⁸⁷ *See* Dutton et al., *supra* note 27, at 508–12.

²⁸⁸ *Id.*

²⁸⁹ *See* Boonin & Herrera, *supra* note 271, at 132.

²⁹⁰ For information about the Quality Matters standards, please see *QM Rubrics and Standards*, QUALITY MATTERS, <https://www.qualitymatters.org/qa-resources/rubric-standards> (last visited Jan. 7, 2023).

²⁹¹ Boonin & Herrera, *supra* note 271, at 131–33.

²⁹² *See* Heather K. Gerken, *Will Legal Education Change Post-2020?*, 119 MICH. L. REV. 1059, 1062–63 (2021) (“I expect the changes in law school pedagogy to stick. That is not to say that classes will remain online when the pandemic subsides. But the pandemic led to many collective conversations about pedagogy.”).

²⁹³ *See, e.g., id.* at 1062.

²⁹⁴ *See* Karen Sloan, *Law School Deans Say Online Course Work Is Here to Stay*, REUTERS (Apr. 5, 2022, 5:18 AM) <https://www.reuters.com/legal/legalindustry/law-school-deans-say-online-course-work-is-here-stay-2022-04-05/>.

IV. CONCLUSION

The internal forces of reform loom present in online education, with goals of flexibility, affordability, and accessibility at the forefront.²⁹⁵ With the external force of the COVID-19 pandemic promoting the proliferation of online learning, a new shift in legal education seems to have occurred.²⁹⁶ And, it is unlikely to be the last.²⁹⁷ As this article has discussed, legal education is in a constant state of critique and change.²⁹⁸

Post-pandemic, a number of things seem certain in legal education.²⁹⁹ The pandemic created a situation in which faculty gained more exposure than ever to online learning.³⁰⁰ As a result, online classes and online programs seem entrenched.³⁰¹ We can expect more schools to embrace these offerings.³⁰² And, against that background, we should also probably expect additional ABA guidance about the requirements for distance learning, how technology can be integrated into in-person classes, and how "much" online learning can be incorporated into an in-person program.³⁰³

Despite these changes, one thing has remained constant during these shifts in legal education.³⁰⁴ The quality of teaching matters.³⁰⁵

²⁹⁵ See Nina A. Kohn, *JDIInteractive: An Online Law Degree Program Designed to Expand Access to Justice*, 90 N.Y. STATE BAR ASS'N J. 30, 30–32 (2018); KATHERINE MCALVAGE & MARY RICE, ACCESS AND ACCESSIBILITY IN ONLINE LEARNING: ISSUES IN HIGHER EDUCATION AND K-12 CONTEXTS 1, 7 (OLC Rsch. Ctr. for Dig. Learning & Leadership ed., 2018).

²⁹⁶ See Wahab Ali, *Online and Remote Learning in Higher Education Institutes: A Necessity in Light of COVID-19 Pandemic*, 10 HIGHER EDUC. STUD. 16, 21 (2020).

²⁹⁷ See Gerken, *supra* note 292, at 1062; Simon Chesterman, *The Evolution of Legal Education: Internationalization, Transnationalization, Globalization*, 10 GER. L.J. 877, 887 (2009).

²⁹⁸ See Chesterman, *supra* note 297, at 879, 887.

²⁹⁹ See Lael Weinberger, *Keep Distance Education for Law Schools: Online Education, the Pandemic, and Access to Justice*, 53 LOY. U. CHI. L.J. 211, 231–32 (2021).

³⁰⁰ See *id.* at 215–18, 232.

³⁰¹ Johnson, *supra* note 272, at 303–04.

³⁰² See generally Weinberger, *supra* note 299, at 216–218, 223, 227–29, 231–32 (discussing how access to online education increases access to justice and can lower the cost of education).

³⁰³ Dutton et al., *supra* note 27, at 495; see *Distance Education*, AM. BAR ASS'N (Jan. 21, 2022), https://www.americanbar.org/groups/legal_education/resources/distance_education/.

³⁰⁴ Dutton et al., *supra* note 27, at 520.

³⁰⁵ *Id.* Derek W. Black, *Taking Teacher Quality Seriously*, 57 WM. & MARY L. REV. 1597, 1601 (2016).

Even the shift from the apprenticeship model to the Langdellian method was motivated in part by ensuring better and more consistent teaching standards for law students.³⁰⁶ The move to clinical education and pro bono experiences exposed students to different styles of learning the law and the ability to receive mentorship in practice skills.³⁰⁷ In the era of online learning, teaching still matters—and it will continue to matter in the next shift.³⁰⁸

³⁰⁶ See Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649, 1653–55 (2011); Spencer, *supra* note 15, at 1982–84.

³⁰⁷ See Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39, 90–91 (2013).

³⁰⁸ See Nathenson, *supra* note 236, at 617; Black, *supra* note 305, at 1601.