
JURIS DOCTOR.COM: ARE FULL-TIME INTERNET LAW SCHOOLS THE BEGINNING OF THE END FOR TRADITIONAL LEGAL EDUCATION?

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I. INTRODUCTION

If only the Framers of our Constitution and the countless lawyers, judges and legislators who have shaped its meaning over the past two centuries could see us now. Would any of them have believed that one could have instantaneous access to virtually every documented statute, case or legal opinion ever drafted? It is doubtful. With the Internet's seemingly endless potential, it was only a matter of time before someone harnessed the technology to sneak under the iron gates of traditional legal education. What once may have seemed like a fleeting and preposterous idea has the traditionalists worried—and it should.

“Distance learning” is defined as “the process of extending learning, or delivering instructional resource-sharing opportunities, to locations away from a classroom, building or site, to another classroom, building or site by using video, audio, computer, multimedia communications, or some combination of these with other traditional delivery methods.”¹ Since Magellan.edu, the nation's first online undergraduate university, began offering distance learning classes in 1994, the idea of

home education via the Internet has spread like wild fire.² With literally hundreds of online colleges teaching similar courses over the Internet, one might think that offering graduate and doctorate level courses would naturally progress from Magellan's humble beginnings.³ But the pursuit of a *juris doctorate* degree is unlike other educational ventures, and the standards for admission and curriculum are locked into a paradigm, in large part because of the American Bar Association (“ABA”).⁴

Formed in 1878, the ABA almost immediately focused their attention on legal education and by 1921, had circulated its first Standards for Legal Education.⁵ With a regulated system firmly established, the ABA began lobbying states to draft statutes that would require their individual law schools to conform to the ABA's model.⁶ The ABA also convinced many states to disallow legal practice by those who were not members of the bar association.⁷ Consequently, their control extended over all aspects of legal education and practice.⁸ While some states did not prescribe to the ABA's requirements, most did, in effect per-

¹ INSTRUCTIONAL TECHNOLOGY COUNCIL, ITC'S DEFINITION OF DISTANCE EDUCATION, at <http://www.itcnetwork.org/definition.htm> (last visited Mar. 16, 2003).

² Although there have been online classes offered in some capacity since 1981, Magellan is considered to be the first truly online university. See *Technology Briefs*, THE BUSINESS MONTHLY, at http://www.bizmonthly.com/7_2001_focus/21.html (July 2001).

³ Heath Row, *Do These Online Schools Make the Grade?*, at <http://www.fastcompany.com/online/24/onlinesch.html> (May 1999).

⁴ The ABA has been recognized since 1952 by the U.S. Department of Education as the governing body for accreditation of American Law Schools. They have come under attack in recent years for having too much control over not only the accreditation process, but also who law schools will hire and how their curriculum is to be designed. See George

B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L.R. 2094, 2094-2100 (1998).

⁵ AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, available at <http://www.abanet.org/legaled/standards/foreword.html> (last visited Oct. 15, 2003) [hereinafter ABA FOREWORD].

⁶ George C. Leef, *Why Law School Costs So Much*, at <http://www.mises.org/fullarticle.asp?control=1113> (last visited Dec. 23, 2002) [hereinafter Leef].

⁷ *Id.*

⁸ Shepherd & Shepherd, *supra* note 4 (stating the ABA has “exerted monopoly power not only over the market for legal training, but also over three related markets: the market for the hiring of law faculty, the market for legal services, and each university's internal market for funding”).

petuating the organization's stranglehold on legal policies.⁹

In 2001, a serious blow was dealt to the ABA's "monopoly" over legal education. In *United States v. American Bar Association*, the U.S. District Court for the District of Columbia determined that the ABA had "restrained competition by fixing compensation levels of professional personnel at ABA-approved schools and by acting in ways to limit competition from non-ABA-approved schools."¹⁰ Despite this decision, little has changed. However, a new development in Internet education stands to pose a serious threat to both the ABA and those who believe that the only way to earn a legitimate law degree is through traditional legal education.

On November 21, 2002, the Concord School of Law graduated the country's first fourteen Internet law school students, marking the first monumental step towards what they hope will become a revolution in legal education. This Comment will examine both the Internet and its immeasurable impact on education of all types, especially legal education. The following section will explore development of Internet education. Section III will scrutinize Internet law schools, including the Concord Law School, and what effect these schools will have on legal education as a whole. Section IV will outline the history of the ABA and how the Internet age is shaping its future. Finally, this Comment will propose that although Internet legal education will not drastically affect most of the traditional law schools in the United States, it will impact the ABA enough that the Association

will be forced to bend its rigid approach towards accrediting those institutions it considers to be inferior and lacking in "proper training."¹¹

II. THE RAPID DEVELOPMENT OF INTERNET EDUCATION

Although generally considered a relatively new invention, the Internet has been used in some capacity for over thirty years, and e-mail was used as early as 1971.¹² However, it was not until the 1980s and 1990s that the Internet spread to the masses and gave a forum to the first Internet educational network and online research programs.¹³

The expansion of education through the Internet has increased dramatically over the past few years.¹⁴ By 1998 there were over 1.3 million students enrolled in distance learning programs, up 78% from 1995.¹⁵ The number of enrollees is projected to continue rising dramatically in the upcoming years.¹⁶ Although the U.S. Department of Education has not tracked the exact increase in the Internet student population, the financial numbers alone are evidence of the tremendous growth in the industry. In fact, distance education generated \$1.2 billion in 1999¹⁷ and is projected to be between \$7 and 10 billion by 2003.¹⁸

These figures indicate that an entirely new population of students are utilizing distance learning.¹⁹ The Internet "is allowing for the creation of learning communities that defy the constraints of time and distance as it provides access to knowledge that was once difficult to obtain."²⁰ Convenience is not the only attractive feature of dis-

⁹ Leef, *supra* note 6.

¹⁰ *United States v. Am. Bar Ass'n*, 135 F. Supp. 2d 28, 29 (D. D.C. 2001).

¹¹ Julia Scheeres, *Virtual Degrees Virtually Tough*, WIRED NEWS, at <http://www.wired.com/news/school/0,1383,54734,00.html> (Aug. 28, 2002) [hereinafter Scheeres].

¹² The Internet was developed in 1969 by the U.S. Defense Advanced Research Project Agency for military and research purposes. Linda Harasim provides a table outlining the history of networks and online education, beginning with the invention of the telegraph in 1861, and ending with the first large scale online education field trials in 1996. See Linda Harasim, *Shift Happens: Online Education as a New Paradigm in Learning*, VIRTUAL U., at http://virtual-u.cs.sfu.ca/vuweb.new/papers/harasim_ihe_nov00.pdf (last visited Feb. 2, 2003) [hereinafter Harasim].

¹³ *Id.* at 8.

¹⁴ This growth in Internet education may taper off shortly, as both supply and demand will likely have "significant effects on the productivity of the educational system only in limited areas" in the near term. Those most likely to

be affected will be corporate information technology training and executive business education. Major increases in productivity will need to wait for "more comprehensive innovations in the sector," and therefore the impact of the Internet on education "in the near term is likely to remain rather modest." See Austan Goolsbee, *Education and the Internet*, at <http://gsbwww.uchicago.edu/fac/austan.goolsbee/research/educ.pdf> (Sept. 2000) [hereinafter Goolsbee].

¹⁵ *Id.* at 6.

¹⁶ Laura Carr, *College Off-Campus*, THE INDUSTRY STANDARD, at <http://www.theindustrystandard.com/article/0,1902,18444,00.html> (Sept. 13, 2000).

¹⁷ *Id.*

¹⁸ See AMERICAN FEDERATION OF TEACHERS, AFT REPORT RAISES CONCERNS OVER DISTANCE EDUCATION, at http://www.aft.org/publications/inside_aft/previous/2001/090301.html (last visited Nov. 3, 2003).

¹⁹ Elizabeth D. Kaiser, *The Legal Implications of Online Universities*, 8 RICH. J.L. & TECH. 1, 19 (2002).

²⁰ *Id.*

tance education; generally the cost is far more manageable in comparison to most colleges or universities.²¹ Internet education has a very low marginal cost and providers can potentially reach large audiences at a nominal price.²² Although online schools and distance learning are not likely to replace traditional universities entirely, these attributes may force traditional universities to be "more innovative and more attentive to the needs of the labor market."²³

However, such positive attributes are often counterbalanced by certain negative aspects. The most glaring disadvantage of distance learning, putting aside the fact that one must possess the technological know-how and machinery to commit to an online program, is the fact that participants lack any social interaction with other students or with professors.²⁴ Many feel interaction with other students that occurs in a traditional learning environment facilitates learning, in part, through developing social skills.²⁵ Opponents believe if a school chooses to simply post reading assignments online and does nothing to initiate enhanced forms of learning, students will retain much less than they would in a traditional classroom setting.²⁶ Additional problems include identity verification and cheating, since it is difficult to monitor who is on the other end of an Internet

connection.²⁷

III. BEYOND A BACHELOR'S DEGREE: ONLINE GRADUATE SCHOOL

Recent history has demonstrated that online educational programs fail when they are haphazardly thrown together. Carefully constructed online undergraduate schools have been immensely successful, while those that tried to jump on the "bandwagon" without properly preparing a format have failed.²⁸ With the proven success of online bachelors programs, it was only natural that online graduate schools would follow. There are currently over 3,500 colleges and universities that offer online courses, and many of those courses are at a graduate level.²⁹

Although Juris Doctor ("JD") degrees are often considered comparable to Masters of Business Administration ("MBA") in terms of course load and difficulty,³⁰ the popularity of online MBA programs has grown at a much faster rate than online JD programs.³¹ While many claim this is explained by the comparative higher quality of online MBA programs, some still think that like their legal counterparts, the education is second-rate.³² Proponents of online MBA programs do not feel they are in competition with traditional universities,³³

²¹ See William M. Bulkeley, *Internet University is Accredited to Grant College Degrees*, HAPPY CAREER, at http://www.happycareer.com/html/internet_university_is_accredite.asp (last visited Mar. 17, 2003) (indicating that lower costs, specifically in the instance of the University of Phoenix, which is the nation's largest private university due in large part to their extensive online class program, are attributable to the fact that core courses are taught by part-time professors that are freelancing from other universities simply to earn extra money. This is far more economical for the online schools because they are not straddled with having to pay multiple professors full-time salaries.).

²² Goolsbee, *supra* note 14, at 3.

²³ Anna Kuchment, *Dollars and Degrees*, NEWSWEEK INT'L, Jan. 13, 2003, at B6 (quoting Jamil Salmi).

²⁴ Warren Rosser, *Disadvantages of Online Education*, PERSONAL WEB PROJECT, at <http://130.217.159.224/~wbr1/2002%20files/disadvantage.html> (last visited Mar. 17, 2003).

²⁵ See *id.* ("[B]eing online means students don't meet other people face to face, and all the social interaction takes place through words typed onto a screen, and occasionally pictures which are 'posted' online. This is a disadvantage which is difficult to isolate from any online learning environment.").

²⁶ Goolsbee, *supra* note 14, at 4.

²⁷ *Id.*

²⁸ See Kendra Mayfield, *Distance Learning Yet to Hit Home*, WIRED NEWS, at <http://www.wired.com/news/school/0,1383,45855,00.html> (Sept. 5, 2001) ("Today, the distance

learning market continues to grow, but much of the momentum has slowed. Many e-learning startups have gone belly-up, realizing the enormous costs of launching efficacious courses online. 'You can't build out the offerings of a great university overnight.'").

²⁹ Elisa Batista, *Online Schools Mean Business*, WIRED NEWS, at <http://www.wired.com/news/business/0,1367,38262,00.html> (Aug. 18, 2000) [hereinafter Batista].

³⁰ Derek Haskew, *Mail Bag*, TRANSFORMING PRACTICES, at <http://www.transformingpractices.com/lc/lc8mailbag.html> (last visited Mar. 17, 2003).

³¹ Press Release, University of Maryland University College, For Profits Start to Profit, at <http://info.umuc.edu/mde/newsarc.htm> (Jan. 2001).

³² See Scheeres, *supra* note 11, at 1. "[W]hile an Internet education may be alluring for wage slaves, stay-at-home parents, rural folks and agoraphobes, online schools still battle the nagging perception that learning by modem is somehow inferior to learning in a classroom." *Id.* Virtual educations are considered second-rate "because the people making hiring decisions all went to traditional schools and have misgivings about online degrees, although there is no objective evidence to support that." *Id.*

³³ See Batista, *supra* note 29, at 2 ("We do not feel we compete with the university," said Donald Norman, author, Professor Emeritus of psychology from the University of California in San Diego, and President of Unext learning systems. "We offer courses to people that can't afford to go to universities because there are no universities nearby or, more

and many seem convinced that it is becoming irrelevant where one received their MBA. They argue that there is no real difference between the MBA degrees offered by schools online and those offered in traditional classroom settings.³⁴

Part of the explanation for the success of online MBA programs is provided by Duke University's Fuqua School of Business, as its distance education program has given tremendous credibility to online MBA programs.³⁵ Already one of the most prestigious MBA programs in the country,³⁶ Duke created the Fuqua Global Executive program in 1996.³⁷ Although widely considered the most prominent of the online programs,³⁸ there are caveats that make the Fuqua School of Business unlike most other online programs. First, Fuqua's application process differs from typical online MBA programs. For example, an applicant must have at least ten years of professional experience and must be currently employed in a managerial position.³⁹ Second, the hefty cost for the program eliminates it as a cheaper alternative to conventional MBA programs—the nineteen-month curriculum carries a price tag of \$95,000.⁴⁰ Third, the program includes a unique two-week residential period where each student is required to attend orientation, classroom discussions, and participate in team projects on the Duke campus.⁴¹ This residency is followed by ten to twelve weeks of "virtual course work."⁴² Over 700 students are currently enrolled in Duke's Global Executive program.⁴³ This is a good indication that a large price tag and strict application requirements do not

prevent qualified students from pursuing online degrees that, on paper, will be comparable to any full-time, top-tier MBA program.⁴⁴

Duke University is not the only top-caliber school to implement online programs. Stanford University offers an online engineering degree and Columbia University offers online graduate degrees in numerous areas of study. Both the University of Pennsylvania's Wharton School of Business and the University of London offer online MBA programs.⁴⁵ The success of online business, engineering and other graduate schools begs the question of why legal education is so far behind the times. While there remains a significant gap between schools such as Fuqua School of Business and the primitive online legal courses that have begun to surface, that gap is surely closing.

IV. INTERNET LAW SCHOOLS

A. Concord Law School

The history of Internet law schools begins and ends with the Concord Law School ("Concord"), as it is the first, and currently the only, institution in the United States offering a JD degree entirely online.⁴⁶ Concord began operations in 1998 and is a division of Kaplan, Inc., a wholly owned subsidiary of the Washington Post Company.⁴⁷ Kaplan, Inc. was founded in 1938⁴⁸ to assist students in their preparation for the Scholastic Aptitude Test, and it has grown into one of the coun-

important, they are too busy.'").

³⁴ Del Jones, *More Students Get MBA's Online*, USA TODAY, Feb. 11, 2003, at B3.

³⁵ Jeff Girion, *E-Learning and the MBA: Changing the Status Quo of Business Education*, E-LEARNING MAGAZINE, available at <http://www.ltimagazine.com/ltimagazine/article/articleDetail.jsp?id=3935> (June 1, 2001).

³⁶ Duke was ranked #11 in the country prior to the creation of Fuqua. See John A. Byrne & David Leonhardt, *The Best B-Schools*, BUSINESS WEEK, Oct. 21, 1996, at A1.

³⁷ DUKE UNIVERSITY, THE FUQUA SCHOOL OF BUSINESS, THE DUKE MBA GLOBAL EXECUTIVE BROCHURE, available at <http://www.fuqua.duke.edu/admin/extaff/news/publications/pdf/gemba.pdf> (last visited Mar. 19, 2003) [hereinafter *Global Executive*].

³⁸ Kimberly Langford, *Do Online Degrees Measure Up?*, at <http://www.thedistancelearningexpo.com/articles.htm> (last visited Mar. 17, 2003) [hereinafter *Langford*].

³⁹ See DUKE UNIVERSITY, THE FUQUA SCHOOL OF BUSINESS, EXECUTIVE MBA ADMISSIONS CRITERIA, available at <http://www.fuqua.duke.edu/admin/executive/admissions/admcriteria.html> (last visited Oct 15, 2003) (other admissions criteria include: achievement in quantitative areas, including in

formation technologies, and proficiency in both written and spoken English).

⁴⁰ Langford, *supra* note 38.

⁴¹ *Global Executive*, *supra* note 37, at 8.

⁴² *Id.*

⁴³ Del Jones, *More Students Get MBAs Online*, USA TODAY, at http://www.usatoday.com/money/perfi/college/2003-02-10-mba_x.htm (last modified Feb. 10, 2003).

⁴⁴ *Global Executive*, *supra* note 37, at 2.

⁴⁵ DEGREES OF SUCCESS, NEW PROGRAMS, at <http://www.degreeofsuccess.com/new.htm> (last visited Mar. 17, 2003); Michael Cox, *How Our Unique, No-nonsense, Real-world, Online MBA, Masters, Ph.D., & DBA Programs Can Help You Get Extraordinary Results in Today's Ultra-Competitive Global Marketplace*, at <http://www.rushmore.edu> (last visited Oct. 15, 2003).

⁴⁶ CONCORD LAW SCHOOL, SCHOOL INFORMATION, available at <http://www.concordlawschool.com> (last visited Mar. 17, 2003).

⁴⁷ *Id.*

⁴⁸ Windy Choi, *Preparing for the SAT's*, URBAN JOURNALISM WORKSHOP REPORTER, at http://www.has.vcu.edu/mac/ujw02/sat_prep.htm (last visited Mar. 17, 2003).

try's largest providers of educational assistance and training.⁴⁹ The company has expanded greatly over the past decade, and has acquired large information technology and publishing companies.⁵⁰

B. Concord's Faculty

Despite having virtual classrooms, Concord's campus is located in Los Angeles, taking its place among over thirty other California based law schools.⁵¹ However, many students enrolled in Concord will only see the campus a handful of times in their four-year tenure.⁵² The same may or may not be said of the faculty members.

Concord's deans and directors, led by founder Jack R. Goetz, are all graduates of esteemed law schools from across the country and many came to Concord with experience as educational administrators at the graduate level.⁵³ Similar to other law schools, some of the deans and directors take on lecturing duties in addition to their administrative positions. These administrators are also responsible for supervising the "professors" performances.⁵⁴

Concord's visiting and supplementary lecturers include many nationally acclaimed legal scholars from across the country. These lecturers have no personal contact with the students, but rather design core courses that are delivered to students

through online video lectures.⁵⁵ Despite the lecturers' lack of interaction with students, they have essentially molded the curriculum and course structure at Concord.

The third level consists of professors who are typically considered adjunct professors in traditional systems. Among other things, these faculty members determine grades and answer student questions online.⁵⁶ Though not as widely known as some of the visiting lecturers, all professors have at least a J.D. degree and most are experienced law professors.⁵⁷

C. Concord's Curriculum

The basic JD program at Concord is on a part-time basis and therefore requires four years of study to complete the ninety-two credits necessary for graduation.⁵⁸ The academic year at Concord is fifty-one consecutive weeks, with roughly fifteen to eighteen study hours per week.⁵⁹

Concord's course requirements are no different from most traditional law schools in the United States. First year students are required to take courses on Contracts, Torts, Criminal Law and Legal Writing & Test Taking.⁶⁰ The manner in which classes are taken, on the other hand, is anything but traditional. Concord does utilize conventional casebooks, but lectures are offered exclusively online.⁶¹ Students may access lectures,

and was recently awarded the Distinguished Recognition Award by the Distance Education and Training Council for outstanding contributions in the advancement of distance education. *Id.*

⁵⁴ Robert Oliphant, *What About a Fifth Law School for Minnesota?*, BENCH & BAR OF MINNESOTA, at <http://www2.mnbar.org/benchandbar/2000/apr00/essay.htm> (Apr. 2000) [hereinafter Oliphant].

⁵⁵ These video lectures are offered by such professors as Arthur Miller of Harvard, John Blum of the University of Chicago, Rafael Guzman of the University of Arkansas, and Mary Cheh of the George Washington University. *Id.* at 3.

⁵⁶ *Id.*

⁵⁷ CONCORD UNIVERSITY SCHOOL OF LAW, 2003-2004 CATALOG, available at http://www.concordlawschool.com/info/custom/concord/pdfs/cls_catalog.pdf (last visited Nov. 17, 2003) [hereinafter CONCORD CATALOG].

⁵⁸ *Id.*

⁵⁹ *Id.* at 7.

⁶⁰ *See id.*

⁶¹ All lectures are viewable through streaming video, defined as video that "passes from our computer to yours in real time, so you don't have to download the entire, very large file before you can watch it. Otherwise, you might have to wait hours until the file were completely downloaded onto your computer." *Id.* at 6.

⁴⁹ Kaplan, Inc. has locations throughout the United States, and it continues to provide preparation courses for 35 different standardized tests and entrance exams. In addition, Kaplan, Inc. provides after-school education centers, programs for students from K-12th grades, secondary education classes, post-secondary classes and various certification programs. Kaplan has served over three million students since its inception. See KAPLAN, INC. COMPANY INFORMATION, at <http://www.kaplan.com/about/index.html> (last visited Mar. 17, 2003).

⁵⁰ For example, Kaplan recently purchased Dearborn Publishing Group, Inc. and Perfect Access, Inc. *Id.*

⁵¹ HUMBOLDT LEGAL RESOURCE CENTER, LAW SCHOOLS IN CALIFORNIA, available at <http://www.humboldt.edu/~legalctr/schools.htm> (last visited Mar. 18, 2003).

⁵² At the inaugural graduation ceremony for Concord in November 2002, those students in attendance were actually meeting face-to-face with other students and faculty for only the third time in four years. See Julia Scheeres, *Law Grads Online, Bar None*, WIRED NEWS, at <http://www.wired.com/new/print/0,1294,56512,00.html> (Nov. 21, 2002) [hereinafter *Law Grads Online*].

⁵³ Among the law schools attended by the 13 Deans and Administrators are UCLA, University of Chicago, Harvard and Boston University. Goetz himself has over 20 years of experience as a former professor of Evidence and Remedies

assignments and any portions of the curriculum twenty-four hours a day, seven days a week.⁶² In addition to lectures, Concord features professor-led chat room⁶³ discussions during which students may ask questions, discuss legal issues, and inquire about assignments.⁶⁴ Students have access to the curriculum through their "Personal Homepage" that provides each student with an interactive syllabus for their courses.⁶⁵

Concord has implemented procedures to ensure students consistently keep pace with the course load. Each course is broken into "modules" of roughly a week and a half.⁶⁶ Before students can progress in any course, they must pass a multiple-choice exam that tests material from the most recent module.⁶⁷ Furthermore, in an effort to prevent students from moving beyond the pace of the course, Concord's computing system prevents new modules from being explored before the quiz on the previous module is passed.⁶⁸ Any "unusual" problems a student experiences in a given course are reported automatically to an administrator, who then contacts the student individually.⁶⁹

Despite being a predominantly distant program, there is some human interaction at Concord. Faculty members are regularly available for questions via phone, e-mail and fax.⁷⁰ This, of course, is in addition to the aforementioned chat

room conversations, which meet on a weekly basis.

D. Concord's Research Facility

The study of law, in the words of Supreme Court Associate Justice Anthony M. Kennedy, "is a search for forms and shapes and language and an idiom of expression," that involves "the process of respect and preservation, restoration and renewal, creation and invention and progress, which is the mark of any decent and just and brilliant society."⁷¹ Traditionally, law students embark on this "search" at their university's law library. Although Concord has no library *building*, their students have access to the world's largest library researching tool: the Internet.⁷² Concord students openly rely on the Internet as their sole source of research and thus far have found everything they need despite the nonexistence of a library.⁷³ In fact, some argue that students enrolled in conventional law schools are so Internet Technology ("IT") literate that they quietly prefer traditional Internet research to traditional library research.⁷⁴ Although many conventional law schools supplement student's research tools by providing access to online research databases such as Westlaw and Lexis, traditionalists refuse to believe a virtual library can replace what is lost when students are

⁶² *Id.*

⁶³ Merriam-Webster defines "chat room" as "a real time on-line interactive discussion group." MERRIAM-WEBSTER COLLEGIATE DICTIONARY (10TH ed. 2002).

⁶⁴ Professors may ask questions during chat room sessions that are directed to the class as a whole and students type replies that are transmitted to the professor's screen, rather than to the entire group. At the professor's discretion, those answers and follow-up questions are then posted to the general chat room for other students to elaborate on or question further. This format "provides students with an opportunity to construct legal arguments, ask questions, and interact with their classmates and leaves complete academic control of the chat room in the hands of the instructor." See CONCORD CATALOG, *supra* note 57, at 6. See also Oliphant, *supra* note 54, at 4.

⁶⁵ CONCORD CATALOG, *supra* note 57, at 33.

⁶⁶ Oliphant, *supra* note 54, at 3.

⁶⁷ "The grading of multiple choice questions is instantaneous and explanatory answers function as teaching tools . . . in the first year, a student will answer hundreds of multiple-choice questions and write answers to 18 essay questions. Each essay answer is submitted for grading and returned online with extensive, individual comments." *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Justice Anthony M. Kennedy, Remarks at the South-

western University School of Law, Law Library Dedication and Gala (Oct. 3, 1997).

⁷² ELECTRONIC INFORMATION LITERACY, LIBRARY & INTERNET RESEARCH, at <http://www.ouc.bc.ca/library/eil/research/internet.html> (last modified Aug. 25, 2000).

⁷³ See CONCORD CATALOG, *supra* note 57, at 28. All the materials students need to complete their coursework is available on the school's law library interface. The library includes all United States Supreme Court Cases, the U.S. Constitution, all United States Codes, the Federal Rules of Evidence, the Federal Rules of Civil Procedure, codes of Professional Responsibility, all California codes and laws, and recent appellate cases and law review articles. The Concord Law Librarian is also available to assist students with their research. *Id.*

⁷⁴ See Nicholas Pengelley, *The Virtual Law School Library*, 29 INT'L J. LEGAL INFO. 615 (2001).

This time the uncertainty is largely driven by the potential advent of Web-based learning, and the as yet largely undeveloped nature of the law school response to the possibilities of education outside of the traditional classroom model. Uncertainty is also due to the growing awareness that IT literacy is increasing rapidly among our user community, and that students in particular now prefer electronic sources of information over print sources which, increasingly, they can access from places other than the physical law library.

Id.

denied an actual library.⁷⁵

E. The Cost of Learning at Home

One of the biggest appeals of distance learning is the economic benefit to the student. The cost of a three-year law school program, including housing, books and living expenses, is estimated to average upwards of \$100,000.⁷⁶ Most students are forced to take out tremendous loans to cover tuition costs, and full-time students at many ABA-accredited schools are not permitted to work more than twenty hours per week.⁷⁷ For students looking for a legal education without the burdens of debt, Concord offers an attractive alternative to most other institutions. Annual tuition for the JD program is \$7,350, not including the cost of books and computer equipment.⁷⁸ Factoring in the cost of books and personal expenses, four years at Concord costs approximately \$32,000, or what many typical law schools cost in tuition for a single year.⁷⁹ Much of the disparity in price is explained by Concord's ability to reduce expenses since they are not required to construct classrooms, maintain facilities, or incur other costs a typical campus brimming with students requires. Many traditional law schools have lost potential students to less expensive endeavors, perhaps even Concord, by pricing themselves out of the market.

F. The Criticism of Concord

Despite the efforts by Concord's founders and

administrators to maintain a traditional legal education through a unique medium, Concord has received a tremendous amount of criticism and resistance from legal scholars, traditionalists, and even a Supreme Court Justice. While this criticism has not weakened Concord's efforts, it has certainly hindered their quest to gain accreditation. Concord has no delusions; it realizes the debate over the legitimacy of online legal schooling is far from over.⁸⁰ Yet, they persist and also address their critics with logical responses while hoping it is only a matter of time before those responses are heard. Concord's President and Dean, Jack Goetz, says those who criticize the school for not having what is necessary to offer a quality legal education are "ill informed on the educational opportunity Concord offers."⁸¹

Harvard University, the nation's oldest continuously operating, and perhaps most prestigious law school, has been indirectly involved with Concord's program and has responded to the situation with unbridled disapproval. In 1998, revered Harvard Professor Arthur Miller agreed to record eleven Civil Procedure video lectures for Concord and endorsed Concord as a legitimate and unique endeavor.⁸² In response, Harvard modified its rules regarding conflicting commitments by professors to include Internet teaching.⁸³ Harvard also prevented Miller from producing any further lectures. Harvard claimed their actions were not financially or control-based, but were taken to prevent the "risk of diluting the value of a Harvard education by making it seem Miller was

⁷⁵ Charlotte Bynum and Claire Germain, *Legal Research in the Internet Age*, CORNELL LAW FORUM, at http://www.lawschool.cornell.edu/lawlibrary/What_is_New/internetage.htm (last modified Apr. 2000). See also Bob Hoover, *Librarians Get Truth-in-Internet Challenge*, PITTSBURGH POST-GAZETTE, June 1, 2001, at C2. See also Jamie McKenzie, *The New Library in the Wired School*, E-SCHOOL NEWS, at <http://newlibrary.org/nll.html> (Oct. 1999).

⁷⁶ See ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, *Lifting the Burdening: Law Student Debt as a Barrier to Public Service* (2003).

⁷⁷ See AMERICAN BAR ASSOCIATION PROGRAM OF LEGAL EDUCATION, at <http://www.abanet.org/legaied/standards/chapter3.html> (last visited Nov. 3, 2003); see also MISSISSIPPI BAR: LAW AS A CAREER, at <http://www.msbar.org/career.html> (last visited Mar. 18, 2003).

⁷⁸ CONCORD CATALOG, *supra* note 57, at 21.

⁷⁹ See, e.g., Jerome Pandell, *NU's Annual Tuition Increase Below National Average*, THE DAILY NORTHWESTERN, at <http://www.dailynorthwestern.com/vnews/display.v/ART/2003/02/25/3e5b7dcfb83f3> (Feb. 25, 2003).

⁸⁰ Jack Goetz, *Interactivity Remains the Key to Successful Online Learning*, at <http://jurist.law.pitt.edu/lessons/lesnov00.htm> (last visited Feb. 25, 2003).

⁸¹ *Id.*

⁸² Arthur Miller was the first professor at Harvard to offer an experimental course online, appropriately entitled, "Privacy in Cyberspace." His endorsement of Concord, which remains on their website says in part:

One of my latest endeavors involves Concord Law School. Concord represents this focus on providing legal education to those who thought a law degree out of reach. The school is at the forefront of educational technology because of its use of the Internet to conduct its law classes. I am proud to be associated with Concord because of its bold attempt to do what no one has done before.

See CONCORD LAW SCHOOL, FACULTY AND LECTURERS, at <http://www.concordlawschool.com/info/custom/concord/faculty/index.asp> (last visited Mar. 18, 2003).

⁸³ See Mark Clayton, *Harvard Draws a Line in the Cybersand*, CHRISTIAN SCIENCE MONITOR, Jan. 23, 2001, at 15.

on the Concord faculty as well as at Harvard.⁸⁴ While Professor Miller agreed to discontinue his association with Concord, he said the policy of-fended academic freedom.⁸⁵

The uproar created by Harvard is not the only highly publicized denouncement of Concord. Perhaps more upsetting were the specific attacks made by Supreme Court Justice Ruth Bader Ginsburg. While speaking at the dedication of the Rutgers University Center for Law and Justice in September of 1999, Ginsburg noted she was mostly pleased with the opportunities afforded by the Internet. Then she addressed those things she did not find pleasing:

I am uneasy about classes in which students learn entirely from home, in front of a computer screen, with no face-to-face interaction with other students and instructors So much of legal education and legal practice is a shared enterprise, a genuine interactive endeavor. The process inevitably loses something vital when students learn in isolation, even if they can engage in virtual interaction with their peers and teachers.⁸⁶

The remarks implicitly denounced Concord since they were, and are, the only institution to offer such a program. Dean Goetz responded immediately to Ginsburg's comments, stating "the reality is that many law schools still have first-year classes of seventy or eighty people in which a student has very little interaction with the professor."⁸⁷ He further noted that Concord students do interact with classmates and professors through e-mail, telephone and online discussions.

One of the more frequent and less publicized criticisms of Concord is that the Socratic Method, *i.e.*, the traditional form of law school teaching during which the professor randomly calls on in-

dividual students to discuss a case or statute, is all but lost over the Internet.⁸⁸ While that fact is undeniable, the true question is whether this teaching method is necessary in law school.

Numerous law review articles have been entirely devoted to the advantages and disadvantages of the Socratic Method. Although it is impossible to do an in-depth analysis of this teaching style, it suffices to say that it has received great criticism as being more of a "hazing" technique despite many professor's beliefs that it teaches students to "think like a lawyer."⁸⁹ For example, "[i]n a courtroom, if you are asked a question by a judge, you can't say 'I need a day or so to look that up on the Web.'"⁹⁰ While true that one cannot use the Internet for research in the heat of litigation, it is questionable whether the Socratic Method makes students any more prepared to answer questions in the courtroom. Goetz seems to feel it does not, stating that Concord's writing and research assignments teach sufficiently "clear thinking."⁹¹ Furthermore, he infers that the Socratic style is less beneficial than the Concord method: "[m]ostly today you have 110 people stuffed in a lecture room and one professor engaged in a Socratic dialogue with one student."⁹² The only certainty when examining the battle between Socratic teaching and Internet education is that much of the burden lies on legal professors to embrace the available technology, while accepting that "traditional" methods are not necessarily the best methods.⁹³ In addition, no logical explanation has been offered to explain the value of the Socratic method to those students who have no future in litigation.

⁸⁴ *Id.*

⁸⁵ Jay Lindsay, *Harvard Considering Tightening Rules for Faculty's Internet Ventures*, AP NEWSWIRE, Apr. 25, 2000 ("The question is whether my contract bounds me exclusively to Harvard Law School, or whether I have free choice.").

⁸⁶ Katherine S. Mangan, *Justice Ginsberg Raises Questions About Internet-Only Law School*, THE CHRONICLE OF HIGHER EDUCATION, at <http://chronicle.com/free/99/09/99091302t.htm> (Sept. 13, 1999) (quoting James Hoover, Associate Dean, Columbia University School of Law).

⁸⁷ *Id.*

⁸⁸ William S. Ramsey, *On-Line Law School*, at <http://williamramseylaw.com/pages/on-linelawschool.html> (last visited Jan. 17, 2003) [hereinafter Ramsey].

⁸⁹ *Id.*

⁹⁰ Pamela Mendels, *Test Preparation Company Offers Virtual Law Degree*, at http://pages.nyu.edu/~fmh1/classes/innovations_in_higher_ed/kaplanlaw.HTM (Sept. 23, 1998).

⁹¹ *Id.*

⁹² *Id.*

⁹³ Peter Tillers, *There is Something Foul in Legal Education. And the Internet is Part of the Cure*, at <http://jurist.law.pitt.edu/lessons/lesdec00.htm> (last visited Mar. 18, 2003).

Yes, many law teachers in the U.S. still use the 'Socratic Method.' But this question-and-answer procedure does not really significantly change the master-servant nature of the educational experience at law schools; 'Socrates' still runs the show and the questioning does not amount to free inquiry. The Internet, however, holds the promise, if not the guarantee, of a more equal, a more free-spirited, a more truly exploratory educational experience. This is so if only because e-mail Internet discussion allows each participant to speak as often as any other member of the group, and the physical trappings of the usual classroom, which make the teacher the center of attention, are absent. However, the Internet by itself cannot free the consumers of legal education from intellectual servility. The teacher must want to use this new educational instrument in a liberating way.

Id.

G. Concord and the Bar Exam

The ABA's refusal to grant Concord Law School accreditation initially precluded Concord graduates from taking the bar exam in almost every state.⁹⁴ This is not a problem for students who are only interested in studying law for the supplementary knowledge they will apply in their pre-existing careers.⁹⁵ For everyone else at Concord it is a major problem. While states vary with regard to their qualifications for legal practice, most require passing a state bar exam, which is predicated on having graduated from an accredited law school. In California, students have the opportunity to take the state bar exam despite not having graduated from an accredited university, provided a few requirements are met. First, students enrolled in an unaccredited program, like Concord, must register with the California Committee of Bar Examiners within ninety days of beginning classes.⁹⁶ Students are also required to take, and pass, the "baby bar" exam. The "baby bar" follows the first year of study and is only given to students attending unaccredited schools. If the student does not pass, he or she cannot sit for the California State bar exam after graduation.⁹⁷ Statistics show that unaccredited programs generally have a "baby bar" pass rate of under 30%.⁹⁸ This figure indicates there is little harm in allowing students to sit for the bar since California's "baby bar" system weeds out students who are unlikely candidates to pass the real exam.

Passing both the "baby bar" and full bar examination in California despite graduating from an unaccredited school allows one to practice law in California among graduates of Stanford and UCLA. Although it may be more difficult to waive into other states, it is not an automatic hindrance.

While some states prohibit graduates from unaccredited schools from practicing law, some states have promulgated exceptions for these students. For example, in June of 1998, the Wisconsin Supreme Court amended its Bar Admission rules:

- (1) An applicant who has been awarded a first professional degree in law from one of the following [shall be eligible to take the bar examination]:
 - (a) A law school that is fully or provisionally approved by the American Bar Association at the time of the applicant's graduation.
 - (b) A law school whose graduates are eligible to take the bar examination of the state, territory or District of Columbia in which the law school is located, provided the applicant has passed the bar examination of and has been admitted to practice in that or another state.⁹⁹

Similarly, Maryland allows anyone who had practiced law for five of the previous seven years as a lawyer, law teacher or judge to become a member of the Maryland bar, provided practitioners pay the requisite fee and pass a separate exam.¹⁰⁰

Both the Wisconsin and Maryland statutes are excellent examples of how individual states can avoid shunning graduates of distance programs, such as Concord, while still ensuring that those individuals are sufficiently trained, educated and qualified to practice.¹⁰¹

H. Why is Concord So Far Behind the Rest?

One of the more obvious deficiencies of distance legal education is the absence of available programs. Concord is presently the only purely online law school, although some lesser programs currently exist to supplement traditional legal programs. For example, there are some "Concordesque" legal institutions in other countries, and a few unaccredited law schools in the U.S.¹⁰²

⁹⁴ Ramsey, *supra* note 88.

⁹⁵ Robert Lee, a 62 year-old who is one of Concord's first graduates, says, "I live in a small town where there is no law school, and I run a very busy medical practice. This is the only opportunity I have to study law, which has been my dream for a long time. This is a dream come true. Hopefully this will allow me to help my patients get the care they need." See *Law Grads Online*, *supra* note 52.

⁹⁶ CAL. ADMIS. CODE, RULE V §2 (2003); see also CONCORD CATALOG, *supra*, note 57.

⁹⁷ See CAL. ADMIS. CODE, RULE VII.

⁹⁸ Michael Finney, *Do Online Law Schools Match Up to Traditional Class?*, at http://abclocal.go.com/kgo/news/7oys/022403_7oys_online_law.html.

⁹⁹ WIS. STAT. §40.04(1) (1998); see also Jeffrey S. Kinsler, *Correspondence Law School Grads May Practice in Wisconsin*, WISCONSIN LAWYER, at <http://www.wisbar.org/wislawmag/2001/>

11/guest.html (Nov. 2001).

¹⁰⁰ See MD. CODE, ADMIS., RULE 13, (2003).

¹⁰¹ See SJCL, ACCREDITATION, at <http://www.sjcl.edu/additionalreq.html> (last visited Mar. 18, 2003) (outlining the states that allow graduates of non-ABA-accredited schools to take their bar exams provided additional requirements are met).

¹⁰² Numerous institutions offering online legal programs exist outside of the United States, such as the Charles Sturt University located in Wagga Wagga, Australia and De Montford University in Leicester, England. They offer a list of partially online legal programs offered by accredited law schools in the United States including the University of Alabama and the University of Wisconsin. See *Law: Graduate Distance Programs*, at http://www.gradschools.com/listings/distance/law_distance.html (last visited Oct. 15, 2003); see also *Degrees-Online.com*, at <http://www.degrees-online.com/Profes>

However, the number of online legal programs comprises only a small percentage of the total number of online graduate programs offered in the United States.¹⁰³

Another shortcoming of online legal education is that no prestigious school has taken a chance by offering an online program similar to Duke University's Fuqua School of Business. However, Duke University School of Law is currently examining Fuqua's program to learn what works, what does not, and what they might be able to put into practice in future legal education distance programs.¹⁰⁴ In addition, the law school currently implements programs that are the groundwork for an online course curriculum, and there is a strong likelihood that Duke will soon become one of the first major law schools to dive headfirst into the world of online legal education.¹⁰⁵

Seemingly, the only thing stopping Duke from providing an online JD program is the same thing that has prevented other legal online programs from approaching the success of online MBA and other online graduate programs: the ABA.

V. THE AMERICAN BAR ASSOCIATION

A. History

Founded in 1878, the ABA began with only one

hundred lawyers from twenty-one states.¹⁰⁶ The founder's mission was to assist in the "advancement of the science of jurisprudence, the promotion of the administration of justice and a uniformity of legislation throughout the country."¹⁰⁷ They immediately established the Standing Committee on Legal Education and Admissions to the Bar to help mold American legal education.¹⁰⁸ By 1900, the ABA had played a major part in the creation of the Association of American Law Schools ("AALS"), through which it was given minor regulatory power over membership requirements.¹⁰⁹ In 1921, they established the "Standards for Legal Education",¹¹⁰ and since then the ABA has been regarded as the primary guardian of the American legal system.

Today, the ABA admits over 50,000 new members per year and has a total membership of over 350,000 members.¹¹¹ Membership is open to any attorney admitted to practice and in good standing before the bar of any state or territory of the United States.¹¹² Similar to the ABA's original mission statement, today's ABA strives "to be the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law."¹¹³

Despite the ABA's stated intentions, there has

sional/Law/ (last visited Oct. 15, 2003).

¹⁰³ *U.S. News and World Reports* claims there will be over 200 institutions offering online graduate degrees in addition to 150 offering online undergraduate degrees by next year. They also list over forty online business degrees available from accredited institutions as compared to no accredited online law degrees. See James M. Pethokoukis, E-Learn and Earn, *U.S. NEWS & WORLD REPORT*, June 24, 2003, at 36. See also *U.S. NEWS & WORLD REPORT*, E-LEARNING, ONLINE GRADUATE DEGREES: Business, at http://www.usnews.com/usnews/edu/elearning/tables/mba_reg_prof.htm (last visited Nov. 17, 2003).

¹⁰⁴ Richard A. Danner, *Strategic Planning for Distance Learning in Legal Education: Initial Thoughts on a Role for Libraries*, at <http://www.law.duke.edu/fac/danner/paper5.html> (last visited Mar. 20, 2003).

¹⁰⁵ Currently Duke Law School requires all of its students to own portable computers. Furthermore, Professor David Lange uses student produced video assignments to supplement his intellectual property and entertainment law courses, and Professor Michael Byer uses video conferencing in his International Dispute Seminar to present guest lecturers from Cambridge University. See *id.*

¹⁰⁶ LECTRIC LAW LIBRARY, BRIEF HISTORY OF THE AMERICAN BAR ASSOCIATION, available at <http://www.lectlaw.com/files/att05.htm> (last visited Mar. 18, 2003) [hereinafter BRIEF HISTORY OF THE AMERICAN BAR ASSOCIATION].

¹⁰⁷ *Id.*

¹⁰⁸ See ABA FOREWORD, *supra* note 5.

¹⁰⁹ The AALS is a non-profit association of 164 law schools committed to "the improvement of the legal profession through legal education." It is "legal education's principal representative to the federal government and to other national higher education organizations and learned societies." See *id.* See also AALS, PURPOSE AND DESCRIPTION, at <http://www.aals.org/about.html> (last visited Mar. 18, 2003).

¹¹⁰ See ABA FOREWORD, *supra* note 5.

¹¹¹ See BRIEF HISTORY OF THE AMERICAN BAR ASSOCIATION, *supra* note 106.

¹¹² *Id.* The following are eligible to join the ABA as associates: non-lawyer judges, federal court executives, bar association executives, law school educators, criminal justice professionals, members of administrative agencies, industrial organization economists, law office administrators, legal assistants, law librarians and members of Association-approved law school boards of visitors. Members of the legal profession in other nations who have not been admitted to the practice of law in the United States can become international associates. *Id.*

¹¹³ The goals of the ABA are:

- Promote improvement in the American system of justice;
- Promote meaningful access to legal representation and the American system of justice for all persons regardless of their economic or social condition;
- Provide ongoing leadership in improving the law to

been an increasing number of lawyers and law students who feel that the ABA abuses its power, and that regulation or even the abolishment of the ABA is necessary to truly ensure fairness in the competitive world of legal education.

For more than half a century, and especially during the past twenty years, the American Bar Association has administered the accreditation system for law schools. This system arose out of successful efforts during the Great Depression by a combination of elite law professors, law schools, and lawyers to limit competition in each of the three related markets for law faculty, legal training, and legal services. Once it was firmly established, this system reduced compensation in the markets for legal training and for law faculty, increased benefits for law faculty, and insulated existing lawyers from new competition.¹¹⁴

B. The ABA and Accreditation

From about 1890 to 1930, the number of law schools in the United States tripled, and the number of law students increased over 800%.¹¹⁵ During most of this period, clerking for a law firm or apprenticing for an established lawyer was the only requirement before one was permitted to take the relatively simple bar exams.¹¹⁶ However, the increasing numbers of schools and students produced attorneys that posed a threat to established lawyers.¹¹⁷

Since the desire on the part of young men to study law has become so great . . . teaching law has become a thriving and profitable industry The competition of such [graduates of new proprietary law schools] between themselves and others of their own better equipped has a tendency to lower the compensation for professional labor and decrease the earning of all of

-
- serve the changing needs of society;
 - Increase public understanding of and respect for the law, the legal process and the role of the legal profession;
 - Achieve the highest standards of professionalism, competence, and ethical conduct;
 - Serve as the national representative of the legal profession;
 - Provide benefits, programs and services which promote professional growth and enhance the quality of life of the members;
 - Advance the rule of law in the world;
 - Promote full and equal participation in the legal profession by minorities and women;
 - Preserve and enhance the ideals of the legal profession as a common calling and its dedication to public service;
 - Preserve the independence of the legal profession

them.¹¹⁸

In response, the AALS, which was regulated in part by the ABA, began to deny membership to proprietary schools.¹¹⁹ Shortly thereafter, the ABA and deans of elite law schools formed an “alliance” in their attempt to limit the number of new lawyers by eliminating proprietary law schools.¹²⁰

Since the ABA claimed to represent the entire legal profession, by 1941 they were able to convince forty-one states to enact legislation that required graduation from an ABA-accredited school as a prerequisite for the bar exam.¹²¹ With this legislation in place, the ABA has wielded the power to determine who is worthy of accreditation for over sixty years. In that time, the ABA has convinced all but four of the fifty states that their stamp of approval should be required before a student may sit for the bar exam.¹²²

C. *United States v. ABA*

Despite the ABA monopoly throughout much of the twentieth century, numerous lawsuits were filed against it in the last twenty years. Many of these suits were feeble attempts to convince the courts to compel the ABA to soften their rigid requirements for accreditation approval. The most notable of these suits involved the United States government, represented by the Department of Justice (“DOJ”), and the result put a dent in the ABA’s invincibility.

Provoked by antitrust claims against the ABA by the Massachusetts School of Law, which had been denied accreditation by the ABA in 1993, the DOJ thoroughly investigated the ABA’s accreditation

and the judiciary as fundamental to a free society.

See AMERICAN BAR ASSOCIATION, ABA HISTORY, at <http://www.abanet.org/media/overview/phistory.html> (last visited Nov. 3, 2003).

¹¹⁴ Shepherd & Shepherd, *supra* note 4, at 2094-2096.

¹¹⁵ *Id.* at 2115.

¹¹⁶ *Id.* Until 1927, law school education was not a bar requirement. In fact, over one fourth of the states required no formal education beyond high school and over thirty did not even require a high school diploma. *Id.* at 2114-15.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 2115, 2116.

¹¹⁹ *Id.* at 2116.

¹²⁰ *Id.* at 2117.

¹²¹ *Id.* at 2122.

¹²² Currently, only California, Tennessee, Alabama and Massachusetts allow graduates of non-ABA-accredited schools to take their bar exams. See Leef, *supra* note 6.

process and filed suit.¹²³ The suit was settled after extensive negotiations, and the ABA agreed to relinquish some of its control over the legal education field.¹²⁴ Among the agreed upon terms were three that specifically regarded accreditation: (1) the ABA may no longer take any action that attempts to regulate or standardize the salaries of law professors; (2) the ABA may not prevent an institution from existing for-profit; and (3) the ABA may not prevent accredited schools from accepting transfer credits from unaccredited schools.¹²⁵

While the victory against the ABA was significant in that it both instituted significant changes and made it more popular for law schools to voice their criticism, the organization continues to be the accreditation gatekeeper. Despite their claim of being nothing more than “an impartial observer that contributes unbiased information about law schools’ characteristics to consumers,” that has “no animus against unaccredited law schools,” it is their “unbiased information” that has kept Concord and other prospective distance programs outside of the gates looking in.

D. Why Distance Learning Has Been Denied Accreditation

Distance law schools are not accredited by the ABA for two specific reasons: ABA Standards for Approval of Law School Standards 304 and 305. To be eligible for accreditation, a school must provide a student with no fewer than 56,000 minutes of instruction time prior to graduation, with at least 45,000 of these minutes offered by “attendance in regularly scheduled class sessions at the law school conferring the degree.”¹²⁶

Under ABA Standard 306(c):

A law school may award credit for distance education and may count that credit towards the 45,000 minutes of instruction required by Standard 304(b) if: (1) there is ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and (2) there is ample monitoring of student effort and accomplishment as the course progresses.¹²⁷

Although this section seems to offer hope that a distance program less intense than Concord’s may receive accreditation if offered in conjunction with a more traditional curriculum, one needs only to look at ABA Standard 306:

- (d) A law school shall not grant a student more than four credit hours in any term, nor more than a total of 12 credit hours, toward a J.D. degree for courses qualifying under this Standard.
- (e) No student shall enroll in courses qualifying for credit under this Standard until that student has completed instruction equivalent to 28 credit hours towards the J.D. degree.
- (f) No credit otherwise may be given toward the J.D. degree for any distance education course.¹²⁸

While the exceptions outlined for distance learning do indicate some flexibility in the ABA’s traditionally rigid standards, they still signify that the ABA is far from accepting a purely online school. Jack Goetz sees the ABA’s exceptions as an indication that they are “moving glacially” towards accrediting Concord, although he claims to be “happy they’re moving at all.”¹²⁹ He optimistically adds, “Someday they’ll see the light.”¹³⁰ As far as the ABA is concerned, that day is not in the immediate future. According to Barry Currier, the ABA’s Deputy Consultant on legal education, Concord has offered no convincing reason why it should be accredited. “The bottom line is that lawyers need to have proper training,” says Currier.¹³¹ He insists that some day the proper training for accreditation may exist online, but Concord’s lack of face-to-face interaction indicates that it is “not there yet.”¹³² With the ABA’s track record, one must wonder if Concord ever will be accredited.

VI. CONCLUSION: HOW THE ABA COULD MAKE PEACE WITH DISTANCE EDUCATION WHILE PRESERVING ITSELF

The twentieth century began with the ABA’s rise in prominence to unprecedented heights and ended with multiple lawsuits and harsh criticism.¹³³ If the ABA hopes to maintain control of

¹²³ Shepherd & Shepherd, *supra* note 4, at 2154.

¹²⁴ *Id.*

¹²⁵ United States v. Am. Bar Ass’n, 934 F. Supp. 435, 435-437 (D. D.C. 1996).

¹²⁶ AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS, STANDARD 304(b), available at <http://www.abanet.org/legaled/standards/chapter3.html> (last visited Oct. 15, 2003).

¹²⁷ *Id.*

¹²⁸ *Id.* at STANDARD 306.

¹²⁹ *Law Grads Online*, *supra* note 52, at 2.

¹³⁰ *Id.*

¹³¹ Scheeres, *supra* note 11, at 2.

¹³² *Id.*

¹³³ See generally Am. Bar Ass’n, 934 F. Supp. at 435. See also Florida Bd. of Bar Examiners *ex rel.* Barry Univ. School of

legal education in any capacity in the twenty-first century, changes are in order.

This Comment examined the Concord School of Law because it is an ideal example of the most extreme form of distance learning—precisely what the ABA fears most. While Concord has received a tremendous amount of attention for its groundbreaking efforts, law schools that exist entirely in cyberspace will not undermine traditional systems, nor will they lure multitudes of students away from traditional programs, regardless of whether or not they receive accreditation. Concord and similar programs will attract students either looking to get a legal education on their own time, or those who simply do not meet the standards of more selective programs.

Despite the optimism of Jack Goetz, and regardless of what changes the ABA has in store, it is highly unlikely that Concord or any other entirely online legal education provider will ever receive ABA accreditation. Although it has taken great strides to provide interaction among students and a curriculum that is comparable to those of many ABA accredited universities, Concord is so far behind the current ABA Standards that to accredit it would go against everything the ABA has taught over the last two decades. To date, there is no indication that the U.S. has any intention of publicly supporting distance education or endorsing Concord in a suit against the ABA.

That does not necessarily leave Concord or its successors without remedy. Should the criticism continue simultaneously with the ABA's stubborn reluctance to change with the times, unaccredited schools, both traditional and Internet-based, may begin looking to state legislators for assistance. Similar to the manner in which the ABA and deans from elite schools petitioned state legislatures to enact legislation requiring ABA accredita-

tion before one is permitted to take the bar exam, unaccredited law schools could petition state legislatures to repeal such legislation.

Some argue the system as it stands is both under and over-inclusive and that states actually hamper the legal profession by limiting the bar exam to ABA-accredited graduates.¹³⁴ Should opponents succeed in convincing states currently requiring ABA accreditation to include distance learning programs, a domino effect could occur across the country within the next few decades.

Though it is unlikely that all forty-six states currently requiring ABA accreditation as a prerequisite to the bar exam will overturn their legislation, the ABA has indicated that it is aware that changes in distance education are in order. Their acceptance of token distance learning credits at accredited schools is certainly a step in the right direction. Whether it is the beginning of a revolution or a one-time bending of their traditional rules is entirely their decision. The ABA's defense for its accreditation policies, that they actually are trying to protect consumers from being "exploited" by insufficient programs, becomes less convincing as the cost of education at ABA-accredited institutions continues to soar.¹³⁵ The ABA's further insistence that it is crucial for students to learn in an environment where they can meet face-to-face with teachers and students has never been substantiated with a concrete explanation for why such interaction is a necessity in legal education. The ABA is fortunate that as the governing body they do not have to justify their reasoning, as they might be hard pressed to do so in regard to this claim. However, the animosity building against the ABA indicates that they should start formulating an explanation for their policies soon, as the need to defend themselves continues to grow.

Law, 821 So. 2d 1050 (Fla. 2002).

¹³⁴ See Shepherd & Shepherd, *supra* note 4, at 2251-52. The accreditation requirement is unfair and inefficient because it is both overinclusive and underinclusive. It is overinclusive because it excludes students who would become excellent lawyers even without attendance at an ABA-approved school. These students could receive adequate training by private study, by apprenticeship, or by study at cheaper unaccredited schools. The present system would have excluded both Abraham Lincoln and all of our founding fathers and early presidents who were lawyers. Indeed, many recall a golden age of lawyering, when lawyers were responsible professionals who delighted in public service. This golden age is instructive, even if the nostalgia may be partly exaggerated. It oc-

curred when most lawyers received no law school training. The recent malaise in the legal profession, in which lawyers have become perceived as greedy parasites, has occurred during the same period that law school training became dominant.

Similarly, the accreditation requirement is underinclusive because it fails to exclude from the profession those who have attended an ABA-approved school, but who nonetheless are not fit for practice. It is inevitable that some students from ABA schools become less effective lawyers than would students who lack the credentials or money to attend an ABA school.

Id.

¹³⁵ *Id.* at 2253.

Many wish the ABA would simply provide impartial and unbiased information so that people could make their own choices as opposed to "suppressing competition."¹³⁶ Unfortunately, the ABA would never reduce itself to such a level unless it was forced off of its perch by anti-ABA legislation. More realistically, one should hope the ABA's acceptance of distance education grows directly in correlation with the online education industry.

While a grudge match between the ABA and its innumerable opponents seems like it will be a reality in the near future, the two sides will eventually mirror the result in *ABA v. United States*: they

will settle. Neither side will ever totally agree, but the ABA will be forced to bend its restrictions to the unstoppable force that is distance education. While Concord may never receive accreditation, legal programs analogous to Duke's Fuqua School of Business are on the way. Those who thought they would never see the ABA's armor kink might be surprised, but it would not be the first time. Who in the ABA would have been surprised to hear a law student sitting in his living room was receiving a lecture from a Harvard Professor? Doubtfully any of them, but times change and so must the American Bar Association.

¹³⁶ *Id.* at 2255.