

Distance Learning: New Tech, Old Problems

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ABSTRACT

In the 1800s, American academic leaders vehemently opposed distance education—where the student and teacher are separated by distance—arguing that it eliminated the social aspects of college life and undermined the prestigious status of professors. Fast forward to the present, and a similar debate is raging in legal academia, this time focused on online legal education. Critics contend that online education devalues face-to-face classrooms and undermines the core of effective teaching and learning—in-person interaction. However, a paradigm shift is on the horizon, marked by the American Bar Association’s recent proposals to liberalize access to legal education through expanded online options for J.D. students.

This Article explores the historical roots of distance education, specifically learning by mail (also known as correspondence education), to draw parallels between the past and present. It examines key figures and events that shaped correspondence education, revealing valuable lessons for developing online legal education. The Article posits that online legal education, like correspondence education, can 1) provide greater access to legal education to a wider range of people, 2) place the individual student at the heart of the learning process, and 3) help legal educators leverage technology to advance their teaching and enhance student learning.

The Article argues that understanding the origins of distance education can help build robust conceptual frameworks for effective online legal teaching, ultimately fostering a legal profession that is not only modernized but also capable of delivering broader access to justice. Applying insights from correspondence schools to law schools offers the potential to create a more inclusive student body and profession by providing greater access to legal education, embracing technological advances, and maintaining a learner-centered approach.

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INTRODUCTION

“*The only thing new in the world is the history you do not know.*”
Harry S. Truman

In the 1800s, a new educational model was on the horizon—correspondence education.¹ Students in correspondence education did not meet in person, but used the mail to communicate with their teachers, hence the name. This method of teaching and learning was revolutionized by the improved postal system.

Correspondence education sparked immediate controversy. Academic leaders of the time opposed it, arguing that correspondence education “eliminate[s] the social aspects of college life, . . . lack[s] the rigor of classroom interactions

1. Correspondence education is education at a distance through the use of the postal system. DESMOND KEEGAN, FOUNDATIONS OF DISTANCE EDUCATION 35 (Routledge Studies in Distance Education, 3rd ed. 1996); *Correspondence Education*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/correspondence-education> [<https://perma.cc/EDJ3-Q36L>].

between teacher and student[,] [and] undermine[s] the personal status of professors and open[s] university-level learning to too many people of low social standing.”² Correspondence education evolved into distance education, encompassing any form of education where the student and teacher are separated by distance.³ From using the postal system in correspondence education, distance education advanced to using radio, television, computers, and now online platforms.⁴

Centuries later, the debate on the efficacy of distance education persists in legal academia, now focusing on online platforms. Current arguments against online legal education include claims that the “pursuit of online education devalues the importance of face-to-face classrooms for all courses” and that live interaction “is at the core of effective teaching and learning.”⁵ However, what many have not appreciated in these discussions is that this endeavor is not the first time higher education—including legal academia—has grappled with issues surrounding the value of distance education. The rich, but often ignored, history of correspondence education can provide valuable insights for improving legal education overall.

Despite widespread acceptance of online distance education in postsecondary institutions for decades,⁶ legal education remained resistant to change until the COVID-19 pivot of 2020. Before then, only a handful of law schools were offering students the opportunity to earn their J.D. mostly online, despite resistance and trepidation from legal academia. However, the foray into emergency online teaching during the pandemic rightfully did not alleviate the concerns of skeptics.⁷ Emergency teaching is not distance education. It was a reaction to COVID-

2. Bernard Hibbitts, *What 19th Century Distance Education Can Teach Us in the Age of COVID-19*, MEDIUM (Feb. 5, 2021), <https://lawyersbymail.medium.com/what-19th-century-distance-education-can-teach-us-in-the-age-of-covid-19-ab340c6e46c3> [<https://perma.cc/9YZV-6S6V>].

3. Distance education, of which online education is a subset, is defined as the separation of student and teacher geographically. Andrele Brutus St. Val, *Survey Says—How to Engage Law Students in the Online Learning Environment*, 70 J. LEGAL EDUC. 297, 300 n.13 (2021). It is rooted in correspondence education. *Id.*

4. See Hope Kentnor, *Distance Education and the Evolution of Online Learning in the United States*, 17 CURRICULUM AND TEACHING DIALOGUE 21, 22 (2015) (discussing the progression of distance education).

5. Jan M. Levine, *A Curmudgeon’s View of The Multi-Generational Teaching of Legal Writing*, 25 J. LEGAL WRITING INST. 1, 9 (2021). Other arguments against online legal education also include how multifaceted relationships cannot be formed virtually via online legal education and how distance education “pose[s] a [threat] to the viability of law schools’ bricks-and-mortar operations.” Andrew Strauss, AM. BAR ASS’N, COMMENTS RECEIVED REGARDING STANDARDS 701 AND 702 30 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2023/comments-received-standards-701-702.pdf [<https://perma.cc/G29J-VU8W>].

6. Levine, *supra* note 5, at 9–10.

7. There are many reasons why this skepticism could be justified. However, a large part of the doubt seems to be the misunderstanding and overall lack of understanding about what constitutes distance education, which has centuries of history. These individuals (and honestly, most of the legal education establishment) think online teaching is simply taking traditional pedagogy and adding technology. However, they do not understand its origins, literature, or pedagogy.

19 that involved no planning or understanding of distance teaching pedagogy or theories.

As the legal academy moves toward developing sustainable distance teaching, there are broader questions to be asked and considerations to be had. Love it or hate it, the American Bar Association (ABA), through its Section of Legal Education and Admissions to the Bar (the Section), has signaled a paradigm shift in online legal education. Through proposals and revisions to the ABA Standards, the ABA is liberalizing⁸ legal education and embracing the 21st century by offering increased access to online classes for J.D. students.⁹

Studying the history of correspondence education—an earlier version of distance education—provides lessons that should be imported and used to pave a path forward for broader access to a J.D. education. First, online legal education, like correspondence education, can provide greater access to legal education to a wider range of people. Second, online legal education, like correspondence programs, underscores how to most effectively put structures in place to support new and flexible modes of instruction. Third, online educators, like correspondence educators, can embrace advances in technology, with leading scholars effectively leveraging technology to advance teaching and student learning. Finally, online legal education, like correspondence programs, can remain learner-centered, placing the student at the heart of the knowledge process. Similarly, the flexible nature of online courses, like correspondence courses, allows professors and law schools to meet students where they are and accommodate different learning styles rather than foisting a one-size-fits-all model of legal education on students that has remained relatively unchanged for the past 150 years.

8. Council Vice Chair Daniel Thies has explained that the Council's Strategic Review Committee began looking at distance learning in 2021 "with an eye towards sort of liberalizing our distance-ed requirements." Christine Charnosky, *Proposal to Allow Fully Online Schools to Apply for ABA Accreditation Sent to Notice and Comment*, LAW.COM (Nov. 17, 2023), <https://www.law.com/2023/11/17/proposal-to-allow-fully-online-schools-to-apply-for-aba-accreditation-sent-to-notice-and-comment/> [<https://perma.cc/WU4H-BUDA>]. Liberalizing is similar to democratizing. *Compare Liberalize*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/liberalize> [<https://perma.cc/HTF6-GQAH>] (defining liberalize as "to make liberal or more liberal") and *Liberalize*, CAMBRIDGE ENGLISH DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/liberalize> [<https://perma.cc/78YP-XMM5>] (defining liberalize "as to make laws, systems, or opinions less severe"), with *Democratize*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/democratize> [<https://perma.cc/GMA3-R2W4>] (defining democratize as "to make democratic") and *Democratize*, CAMBRIDGE ENGLISH DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/democratize> [<https://perma.cc/A7YW-XHXV>] (defining democratize as "to make countries or organizations use democratic ways of making decisions"). Both are rooted in providing broader access.

9. The ABA's limits on distance education only apply to students pursuing J.D. degrees. *Legal Education and Admissions to the Bar Frequently Asked Questions*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions/ [<https://perma.cc/9FA4-Y6FB>] ("ABA accreditation does not extend to any program supporting degrees other than the J.D. that may be granted by the law school. Rather, the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA accrediting bodies regarding the quality of the program.").

This paper contributes to scholarship surrounding online legal education by drawing parallels between the past and the present to help forge a way for the future. It traces the history of correspondence education within the broader context of American history. It analyzes the historical lessons of correspondence education to provide insights to help with online legal education. Most significantly, it posits that in embracing online legal education and delivering effective online legal teaching, we have the opportunity to cultivate a broader student base, which in turn creates a more inclusive legal profession that can foster greater access to justice.¹⁰ Understanding the origins of distance education allows for a better understanding of the strengths and weaknesses of online legal education, helping with the development of sound conceptual frameworks and theories for effective distance legal teaching.

In highlighting the parallels between correspondence education and online legal education, this paper offers a critique of the current resistance to online legal education. History proves that any change that focuses on making education more equitable has been met with strong opposition, disdain, suspicion, and hostility. Legal education is no different. In studying history, it is evident that those who oppose online legal education are interested in maintaining the status quo and keeping out those who do not conform to the elite system. This article provides historical context to support the position that the debate over online legal education is just the latest iteration of the gatekeeping battle for who gets to learn the law, how they are educated, and, ultimately, who enters the legal profession.

This Article highlights the value of distance education¹¹ and analyzes its origins to draw lessons from its early founders and movements to progress online legal education forward. Distance education began with correspondence education, or learning by mail. This approach emerged as part of a broader societal shift to provide equal access to education for all. It successfully reached working men and women who, because of other obligations like work and family, could not attend brick-and-mortar colleges or universities and would not have gained access to education otherwise. Data on how many people were educated by correspondence is

10. For example, “Alvin Moore, Miranda’s court-appointed lawyer in the Arizona courts, [attended] LaSalle University School of Law, a Chicago-based correspondence school.” Yale Kamisar, *Miranda: the Case, the Man, and the Players*, 82 MICH. L. REV. 1074, 1078–79 (1984) (reviewing LIVA BAKER, *MIRANDA: CRIME, LAW AND POLITICS* 463 (New York: Antheneum 1st ed. 1983)).

11. See Catherine Cavanaugh, *The Effectiveness of Interactive Distance Education Technologies in K-12 Learning: A Meta-Analysis*, 7 INT’L J. EDUC. TELECOMM. 73, 73 (2001) (summarizing “a quantitative synthesis of studies of the effectiveness of interactive distance education using videoconferencing and telecommunications for K-12 academic achievement”); Mike Allen, Edward Mabry, Michelle Mattrey, John Bourhis, Scott Titsworth & Nancy Burrell, *Evaluating the Effectiveness of Distance Learning: A Comparison Using Meta-Analysis*, 54 J. COMM’N 402, 415 (2004) (summarizing over 500 papers on distance education and concluding that distance education was, by some measures, slightly better than in person education). At the time of their existence, “attitudes were quite mixed [about correspondence schools] . . . [T]here was a certain amount of respect for these schools, along with curiosity about their future . . . [S]erious consideration was given to the technically oriented correspondence schools in the first two or so decades of their existence.” Jane Shaw Stroup, *American Correspondence Schools in Context*, 27 INDER REVIEW 37, 38 (2022).

scarce because systematic data collection did not begin until 1870 and first compiled only basic enrollment information.¹²

I. THE PRESENT

In a shocking turn of events, the ABA, through the Section, finally took steps to liberalize legal education by relaxing some standards related to distance education. These changes come decades after other areas of higher education successfully used the World Wide Web to deliver education. However, the ABA was forced into this direction mainly due to our foray into emergency online teaching brought on by the COVID-19 pandemic and the legal profession's changing view of online education, including students' views.¹³ These changes indicate that the ABA views online education with less skepticism than it did previously and supports a movement that democratizes legal education and challenges elitism in the law. This section analyzes the latest updates to the ABA standards, traces the short history of how we got here, and discusses students' perceptions of online legal education.

A. Recent Updates to ABA Standards

The ABA began allowing law students to take J.D. courses via distance education in 2002.¹⁴ It slowly expanded the number of credit hours students could take online, "granting waivers or variances to schools to start offering distance-

12. See National Center for Education Statistics, 120 YEARS OF AM. EDUCATION: A STATISTICAL PORTRAIT 65, 75 (providing enrollment statistics by sex); Tom Snyder, *Celebration 150 Years of Education Data*, NCES BLOG (Sept. 5, 2018), <https://nces.ed.gov/blogs/nces/post/celebrating-150-years-of-education-data> [<https://perma.cc/WPW4-6LSD>] ("When the work of collecting educational statistics was begun by the Office, it was found that there was no authentic list of the colleges in the United States, or of academies, or normal schools, or schools of science, law, or medicine, or of any other class of educational institutions.") (quoting John Eaton, Commissioner, Census Bureau, Report to Congress (1875)); see also WALTON S. BITTNER AND HERVEY F. MALLORY, UNIVERSITY TEACHING BY MAIL: A SURVEY OF CORRESPONDENCE INSTRUCTION CONDUCTED BY AMERICAN UNIVERSITIES 25 (1933) (reviewing university correspondence programs in the 1900s and reporting that 149 U.S. colleges had correspondence programs in 1928–29).

13. See Christine Charnosky, *ABA Council Sends Proposal to Increase Distance Learning to Notice & Comment*, LAW.COM (Feb. 21, 2023), <https://www.law.com/2023/02/17/aba-council-sends-proposal-to-increase-distance-learning-to-notice-comment/> [<https://perma.cc/9ZZK-FQSE>]; James Leipold, *Access to Legal Educ. Expanded Through Increased Distance Learning*, LAW SCHOOL ADMISSION COUNCIL (Aug. 17, 2023), <https://www.lsac.org/blog/access-legal-education-expanded-through-increased-distance-learning> [<https://perma.cc/9E24-BTD3>]; see also Julianne Hill, *LSAC President Reflects on Challenges Facing Legal Ed as She Shifts to Lead Association of American Law Schools*, AM. BAR ASS'N (Jun. 17, 2024), <https://www.abajournal.com/web/article/10-questions-with-kellye-testy-as-she-moves-from-lsac-to-aals> [<https://perma.cc/4AY2-2XUX>]; Catherine Cooke, *In-Person vs Online Learning Statistics: The Top List of 2024*, UPSKILLWISE (Apr. 24, 2024), <https://upskillwise.com/in-person-vs-online-learning-statistics/> [<https://perma.cc/33WC-HAJE>].

14. Standard 306(d), allowing J.D. students to take no more than 12 credit hours via distance education, was enacted in 2002. See STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS: RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, POLICIES OF THE COUNSEL OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR AND OF THE ACCREDITATION COMMITTEE at 31, AM. BAR ASS'N (2002).

learning options.”¹⁵ By 2015, “students could take up to one-third of their credit hours through distance education, and up to ten hours could be taken within the first year.”¹⁶ This shift occurred slowly, even though the U.S. Department of Education has allowed educational institutions to offer students the opportunity to take 50% or fewer of their courses via distance education without prior approval since 2006.¹⁷

In 2020, President Biden declared a national emergency related to COVID-19, resulting in nationwide pivots to emergency online teaching, including for legal education.¹⁸ In response, the Section’s Council and Accreditation Committee (the Council), which is the national accrediting agency for legal education,¹⁹ permitted law schools to have emergency online classes.²⁰ It subsequently granted extensions to 140 schools to continue with online learning if needed.²¹ Currently, out of 196 ABA-accredited law schools, 18 of them have been granted variances to offer fully online or hybrid J.D. programs.²²

In February 2023, the Section’s Strategic Review Committee (SRC) proposed increasing the distance education limits to match the limit from the Department of Education. It recommended “that ABA Definitions, Standards, Rules, and IOPs be revised to raise [the distance education limit for J.D. programs from one-third] to 50 percent, without regard to when in the student’s program of legal education the Distance Education Courses are offered.”²³ This change would include removing the 10 credit-hour distance education limit for first-year law students.²⁴

15. Brutus St. Val, *supra* note 3, at 301.

16. *Id.* at 302.

17. U.S. Dep’t of Educ., OPE-Accreditation-01192021-02, Guidance on Accreditation and Eligibility Requirements for Distance Education (2021). In its 2006 Dear Colleague Letter (DCL), the Department explained that once an accrediting agency approved an institution to offer distance education courses, the institution can provide such programs without the agency’s approval, as long as it offers no more than 50% of the courses via distance education. *Id.* Further approval is only needed to provide more than 50%. *Id.*

18. Am. Bar Ass’n, Guidance Memorandum from the Managing Director, Section of Legal Educ. and Admissions to the Bar, (Feb. 2020).

19. *About Us*, AM. BAR ASS’N, https://www.americanbar.org/groups/legal_education/about_us/ [<https://perma.cc/X3Z6-88WD>].

20. Stephanie Francis Ward, *Legal Ed Will Resubmit Proposed Elimination of Admissions-Test Standard and Consider Increasing Distance Ed Credits*, AM. BAR ASS’N (Feb. 17, 2023, 4:45 PM), <https://www.abajournal.com/web/article/legal-ed-plans-to-resubmit-admissions-test-standard-to-house-of-delegates-and-considers-increase-in-distance-ed-credits> [<https://perma.cc/J74S-6CFW>].

21. *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/> [<https://perma.cc/89UG-GL2H>].

22. *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/ [<https://perma.cc/VG7T-UMKR>] (explaining that, out of the 18 schools, four offer fully online programs, including Mitchell Hamline’s fully online program, which is offered as part of its Prison to Law Pipeline program).

23. Am. Bar Ass’n, Memorandum from The Strategic Review Committee to The Council, at 1 (Feb 8, 2023).

24. *Id.* at 2.

According to the proposal, law schools could allow their J.D. students to take up to 50% of distance education courses without needing Council approval. Approval would be needed only for schools that wished to let their students take more than the proposed 50%.

The SRC, however, warned schools to advise students to check with the jurisdictions in which they seek admissions to practice to confirm that the number of distance education credits and the levels at which they are taken will not affect their eligibility to take the bar exam in that jurisdiction.²⁵ For example, New York only allows J.D. students to take up to 15 out of 83 (18%) credit hours via distance education.²⁶ It also does not allow students to take online courses until after they have taken at least 28 credit hours, meaning first-year students are ineligible to take classes via distance education.²⁷ Furthermore, “[l]aw degrees obtained by way of correspondence, external, internet or self-study do not qualify an individual to take the New York bar examination.”²⁸ This restriction means that any student who obtains their J.D. only via distance education is ineligible to sit for the New York Bar.²⁹ Thus, under the SRC’s proposed revisions, students who wished to be admitted to the New York Bar should not take *any* distance education courses in their first year and should take no more than 15 credit hours via distance education.³⁰

Additionally, the SRC added requirements for the use of “appropriate and readily accessible technology that supports course learning outcomes, appropriate training and support for technology, and the assurance of the effectiveness and quality of Distance Education Courses provided by parties outside the law school.”³¹ This restriction will require law schools to provide, and train students and faculty on, the technology supporting distance education programs. After notice and comment and Council’s approval, the ABA House of Delegates approved the proposed revisions.³² Law students can now take up to half of their

25. *Id.*

26. N.Y. Ct. R. § 520.3(c)(2); N.Y. Ct. R. § 520.6(b)(1)(i)(a). Interestingly, New York also does not permit LLM students to take distance education courses. N.Y. Ct. R. § 520.6(b)(3)(viii).

27. N.Y. Ct. R. § 520.3(c)(3); *Bar Exam Eligibility*, NEW YORK STATE BOARD OF LAW EXAMINERS, <https://www.nybarexam.org/eligible/eligibility.htm#:~:text=Up%20to%2015%20credit%20hours,the%2064%20classroom%20credit%20hours> [https://perma.cc/QB54-UEAT].

28. NEW YORK STATE BOARD OF LAW EXAMINERS, *supra* note 27.

29. *See id.* This affects students enrolled in online programs at Case Western Reserve University School of Law, University of Hawai’i William S. Richardson School of Law, St. Mary’s University School of Law, Southwestern Law School, and the Prison to Law Pipeline at Mitchell Hamline School of Law. *See infra* section I.C (discussing schools that provide J.D. degrees solely online without an in-person requirement); *ABA-Approved Law Schools with Approved Distance Education J.D. Programs*, *supra* note 22.

30. These limitations were waived for students from Spring 2020 through Spring 2022. *NY Court of Appeals Orders Waiving the Limitations for Students (2020 through 2022)*, <https://www.nycourts.gov/ctapps/news/Court-Orders-Covid19.pdf> [https://perma.cc/H8AM-UQDL].

31. Am. Bar Ass’n, *supra* note 23.

32. Leipold, *supra* note 13. While the ABA’s changes are noble, it appears that these changes did not come about because of benevolence. This shift is likely influenced by a resurgence in the popularity of democratizing (or liberalizing) legal education and evening the playing fields. *See* Julia Brunette

courses online without needing the school to obtain ABA approval.³³ As Omer Waddles—a former Congressional aide and Department of Education official and then-current president of the Career College Association—said during his House subcommittee testimony in 2001, the Department of Education’s 50% rule “was created in response to various concerns about the level of quality of correspondence courses back in the late 1970’s and early 1980’s,” but it “does not reflect the highly effective communications and interactive teaching methods developed for use on the internet only in the last few years.”³⁴ Waddles’s statement rings even truer over 20 years later.

However, despite the change in how many classes J.D. students can take online, the definition of distance education and the standard for when classes fall into this category remains the same. If students and faculty are separated from one another for more than one third of a course and technology is used to facilitate the instruction, then the course counts as a distance education course.³⁵

The current ABA standards, which are part of the old regime, only allow those schools that are currently fully approved by the ABA and with a physical campus to apply for a substantive change under Standard 105 (acquiescence for substantive change in program or structure) to exceed the distance education restrictions and have a fully online program.³⁶ On November 17, 2023, the

Johnson, *Online education takes off*, THE NAT’L JURIST (Aug. 1, 2023, 7:06 AM) <https://nationaljurist.com/national-jurist-magazine/online-education-takes-off/> [<https://perma.cc/76WW-V4QV>]; see also Alan Dershowitz, *Unequal Justice*, N.Y. TIMES (Jan. 25, 1976) <https://www.nytimes.com/1976/01/25/archives/unequal-justice-counselor-counsel-thyself.html?login=ml&auth=login-ml> [<https://perma.cc/R4HL-URTN>](quoting historian and law professor Jerold S. Auerbach’s view that “every liberalizing action taken by the established bar [i]s designed to preserve its powers under ‘the stress of severe social turmoil’”). Also, the “research shows there are benefits to online learning such as higher retention rates, time savings, and lower costs.” Leipold, *supra* note 13.

33. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 306(d) (2023).

34. David Whitman, *The Cautionary Tale of Correspondence Schools*, NEW AMERICA (2018), <https://www.newamerica.org/education-policy/reports/cautionary-tale-correspondence-schools/> [<https://perma.cc/P4PA-6FAJ>].

35. Ward, *supra* note 20, at 2.

36. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 105(a)(12), <https://taxprof.typepad.com/files/aba-022323.pdf> [<https://perma.cc/K9V6-TAH4>] (“Before a law school makes a substantive change in its program of legal education or organizational structure, it shall obtain the acquiescence of the Council for the change. A substantive change in program or structure that requires application for acquiescence includes: The addition of courses or programs that represent a significant departure from existing offerings or methods of delivery including (i) instituting a new full-time or part-time division, (ii) changing academic policies to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses, or (iii) establishing a new or different program leading to a degree other than a J.D. degree.”); see also Charnosky, *supra* note 8 (“‘The rules basically say you can’t get that substantive change unless you are already fully approved,’ Thies continued. ‘So effectively, that means [there] are 196 approved law schools have the option of implementing fully online programs, and some of them have, but outsiders, new law schools, others who might want to start up a fully online program from scratch are not able to because they can’t get fully approved.’”) (quoting Council Vice Chair Daniel Thies). Schools like Southwestern Law School and St. Mary’s University of Law are examples of schools that were recently granted a substantive change to establish their fully online programs. Karen Sloan, *First all remote, full*

Council approved standards for notice and comment³⁷ that would allow a new or existing law school that is fully online and not approved by the ABA to receive ABA accreditation, first provisionally and then full.³⁸ The Council is specifically looking to revise Standards 701 (General Requirements) and 702 (Facilities).³⁹ Revising these standards would “allow law schools to make changes to their physical [buildings] due to increased use of distance education offerings and remote work arrangements.”⁴⁰

Under the proposal, non-ABA-accredited schools would become eligible to obtain ABA approval, allowing their graduates to become eligible to sit for the bar in most states.⁴¹ The best known of these schools and the one most likely to

time law degree with ABA blessing set to start next fall, REUTERS (Sept. 29, 2023), [https://www.reuters.com/legal/government/first-all-remote-full-time-law-degree-with-aba-blessing-set-start-next-fall-2023-09-29/#:~:text=Sept%2029%20\(Reuters\)%20%2D%20Southwestern,by%20the%20American%20Bar%20Association](https://www.reuters.com/legal/government/first-all-remote-full-time-law-degree-with-aba-blessing-set-start-next-fall-2023-09-29/#:~:text=Sept%2029%20(Reuters)%20%2D%20Southwestern,by%20the%20American%20Bar%20Association) [https://perma.cc/26J6-6BG4].

37. Each year, the Council makes an open call for suggestions on Standards that may need revision. The Council then sets the agenda for its Standards Review Subcommittee (SRS) to review and revise the Standards to ensure that they are appropriate requirements for current legal education programs and that they focus on matters that are central to the provision of quality legal education. After its review, the SRS presents its recommendations to the Council. The Council sends any proposed changes out for public notice and comment. After receipt of written comments as well as oral comments at an open hearing, the SRS reviews the comments and makes recommendations to the Council. When the Council decides to adopt a revision, the ABA House of Delegates then reviews the decision. The House either concurs in those revisions or refers them back to the Council for further consideration. The Council’s decision after the second referral back is final. *ABA Standards Revisions Process*, ASSOCIATION OF LEGAL WRITING DIRECTORS, <https://www.alwd.org/aba-engagement/aba-standards-revisions-process#:~:text=When%20the%20Council%20decides%20to,second%20referral%20back%20is%20final> [https://perma.cc/N2NN-W44C].

38. Memorandum from Council Chair and Director of Accreditation and Legal Education to Interested Parties and Entities, Am. Bar Ass’n, 1 (Dec. 1, 2023).

39. *Id.* at 1–5.

40. *Id.* at 4.

41. Charnosky, *supra* note 8. State bars will still have the ability to regulate who they allow to sit for the bar exam. For example, New York has a ban on allowing J.D. students who received their J.D. degrees fully online to sit for the bar exam. NEW YORK STATE BOARD OF LAW EXAMINERS, *supra* note 27. However, some jurisdictions, like Massachusetts, allow students who obtain their law degrees from non-ABA accredited programs to petition for admissions to the bar. See *Mitchell v. Bd. of Bar Exam’rs*, 897 N.E.2d 7, 12 (Mass. 2008) (granting a graduate of Purdue Global a waiver to sit for the bar examination based on his circumstances). Some state courts have the power to waive bar requirements. See *id.* at 10 (“This court has the equitable power to waive a particular requirement of a court rule concerning admission to the bar.”); *Application of Collins-Bazant*, 578 N.W.2d 38, 42 (Neb. 1998) (“This Court has the power to waive the application of its own rules regarding the admission of attorneys to the Nebraska bar.”); *Matter of Schmidt*, 604 P.2d 1208, 1209 (Idaho 1980) (“[T]here can be little doubt that this court possesses jurisdiction on petitioner’s request [for waiver] by way of its inherent power to regulate the practice of law in the State of Idaho.”). In 2024, Indiana became the second state to allow students who graduated from non-ABA approved, online schools to petition to sit for the bar exam. Order Amending Commercial Court Rules, Cause No. 24S-MS-1 (July 1, 2024). The first was the state of California. Adam Bartels, *Indiana Supreme Court Decision Moves Purdue Global Law School Forward*, PURDUE UNIV. (Feb. 16, 2024), <https://www.purdue.edu/newsroom/releases/2024/Q1/indiana-supreme-court-decision-moves-purdue-global-law-school-forward.html> [https://perma.cc/H92J-GFTS]. Additionally, other pathways to bar licensure include apprenticeship programs and alternate assessment processes. See Julianne Hill, *Nevada Will Consider Three-stage Process to Join Bar*, ABA JOURNAL (May 29, 2024), <https://www.abajournal.com/web/article/nevada-to-consider-three-stage-process-to-join-bar> [https://perma.cc/WE4Y-WT62].

benefit from this revision is Purdue Global Law School, which launched in 1998 and was the first fully online school.⁴² Other unaccredited law schools would also benefit from the proposals.⁴³ These amendments would also open doors for new fully online law schools to open that are started from scratch and not attached to a physical building.⁴⁴ However, these schools, along with Purdue, would still have to go through the ABA's rigorous approval process.⁴⁵ The proposal simply gives them the opportunity for ABA approval.

By the end of the notice and comment period on January 8, 2024, the Council received 83 pages' worth of comments. Of the 45 comments, 42 supported the proposal and three were against it.⁴⁶ Most commenters were Purdue Global Law School students or alumni.⁴⁷ The others included practicing attorneys, a former dean and current law professor, an ABA Diversity and Inclusion student delegate, and a handful of prospective law students.⁴⁸

The proposed amendments to ABA Standards for Approval of Law Schools regarding the removal of the requirement for physical campuses have garnered significant debate. Among the opposition voices, concerns are raised regarding the impact on minority students and the integrity of legal education. Yousef Ziyadi, a law student at Georgetown University, argues against the amendments, citing studies suggesting that online learning exacerbates achievement gaps for ethnic-minority students.⁴⁹ Ziyadi points to systemic issues such as lack of support systems and disparities in internet access as hindrances to minority students' success in online education.⁵⁰ However, a review of the study shows that what the researchers categorized as "sustainable online learning" (as opposed to "emergency online learning") occurred in the Spring semester of 2021, when the pandemic was still ongoing.⁵¹ Similarly, Christopher Chapman, President of

42. See Bartels, *supra* note 41.

43. See David Merson, *List of Unaccredited Law Schools*, JURIS EDUC. (Oct. 31, 2023), <https://www.juriseducation.com/blog/unaccredited-law-schools-pros-and-cons#p3> [<https://perma.cc/7JQG-NHXZ>] (listing unaccredited law schools).

44. See Charnosky, *supra* note 8 (quoting a council member on how "thinking from the beginning about what an online law school looks like, rather than thinking about how to transform an existing residential program into an online law school is a good alternative").

45. See RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023–2024, ch. VI, rule 22 (AM. BAR ASS'N 2023); see also Paul Caron, *ABA Proposal To Allow Accreditation Of Fully Online Law Schools Draws Overwhelming Support*, TAXPROF BLOG (Jan. 5, 2024), https://taxprof.typepad.com/taxprof_blog/2024/01/aba-proposal-to-allow-accreditation-of-fully-online-law-schools-draws-overwhelming-support.html [<https://perma.cc/AKZ7-PWRP>] (explaining that the Section's proposal "would allow a fully online law school to apply for, and potentially earn, provisional and full ABA approval").

46. AM. BAR ASS'N, *supra* note 5.

47. *Id.*

48. *Id.*

49. *Id.* at 30.

50. *Id.* n.1 (citing Lilach Alon, SeoYoon Sung, JiYong Cho, & Rene F. Kizilcec, *From emergency to sustainable online learning: Changes and disparities in undergraduate course grades and experiences in the context of COVID-19*, 203 COMPUTERS & EDUC. (Oct. 2023)).

51. Alon, *supra* note 50, at 2; see also *Global U.S. Agencies Declare End of COVID-19 Emergency*, PFIZER (May 11, 2023, 11:15 AM) <https://www.pfizer.com/news/announcements/global-and-us-agencies->

AccessLex, acknowledges the barriers faced by minority and online students, such as difficulties accessing career services and law school resources.⁵² Others voice their concerns about the emergence of predatory law schools targeting vulnerable student populations, potentially perpetuating inequality and offering inferior education.⁵³

But proponents of the amendments argue for the benefits of online education, including accessibility and cost-effectiveness.⁵⁴ Many commenters, predominantly Purdue Global law students and alumni, express positive experiences with online education, emphasizing virtual friendships, dedicated faculty, and the practical advantages of remote learning.⁵⁵ They believe that online schooling has opened doors and facilitated cross-country connections while saving time and money. However, opponents like Andrew Strauss, a former law school dean, emphasizes the importance of physical spaces in fostering deep relationships and maintaining a “living culture of law.”⁵⁶ The debate highlights a tension between the desire to preserve elite legal education structures and the need to address systemic inequalities and adapt to changing educational landscapes.

Additionally, allowing a fully online program to receive ABA approval would entail changes to other Standards, specifically Standards 102 (Provisional Approval) and 306 (Distance Education).⁵⁷ The Council has proposed adding language to Standard 102 to require fully online law schools that seek provisional ABA approval to indicate at the time of their application whether their program is delivered wholly or in part via distance education.⁵⁸ Under the proposed change, such a school would not need to gain approval under Standard 105(a)(12) first and would simply note their program delivery method and provide the ABA with all requested information.⁵⁹ Similar language was added to Standard 306.⁶⁰ The

declare-end-covid-19-emergency#:~:text=Following%20an%20initial%20announcement%20earlier,States%2C%20effective%20on%20May%202011 [https://perma.cc/WG82-5H7L].

52. AM. BAR ASS'N, *supra* note 5, at 71 (citing TIFFANE COCHRAN & SHERRIE GODETTE, LAW SCHOOL IN A PANDEMIC UNGROUPED: HOW ONLINE J.D. EXPERIENCES VARIED ACROSS STUDENTS 7 (2023), <https://www.accesslex.org/law-school-in-a-pandemic-ungrouped> [https://perma.cc/DF7W-MDDV]).

53. Ziyadi, *supra* note 49 at 31.

54. Out of 45 commentors, 33 were Purdue Global law students or alumni who passionately recounted their virtual friendships with fellow students, the conscientiousness of their faculty, and the positive impact that their online education has had on their lives. *See generally* Am. Bar Ass'n, *supra* note 5.

55. *See generally* Am. Bar Ass'n, *supra* note 5.

56. AM. BAR ASS'N, *supra* note 5, at 74, 75. Strauss argues that physical spaces allow for deep relationships and that in-person schools maintain a “living culture of law.” In light of this, he proposes that the ABA study the implications of implementing the 701 and 702 amendments, in accordance with their mission to “promot[e] the integrity of our profession and our rule of law democracy.” *Id.*

57. *See generally* Am. Bar. Ass'n, MATTERS FOR NOTICE AND COMMENT: STANDARDS 102, 306 (2023), <https://taxprof.typepad.com/files/notice-and-comment-memo-fully-online-law-school-102-306-1.pdf> [https://perma.cc/AM9D-XMQE].

58. *Id.* at 3.

59. *Id.*

60. *Id.* (“A few changes were made to this Standard. In subsection (d), language was added to differentiate between a law school that was initially approved as a fully online law school and one that was not for purposes of acquiescence in a substantive change to exceed the current limits related to Distance Education. Also, in subsection (d), language was revised to match previously made changes to

Council is currently accepting comments on the these proposed changes, recognizing that people may feel strongly about it. Once the comment period or multiple rounds of comments ends, the proposal will head to the ABA House of Delegates who can reject or accept the changes, before the Council makes a final decision.⁶¹ Having experimented with online education during the start of the COVID-19 pandemic, the Council and legal scholars have continued to investigate the role of online education in the legal academy from students' perspectives.

B. Students' Perceptions of Online Legal Education

The student perspective is a powerful tool in understanding how to move forward with legal education, which is a position that the Council and other interested parties seem to agree with. In February 2022—a year before it recommended changes to the Standards allowing J.D. students to be able to take up to 50% of their classes online—the SRC elicited responses from 3Ls in law schools throughout the country about their perceptions of distance education.⁶² Approximately 1,400 third-year students from 60 law schools completed the survey and shared their thoughts on distance learning.⁶³ Most notably, when asked, “Do you want the ability to earn more distance education course credit than your law school currently allows,” 68.65% of students answered yes.⁶⁴ Additionally, 52.29% of students said if they had a choice, they preferred to take a course through Zoom or other web broadcast over being in person.⁶⁵

The SRC report tracks with a 2022 AccessLex study that was performed in conjunction with Gallup.⁶⁶ The study “compare[d] responses from the 820 students interviewed in 2022 with the responses from those same 820 students in 2021.”⁶⁷ It demonstrated a more favorable perception of online learning among law students than the previous year—an improvement, albeit a modest one.⁶⁸

In the Spring 2021 survey, there were wide gaps in quality ratings by students' mode of instruction that academic year; among those who continued taking most or all of their classes in-person, 76% rated their

Standard 105 regarding the current limits related to Distance Education. Finally, a new subsection (e) was added to explain that a fully online law school can seek ABA-approval as a cross-reference to Standard 102(h) on Provisional Approval.”).

61. *ABA Standards Revisions Process*, *supra* note 37.

62. See generally AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, DISTANCE EDUCATION SURVEY: 3L STUDENT QUANTITATIVE RESPONSES (2022), www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2022/22-distance-ed-survey-responses.pdf [https://perma.cc/4AUA-PU3R].

63. *Id.* at 1.

64. *Id.* at 3.

65. *Id.*

66. See generally GALLUP & ACCESSLEX INST., LAW SCHOOL IN A PANDEMIC, YEAR 2 (2022), <https://www.accesslex.org/law-school-in-a-pandemic-year-2> [https://perma.cc/8BJP-9NGX].

67. *Id.* at 7.

68. *Id.*

J.D. program as excellent or good, vs. 51% of those who were about equally in-person and online and 57% of those who took most or all of their classes online. Among students reinterviewed for the Spring 2022 survey, those gaps had narrowed considerably. Just over three-fourths of students whose schools had returned to mostly or completely in-person classes (78%) rated their program quality as “excellent” or “good.” However, this metric was also high among those who were splitting their time evenly between in-person and online classes or remained mostly or completely online (73% and 72% respectively, though fewer in the latter group rated their program “excellent”).⁶⁹

The survey results suggest that “a hybrid format that combines advantages of in-person and online attendance is at least acceptable—if not overwhelmingly positive—to most of these students.”⁷⁰ Furthermore, a report from Law School Survey of Student Engagement (LSSSE) found that “[m]ost law students remain quite satisfied with their law school experience, a consistent finding since the LSSSE inaugural survey in 2004. In 2022, 77% of students evaluated their entire educational experience as “good” or “excellent.” Similarly, 76% of students enjoy “good” or “excellent” online courses.”⁷¹

The ABA, AccessLex-Gallup, and LSSSE surveys show a trend in students’ use and familiarity with online education. The next wave of law students will be even more familiar with this learning modality and will come to expect, if not demand, that they have more access to this way of learning.⁷² In the Fall of 2019, 37% of students in postsecondary institutions had taken distance education courses, half of whom (18%) had classes exclusively online.⁷³ Naturally, these figures changed drastically with the pandemic. “In the Fall of 2020, some 75 percent (11.8 million) of all undergraduate students were enrolled in at least one distance education course, and 44 percent (7.0 million) of all undergraduate students

69. *Id.* at 11.

70. *Id.* at 10.

71. MEERA E. DEO, CHAD CHRISTENSEN, & JACQUELYN PETZOLD, LSSE 2022 ANNUAL REPORT: SUCCESS WITH ONLINE EDUCATION 9 (2022), <https://lsse.indiana.edu/wp-content/uploads/2022/10/Success-with-Online-Education-Final-10.26.22.pdf> [<https://perma.cc/U8A9-LHJR>].

72. Karen Sloan, *Online class options gaining popularity among law students, ABA says*, REUTERS (July 22, 2022), <https://www.reuters.com/legal/legalindustry/online-class-options-gaining-popularity-among-law-students-aba-says-2022-07-22/> [<https://perma.cc/W6EB-AVZA>]; *Trend Generator: Student Enrollment*, NATIONAL CENTER FOR EDUCATION STATISTICS, <https://nces.ed.gov/ipeds/TrendGenerator/app/build-table/2/42?rid=6&cid=85> [<https://perma.cc/GM6R-KTQJ>] (finding that 53.3% of students enrolled in postsecondary secondary institutions in the fall of 2022 were enrolled in distance education courses); see also Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29 (2018).

73. Table 311.15, Fall 2019 and Fall 2020, DIGEST OF EDUC. STAT., https://nces.ed.gov/programs/digest/d21/tables/dt21_311.15.asp [<https://perma.cc/SP8J-X9JJ>].

exclusively took distance education courses.”⁷⁴ Students will enter law school having had more consistent exposure to online learning. Even with these positive outlooks, some oppose this mode of legal education due to the limited nature of information available. These concerns are valid and merit further research.

C. Limited Information

While both the ABA revisions and student perceptions are promising, more information is needed about the current state of distance legal education. Currently, there is limited information on how these programs operate and the technology they use.⁷⁵ While reviewing the websites of various ABA-approved schools offering hybrid or completely online J.D. courses, one can glean limited information about these programs. Importantly, no information is available on how these programs are helping eliminate or close the “digital divide,” which requires more than simply giving students laptops.⁷⁶ Also, there is no central repository of research or body of work on these programs.⁷⁷

A review of the online J.D. programs through their websites shows they provide varying information about programming, technology, and resources available to students. For example, Mitchell-Hamline highlights its dedicated team of designers and tech support.⁷⁸ The University of New Hampshire Franklin Pierce’s hybrid program boasts of having the only ABA-approved hybrid J.D.

74. *Online Colleges*, DEGREE FAVORITES, <https://www.degreefavorites.com/online-colleges> [https://perma.cc/N8RS-TNLJ] (last visited Oct. 18, 2024) (relying on data from the National Center for Education Statistics); *Fast Facts: Distance Learning*, NAT’L CTR. FOR EDUC. STATS., <https://nces.ed.gov/fastfacts/display.asp?id=80> [https://perma.cc/5G2E-3VQF] (last visited Oct. 18, 2024).

75. See generally RTI INT’L & ACCESSLEX INST., AN APPROACH TO MONITORING AND ASSESSING ONLINE/HYBRID J.D. PROGRAMS (2024), https://www.accesslex.org/sites/default/files/2024-04/RTI%20Report_031124_Spreads.pdf [https://perma.cc/A2GJ-RWAS].

76. The “digital divide” is defined as “the gap between those who are empowered to substantially participate in an information and knowledge-based society and economy, and those who are not The digital divide is more complex than simply lack of access to computing devices or the Internet. A direct link between lack of access to technology and negative outcomes is not always clear. There may be other factors which are quite significant, such as economic resources, employment, health, education, housing, recreation, culture, and civic engagement. This means that overcoming the digital divide is not simply a matter of providing access [sic] to digital devices and broadband—time, language skills, and capacity to cope with complexity are also barriers.” *Lawtech and the ‘Digital Divide,’* FUTURE OF LAW ASS’N, <https://futureoflawassociation.org/article/lawtech-and-the-digital-divide/> [https://perma.cc/6PT7-5BBA].

77. Websites like the U.S. News and Princeton Review only provide minimal information on online J.D. programs. See Gabriel Kuris, *Advice for Choosing an Online J.D. Program*, U.S. NEWS (June 3, 2024), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/advice-for-choosing-an-online-j-d-program#:~:text=Online%20law%20programs%20enable%20students,for%20a%20range%20of%20students> [https://perma.cc/26C5-X3XN]; *Best Online JD Programs at Law School for 2024*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=best-online-jd-programs-at-law-school> [https://perma.cc/R4BP-27H8].

78. *Blended Learning at Mitchell Hamline*, MITCHELL HAMLINE SCH. OF LAW, <https://mitchellhamline.edu/academics/j-d-enrollment-options/blended-learning-at-mitchell-hamline/> [https://perma.cc/KC54-V6AD] (Oct. 7, 2024).

program with an “Intellectual Property, Technology, and Information Law focus.”⁷⁹ Seattle University’s Flex J.D. program has “concentrated campus-based sessions each year” and a program that integrates social justice into its online curriculum.⁸⁰ Syracuse Law’s JDinteractive or JDi program website explains how its classes have both a self-paced and live meeting requirement and that professors teaching in the JDi program “dialog with students using the Socratic method of teaching.”⁸¹

Until recently, the ABA-approved hybrid programs were generally designed for part-time students and had some form of in-person requirement. Even St. Mary’s University School of Law, which is a fully online program with no in-person requirement, is for part-time students.⁸² Suffolk University Law School and Southwestern Law School in California are the only hybrid programs for full-time students. Suffolk has a full-time hybrid program that can be completed in three years.⁸³ It also has a part-time hybrid J.D. program⁸⁴ and a part-time, in-person program for working students.⁸⁵ Additionally, in August 2023, the ABA approved Southwestern Law School in California to provide a fully online J.D. program for full-time students.⁸⁶ It offers fully online asynchronous classes with optional real-time meetings with professors starting in the fall of 2024.⁸⁷ Students in this program can also complete their studies in three years.⁸⁸

Furthermore, schools are inconsistent about the student body demographic information they collect or share about their distance learning students. As seen in the chart below, the schools offer little on their websites, and the ABA does not require reporting by modality.⁸⁹ Collecting this information could help schools better understand the student population, create policy recommendations, and provide more individualized services. Also, combining demographics with other

79. *Hybrid JD*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF LAW, <https://law.unh.edu/academics/degrees-certificates/hybrid-jd> [https://perma.cc/K7DA-D4SL] (last visited Oct. 7, 2024).

80. *Flex JD*, SEATTLE UNIV. SCHOOL OF LAW, <https://law.seattleu.edu/academics/degree-programs/jd/flex-jd/> [https://perma.cc/5R3S-RSCU] (last visited Oct. 7, 2024). For both fall and spring semesters, students are required to attend in-person classes over five weekends. *Learning Experience*, SEATTLE UNIV. SCH. OF LAW, <https://law.seattleu.edu/academics/degree-programs/jd/flex-jd/learning-experience/> [https://perma.cc/DBD7-TGMM] (last visited Oct. 7, 2024).

81. *About JDi’s Online Classes*, SYRACUSE UNIV. COLL. OF LAW, <https://jdinteractive.syr.edu/academics/about-jdis-online-classes/> [https://perma.cc/66BU-64HM] (last visited Oct. 7, 2024).

82. *Online J.D. Program*, ST. MARY’S UNIV. SCHOOL OF LAW, <https://law.stmarytx.edu/academics/programs/jd/online-j-d-program/> [https://perma.cc/WG6Q-N527] (last visited Oct. 7, 2024).

83. *Hybrid Online JD*, SUFFOLK UNIV. LAW SCHOOL, <https://www.suffolk.edu/law/academics-clinics/juris-doctor/hybrid-online-jd> [https://perma.cc/UM2Q-JCHJ] (last visited Sept. 27, 2024).

84. *Id.*

85. *Evening JD*, SUFFOLK UNIV. LAW SCHOOL, <https://www.suffolk.edu/law/academics-clinics/juris-doctor/evening-jd> [https://perma.cc/Q5KZ-W8VC] (last visited Sept. 27, 2024).

86. Sloan, *supra* note 36.

87. *Id.*

88. *Id.*

89. There are numerous reasons why reporting by modality would be difficult, including the time, effort, and manpower available to track such information. Nonetheless, it is vital information that would be very useful to administrators and prospective students.

measures like student and faculty perceptions will deepen the understanding of the online learning environment. Other information like bar passage rates, career objectives, and practice area and subject matter are also key information that would be useful to collect and share.⁹⁰

School Name ⁹¹	# Students	% Female	% Students of Color	% LGBTQ+	% First Generation ⁹²
Mitchell Hamline College of Law ⁹³	793 total part-time and 344 full-time	63%	30%	17%	91%

90. Of the ABA approved online programs, only Syracuse Law shared the bar passage rates for its JDinteractive program. *About JDI's Online Classes*, *supra* note 81 (noting that its 2022 class of JDI students had “100% New York State and 84% nationwide bar passage rates”). Although the New York State Bar’s rule only allows students to take 18% or 15 out of 83 credit hours via distance education, NEW YORK STATE BOARD OF LAW EXAMINERS, *supra* note 27, during the pandemic it provided distance learning waivers to students who had to take classes online due to the COVID-19 pandemic. *See, e.g.*, Temporary Waiver of Strict Compliance with certain provisions of Sections 520.3 and 520.6 of the Rules for the Administration of Attorneys and Counselors at Law (N.Y. 2021).

91. Except where otherwise noted, the information in the chart is for the 2024 entering class. The information listed was highlighted on the respective school’s website as part of the class profile, demographics, or in some other form and includes information about the number of students enrolled in the online programs. The schools provided data on the number of students in their online programs along with other demographic information like the percentage of women, students of color, and LGBTQ+. However, the related information for online students was not provided separately and instead was included in the overall demographics. University of New Hampshire School of Law, Northeastern University School of Law, Cleveland State University College of Law, Ohio Northern University Claude W. Pettit College of Law, and South Texas College of Law-Houston did not provide any data about their online programs on their websites. Thomas R. Kline School of Law of Duquesne University began offering courses online in Fall 2024 but it does not offer a fully online program. Instead, students attend in-person classes the first two weeks of class followed by the remaining eleven weeks of class being offered in a “hybrid modality” where faculty have some students present with them in the classroom and others online on Zoom. *Flexible Part-Time Evening Program*, DUQUESNE KLINE SCH. OF LAW, <https://www.du.edu/academics/colleges-and-schools/law/academics/degree-programs/juris-doctor/part-time-evening-program.php> [<https://perma.cc/L229-PVM5>] (last visited Oct. 7, 2024). Also, Albany Law School and University of Dayton School of Law, are starting new programs and do not have any data to provide. However, as required by ABA Standard 509, all law schools have a dedicated section on their website that makes information—including admissions data employment outcomes, bar passage rates, and more—publicly available. *See* AM. BAR ASS’N STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 509 (2024).

92. It is unclear what definition is used to define first generation student. *See, e.g.*, Jay Petzold, *First Generation*, LSSSE, https://lsse.indiana.edu/tag/first-generation/#_ftn2 [<https://perma.cc/S8QC-6U2X>] (last visited Sept. 27, 2024) (“Although definitions vary and self-identification is important, a first-generation student is typically one whose parents or legal guardians have not completed bachelor’s degrees.”); *Are you a first-generation student?*, FIRST-GEN FORWARD, <https://firstgen.naspa.org/why-first-gen/students/are-you-a-first-generation-student> [<https://perma.cc/PU33-EQBA>] (last visited Sept. 27, 2024).

93. *Student Profile*, MITCHELL HAMLINE SCH. OF LAW, <https://mitchellhamline.edu/admission/student-profile/> [<https://perma.cc/X42S-Z9RD>] (last visited Oct. 7, 2024).

CONTINUED

School Name ⁹¹	# Students	% Female	% Students of Color	% LGBTQ+	% First Generation ⁹²
St. Mary’s University School of Law ⁹⁴	25 cap every year for online program				
Seattle University School of Law ⁹⁵	55 Flex JD and 681 total JD	65%	45%	31%	
Suffolk University Law School ⁹⁶	25 online cohort				
Syracuse University College of Law ⁹⁷	243 total class	59%	30%		
Vermont Law School Online Hybrid ⁹⁸	495 students and 96 Online Hybrid JD (2023 Class)	65%	30%		
University of Hawai’i William S. Richardson School of Law ⁹⁹	60 Full-time students and 40 Part-Time Online JD Students				

94. *Online J.D. Program*, *supra* note 82.

95. *JD students by the numbers*, SEATTLE UNIV. SCH. OF LAW, <https://law.seattleu.edu/admission/apply/jd-students-by-the-numbers/> [https://perma.cc/98F2-LTGK] (last visited Aug. 24, 2024).

96. *Hybrid Online JD*, *supra* note 83.

97. *Class Profile, Fall 2024 Entering Class*, SYRACUSE UNIV. COLL. OF LAW, <https://law.syracuse.edu/admissions/j-d-admissions/class-profile/> [https://perma.cc/Z3MZ-AV9R] (last visited Sept. 27, 2024).

98. *Class Profile*, VT. LAW & GRADUATE SCH., <https://www.vermontlaw.edu/admissions/class-profile> [https://perma.cc/B4AY-XVKT] (last visited Oct. 7, 2024).

99. *About Us*, UNIV. OF HAW. WILLIAM S. RICHARDSON SCH. OF LAW, <https://law.hawaii.edu/about-us/> [https://perma.cc/CYA9-D5Y] (last visited Oct. 7, 2024).

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School Name ⁹¹	# Students	% Female	% Students of Color	% LGBTQ+	% First Generation ⁹²
Lincoln Memorial University Duncan School of Law ¹⁰⁰	60 online students (starting in 2025)	53%	32%		
Southwestern Law School ¹⁰¹	278 full-time day program, 39 online full-time program, and 51 online part-time program	59%	43%		
Case Western Reserve University School of Law ¹⁰²	166 In Person, Full-Time 32 Online, Part-Time	54%	31%	24%	

Recognizing the limited research and data available on online legal education programs, AccessLex partnered with RTI Solutions to create a “guide [that] serves as a primer to law schools and other parties interested in evaluating hybrid J.D. programs.”¹⁰³ This guide was based on an evaluation of an ABA-approved hybrid J.D. program.¹⁰⁴ It lays a foundation for law school administrators who want to assess the effectiveness of their online programs.¹⁰⁵ It provides a detailed program evaluation guide, including a program assessment rubric, an example of how to map research questions and data, and a template for administrative data

100. *Part-Time/Hybrid Program*, LINCOLN MEM’L UNIV. DUNCAN SCH. OF LAW, <https://www.lmunet.edu/duncan-school-of-law/part-time-hybrid-program/> [https://perma.cc/76HZ-CGMP] (last visited Oct. 7, 2024).

101. *Prospects for Admission & Entering Class Profile*, SOUTHWESTERN LAW SCHOOL, <https://www.swlaw.edu/admissions-financial-aid/admissions-jd/prospects-admission> [https://perma.cc/BZS7-9GHT] (last visited Oct. 7, 2024).

102. *JD Class Profile*, CASE WESTERN RESERVE UNIV. SCHOOL OF LAW, <https://case.edu/law/admissions/jd-admissions/jd-class-profile> [https://perma.cc/CF8B-WAM7] (last visited Oct. 7, 2024).

103. AN APPROACH TO MONITORING AND ASSESSING ONLINE/HYBRID J.D. PROGRAMS, *supra* note 75.

104. *Id.* at 2.

105. *Id.* at 3–4.

requests.¹⁰⁶ While helpful to administrators and interested researchers, the guide in its current form is not helpful to prospective students.

However, the information the guide yields, if implemented by *all* programs and provided openly, would be of immense value to prospective students considering their options. For example, the summative assessment questions include:

1. Has the hybrid program achieved its goal of broadening access to legal education?
2. Have hybrid program activities been beneficial to the target population?
3. Did offering multiple hybrid course options increase bar passage rates for program students?
4. Did offering a hybrid or online option for legal education increase the diversity of the applicant pool?
5. When compared to residential students, did hybrid students achieve similar academic and professional goals at the conclusion of their legal education?¹⁰⁷

Having these answers for different programs would give a student considering a hybrid or online program important information in comparing online programs against one another and to brick-and-mortar options. These students need all the available information to assess programs and make an informed decision.¹⁰⁸

Legal education is at the start of a paradigm shift—one that can have it join other graduate programs in leveraging online platforms to deliver education and help address the access to justice problem. However, in proceeding, it helps to stop and analyze the past so that we can learn and grow from it. There are misconceptions and misunderstandings as to what distance education is. For example, our experiment with online teaching due to the COVID-19 pivot of 2020 was emergency teaching, not distance education. By analyzing the origins of distance education, primarily correspondence education, we can expand on the work of those who have built distance education programs (some successful and others not) and create highly effective distance legal education programs.

106. *Id.* at 11–14.

107. *Id.* at 5.

108. More information is needed about the online legal education programs at the various institutions. When assessing programs, there are several questions that need answers. Does the online program have fully dedicated faculty and staff support, independent of the brick-and-mortar institution, or are they using the same people who work in person? What is their source of funding – is it a budgeted line item from the law school or is it funded by the tuition the program brings in? What technologies are they using? Do they have independent/internal, proprietary technology or are they using what is already available (Canvas, Zoom, Teams)? Have they outsourced the online function to an outside company? How are they defining hybrid, is it simply adding a camera and online option to an in-person, physical class or is it a fully online synchronous/asynchronous classroom? What is the program model? Is there a coordinator, director, or assistant dean? Do they have dedicated instructional designers and information technology staff? How do they define and measure student and program success?

II. THE PAST: HISTORICAL CONTEXT

Online education is the latest iteration of distance education. Distance education, which has its own pedagogy, is the broad umbrella under which teaching occurs with the student and teacher separated by distance.¹⁰⁹ It has existed in different modalities based on the technology available at the time. Earlier forms have included home study, university extension, broadcast education via radio and television, and teleconferencing.¹¹⁰ Current versions are hybrid, synchronous learning, asynchronous learning, e-learning, and online learning/education.¹¹¹

Ultimately, distance education is rooted in correspondence education. Correspondence education describes teaching and learning that takes place by mail. As will be discussed in this section, correspondence education was first established in the United States in the early 1800s. The term distance education was first used in 1892 by the University of Wisconsin to label its correspondence course offerings.¹¹² This section explores the foundations of correspondence education and discusses some of its earliest European influences. This section also discusses some of the first formalized correspondence programs and situates them within the context of the growth in legal education.

A. Foundations of Correspondence Study

Correspondence education was established to counter the elitist approach to education. The first institutions of higher education in the American colonies, the colonial colleges as they are known,¹¹³ were created because the Puritans wanted

109. Brutus St. Val, *supra* note 3, at 303–04.

110. ARAS BOZKURT, HANDBOOK OF RESEARCH ON LEARNING IN THE AGE OF TRANSHUMANISM, 253 (Serap Sisman-Ugur & Gulsun Kurubacak eds., 2019).

111. *Id.* at 259. Despite the various names, they are all versions of online learning with only slight differences and most terms can be used interchangeably. See, e.g., Caroline Lawless, *What is eLearning?*, LEARNUPONBLOG, <https://www.learnupon.com/blog/what-is-elearning/> [https://perma.cc/59FD-FHVT] (last visited Sept. 27, 2024) (defining e-learning as “the delivery of learning and training through digital resources”); Caroline Lawless, *The Ultimate Glossary of eLearning Terms*, LEARNUPONBLOG, <https://www.learnupon.com/blog/elearning-glossary/> [https://perma.cc/SKE5-A6E9] (last visited Sept. 27, 2024) (defining asynchronous learning as “allow[ing] learners to train individually, enabling them to complete courses at a time, place and pace that suits them synchronous learning as “instructor-led learning in a virtual classroom setting, [where] learners log on at the same time and an instructor guides the class,” as well as online learning as “often used interchangeably with eLearning and web-based training”).

112. *The History of Distance Learning*, OXFORD COLL., <https://www.oxfordcollege.ac/news/history-of-distance-learning/#:~:text=University%20of%20Wisconsin%2C%20U.S.%20%E2%80%93%201892,phonographs%20out%20to%20their%20students> [https://perma.cc/3QQA-PLKQ] (last visited Aug. 24, 2024).

113. “The first colonial college was Harvard College, founded in 1636 in Cambridge, Massachusetts. Harvard College is now known as Harvard University and is one of the most famous colleges in the world. Other colonial colleges include the College of William and Mary, Yale University, Princeton University, Columbia University, Brown University, Rutgers University, and Dartmouth College.” *Cleary University Eliminates the Admission Process*, CLEARY UNIV., <https://cleary.edu/international/history-of-he/> [https://perma.cc/RR6W-6FK3] (last visited Aug. 24, 2024). However, “Cornell, which was established in 1865, is generally considered to be the first real American university,

their clergy and civil leaders to be educated.¹¹⁴ Some of these early settlers were alumni of Cambridge and Oxford, bringing with them English traditions of and belief in education.¹¹⁵ Throughout the 18th and 19th centuries, seminary colleges were founded by churches to educate clergy in their faith.¹¹⁶ Denominational colleges of the time only admitted white, Christian men, reflecting the exclusionary practices prevalent in higher education during that era.¹¹⁷ Because these early colleges and universities were elitist and exclusionary, the masses relied on informal apprenticeships and discussion groups to gain knowledge and learn a trade, which in turn helped influence the formation and growth of distance education.¹¹⁸

Correspondence education shared a theme with Andrew Jackson's presidency—a focus on uplifting the common man.¹¹⁹ His ideology of resisting the elite's intimidation and stronghold over the country and instead focusing on the common citizen ushered in what became known as the Jacksonian Democracy.¹²⁰ During the period of Jacksonian Democracy, which lasted until the start of the Civil War in 1861, “governments of all levels tried to change their laws to disempower the American elites.”¹²¹ This aligned with the democratizing knowledge movement, the goal of which was to help expand access to education by bringing educators to the masses at a low cost.¹²² The newspaper served as the conduit for

that is, an institution that emphasized research and provided postgraduate and professional education.” John Freed, *The Founding of Illinois State Normal University: Normal School or State University?*, 101 J. ILL. HIST. SOC. 106, 106 (2008).

114. John R. Thelin, Jason R. Edwards, & Eric Moyon, *Higher Education in the United States*, STATE UNIV., <https://education.stateuniversity.com/pages/2044/Higher-Education-in-United-States.ht> [https://perma.cc/NK47-DV2A] (last visited Aug. 8, 2024).

115. *Id.*

116. *Id.*

117. *Id.*

118. See Farhad Saba, *Distance Education in the United States: Past, Present, Future*, 51 EDU. TECH. 11, 11 (2011). An example of one such discussion program is the Junto Club also known as the Leather Apron Club, formed by Benjamin Franklin in 1727. *Junto Club*, BENJAMIN FRANKLIN HISTORICAL SOCIETY, <http://www.benjamin-franklin-history.org/junto-club> [https://perma.cc/9YGR-BD9Q] (last visited Aug. 24, 2024). Club members, which consisted of tradesmen and artisans, 12 in total, met on Friday nights to discuss morals, politics, and natural philosophy (which is modern science). *Id.* Franklin and his friends were learners or learned men who were seeking knowledge independent of an instructor or teacher. *Id.*

119. Paul Edelson & Von Pittman, *E-Learning in the United States: New Directions and Opportunities for University Continuing Education*, 10 INDIAN J. OPEN LEARNING 1, 6 (2001).

120. *Id.*

121. BENJAMIN H. BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* 18 (2019).

122. The American Lyceum Movement, which was created by Yale graduate Josiah Holbrook, is a prime example of the democratization of knowledge at work. Louis J. Alber, *Josiah Holbrook—Father of the Lyceum*, 12 THE VIRGINIA TEACHER 16, 16–17 (1931), <https://commons.lib.jmu.edu/cgi/viewcontent.cgi?article=2494&context=va-teacher> [https://perma.cc/234G-XGVD]. Despite his privileged status, he wanted to provide broader access to education. The Lyceum movement was an organization composed of professional educators who traveled to 15 states to engage the community in discussions regarding the intellectual and ethical issues faced by society at that time. *Id.* at 17 (explaining how Holbrook's plan called for a Lyceum to be formed “in every town, city, village, or community” and eventually for an international association). “The masses” in this sense meant

achieving this goal. Using the newspaper and postal system, correspondence began to grow in the U.S., drawing from the European university extension programs that were using mail to teach.

1. Newspaper Beginnings

Correspondence education relied on newspapers and mail for advertising and instruction. Scholars debate the origins of this form of education.¹²³ Some argue it began in 1728, when Caleb Phillips advertised shorthand lessons in the *Boston Gazette*,¹²⁴ while others cite an 1833 Swedish newspaper offering composition lessons by mail.¹²⁵ Critics of these examples claim that advertisements alone, lacking two-way communication and grading, do not constitute true education.¹²⁶ However, supporters argue the intent to teach via mail was clear.¹²⁷ Classifying early newspaper advertisements as distance education depends on the definition.¹²⁸ Regardless of the classification, newspapers and postal services were crucial to the development of correspondence education.

Practical correspondence programs emerged with postal system improvements. Benjamin Franklin, as Postmaster General, standardized postal rates and

wealthy, white men. Lyceums were not open to enslaved persons. See JOSEPH F. KETT, *THE PURSUIT OF KNOWLEDGE UNDER DIFFICULTIES: FROM SELF-IMPROVEMENT TO ADULT EDUCATION IN AMERICA, 1750–1990*, 47 (1994); see also Dorothy P. Porter, *The Organized Educational Activities of Negro Literary Societies, 1828–1846*, 5.4 J. OF NEGRO ED. 555, 558–76 (1936) <http://www.autodidactproject.org/other/negrolit.html> [https://perma.cc/VP5F-UB5H]. They were also not available to the poor. *Id.* (explaining how Lyceums were first approved by cultured Boston, which was the “intellectual and cultural capital of the country.” This led “[i]mportant people in every community [to be] willing to sponsor the new movement.”). The movement was ended by the Civil War. Ernest J. Moyne, 25 PA. HIST: A J. OF MID-ATL. STUD.200, 201 (1956). Nonetheless, it had a lasting impact on adult education and greatly contributed to correspondence education. See Alber, *supra* note 122, at 19 (discussing how “[t]he University Extension movement is Holbrook’s plan carried out by a University. The Chautauquas are Holbrook’s Lyceum dressed in summer clothes. The Institute of Politics at Williamstown, Mass., and similar organizations are unconsciously doing the thing that Holbrook advocated for his International Lyceum.”).

123. JOHN R. VERDUIN JR. & THOMAS A. CLARK, *DISTANCE EDUCATION: THE FOUNDATIONS OF EFFECTIVE PRACTICE* 15 (1991).

124. Kentnor, *supra* note 4, at 23 (explaining how in the advertisement, Philips offered to any “[p]erson in the Country desirous to Learn this Art, may be having several Lessons sent Weekly to them, be as perfectly as those that live in Boston.”); VERDUIN ET AL., *supra* note 123, at 15.

125. VERDUIN ET AL., *supra* note 123, at 15; Bozkurt, *supra* note 110, at 254.

126. Those who oppose categorizing these documents as evidence of early forms of correspondence education contend that the problem with these advertisements is that they are simply advertisements, nothing more; they lack educational quality. VERDUIN ET AL., *supra* note 123, at 15.

127. Those who support classifying these early documents as evidence of correspondence education maintain that “the premise and intent are apparent in the advertisement[s]—to teach shorthand [and composition] by way of the Postal Service.” Kentnor, *supra* note 4, at 23.

128. KEEGAN, *supra* note 1, at 39–44. A broad definition, involving education through technological innovation with teacher and learner separated by space throughout the learning process, *id.* at 44, includes these advertisements. A narrow definition, requiring educational organization and two-way communication, *id.*, excludes them.

established routes.¹²⁹ Franklin greatly enhanced the colonial postal system, enabling regular service between the colonial territories and Britain.¹³⁰ By the 1840s, postal reforms, like Rowland Hill's penny postage system, made mail affordable and accessible.¹³¹ The penny stamp greatly reduced the cost of postage, making it more affordable for the masses to send and receive mail.¹³² The post office continued to innovate and grow, connecting people across the country at minimal costs and allowing them to send and receive learning materials.¹³³

Seeing opportunity with the postal system, in 1840 England, Sir Isaac Pitman developed a method of teaching his shorthand style of writing (or phonography) through the mail.¹³⁴ "Pitman mailed postcards to students and instructed them to transcribe passages from the Bible into shorthand and to return them, by post, for correction."¹³⁵ Pitman's method is generally recognized as the first course taught through correspondence, making him the first known distance educator.¹³⁶ Unlike the newspaper advertisements, it is undisputed that communication between Pitman and his students was two-sided, with students receiving feedback and ways to improve. Pitman's course led to the creation of the Phonographic

129. *Benjamin Franklin*, PBS, https://www.pbs.org/benfranklin/13_world_letters.html [https://perma.cc/C5GP-8723] (last visited Jul. 28, 2024).

130. Franklin originally served as Postmaster General for the British, where he created a standardized postal rate system based on weight and distance for all the postmasters to use. *Id.* He was dismissed from his position because of his vocal support for the colonies' independence in 1774. *Id.* A year later, the Continental Congress, before signing the Declaration of Independence, created the Post Office of the United States and appointed Franklin as the Postmaster General of the colonies. 1775 *U.S. Postal System Established*, HISTORY, <https://www.history.com/this-day-in-history/u-s-postal-system-established> [https://perma.cc/VGK6-VDS5] (last visited Oct. 7, 2024). Despite holding the position for only one year, he "vastly improved the mail system, [establishing] routes from Florida to Maine and [implementing] regular service between the colonies and Britain." *Id.*; Winifred Gallagher, *A Brief History of the United States Postal Service*, SMITHSONIAN MAG. (Oct. 2020), <https://www.smithsonianmag.com/smithsonian-institution/brief-history-united-states-postal-service-180975627/?page=2> [https://perma.cc/XKF7-JWYY].

131. In 1837, Rowland Hill published *Post Office Reform, its Importance and Practicability*, in which he "argued for abolishing the postal tariffs and replacing them with a single national rate of one penny, which would be paid by the sender." Jimmy Stamp, *The Story of the First Postage Stamp*, SMITHSONIAN MAG. (July 19, 2013), <https://www.smithsonianmag.com/arts-culture/the-story-of-the-first-postage-stamp-14931961/> [https://perma.cc/2DU6-4QPU]; Rowland Hill, *Post Office Reform Its Importance and Practicability*, INTERNET ARCHIVE (1837), http://archive.org/details/cihm_21617/page/n7/mode/2up?view=theater [https://perma.cc/J8ED-DCPR]. Working with the Postmaster General at that time, Hill created the first adhesive postal stamp. On May 1, 1840, the "penny black" stamp went on sale. It was an immediate success. Gallagher, *supra* note 130.

132. Gallagher, *supra* note 130.

133. *Id.* ("In 1869, the great transcontinental railroad was completed. The mail was a lifeline connecting Western settlers with loved ones back home... [It also] brought rural residents into the mainstream.").

134. "Phonography, the name originally given to Pitman's Shorthand, has been briefly but accurately defined as 'the art of representing spoken sounds by character; a system of shorthand.'" ISAAC PITMAN, PITMAN'S SHORTHAND INSTRUCTOR: A COMPLETE EXPOSITION OF SIR ISAAC PITMAN'S SYSTEM OF SHORTHAND vii (2d Australian ed. 1920); VERDUIN ET AL., *supra* note 123, at 15.

135. Kentnor, *supra* note 4, at 23; VERDUIN ET AL., *supra* note 123, at 15.

136. VERDUIN ET AL., *supra* note 123, at 15; Kentnor, *supra* note 4, at 23.

Correspondence Society and Pitman's Correspondence College, influencing the growth of correspondence programs in England and the Americas.¹³⁷

2. European Origins – University Extension

While America had correspondence education, Europe had university extension programs. The thought leaders and innovators in the Americas were heavily influenced by the growing program in Europe. In the mid-1800s, correspondence programs, termed university extension, began to form in Europe.¹³⁸ University extension programs and divisions were formed to reach the broader population by offering courses via correspondence or in-person, but beyond the university walls. The first university to offer such a program in England was the University of London,¹³⁹ which was established as the governing board to administer examinations and confer degrees to students who held certificates from University College London and King's College London.¹⁴⁰ The University of London later expanded its program to allow "external students the opportunity to continue to earn a living while studying, and to study privately and take exams without coming to London."¹⁴¹

However, Cambridge University is generally regarded as having formalized correspondence education through its extension program.¹⁴² In the mid-1800s, "[c]ollege fellows from Oxford and Cambridge and professors from London were taking themselves off into the provinces to meet the clients of mechanics' institutes, middle-class women's educational associations and societies of working people, trying to give them some better educational fare than the genteel amusements that were commonly available."¹⁴³ These "missionary dons," as they were called, were the leaders of the movement to educate the masses by going into smaller cities, and were the driving force behind the extramural movement, which was the precursor to extension programs.¹⁴⁴

137. Kentnor, *supra* note 4, at 23; Bozkurt, *supra* note 110, at 254.

138. "The terms 'university extension' and 'correspondence study' were often used interchangeably well into the twentieth century. Extension credit was offered through correspondence study, direct class instruction, or both." Barbara L. Watkins, *A Quite Radical Idea: The Invention and Elaboration of Collegiate Correspondence Study*, in *THE FOUNDATIONS OF AMERICAN DISTANCE EDUCATION A CENTURY OF COLLEGIATE CORRESPONDENCE STUDY*, 2 n.1 (Barbara L. Watkins and Stephen J. Wright eds., 1991); ADRIAN BARLOW, *EXTRAMURAL: LITERATURE AND LIFELONG LEARNING* 13 (2012).

139. Although it boasts being the first university to ever offer distance learning opportunities in 1865, History of the University of London, Univ. of London, <https://london.ac.uk/about-us/history-university-london> [<https://perma.cc/7N5U-N3VP>] (last visited Oct. 7, 2024), there is documented proof that Charles Toussaint and Gustave Langenscheidt founded a correspondence school ("The Society for Modern Languages") in Berlin, Germany in 1856, teaching languages. VERDUIN ET AL., *supra* note 123, at 16; WATKINS, *supra* note 138, at 2.

140. VERDUIN ET AL., *supra* note 123, at 15–16; Univ. of London, *supra* note 139. <https://london.ac.uk/about-us/history-university-london> [<https://perma.cc/7N5U-N3VP>].

141. *UNIV. OF LONDON*, *supra* note 139.

142. RAE WAHL ROHFELD, *EXPANDING ACCESS TO KNOWLEDGE—CONTINUING HIGHER EDUCATION* 1–2 (NUCEA 1990).

143. STUART MARRIOTT, *A BACKSTAIRS TO A DEGREE* 2 (1981).

144. *Id.*

In 1873, Cambridge formally adopted the work of one such fellow and don, Professor James Stuart. A Scotsman who had spent time at the University of Glasgow and gave public lectures throughout England, Stuart was an avid proponent of education for the masses, including women, which was a radical position at the time.¹⁴⁵ He had a vision of higher education for adult learners where professors would travel to big towns to lecture those interested in learning—a traveling university of sorts.¹⁴⁶

In 1871, while still a fellow at Trinity College in Cambridge, he gave a lecture to the Leeds Ladies' Educational Association entitled "University Extension," which is regarded as the beginning of university extension.¹⁴⁷ During this lecture, he stated the following:

The object of all education is to teach people to think for themselves, that is the direct or specified object of what is called Higher Education. Reading and writing are one of the many means of acquiring education, they constitute what is called primary education, and supply men with better tools, so to speak, to work with. But reading and writing are not education any more than a fork and knife constitute good dinner, and a man who is educated in the truest sense may even be unable to read or write, for an educated man is a man who is capable of thinking about what he sees.¹⁴⁸

When Stuart's proposal for an extension lecture program was adopted by Cambridge, it was adopted for a three-year trial period.¹⁴⁹ It was placed under the supervision of the university's Local Examinations Syndicate. "The Syndicate was responsible for assuring the quality of what was being taught and examined and was responsible too for guiding the programme as it grew in size and scope."¹⁵⁰ Three lecturers were appointed to travel between three cities each week to lecture on behalf of the university.¹⁵¹

A prime feature of the lecture program, and ultimately, university extension, was Stuart's syllabus—which is the same structure as the syllabus that universities use today.¹⁵² He developed the syllabus in 1867 when he gave a series of

145. BARLOW, *supra* note 138, at 20.

146. *Id.* at 18.

147. *Id.* at 15.

148. *Id.*

149. *Id.* at 19.

150. *Id.*

151. *Id.*

152. *Id.* at 18; *see also Economics at Cambridge*, THE HIST. OF ECON. THOUGHT, <https://www.hetwebsite.net/het/schools/cambridgeuniv.htm> [<https://perma.cc/JAX6-T9LZ>] (last visited Oct. 7, 2024) ("Stuart introduced several innovations - courses of multiple lectures (rather than single lectures), syllabi for note-taking, and written examinations by correspondence."); H. J. MACKINDER & M. E. SADLER, UNIV. EXTENSION, PAST, PRESENT, AND FUTURE 48 (3rd ed. 1891) ("A universal characteristic of Extension lectures is the syllabus—a pamphlet containing an analysis of each lecture, a list of text-books

lectures to the North England Council for promoting the higher education of women in astronomy.¹⁵³ The lectures were held in the four cities that belonged to the Council and lasted for eight weeks.¹⁵⁴ In preparing for these lectures, Stuart invented lecture handouts that contained headings and sentences to help students follow the lecture and take notes.¹⁵⁵ He called these handouts a syllabus.¹⁵⁶

As the lectures progressed, Stuart added questions to the syllabus and allowed students, if they so desired, to submit answers for written feedback before the next lecture.¹⁵⁷ He also divided the lectures into two sessions to allow more discourse between students and the lecturer.¹⁵⁸ He would lecture for the first hour and then lead an optional discussion based on the subject of the lecture.¹⁵⁹ Stuart's optional discussions are akin to our modern office hours. In addition to the syllabus, Stuart's extension program also included written work and local examinations.¹⁶⁰ Other universities in England soon began their own extension programs. Oxford held its first Oxford Extension Lectures in 1878.¹⁶¹ From there, distance education through correspondence study and university extension spread quickly throughout Europe and eventually made its way to the Americas.¹⁶²

B. Formalized Correspondence Education

Correspondence education developed a little later in the United States than in Europe. Taking advantage of the postal system and building upon Sir Isaac Pitman's work, correspondence programs began to formalize. The first of these programs was Anna Ticknor's Society. At the same time, the Chautauqua Movement was also developing and reaching students. These were all private or proprietary programs. Eventually, universities began to create and expand their correspondence programs.

Black people also benefited from education through correspondence, as it provided them access to education when being an educated Black person was at times illegal. This aspect is often overlooked and understudied in historical narratives. Knowing the history of correspondence education helps to place the argument over the effectiveness of online legal education and the ABA's slow developments in legal education into context. Correspondence education laid the

and other authorities on the subject, and such quotation and statistics as the lecturer finds it expedient to put into print.”).

153. BARLOW, *supra* note 138, at 18.

154. *Id.*

155. *Id.* at 18–19.

156. *Id.* at 18.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 18–19.

161. *Taking the University Outside Oxford*, DEP'T FOR CONTINUING EDUC., <https://www.conted.ox.ac.uk/about/taking-the-university-outside-oxford> [<https://perma.cc/G7ZH-8595>] (last visited Oct. 7, 2024).

162. VERDUIN ET AL., *supra* note 123, at 16.

foundation for online education, and both concepts fall under the broader umbrella of distance education. This history also serves as the foundation for the analysis of the lessons we can glean as we move forward with online legal education.

1. Proprietary Correspondence Schools

The first correspondence school in the U.S. was founded in 1873 by Anna Ticknor, the daughter of Harvard Professor George Ticknor, in Boston, Massachusetts.¹⁶³ Ticknor is regarded as the “mother” of American correspondence study.¹⁶⁴ Using the correspondence school model from Pitman, Ticknor founded the Society to Encourage Study at Home to provide women from all classes with the opportunity to learn from their homes since they were not allowed to attend formal educational institutes.¹⁶⁵ Ticknor was a member of the Women’s Education Association, which was established in 1872.¹⁶⁶ Association members were prominent New England women who were wives and daughters of clergy and educators.¹⁶⁷ These women were aware of the extension movement in England, specifically the programs at Cambridge.¹⁶⁸ It is believed that Stuart’s work also influenced Anna Ticknor due to her affiliations and work with the women’s society in England.¹⁶⁹

Like Pitman’s program, students at the Society corresponded with teachers, exchanging comments and receiving grades by mail.¹⁷⁰ The key difference between Ticknor’s program and the others of that time was its personalized instruction. Students received monthly correspondences with guided readings, via syllabi (the same method developed in England by James Stuart), and frequent tests.¹⁷¹ The Society lasted for 24 years.¹⁷² Scholars speculate that it ended because it failed to take into account students’ increasing and ever-changing needs and adjust accordingly.¹⁷³ Others assert that the Society shut down voluntarily after Ticknor’s death.¹⁷⁴

163. WATKINS, *supra* note 138, at 3; Kentnor, *supra* note 4, at 23.

164. VERDUIN ET AL., *supra* 123, at 16.

165. WATKINS, *supra* note 138, at 3; Bernard J. Hibbitts, *Pushing the Envelope: How a Handful of Innovative Law Professors Delivered Distance Education in the Age of Langdell*, UNIV. OF PITTSBURGH LEGAL STUD. RSCH. PAPER NO. 2021-17, 28 (Feb. 5, 2021), <https://ssrn.com/abstract=3780297> [<https://perma.cc/SD8E-2EB8>] (noting how “Ticknor insisted on inclusiveness in multiple forms[,]” including age, wealth, color, and race).

166. Hibbitts, *supra* note 165, at 25.

167. *Id.*

168. *Id.* at 26.

169. *Id.* at 27.

170. BOZKURT, *supra* note 110, at 254; VERDUIN ET AL., *supra* note 123, at 15.

171. Jorge Larreamendy-Joerns & Gaea Leinhardt, *Going the Distance With Online Education*, 76 REV. OF EDUC. RSCH. 567, 573 (2006).

172. WATKINS, *supra* note 138, at 3.

173. *Id.*

174. Hibbitts, *supra* note 165, at 28.

Around the time Ticknor was founding her program, the Chautauqua movement was also forming. Drawing from the Lyceums,¹⁷⁵ in 1874, John Heyl Vincent and Lewis Miller held the first Chautauqua Sunday School Assembly.¹⁷⁶ It was a two-week conference at Chautauqua Lake that sought to train Sunday school teachers.¹⁷⁷ Vincent and Miller believed education should not be exclusive to the privileged, but rather accessible to the masses; thus, the program expanded beyond the conference at the lake.¹⁷⁸

In 1878, Vincent established the Chautauqua Literary and Scientific Circle (CLSC), which was “for the promotion of reading habits among all classes of people at their homes during the entire year.”¹⁷⁹ The success of the CLSC resulted in the creation of many new “Chautauquas” that traveled around the U.S. and Canada, calling on college professors to give lectures to the general public.¹⁸⁰ “Although known for their summer gatherings, [these Chautauquas] offered four-year programs of reading through correspondence, and participants earned certificates of study.”¹⁸¹ In 1883, Chautauqua University was formed and accredited by the state of New York, offering correspondence courses and summer classes.¹⁸² Despite its best efforts, the university was forced to close its doors in 1892 due to a lack of funding.¹⁸³

A prominent lecturer within the Chautauqua movement was William Rainey Harper.¹⁸⁴ Frustrated that his students at a Baptist Theological Seminary in Illinois could not attend his classes despite offering a summer term, he developed a correspondence program for his students to learn the Hebrew language in 1881.¹⁸⁵ His program became the standard for correspondence teaching, earning him the title of the “father of American correspondence study.”¹⁸⁶ In support of his correspondence school, Harper created a printing office to provide lesson outlines and manuals.¹⁸⁷ He ultimately left Chautauqua to become an organizer and

175. See Alber, *supra* note 122, at 16–17 (discussing the Lyceum movement).

176. Kentnor, *supra* note 4, at 23; JOHN H. VINCENT & LEWIS MILLER, *The Chautauqua Movement* 16 (1886).

177. Vincent & Miller, *supra* note 176, at 16 (“The Chautauqua Assembly opened as a Sunday-school institutes—a two-weeks’ session of lectures, normal lessons, sermons, devotional meetings, conferences, and illustrative exercises, with recreative features in concerts, fireworks, and one or two humorous lectures.”).

178. *Id.* at 177–78 (“By its courses of popular reading it gives a college outlook to the uncultivated, and exalts the higher learning.”).

179. *Id.* at 37.

180. *History: 1874–1903*, CHAUTAUQUA INSTITUTION, <https://chq.org/about-us/history> [<https://perma.cc/Z8TU-ZNXS>].

181. Kentnor, *supra* note 4, at 23.

182. VERDUIN ET AL., *supra* note 123, at 16.

183. Kentnor, *supra* note 4, at 23–24.

184. BOZKURT, *supra* note 110, at 253; Kentnor, *supra* note 4, at 24.

185. David Mathieson, *Correspondence Study: A Summary Review of the Research and Development Literature*, SYRACUSE UNIV. ERIC CLEARINGHOUSE ON ADULT EDUC. 9 (March 1971).

186. VERDUIN ET AL., *supra* note 123, at 16.

187. William Rainey Harper, 1891–1906, UNIV. OF CHICAGO, <https://president.uchicago.edu/en/about-the-office/history/william-rainey-harper> [<https://perma.cc/YT3R-VFSQ>].

the first president of the University of Chicago, where he incorporated correspondence programs as part of the university's offerings.¹⁸⁸

2. University Correspondence Programs

While private, proprietary correspondence programs grew in popularity, so too did university-based programs. The first American university to use the correspondence model was Illinois Wesleyan University, led by Reverend Samuel Fallows.¹⁸⁹ Starting in 1873, the university began offering bachelor's to Ph.D. degrees and courses in absentia using correspondence study.¹⁹⁰ However, like many correspondence programs that followed, critics questioned whether the program was equal to the university's residential programs.¹⁹¹ Other schools even refused to recognize a correspondence study-based degree.¹⁹² Correspondence study did not gain widespread acceptance until the 1890s with the foundation of the University of Chicago.

In 1890, William Rainey Harper, the former Chautauqua lecturer, became the first president of the University of Chicago.¹⁹³ Drawing on his familiarity with correspondence education, experience with Chautauqua, and knowledge of the university extension program in England, Harper incorporated correspondence study into the university's extension division.¹⁹⁴ The Correspondence Study Department, which was later renamed the Home Study Program, set forth "early guidelines[,] prescribed a student profile, enrollment regulations, rules for granting credit, and control of course content by academic departments that would influence collegiate correspondence study for the next century."¹⁹⁵ The Home Study Program served the public until 1964.¹⁹⁶

Many other prestigious universities also offered correspondence study courses, in part due to the Land Grant Act. During the Civil War, in 1862, Congress passed the Morrill Land Grant Act.¹⁹⁷ The Act "set aside federal lands

188. Mathieson, *supra* note 185.

189. Hibbitts, *supra* note 165, at 30–31; WATKINS, *supra* note 138, at 4–5.

190. Hibbitts, *supra* note 165, at 30–31.

191. Mathieson, *supra* note 185, at 8.

192. *Id.* at 8–9.

193. *Id.* at 9.

194. *Id.* at 2–3.

195. WATKINS, *supra* note 138, at 7.

196. Mathieson, *supra* note 184, at 2. The Home Study Program lasted decades after Harper's presidency. See GUIDE TO THE UNIVERSITY OF CHICAGO UNIVERSITY EXTENSION RECORDS 1892–1979 4–5 (University of Chicago Library, 2006) ("By the 1960s, University Extension enrollment[at the University of Chicago] had declined precipitously from the two previous decades. After 1963–64 the Home-Study Department ceased to exist, and the Downtown Center closed in 1974. By 1982 the University Extension had become part of the Center for Continuing Education. Though its programs and course offerings have been reduced from earlier years, this entity continues to offer adult educational services, most of them non-credit, in the following areas: liberal education, including the Basic Program; business and professional courses, particularly in publishing, communications, and marketing; and higher education, including faculty symposia and seminars.").

197. Morrill Land Grant Act, Pub. L. No. 37-108, 7 U.S.C. §301 (1862).

to create colleges to ‘benefit the agricultural and mechanical arts.’”¹⁹⁸ These lands were taken from the Native American tribes who inhabited them.¹⁹⁹ They were given to universities to help them raise funds.²⁰⁰ “[T]he main object of the colleges was to teach subjects related to agriculture and the mechanical arts, ‘in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.’”²⁰¹

Following the Morrill Land Grant Act of 1862, a second Land Grant Act was passed in 1890.²⁰² To fulfill their mission under both of these Acts, many of these institutions offered some form of distance education courses or programs.²⁰³ Today, these land grant universities are some of the most prominent research universities in the country.²⁰⁴

[M]ajor institutions as the Universities of Wisconsin, Illinois, Minnesota, and Iowa established or revitalized extensive correspondence programmes. The best of the southern schools, the University of North Carolina, did likewise. At the Pennsylvania State University and other schools with colleges of agriculture, the faculties developed detailed courses of study for people engaged in farming and agribusiness. A number of smaller colleges that mainly served to train teachers also began to offer correspondence study. . . . The collegiate correspondence programmes served two publics:

198. *The Civil War: The Senate's Story*, UNITED STATES SENATE, https://www.senate.gov/artandhistory/history/common/civil_war/MorrillLandGrantCollegeAct_FeaturedDoc.htm#:~:text=First%20proposed%20when%20Morrill%20was,law%20on%20July%202%2C%201862 [https://perma.cc/2NSY-SP3W] (quoting the Land Grant Act).

199. Kalen Goodluck, Tristan Ahtone, & Robert Lee, *The land-grant universities still profiting off Indigenous homelands*, HIGH COUNTRY NEWS (Aug. 18, 2020), <https://www.hcn.org/articles/indigenous-affairs-the-land-grant-universities-still-profiting-off-indigenous-homelands/> [https://perma.cc/FZW4-7HGT] (“To fund land-grant universities like the University of Idaho, the United States took nearly 11 million acres of land from approximately 250 tribes, bands and communities through over 160 violence-backed treaties and land cessions.”); Hannah Z. Morley, *The Truth Behind Land-Grant Universities*, UCSB DIV. OF HUMANITIES AND FINE ARTS, <https://www.hfa.ucsb.edu/news-entries/2021/1/27/the-truth-behind-land-grab-universities> [https://perma.cc/WQU9-BBGY]; Robert Lee, Tristan Ahtone, Margaret Pearce, Kalen Goodluck, Geoff McGhee, Cody Leff, Katherine Lanpher, Taryn Salinas, *Land-Grab Universities*, HIGH COUNTRY NEWS, <https://www.landgrabu.org/> [https://perma.cc/UTA5-2B63] (documenting the history of the Land Grant parcels).

200. Goodluck, *supra* note 199 (“The Morrill Act of 1862 granted that land to states to be sold for the benefit of fledgling universities; altogether, it would raise nearly \$18 million for 52 institutions by the early 20th century.”).

201. *Id.* (quoting the Morrill Act of 1862).

202. *Id.* (“This legislation also stipulated that both blacks and whites must have access to the land grant universities; however, it permitted states to accomplish this through the Jim Crow system which results in meager resources for black institutions.”).

203. Edelson & Pittman, *supra* note 119, at 7.

204. See *College Partners Directory*, NAT’L INST. OF FOOD AND AGRIC., <https://nifa.usda.gov/land-grant-colleges-and-universities-partner-website-directory> [https://perma.cc/DQT9-BE98] (an interactive map); *NIFA Land-Grant Colleges and Universities*, NAT’L INST. OF FOOD AND AGRIC. (March 2019), <https://nifa.usda.gov/sites/default/files/resource/LGU-Map-03-18-19.pdf> [https://perma.cc/7HPR-3L4W] (map of colleges and universities that benefited from the Land Grant Acts of 1862, 1890, and 1994).

those interested in a traditional liberal arts curriculum and those who needed more applied professional or vocational training.²⁰⁵

The most notable of the land grant universities to significantly impact distance education was the University of Wisconsin. In 1885, the university regents established a short course in agriculture and received state funding for a farmer's institute, which was managed by the regents and operated outside of the university.²⁰⁶ The farmer's institute became very popular and successful, earning increased funding from the legislature and forcing the University to recognize the utility of distance education.²⁰⁷ In 1891, the university formally established a correspondence study program, which was also referred to as an extension program.²⁰⁸ "By 1894–1895 the University of Wisconsin offered 63 courses through correspondence study, including: one in each in Botany, English Literature, French, German and Physiology; two each in Bacteriology, Economics, Hebrew, and Greek; four in Music; and seven each in Arabic and Mathematical Physics."²⁰⁹ The correspondence program ended in 1899, partly due to a "lack of suitable extension lecturers and . . . financial support, the inability of university faculty to carry the extra burden of travel and teaching, new demands on campus instruction as enrollments increased, and the development of less expensive ways to provide popular education."²¹⁰

However, correspondence study resumed at the University of Wisconsin in 1906 after Charles Van Hise became President in 1903.²¹¹ Van Hise, recognizing the importance of correspondence studies and the success of proprietary or commercial correspondence schools, requested funding from the university regents to study the complexities of correspondence programs, ultimately leading to its re-establishment.²¹² In 1906, Van Hise subsequently hired William Lighty, a social worker, to lead the Correspondence Study Department.²¹³ Working with the faculty, Lighty was able to announce 150 courses for the fall of 1906.²¹⁴

Ultimately, the University of Wisconsin became the nation's leader in correspondence and extension study. Having studied the field and examined other programs, it created separate instructional staff for vocational correspondence

205. Edelson & Pittman, *supra* note 119, at 7 (citations omitted).

206. Watkins, *supra* note 138, at 10; ROHFELD, *supra* note 142, at 17.

207. ROHFELD, *supra* note 142, at 17–18.

208. CHESTER ALLEN & CHARLES A. WEDEMAYER, "EXTENDING TO THE PEOPLE": THE STORY OF CORRESPONDENCE STUDY AT THE UNIVERSITY OF WISCONSIN 20 (The University of Wisconsin Extension Division, 1957).

209. David Werther, *Independent Learning: About & History*, UNIVERSITY OF WISCONSIN, <https://continuingstudies.wisc.edu/independent-learning/independent-learning-about/> [https://perma.cc/E3LY-NZZ2] [https://web.archive.org/web/20210128143220/https://continuingstudies.wisc.edu/independent-learning/independent-learning-about/].

210. WATKINS, *supra* note 138, at 13.

211. ROHFELD, *supra* note 142, at 18; WATKINS, *supra* note 138, at 13–14.

212. WATKINS, *supra* note 138, at 13.

213. *Id.* at 15.

214. *Id.*

courses.²¹⁵ In doing so, it “enhanced the [correspondence] department’s options while preserving University departments’ shared power over choice of instructors for academic courses.”²¹⁶ The university selected instructors who were sensitive to students’ backgrounds and abilities.²¹⁷ It also created specialized texts for correspondence study subjects that were written by field experts but revised by experienced teachers.²¹⁸ Supported by the at-large university and located in a “state imbued with the idea of service to the people,”²¹⁹ the correspondence study at the University of Wisconsin found the balance between liberal arts and vocational subjects and thrived.

3. Black People: Literary Societies and Correspondence Studies

The history of educational opportunities for Black people in this country has been and continues to be very complex, mainly due to slavery and racism. For example, educational opportunities for persons of African descent were virtually nonexistent in the South before the Civil War because most Black people were enslaved.²²⁰ Access to learning for enslaved people was illegal and had to be surreptitious.²²¹ Despite this, in the 1830s, African Americans (in the North) created their own literary and educational societies in part because they were excluded from literary societies like Franklin’s Junto Club.²²² These organizations began out of a belief that free Black individuals needed to form a moral and educational foundation.²²³

Specifically, these organizations were formed to teach “intellectual skills” and “improve their minds, strengthen their intellectual faculties, and cultivate a refined literary taste.”²²⁴ Members organized libraries and reading rooms, gathered supplies for Black school children, sponsored lectures, and engaged in debates.²²⁵ But these societies were also formed out of necessity—African Americans were deliberately excluded from white literary societies.²²⁶ Even in the more liberal Northern states, like New York and Massachusetts, Black individuals had fewer privileges in white literary societies or were not invited to

215. *Id.* at 17–18.

216. *Id.*

217. *Id.* at 18.

218. *Id.*

219. *Id.*

220. *Education Steeped in African American Culture: Historically Black Colleges and Universities*, SMITHSONIAN, <https://nmaahc.si.edu/explore/stories/education-steeped-african-american-culture-historically-black-colleges-and> [<https://perma.cc/F7VD-Z4WH>] (last visited Sept. 22, 2024).

221. *Id.*

222. JOSEPH F. KETT, *THE PURSUIT OF KNOWLEDGE UNDER DIFFICULTIES: FROM SELF-IMPROVEMENT TO ADULT EDUCATION IN AMERICA 1750–1990*, 47 (1995) (ebook).

223. Dorothy B. Porter, *The Organized Educational Activities of Negro Literary Societies, 1828–1846*, 5 J. OF NEGRO ED. 555, 557 (1936).

224. KETT, *supra* note 220.

225. *Id.*

226. *Id.*

participate in meetings.²²⁷ These literary societies were highly successful in their exclusionary efforts.²²⁸ As they continued to grow and ultimately transform into correspondence programs, it is unclear if or how Black literary societies transformed due to a lack of archival records.

Systematic research on Black correspondence schools “or Black enrollment in white schools” is nonexistent.²²⁹ However, through a review of the history of prominent Black leaders and newspapers, we can glean sporadic information about Black people’s use of correspondence schools to receive higher education. For example, David Augustus Williston, recognized as the first professionally trained African American landscape architect, took municipal engineering courses at the International Correspondence School.²³⁰ John Lankford, a prominent Black architect, took architectural and mechanical drawing courses from the International Correspondence School.²³¹ Additionally, a review by Professor Robert L. Hampel of online collections of African American newspapers spanning from 1890 to 1940 found many announcements and celebrations of individuals who graduated from large and reputable correspondence schools.²³² However, these white correspondence schools rarely, if ever, advertised in Black newspapers.²³³ Indeed, Professor Hampel found that correspondence schools and home study were rarely advertised in African American newspapers at all.²³⁴ Of the schools that did advertise, they promoted vocational skills, such as bookkeeping, female beauty skills (e.g., hair styling), or automotive repair.²³⁵ Some Black colleges advertised correspondence courses but taught primarily business and religion.²³⁶ However, there is one notable exception to predominantly vocational offerings—a Black-run school that sought to provide collegiate-level education about Black culture via correspondence.

In 1927, the Association for the Study of Negro Life and History (ASNLH), founded by the Black historian Carter G. Woodson, created a Home Study Department.²³⁷ Woodson created the courses to encourage unbiased scholarship

227. Porter, *supra* note 221.

228. *Id.* at 563–64. A survey of Black individuals in the Philadelphia neighborhoods of Southwark and the Northern Liberties found that, out of 2,560 adults, 1,030 could read and 92 could write. Of 1,945 children, 970 could read. *Id.*

229. Robert L. Hampel, *What Might Have Been: A First-Rate Black Correspondence School, 1927–1930*, 37 AM. J. OF DISTANCE ED. 1, 2 (2023).

230. *Learning from Leaders: David Williston*, NAT’L PARK SERV. (Mar. 23, 2021), <https://www.nps.gov/articles/david-williston-learning-from-leaders.htm> [<https://perma.cc/7R3L-9T7P>] (last visited Sept. 22, 2024).

231. Sandra L. Tatman, *Lankford, John Anderson (1874–1946)*, PHILADELPHIA ARCHITECTS AND BUILDINGS, https://www.philadelphiabuildings.org/pab/app/ar_display.cfm/882164 [<https://perma.cc/JD8H-APRP>] (last visited Jan. 27, 2024).

232. Hampel, *supra* note 229, at 8.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.* at 3.

on Black accomplishments.²³⁸ Its 17 courses on literature, art and culture, history, and religion, among other subjects, were designed for high school graduates and staffed by prominent Black academics.²³⁹ These courses were rigorous and required exams, field trips, or written thesis.²⁴⁰ However, by 1931, the Department shuttered its doors.²⁴¹ Professor Hampel attributes the Home Study Department's failure to three reasons: a lack of effective marketing to a niche demographic, an inability to receive college credits, and high tuition.²⁴² Indeed, the school was expensive. Not including the cost of textbooks, enrollment fees cost an upfront payment of \$25 per course or \$40 for two courses (approximately \$433.26 and \$693.21 respectively in 2024 dollars).²⁴³ Additionally, ASNLH was never affiliated with a college or university and was thus unable to provide credits to students.²⁴⁴ If ASNLH had successfully tapped into its niche of well-educated Black individuals, many likely would have been dissuaded by the lack of credits.²⁴⁵ In his bookkeeping, Woodson recorded "only a few" enrollments by mid-1928 and one payment in 1929, a signal recognized by Professor Hampel as the end of ASNLH.²⁴⁶

As correspondence education grew in popularity and offerings, traditionally Black universities (some of which were a product of the Second Land Grant Act)²⁴⁷ began offering their own correspondence courses. In 1936, there were 121 Black institutions of higher education, of which 65 granted degrees on four or more years of correspondence study.²⁴⁸ At this time, public Black institutions accounted for 62% of Black college students in summer session, extension, and correspondence courses.²⁴⁹ Fifteen thousand students were enrolled in extension, correspondence, and short courses in 1936.²⁵⁰

While correspondence education and extension programs were developing, legal education was also transforming. There was a brief period in time when one could study law by correspondence. However, it was short-lived and came to an end once the ABA was formed.

238. *Id.*

239. *Id.*

240. *Id.* at 3–4.

241. *Id.* at 4.

242. *Id.* at 2.

243. *Id.* at 4.

244. *Id.* at 6.

245. *Id.*

246. *Id.* at 4.

247. Denise A. Smith, *Nourishing the Nation While Starving: The Underfunding of Black Land-Grant Colleges and Universities*, THE CENTURY FOUND. (July 24, 2023), <https://tcf.org/content/report/nourishing-the-nation-while-starving-the-underfunding-of-black-land-grant-colleges-and-universities/> [<https://perma.cc/ADQ8-WJS2>] ("With the passing of the Agricultural College Act of 1890 (the Second Morrill Act), nineteen Historically Black College and University (HBCU) land-grant institutions were established to create a system for Black students.").

248. Susan T. Hill, *THE TRADITIONALLY BLACK INST. OF HIGHER EDUC. 1860 TO 1982* 10 (National Center for Education Statistics 1985).

249. *Id.*

250. *Id.* at 10–11.

C. Legal Education

During the early years of legal education in America, the transition from apprenticeships to formal law schools was marked by varying standards across states. The establishment of the ABA in 1878 aimed to standardize legal education, influenced by figures like Christopher Columbus Langdell and initiatives such as the American Association of Law Schools. However, this period also saw the emergence of correspondence law schools, notably William Sprague's for-profit institution in Detroit in 1890, providing legal education to a diverse range of individuals. Despite their success, correspondence schools faced opposition from the ABA's efforts to standardize legal education, reflecting the ongoing evolution and challenges in the legal education landscape.

1. The Early Years

Until the mid-1800s, the primary mode of legal education in America, which was based on the English common law, was through apprenticeships.²⁵¹ In this manner of legal education, "an aspirant was assigned the reading of classic common law texts of varying utility, and placed 'at the desk of some skilful [sic] attorney in order to initiate them early in all the depths of practice, and render them more dexterous in the mechanical part of business.'"²⁵²

However, unlike in England,²⁵³ "admission to the bar in colonial America was determined by the local courts. Courts in each colony essentially decided whether someone would be admitted, usually after the applicant had completed an apprenticeship of some indeterminate length."²⁵⁴ This changed after the American Revolution, with most states developing their own standards for admission to the bar.²⁵⁵ Bar admission standards varied from state to state.²⁵⁶ Some standards allowed admission after studying under a judge or practitioner.²⁵⁷ Other states required passing an examination, either oral or written.²⁵⁸ Some states even provided an exemption and, in turn, automatic bar admission if the applicant had clerked in a law office "for a period of years."²⁵⁹ Legal education was just as varied.

251. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1961–62 (2012).

252. *Id.* (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES at 32).

253. See Roscoe Pound, *Legal Profession in England from the End of the Middle Ages to the Nineteenth Century*, 19 NOTRE DAME L. REV. 315, 317 (1944) (explaining how in England "the attorneys were strictly regulated both by Parliament and by the judges. Medieval statutes gave the courts power both to control and to admit them. All through the sixteenth and seventeenth centuries, this control grew in strictness").

254. Daniel R. Hansen, *Do We Need the Bar Examination—A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives?*, 45 CASE W. RES. L. REV. 1191, 1193 (1995).

255. *Id.* at 1194.

256. *Id.* at 1194–95.

257. *Id.* at 1194.

258. *Id.*

259. *Id.*

In 1779, the first law professorship was established at William and Mary College, one of the first colonial colleges in America.²⁶⁰ This position was a part of the overall institution and not in a separate college.²⁶¹ However, learning from a professor was not a substitute for practical training, and students remained obligated to pursue an apprenticeship to become a lawyer.²⁶² Even with the creation of law professorships, “the first established law school, the Litchfield Law School in Connecticut, was independent of the university system and arose as an expansion from office apprenticeships in the law office of Tapping Reeve.”²⁶³ The Litchfield School was established in 1784. The first university law school, Harvard Law School, was established years later in 1817.²⁶⁴ Other universities followed Harvard and founded their own law schools, focusing on teaching legal theory, philosophy, and history.²⁶⁵ But none had the favorable reputation that the Litchfield School enjoyed due in part to its focus on practice readiness.²⁶⁶ The Litchfield School was in operation from 1784 to 1833 and produced many notable graduates.²⁶⁷ Despite the establishment of these new institutions, apprenticeships remained the preferred method for training lawyers, since these institutions “could not compete with the practical skills training students received from studying under a practitioner.”²⁶⁸

However, the dawn of Jacksonian democracy, starting in 1828, brought great access to the profession and “essentially killed law schools, formal apprenticeship, and even bar associations”²⁶⁹ by lowering the requirements to enter the legal

260. Spencer, *supra* note 251, at 1964–65; <https://scholarship.law.wm.edu/gwythe/#:~:text=In%201779%2C%20William%20%26%20Mary's%20Board,in%20the%20English%20speaking%20world> [<https://perma.cc/88L5-KH52>] (last visited Oct. 27, 2024).

261. See Spencer, *supra* note 251, at 1964–65.

262. *Id.* at 1965–66.

263. *Id.* at 1966–67. “The course of instruction offered by Reeve at Litchfield covered all of Anglo-American private law with no special attention given to the law of any one state or to areas of public law. The weekly Saturday examinations were three hours in length and mainly oral, consisting of ‘a thorough investigation of the principles of each rule [of law], and not merely of such questions as can be answered from memory without any exercise of the judgement [sic].’” *Id.* at 1967.

264. *Id.* at 1968–69.

265. John O. Sonsteng, Donna Ward, Colleen Bruce, & Michael Peterson, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 322 (2007) (“[L]aw schools were a supplement to the apprenticeship program, and justified their existence on the ground that they were specially adapted to provide one phase of a student’s multi-phased preparation for lawyering.”).

266. See Spencer, *supra* note 251, at 1968.

267. *Id.* at 1968 n.68 (noting that notable graduates included “[a] compendium of alumni [which included] twenty-eight U.S. Senators, 101 members of Congress, thirty-four state supreme court justices, fourteen governors of states and ten lieutenant governors, three U.S. vice presidents, three U.S. Supreme Court Justices, and six members of the Cabinet.”).

268. Sonsteng, *supra* note 265, at 323; Rachel Gurvich, Danielle Tully, Laura Webb, Alexa Chew, Jane Cross & Joy Kanwar, *Reimagining Langdell’s Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C. L. REV. F. 118, 124–25 (2023). Apprenticeships, however, had their own problems. See Sonsteng, *supra* note 265, at 322 (explaining how apprenticeships were unstructured, uneven, and “could not guarantee the quality of the practitioner”).

269. BARTON, *supra* note 121, at 19.

profession.²⁷⁰ Legislatures simplified pleadings, codified the common law, and moved toward elected judicial officials.²⁷¹ Those in government at this time worked to reduce the elite's power over the legal profession and courts.²⁷² This resulted in greatly reducing the apprenticeship requirement that was once required in 12 out of the 13 original states for entry into law practice.²⁷³ It also "led to a predictable collapse in interest in bar associations and formal legal education."²⁷⁴

By the time Christopher Columbus Langdell became the first dean of Harvard Law School in 1870 and ushered in his case and Socratic methods of teaching, the legal profession and education were at their lowest points for formality.²⁷⁵ Langdell's new method and organizational structure for law schools was part of a greater movement to rein in the effects of the Jacksonian democracy.²⁷⁶ Despite initially drawing the disdain of colleagues, students, and practitioners because of its drastic changes,²⁷⁷ Langdell's reforms spread to other law schools and was recognized as the leading innovation by the time he stepped down from his post as dean in 1895.²⁷⁸ The near-universal adoption of this new approach to legal education a half-century later²⁷⁹ created a single view of what legal education and those who have access to it should look like. "Langdell disrupted the emerging institutional model by changing who could attend Harvard Law School, who taught there, and how they taught. . . . [He] sought to elevate the profession by restricting who was allowed to attend law school and who was allowed to practice."²⁸⁰ Part of Langdell's new model of legal education required law students to have an undergraduate degree before attending law school.²⁸¹ Also, "after the 1895–1896 academic year Harvard no longer admitted law candidates without an academic degree from a specific list of colleges."²⁸² He extended

270. *Id.*

271. *Id.* at 18.

272. *Id.*

273. *Id.*

274. *Id.* at 19.

275. BARTON, *supra* note 121, at 19 ("In the 1870s and 80s, the choice was not between a functioning apprenticeship system and a resurgent or redesigned law school system."); Gurvich, *supra* note 268, at 123 (providing a history of legal education before and after Langdell).

276. See Gurvich, *supra* note 268, at 125–27.

277. See Sonsteng, *supra* note 265, at 324–26 (explaining Langdell's reforms and how he "elevated law to a post-graduate level of study[,] . . . increased the length of study to three years[,] . . . introduced entrance exams, graduation exams, rigorous coursework, and the case method").

278. Gurvich, *supra* note 268, at 131 n.63.

279. *Id.* at 131.

280. *Id.* at 127. This "elevation" of the profession also serves to keep others out and restricted who could gain access to legal education and the profession. See Hazel Weiser, *More History of the Regulation of Legal Education So That We Understand Where We Are and How We Got Here*, SALT LAW (Nov. 3, 2011), <https://www.saltlaw.org/more-history-of-the-regulation-of-legal-education-so-that-we-understand-where-we-are-and-how-we-got-here/> [<https://perma.cc/RQY3-BLXS>].

281. Gurvich, *supra* note 268, at 127–28.

282. *Id.* at 128 n. 41 (citing ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 82–83 (1953)).

law school from 18 months to three years.²⁸³ The effect of these changes were to limit access to legal education to a select class of people—wealthy white men who, because of their family wealth, could spend years studying and not having to work.²⁸⁴ The Langdell model of legal education has persisted for over 200 years and impacts our current view of online education.

The push against broad access to the legal profession and the creation of a unified legal education standard culminated in the creation of the ABA in 1878. On paper, the ABA was established with the purpose of “the legal and ethical foundation for the American nation.”²⁸⁵ Coincidentally, this happened at the same time as the Chautauqua movement began.²⁸⁶ However, the ABA’s intentions “were infused with the nativism and xenophobia that were this country’s reaction then, as it is now, to large influxes of immigrants whether Irish or Eastern and Southern Europeans, or African Americans flooding out of the South after the Civil War and the collapse of Reconstruction.”²⁸⁷

In 1897, the ABA passed a resolution requiring three years of law school, which was a requirement initiated by Langdell.²⁸⁸ Two years later, it called for the establishment of an organization of “reputable law schools.”²⁸⁹ In turn, the American Association of Law Schools (AALS) was formed in 1900 with 27 charter members to “improve legal education in America.”²⁹⁰ Like the ABA, elitism was at the heart of the AALS.²⁹¹

283. *Id.* at 126 n. 33 (citing ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 35–36 (1983)); Bruce A. Kimball, *Impoverishing “the greatest law school in the world”: The Financial Collapse of Harvard Law School, 1895–1909*, 61 L. J. LEGAL EDUC. 4, 7 (2011).

284. See Best Colleges Staff Writers *A History of Privilege in American Higher Education*, BEST COLLEGES (Dec. 16, 2021), <https://www.bestcolleges.com/news/analysis/2020/07/17/history-privilege-higher-education/> [<https://perma.cc/PV75-FE5N>] (“Prior to the 20th century, the high cost of higher education was not due to tuition; rather, only the wealthy had the luxury of spending years out of the workforce to pursue an education.”).

285. *The American Bar Association*, AM. BAR. ASS’N, https://www.americanbar.org/about_the_aba/ [<https://perma.cc/88WS-3G7Z>] (last visited Sept. 27, 2024).

286. See *infra* Section II.b.1.

287. Weiser, *supra* note 280.

288. Gurvich, *supra* note 268, at 124 n.21.

289. Weiser, *supra* note 280.

290. *History*, ASS’N OF AM. LAW SCHOOLS, <https://www.aals.org/about/history/> [<https://perma.cc/6ML7-DUXC>] (last visited Sept. 27, 2024). The first president was James Bradley Thayer who, unsurprisingly, was a professor at Harvard Law School. *Id.* Presently, there are 175 law schools that are members of AALS. *Member Schools*, ASS’N OF AM. LAW SCHOOLS, <https://www.aals.org/member-schools/> [<https://perma.cc/955M-BBK8>] (last visited Sept. 27, 2024).

291. Weiser, *supra* note 280 (“According to Jerold Auerbach, a social historian, the motivation behind the AALS’s work to regulate legal education was to drive out the profitable non-member proprietary law schools; eliminate Jews, African Americans, and immigrants from the legal profession; and create a profession made up of ‘leaders of society’ who all looked alike and maintained the same values and ideology.”). See also JEROLD S. AUERBACH, *ENMITY AND AMITY: LAW TEACHERS AND PRACTITIONERS, 1900–1922* 5 PERSPECTIVES ON AM. HIST. 573 (1971) (as cited in WAYNE K. HOBSON, *THE AM. LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY, 1890–1930*, 106 (1986)).

Between 1890 and 1930, the number of law schools grew exponentially.²⁹² In response to the swelling ranks of lawyers and the perceived competition from new schools, “the ABA teamed up with [AALS] to lobby state legislatures and supreme courts to begin requiring graduation from an ABA-approved law school to gain admission to the state bars.”²⁹³ AALS also echoed the ABA’s position that students should graduate from a three-year, daytime program.²⁹⁴ Unsurprisingly, only the elite, full-time programs gained ABA approval.²⁹⁵ One category of schools that did not gain ABA approval and in fact drew the ABA’s ire was correspondence law schools.

2. Correspondence Legal Education

There was a brief period in history, around the 1870s and 1880s, where correspondence and legal education converged. Seeing the successes of correspondence schools, institutions like the University of Chicago, Yale, and Columbia law schools soon began to create their own correspondence law schools.²⁹⁶ Correspondence law schools attracted two types of students: “(1) Those who wish to acquire some knowledge of law for purposes of business or of general information; and (2) those who wish to become practising [sic] lawyers.”²⁹⁷ Like evening law students, the correspondence law students were those who were unable to attend a brick-and-mortar institution because of work or family obligations.²⁹⁸

Correspondence law programs typically functioned in the same manner: students would receive books to study along with directions or a syllabus, they would be sent exam papers at various intervals and asked questions related to the study area, and they would submit their answers, which would be graded and returned with comments.²⁹⁹ The quality and effectiveness of the programs varied, as did bar exam results.³⁰⁰ Even the proponents of correspondence legal programs

292. In 1890, there were 61 law schools. Dorothy E. Finnegan, *Raising and Leveling the Bar: Standards, Access, and the YMCA Evening Law Schools, 1890–1940*, 55 J. LEGAL EDUC. 208 (2005). By 1910, the number had doubled to 124. *Id.*

293. Herb D. Vest, *Felling the Giant: Breaking the ABA’s Stranglehold on Legal Education in America*, 50 J. LEGAL EDUC. 494, 496 (2000).

294. Weiser, *supra* note 280.

295. Vest, *supra* note 293, at 496.

296. See Griffith Ogden Ellis, *The Value of Correspondence Instruction in the Law*, 2 AM. SCH. REV. 166, 168 (1908); Bernard Hibbitts, *The First Correspondence Law School Advertisements*, MEDIUM (Feb. 4, 2021), <https://lawyersbymail.medium.com/the-first-correspondence-law-school-advertisements-f011e68ff9bd> [<https://perma.cc/EV6J-Y945>] (“[L]aw professors at Yale and Columbia law schools . . . briefly experimented with correspondence-based legal education in the 1870s and 1880.”).

297. James Parker Hall, *The Study of Law by Correspondence*, 32 ANNU. REP. A.B.A. 798, 799 (1909).

298. I. Maurice Wormser, *The Problem of Evening Law Schools*, 4 AM. L. SCH. REV. 544, 544 (1920); Ellis, *supra* note 296, at 168.

299. Hall, *supra* note 297, at 801; Ellis, *supra* note 296, at 168.

300. Compare Ellis, *supra* note 296, at 168–69 (providing student testimonials about their experiences at the Sprague school and how it is based in sound pedagogical practices), with Hall, *supra* note 297, at 801 (explaining the deficiencies with some of the programs, including large unannotated textbooks, exam questions that followed the textbook and tested conventional definitions, and graded

conceded that resident or brick-and-mortar programs were superior because of the classroom atmosphere which allowed students to associate with one another, all while pursuing a common goal and interacting with the professor.³⁰¹ However, despite such acknowledgments, proponents still maintained that

the correspondence method of instruction has features of immense value to the public at large, and institutions giving correspondence instruction have their place—not as rivals of the resident schools and universities, not necessarily as institutions in the same class, but as institutions that serve that greater body of earnest and ambitious men and women who want to learn, who want to educate themselves, who want to improve their condition and prospects in life.³⁰²

In addition to university-based correspondence law programs, there were also for-profit or proprietary correspondence law schools. This was lost in time until recently discovered by Bernard Hibbitts, Professor of Law at the University of Pittsburgh.³⁰³ In his forthcoming book, Professor Hibbitts details the first for-profit correspondence education law school.

In 1890 William Sprague, a young lawyer heading a legal publishing house in Detroit, set up the first for-profit correspondence school in the US to teach law to small town up-and-comers, working men, women and minorities who could not attend traditional law schools. He printed his own textbooks, hired staff to grade tests and answer letters, and published a monthly magazine for his students.³⁰⁴

Sprague was familiar with the correspondence study movement and had even been a student of William Rainey Harper.³⁰⁵ Sprague advertised his school in newspapers in small towns in Vermont and Pennsylvania and later expanded into North Carolina.³⁰⁶ The school was headquartered in the Whitney Block of Detroit.³⁰⁷ This area was “one of Detroit’s finest business blocks near heavily

papers that overlooked basic errors and were too encouraging). *See also* Ellis, *supra* note 296, at 170 (discussing how the thousands of students enrolled at the Sprague Correspondence School of Law took and passed the state bar exams “almost without exception”).

301. Ellis, *supra* note 296, at 167.

302. *Id.* at 166.

303. Bernard Hibbitts, *Finding Legal Education’s Lost Empire, Or How I Discovered the Correspondence Law Schools*, MEDIUM (Jan. 31, 2021) <https://lawyersbymail.medium.com/finding-legal-educations-lost-empire-dd4e7df7f4f> [<https://perma.cc/QK26-GNAB>].

304. *Missionary Man: William Sprague and the Correspondence Law School*, LEGAL HIST. BLOG, (Feb. 26, 2014) <http://legalhistoryblog.blogspot.com/2014/02/missionary-man-william-sprague-and.html> [<https://perma.cc/DM7T-PMSQ>].

305. *Id.*

306. *Id.*

307. *Id.*

traveled Woodward Avenue, a recognized location that carried social and economic weight not only in the city, but outside in greater Michigan and beyond.³⁰⁸ His students were primarily men but included some women.³⁰⁹ Like many correspondence students, they were “farmers, shopkeepers, store clerks, school students, and businessmen and more. Some came from middle-class backgrounds and above; some were lower-class workers.”³¹⁰ By 1893, Sprague claimed to have enrolled thousands of students in his school who were passing state examinations and practicing as attorneys.³¹¹

Unfortunately, the Sprague School and other correspondence law schools’ rebuke of the elite’s view of legal education threatened the ABA’s quest to “standardize”³¹² legal education and promote white, male values. The ABA promulgated new rules and resolutions that prohibited students from earning their law degrees from correspondence programs.³¹³ However, the ABA’s position was rooted in racism, sexism, and xenophobia.³¹⁴

As correspondence education expanded in the 20th century, correspondence schools faced many challenges and obstacles. The elite were prejudiced against correspondence programs because they were “new and revolutionary.”³¹⁵ New proprietary schools also formed, some of which used deceptive marketing tactics.³¹⁶ Despite these problems, correspondence education laid the foundation for the growth and evolution of distance education. It also impacted legal education despite efforts to keep the profession dominated by white men of a certain class and background.

Knowing the history of correspondence education can help us understand how we approach and expand access to online legal education. There are lessons that can be gleaned from these early correspondence education founders to help us as we move into the future of legal distance education.

308. *See id.*

309. *See id.*

310. *Id.*

311. *Id.*

312. The ABA was against the democratization of legal education and promoted racist, xenophobic ideologies, couching this position in terms of “standardize.” *See* JEROLD S. AUERBACH, ENMITY AND AMITY: LAW TEACHERS AND PRACTITIONERS, 1900–1922, in *LAW IN AM. HIST.* 572–73 (1971); Weiser, *supra* note 280.

313. *See Hibbitts, supra* note 2 (“[I]n the first decade of the 20th century the institution began drawing the ire of elite university law professors who for both academic and self-serving reasons regarded legal instruction by mail as an abomination.”).

314. Weiser, *supra* note 280 (“When the ABA was formed in 1878 to ‘improve the profession,’ its intentions were infused with the nativism and xenophobia that were this country’s reaction then, as it is now, to large influxes of immigrants whether Irish or Eastern and Southern Europeans, or African Americans flooding out of the South after the Civil War and the collapse of Reconstruction.”).

315. Lowry W. Harding, *Correspondence Instruction*, 23 *EDUC. RSCH. BULL.* 29, 30 (1944).

316. Whitman, *supra* note 34, at 8.

III. THE FUTURE: LESSONS FROM CORRESPONDENCE EDUCATION

A critical evaluation of the history of correspondence education teaches that not only should the legal education community embrace technological innovations, but also that for this modality of legal education to thrive, it should stay abreast of changes in societal norms and technical advancements, remain learner-focused, and properly support such innovation with monetary funds and visionary leaders. Doing these things will help further the profession by providing access to education to a broader category of students and ultimately increase the public's access to justice.

A. Broader Access to Legal Education

The American legal system has an access to justice problem that can be helped in part by broadening access to online legal education. “Most of the civil justice problems that Americans experience receive no legal attention of any kind, ever. They never make it to court. They never receive consideration from any kind of legal professional such as a lawyer.”³¹⁷ Those who receive the least access to the legal system, and in turn to justice, are economically disadvantaged or racial minorities.³¹⁸ As explained by Rebecca Sandefur, the problem is not just a lack of access to legal services, but a lack of just resolution.³¹⁹ A 2021 study by the Institute for the Advancement of the American Legal System (IAALS) and The Hague Institute for Innovation of Law (HiIL) revealed that “lower income, women, multiracial and Black Americans, younger and middle-aged, and those living in urban and rural environments” were the most vulnerable when it came to receiving fair resolutions of their legal problems.³²⁰ However, expanding access to legal education through online platforms can help address this problem.

Online legal education offers a promising path toward creating a more inclusive legal landscape, which in turn can broaden access to justice for all. Online J. D. programs can reach a wider range of students, allowing them to balance their studies with other commitments.³²¹ There are many reasons people choose not to

317. Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 49 (2019), <https://www.amacad.org/publication/access-what> [<https://perma.cc/7UY4-NE4P>].

318. *Id.* at 51 (explaining “access to justice is systematically unequal: some groups—wealthy people and white people, for example—are consistently more likely to get access than other groups, like poor people and racial minorities”).

319. *Id.* at 49.

320. Zachary Willis & Kelsey Montague, *New Study Reveals the Full Extent of the Access to Justice Crisis in America*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Aug. 24, 2021), <https://iaals.du.edu/blog/new-study-reveals-full-extent-access-justice-crisis-america> [<https://perma.cc/R6YV-Q2ZK>].

321. Cochran & Godette, *supra* note 66, at 6.

attend law school, including family obligations, time commitment, financial constraints, the inability to relocate, and more.³²² Having the option to attend law school remotely can address some of these obstacles.³²³ However, the legal education system still upholds structures that serve to gatekeep who can and cannot access this education. For example, you must have an undergraduate degree to enter law school, you must have the ability to apply for and take the LSAT,³²⁴ you must have the means to attend and pay for law school for at least three years while maintaining a living,³²⁵ and the law school must certify your character and fitness to the state bar before you are deemed eligible for the bar examination.³²⁶ The debate over the efficacy and value of online legal education is, in reality, a proxy for a discussion about who is deemed worthy to enter the profession. The underlying argument suggests that if you cannot afford to pause your life to attend law school in person and gain knowledge in the physical presence of esteemed professors, then you do not deserve to earn a J.D. and become a lawyer. This notion directly contradicts the values the profession claims to uphold³²⁷ and serves to punish those who choose to tend to their other life obligations, which are at times out of their control.

322. *Why (Not) Go to Law School?*, HORIZON INST. FOR PUB. SERV. (April 11, 2024), [https://emergingtechpolicy.org/pathways/graduate-school/law-school/2-why-go-to-law-school/#:~:text=Law%20school%20is%20not%20a,pressing%20problem%2C%20\(3\)%20have](https://emergingtechpolicy.org/pathways/graduate-school/law-school/2-why-go-to-law-school/#:~:text=Law%20school%20is%20not%20a,pressing%20problem%2C%20(3)%20have) [<https://perma.cc/FSH3-P5PS>] (explaining how law school is not a good fit for people who “already have a strong personal fit for a role working on a pressing problem, . . . have significant personal commitments that would make spending 50+ hours per week on schoolwork infeasible, . . . or for whom prolonged periods of stress or frequent discouraging feedback are especially costly”).

323. See, e.g., Julia Johnson, *Online Education Takes Off*, THE NAT’L JURIST (Aug. 1, 2023), <https://nationaljurist.com/national-jurist-magazine/online-education-takes-off/> [<https://perma.cc/HB25-RXRJ>] (last visited Oct. 7, 2024) (discussing why some students choose the online legal programs).

324. Emma Plante, “What, like it’s hard?”: *The Systemic Barriers to Law School Applications*, NORTHEASTERN UNIV. POL. REV. (Jan. 27, 2022), <https://nupoliticalreview.org/2022/01/27/what-like-its-hard-the-systemic-barriers-to-law-school-applications/> [<https://perma.cc/8Y9A-KVSG>] (last visited Oct. 7, 2024).

325. Jennifer S. Bard, *Looking At Ourselves—How Can Reduce Barriers to Entry in the Legal Profession?*, BEST PRACS. FOR LEGAL EDUC. (Dec. 21, 2020), <https://bestpracticeslegaled.com/2020/12/21/looking-at-ourselves-how-can-reduce-barriers-to-entry-in-the-legal-profession/> [<https://perma.cc/LD7H-CPZU>] (last visited Oct. 7, 2024) (explaining how the cost and structure of legal education are the primary barriers to entry into the legal profession).

326. See Em Carpenter, *Wednesday Writs: Bar Exam, Gatekeeping, and Cheese Snobbery Edition*, ORDINARY TIMES (Jan. 12, 2022), <https://ordinary-times.com/2022/01/12/bar-exam-bar-exams-lawyer-legal-law-school-cheese-snob/> [<https://perma.cc/LK58-YSZZ>] (last visited Oct. 7, 2024); see also Barry R. Vickrey, *Are we Gatekeepers*, 34 UNIV. OF TOLEDO L. REV. 179 (2003) (discussing how law schools serve as gatekeepers to the legal profession); Eric Fischer, *Law School as a Gatekeeper*, COUNSELOR CHRON. (Jan. 14, 2016), <https://counselorchronicles.com/law-school-as-a-gatekeeper-ab3843a122c4> [<https://perma.cc/7UC9-RHK6>] (last visited Oct. 7, 2024) (recounting from the student perspective how “law school is more of a gatekeeper than an institution meant to train lawyers” and is more of a model where “rich people keep poor people out of the profession”).

327. *ABA Mission and Goals*, AM. BAR ASS’N, https://www.americanbar.org/about_the_aba/aba-mission-goals/#:~:text=Increase%20public%20understanding%20of%20and,to%20justice%20for%20all%20persons [<https://perma.cc/7TME-S7KF>] (according to the ABA, one of its goals is to “[p]romote full and equal participation in the association, our profession, and the justice system by all persons”).

A more diverse student body can lead to a more diverse legal profession, enriching legal discourse and problem-solving with a variety of perspectives.³²⁸ This diverse group of students, coming from different backgrounds, including diverse racial and socioeconomic communities, will be equipped to provide legal services and solutions to a broader population. This population of people will inevitably include vulnerable communities that need assistance with resolutions of their legal matters.

Having more lawyers who resemble the racial composition of the country is a step towards greater access to justice.³²⁹ According to the ABA's 2022 profile of the legal profession, 4.5% of lawyers are Black, 5.5% are Asian-American, 5.8% are Hispanic, and 2.7% are mixed-race.³³⁰ Yet, the composition of the legal profession does not reflect that of the nation, where Black Americans account for 13.4% of the American population, Hispanics 18.5%, and Asian Americans 5.9%.³³¹ The students attending online law school will become lawyers who will theoretically stay in the communities where they are from.³³² They will then be able to serve that same broader community by their presence and ability to provide resolutions to legal problems.

328. Jamison Davies, *Diversity in Law, Who Cares?*, AM. BAR ASS'N (Apr. 16, 2016), <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/> [<https://perma.cc/TYQ5-CTSP>] (explaining that “[a] diverse legal profession is more just, productive and intelligent because diversity, both cognitive and cultural, often leads to better questions, analyses, solutions, and processes”).

329. See Abigail Frisch, David Levi, & Dana Remus, *Reclaiming the Role of Lawyers Community Connectors*, 103 JUDICATURE 28, 30 (2019) <https://judicature.duke.edu/articles/reclaiming-the-role-of-lawyers-as-community-connectors/> [<https://perma.cc/T388-9RY9>] (“Regarding access to justice, the legal profession can produce lawyers and judges who have a day-to-day understanding of the entire range of social life in a community. The profession can produce lawyers who, in the Jacksonian tradition, serve and embrace “persons of every outlook” and background.”).

330. Profile of the Legal Profession 2022, AM. BAR ASS'N, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf> [<https://perma.cc/7NY2-NHE5>].

331. *Id.*

332. See, e.g., *A Behind the Scenes Look at the New Online Part-Time J.D. Program*, CASE W. RESRV. L. REV. (Oct. 10, 2023), <https://case.edu/law/our-school/news/behind-scenes-look-new-online-part-time-jd-program-qa-cassandra-robertson-faculty-director-program> [<https://perma.cc/5NQC-HJ4B>] (last visited Oct. 7, 2024) (explaining how Case Western Reserve University's “online program can make legal education accessible to rural residents, and those students are more likely to serve their communities when they graduate”); *Online Hybrid J.D. Overview*, U. OF DAYTON SCH. OF LAW, https://udayton.edu/law/jd_programs/online_hybrid/index.php [<https://perma.cc/93WZ-LYQ8>] (last visited Oct. 7, 2024) (highlighting alumna Alit Stillman how taking courses online allowed her to attend law school, keep her job, and not have to relocate her family); Genevieve Carlton, *2024 Online Learning Statistics*, FORBES (Aug. 23, 2024), <https://www.forbes.com/advisor/education/online-colleges/online-learning-stats> [<https://perma.cc/Y2NF-BVPE>] (discussing the demographics of students who take classes online in the undergraduate and graduate setting and how most students attend in-state online programs and how “Pacific Islander, Black and Native American students enroll in these institutions at higher rates”). These students are likely to remain in their communities because of their existing obligations (such as work and family). Students in this demographic also tend to be older students who are already employed and established and do not have the ability to relocate. See *id.*

An increase in diversity is likely to result in more public interest lawyers. In 1991, women accounted for 43% of law students.³³³ By 2021, this figure grew to 55%.³³⁴ Notably, the representation of women of color in public interest legal roles—such as prosecutors, public defenders, and civil service lawyers—also doubled from 1991 to 2021.³³⁵ While many factors contribute to this trend, the influx of women into law schools has likely played a key role in expanding the public interest law sector. As more women, especially women of color, enter the legal profession, many bring with them a strong commitment to addressing systemic inequities, which often aligns with the goals of public interest law. As of 2023, “the majority of graduates employed in public interest law firms are women.”³³⁶ Therefore, the growing diversity within law schools contributes to a more robust pipeline of public interest lawyers,³³⁷ though further data and analysis are needed to fully understand the impact of online legal education in broadening access.

As diversity increases across race, gender, and socioeconomic backgrounds in law schools, the public interest sector will naturally benefit. Evidence suggests that online learning, by reaching a more diverse population of students—including those from lower-income backgrounds, women, people with caregiving responsibilities, and individuals in rural areas—has the potential to widen the

333. *The Demographics of Jobs from 1991–2021 - Part 2*, NAT’L ASS’N FOR L. PLACEMENT, <https://www.nalp.org/0723research#:~:text=Women%2C%20who%20made%20up%20less,55%25%20of%20all%20law%20students> [https://perma.cc/TY8E-XPG8] (last visited Oct. 7, 2024).

334. *Id.*

335. *What Lawyers Do*, U.S. BUREAU OF LAB. STAT. OCCUPATIONAL OUTLOOK HANDBOOK (Aug. 29, 2024), <https://www.bls.gov/ooh/legal/lawyers.htm#tab-2> [https://perma.cc/89JY-5BT8] (“[P]ublic-interest lawyers work for organizations that provide legal services to disadvantaged people or to others who otherwise might not be able to afford legal representation. They often handle cases involving issues related to social justice or individual liberty, such as housing discrimination or consumer rights.”); see also Julianne Hill, *More 2023 Law School Grads Found Full-Time Jobs than Any Class in Past 10 Years, New ABA Data Shows*, ABA J. (April 22, 2024), <https://www.abajournal.com/web/article/more-full-time-jobs-for-2023-law-school-grads-than-in-past-decade> [https://perma.cc/BC2Q-9F5C] (“For the class of 2023, . . . [m]ore had public-interest jobs, with 3,122—or 8.9% of the graduates—compared to 3,013—or 8.4% of graduates in 2022.”).

336. *Public Interest Law Firm Employment for New Law Graduates*, NAT’L ASS’N FOR L. PLACEMENT (Feb. 2023), <https://www.nalp.org/0223research#:~:text=The%20majority%20of%20graduates%20employed,considerably%20from%20year%20to%20year> [https://perma.cc/6WKG-92B2]; see also *The Demographics of Jobs from 1991–2021*, NAT’L ASS’N FOR L. PLACEMENT (Mar. 2023), <https://www.nalp.org/0323research> [https://perma.cc/LRX3-M4JL] (last visited Oct. 7, 2024) (“White men have not—at least in the past 30 years—taken the majority of jobs as prosecutors, public defenders, or in civil legal services. White women have outnumbered white men in public defender jobs since at least 2001; while white women have outnumbered white men in civil legal services by a considerable margin across the entire period.”).

337. See, e.g., “*Aloha Spirit*” and Commitment to Community Helped Alumna Succeed in JDi Program, SYRACUSE UNIV. COLL. OF L. (July 26, 2024), <https://law.syracuse.edu/news/aloha-spirit-and-commitment-to-community-helped-alumna-succeed-in-jdi-program/> [https://perma.cc/V7PG-2RGT] (highlighting Aluma Brooke Hasegawa-Nakaoka who provided 821 community service hours with Legal Aid in her hometown while taking classes in Syracuse’s online JDi program and upon graduation, “as an associate with the International Reproductive Law Group of Los Angeles”).

scope of who enters the legal profession.³³⁸ Many of these students, who are personally connected to underrepresented communities, are likely to be motivated to address systemic inequalities they have witnessed or experienced. This influx of diverse legal professionals will likely bolster the public interest field, helping to better address the needs of marginalized communities.

The focus on increasing the diversity of the lawyers who can provide legal services is just one part of the solution. “At other times still, systemic reforms will be the right solution, not providing costly and inefficient assistance to individuals.”³³⁹ As explained by Rebecca Sandefur, “[r]esolving the access-to-justice crisis requires that justice professionals shift their understanding of the access problem, and share the quest for solutions with others: other disciplines, other problem-solvers, and other members of the American public whom the justice system is meant to serve.”³⁴⁰ Online legal education and its potential to provide broader access is just one aspect of addressing the access to justice issue.

In this way, online legal education upholds the principle of accessibility once championed by correspondence education. Correspondence education was developed to provide educational access to the masses. The innovative spirit behind movements like the Lyceums and Chautauqua recognized changing societal values and aimed to democratize knowledge. Visionaries such as Sir Isaac Pitman, Anna Ticknor, and William Rainey Harper advanced this effort by establishing formal correspondence programs. These programs empowered historically marginalized groups, particularly the economically disadvantaged and women, by offering educational opportunities, knowledge, and training they would not have otherwise been able to access.³⁴¹

338. See, e.g., Leipold, *supra* note 13; Marin McCall, *Diverse Students More Likely to Participate in Law School Courses Online, According to Survey*, 2CIVILITY (Nov. 10, 2022), <https://www.2civility.org/diverse-students-more-likely-to-participate-in-online-law-school-courses-according-to-survey/> [<https://perma.cc/CLD5-TGJS>]; Lilah Burke, *Which law students are more likely to prefer online J.D. classes?*, HIGHER ED DIVE (June 29, 2023), <https://www.highereddive.com/news/law-student-survey-gallup-online-classes-preference/654230> [<https://perma.cc/CT4U-XFLM>] (last visited Oct. 7, 2024); *Blended Learning at Mitchell Hamline*, MITCHELL HAMLINE SCH. OF L., <https://mitchellhamline.edu/about/blended-learning-at-mitchell-hamline/> [<https://perma.cc/ZQ5A-XKYN>] (last visited Oct. 7, 2024) (highlighting a student’s experience with the Mitchell Hamline blended program while working and taking care of her special needs children).

339. Sandefur, *supra* note 317, at 53; see also Levi, Remus & Frisch, *supra* note 329, at 30 (“Even if all lawyers were entirely devoted to addressing the justice gap with some portion of their time, the depth and breadth of the gap make it unlikely that the profession could address it on its own.”).

340. Sandefur, *supra* note 317, at 54.

341. See Borje Holmberg, *Distance Education in Essence – An overview of theory and practice in the early twenty-first century* 81 (2d ed. 2003) (“When in the nineteenth century distance education was organised in the form of correspondence study there was a clearly understood social objective, that of making education and the acquisition of intellectual competencies available also to the underprivileged, those who for reasons of poverty or subordinate positions had not had the opportunity to get the kind of schooling required of those wanting to go in for higher education or for making careers in trade or industry. Thus general education and occupational/professional training became the main purposes of study.”).

Additionally, correspondence programs gave those with the desire and ability to pursue their education while balancing other professional and personal obligations. Correspondence education was a rebuke of the elite's view of education as only being for wealthy, white men. It was in direct opposition to attempts to keep certain groups of people, mainly women and the poor, from gaining knowledge and access to a profession. It gave this same group access to education that they would otherwise not have.

In conclusion, online legal education not only upholds the social imperatives of correspondence education but also aligns with the evolving needs and preferences of contemporary and prospective law students. It is a direct rebuke of the elitism that has plagued legal education and the profession. The resurgence of distance legal education via the online modality is an effort to democratize the profession and expand its access. It is the antithesis of the classism, racism, sexism, xenophobia, and ableism that prevailed in shaping legal education. By embracing this paradigm shift, legal education can become more accessible, equitable,³⁴² and inclusive, thereby advancing the cause of justice for all.

B. Embrace Technological Advancements

Societal norms have shifted significantly due to technological advancements. Even the U.S. Supreme Court has recognized technology's impact on societal expectations.³⁴³ We've transitioned from the information age³⁴⁴ to the imagination age,³⁴⁵ yet legal education still relies on the Langdellian model from the 19th century, showing reluctance to embrace technological progress until COVID-19 necessitated it.³⁴⁶

342. See *DEI Center FAQs*, AM. BAR ASS'N, <https://www.americanbar.org/groups/diversity/resources/dei-center-faqs/> [<https://perma.cc/7AXH-E5Y9>] (defining diversity, equity, and inclusion).

343. *United State v. Jones*, 565 U.S. 400, 427 (2012) (Alito, J., concurring in the judgment) (“Dramatic technological change . . . may ultimately produce significant changes in popular attitudes.”). See also *id.* at 415 (Sotomayor, J., concurring) (noting the “evolution of societal privacy expectations” in light of “technological advances”).

344. Linda Tucci, *Information Age*, TECHTARGET (May 2023) <https://www.techtarget.com/searchcio/definition/Information-Age#:~:text=What%20is%20the%20Information%20Age,current%20era%20in%20human%20civilization> [<https://perma.cc/D4CJ-VTK5>] (“[T]he Information Age is the idea that access to and the control of information is the defining characteristic of this current era in human civilization.”).

345. Raya Bidshahri, *How Technology is Leading Us Into the Imagination Age*, SINGULARITYHUB (Nov. 19, 2017), <https://singularityhub.com/2017/11/19/how-technology-is-leading-us-into-the-imagination-age/> [<https://perma.cc/LY7V-A835>] (“[I]nitially coined by Rita J. King, the imagination age is a theoretical period beyond the information age where creativity and imagination will become the primary creators of economic value.”); Gabriel Silva, *‘Thinkers and Innovators’: Rita J. King on How ‘The Imagination Age’ is Necessary for Humans to Thrive*, FORBES (July 27, 2021), <https://www.forbes.com/sites/gabrielasilva/2021/07/27/thinkers-and-innovators-rita-j-king-on-how-the-imagination-age-is-necessary-for-humans-to-thrive/> [<https://perma.cc/CB8P-HZ25>].

346. Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 CONN. L. REV. ONLINE 1, 5 (2020) (discussing how “[f]aculty, 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”); Morenike Saula, *Crisis-Induced Innovation*

In contrast, correspondence educators seized technological innovations to advance education. Newspapers and an improved postal system in the 1800s facilitated the growth of correspondence education, appealing to a broader audience.³⁴⁷ With these “new” innovations, pioneering leaders saw the ability to transform education and appeal to a wider audience.

Similarly, the internet and the World Wide Web have democratized education, providing access to a wider audience. Undergraduate educators began integrating these technologies into their courses in the mid-1990s.³⁴⁸ However, it took the legal academy, notably the ABA, 25 years longer than undergraduate programs to allow online J.D. courses with certain restrictions.³⁴⁹ In 2023, St. Mary’s Law School became the first institution to offer fully online part-time J.D. degrees, and Southwestern Law School gained approval for the first fully online full-time day-time program.³⁵⁰ Furthermore, the ABA is considering accrediting online programs independent of physical locations.³⁵¹

To thrive in this evolving landscape, legal educators and the ABA must embrace technological advancements. Failing to do so will leave legal educators ill-prepared to meet the evolving needs of today’s students, who expect online learning as a standard part of their education.³⁵² Incorporating technology not

in *U.S. Legal Education*, 69 J. OF LEGAL EDUC. 689, 691 (2021) (“In addition to the distance learning methods adopted, other deviations from the traditional law school practice brought about by the pandemic include the adoption of different modes of course evaluation and grading.”); *supra* note 268, at 142 (noting how legal education is “reactive” and embraces change when it is forced to do so from outside forces).

347. The postal system underwent massive overhaul and became more advanced with advent of the penny stamp in the 1840s, making it more accessible to the masses. See Gallagher, *supra* note 130.

348. Chelsea Penney, *The History of Distance Learning and the Future of Virtual Instruction*, PROXIMITY LEARNING (Mar. 14, 2024), <https://www.proxlearn.com/blog/the-history-of-distance-learning-and-the-future-of-virtual-instruction#:~:text=Much%20later%20in%20the%201990s,into%20grade%20school%20as%20well> [<https://perma.cc/WGW4-SSPY>] (last visited Oct. 7, 2024); see also *The Evolution of Technology in the Classroom*, PURDUE UNIV., (Jan. 1, 2024), <https://education.purdue.edu/2024/01/the-evolution-of-technology-in-the-classroom/> [<https://perma.cc/KC8U-CDAN>] (last visited Oct. 7, 2024) (“In 1990, The World Wide Web was given life when a British researcher developed Hyper Text Markup Language, or HTML, and when the National Science Foundation (NSF) removed restrictions on the commercial use of the Internet in 1993, the world exploded into a frenzy of newfound research and communication methods.”).

349. Brutus St. Val, *supra* note 3, at 301.

350. Previously, law schools could provide a portion of classes online but were still required to have some sort of in-person component. For example, Mitchell Hamline offered capstone and cornerstone classes where students would meet on the school’s campus at the beginning and end of each semester, while taking the rest of their courses online. Since the pandemic, schools were able to receive variances or waivers, bypassing this requirement. See *infra*, Section I.A. St. Mary’s is the first institution to receive approval without a waiver or variance to offer fully remote J.D. courses.

351. This is in keeping with the Indiana Supreme Court’s recent ruling on February 15, 2024, allowing students who have obtained their law degrees fully online from non-ABA approved law schools to be eligible to petition to sit for the bar exam, becoming second after California to allow this. Bartles, *supra* note 41.

352. Julian Roberts-Grmela, *More Students Want Virtual-Learning Options. Here’s Where the Debate Stands*, THE CHRON. OF HIGHER EDUC. (June 5, 2023) <https://www.chronicle.com/article/more-students-want-virtual-learning-options-heres-where-the-debate-stands#:~:text=The%20share%20of%20students%20enrolled,expand%20remote%20and%20hybrid%20options> [<https://perma.cc/8YDJ->

only enhances access but also enriches the learning experience, allowing for more interactive and dynamic instruction. Moreover, embracing technology fosters innovation in legal pedagogy, preparing students for the increasingly digitalized legal landscape they will encounter in their careers. Therefore, legal educators and accrediting bodies must embrace technology fully to ensure the relevance and effectiveness of legal education in the 21st century.

C. Remain Learner-Focused

Traditional methods of legal education are rooted in a teacher-focused model, where the professor is regarded as the subject matter expert from whom students are expected to learn. This approach, originating from Langdell's case method, relies on the Socratic method—a “hub-and-spoke” discussion between professor and student.³⁵³ However, this pedagogical approach is ill-suited for online legal education.³⁵⁴ Conversely, correspondence education places a premium on the learner's needs. Teachers engage directly with students, delivering tailored assessments and personalized instruction. Anna Ticknor's correspondence school epitomized this individualized approach.³⁵⁵

Thus, effective online legal education programs must prioritize the learner. Educators should provide personalized instruction and consistently evaluate methods for improvement, placing student learning and continuous feedback at the forefront of the online learning experience. This creates a more inclusive learning environment where each student can grow.

Moreover, students pursuing online legal education must recognize the self-discipline required for success. They must be self-motivated, organized, and proficient in time management. These attributes, while also necessary for all law students regardless of learning modality, are acutely needed when in the online learning environment. Correspondence learners typically embodied these traits, actively participating in the learning process. Online legal education program administrators and professors should ensure students comprehend the necessity of these attributes and the level of commitment essential for achievement.

Additionally, fostering inclusivity and embracing a learner-focused approach not only benefits individual students, but also enhances the overall quality of legal education.³⁵⁶ By accommodating diverse learning needs and backgrounds,

6PXP](last visited Oct. 27, 2024); Genevieve Carlton, *2024 Online Learning Statistics*, FORBES (Aug. 23, 2024) <https://www.forbes.com/advisor/education/online-colleges/online-learning-stats/> [https://perma.cc/9BHG-4P8V] (last visited Oct. 7, 2024).

353. *The Case Study Teaching Method*, HARVARD LAW SCHOOL, <https://casestudies.law.harvard.edu/the-case-study-teaching-method/#:~:text=The%20case%20method%20in%20legal,that%20furthered%20principles%20or%20doctrines> [https://perma.cc/37K4-T3WC] (last visited Oct. 7, 2024).

354. Indeed, scholars are currently debating whether this teaching style is effective for in-person, legal education. See e.g., Gurvich, *supra* note 268, at 132-47.

355. Watkins, *supra* note 138, at 3; Kentnor, *supra* note 4, at 23.

356. Linda Jellum, *Did the Pandemic Change Legal Education for Better or Worse? Did the Pandemic Change Legal Education for Better or Worse?*, DEP'T OF JUST. J. OF FED. L. & PRAC. 67-75 (2021).

educators create a dynamic and enriching learning environment that encourages collaboration, critical thinking, and a deeper understanding of legal concepts. This inclusive approach prepares students to navigate complex legal issues and contribute meaningfully to the legal profession and society.

D. Institutional Support is Key

To thrive within the academy, online J.D. programs will need proper institutional support. At a minimum, this support should include funding, dedicated faculty, technical support, and instructional designers. Most importantly, these programs need visionary leaders who have the foresight and passion needed for these programs to excel. The most successful correspondence programs had all of these things in common.

A key component in online legal education's success is having it as a free-standing program that is fully integrated into the law school and university with its own dedicated faculty and staff. Like many of the successful correspondence programs, online legal education should be staffed with professors, administrative personnel, and technology support that are solely committed to the online programs. It should also have its own curriculum, revenue stream, and structural support.

The University of Wisconsin provides a great model of how correspondence programs can thrive when properly supported by an institution. By taking the time to study the field, understanding and creating programs specifically geared for its distinct student body, and employing specialized staff and instructors, the University of Wisconsin thrived as the leader in correspondence education.³⁵⁷ It has been able to sustain this standing and evolve within the field of distance education.³⁵⁸

Having institutional support for an online J.D. program helps to strengthen it, allows it to grow, and enables it to reach more students. Institutionalizing the program also addresses the star leader problem, faced by many correspondence schools and programs, in which a program relies solely on one leader to grow the program without any contingencies.³⁵⁹ In this sense, correspondence programs that overly relied on one leader to take charge and facilitate the plans did not last long once that leader departed. A key example of this is Anna Ticknor's Society, which ended shortly after her death.³⁶⁰

Moreover, institutionalizing online programs helps alleviate the fears that online classes are a threat to the traditional law school format. This fear was the impetus behind the Sprague Correspondence Law School being forced to close. Online legal education faces the same criticism. However, it is not a threat to legal

357. Watkins, *supra* note 138, at 17.

358. *Id.* at 17–18.

359. See *infra* Section II.B.1.

360. Hibbitts, *supra* note 2.

education. It is yet another avenue for expanding the reach of the legal academy and providing access to education.

E. Separate Accrediting Body

Another lesson that can be learned from correspondence education is that there is a need for an accrediting body, beyond the ABA Council, that is dedicated to developing and advancing the field. While the Council has been instrumental in expanding online legal education due to the COVID-19 pandemic, it also has been a barrier. As seen from history, the ABA Council has placed limitations on legal distance education that have not been in keeping with Department of Education standards, although it is now trying to catch up.³⁶¹ Moreover, the ABA and legal profession have a history of being against advancements in distance education.³⁶²

Although the ABA is attempting to bring legal education in line with where undergraduate education has been since the 1990s, we need a separate accrediting body that is committed to growing this field of legal education. Smaller work-groups exist³⁶³ and the Center for Computer-Assisted Legal Instruction (CALI) has been a staunch advocate of online education.³⁶⁴ However, there is a need for a body that is accredited by the Department of Education³⁶⁵ and does not fall under the ABA umbrella, although the two bodies could work in tandem. The ABA “is out of touch with the profession, students, legal consumers, and the tens of millions in need of legal services. The organization’s resistance to meaningful

361. See *infra* Section I.A.

362. See *infra* Section II.C.2.

363. See Susannah Pollvogt, *LSAC Forms Strategic Legal Education Working Group*, LAW SCH. ADMISSIONS COUNCIL (Nov. 11, 2022), <https://www.lsac.org/blog/lsac-forms-strategic-legal-education-working-group> [<https://perma.cc/PTS7-STNX>] (discussing “LSAC’s Legal Education Solutions division has assembled the LSAC Strategic Legal Education Working Group”); William Byrnes, *Working Group for Distance Learning in Legal Education Spring 2015 Meeting Hosted by Hastings*, www.ProfWilliamByrnes.com [<https://perma.cc/YD5B-83GL>] (July 6, 2023), <https://profwilliambyrnes.com/2015/02/17/working-group-for-distance-learning-in-legal-education-spring-2015-meeting-hosted-by-hastings/> [<https://perma.cc/NC6B-GP7B>] (“The Working Group for Distance Learning in Legal Education is a loosely structured alliance of law educators collaborating to provide increased opportunities for faculty, students, and other participants to access high quality, innovative, and interactive online legal education.”); WORKING GROUP FOR DISTANCE LEARNING IN LEGAL ED, <http://www.wgdllc.org/> [<https://perma.cc/G3BG-2NKQ>]; REBECCA PURDOM, GREG BRANDES, KAREN WESTWOOD, *DISTANCE LEARNING IN LEGAL EDUC.: DESIGN, DELIVERY AND RECOMMENDED PRACTICES* (2015) (ebook), <https://www.cali.org/books/distance-learning-legal-education-design-delivery-and-recommended-practices> [<https://perma.cc/G7HK-N7KZ>] (providing best practices recommendations for online legal education).

364. *About CALI*, THE CTR FOR COMPUTER-ASSISTED LEGAL INSTRUCTION, <https://www.cali.org/content/about-cali> [<https://perma.cc/Q87S-NWQV>] (“The Center for Computer-Assisted Legal Instruction (CALI) is a 501(c)(3) non-profit consortium of law schools, law libraries, and related organizations . . . In keeping with our Mission Statement, CALI conducts applied research and development in the area of computer-mediated legal education and creates tools that increase access to justice.”).

365. The Distance Education Accrediting Commission (DEAC) is the Department of Education’s designated accrediting organization for distance education institutions. *Welcome to DEAC*, DEAC, <https://www.deac.org/> [<https://perma.cc/V9UW-UFME>].

change has produced dire consequences in legal education”³⁶⁶ The ABA and its standards also restrict innovation.³⁶⁷ It has been slow to adopt any measures of meaningful change in distance education. Additionally, despite loosening its reins on online legal education access starting in 2015, the ABA has failed to provide clear guidance on online legal education programs. It has not conducted an in-depth review of such programs and has left prospective students to navigate the decision as to which programs to attend and how they differ from one another on their own.³⁶⁸

Moreover, the ABA’s legal education standards have been anti-democratic and have hindered legal education’s progress in the realm of distance education. Its professional focus has not been in the interest of the larger community. It has historically worked to keep people out of the profession and maintain a wealthy, white, male focus.³⁶⁹ While the Department of Education was expanding access to distance education, the ABA remained steeped in the status quo and slow to change.³⁷⁰ Although the current proposed standards offer some hope, it is unclear whether the ABA is willing to relax its hold on the profession and legal education system and give law back to the American people. Thus, it is necessary that an accrediting entity working with educators at all levels (especially those interested in public legal education) exist outside of the ABA and help remove online legal education from the traditions that have prevented its growth.

Correspondence education provides a great model for this accreditation body. In 1915, the deans and directors of 22 institutions with correspondence programs convened for the first conference of the National University Extension Association (NUEA) in Madison, Wisconsin.³⁷¹

366. Mark Cohen, *Is the American Bar Association Passe?*, FORBES LEADERSHIP STRATEGY (AUG. 2, 2018), <https://www.forbes.com/sites/markcohen1/2018/08/01/is-the-american-bar-association-passe/> [https://perma.cc/2KBD-A62Z]. In addition, the ABA and its standards harms minorities. Allen Mendenhall, *It’s Time to End the American Bar Association’s Monopoly*, FOUND. FOR ECON. EDUC. (June 25, 2017), <https://fee.org/articles/its-time-to-end-the-american-bar-associations-monopoly/> [https://perma.cc/JJ33-ASGG] [hereinafter Mendenhall, *Monopoly*], and is in part, why law school is so expensive. Allen Mendenhall, *End the ABA’s Accreditation Power*, AM. INST. FOR ECON. RSCH. (Dec. 15, 2020), <https://www.aier.org/article/end-the-abas-accreditation-power/> [https://perma.cc/PK72-KCEC] [hereinafter Mendenhall, *Accreditation Power*] (explaining that law is expensive in part “because ABA standards drive up the costs of legal education, causing administrators to spend on expensive compliance rather than teaching or student services”).

367. Mendenhall, *Monopoly*, *supra* note 366 (describing the ways legal education restricts innovation).

368. *See infra* Section I.C (discussing the limited information available about online legal education programs).

369. *See infra* Section II.C.1 (discussing the ABAs origins).

370. *See infra* Section I.A. (discussing how the Department of Education allowed students to take up to half of their classes online without prior approval in 2006 while the ABA started to allow students to take distance education classes in 2022 and progressed to one-third in 2015).

371. ROHFELD, *supra* note 142, at 19 (listing the names of the 22 of the 28 universities that attended the conference).

Universal issues including course completion problems, program promotion tactics, university policies regarding acceptance of credit for correspondence courses, credit transferral, and standards of quality occupied correspondence educators at [the] early NUEA meetings. Underlying all of these concerns was the larger issue of how to achieve and preserve the legitimacy and respectability of their programs.³⁷²

The NUEA became a 501(c)(3) nonprofit organization in the 1950s and after several name changes, became the University Professional and Continuing Education Association (UPCEA).³⁷³ Although the name has changed, the values remain the same—supporting distance education.³⁷⁴ The association brings “together decision makers and influencers in education, industry, research, and policy interested in improving educational access and outcomes.”³⁷⁵ UPCEA has five main areas of focus: “Leadership in Online Learning, Professional & Continuing Education, Alternative Credentials, Marketing, Enrollment & Student Success, and Research & Consulting.”³⁷⁶ It supports institutions and individuals “through research, networking, mentorship, conferences, seminars, and advocacy.”³⁷⁷

Similarly, legal distance education needs an association whose main task is to “achieve and preserve the legitimacy”³⁷⁸ of such programs. This association can be comprised of the deans and directors of law schools that currently provide or wish to provide online distance education programs, and other stakeholders who support online legal education.

CONCLUSION

Correspondence education continued to evolve in the 20th century. As it did, so did technology and its use in distance education. Out of correspondence study grew a parallel track of using technological innovations—including radio, television, and telecommunications—to teach and learn.³⁷⁹ However, of the modern technologies, it was the internet that revolutionized distance education. The 1990s brought about a synergy of technologies and created the knowledge economy.³⁸⁰ This new economy was ushered in by the availability of network computing and internet access to the workplace, homes, and education.³⁸¹

372. Watkins, *supra* note 138, at 22.

373. *National University Extension Association (NUEA) Records*, SYRACUSE UNIV. (last visited July 24, 2024), <https://library.syracuse.edu/digital/guides/n/nuea.htm> [<https://perma.cc/SMG7-3RPA>].

374. See *The Online and Professional Education Association*, UPCEA, <https://upcea.edu/#> [<https://perma.cc/SLV3-GDBU>].

375. *Id.*

376. *Id.*

377. *Id.*

378. Watkins, *supra* note 138, at 22.

379. Saba, *supra* note 118, at 12.

380. *Id.* at 13 (“[T]echnological innovation based on generation of new knowledge began to replace industrial production as the primary factor in the wealth of advanced economies.”).

381. *Id.*

Like the postal system was to correspondence education, as the internet grew and became widely accessible to the masses, so did the ability for students to take courses beyond the walls of the university. Postsecondary institutions began offering online courses to their students. However, the legal academy refused to adapt and incorporate this technological advancement into the J.D. curriculum.³⁸² The emergency pivot of 2020 has finally brought the legal academy into the technology age. With that, we need to pause and reflect on the past to forge a better way forward.

This article analyzed the history of correspondence education and how it can help us understand the path forward for the growth of online legal education. The article discussed how having institutional support from individual law schools and the broader legal academic community is paramount. Next, it proposed the creation of a separate accrediting body to help expand such programs. It also discussed how a lack of innovation could negatively impact both law schools and the legal profession. Traditional institutions risk losing students who have completed high school and undergraduate education through online components or in programs that promote more self-directed, autonomous learning. Most importantly, the article highlighted how online legal education can play a critical role in cultivating a new generation of public interest lawyers who reflect the diverse populations they serve, ultimately leading to greater access to justice.

By studying the past, we can avoid some of the pitfalls that correspondence education fell prey to and glean insightful lessons that help pave the way forward for sustainable online legal education.

382. Anna Williams Shavers, *The Impact of Technology on Legal Education*, 51 J. OF LEGAL EDUC. 407, 412 (2001) (explaining how “[n]ew technologies present the opportunity to explore new methods of teaching in law schools” and calling for “further exploration and study of the use of technology”).