

ONLINE LEARNING AND THE FUTURE OF LEGAL EDUCATION: SYMPOSIUM INTRODUCTION

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INTRODUCTION

Around the country, law schools and law professors are exploring online teaching. Law schools are making specialty courses available online, and many have created online master’s degree programs. A handful, including Syracuse University, are even bringing their J.D. programs online.¹ This new reality raises important questions and theoretical challenges for the legal education and the broader practice of law.

A key question is how online education will—or should—change the way law is taught. Some describe online education as an opportunity to reimagine legal education. Others caution that online education could undermine the rigor of traditional legal education, potentially to the disadvantage of both new lawyers and those they serve. Another key question is how online education will affect the practice of law. To what extent will online education affect the ability of the legal profession to meet client needs? Will it change the demographic composition, skill set, or ethos of the legal profession? Complicating matters is that the move toward online education is occurring during a period in which legal academy is

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1. As of the date of publication, Mitchell Hamline School of Law, Syracuse University College of Law, University of Dayton School of Law, Southwestern Law School, and New Hampshire School of Law had received variances from the American Bar Association (ABA) that permitted the schools to operate “hybrid J.D.” programs that combine in-person classes with online coursework in excess of the amount otherwise permitted under ABA Standard 306. In addition, other law schools, including Touro College Law Center, Loyola University (Chicago) School of Law, Seton Hall Law School, and University of Denver College of Law, were operating hybrid J.D. programs designed to comply with ABA Standard 306.

confronting significant instability, with many schools struggling to maintain enrollments, and some even shuttering their doors.

While law schools are just beginning to explore online course offerings, online education has a strong foothold in many other areas of higher education. In the United States, more than a million students are enrolled in online graduate programs² and approximately one-third of students in institutions of higher education have taken an online course.³ In fact, online education represents a substantial part of the market in certain professional fields. Indeed, in 2019, *U.S. News and World Report* ranked 301 online MBA programs (compared to 475 residential MBA programs).⁴

Similarly, while the literature on the impact of online education in law schools is limited,⁵ with only a handful of articles published to date,⁶ there is an ample body of research on the effectiveness and impact of online education in other fields.⁷ Much has been written about the effectiveness of online teaching in higher education, and best practices for promoting rich learning and understanding.⁸ Research examining effectiveness of online education in other professional fields of study has found that it can be an effective modality for teaching both concepts and skills.⁹

2. See Julia E. Seaman et al., *Grade Increase: Tracking Distance Education in the United States* 1, 11 (2018), <http://onlinelearningsurvey.com/reports/gradeincrease.pdf>. See *id.* at 12 (reporting that approximately 1.1 million graduate students took at least one distance learning course in 2016).

3. See *id.* at 11.

4. See *Best Online MBA Programs*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/online-education/mba/rankings> (last visited Nov. 21, 2019); *Best Business Schools*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-business-schools/mba-rankings> (last visited Nov. 21, 2019).

5. This is, of course, the predictable and natural consequence of ABA restrictions on online legal education. Indeed, this volume is the first law review volume devoted to exploring online legal education and this volume's articles represent a much-needed addition to the literature.

6. See generally, e.g., Yvonne M. Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, 96 DENV. L. REV. 493 (2019) (studying the student experience with online legal education and providing support for the proposition that online courses can provide education of equal quality to residential courses and suggesting key attributes of high-quality online courses).

7. Studies of online learning outcomes and meta-analyses of those studies are rapidly proliferating, and entire journals (e.g., *The Internet and Higher Education*, *Distance Education*, *The Online Learning Journal*) are devoted to the topic of online learning.

8. See generally, e.g., Barbara Means et al., *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies* (2010), <https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf> (providing an important early meta-analysis of studies on the efficacy of online learning).

9. See generally, e.g., Dina J. Wilke et al., *Can Clinical Skills Be Taught Online? Comparing Skill Development Between Online and F2F Students Using a Blinded Review*, 52 J. SOC. WORK EDUC. 484 (2016) (comparing clinical social work skills of students who took a clinical social work course in a residential classroom versus those who took the course

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Research from other fields also indicates that online education increases the rate at which many historically disadvantaged populations participate in higher education. For example, students from rural communities¹⁰ and members of the military¹¹ disproportionately enroll in online degree programs.

The scarcity of writing and research on online legal education is particularly unfortunate given the recent decision by the American Bar Association (ABA) to liberalize rules limiting online education. Prior to August 2018, the ABA prohibited ABA-accredited law schools from awarding any credit for “distance learning” courses during a J.D. student’s first year of study and from awarding more than fifteen credits from such courses to any J.D. student.¹² Law schools could only exceed this threshold if they were granted a discretionary variance from Standard 306. By contrast, starting in August 2018, ABA-accredited law schools may permit a student to earn up to a third of the credits required for graduation in a “distance learning format,”¹³ including ten during the first third of the student’s legal education.¹⁴ This change—and the possibility

online); Sherry M. Cummings et al., *Comparative Analysis of an Online and a Traditional MSW Program: Educational Outcomes*, 51 J. SOC. WORK EDUC. 109 (2015) (comparing knowledge and skills-related learning outcomes for online and traditional social work students).

10. See David L. Clinefelter & Carol B. Aslanian, *Online College Students 2014: Comprehensive Data on Demands and Preferences*, THE LEARNING HOUSE, INC. 29 (June 2014), <https://www.learninghouse.com/wp-content/uploads/2017/09/2014-Online-College-Students-Final.pdf>.

11. See Alexandria Walton Radford et al., *After the Post-9/11 GI Bill: A Profile of Military Service Members and Veterans Enrolled in Undergraduate and Graduate Education*, U.S. DEPARTMENT OF EDUCATION 17 (Aug. 2016), <https://nces.ed.gov/pubs2016/2016435.pdf> (noting that 37% of military graduates had participated in entirely online graduate degree programs, compared to 17% of nonmilitary grad students).

12. Notably, the definition of “distance learning” was carried over to the revised Standard 306. For that definition see *infra* note 13.

13. Under Standard 306:

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.

See ABA Standards and Rules of Procedure for Approval of Law Schools Standard 306(a) (2019–2020). This definition did not change with the 2018 amendments.

14. Certain, non-demanding limitations remain. Standard 306 requires accredited law schools to ensure that for-credit distance learning courses provide students with the opportunity for regular and substantive interaction with faculty, and requires that faculty monitor

that the ABA will further liberalize these rules in coming years¹⁵—have the effect of encouraging law schools to actively consider moving substantial portions of their curriculum online in a long-term way, and not simply as a short-term response to the coronavirus pandemic.

This symposium issue, based on a symposium held at Syracuse University College of Law in May 2019,¹⁶ thus represents a timely and important step forward in advancing research into online education in law schools, and bringing legal academia into a larger conversation about online education in higher education. It brings together leading thinkers in legal education and educational design to explore the theoretical and practical opportunities and challenges posed by online education, to evaluate different learning models and consider best practices, and to explore the implications for the legal profession and access to justice more broadly.

This short article draws on the contributions to the symposium to distill three key predictions about the impact of online education on the future of legal education and the legal profession. It then builds on the work of this symposium by suggesting key topics for further research on the symposium's themes.

student effort and “opportunity for communication about that effort” *See id.* In addition, accredited schools offering for-credit distance learning courses must possess the “technological capacity, staff, information resources, and facilities necessary to assure the educational quality of distance education.” *Id.*

15. In March 2020, the Council of the Section of Legal Education and Admissions to the Bar approved for notice and comment proposed changes to the accreditation standards for law schools that would eliminate Standard 306 and most restrictions on online courses, but (1) would limit distance learning to 10 credits during the first third of a student's study, and (2) require a law school to receive acquiescence from the ABA before offering a program of JD education in which more than one-third of the credits required for graduation would be online. *See* Diane Bosse & Barrier A. Currier, Memorandum to Interested Persons re. ABA Standards and Rules of Procedure – Matters for Notice and Comment (Mar. 6, 2020), available at http://www.americanbar.org/groups/legal_education/resources/notice_and_comment. At the time of publication, it was an open question whether the ABA would adopt these changes.

16. This was a fitting setting for the conversation as the Syracuse College of Law community is acutely attuned to online education, and its potential to impact legal education, the legal profession, and the public more broadly. This is in large part because, in January 2019, the College of Law launched the JDinteractive, a hybrid J.D. program that combines online courses, skills-focused residential courses, and an externship opportunity. In this first-of-its-kind program, each online course consists of both a self-paced class session and a live class session in which faculty and students interact in real-time much as they would in a residential classroom. For a more detailed description of the JDinteractive program, *see generally* Nina A. Kohn, *JDinteractive: An Online Law Degree Program Designed to Expand Access to Justice*, 90 N.Y. STATE BAR ASSOC. J. 30 (Sept. 2018) (providing an overview of the program and its goals).

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I. PREDICTIONS SUPPORTED BY THIS SYMPOSIUM

While it is impossible to predict the full impact that the move toward online education will have on legal education and the legal profession, the contributions to this symposium support three key predictions.

First, high quality legal education can be delivered online. Contributions to this symposium provide both empirical and theoretical support for the proposition that high quality learning and teaching can be achieved using many different teaching techniques, just as poor quality teaching and learning can occur in many different settings. That is, modality of education must not be conflated with quality of education. Thus, Michael Hunter Schwartz takes on the “pernicious myths” surrounding online teaching to show why excellent teaching is not “modality dependent.”¹⁷ He presents a compelling argument in favor of a modality-less model of law teaching excellence.¹⁸ Building on his research on effective teaching in residential classrooms, Schwartz shows how the techniques excellent law teachers use are equally available—and can be equally effective—in the online space.¹⁹ In addition, Victoria Sutton provides empirical evidence that supports the proposition that online legal education can be at least as effective and residential legal education by outcomes in her online course she taught with those in her parallel residential course.²⁰ Students’ self-reported engagement and perceptions about online learning support the conclusion that online law classes can be engaging for students, and give students a strong sense of connection with faculty.

Several of the contributors provide concrete ideas for achieving excellence in online teaching. Noelle Sweaney shows how education psychology theory can inform how design of online law classes, and offers specific techniques that teachers can use to be effective in the online teaching space.²¹ Perhaps most notably, she describes techniques educators can use to create a sense of community among online learners—even if learners enrolled in entirely asynchronous courses.²² Margaret Ryznar and Yvonne Dutton similarly suggest concrete techniques that professors teaching asynchronous online courses can employ to motivate students

17. Michael Hunter Schwartz, *Towards a Modality-Less Model for Excellence in Law School Teaching*, 70 SYRACUSE L. REV. 115, 131 (2020).

18. *Id.*

19. *Id.*

20. See generally Victoria Sutton, *Asynchronous, E-Learning in Legal Education: A Comparative Study with the Traditional Classroom*, 70 SYRACUSE L. REV. 143 (2020) (discussing her study and its results).

21. See Noelle Wall Sweaney, *From Theory to Practice: Evidence-Based Strategies for Designing & Developing Engaging Online Courses*, 70 SYRACUSE L. REV. 167 (2020).

22. *Id.*

and, in turn, increase the likelihood that students learn course content.²³

Second, the contributions to this symposium suggest that the move toward online education will spark innovation. Online education provides an opportunity to fundamentally rethink how best to “do” legal education. For example, in this symposium, David Thomson, as self-described “futurist,” provides his vision for how novel uses of online legal education could and should transform legal education by creating new paths for legal study and reducing the cost of law school attendance.²⁴ Similarly, Andrew Morriss and James McGrath suggest that online education, and the ample opportunities for assessment in asynchronous online courses, could facilitate a competency-based approach to J.D. education whereby students would be unable to move forward in their studies until they had mastered certain competencies.²⁵

Third, the contributions to this symposium suggest that the ability for law students to earn their J.D. through primarily online study will increase access to justice. The contributions suggest that one way it will do this is by creating access to law school for populations who have lacked such access. For example, Eric Janus shows how William Mitchell’s pioneering hybrid J.D. program made it possible for students to succeed in law school who otherwise would not have been able to attend law school, thus furthering its mission of expanding access to legal education.²⁶

The contributions suggest that another way that online education will expand access to justice is by training lawyers in communities which are currently underserved by the legal profession. Indeed, Morriss and McGrath provide a compelling argument that online education can help bridge the justice gap between where legal service providers are needed, and where they are currently located.²⁷ Using Texas as a case study, they model the relationship between where prospective law students are located and where law schools are located.²⁸ Their model suggests that online education could substantially increase access to legal education to

23. See Margaret Ryznar & Yvonne Dutton, *Lighting a Fire: The Power of Intrinsic Motivation in Online Teaching*, 70 SYRACUSE L. REV. 73 (2020).

24. See David I. C. Thomson, *How Online Learning Can Help Address Three Persistent Problems in Legal Education*, 70 SYRACUSE L. REV. 181 (2020).

25. See James McGrath and Andrew P. Morriss, *Online Legal Education and Access to Legal Education and the Legal System*, 70 SYRACUSE L. REV. 49 (2020).

26. See Eric S. Janus, *The “Worst Idea Ever!”—Lessons from One Law School’s Pioneering Embrace of Online Learning Methods*, 70 SYRACUSE L. REV. 13 (2020).

27. See McGrath & Morriss, *supra* note 25 at 59.

28. *Id.* at 53.

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prospective students who are not located in major urban areas—law students who are disproportionately in areas with unmet legal need.²⁹ Notably, this conclusion is also supported by research that shows that students living in rural areas disproportionately enroll in an online graduate programs.³⁰

Thus, the contributions suggest that—even if only a subset of law schools offer online programs of J.D. study—such offerings could substantially address the structural mismatch between where lawyers are currently located and where they are currently needed and, in particular, the “rural lawyer gap.”³¹ This would be a positive and significant development. The need for lawyers in some rural areas of the nation is sufficiently great that some states and bar associations are investing substantial sums of money to encourage new lawyers to practice in rural communities.³² By comparison, residential law schools—which tend to be located in major metropolitan areas and areas in which there are already ample legal services—are not well-suited to addressing the gap.³³

II. AGENDA FOR FURTHER INQUIRY

The fact that good education *can* be delivered online does not mean that it *will* be delivered online. While the contributions to this symposium provide good reason to be optimistic about the potential for online education to produce high-quality student learning, they by no means suggest

29. *Id.*

30. See Clinefelter & Aslanian, *supra* note 10 at 29.

31. See, e.g., *Special Report: Access to Justice: The Rural Lawyer Gap*, LAW.COM (Jan. 15, 2015), <https://www.law.com/dailyreportonline/almID/1202714351222>; Ethan Bronner, *No Lawyer for Miles, So One Rural State Offers Pay*, N.Y. TIMES (Apr. 8, 2013), <https://www.nytimes.com/2013/04/09/us/subsidy-seen-as-a-way-to-fill-a-need-for-rural-lawyers.html> (discussing the predicament faced by rural South Dakota residents); Grant Gerlock, *Lawyer Shortage in Some Rural Areas Reaches Epic Proportions*, NAT’L PUB. RADIO (Dec. 26, 2016), <https://www.npr.org/2016/12/26/506971630/nebraska-and-other-states-combat-rural-lawyer-shortage> (focusing on the situation in Nebraska).

32. See Noel K. Gallagher, *Maine School Moves to Reverse Shortage of Rural Lawyers*, PORTLAND PRESS HERALD (Oct. 22, 2017), <https://www.pressherald.com/2017/10/22/maine-school-moves-to-reverse-shortage-of-rural-lawyers/> (discussing Maine’s program and similar programs in other states); see also Kathryn Hayes Tucker, *Bar Board Approves Rural Assistance Plan But Not Without a Fight*, DAILY REPORT (Jan. 11, 2015) (describing Georgia’s approach); Gerlock, *supra* note 23 (describing Nebraska’s approach); Bronner, *supra* note 23 (describing South Dakota’s approach).

33. As I explained in an earlier article: “Even if students from marginalized communities are able to uproot themselves—and potentially their families—to earn a J.D. at a residential program, they may never return to that underserved community. Returning typically means graduates must uproot themselves again, leave behind connections to new people and places, and forgo cosmopolitan experiences and amenities to which they have grown accustomed.” See Kohn, *supra* note 16, at 33.

that online education will produce such outcomes. Indeed, to the contrary, they suggest that the modality of education should not be conflated with the quality of online education. Good education can occur online, as can poor—just as good education can occur in a residential program, as can poor.

The key question is what specific practices are consistent with high quality legal education. At the program level, is there a particular mix of online elements, or a particular combination of online and residential elements, that is best suited to delivering high quality legal education? Conversely, are there particular approaches or combinations that are unlikely to deliver high quality legal education?

Two key program design variables deserve particular attention. The first is the manner and extent to which online education is combined with residential education. There is reason to believe that, as some of the contributors to this symposium speculate, a “hybrid model” that combines place-based (often called “in person”) and online courses may be especially well suited to delivering legal education in a way that is robust and accessible. A 2010 meta-analysis commissioned by the U.S. Department of Education of then-existing research on effectiveness of online education found support for proposition that online education may have an advantage of residential education, and suggested that the advantage was greater when the online instruction was “blended” with residential instruction than when it was exclusively delivered online.³⁴

A second program variable deserving attention is the manner and extent to which programs combine live and asynchronous online education. Today, “online education” is often assumed to be—and equated with—*asynchronous* online education. Indeed, the tendency is so pervasive that even authors to the symposium assume—without discussion—that online education will be asynchronous.³⁵ Yet online education can also be partially or fully synchronous, taking advantage of web conferencing software to conduct class in real time.

Synchronous online education can readily mirror the experience in a traditional residential classroom for both students and teachers. So long as the professor (or professors) and students simultaneously can see one and hear everyone in the virtual classroom, the experience of teaching and learning will generally mirror the experience of teaching and learning in a residential classroom.³⁶ Indeed, in my own teaching, I have found

34. See Means et al., *supra* note 8, at 18–19.

35. See, e.g., Ryznar & Dutton, *supra* note 23 (comparing “online courses” to “live courses”).

36. Other approaches to synchronous learning, by comparison, may differ substantially

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that not only the style of teaching in my synchronous online torts classes mirrors that of my residential torts courses, but that the student dynamics (both with one another and with me, their professor) also mirror those in my residential course.

By contrast, asynchronous online education represents a true departure from the traditional law school experience. In a traditional, residential law school classroom in which Socratic or modified Socratic dialogue is employed, students are called upon to “think on their feet” by responding to questions and ideas raised by the professor and by classmates, and to follow a conversation as it spontaneously and dynamically evolves. By contrast, in the asynchronous classroom, instruction is typically self-paced with professors and students interacting—to the extent they interact—sequentially and with delay. Even when interactive elements are added to asynchronous class sessions to encourage similar patterns of thinking, the pacing of the class is distinct from that in a live, residential classroom. In some cases this may be an advantage—the student will have the opportunity to reflect before responding.³⁷ In other cases, this may be a disadvantage—the student is not forced to practice the skill of answering on one’s feet, and may feel less connected to peers and to the instructor, which may itself impede learning.³⁸ Either way, the experience is profoundly different than that in the traditional residential classroom.

Thus, the “radical” move in online education is not the move to teaching online but rather the move to teaching asynchronously. Accordingly, researchers wishing to understand the impact on online J.D. education, and those wishing to design effective online J.D. education programs, should focus substantial energy on understanding the relative advantages and disadvantages of these competing modes of online instruction, the most effective teaching practices in each, and how the combination of the two may affect key performance outcomes.

The difference between live and asynchronous teaching might affect

from this engaged approach. For example, a live webinar where the instructor lectures in real time but does not see students, and students do not see one another, would be a substantial departure from the traditional law school education model.

37. Cf. Schwartz, *supra* note 17 at 126 (suggesting that asynchronous courses may improve learning because each student must respond, rather than relying on “vicarious” learning and because “[t]he extra thinking time increases the likelihood that what they contribute reflects deeper thought, and the modality means that students who have great insights but are not extroverts or who process less speedily than their peers can enjoy success.”).

38. See generally Peter Shea & Temi Bidjerano, *Understanding Distinctions in Learning in Hybrid, and Online Environments: An empirical Investigation of the Community of Inquiry Framework*, 21 INTERACTIVE LEARNING ENV'TS 355 (2013) (finding that students’ perceptions of social interaction in online courses was positively correlated with indicators of student learning).

everything from course design, to faculty selection and development, to the regulation of law schools. Of course, live instruction is less flexible in terms of schedule, and the larger the amount of live instruction, the less the online format may meet the needs of working adults. Thus, in assessing the advantages and disadvantages of the competing formats, some attention should be paid on the potential of each format to expand access to legal education and justice more broadly.³⁹

Notably, this type of inquiry might lead to a conclusion that rather than regulating “online education” separately from other kinds of J.D. education, the ABA should regulate asynchronous education separately from other kinds of J.D. education.⁴⁰ Indeed, I would posit that the live online classroom has far more in common with the bricks-and-mortar classroom than it does with the asynchronous online classroom, and that regulatory approaches should reflect these real differences.

CONCLUSION

As the ABA’s decision to liberalize Standard 306 recognizes, online education can be part of a high-quality J.D. education. The growth of online J.D. education can not only help the legal academy to reflect on and improve existing practices; it also has the potential to expand access to justice by opening the profession to talented students for whom residential J.D. education is unrealistic, and by expanding the number of attorneys in key underserved communities.

The question now is how can law schools best design and implement online education in a way that best takes advantage of this new modality’s potential. This symposium has suggested some answers to that question. As more law schools move J.D. courses online in the coming years, it will be imperative that educators build upon the work of this symposium with further research on best practices with regard to online legal education. Law schools, law students, the legal profession, and those it serves all stand to benefit from research that considers whether outcomes for legal education (e.g., bar passage, and skills such as oral advocacy or client counseling) differ based on whether instruction is offered primarily online or with a substantial residential component, and whether it is offered primarily asynchronously or with a substantial live component.

39. On the other hand, working adults are only one population for whom online education expands access. There are other populations who cannot realistically attend residential programs (e.g., those who are geographically mobile such as military spouses or individuals with mobility disabilities) for whom flexible timing may not be critical.

40. For example, it might suggest that the ABA should revisit the definition of distance education so that it distinguishes between live and asynchronous education.

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As such research progresses, stakeholders should be encouraged to maintain high expectations for the quality of online J.D. education. Just as online legal education should not be held to a higher standard than residential legal education, so too should it not be held to a lower standard.