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“The Worst Idea Ever”: Lessons from One Law School’s Embrace of Online Learning

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“The Worst Idea Ever”: Lessons from One Law School’s Embrace of Online Learning

Abstract

This essay explores one law school's contrarian and pioneering embrace of online education into the core of its J.D. program, a five-year journey undertaken by William Mitchell College of Law (now Mitchell Hamline School of Law). This essay makes a simple point. Online pedagogy ought to be part of the palette of tools available for the design of J.D. programs. But placing it at the core of a J.D. program is not universally to be desired. Like any pedagogy, these online tools have their strengths and their weaknesses. The particular combination of tools and methods represents a question of design: of arranging resources to maximize strengths and minimize weaknesses-within a set of constraints. And the key constraint ought to be the particular mission of each law school. Design in the absence of clarity of mission, and without the availability of the full gamut of instructional methods, is impoverished and suboptimal.

An openness to bringing online pedagogy into the core has this salutary effect: it invites, almost requires, intentional, mission-based design. It invites educators to think foundationally about what they seek to accomplish by their J.D. programs, and how that might best be accomplished. It exposes business-as-usual thinking, and forces one to question what seem to be quite foundational assumptions about how to educate lawyers. For this reason alone, online methodologies ought to be clearly and readily available to legal educators.

There are strong sentiments opposing substantial incorporation of online components in legal education, many of which I will explore. Not the least has been the historic, robust embrace of face-to-face teaching by the American Bar Association (ABA). As well, online pedagogy, especially if its adoption is part of a major re-design of the J.D. program, is not cheap and not easy. And the uncertainty surrounding many of the design constraints is high. All of this leads me to conclude that only one variety of law school mission is likely to support substantial online incorporation-that with the goal of expanding access to legal education.

Keywords

Legal education, Online learning, Hybrid JD, Mitchell Hamline School of Law

Disciplines

Legal Education

THE “WORST IDEA EVER!”—LESSONS FROM ONE LAW SCHOOL’S PIONEERING EMBRACE OF ONLINE LEARNING METHODS

Eric S. Janus[†]

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INTRODUCTION

Should online instruction be a substantial, or even a core part, of Juris Doctor (“J.D.”) programs? Is it the worst idea ever? A serious option that some law schools should consider? The inevitable future of legal education? In the overall universe of higher education, these are surprising questions to be asking in 2020. Compared to most other areas of higher education, legal education has been slow to adopt online pedagogies into its canon of acceptable instructional options.¹ The reluctance to adopt

[†] Professor of Law, Mitchell Hamline School of Law. The author was President and Dean of William Mitchell College of Law during the development of its Hybrid J.D. Program. Portions of this essay are based on Eric S. Janus, Gregory M. Duhl & Simon Canick, *William Mitchell College of Law’s Hybrid Program for J.D. Study: Answering the Call for Innovation*, B. EXAMINER 28 (2014). Many thanks to my research assistant Samantha Zuehlke for her expert assistance in preparing this manuscript.

1. See David A. Thomas, *American Legal Education: Moving from the Classroom Without Paper to Instruction Without the Classroom?*, 1 J. INFO. L. & TECH. (2001), https://warwick.ac.uk/fac/soc/law/elj/jilt/2001_1/thomas/ (“In American legal education, distance learning is moving very cautiously.”).

these technological teaching options reflects a deep-seated, historic elitism in legal education, combined with a devotion to a particular pedagogical paradigm (the “Socratic Method”) that is as strong emotionally as it is short on empirical grounding.² This essay explores one law school’s contrarian and pioneering embrace of online education into the core of its J.D. program, a five-year journey undertaken by William Mitchell College of Law (now Mitchell Hamline School of Law).

This essay makes a simple point. Online pedagogy ought to be part of the palette of tools available for the design of J.D. programs. But placing it at the core of a J.D. program is not universally to be desired. Like any pedagogy, these online tools have their strengths and their weaknesses. The particular combination of tools and methods represents a question of design: of arranging resources to maximize strengths and minimize weaknesses³—within a set of constraints. And the key constraint ought to be the particular mission of each law school. Design in the absence of clarity of mission, and without the availability of the full gamut of instructional methods, is impoverished and suboptimal.

An openness to bringing online pedagogy into the core has this salutary effect: it invites, almost requires, intentional, mission-based design. It invites educators to think foundationally about what they seek to accomplish by their J.D. programs, and how that might best be accomplished. It exposes business-as-usual thinking, and forces one to question what seem to be quite foundational assumptions about how to educate lawyers. For this reason alone, online methodologies ought to be clearly and readily available to legal educators.

There are strong sentiments opposing substantial incorporation of online components in legal education, many of which I will explore below. Not the least has been the historic, robust embrace of face-to-face teaching by the American Bar Association (ABA).⁴ As well, online pedagogy, especially if its adoption is part of a major re-design of the J.D. program, is not cheap and not easy. And the uncertainty surrounding many of the design constraints is high. All of this leads me to conclude that only one variety of law school mission is likely to support substantial

2. See Stephen M. Johnson, *www.lawschool.edu: Legal Education in the Digital Age*, 2000 WIS. L. REV. 85, 87–89, 94 (2000).

3. Gerald F. Hess, *Blended Courses in Law School: The Best of Online and Face-to-Face Learning?*, 45 MCGEORGE L. REV. 51, 56, 59 (2013) (“Effective blended course design requires the teacher to integrate online and classroom instruction thoughtfully, seeking to maximize the advantages of both online and face-to-face learning.”).

4. *Id.* at 52 (“The American Bar Association has built its accreditation standards around the face-to-face course model.”).

online incorporation—that with the goal of expanding access to legal education.

This paper is not about the benefits of adopting technology at the *margins* in legal education. That is easy and relatively risk-free. The question posed here is whether, how, and—most importantly—why, a law school would or should place online education at the *center* of its program of education. The paper builds this thesis around the experience we lived at William Mitchell College of Law (now Mitchell Hamline School of Law) during the period 2010 through 2015—a period during which I was President and Dean of this independent law school—as we conceived of, debated, designed, and implemented the first ABA-approved J.D. program centered on a substantial component of online instruction. This narrative is followed by a necessarily preliminary and incomplete assessment of the operation of the programs of blended learning we adopted, and a summary of lessons to be learned from our experience.

I. THE BEGINNINGS: FROM “WORST IDEA EVER” TO ABA APPROVAL

In 2010, William Mitchell College of Law was a law school that had, for 110 years, set its own path.⁵ With its beginnings as one of a handful of night law schools in Minneapolis and St. Paul, its soul from birth was providing access for people who needed to work or care for families, through a flexible program of day and night, full and part-time programs.⁶ It had always been closely connected to the practice of law—“a lawyer’s law school”⁷—and was a pioneer in the development of comprehensive writing and skills programs⁸ and clinical education.⁹ Key antecedents to the generalized shift in legal education towards teaching skills and values,

5. See Nancy Crotti, *Fitting a Law Degree Around Your Life: Then and Now*, MITCHELL HAMLINE SCH. OF L. (Dec. 16, 2017), <https://mitchellhamline.edu/news/2017/12/16/fitting-a-law-degree-around-you-your-life-then-and-now/>.

6. See Douglas R. Heidenreich, *With Satisfaction and Honor: William Mitchell College of Law, 1900–2000* 1, 10–14 (1999).

7. Eric S. Janus, *Clinics and Contextual Integration: Helping Students Put the Pieces Back Together Again*, 16 WM. MITCHELL L. REV. 463, 464 n.4 (1990) (quoting SAINT PAUL COLLEGE OF LAW ANNOUNCEMENTS AND BULLETIN 1954–55, at 4).

8. See Deborah A. Schmedemann & Christina L. Kunz, *Dean James F. Hogg: A Decade of Developments in Performance-Based Legal Education*, 21 WM. MITCHELL L. REV. 673, 673–74 (1996).

9. See Roger S. Haydock, *Clinical Legal Education: The History and Development of a Law Clinic*, 9 WM. MITCHELL L. REV. 101, 104 (1983).

in addition to doctrine, can be traced to William Mitchell alumni and faculty such as Chief Justice Warren Burger¹⁰ and Minnesota Associate Justice Rosalie Wahl.¹¹

Sometime in 2009 or 2010 we had a visit from Barry Currier, arranged by our innovative faculty member Professor John Sonsteng. Mr. Currier would become the head of the ABA's law school accreditation operation, and was then Dean of Concord Law School, an online, well-established law school that lacked ABA approval, but was accredited by the State of California.¹² In the course of a wide-ranging conversation about innovations in legal education, Mr. Currier suggested that we think about seeking a variance from the ABA to offer a J.D. program that combined substantial online instruction with onsite, face-to-face portions of the program that were concentrated in several long weekends and a summer session.¹³ We came to refer to this approach that blended online with onsite instruction as the hybrid model.¹⁴

This suggestion struck a chord with me for several reasons: access to legal education and innovation were two. As alluded to above, our school had a long history of innovative teaching. As well, our access mission as a night law school was in focus: enrollment in our part-time evening program had been slowly but steadily declining, yet we were aware that access to legal education was a widespread problem, especially in rural areas.

At about the same time as Mr. Currier's visit, the college had hosted a symposium on the shortages of lawyers in rural areas. Deeply involved in the effort to provide legal services throughout the state, Professor Peter Knapp observed that "parts of Greater Minnesota needed new strategies to get more people help... 'We have come a ways down the road,' he said. 'There is a long ways to go.'"¹⁵ During a 2011 Mitchell event to promote rural practice, a rural Minnesota lawyer in his late 40s said he

10. See Jeffrey B. Morris, *Warren E. Burger and Change in Legal Education*, 11 COLONIAL LAW. 1, 2 (1981).

11. See Rosalie Wahl, *Lest We Forget: Celebrating Thirty Years of Clinical Legal Education at William Mitchell College of Law*, 30 WM. MITCHELL L. REV. 5, 6 (2003); see also Ann Juergens, *Rosalie Wahl's Vision for Legal Education: Clinics at the Heart*, 30 WM. MITCHELL L. REV. 9, 14-16 (2003).

12. See Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 WM. MITCHELL L. REV. 841, 847 (2000).

13. See *id.* at 867 n.105.

14. See Eric S. Janus, Gregory M. Duhl & Simon Canick, *William Mitchell College of Law's Hybrid Program for J.D. Study: Answering the Call for Innovation*, B. EXAMINER 28, 28 (2014).

15. Scott Russell, *Minnesota's Legal Safety Net: Many Hands Intertwined*, 66 BENCH & B. MINN. 22, 26 (2009).

was the youngest lawyer in his community.¹⁶ Participants in the discussion included older lawyers who said, essentially, “I have a great career with lots of clients, and a humane lifestyle, but I’m going to retire soon and I don’t have anyone to leave my practice to.”¹⁷ We theorized that there were college graduates in rural areas who would not, or could not, relocate to attend law school, but who would make great lawyers and fill an important need in their hometowns. This, and other aspects of our access mission, were to become central themes as we developed our plans.

As President and Dean, I decided that we would make a serious run at developing a hybrid program, and I asked our Library Director and Associate Dean, Simon Canick, to head up an effort to explore this idea. Dean Canick made an initial presentation to our Board of Trustees in February 2010, in which he traced the increasing spread of distance educational approaches in higher education and summarized the rather extensive use of online technologies at William Mitchell College of Law to that date.¹⁸ Dean Canick’s presentation put some emphasis on the availability of synchronous tools, such as Adobe Connect: “To be clear, videoconferencing isn’t new. What’s new is that we can afford to use it, and that we can adapt it to our style of teaching.”¹⁹ Describing one of our existing trial advocacy courses, his presentation emphasized the advantages of such synchronous pedagogy in teaching lawyering skills: “We use whiteboards just like in a classroom, and PowerPoint. . . . Students go home, videotape themselves with a webcam or some other recording device, then upload them to YouTube. [The t]eacher adds annotations to the video, or types written comments.”²⁰ His presentation proposed adding online components to a variety of classes “to add flexibility” to our program.²¹ His presentation also mentioned the idea of a “hybrid model” with “[f]ace-to-face classes one weekend a month during the regular academic year, plus an intensive two-week block over the summer.”²² He noted that “[t]his is as far as you can push the standards

16. Email from Simon Canick, Assoc. Dean to Eric S. Janus, President and Dean, William Mitchell Coll. Of Law (Aug. 5, 2019) (on file with author).

17. *Id.*

18. Email from Simon Canick, Assoc. Dean to Eric S. Janus, President and Dean, William Mitchell Coll. of Law (Feb. 17, 2010, 12:48 CST) (on file with author).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

without violating ABA standards.”²³ He concluded: “This isn’t a proposal... just food for thought.”²⁴

By July of 2010, our thinking had evolved to fully embrace the “hybrid model.”²⁵ In a document entitled “Transforming Delivery of Legal Education,” Dean Canick laid out a plan:

With the rapid growth of online, distance education, William Mitchell College of Law is implementing strategies for using this tool to increase access, improve learning, and help manage the costs of a law school education. Our plan at William Mitchell is to improve on our existing high quality of legal education and to use all the tools, including online technology, available to us. Central to our plans will be allegiance to our traditional mission: providing talented students with meaningful access to engaged, practical legal education.

Our vision is to implement a new legal educational model—what we call the “hybrid model”—that will combine online with on-campus courses and practical, experiential learning. It will be part of an overall plan to provide the Mitchell brand of legal education in a way that delivers quality, experiential learning and value to our students—whether that education is delivered full-time, part-time or on a hybrid, online/on-campus basis.²⁶

The document continued:

[w]e may also seek a waiver to include a somewhat higher proportion of online teaching. The program model is likely to include several three-day weekends each semester during the academic year and an intensive two-week summer session. All other coursework will be online. Students will complete the J.D. in four years.²⁷

The memo characterized the proposal as a “major reform that will be subject to approval by Mitchell’s faculty.”²⁸ The memo proposed an aggressive timeline for faculty and board consideration, and for the development of the design and curriculum for the hybrid program.²⁹ It contemplated a beginning date two years later, in fall 2012.³⁰

It quickly became apparent that we did not have sufficient support

23. Email from Simon Canick, Assoc. Dean to Eric S. Janus, President and Dean, William Mitchell Coll. of Law (Feb. 17, 2010, 12:48 CST) (on file with author).

24. *Id.*

25. See Memorandum from Simon Canick, Assoc. Dean to Eric S. Janus, President and Dean, William Mitchell Coll. of Law (July 2010) (on file with author).

26. *Id.* at 1.

27. *Id.* at 2.

28. *Id.*

29. *Id.* at 5.

30. Memorandum from Simon Canick, *supra* note 25.

from the faculty to proceed. Especially memorable was the comment at one of the “hybrid task force” meetings by one of our senior faculty members, concluding that this was “the worst idea ever.” Recognizing that faculty support and participation were essential to building any new program, it made sense to take time to continue to build additional comfort and competence with distance education. In part, this was accomplished by encouraging and supporting individual faculty members in the development of courses—and components of courses—using online technology.

It bears emphasizing that our faculty had a long tradition of being open to innovation and change in legal education.³¹ The lack of support for the hybrid proposal arose not from a generalized hostility to change, although that certainly gave rise to a small portion of the concern, but rather from more practical considerations. In that sense, our faculty differed from the received wisdom about law school faculties. The ABA Task Force on the Future of Legal Education reported that faculty cultures within law schools “tend to be stable and not easily changed,” arguing that desired change “requires a reorientation of attitudes towards change, including market-driven change, by persons within the law school.”³²

Our 2011 self-study described faculty concerns.³³ The worries were not couched in a reverence for the traditional Socratic pedagogy.³⁴ Rather, our faculty had much more pragmatic concerns: “[s]ome task force members expressed concerns regarding the potential market for a hybrid J.D., whether we had adequate financial resources to develop and sustain such a program, the willingness of college faculty to design hybrid courses, and the effect of a hybrid J.D. on the college’s reputation.”³⁵ But the faculty expressed a desire to continue working on the idea of the hybrid model:

In light of the goals and concerns discussed above, the Task Force made the following recommendations: (i) conduct market research to assess

31. Mitchell Hamline Sch. of L., *History*, (last visited Aug. 20, 2019), <https://mitchellhamline.edu/about/history/>.

32. Am. Bar Ass’n Task Force on Future of Legal Educ., *Report and Recommendations*, 15–16 (2014), <http://s3-ap-southeast-2.amazonaws.com/resources.farm1.mycms.me/centre-forlegaleducation-edu-au/Resources/ABA%20Task%20Force%20Report.pdf> [hereinafter *Future of Legal Education Task Force Report*]. The task force suggests, however, that successful adoption of its recommendations “requires a reorientation of attitudes toward change, including market-driven change, by persons within the law school.” *Id.* at 16.

33. Ann Juergens et al., *William Mitchell College of Law Self Study* (Apr. 13, 2011) (unpublished study) (on file with author).

34. *Id.*

35. *Id.*

both the demand for a hybrid J.D. program and its reputational impact (if any) on William Mitchell; (ii) designate a small group (3–4 people) to develop a proposal, using the goals developed by the Task Force as parameters; (iii) continue to explore ways to teach effectively with technology and invest, to the extent possible, in showing faculty how to build blended or fully online courses.³⁶

The Faculty Curriculum Committee adopted these recommendations, which were implemented beginning in spring 2011.

Some concerns continued into 2012 as we reported in a 2012 strategic planning document:

Although we believe the Hybrid J.D. would attract an audience, discussions with William Mitchell faculty members indicated reluctance to move quickly. As a result, our approach has been to encourage professors to develop fully online or blended courses, incorporating technology chosen to match their comfort level and learning objectives.

We continue to develop new courses, and will continue to seek a supportable, scalable model for delivering online education. Given our analysis that a market exists for [a] Hybrid [J.D.], we hope our strategy will strengthen our expertise in online pedagogy while generating faculty enthusiasm for a larger scale program.³⁷

We moved to the next phase in 2013. In part, the impetus for the move was an approach from a national for-profit educational organization that expressed interest in a joint venture to develop the hybrid program. This approach pushed us to move forward for several reasons. The interest of this national group gave us confidence that the idea for the hybrid program was sound and marketable. And the company had both the financial and the technological resources we thought would be needed to get the program started. This spurred the appointment of internal groups to design the hybrid program, choose a learning management platform, and manage the process of seeking ABA approval.³⁸ In addition to Associate Dean Simon Canick, leaders in this effort were Associate Deans Nancy Ver Steegh, Mary Pat Byrn, and Mehmet Konar-Steenberg, and Professor Greg Duhl, who eventually had a major role in developing the

36. *Id.*

37. Memorandum from Eric S. Janus, President and Dean, William Mitchell Coll. of Law to the Strategic Planning Comm. of William Mitchell Coll. of Law (July 10, 2012) (on file with author).

38. *See generally* Council of the ABA Section of Legal Educ. & Admissions to the Bar, *ABA Standards and Rules of Procedure for Approval of Law Schools 2019-2020*, AM. B. ASS'N 1, 3–6 (2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-and-rules-of-procedure.pdf (outlining the process for law schools to obtain ABA approval).

curricular structure for the program.³⁹

From the beginning, the planning and design of the program were sharply focused on the school's two-pillar mission: access through flexible scheduling and experiential learning.⁴⁰ The program as designed would require a variance from the ABA to allow for fifty percent distance education and fifty percent face-to-face instruction in the foundational courses.⁴¹

Key structural features of the design were dictated by our mission. For example, we chose to schedule the face-to-face time in week-long sessions, rather than more frequent weekend sessions, because we felt the concentration of on-campus hours would advance both our access and experiential missions. The face-to-face instruction would be delivered in week-long, intensive sessions—an orientation week at the beginning of each of the first two years, and capstone weeks at the end of the first four semesters. The capstone weeks were designed to be largely experiential,⁴² and to integrate content from all of the courses in which the students were enrolled that semester. Week-long sessions, rather than long weekend sessions, would reduce travel time and expense, facilitating participation of students from more distant homes, and would allow for a design of simulation activities that integrated all aspects of the semester's instruction, and thereby provide a more realistic learning experience. This notion of "integration" was central to the design. As explained in the

39. Others involved included Professor Jim Hilbert; Karen Westwood, Assistant Director, Research and Instructional Services; Janelle Beitz, Research and Instructional Librarian; and Kevin Hill, Student Bar Association Designee and Curriculum Committee Representative, Kathy Panciera, Vice President of Finance; and Louise Copeland, Director of Marketing and Alumni Relations.

40. The school's mission statement was as follows:

We serve the law. We teach it, study it, practice it, and work to make it just. This is our mission. Our students come to William Mitchell with diverse traits, talents, and experiences, yet they have in common a desire to transform themselves into skilled and ethical legal professionals. They learn from us and from each other. We challenge and support them, and we are responsive to their family and career commitments. We study law and the legal profession as critical observers and active participants. Our legal education incorporates scholarship and practice, maintains a strong connection to the profession, is intellectually rigorous, and instills an ethic of service to clients and community.

See Irene Scharf & Vanessa Merton, *Table of Law School Mission Statements*, U. MASS. SCH. L.: SCHOLARSHIP REPOSITORY 1, 119 (2016) (providing a repository of law school mission statements).

41. See Janus, Duhl & Canick, *supra* note 14, at 28–29 (providing a more complete description of the then-current ABA rules).

42. This was later modified at the request of the faculty to allow for the inclusion of more traditional classroom activities.

school's variance application:

The Mitchell faculty believe that doctrine, skills, and professional values are most effectively learned when woven into an experiential program that simulates or resides in the real world. This approach helps students to “connect the analytically separate pieces of their legal education together into a meaningful whole.”⁴³

To facilitate the integration of learning, we chose the course offerings for each semester so that they related to each other thematically.⁴⁴ The first two semesters, for example, were designated “legal foundations”; each included two doctrinal courses and a related skills course.⁴⁵ The second year's theme was litigation, and the third and fourth years' themes were to be transactions and public law, respectively.⁴⁶ Again, skills courses related to the theme were included in each semester.⁴⁷ Our intention was that the capstone weeks would provide a real-world opportunity to integrate the doctrinal courses through exercises designed around the skills courses.

Our ABA application put integration at the center of our design:

The proposed curriculum integrates doctrine, skills, and professional attributes to develop students into skilled, ethical professionals. Our approach is informed by what we have learned through implementing our integrated and collaborative first-year curriculum: intentional course sequencing reinforces and enhances student learning; students learn best with coordinated instruction in doctrine, skills, and professionalism; and both a common framework and vocabulary for all classes increase the transference of student learning among first-year courses. The benefits of curricular integration are reflected in three features of this proposal: block scheduling, course sequencing, and faculty coordination of instruction and assessment.⁴⁸

There was an additional reason for the choice of week-long sessions as opposed to a weekend format: our faculty had substantial experience in designing and delivering experiential courses in this concentrated format.⁴⁹ By 2013, we had been offering several of these extended simulation courses: The Deals and Disputes course, for example, comprised

43. Eric S. Janus, William Mitchell Am. Bar Ass'n Variance Application 9 (Aug. 14, 2013) (on file with author) (quoting Eric S. Janus, *Clinical Teaching at William Mitchell College of Law: Values, Pedagogy, and Perspective*, 30 WM. MITCHELL L. REV. 73, 74 (2003)).

44. See Janus, Duhl & Canick, *supra* note 14, at 30.

45. *Id.* at 32.

46. *Id.* at 32–33.

47. *Id.*

48. Variance Application, *supra* note 43.

49. *Id.* at 10.

forty-two hours of instruction over five days.⁵⁰ Our Divorce Mediation course required forty-four hours of instruction over a five-day period, and our Advanced Advocacy course comprised three credits of skills instruction within a one-week period.⁵¹

Our mission also dictated a second major structural choice: the use of asynchronous instruction.⁵² This critical design feature would allow students to matriculate no matter their time zone or work/family schedule.

By the time we submitted our application to the ABA for a variance in July 2013, there was widespread and enthusiastic support among the faculty and the Board of Trustees.⁵³ Building on a faculty that identified itself as pioneering in legal education,⁵⁴ the key to this widespread enthusiasm had been slow and steady development, early and frequent notice and discussion, and growing experience among faculty members with online technology and design. I think it is fair to say that both groups felt a sense of pride that the school would be a pioneer, and that we were taking some action in the face of the darkening clouds of legal education.⁵⁵

The ABA approved the variance in December 2013, setting a cap of ninety-six students on annual enrollment, and we set out to recruit a class and finish the construction of the program.⁵⁶ Even with ABA approval,

50. *Id.* at 21.

51. *Id.*

52. See Janus, Duhl & Canick, *supra* note 14, at 30.

53. Variance application, *supra* note 43; Memorandum from Barry A. Currier, Managing Director of Accreditation and Legal Education to Deans of ABA-Approved Law Schools, et al. (Dec. 8, 2015).

54. Our ABA Variance Request described the faculty's recent pioneering work as follows:

Energized by discussions based on the Carnegie Report, the College accelerated its curriculum reform efforts with a focus on further defining outcomes for graduates, curriculum mapping, incorporating "backward course design" principles, using multiple and varied assessments, and expanding teaching methods (including teaching with technology). [Footnotes omitted.]

Variance Application, *supra* note 43.

55. See Carrie Joan Menkel-Meadow, *Too Many Lawyers? Or Should Lawyers Be Doing Other Things?*, 19 INT'L J. LEGAL PROF. 147, 148, 150–51, 159, 163 (2013); Carrie Menkel-Meadow, *The State and Future of Legal Education: Crisis in Legal Education or the Other Things Law Students Should be Learning and Doing*, 45 MCGEORGE L. REV. 133, 133–34, 159–60 (2013); see also Paul D. Carrington, *The Price of Legal Education*, 127 HARV. L. REV. F. 54, 54–55 (2013); Editorial Board, *The Law School Debt Crisis*, N.Y. TIMES (Oct. 24, 2015), <https://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html>.

56. Victor Li, *Law School's Online-Hybrid Degree Program Gets First-Ever Approval*

we had no idea whether we could make a go of it. Among a myriad of uncertainties, we were a school with a regional reputation, and we did not know whether we could recruit in the national market our new format would appeal to. We developed go/no-go scenarios contemplating that we would need to matriculate between twelve and twenty-five students to make the hybrid program financially viable. As it happens, our initial enrollment efforts generated a level of response whose strength surprised and pleased us.⁵⁷ The applicant pool was as strong as our traditional brick and mortar pool in terms of quantitative credentials, and we were able to matriculate a class of eighty-five students whose profile was a bit stronger than our brick and mortar profile.⁵⁸

II. OBJECTIONS TO PLACING DISTANCE EDUCATION AT THE CENTER OF A PROGRAM OF LEGAL EDUCATION

We embarked on this project with full awareness that distance education “correspondence courses” were held in low esteem in the legal profession and academy, but so was “night law school.”⁵⁹ Our approach was similar to our approach for any major project, especially a controversial one. We did market research, consulted and informed stakeholders, and engaged in an intentional and disciplined announcement of the project.

Early market research, conducted in 2012 in connection with our strategic planning process, indicated that reputational concerns among prospective students might not be a major risk.⁶⁰ In an online survey of prospective students (with a rather paltry four percent return rate), only seventeen percent indicated that a hybrid program would negatively affect their opinion of the school, while thirty percent felt it would enhance

from ABA, ABA J. (Dec. 19, 2013, 7:45 PM), http://www.abajournal.com/news/article/william_mitchell_online-hybrid_law_school_program.

57. See generally Josh Verges, *William Mitchell Hybrid Online Law Degree Program Nation's First*, ST. PAUL PIONEER PRESS (Jan. 14, 2015), <https://www.twincities.com/2015/01/14/william-mitchell-hybrid-online-law-degree-program-nations-first/> (explaining that eighty-five students enrolled in the program).

58. See *id.* The inaugural class entered also with a wide breadth of experience. Students hailed from twenty-nine states other than Minnesota, including Canada, and ranged in age from twenty-two to sixty-seven. Additionally, there were a greater number of second-career students, including five medical doctors. *Id.*

59. Economist, *Making Law School Cheaper: For Many, Two Years is Plenty*, ECONOMIST (Aug. 31, 2013), <https://www.economist.com/united-states/2013/08/31/for-many-two-years-is-plenty> (“Elite universities set up legal departments for posh students; night schools catered to the sons of immigrants.”).

60. Memorandum to the Strategic Planning Comm. of William Mitchell Coll. of Law, (July 10, 2012) (on file with author).

the school's reputation.⁶¹ In contrast, a more negative reaction came from focus groups of current students:

Current Mitchell students were negative, and protective of their existing law school experience. Partly because of the camaraderie/community that developed during their first year, participants assumed that deep relationships with professors and other students would be impossible in Hybrid. And students perceived Hybrid as an easier option, designed for people who would not make the same commitment and sacrifice that they made.⁶²

Focus groups of prospective employers did not raise significant alarms:

Negative: interviewees expressed concerns about the difficulty of translating law school teaching methods to an online format. Other concerns included the loss of connection to the school and classmates, and the importance of learning face-to-face communication skills for practicing law.

Interviewees were not especially concerned about the impact of this program on William Mitchell's reputation. They believed that because William Mitchell's brand is well-established, Hybrid was unlikely to hurt the school's reputation.⁶³

Our subsequent more in-depth market research convinced us that there would be sufficient potential student interest in a hybrid program, a belief that was eventually vindicated by the strong numbers and qualifications of our inaugural hybrid class, discussed above. But a key word of caution from our marketing department was this: "Educating our alumni and prospective employers on the nuances of a hybrid J.D. program will be critical to protecting Mitchell's reputation among these audiences."⁶⁴ A more detailed report stated:

Not surprisingly, respondents had both positive and negative reactions to the hybrid J.D. There will be some resistance and skepticism. And William Mitchell may risk a short-term impact on its reputation.

When first asked to identify, in their own words, what were their primary concerns with this new type of J.D. program, respondents' top unaided answers were: "lack of interaction with students and faculty," "perceived as less prestigious by the profession," and "low academic rigor." In successive questions, respondents' aided responses indicated

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

that more than half of respondents would have more concerns employing graduates from a hybrid program than from a traditional program. And about half of respondents believe that graduates from a traditional J.D. would be better than those from the hybrid J.D. Finally, while six in ten respondents would not change or would improve their opinion of William Mitchell if it were to offer the new type of J.D., three in ten feel their opinion would worsen.⁶⁵

As part of the roll-out of our new Hybrid program, I met with numerous stakeholders. Listening to these people helped me understand the ways in which distance legal education is viewed. What follows is a description of the most common objections. Later in this essay I circle back and assess the themes and values underlying these objections.

Concerns reflected two major themes: pedagogy and reputation. The first is that distance education cannot reproduce the academic learning produced by the face-to-face classroom experience. For example, over half of the lawyers we surveyed in our market research identified this sort of concern in response to open-ended questions asking for their “primary concerns.”⁶⁶

For some of the alums and others that I talked with, this objection was based on a perception that online instruction lacks the rigor of the traditional classroom. But the validity of this particular concern clearly depends on the particulars of an online program (and, of course, the often unspoken assumptions about the traditional program that serves as the baseline for comparison). My view is that rigor, or the lack thereof, is highly variable within legal education, but the proximity or distance between the student and teacher are not correlated with this variance.

The concern that more accurately reflects the nature of distance education addresses the lack of interaction, and, most directly, the absence of the Socratic Method. There was a persistent assertion that the Socratic classroom and cold-calling helps keep students accountable and helps them learn to “think on their feet.” A strong concern was that students in a distance setting would not have the opportunity to learn about the interpersonal skills critical to being a lawyer, and, more broadly, would not be imparted with the professional norms that form the background—and hence, perhaps, the strongest lessons—of the face-to-face environment.⁶⁷

65. Memorandum from Louise M. Copeland, Dir. of Mktg. & Alumni Relations, William Mitchell Coll. of Law to Strategic Planning Comm., William Mitchell Coll. of Law (Dec. 4, 2013) (on file with author).

66. *Id.*

67. See Abigail Cahak, Note, *Beyond Brick-And-Mortar: How (Cautiously) Embracing Internet Law Schools Can Help Bridge the Legal Access Gap*, 2012 J. L. TECH. & POL'Y 495, 501, 513 (2012) (summarizing common criticisms of an online legal education); Katherine S.

A related concern was that students would miss out on the sense of community that grows among classmates in the face-to-face environment, and that the relationships developed in the classroom remain important as foundations for one's professional career.

The second axis for concern was directed to the reputational effect resulting from the adoption of an online program. Typical was this email that I received from a recent alum:

I received your email about the online program last night...There is a universal belief among us that our degrees have been devalued, and that, frankly, we just became the laughing stock of the Twin Cities law schools. I think it will be very difficult to raise the reputation of our law school when jokes like "University of Phoenix Law School" are already making their way around the web. This hit to the school's reputation has real life consequences on the value of our degrees, which, in turn, affects our earning potential. Alumni trust their schools to maintain its hard-won reputation. I think the college has breached that trust today. I am very disappointed in your decision to proceed with this plan, and I hope you will reconsider.⁶⁸

As noted above, this view was shared by a proportion of the lawyers whom we surveyed for our market research.⁶⁹ Twenty percent of the alums surveyed volunteered this as one of their "primary concerns" about the program.⁷⁰ Citing a mix of the two concerns of academic preparation and reputation, about sixty percent of prospective employers we surveyed endorsed the view that they would have "more concerns" hiring a graduate of the hybrid program than from the school's traditional J.D. program.⁷¹

Our approach to debriefing our shared governance bodies (faculty and Board) was to be straightforward about the reputational challenges, but to put those challenges in an historical context, comparing the critique of distance education to the intense criticism aimed at "night law schools"

Mangan, *Justice Ginsburg Questions Internet-Only Law School*, CHRON. HIGHER EDUC. (Sept. 24, 1999), <http://chronicle.com/article/Justice-Ginsburg-Questions/31346> (discussing how Justice Ginsburg famously questioned the viability of internet-only law school training); see generally Johnson, *supra* note 2 (outlining potential disadvantages of online legal instruction); Thomas, *supra* note 1, at 6 (accepting the preference for live instruction).

68. E-mail from W.O., to Eric S. Janus, President and Dean, William Mitchell Coll. of Law (Dec. 18, 2013, 12:44 pm CST) (on file with author).

69. Survey by Anderson, Niebhur & Associates, *William Mitchell Coll. of Law: Perceptions of a New Type of J.D. Program* (Nov. 2013) (on file with author).

70. *Id.*

71. *Id.*

and their descendants.⁷² This is from my memo to the Board in December 2013:

As you will see when you review the market research, there is a sizable portion of our stakeholders—alums, the legal profession in general—who have their doubts about “online” education, just as there were many in the legal establishment who doubted, in 1900, that “night law school” could deliver a rigorous, highly valued legal education. As we have a chance to talk about our program, I am confident that most will come to understand that the hybrid program will have the same standards, the same rigor, and the same value, as our traditional “bricks and mortar” program.

The launch of a new and innovative program will not be risk-free. We will need to invest dollars and time, bringing to bear our best efforts at organization and curriculum design. But there are risks in standing still, risks in doing business as usual. In my judgment, I would rather be moving and innovating than waiting and watching.⁷³

My notes for my presentation to the faculty in the summer of 2013 addressed the reputational issue by putting it in the context of the long history of elite criticism of access-based night-law schools:⁷⁴

What about the effect on our reputation? Won't people think of this as being the 21st century equivalent to the “correspondence” schools that advertised on matchbook covers?

This is an empirical question. We will seek to make our project high quality. It will have ABA accreditation (otherwise, we won't do it). William Mitchell Marketing Director [] is working...to implement market research specifically designed to answer these (among other) questions.

Nonetheless, won't there be some people who think less of us because we are pioneers in the use of online technology to increase accessibility? Of course. But remember that “night law school” was (and for some, still is) synonymous with low quality.

A digression. Recently, at an ABA Committee on Admissions to the Bar that I attended, when the subject was admission of the graduates of foreign law schools, one of the distinguished members of the committee (a practitioner from Alabama or Mississippi) warned that graduates of some foreign law schools could be “as bad as the graduates of night law schools.”

Our founders, as well as the founders of other night law schools, fought

72. Memorandum from Eric S. Janus to the William Mitchell Coll. of Law Board of Trustees (Dec. 10, 2013) (on file with author).

73. *Id.*

74. Eric S. Janus, Address to William Mitchell Coll. of Law Faculty (June 27, 2013) (on file with author).

hard for the principle of access. They had to fight against a persistent exclusionary bias that identified “night law schools” with low quality.

In her thorough 1993 report on the history of law school accreditation, Susan K. Boyd writes that in the formative days of the ABA Section on Legal Education (in the late 1800s), when early attempts at setting accreditation standards were taking shape, “John Henry Wigmore of Northwestern recommended that law schools exclude outside work of any kind. He felt the schools should structure their programs to exclude night students by having only day lectures. Those who must work could not dedicate the necessary time to law school, Wigmore said, and therefore they should not aspire to a legal education.”⁷⁵

She records that in the early 1900s, “a frequent subject of concern was the burgeoning number of night law schools. Speakers at these meetings argued on both sides, some charging that a lack of ethics in the profession originated largely among graduates of these law schools. At this time, many of the part-time or night schools provided an education for immigrants, who lacked the time and the funds to attend a daytime law school ...”⁷⁶

She links the criticism of night and proprietary law schools to the “[b]igotry and prejudice [that] permeated the established bar and law school world” citing the “egregious discrimination against African-Americans, Jews, Catholics, and immigrants from places other than Northern Europe.”⁷⁷ She concludes: “A great deal of the criticism of night and proprietary law schools stemmed from the fact that these institutions provided access for a vast section of the population.”⁷⁸

In a 2011 article *The New York Times* explored the history of the ABA and night law schools in the context of the current concerns about the cost of legal education. Referring to the period from 1890 to 1930 when the number of law schools tripled, and most of the increase came from night schools, the article states: “To say that these night schools and their graduates appalled the A.B.A.’s core membership hardly captures the horror. Thousands of new lawyers were suddenly flowing into the market, many of them poor immigrants....The dean of Yale described night schools as a ‘rank weed’ and urged their closure.”⁷⁹

In the end, I decided to take ownership of the reputational issue by describing our proposal—particularly to the school’s older alumni—as

75. Susan K. Boyd, *The ABA’s First Section: Assuring a Qualified Bar* 14 (1993).

76. *Id.* at 16.

77. *Id.*

78. *Id.*

79. David Segal, *For Law Schools, A Price to Play the A.B.A.’s Way*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html>.

the “night law school for the twenty-first century.”⁸⁰

III. EVALUATING THE ADOPTION OF A BLENDED J.D. PROGRAM

A. How Should We Assess? Where is the Burden of Proof?

How should we assess whether the adoption of the Hybrid program was a wise decision? Whether a J.D. program with blended learning at its core is a good thing? What are the factors that ought to be taken into account? In an arena full of uncertainties, where should the burden of proof lie?

At the most basic level, the hybrid option has been a success. As this article goes to press (August 2019) we are welcoming our sixth cohort of hybrid students, and the fifth cohort at the ABA approved maximum of ninety-six students.⁸¹ Our blended Executive J.D. program (similar to the hybrid, but designed so that it did not require an ABA variance) is matriculating eighty-six students.⁸² The students in our blended-learning programs hail from thirty-eight states, including twenty-seven from Minnesota, sixteen from Texas, and ten each from Florida and Colorado.⁸³ There are also six different Native American tribes and Canadian Indigenous First Nations represented this year.⁸⁴ In contrast, our traditional (bricks and mortar) program’s students are eighty percent from Minnesota.⁸⁵

But we can dig deeper. Any assessment of a radical change in law school pedagogy ought to acknowledge that the baseline—the norm against which any change ought to be evaluated—is itself largely of unknown efficacy.⁸⁶ We know that law schools create many great lawyers—

80. Memorandum from Eric S. Janus, *supra* note 74; see also Barbra L. Jones, *Mitchell to Offer ‘Night School for the 21st Century,’* MINN. LAW. (Dec. 18, 2013), <https://minnlawyer.com/2013/12/18/mitchell-to-offer-night-school-for-the-21st-century/>.

81. E-mail from Ann Gemmell, Interim Dean of Admissions, Mitchell Hamline School of Law, to Faculty and Staff (Aug. 12, 2019 9:54 AM CDT) (on file with author).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. See Stephen L. Chew, *Do We Know How to Judge Teaching?*, INSIDE HIGHER ED (July 27, 2015),

<https://www.insidehighered.com/views/2015/07/27/essay-whether-academe-knows-how-judge-teaching> (arguing current approaches to teaching are not focused enough on learning, and noting that the criteria institutions use to reward promotions and tenure to professors can have little to do with teaching skills); see also Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L.L. REV. 595, 595 (2008) (“[T]he reality is that few law students graduate from law school ready to practice law.”) Chemerinsky also states that a typical method of evaluation—one cumulative end-of-semester evaluation—“is impossible to justify from a

and as many mediocre ones.⁸⁷ We know little about what role the Socratic Method plays in producing these divergent results.⁸⁸

A major, persistent, and passionately held view, particularly among lawyers who have been educated through this method and the teachers who employ it, is that nothing can truly replace that form of lawyer preparation.⁸⁹ But the superiority of traditional Socratic pedagogy is taken on faith, not on proof.⁹⁰ Derek Bok, former Dean of Harvard Law School and former President of Harvard University, is referenced in William Bowen's influential volume *Higher Education in the Digital Age* as someone who has been "for years remind[ing] everyone who will listen[] [that] the lack of careful studies of the learning effectiveness of various teaching methods is a long-standing problem."⁹¹ Bowen, President Emeritus of Princeton University, quoted Professor William J. Baumol of New York University as observing that, "[i]n our teaching activity we proceed without really knowing what we are doing.... I am... utterly without evidence as to... the tools the students should learn to utilize."⁹²

Even the ABA has acknowledged that the sacred Socratic Method might not be the only way to teach law.⁹³ The 2014 ABA Task Force on the Future of Legal Education brought this perspective to bear:

pedagogical perspective." *Id.* at 597. One study implicated certain traditional teaching methods as contributing to students' poor mental health. See Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 262 (2004) ("Potential negative aspects of legal education include . . . teaching practices that are isolating or intimidating, and content that is excessively abstract or unrelated to the actual practice of law . . .") (citations omitted).

87. See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2017 (2012) (arguing that present reforms in law school curricula are not resulting in improved law student "practice-readiness"); see also Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 583 (2015) (arguing that Socratic dialogue does a disservice to law students in not preparing them for real-world client matters).

88. See Daniel J. Dye, *Debunking the Socratic Method?: Not So Fast, My Friend!*, 3 PHX. L. REV. 351, 351 (2010) (arguing that the Socratic Method's effectiveness depends on how it is used in a law school classroom); see Stephanie B. Goldberg, *Beyond the Socratic Method*, 36 STUDENT LAW. 18, 19 (2007) (claiming there lacks evidence that the Socratic Method is an effective teaching method).

89. See Abrams, *supra* note 87, at 563 (stating that the Socratic Method is an enduring part of law school education); see also Goldberg, *supra* note 88 (acknowledging that the Socratic Method is necessary because it prepares students for practicing law before judges).

90. See Abrams, *supra* note 87, at 566 (explaining that the Socratic Method's effectiveness is often questioned); see also Goldberg, *supra* note 89.

91. William G. Bowen, *HIGHER EDUCATION IN THE DIGITAL AGE* 47 (2013).

92. Janus, Duhl & Canick, *supra* note 14, at 32; see generally WILLIAM J. BAUMOL, *THE COST DISEASE: WHY COMPUTERS GET CHEAPER AND HEALTH CARE DOESN'T* (2012) (explaining the "cost problem" plaguing higher education).

93. See Future of Legal Education Task Force Report, *supra* note 32, at 24.

One can acknowledge the success of the prevailing model brought into being by the schools, the ABA, and the wider profession and still believe that it might not be the exclusive way of effectively preparing people to be good lawyers.

The system of legal education would be better with more room for different models.⁹⁴

The baseline is that we do not know how effective traditional J.D. instructional methods in law really are.⁹⁵ The concerns about accountability and thinking on one's feet and especially inculcating the norms and values of the legal profession are largely intuitive and unempirical.⁹⁶ Consider the following passage from David Thomas in the *Journal of Information, Law and Technology*, which sets out a succinct statement of the comparative deficiencies of distance education:

The most cogent statement of distance learning's principal disadvantage is stated below:

The most obvious is the loss of proximity. When the instructor and the students are simultaneously physically present in the same room, the interaction has an immediacy and spontaneity that even the most sophisticated video conferencing systems cannot approach. The instructor and students are more readily responsive to each other, and group dynamics can lead both the instructor and students to insights that might not occur, or would occur less frequently, outside the group. Further, a teacher is not merely a conveyor of information; a teacher—a good one, at least—is also a model of intellectual and professional virtues such as responsibility, thoroughness, and tolerance. These virtues are most effectively on display when teacher and student are present in the same classroom.⁹⁷

Thomas continues:

I accept the preference for live instruction. I also accept the wonderful opportunities proffered by distance education to extend instruction to persons and places where otherwise no instruction at all would be available. This leads me to conclude that distance learning should not be employed in place of already established live instruction programs, either actual or readily available. Instead, the best use of distance learning programs is to extend the instruction to situations where otherwise no

94. *Id.*

95. See Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 1-2 (1996).

96. See *id.*

97. Thomas, *supra* note 1 (quoting Richard Warner, Stephen D. Sowle & Will Sadler, *Teaching Law with Computers*, 24 RUTGERS COMPUTER & TECH. L.J. 107, 164-65 (1998)).

instruction at all would be available.⁹⁸

Note first that the advantages of live education are assumed, not proved. And there is good reason to be skeptical, in the absence of proof, that the assumed advantages are actually a characteristic of the Socratic Method, or of face-to-face teaching more generally.

Why is it the case that “responsibility, thoroughness, and tolerance” are “most effectively on display” when the student and teacher are “in the same classroom?” Do traditional classroom teachers identify and plan for these aspects of their teaching, articulating them as explicit teaching objectives of their courses? Is it also true that the live classroom can “most effectively” teach the wrong lessons, as well? What lessons do students learn from professors who begin—or end—class late? How about professors who express cynicism about their role as teachers (“Of course, teaching you is just the part of the job that we have to endure in order to do our real work, writing opaque and ignored law review articles.”)? Or who deny that they care whether their students learn? Or who have no discernable teaching objectives? Does being face-to-face with these professors teach cynicism, disorganization, arrogance?

Relatedly, it is worth considering the lessons learned by law students from the implicit curriculum: the arrangements, structure, and choices their law school has made. There is strong evidence that these “background” messages—the medium which carries the foreground lessons of the curriculum—exert a strong influence on students.⁹⁹ If that is the case, then one must consider the values and professional role modeling inherent in choosing—or rejecting—online pedagogy. Do these choices teach students in particular about the value in their new profession of innovation, questioning orthodoxy, expanding access to legal education (and legal services)?¹⁰⁰ What are the messages inherent in defending rather than de-centering the Socratic Method, of regularizing formative evaluations, of being explicit about learning objectives and criteria for evaluation? Are these lessons we want to be teaching?

Does the Socratic Method really foster widespread preparation? Do students prepare because of the random, but small, chance of being called

98. *Id.*

99. See Janus, *supra* note 43, at 85–86; see generally Eric S. Janus, *Clinics and “Contextual Integration”: Helping Law Students Put the Pieces Back Together Again*, 16 WM. MITCHELL L. REV. 463 (1990) (arguing for a non-traditional, non-academic approach to teaching law).

100. Consider former Chief Justice Burger’s belief that “[t]he operation of a law school is a stewardship. Like other fiduciaries, those running law schools ought to be accountable, in this case—to the public.” Jeffrey B. Morris, *Warren E. Burger and Change in Legal Profession*, 11 COLONIAL LAW. 1, 1 (1981).

on? Does reciting three times a semester really teach students to “think on their feet”? How many students are fully engaged during the ninety-five percent of class time that other students are being called on? Which is a more important skill for a twenty first century lawyer: thinking on her feet, or writing a succinct, persuasive email? Which skill is more readily taught face to face? Online?

Can all professors in a face-to-face environment really sense the mood of the class, the subtle signals that the group is confused, or bored, or excited? And, if they can read these signals, how many have the skills to adjust their teaching on the fly, digging into the confusion and clarifying it, or recapturing student attention when boredom leads to distraction?

Many of the advantages of face-to-face instruction, then, are contingent on execution, not automatically generated by physical proximity.¹⁰¹ Further, this article would be incomplete if it focused only on what is missing from online instruction. Distance education offers its own set of potential advantages, going well beyond accessibility. Many of these advantages are also available, at least theoretically, in a traditional classroom. Key examples are the intentionality of outcomes, the careful sequencing of instruction, and the regularity of writing and feedback. These provide real accountability and regular opportunity for the professor to assess the progress of her students. True, the assessments come in a form different from the body language and intangible signals in the live classroom. But who is to say that the online signals, the weekly discussions and comments, the quizzes, are less accurate at judging comprehension and skill development?

Here is the key: these tools can be used in a regular classroom. But in the online setting, they are the default, and the traditional classroom often needs modification to truly incorporate the intentionality and accountability of online methods.

Take another rather mundane example: is it best to divide up instruction into fifty-minute classes that meet three times per week? Is this the ideal for every single course? Every single topic? Might it be better to meet in class for twenty minutes, complete an exercise analyzing a problem, and then receive feedback? Then meet in class for another half hour? Online instructional modules can be tailored to serve their instructional ends. The logistics of classroom and student scheduling makes this impossible in the brick-and-mortar setting.

Adding online instruction to the permitted palette of pedagogies pro-

101. See Hess, *supra* note 3, at 61.

vides legal educators a greater degree of choice in designing their programs. The “flipped classroom” concept, for example, posits that knowledge transfer can take place outside of the classroom, and experiential application of the learning occurs in class, under the face-to-face supervision of the teacher.¹⁰² Our hybrid program adopted that approach on a macro scale: the weeks of online instruction provide the scaffolding for the intense capstone weeks that integrate each semester’s learning in weeklong, face-to-face instruction, exercises, and simulations.¹⁰³

This comparative articulation of advantages exposes the falsity of viewing pedagogical design as a forced choice between traditional and online approaches. In fact, blended approaches are possible. Opening up to online techniques poses the opportunity for—and perhaps actually insists on—intentional design.¹⁰⁴ It provides an opportunity to choose among the strengths of a wider variety of instructional techniques.¹⁰⁵ Program design can be guided by mission (what we want our students to learn) rather than method (how we want to teach them).¹⁰⁶

B. Evaluating Blended Learning

Online and traditional approaches bring largely different sets of putative advantages and disadvantages.¹⁰⁷ At an impressionistic level, one might hypothesize that the blended approach, employing both traditional and online methods, designed to amplify the advantages of both and mute the disadvantages, might be the most effective approach.¹⁰⁸

Substantial evidence shows that “blended” instruction is as good as or better than traditional face-to-face instruction.¹⁰⁹ A study conducted by

102. See Janus, Duhl & Canick, *supra* note 14, at 32.

The flipped classroom concept, one of four “blended” learning models developed by the Khan Academy, involves students rotating between online delivery of instruction from a remote location after school [usually at home] and face-to-face teacher-guided practice in class during the standard school day—with the primary delivery of content and instruction being online.

Id.

103. See *id.*

104. See *id.* at 31.

105. See *id.* at 30–31.

106. See Hess, *supra* note 3, at 79 (“Student learning outcomes, not technology, should drive the design of a blended course.”) (citing JAY CAULFIELD, HOW TO DESIGN AND TEACH A HYBRID COURSE: ACHIEVING STUDENT-CENTERED LEARNING THROUGH BLENDED CLASSROOM, ONLINE, AND EXPERIENTIAL ACTIVITIES 199 (2011)).

107. See *id.* at 56.

108. See *id.* at 59.

109. See *id.* at 69.

the ITHAKA group—described as the “most rigorous assessment to date of the use of a sophisticated online course”¹¹⁰—comparing hybrid approaches with face-to-face statistics courses, found “no statistically significant differences in learning outcomes between students in the traditional and hybrid-format sections.”¹¹¹ Former Princeton President Bowen says he began as a skeptic regarding the use of distance technology in higher education.¹¹² However, research, including the ITHAKA study, has since changed his mind: “I am today a convert. I have come to believe that now is the time.”¹¹³

These findings agree with those of three other extensive and authoritative studies. The *ECAR Study of Undergraduate Students and Information Technology, 2013*, conducted by the EDUCAUSE Center for Analysis and Research, surveyed 113,000 respondents across thirteen countries on a variety of topics regarding technology in education.¹¹⁴ The study concluded that “blended learning persists as the preferred modality” among respondents.¹¹⁵ Furthermore, “[t]he majority of students across all regions and [types of institutions] report that they both *prefer and learn most* in blended learning environments.... These findings track with data regarding students’ desire to communicate with instructors face-to-face as well as having anytime, anywhere access to course materials.”¹¹⁶

Perhaps the most persuasive research is the 2010 meta-analysis published by the United States Department of Education titled *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies*.¹¹⁷ The report’s abstract describes its method and major findings:

A systematic search of the research literature from 1996 through July

110. Bowen, *supra* note 91, at 48.

111. WILLIAM G. BOWEN ET AL., INTERACTIVE LEARNING ONLINE AT PUBLIC UNIVERSITIES: EVIDENCE FROM RANDOMIZED TRIALS 18 (2012). ITHAKA is a not-for-profit organization that helps the academic community take advantage of advances in new technologies and use them to advance research and teaching in sustainable ways. *See id.* at 1.

112. *See* Bowen, *supra* note 91, at 45.

113. *Id.*

114. *See* EDEN DAHLSTROM, J.D. WALKER & CHARLES DZIUBAN, ECAR STUDY OF UNDERGRADUATE STUDENTS AND INFORMATION TECHNOLOGY, 2013 4 (2013). ECAR provides research and analysis about information technology in higher education with the goal of understanding information technology’s role in colleges and universities. *See id.* at 2.

115. *Id.* at 5.

116. *See* Janus, Duhl & Canick, *supra* note 14, at 33–34.

117. *See* U.S. DEP’T OF EDUC., EVALUATION OF EVIDENCE-BASED PRACTICES IN ONLINE LEARNING: A META-ANALYSIS AND REVIEW OF ONLINE LEARNING STUDIES ix (2010).

2008 identified more than a thousand empirical studies of online learning.... The meta-analysis found that, on average, students in online learning conditions performed modestly better than those receiving face-to-face instruction. The difference between student outcomes for online and face-to-face classes... was larger in those studies contrasting conditions that blended elements of online and face-to-face instruction with conditions taught entirely face-to-face.¹¹⁸

Finally, a recent study published by ITHAKA S+R, in conjunction with the University of Maryland, compared student performance in seventeen courses at seven universities, conducting side-by-side comparisons “to evaluate outcomes of students in hybrid sections with those of students in traditionally taught courses.”¹¹⁹ The authors of the study concluded:

Students in the hybrid sections did as well [as] or slightly better than students in the traditional sections in terms of pass rates and learning assessments, a finding that held across disciplines and subgroups of students. We found no evidence supporting the worry that disadvantaged or academically underprepared students were harmed by taking hybrid courses.¹²⁰

C. Cost

One attraction of online methods has often been that they are assumed to be more efficient and cheaper per student credit-hour than traditional methods of face-to-face instruction.¹²¹ But those notions focus on only one aspect of online education and ignore other aspects that actually increase its cost.¹²² Further, the comparison is useless unless it attempts to hold quality—however that might be defined and measured—constant. Both forms of education can be done well or poorly, with lavish or stingy allocation of expensive resources.¹²³

The one obvious way in which online education might be cheaper is the absence of classroom-capacity as a ceiling on the number of students who can be addressed by a single instructor’s teaching.¹²⁴ Arguing that

118. *Id.*

119. REBECCA GRIFFITHS ET AL., INTERACTIVE ONLINE LEARNING ON CAMPUS: TESTING MOOCs AND OTHER PLATFORMS IN HYBRID FORMATS IN THE UNIVERSITY SYSTEM OF MARYLAND 4 (2014). Ithaka S&R, a part of ITHAKA, is a research and consulting service that helps the academic and other communities make the transition to the digital environment; it pursues projects in this area critical to the advancement of the academic community. *Id.*

120. *Id.*

121. See Warner, Sowle & Sadler, *supra* note 97, at 146–54; see also *id.*

122. See *id.*

123. See GRIFFITHS ET AL., *supra* note 119.

124. See Warner, Sowle & Sadler, *supra* note 97, at 164.

distance education has the “potential to revolutionize legal instruction—for better or worse,” Warner and colleagues explained: “The economic advantage is obvious. Suppose a faculty member teaches students in ten different schools, with each school contributing an appropriate fraction of the instructor’s salary. A school could meet its curricular needs while reducing the number of faculty required and, of course, the amount spent on faculty salaries.”¹²⁵

But this sort of cost savings has not been a realistic possibility in our program. In part because of ABA restrictions, in part because of admissions reality, and in part by choice, we have kept blended sections to about the same enrollment as traditional sections. Thus, our per-credit-hour faculty-cost for our blended program is similar to the cost of our traditional program.

Other expenses for the blended programs have been substantial. While the ratio of full-time, tenure-track faculty to students is about the same as in the bricks-and-mortar program, the infrastructure for the blended programs is more extensive: instructional designers help professors understand the structure and characteristics of state-of-the-art online instruction, and translate their materials into modules, videos, and exercises, with grading rubrics and posted schedules. Program managers tend to the rather complex logistics of bringing blended cohorts to campus for intensive workshops and capstone weeks. Adjuncts assist with the grading required by nearly weekly written assignments.

But here is a critical point: most of this extra work is a product of the pedagogical principles that have been incorporated into our blended programs. Similar additional work would be necessary if these same principles were incorporated into bricks-and-mortar instruction—for example, weekly writing assignments and grading rubrics. And, some of the coordination and intentionality of the intense capstone weeks—a cross-course focus on a particular issue—could be adopted by bricks-and-mortar programs, as well, bringing with it much of the same logistical complexity and expense.

Add to this the extra stipends that are paid to faculty for them to transform their courses into a blended format.¹²⁶ This, too, might cease to be an extra expense in a school in which blended learning principles are as ubiquitous as traditional, or in which the same kind of backward design

125. *Id.*

126. See Hess, *supra* note 3, at 58 (“To design a blended course or to redesign a traditional course into a blended format requires significant effort.”) (citing Joseph Rosenberg, *Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*, 12 SMU SCI. & TECH. L. REV. 19, 43 (2008)).

is expected in bricks-and-mortar teaching.¹²⁷

D. The SRI Study: A Preliminary Assessment

About a year into the hybrid program, William Mitchell received a grant from the Access Group to perform an assessment of the performance of the program.¹²⁸ The evaluation was performed by the SRI International Group, and was designed to address the first two years of the program (approximately January 2015 through December 2016) with a report submitted in 2017.¹²⁹ The study used multiple sources of data, including administrative data, assessment scores, student surveys, and interviews.¹³⁰ SRI undertook statistical analyses to compare student outcomes in the hybrid program with part-time and full-time brick-and-mortar (BAM) students.¹³¹ The analysis controlled for salient background characteristics such as undergraduate GPA, age, LSAT score, gender, and years of education.¹³²

This preliminary assessment reported some key findings:

- In a voluntary survey, over half of the hybrid students who responded reported that but for this program, they would not have pursued a law degree. Two factors contributed to this response, a combination of geographic and scheduling convenience. Thus, of the students who said that the hybrid program provided them access they would not otherwise have had, over three-quarters said other J.D. programs were not compatible with work schedules or family schedules, while about a third said they were from areas with no other J.D. program available.¹³³
- The withdrawal rates from the early hybrid cohorts were somewhat higher than comparable withdrawal rates from the

127. Relatedly, the comparative expense of our blended learning options might decrease with time. As William G. Bowen noted, “A fundamental problem, cutting across all types of online offerings, is that contemporaneous comparisons of the costs of traditional modes of teaching and of newly instituted online pedagogies are nearly useless in projecting steady-state savings—or, worse yet, highly misleading. The reason is that the costs of doing almost anything for the first time are very different from the costs of doing the same thing numerous times.” Bowen, *supra* note 91, at 51.

128. Rebecca Griffiths, *Mitchell Hamline Hybrid Law Program Evaluation Study by SRI International* (May 12, 2017) (unpublished study) (on file with author).

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Griffiths, *supra* note 128.

BAM programs, but when controlled for the varied background characteristics of the students in the three programs, the differences were not statistically significant. In addition, the hybrid withdrawal rates declined over the first three cohorts.¹³⁴

- The report found students' academic outcomes (course grades, course assessment scores) "no less effective" than those of BAM students, though there was limited data to assess a comparative analysis.¹³⁵
- The assessment compared data from the Law School Survey of Student Experience (LSSSE), administered in spring 2016. Using anonymized student ID numbers, student outcomes across the three formats (hybrid, full-time BAM, part-time BAM) were analyzed on three LSSSE measures. The comparisons found some differences among students in the three programs, but the hybrid scores were at least as favorable as those of the BAM programs when relevant background differences were controlled.¹³⁶
 1. Thinking like a lawyer: marginally significant difference, with hybrid students reporting higher scores for this indicator.
 2. Law school environment: no difference among the groups reported.
 3. Student-instructor relationship: no significant difference among the groups in their rating of student-faculty interaction.¹³⁷

Clearly, comparative bar pass rates will be an important data point, as will employment outcomes, when those data become available.¹³⁸

E. Mission-Related Features

How has the hybrid program performed when measured against the

134. *Id.*

135. The report found that hybrid students scored lower in Torts on the same final exam administered to the BAM students, controlling for relevant background factors. The difference was small, but statistically significant. The report noted that the two Torts classes, though taught by the same professor, "addressed different competencies, so differences in assessment scores may reflect different emphases in the class focus." *Id.* at 16. Conversely, the report found that hybrid students scored higher than BAM students on a writing skills exercise, but that the difference was not statistically significant. *Id.*

136. *Id.*

137. Griffiths, *supra* note 128.

138. *Id.*

core mission pillars—access through flexible scheduling and experiential learning—that influenced its design? With respect to the expansion of access to legal education, the program has been a success.¹³⁹ As indicated above, more than half of the early-cohort students who responded to a voluntary survey indicated that they could not have gone to law school were it not for the online features of the hybrid program.¹⁴⁰ An additional measure is the geographic distribution of matriculants. Of the students in the first cohort, seventy percent hailed from outside of Minnesota, the inverse of our normal distribution in our brick-and-mortar program.¹⁴¹

The results considering the experiential mission pillar are more nuanced. Our original plan called for extended simulations in the capstone weeks, “in which students integrate and apply the doctrine, skills, and professional attributes they have learned over the course of the semester in experiential exercises and simulations.”¹⁴² This plan has been realized in its material aspects. The capstone sessions contain substantial segments of experiential work, and the doctrinal work is coordinated and integrated with the experiential work.¹⁴³ But experience has led us to include more direct instruction, in a traditional classroom setting, than we had originally contemplated.

As described above, a central intention of our design was the integration of learning.¹⁴⁴ From my perspective, the implementation of the program has fulfilled that goal. The structure of the face-to-face capstone sessions facilitates in-depth coordination and integration. Students are on campus and available for an extended period of time. There is a clear expectation that faculty in all of the courses will coordinate, and there is a staffing infrastructure that makes this coordination actually happen. The result has been a much more sophisticated and extended level of coordination and integration than we have ever been able to achieve in the traditional bricks-and-mortar setting.

As an example, consider our recently-held program for our fourth semester blended students. Our planning group for the session met regularly, and comprised both full-time faculty for the three courses (Constitutional Law: Powers; Advocacy; Professional Responsibility) and staff

139. *Id.*

140. *Id.*

141. *Id.*

142. Variance Application, *supra* note 43.

143. *Id.*

144. *Id.*

(instructional designers, coordinators). We first chose a topic: the Watergate Scandal. The subject had clear topical relevance,¹⁴⁵ and also had a clear tie-in to the Constitutional Law class topics of executive power and privilege. The session began on Friday night with the showing of a documentary on the Watergate scandal. A two-and-a-half-hour discussion of executive power permitted a relatively in-depth and contextualized look at *United States v. Nixon*.¹⁴⁶ Discussion addressed the key role that Congress played in laying the groundwork for the appointment of Archibald Cox as special prosecutor, and in the independence of Leon Jaworski after the Saturday Night Massacre.¹⁴⁷ Videos and transcripts of the confirmation hearings for Elliot Richardson and William Saxbe for Attorney General graphically illustrated the separation of powers and Congressional oversight in operation, and had direct relevance to the recently completed hearings for now-current Attorney General William Barr.¹⁴⁸ In-class exercises focused on President Trump's recent declaration of a national emergency,¹⁴⁹ and the application of *Youngstown Sheet and Tube Co. v. Sawyer*.¹⁵⁰ The Advocacy classes focused on appellate oral argument, and took as their text the oral argument¹⁵¹ in *Nixon*,¹⁵² excerpts of which also played into the Constitutional Law discussion of the

145. The news cycle in spring 2019 focused heavily on President Trump and special counsel Robert Mueller's impending report on the investigation into Russian interference in the 2016 presidential election. See, e.g., British Broad. Corp., *Trump Russia Affair: Key Questions Answered*, BBC NEWS (July 24, 2019), <https://www.bbc.com/news/world-us-canada-42493918>. The echoes of Watergate were palpable. See *id.*

146. See generally 418 U.S. 683 (1974) (concluding that the president of the United States lacks an unqualified privilege of immunity from the judiciary).

147. See generally Ken Gormley, *An Original Model of the Independent Counsel Statute*, 97 MICH. L. REV. 601 (1998) (discussing Archibald Cox's press conference and laying out the sequential facts of the Saturday Night Massacre.)

148. See Mikhaila Fogel, Quinta Jurecic & Benjamin Wittes, *Lessons from Watergate: What the Senate Judiciary Committee Should Ask Bill Barr*, LAWFARE (Jan. 14, 2019), <https://www.lawfareblog.com/lessons-watergate-what-senate-judiciary-committee-should-ask-bill-barr>.

149. See Emily Cochrane, *Senate Again Rejects Trump's Border Emergency, but Falls Short of a Veto-Proof Majority*, N.Y. TIMES (Sept., 25, 2019), <https://www.nytimes.com/2019/09/25/us/politics/senate-vote-trump-national-emergency.html>.

150. See generally 343 U.S. 579 (1952) (considering the constitutionality of an Executive Order given during the Korean War to seize and operate most steel mills, as pursuant to the President's military power as Commander in Chief, and as granted or implied by Article II of the Constitution).

151. Video Clip, *United States v. Nixon Oral Argument*, C-SPAN (Feb. 21, 2019), <https://www.c-span.org/video/?c4781642/oral-arg-clip-1>

152. See generally 418 U.S. at 692-95 (discussing the role of special prosecutors and their ability to investigate the use of executive privilege under Article II, Section Two of the Constitution).

case. The Professional Responsibility class focused on the role of government lawyers, and the evolution of professional ethics post-Watergate.¹⁵³ A panel of government lawyers brought real-world experiences to bear. The session ended with a panel discussion of three constitutional law professors about the future of executive power, with a focus on presidential power to act pursuant to an emergency declaration, the role of special or independent prosecutors, and executive privilege—all of which had contemporary salience.

F. Reputation

As reported above, a major concern expressed by a broad range of stakeholders was that the adoption of a distance education program would damage the reputation of the law school. The difficulty in measuring reputation is multiplied by any attempt to isolate the effects of one out of the many factors that form an institution's reputation. Further, one must ask "reputation for what, among whom, and where"? Reputation as an elite graduate school? As a "lawyers' law school"? As a regional law school with connections to the regional bench and bar? Among academics? Lawyers and judges? Prospective law students?

Despite those difficulties and complexities, we can make some observations about the reputational impact of the hybrid program on William Mitchell. We began seriously communicating to the outside world about the hybrid program early in 2014, soon after receiving ABA approval.¹⁵⁴ Our announcement received significant media coverage.¹⁵⁵ In September 2014, we specifically targeted *U.S. News* voters with postcards announcing the commencement of the program, to coincide with the *U.S. News* reputational survey.¹⁵⁶ And although attributing a decline in reputation to the preceding announcement of the hybrid program might

153. See Beth Nolan, *Removing Conflicts from the Administration of Justice: Conflicts of Interest and Independent Counsels Under the Ethics in Government Act*, 79 GEO. L.J. 1, 2–14 (1990).

154. Am. Bar Ass'n, *Council Grants Variance to William Mitchell College of Law*, A.B.A. (2013), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2013_william_mitchell_hybrid_variance_announcement.authcheckdam.pdf.

155. See Carl Straumsheim, *Law School Hybrid*, INSIDE HIGHER ED (Dec. 18, 2013), <https://www.insidehighered.com/news/2013/12/18/american-bar-association-approves-experimental-hybrid-jd-program>; Maura Lerner, *William Mitchell Welcomes its First Hybrid 'Online' Law School Class*, STARTRIBUNE (Jan. 12, 2015), <http://www.startribune.com/william-mitchell-welcomes-its-first-hybrid-online-law-school-class/288350831/>; Victor Li, *Law School's Online-Hybrid Degree Program Gets First-Ever Approval From ABA*, A.B.A. J. (Dec. 19, 2013), http://www.abajournal.com/news/article/william_mitchell_online_hybrid_law_school_program.

156. See Hybrid Reputational Marketing Plan v2. June 18, 2014 (on file with author).

be an example of the post-hoc-ergo-propter-hoc fallacy, the absence of a decline might refute the reputational-detriment hypothesis.

U.S. News rankings provide a set of reputational measures that are as readily adverted to as they are imperfect.¹⁵⁷ I examined three of those measures, comparing the scores from immediately before our announcement of the Hybrid (scores relating to 2012 and 2013), to the scores from the period immediately after the announcement (2014 and 2015).¹⁵⁸ As shown in the table, the scores showed no decline in the immediate aftermath of the announcement (2014); in fact, one of the measures improved that year, and one improved the following year. Taken together, these numbers suggest that the adoption of the hybrid program did not adversely affect these traditional reputational measures.

Data from fall:	Academic peers (larger number is better)	Lawyers and Judges (larger number is better)	Part-time program ranking (smaller number is better)
2012	1.8	2.3	40
2013	1.8	2.4	26
2014 (Hybrid announced)	1.8	2.4	21
2015	1.7	2.6	28

The launch of the hybrid program was positively reported in the media.¹⁵⁹ For a regional school like William Mitchell, national media attention, especially if it is positive, is relatively rare.¹⁶⁰ Notably, the hybrid program was mentioned in *The New York Times*, among other national

157. Robert Morse, Kenneth Hines & Elizabeth Martin, *Methodology: 2020 Best Law School Rankings*, U.S. NEWS (Mar. 28, 2019), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

158. The nomenclature used in the *U.S. News* rankings is confusing. For example, scores labeled “2016” and “2017” were published in 2015 and 2016, respectively, and were derived from surveys conducted in fall 2014 and 2015.

159. See Straumsheim, *supra* note 155; Lerner *supra* note 155; Li, *supra* note 155.

160. See Don Macaulay, *First “Hybrid” Law Students Graduate From Mitchell Hamline*, NAT’L JURIST (Jan. 12, 2018, 1:58 PM), <http://www.nationaljurist.com/national-jurist-magazine/first-%E2%80%9Chybrid%E2%80%9D-law-students-graduate-mitchell-hamline>; see also Tim Post, *Hamline, William Mitchell Law Schools to Merge*, MPRNEWS (Feb. 13, 2015, 7:30 PM), <https://www.mprnews.org/story/2015/02/13/hamline-william-mitchell-merger>.

publications.¹⁶¹ PreLaw called it one of the “10 Most Promising Innovations in Legal Education.”¹⁶² The *National Jurist* named me one of the twenty-five most influential people in legal education, apparently because of the school’s launch of the hybrid program: “William Mitchell College of Law – under Dean Eric Janus – is the Indy race car of law schools.”¹⁶³

Perhaps the most persuasive evidence that the hybrid program did not damage the school’s reputation is the number of law schools who are following in our footsteps. As of this date, we count eight law schools, with *U.S. News* rankings as high as sixty-three and eighty-eight, who have sought to offer true blended or hybrid J.D. programs.¹⁶⁴

There is some contrary evidence. In market research the school conducted in 2018, concern among some of the school’s stakeholders regarding the school’s adoption of the hybrid program seems to remain. Of the 1,181 individuals surveyed (students, faculty/staff, alumni), using a five-point scale (five being the best), the mean rating for the traditional on campus program was a bit higher than for the hybrid program (3.76 vs. 3.66 on a scale of 1-5).¹⁶⁵ But broken down by stakeholder group, it was uniquely the alumni group who expressed the concern about the hybrid program.¹⁶⁶ Current students and faculty/staff rated the hybrid program more positively than the traditional program, whereas alumni rated it significantly lower.¹⁶⁷

161. See Elizabeth Olson, *Law Schools Are Going Online to Reach New Students*, N.Y. TIMES (June 22, 2016), <https://www.nytimes.com/2016/06/23/education/law-schools-are-going-online-to-reach-new-students.html>; Margaret Loftus, *Law Schools Innovate With Hands-On Learning*, U.S. NEWS (Mar. 30, 2016), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2016-03-30/law-schools-innovate-with-hands-on-learning>; Stephanie Landsman, *Digital Cracks the Final Frontier: Law School*, CNBC (Apr. 5, 2015, 12:00 PM), <https://www.cnbc.com/2015/04/02/digital-cracks-the-final-frontier-law-school.html>.

162. See Mike Stetz, *10 Most Promising Innovations in Legal Education*, 19 PRELAW 1, 32 (2015).

163. See Mike Stetz, *2014 Most Influential People in Legal Education*, 24 NAT’L JURIST 1, 23 (2015); see also Carl Straumsheim, *Law School Hybrid*, INSIDE HIGHER ED (Dec. 18, 2013), <https://www.insidehighered.com/news/2013/12/18/american-bar-association-improves-experimental-hybrid-jd-program>.

164. See Paul Caron, *Denver Is The Eighth Law School To Offer A Hybrid J.D.*, TAXPROF BLOG (Aug. 23, 2008), https://taxprof.typepad.com/taxprof_blog/2018/08/denver-is-eighth-law-school-to-offer-hybrid-jd.html; see also *Best Law Schools*, U.S. NEWS, <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Sept. 3, 2019).

165. Survey by Chuck Reed, Senior Vice President, Client Services & Sally Olinger, Senior Research Analyst, Ind. Univ. Robert H. McKinney Sch. of Law (2018) (on file with author), <https://www.dropbox.com/s/lp8v12k0rsxrnw3/MH%20REPORT%209.14.18.pdf?dl=0>.

166. See *id.*

167. See *id.* For example, students rated the hybrid program 3.76, faculty/staff 4.0, and

IV. LESSONS TO BE DRAWN

Online pedagogy is a tool. Our experience has shown that it is not radioactive; it does not taint or spoil a program of legal education. It is not a less-than-useless, harmful agent that threatens to destroy legal education. In fact, online pedagogy offers a suite of benefits to providers of legal education. Sensible legal educators will understand that these pedagogical approaches belong in the palette of tools from which a program of legal education can be designed. But, as with all pedagogies, online tools have costs and weaknesses. Thoughtful designers will choose among the available tools with eyes open to the respective characteristics of each available approach.

From my perspective, the benefits offered by online tools fall into three categories. First, online tools allow for transfer of knowledge to be accomplished outside the classroom more flexibly. Teachers can include lectures in addition to readings in the out-of-classroom tool kit, thus potentially freeing more face-to-face time for working with that knowledge. In short, online tools allow for the “flipped classroom” approach. The length of each module of instruction can be tailored to the subject rather than dictated by invariable and uniform room schedules.

Second, the introduction of a new set of pedagogical possibilities naturally provides the opportunity, and the incentive, for redesign at a rather large scale. The state of the art in online education brings to the foreground a set of design practices—backwards design,¹⁶⁸ frequent assessments, and rubrics¹⁶⁹—that are often ignored in traditional law school settings. The acceptance of online tools in the pedagogical palette can serve as an opportunity, and the incentive, to redesign the J.D. program using current best practices. But these best practices are not unique to online pedagogy, and can be adopted in traditional settings as well.

Finally, online delivery has one core unique feature: Online tools can radically—and uniquely—diminish the spatial and temporal barriers to accessing legal education.¹⁷⁰

alumni 3.56. *Id.*

168. See Hess, *supra* note 3, 70–71. (“Consequently, learning objectives play a central role in course design. To systematically design a course, teachers must first clearly articulate what students should learn. The learning objectives then should drive the subsequent decisions on teaching and learning methods, materials, feedback, and assessment.”); see also Max Huffman, *Online Learning Grows Up—And Heads to Law School*, 49 IND. L. REV. 57, 64 (2015).

169. See Hess, *supra* note 3, at 75 (reviewing blended course design principles).

170. See Warner, Sowle & Sadler, *supra* note 97, at 164; see also Future of Legal Education Task Force Report, *supra* note 32, at 27 (calling for: “(a) a greater willingness of law schools and others entities which deliver legal education services to experiment and take thoughtful risks; and (b) support for the experiments and risk-taking by other participants in the legal education system”). The task force further recommended eliminating or substantially

All of these considerations point to the centrality of mission. By providing the opportunity, and the necessity, for major redesign, online pedagogy forces the question: to what end is our legal education addressed? Why are we doing this, why are we teaching this way, why are our classes fifty minutes long? With new teaching tools available, we cannot simply continue to do what we have always done; we must make choices, and those choices, like all design choices, involve combining components, and working within constraints. How to decide what combination, how to balance various costs and benefits? The clear answer lies in the mission: deciding why we are doing this and insisting that that purpose shape and inform the design.

There are significant costs associated with the introduction and operation of a blended program.¹⁷¹ It requires abandoning, or diminishing, aspects of legal education that constitute the sacred and firmly held beliefs about what produces good, connected, ethical lawyers. Many of the apparent benefits of online education can be accessed without putting online at the core of the curriculum. Only one of the benefits of online education is truly unique to centering online pedagogy: the access mission.

So the answer to the questions posed at the outset of this essay lies in examining the particular mission of a law school. For William Mitchell, the century-long mission of providing access to a rigorous and practical legal education for working people and people with family obligations was the central, guiding mission.¹⁷² It was that mission that pointed towards the capstone week format, and the emphasis on asynchronous delivery. The benefits to access are plain. Further, there are good reasons for thinking that the traditional academic outcomes in our blended program will be the equivalent of those in our traditional program. If so, then the clear answer is that it is worth the costs. But even if there are differences in educational outcomes, those might be outweighed by the individual benefit arising from increased opportunity to overcome geographic barriers to access legal education.

Though there remains uncertainty about the comparative efficacy of core-online programs, there is good research showing that blended methods are as good as traditional methods, and some evidence that the outcomes in our blended and traditional programs are similar. But the true measure is mission. It is the values incorporated into the mission that pro-

altering the restrictiveness of Standard 306, relating to distance education. *See id.* at 31.

171. *See* Janus, Duhl, & Canick, *supra* note 14.

172. *See id.* at 31.

vide the yardstick for measuring costs and benefits, and the rules for decision when the facts are cloudy. In our world, against the backdrop of a mission to provide accessible, practical legal education, the burden of proof lies with the online-skeptics, and it has not been satisfied.

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