Graduate-Level Distance Learning: Enhanced Student Experience, Significant Scalability Challenges: A Multiyear Case Study

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Cautious Converts Riding the Distance-Education Bandwagon

A current critical assessment of legal education (and, more broadly, of higher education) might suggest that neither students nor faculty are fully satisfied with the learning experience. To achieve a "significant learning experience," students must actively *engage* in the process of learning, devote the high level of energy demanded by it, connect learning to past experiences, and link the learning to future goals.[1] The traditional law school model, dominated by quasi-Socratic

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1. Dee Fink, former president of the Professional and Organizational Development Network in Higher Education, defines a "significant learning experience" as one that results in a significant

lectures conducted in cavernous amphitheaters and culminating in a one-shot timed examination, increasingly seems ill suited to such a task. On the delivery end, faculty lack incentives to follow rapidly evolving educational technologies, opportunities, expectations, and norms and have every reason to question the utility of investing the considerable time and effort necessary to investigate and experiment with, let alone adopt, new methods of teaching.[2]

Against this backdrop, long before the coronavirus pandemic, and through a circuitous route, we found ourselves gravitating toward a surprising solution. In aspiring to achieve our most ambitious teaching goals[3]—preparing our students for practice and empowering them to become critical thinkers and self-directed learners—we never expected the answer to lie in "distancing" ourselves from our students. Yet what we believe we learned, and what this article attempts to summarize, is that embracing distance education, at least in a hybrid form, offers exciting opportunities for more effective teaching and superior student learning.[4]

First, some friendly warnings and caveats: The experiences described herein predate the spring 2020 coronavirus pandemic during which our school, like many others, transitioned quickly from classroom to "emergency remote teaching,"[5] relying on lowest common denominator technology and techniques to

impact on the student's life rather than piling information into their short-term memory. L. Dee Fink, Creating Significant Learning Experiences: An Integrated Approach to Designing College Courses 7–8 (2013).

2. *See generally infra* note 56 and accompanying text.

3. The first questions Fink asks faculty who want to improve their teaching are, What is your innermost dream for the impact your course has on your students; what do you want to distinguish them from other learners, 1–2 years later? Fink, *supra* note 1, at 10.

4. We aspire to be unflinchingly honest in this paper—embracing a new approach to teaching is hard. If complicated factors like personality, fiscal austerity, technical support, and time constraints make online education impossible for you right now, consider adopting the techniques we learned to innovate within your classroom. The rewards will be meaningful.

5. Commentators propose the term "emergency remote teaching" to denote the MacGyver-like instruction resulting from colleges and universities having shifted *en masse,* with unprecedented and staggering speed, to online teaching. Charles Hodges et al., *The Difference Between Emergency Remote Teaching and Online Learning*, Educause Rev. (Mar. 27, 2020), https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning (defining "emergency remote learning" as a "temporary shift of instructional delivery to an alternate delivery mode due to crisis circumstances").

complete the semester.[6] For innumerable reasons, this proved suboptimal.[7] We fear that, for a generation of faculty and a cohort of law students, many will take away the wrong message from this experience. We hope that cooler heads prevail.[8] Our experience suggests that the appropriate "lesson learned" is that distance education is not something to be undertaken by the seat of the pants, absent strategic vision, and without meaningful investment of resources and preparation. Done well, distance education has nigh-unlimited potential; done poorly, it may unwind progress and acquire an undeservedly poor reputation.

Our story, which focuses on delivering graduate-level government contract law (and business and policy) courses and degree programs,[9] is both quirky

6.   Our school relied primarily upon (1) our preexisting (proprietary) e-portal (separate and distinct from the university's Blackboard platform, discussed at length below); (2) Kaltura Capture (for faculty recording of lectures at home) and preexisting in-classroom video recording resources (for faculty who preferred to record lectures in empty classrooms); and (3) Google Meet for videoconferencing sessions with students. (At the time, our university prohibited use of Zoom, primarily, but not exclusively, because of security concerns.) The authors were on both the teaching and the receiving/learning ends of this experience, and this brief microcosm provided a steady stream of anecdotes to distinguish between doing it right (e.g., our aspirational model) and just getting it done. From the student perspective, one success story involved a small seminar class (fewer than twenty students), which *improved* during the pandemic because the online environment created a sense of greater proximity, which enhanced student participation. In contrast, classes with synchronous lectures and extended class periods (ninety to 120 minutes) suffered the most, primarily from issues ranging from cognitive overload to poor connectivity.

7.   Not surprisingly, prior experience with distance education enabled some professors to pivot more quickly and smoothly to the online environment in the face of the pandemic. Knowing to deliver substantive content asynchronously via short, pithy, and to-the-point videos allowed distance-education veterans to avoid the miry bogs of poor connections and awkward time lags that may derail live (synchronous) lectures. Agnieszka McPeak, *Asynchronous Online Law School Teaching: A Few Observations* (Mar. 12, 2020), https://ssrn.com/abstract=3553094 (offering a veritable potpourri of practical suggestions for transitioning to online teaching during the pandemic, drawn from six years of experience with online legal education).

8.   Confusing or conflating the hurried move to remote learning (or emergency remote teaching) in the wake of the coronavirus outbreak with high-quality online learning (resulting from a considered and measured transition to the virtual realm) may unduly stigmatize and politicize distance education. Hodges et al., *supra* note 5 (noting that effective online courses typically entail six to nine months of planning and course development; and effective online programs require investing in "an ecosystem of learner supports," not unlike that required in face-to-face residential education).

9.   The field is also commonly called "government procurement law" (our legacy moniker), "public procurement law" (the most widely adopted nomenclature abroad, including throughout the European Union (EU)), the law of "public purchasing," "outsourcing," and—in domestic federal government circles − "acquisition law." Although it is admittedly a niche field of law, the markets affected are massive. For example, federal executive agencies annually enter into approximately $600 billion in contracts, with government expenditures at the state and local level dwarfing that sum. A Snapshot of Government-wide Contracting for FY2021 (Interactive Dashboard), August 25, 2022, https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2021-interactive-dashboard Annual EU public procurement spending greatly exceeds a trillion euros; and, in the developing world, the most commonly cited estimate is that public procurement accounts for more than fifteen percent of states' gross domestic product (GDP). OECD Stat, Government at a Glance−2017 Edition, https://

and contained. Our school, the George Washington University Law School ("GW Law"), birthed the academic discipline of government contract law in 1960,[10] and we have offered a Master of Laws (LL.M.), in addition to extensive JD opportunities, for nearly sixty years.[11] In 2012, our experimentation with interdisciplinary education led to the creation of a degree program through the university's School of Business, which had emphatically embraced distance education. After cautiously dipping our toe into the distance-education waters, we have, by slowly feeling our way and trying to learn from our mistakes, expanded our efforts. We now offer most (but not all) of our subject-matter classroom course content online, and we permit students to pursue our LL.M. and Master of Studies in Law (M.S.L.) degrees with no physical residency requirement.

Yet we remain somewhat of an island. Despite our (more than modest) fiscal success and confidence in the quality of our students' learning outcomes, many of our colleagues (at our school and others) remain hesitant about opening the perceived floodgates by offering robust distance-education options to our JD students. Against that backdrop, we are grateful for this opportunity to inform, continue, and expand the distance-education conversation.

Lessons Learned: Bandwagon Boons and Banes

This article describes our journey, some of the impediments (anticipated and unanticipated) we encountered, pleasant surprises and bitter disappointments, and, of course, our primary lessons learned and lingering concerns. Ultimately, our case study suggests that, among other things:

- If managed properly, the student experience in distance education not only compares favorably with, but *could* (in terms of learning)[12] ultimately prove superior to, the classic large classroom lecture course.[13]

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stats.oecd.org/Index.aspx?QueryId=78413 (noting also that public procurement accounted for 11.89 percent of GDP among OECD states in 2015).

10. We, and the broader community, owe a debt of gratitude to our emeritus predecessors and former colleagues Ralph C. Nash, Jr., and John Cibinic, Jr. (deceased), for their vision, formative work, prodigious output, and, of course, mentorship. https://blogs.gwu.edu/law-govpro/about-us/; Nash Jr., Ralph C., *In Memoriam: John Cibinic Jr.*, 35 Pub. Cont. L.J. 3 (2005-2006).

11. Our program website details our broad range of courses and substantive programming on government procurement law. *Government Procurement Law*, Geo. Wash. Univ. L., https://www.law.gwu.edu/government-procurement-law (last visited March 3, 2023).

12. Quantifying student learning and the challenging issues associated with outcome assessment lies beyond the scope of this case study. *See, e.g.,* Steven I. Friedland, *Rescuing Pluto from the Cold: Creating an Assessment-Centered Legal Education*, 67 J. Legal Educ. 592 (2018); Andrea A. Curcio, *A Simple Low-Cost Institutional Learning-Outcomes Assessment Process*, 67 J. Legal Educ. 489 (2018); Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons from Systematic Change in Legal Education*, 67 J. Legal Educ. 376 (2018); Max Huffman, *Online Learning Grows Up And Heads to Law School*, 49 Ind. L. Rev. 57 (2015) (positing that law schools ignore online courses at their peril, given their promise to further learning outcomes, improve student diversity, increase flexibility, and reduce student costs, because schools that engage and invest in distance education will gain a competitive advantage).

13. While we claim no unique credentials in the discipline, we nonetheless stand, with some degree

- Delivering quality distance education is time-consuming and requires a great deal of work. The threat of burnout is real. Teaching in front of a camera fails to provide the normal, familiar (dare we say "gratifying" and "reinforcing") short-term stimulus of student engagement, lacks long-term rewards (at least in a system in which online courses do not count as "teaching"), and carries high opportunity costs.[14] For some, watching one's recorded self, and the self-criticism it engenders, only exacerbates the "dread" of the studio.

- To reap the benefits and achieve the promise of distance education, law schools must embrace culture change, no mean feat.[15] On the one hand,

of confidence, behind our claim. Sometimes you just have to trust that "you know it when you see it." One of us, Professor Schooner, frequently reflects upon one of his most practical, results-oriented, and formative learning experiences that seemed, in many respects, the polar opposite of every salient characteristic of the law school classroom experience. Some forty years ago, at U.S. Army Parachute ("Airborne") School in Fort Benning, Georgia, he spent three weeks (of long, hot days) being trained in a specific skill, by experienced (and, in the day, intimidating) instructors whose high degree of proficiency and qualifications to teach (in accordance with the Army MOI, or "methods of instruction") required no advance schooling (or, of course, scholarly agendas). While there were no texts, advance readings, or writing assignments, there was a never-ending stream of evaluative tasks—or, in other words, constant assessment of student learning or mastery of (both discrete and cumulative) tasks, with lack of proficiency promptly correlated to consequences, running the gamut from repetition under increased scrutiny, low-grade punishment (verbal abuse, shaming, and additional exertion, typically push-ups), or expulsion (or, for the lucky ones, "recycling"). While achieving the learning outcome was easy to confirm—nearly 500 colleagues and Professor Schooner survived, and most of them completed all of the required jumps (day and night, from jets and propeller craft) and earned their jump "wings"—Professor Schooner was far more impressed by his (and the group's) ability to apply the learned knowledge under a fair amount of stress (e.g., standing in front of, and stepping out the door of, a perfectly good airplane, in flight).

14.   For example, for one of us, filming two courses back-to-back in a single summer became insufferable, even with minibreaks and despite having previously taught one of the courses over twenty times. To be fair, our instructional design team had proposed (and advocated for) a far more palatable six-month production schedule structured around regular meetings and chunking the work into smaller tasks, but this proved impracticable with competing teaching and travel obligations.

15.   The tradition-bound mentality becomes a liability when experts in change management identify a sense of urgency as the first of three steps required for institutional change. Michael J. Madison, *An Invitation Regarding Law and Legal Education, and Imagining the Future*, 3 (U. of Pitt. Legal Studies Research Paper No. 2018-03, 2018), https://ssrn.com/abstract=3122624. Law schools face "distinctive challenges" in managing change because, as Madison observes, "[t]he most salient feature of modern US legal education is its antiquity rather than its complexity. US law schools remain anchored in a conceptual framework that is close to 150 years old." *Id.* at 3. An extensive literature on facilitating institutional change exists, which promises solutions if the political will to apply them is exerted. *See, e.g.,* Wendy W. Porter & Charles R. Graham, *Institutional Drivers and Barriers to Faculty Adoption of Blended Learning in Higher Education*, 47 Brit. J. Educ. Tech. 748 (2016); Helen J. McLaren & Paul L. Kenny, *Motivating Change From Lecture-Tutorial Modes to Less Traditional Forms of Teaching*, 57 Austl. Univs. Rev. 26, 30 (2015); Steven L. Schooner, *Book Review: Change, Change Leadership, and Acquisition Reform*, 26 Pub. Cont. L. J. 467 (1997). One of the most cited models is the "diffusion of innovation theory," developed by Everett Rogers, in which participants in a social system can be identified as "innovators, early adopters, the early majority, the late majority and laggards" based on their

that entails institutional change management, including buy-in from faculty, the dean, the records office (or registrar), dean of students, etc. Of equal and arguably greater importance is finding ways to educate and support individual teaching faculty, reduce the intimidation factor, achieve efficiencies in the process to overcome faculty reluctance to "flip" the classroom,[16] and, ultimately, create the incentives commensurate with the level of effort it takes to fundamentally rethink deeply ingrained teaching practices and fully engage in course production to generate quality distance-learning courses.[17] Finally, a credible senior detail-oriented program director, respected by tenured faculty, is needed to align the moving parts and serve as a proactive liaison among faculty, the dean's suite, instructional designers, and information technology (IT) professionals.

- Flexibility pays dividends, as tomorrow's innovation likely will surpass today's best solution. The commercially available technology and the range of options have evolved appreciably since we began our journey, and we expect this trend to continue (and, potentially, accelerate). Our small phased start permitted us to experiment. New and diverse tools helped us improve faculty responsiveness to students and enabled teachers to be more creative with their learning assessments. Conducting market research, understanding the marketplace, and choosing the best technology to suit our needs was critical. And, of course, an open, communicative, and positive relationship with our IT team was imperative.

- The jury remains out on the economics, and we tend to conceptualize this as a scalability challenge.[18] Nonetheless, we are convinced that distance

speed of adoption of new ideas. Everett Rogers, Diffusion of Innovations (5th ed. 2003). Each group may vary as to which factors most influenced their decisions on whether or not to adopt an innovation. *Id.* at 756.

16. "Flipping" a classroom involves students learning the content of a lesson *before* attending class, thereby allowing class time to focus on active learning. Mohamed Ali Nagy Elmaadaway, *The Effects of a Flipped Classroom Approach on Class Engagement and Skill Performance in a Blackboard Course*, 49 Brit. J. Educ. Tech. 479, 481 (2018). In a study on motivating university professors to adopt new teaching methods including active learning, blended learning, flipped teaching, and team-based learning, McLaren and Kenny found rewarding the innovation and dissemination of teaching methods is crucial in recruiting innovators and early adopters to the cause of helping the mainstream majority cross the "innovation chasm." McLaren & Kenny, *supra* note 15, at 32. In our flipped classroom, students completed assigned readings, watched video, and produced a written essay based on a hypothetical scenario implicating the issues raised in the video and reading, *all before* joining the weekly videoconference. Engaging the material in different formats prepared them to be more active in the classroom discussion and receptive to perspectives they may otherwise not have seen.

17. Australian researchers McLaren and Kenny found teaching can be transformed by necessity or facilitation, and that the facilitated means were far preferable as being less disruptive of research. McLaren & Kenny, *supra* note 15, at 26–27.

18. As discussed at length below, our experience indicates that the most successful aspects of our program could not be exported to our larger JD population without hiring and managing legions of adjunct faculty (or some proxy for teaching assistants).

education creates an opportunity to reach an important audience that we previously failed to serve.[19] However, while we believe that bringing quality legal education to a more broad swath of society, including nonlawyers,[20] at a more affordable price point is an honorable, even ethical, pursuit,[21] our experience was, at best, a small step toward that goal.

We expect careful readers will experience some repetition in the pages that follow. But context matters, and presenting our findings without the journey (or, in other words, our circuitous path to our discoveries) would be incomplete. Accordingly, we encourage readers to skim the next section, which chronicles the production of our pilot course, and focus more closely on our reflections on that experiment. The subsequent section, on the tough choices we made and our reassessment of our roles as educators, may be the most informative (and, dare we say, transferable). We then resolve our story with a summary of perceived challenges to arm readers with insights as they commence their own innovations. Forewarned is forearmed.

19. Because of our location and historical subject-matter strengths, which tend to attract active-duty military personnel, we have long experienced student demand for the ability to commence studies in D.C. part time and complete degree requirements at remote duty stations. The nonlegal acquisition career field (which numbers tens of thousands of professionals nationwide) carries considerable continuous education requirements, the most discerning consumers of which seek the highest-quality programs. Meanwhile, online education has successfully expanded access to continuing legal education through "periodically travel to" and "wherever, whenever" instruction. Peter W. Martin, *Employing Technology to Erode Legal Education's Twin Barriers of Distance & Cost*, 61 Rutgers L. Rev. 1115, 1120–21 (2009) (recognizing the success of LL.M. programs in tax law, which mirror the success of executive MBA programs, but also noting most JD programs are still confined to "move to" or "commute to" options, which exclude "countless individuals" from the legal profession).

20. Our struggles to reap many of the potential benefits of interdisciplinary education lie beyond the scope of this article. We have enjoyed welcoming and working with students seeking to better understand the rules, regulations, and policies underlying government procurement law without the intent of practicing law. We also found that teaching to an interdisciplinary audience can introduce fascinating, diverse, and highly informative perspectives into classroom discussions and peer review. Still, it is not easy (or not as easy as it should be) to reach across traditional university boundaries and overcome inconsistent pedagogical, budgetary, organizational, structural, and cultural regimes, among others. Daniel C. Powell, *Five Recommendations to Law Schools Offering Legal Instruction over the Internet*, 11 J. Tech. L. & Pol'y 285, 294 (2006) (recommending law schools "own" their programs, rather than offering programs jointly, because differing faculty views on admission, curriculum, grading policy, and resources may ultimately cause collaborative efforts to fail).

21. George Critchlow, *Beyond Elitism: Legal Education for the Public Good*, 46 U. Tol. L. Rev. 311, 348 (2015) (positing "[l]egal education's primary purpose is to serve society's legal needs," but, in pursuing the needs of America's corporations, law schools have failed to "design and price" a legal education system capable of creating a "diverse group of lawyers and other legal service providers" able to address the "substantial unmet legal needs" of America's "ordinary public."). As we innovate further and look to teach our courses internationally, we will have to address vastly different pricing expectations (and time zones) abroad.

Our Journey: Embracing Fearless Learning and Change

We produced our first online course as part of a new and creative interdisciplinary degree—the Master of Science in Government Contracts (MSGC)—launched in partnership with the School of Business, following a well-funded, sophisticated (and, in retrospect, highly accurate) market research study. For better or worse, transitioning from classroom to distance education was just one piece of a complicated multiyear interschool relationship.[22]

We expected that the primary challenges would come from adapting to the limitations of technology, and we were wrong. Almost every conceivable aspect of the technology we employ has vastly improved since we produced our first online course with the support of an outside vendor in 2014. Accordingly, our sense today is that the challenges that remain have much less to do with technology than human (faculty and administrative) resistance to change.[23] To that end, we attribute much of our success to our team's conscious effort to embrace the growth mindset shift,[24] collaboration with experienced instructional designers,

22. Although it lies largely beyond the scope of this paper, there is another potentially informative narrative about how our interschool/interdisciplinary relationship soured. In part, we suffered from bad timing, which we could neither predict nor control: From concept inception, we experienced an unusual leadership turnover at *both* schools. Unrelated to the promises or pitfalls of distance education, we also came to appreciate that each student comes to nonlegal graduate education with distinctly individual career and education goals. This realization led us to create the M.S.L. degree to serve an otherwise untapped pool of applicants with a career incentive to learn how lawyers think, analyze, and communicate within the regulatory framework of government procurement.

23. Based on our experience, most teachers' default is to teach as they were taught (after all, they generally were among the top students in their class, which helped them get their teaching position, and so, *clearly,* they understand how teaching and learning work). Research on confirmation bias, however, suggests familiarity causes an "illusion of knowledge" resulting in tenured faculty failing to see reasons for adopting new methods of instruction, even ignoring the results of scholarly research, because of their familiarity with their own teaching practice. *See, e.g.,* Christopher Chabris & Daniel Simons, The Invisible Gorilla: And Other Ways Our Intuitions Deceive Us 123 (2010) (stating that the illusion of knowledge leads us to "focus on those snippets of information that we do possess, or can easily obtain, but ignore all of the elements that are missing, leaving us with the impression that we know everything we need to."). Furthermore, given that adopting online education is not an easy decision or process, faculty are unlikely to make it without a "nudge" from administrators and colleagues. Richard H. Thaler & Cass R. Sunstein, Nudge: Improving Decisions About Health, Wealth, and Happiness 75–76 (2008). A nudge is defined as "any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives." *Id.* at 6. Nudges excel when decisions are difficult, especially when feedback is delayed. On a related note, consider Richard H. Thaler, Misbehaving: The Making of Behavioral Economics (2016), for a surprisingly entertaining case study of a successful academic career defined by cutting against the conventional grain.

24. Maintaining, or developing, a growth mindset toward novel, even frightening, learning opportunities leads to taking on more challenges, persisting despite setbacks, and ultimately raising the level of achievement. Carol S. Dweck, *The Choice to Make a Difference*, 14 Persp. on Psychol. Sci. 21, 21 (2019). A growth mindset is the belief that, rather than being fixed, human capacities change over time; and, with effort, strategy, and mentoring, new skills and abilities can be learned. Carol S. Dweck & David S. Yeager, *Mindsets: A View From Two Eras*, 14 Persp. on Psychol. Sci. 481, 481–82 (2019).

and willingness to experiment by maximizing the technological advancements to integrate interaction into the class routine (e.g., through frequent research and writing assignments, faculty and peer review, and role-playing exercises) to create a learner-focused environment.

We hope our story will assist in overcoming resistance to change and encourage faculty to rethink their reflexive "I can't (won't) do that in my course" response to distance education. Throughout our journey we strived to embrace the kind of fearless learning we seek to animate in our students. Ultimately, we refrain from offering advice on how to integrate our lessons learned into the mainstream JD curriculum, because, as yet, we lack sufficient experience in that sphere.[25] Accordingly, what follows is the more modest but, we hope, illuminating tale of our experimental journey, reflections on our experiences, and an accounting of the challenges that persist.

A Guided Tour: From Pilot Course to Takeaways

One of the most fulfilling aspects of this journey has been how much we learned from the various instructional designers we've partnered with. They pressed us to think differently—to focus on *how students learn* rather than what we have done, how we taught, or the content previously presented.

Once we subjected ourselves to the designers' coaching and were able to correlate their methodology with how our students responded to the iterative learning process (e.g., watch, read, write, discuss, respond to feedback, repeat), we recognized unlimited opportunities to make our traditional curriculum better. We promptly shared with our faculty colleagues our assessment that the active learning and individual feedback made possible in online courses is superior to the in-residence version of the same course. We've been somewhat disappointed that more of our colleagues haven't embraced the challenge to innovate, but we are encouraged by the ABA's decision to expand the landscape of opportunity.

Our Pilot Course: Assembling the Skeleton

We designed our first online course, the three-credit, semester-long Formation of Government Contracts course,[26] in conjunction and with the high-level support of a sophisticated outside vendor.[27] We made the conscious decision

25. We remain optimistic, however, that, by the time readers begin to follow up with questions, we will have embarked upon that next leg of the journey. And, as noted above, we hope that readers were not unduly influenced or, worse, irreparably scarred by their hasty, largely unplanned-for, spring semester 2020, pandemic-driven, and all-too-often awkward and unsatisfying introduction to distance education.

26. This cornerstone course introduces students to the statutes, regulations, policies, and precedent balanced at the intersection of contract law and administrative law that shape the process through which the federal government chooses its contractual partners.

27. To be clear, we were impressed with their advice and the quality of their technology and personnel; blown away by their production qualities; at times daunted by their professionalism, attention to detail, confidence, and resolve; and, in the end, extremely satisfied with the finished product. Unfortunately, the firm's services were prohibitively expensive for our long-term purposes. Since 2014, by necessity, we have experimented with alternative, more

to make a significant investment in the pilot with an eye toward rapidly driving ourselves up the learning curve, fully recognizing that the firm's level of service and support would not be sustainable (for us) in the long run. Leveraging their expertise to accelerate our learning is not, however, the same as a "leave it all to them" approach resulting in no growth of institutional capacity.

The pilot course was built around six core components: (1) assigned readings, then largely identical to what we had assigned in the classroom version of the course; (2) a series of condensed, studio-quality, recorded video lectures by our full-time faculty; (3) weekly discussion (or question-and-answer) sessions conducted as videoconferences;[28] (4) weekly writing assignments (and a steady stream of feedback); (5) frequent peer review and exchanges among students; and (6) a final exam. We discuss many of these components below, highlighting unique or particularly interesting issues that arose.

"Chunking"

In lieu of classroom lectures (or quasi-Socratic dialogue), our pilot distance course was designed and built around videos narrated by two of our permanent faculty (with more than twenty-five years of law school teaching experience, at the time, in addition to decades of legal practice). In the past, this class has most commonly been offered in the evening, in ninety-minute and two-hour blocks; for the distance course, the content was repackaged, or "chunked," before taping, into much smaller, highly condensed topical discussions.[29] Accordingly, students viewed a number (between three and six, excluding brief introductions

cost-effective approaches to obtaining course design support, including in-house university staffing.

28. In our courses, the recorded video presents a condensed version of the static legal principles and theory-based material presented in a traditional classroom lecture. The weekly hour-long videoconferences represent the dynamic classroom discussion in which professors challenge students to question established principles and connect theory to practice. We distinguish, on the one hand, synchronous online courses that "beam" distance students into a live classroom via a camera at the back of the room, with, on the other hand, courses that give students asynchronous access to self-paced, chunked videos and readings combined with weekly small-group discussion sessions. *See* Huffman*, supra* note 12, at 58–59. Which format is preferable depends upon the desired learning outcome and fiscal resources. Whenever learning outcomes call for students to "reflect, research, and write a reasoned response," asynchronous courses have proved superior, because their time-shifted nature allows students to log off, ponder a question, and consult one another or outside sources before responding. *Id.* at 61. This makes asynchronous courses ideally suited for teaching such lawyering skills as client counseling, negotiation, and the vast amount of litigation and appellate work that occurs outside of a courtroom. *Id.*

29. Chunking, or microlearning, is the practice of distilling lengthy instruction into "information nuggets" tied to discrete learning objectives. Amanda Major & Tina Calandrino, *Beyond Chunking: Microlearning Secrets for Effective Online Design*, 15 Distance Learning 27, 28 (2018). By providing the learner with just enough information to grasp a concept before solving a problem, answering a question, or reflecting on how the principle fits into the larger picture, microlearning reduces the cognitive load on working memory. *Id.* Long-term knowledge is therefore more readily acquired when information is sliced into frequent bursts of learning. *Id.*

and summaries) of relatively short or "chunked" recorded lectures each week, on their own schedule and at their own convenience. Most lectures covered discrete topics and ran between eight and twenty minutes. Videos did not attempt to simulate a conventional classroom setting. Instead, we employed three formats: (1) one professor presenting the material to—or discussing the material with—one or two students seated at a small table; (2) one professor presenting the material directly to the camera (or viewer); or (3) both professors, seated, speaking to each other or directly to the camera (or viewer).

Students could choose to stop the lecture at any time, repeat passages, or view the transcribed text of the lecture. Students tended to view most lectures multiple times.[30] (This was, for us, an unanticipated benefit of the technology, as was the discovery that we could quantify student consumption of specific content.) Embedded within the videos was additional content—numerous links to external documents and websites (containing statutes, regulations, cases, government reports, articles, policy documents, etc.) that provided breadth and depth to the information presented. Again, we found that students clicked on (or followed) most of these links, taking advantage of recommended or supplemental content.

The Platform

To present our distance-education courses, we used the Blackboard learning management system, which we had found to be sufficiently powerful and surprisingly flexible in terms of the features it offers and practices it enables.[31] At the start, our online course mirrored our traditional content. For example, the syllabus and course readings were essentially the same as for the in-residence course, the primary initial difference being that documents were accessed via links from the week's agenda, rather than stored on and downloaded from our proprietary law school portal. As the course progressed, however, the course site (or portal or platform) looked far less like a conventional classroom experience.

During the first week of the semester, the faculty and students "met" electronically via Blackboard's Collaborate feature. This session allowed participants to match faces to names (and voices) and created some degree of personal context.[32] Faculty and students recorded and posted a brief video self-introduction on the

30. We continue to be flummoxed by how strongly many of our colleagues object to this capacity, particularly given what we charge in tuition and, of course, what we perceive as the purpose of our classes: to enhance our students' learning.

31. To be clear, we use Blackboard because the university long ago adopted the platform. It is not our intent, here, to endorse Blackboard over other platforms, particularly because we have not experimented with competing platforms.

32. Recognizing the importance of human interaction to student satisfaction and learning, commentators foresee virtual equivalents to office hours, discussion groups, debates, and advising, even if such options are neither free nor currently well developed. Sandy Baum & Michael McPherson, *The Human Factor: The Promise & Limits of Online Education*, 148 Daedalus 235, 247–48 (2019), https://doi.org/10.1162/DAED_a_01769 ("Incorporating meaningful interaction among students and between students and faculty may be more challenging absent physical proximity, but it is surely possible.").

Discussion Board. The Voicethread tool enabled individuals to share discussion by text, audio, or video. Although most students had not used the application before, they were able to record (and, if they chose, rerecord) and post their introductions relatively easily. This simple exercise—followed by students watching one another's introductions—meant that our students knew far more about one another—their backgrounds, experiences, and educational and professional aspirations—by the second week of the semester than most in-residence students know about their peer group at the end of a semester-long course.

Student Interaction, Peer Review, and Learning Assessment

For the remainder of the semester, on a weekly basis, students had the *option* of participating in a live, sixty-minute videoconference with one or both of the professors over Collaborate. Approximately half of the students actively participated on the conference.[33] The other students subsequently accessed the recorded sessions (which included a discussion transcript, as well as innumerable links to content, current events, etc., in the chat bar). Anecdotal feedback from students who did not frequently participate in the live sessions pointed to work schedule limitations and conflicts. This was particularly problematic for our students who worked within secure (e.g., defense-related, classified) facilities and learned that videoconferencing access was not allowed; as a result, some of these students left their office and dialed into the sessions by phone.[34] We experienced only one complete technology failure—where the Collaborate system failed (beyond the control of GW)—and that session was canceled. This was the closest we came to a "snow day."

Students also completed practical written research and analysis assignments each week to assess learning. Faculty posted one or more questions, and students responded with brief essays (of approximately 500 words). Students proved consistently diligent in submitting their written work. We experienced only three

33. We should explain that, as quantified below, class participation was factored more heavily into the grading rubric than in our conventional classroom offerings, so the "lurkers" (or those who preferred just to watch) suffered in their final grades. Having said that, class participation included (faculty-monitored) peer review activity, and, not surprisingly, some of the more reserved students excelled in that capacity.

34. We saw it all, and that was before the spring 2020 pandemic distance education experience. Students (and faculty) participated from work, home (inside and on backyard decks), hotels, airports, and coffee bars; some left their offices to sit in their cars to participate by mobile phone. Some made regrettable decisions regarding clothing and backgrounds (inadvertently exhibiting embarrassing "items" on the screen). Babies and pets were consistent crowd pleasers. Indeed, we are constantly reminded of Professor Robert Kelly's viral BBC interview from his South Korean home office. CBS Mornings, *Dad in Viral BBC Interview Speaks Out,* YOUTUBE (Mar. 15,2017), https://www.youtube.com/watch?v=PvjuVnKDUbw. At Mitchell Hamline, which offered the first ABA-accredited hybrid JD program in the U.S., faculty expressed abundant skepticism on whether online students "sitting at home in [their] jammies" were capable of gaining the high degree of discipline associated with the legal profession. Blake A. Klinkner, *Will Online Law Degrees Be the Future of Legal Education?*, 39 WYO. LAW., Apr. 2016, at 48, 49. And yet the then current student among us legitimately questioned how much more professional conduct is imparted and exhibited in today's live lecture hall.

missed submissions (out of more than 150 papers), and we sense that the peer review aspect (discussed at greater length, below) played a role in motivating students to submit their work on time.

After the submission deadline, student papers were shared through the Discussion Board, and students were required to provide constructive comment and feedback on at least two peer papers.[35] Instructors reviewed and graded essays each week, and students received feedback: both a numerical score and comments. These written assignments gave the instructors timely feedback on the students' grasp of the material[36] and fueled the weekly Q&A sessions. Here again, the Blackboard platform facilitated and organized the efficient assignment, submission, circulation, grading, comment, and feedback of/on a high volume of student work. This robust feedback loop—assignment, student work product submission, peer review, faculty assessment, and faculty feedback—proved one of the most significant pedagogical advantages of this format.[37] Unfortunately, while this format provided an excellent learning experience, it also demanded unsustainable teaching resources. (We discuss our reluctant adjustments to the format below, in the section on our continuing experiment.)

The final exam was essay-based, with all students responding to one mandatory question and students choosing one question out of two options (with all submitting a total of two essays). Students were allowed two weeks to complete and submit their exams. No technical or other difficulties were encountered.[38] For their final course grade, students were evaluated as follows: (1) weekly

35.   Student peer feedback was not graded weekly, but it was considered (with an eye to content, not just quantity) in the participation portion of the grading rubric. We think this makes sense given that the purpose of such feedback is to help students "develop their reflective and critical thinking skills." Abdou Ndoye, *Peer/Self-Assessment and Student Learning*, 29 Int'l J. Teaching and Learning in Higher Educ. 255, 255-58 (2017) (reporting students perceived that peer assessments heighten their awareness of expectations, develop their evaluative skills, help them to identify gaps in their learning, and aid in locating resources to fill those gaps).

36.   Feedback is "[a] critical and powerful aspect of teaching and learning." John Hattie & Shirley Clarke, Visible Learning: Feedback i (2019). The value of feedback lies in revealing the extent of student learning; it is most powerful when coming from the student to the teacher, because then the teacher may address the misconception. Categorizing feedback as, or implying that feedback is, something exclusively dispensed by teachers to students, therefore, is a fundamental, easily avoidable mistake. *Id.* at 4. When used in conjunction with other teaching and learning strategies, feedback becomes "among the most positive influences on achievement." *Id.*

37.   Feedback plays an essential role in the scaffolding of learning as well as relationship building. Samantha N. Uribe & Michelle Vaughan, *Facilitating Student Learning in Distance Education: A Case Study on the Development and Implementation of a Multifaceted Feedback System*, 38 Distance Educ., 288, 300 (2017). More quantitatively, in a synthesis of educational best practices derived from 1400 meta-analyses, Hattie found feedback had a strong effect size of 0.7 on average, well above the threshold (0.6) for large effects. *250+ Influences on Student Achievement*, Visible Learningplus (Nov. 2017) https://visible-learning.org/wp-content/uploads/2018/03/VLPLUS-252-Influences-Hattie-ranking-DEC-2017.pdf (stating effect sizes were calculated using Cohen's d).

38.   Although we chose not to employ the available technology in this initial course, there is a built-in Blackboard setting/tool to deter and detect cheating.

assignments (research and analysis essays), fifty percent; (2) final exam, thirty-five percent; and (3) class participation (including peer feedback), fifteen percent.[39]

"Flipping the Classroom" Changes Everything

Pedagogically, *we observed no obvious flaw or downside in distance education* in the context of our pilot. Our most important takeaway from the pilot may be that the "flipped classroom" is fundamentally different from live classroom teaching.[40] From the professors' standpoint, the most significant differences may derive from: (1) the challenge of making such a dramatic change to approach, habit, venue, thinking, teaching, etc., and (2) the need for advance planning and preparation.[41] In other words, if you don't want to change what you're doing in the classroom, you may not be interested in experimenting with this methodology and technology. But if you're willing to try something totally different, you may be blown away by the potential of distance education.[42]

Contrary to our expectations, *readily available technology empowers the institution and the professor to engage with remote students—as a group and individually—at least as (if not more) effectively as/than in the conventional classroom.*[43] One of

39. One of us, a recent law school graduate, is impressed by how desirable (and how divergent) such an assessment regime is in contrast to the traditional first-year lecture course. In most courses the only performance feedback came in the form of a final grade (representing a point on a mandatory curve—and, thus primarily summarizing achievement *relative to a peer group*), delivered well after the exam and, thus, provided too late to do anything about (or with) the assessment information.

40. In comparing a flipped (experimental) class with a traditionally taught (control) class, Elmaadaway found skill acquisition significantly higher in the flipped classroom, together with better engagement, attendance, and self-reported satisfaction. Elmaadaway, *supra* note 16, at 485–88. While flipping a class is not unlike requiring students to read before attending class, technology now allows students to acquire content knowledge through a far greater range of media then a casebook or statutory supplement. Not only can students learn from video lectures "individually and flexibly," but by reserving "time ordinarily devoted to lecturing" to the dissection of the most challenging concepts and practicing the application of knowledge under teacher guidance, better learning outcomes can be achieved. *Id.* at 481.

41. For example, lesson planning identifies the points the professor wishes to make, but the goal is for the students to arrive at these points through questions about the assigned reading. The professor assumes more of a facilitative role rather than adopting the more dominant and unequal role of the inquisitor in the Socratic method. Our experience appeared to confirm that this approach could reduce student passivity and increase students' active engagement with the material.

42. "[E]xcellent teaching is not 'modality dependent.'" Nina A. Kohn, *Online Learning and the Future of Legal Education*, 70 Syracuse L. Rev. 1, 5 (2020) (citing Michael Hunter Schwartz, *Towards a Modality-Less Model for Excellence in Law School Teaching*, 70 Syracuse L. Rev. 115, 131 (2020)). In other words, the "modality of education must not be conflated with quality of education," because "[g]ood education can occur online, as can poor––just as good education can occur in a residential program, as can poor." Kohn at 8. Similarly, "[t]he shortcoming we worry about in online education may be evident in many brick-and-mortar classrooms. It is not appropriate to compare the average online course to the best and most expensive education available." Baum & McPherson, *supra* note 32, at 248.

43. Other studies reached similar conclusions: "Asynchronous online teaching can beat the live

the most critical challenges for faculties in assessing the status and potential of distance education is to avoid the instinct to impose preconceived notions of the optimal classroom experience (e.g., glorifying what we each individually do in the classroom) or underestimate the enabling power of the technology to permit us to more effectively teach and assess student learning.[44] In other words, moving from the classroom to cyberspace is not necessarily a step down. Rather, we concluded that the success of distance education—and the effectiveness of student learning—depends in large part upon: (1) instructor effort, creativity, interest in student learning, and flexibility, and (2) whether the available technology and potential are exploited (or ignored).

We were ecstatic with the learning outcomes. Comparing the pilot to the large lecture (and, at best, modified Socratic) classes we typically teach, we are confident that the students learned more through our distance pilot than in the same class taught each year in a large classroom. We sensed this was true at the top, middle, and bottom of the class (although the effects likely were most pronounced in the middle and at the bottom of the class.) Among the advantages was that it was much more difficult for students to "check out" or "hide" in the distance pilot, and, quite simply, it was impossible for the students to "kick the can down the street" and simply borrow an outline, purchase a study aid, and/or "cram" for the exam at the end of the semester.[45] While in the

classroom." Huffman*, supra* note 12, at 77. The modified Socratic dialogue, resting upon the Langdellian case method developed at Harvard in 1870 and emphasizing a live question-and-answer exchange between professor and student, stubbornly clings to its near-hallowed status as "the signature pedagogy of U.S. legal instruction." *Id.* at 59–60. Despite the ability to develop the skills of "reasoning under pressure" and "public speaking," the Socratic method is far less effective in developing other important lawyering skills. By providing (all enrolled) students opportunities to practice researching, drafting, and editing reasoned arguments, asynchronous online education excels where the Socratic method stumbles. *Id.* at 77–78. *See also* Yvonne Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, 96 Denv. U.L. Rev. 493 (2019); Stephanie Francis Ward, *If Taught Well, Online Courses Can Pass the Test, Experts Say*, ABA J. (Feb. 6, 2019), http://www.abajournal.com/news/article/are-online-law-school-courses-good-that-depends-experts-say.

44. Experience shows students retain more from this type of active learning than from the more passive learning associated with the traditional Socratic method. *See supra* note 41 and *infra* note 53, referencing the professor's facilitator role and student engagement. Distance education requires the professor to give more control to the students while still presenting material in a structured manner. Our experience shows that distance learning can engage students more than classroom learning and that the students enrich distance learning by sharing their insights and experiences missing from the professor's lesson plan.

45. Student assessments can usefully be divided based on their intended purpose. Dante D. Dixson & Frank C. Worrell, *Formative and Summative Assessment in the Classroom*, 55 Theory Into Pract. 153 (2016). Summative assessments, such as final exams, measure a student's ability at the end of a learning sequence. *Id.* at 153. Formative assessments, on the other hand, are intended to provide feedback to teachers and students to improve student learning. *Id.* at 154. Because they come at the end of a learning cycle (typically the end of a semester), summative assessments fail to inform students or teachers how better outcomes can be attained; they therefore provide little heuristic value for most students. Richard J. Stiggins, *Assessment Crisis: The Absence of Assessment for Learning*, 83 Phi Delta Kappan, 758, 759. Assessments earlier in the semester, which allow students to learn and improve their work before the final assessment,

classroom version of the course we consistently require our upper-level students to complete a take-home research assignment during the semester, in addition to a final exam, the students in the pilot engaged with, produced, evaluated, and received feedback on far more—and a much broader array of—work than their similarly situated colleagues in large conventional classrooms.

The Journey Continues: The Only Constant is Change

After nearly a decade of creating and teaching online courses to graduate students, we remain confident that, setting aside the challenging issues of scalability, the active learning and individual feedback made possible in online course delivery is equal, if not superior, to in-residence courses. We have transitioned from fearing change and technological shortcomings to appreciating the potential of distance education and celebrating the ever-expanding power of technology. Yet every semester, each new course, and new information brings new challenges and opportunities to learn more.

Persuaded: But Still Experimenting . . . and Learning

We're glad we tried distance education, and, as discussed above, we're persuaded that it's not only a reasonable alternative to the classic classroom delivery method for law students, but—if managed and delivered properly—a fully adequate and potentially superior alternative in terms of learning outcomes. Having said that, despite having grappled with difficult decisions along the journey, we're not yet convinced that the type and quality of distance education we've embraced is scalable, sustainable, or affordable in our law school, especially if expanded to JD students; nor would we even venture a guess as to its economic viability or communal palatability at institutions with which we are unfamiliar.

To the extent that preparing this article served as a retrospective of our efforts, our current sense is that some of the ***best decisions*** we've made since launching the pilot nearly a decade ago have been to:

- make the most of in-house resources and relationships;
- stretch beyond our comfort zones to engage creatively with technology;
- embrace the "distance" between faculty and students to make our learning objectives clearer and our courses more consciously scaffolded;[46] and,

are "for learning" rather than "of learning." If law schools cared more about maximizing learning and less about sorting (or ranking) students, then such a diversified assessment strategy ought to be embraced on principle. Formative data on a student's performance is worth its weight in gold to students, and the schools or programs that provide such data will likely gain a competitive advantage. In their reluctance to adopt assessments for learning, law schools trail the medical, dental, and other professional disciplines. Larry Cunningham, *Building a Culture of Assessment in Law Schools*, 69 Case W. Rsrv. L. Rev. 395, 396 (2018).

46. Scaffolded learning recognizes that an instructor must guide and support a student's learning by building up the student's knowledge base. *See, e.g.*, Shaun Archer et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. Legal Educ. 258, 265 (2014) (explaining that scaffolding allows "people [to] integrate new information into existing

- • (although the hardest decision of all) adjust (or reduce) the number of writing assignments to preserve a well-timed feedback loop.

Upon reflection, starting slow and giving ourselves permission to learn from our mistakes along the way were critical to any success we can claim.

From day one, we staffed the enterprise with experts, and we've relied on them for candid guidance and feedback throughout our journey. We would not have taken the leap into distance education had we not been able to rely on our then-program director's subject-matter expertise (in both government contracts and adult education) and widespread recognition and visibility in the field. He did extensive market research to identify demand among acquisition professionals for an MSGC degree delivered via distance education. After the experience of the pilot course showed the cost of "contracting out" to a third-party vendor for course production was prohibitive, we turned to the university's dean of Libraries & Academic Innovation (LAI) to develop online versions of our full curriculum of courses. Subsequently, LAI's in-house Teaching & Learning Center and videography staff allowed us to build six courses in eighteen months at a fraction of the original vendor's fee and avoid becoming beholden to venture capitalist backers.

Working with university colleagues also gives the feel of a community effort, where experimentation and tough choices are encouraged. For example, despite our aspirations, we regretted that, given our tight production schedule for the pilot, our focus was primarily limited to structuring and presenting content; accordingly, we were unable to sufficiently, consistently prepare and engage student "actors" in our videos. That experience proved prescient. In creating additional distance-education classes, we struggled to fully integrate a student presence into our routine.[47] We found it hard enough to ensure that the professor (narrator) was properly prepared for his or her various studio sessions; simultaneously attempting to script one or more students on a consistent basis proved to exceed our capacity.

Our in-house partners have consistently encouraged us to stretch beyond our technology comfort zone and have supported us when we've stumbled. We continue to experiment, for example, with different styles of video for different types of classes. We have increased the frequency with which we use guests in the video lecture sessions, and have refined the practice of more effectively integrating them. For example, pairing a faculty member with an expert practitioner in

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frameworks of knowledge"); Charlotte D. Schneider, *Using Scaffolding Techniques for Legal Research Instruction*, 2 Legal Info. Rev. 61, 63 (2016–2017) (elaborating that scaffolding "enables a learner to understand concepts that might otherwise be outside their scope of comprehension without the direct guidance or support of the instructor").

47. Effectively employing students in the studio entails additional resources we simply could not consistently sustain—ranging from the legal and administrative (e.g., obtaining permissions, rights, and waivers), management (scheduling, obtaining commitments, enforcing sartorial standards, etc.), compensation (we experimented with a diverse and flexible menu of work-study, flat fees, and gift cards), and preparation, with the last most frequently proving the deal breaker.

the video for (admittedly staged) questions, responses, and dialogue brings the student more actively into the video (and reduces instances of passive listening). We have relished testing the limits of Collaborate to host a mock hearing across four virtual breakout rooms with multiple guest mediators and the professor floating from one breakout room to another. Our distance-education student cohort has conducted mock negotiations, litigated bid protests (e.g., simulating disappointed offeror litigation), and facilitated dynamic peer review across the Blackboard Collaborate platform, just as their peers do in the classroom.[48] Although initially we found that we more frequently suffered—and were less equipped to overcome—technology failures or hiccups when logging in from remote locations, those impediments decreased significantly with practice.

In retrospect, we were slow to acknowledge (despite the instructional designers' initial, stern, and ultimately prescient warnings) exactly how clear and detailed we needed to make directions and learning objectives. In other words, we found it was not enough to assign tasks in the syllabus. While we all have experienced students who fail to read the syllabus, our sense was that, for some reason, the lack of shared classroom time requires us to more explicitly articulate our expectations for class preparation, including, for example, explaining why students must complete the readings *and* watch the condensed lecture video.

Also, in contrast to the cynicism and formalism we've experienced with regard to the ABA's efforts to mandate learning objectives and outcome assessment, we've found that the intentionality of designing an online course has forced us to be more cognizant of, and transparent with, our learning objectives. We've also become more conscious of how those objectives are assessed. For example, in transforming seminar courses that culminated in a research paper, we created formative assessments early in the semester to give students a low-risk opportunity to experiment with, and get feedback on, their ideas.[49] Those assignments informed the faculty about topics they needed to return to and which earlier points needed clarification during the next class. We also found increased faculty confidence in the integrity of student work product by integrating SafeAssign review into every assignment.[50] The University Teaching & Learning Center staff made us think more critically about our teaching goals not just course by course, but across the entire curriculum. When it came time to update one of our core (required) online courses, we realized our students

48. More recently, during the spring 2020 pandemic-impacted semester, we welcomed our community to experience the finals of the Arnold & Porter Government Contracts Moot Court Competition on Google Meet instead of in our preferred venue, the U.S. Court of Appeals for the Federal Circuit, at the nearby Howard T. Markey Federal Court Building.

49. To help faculty gain efficiency in grading those formative assignments, we also took advantage of an increasingly user-friendly Blackboard platform to build rubrics into the course page, which had the secondary benefit of fostering self-determined learning.

50. Indeed, our beleaguered Fundamentals of Lawyering Faculty colleagues took a page from our playbook and subscribed to a service like SafeAssign to increase confidence in their review for integrity violations in on-campus JD writing courses. Of course, our pilot experience predated current concerns with regard to generative artificial intelligence (AI) such as ChatGPT.

would be better served if we spun off a new short course to present an overview of the curriculum, explain how the courses build upon one another, lay out the statutory and regulatory landscape, and introduce the language (or vocabulary or nomenclature) of the field. We were astonished that something as banal as a course update could yield something so revolutionary and learner-focused, but such is the intentionality of online course design. Before collaborating with instructional designers, we would never have used, let alone understood, vocabulary like "scaffolded learning."

After three years, we made the difficult and painful decision to reduce the number of short writing assignments to give faculty more breathing room to give timely feedback.[51] The burden on faculty to provide meaningful feedback on weekly assignments simply proved unsustainable. Consistently assessing student work and providing frequent, meaningful feedback to students is time-consuming and, frankly, not terribly gratifying. (Nor does this level of attention to individual students check any of the boxes upon which our institutions evaluate us for the purposes of tenure, promotion, compensation, or, frankly, prestige.) As a compromise, for every week we removed a writing assignment we added a peer review exercise.[52] Even this reduced assignment load represents much more "work" being generated by students and much more ongoing evaluation and feedback when compared with a large classroom where, well, there's none whatsoever.[53] We also hired additional adjunct faculty to maintain

51.   Once students embraced the iterative learning, they came to welcome (and, to some extent, crave) *prompt* feedback and were dismayed when it didn't come quickly enough. This is common among students, as the former science teacher among us can attest, having fielded innumerable questions along the lines of "How did I do?" a day after administering a science exam. The desire to know how one's performance measured up is an innate part of learning, for only by seeing one's results can one adequately gauge what improvements to make. While we agree that "[a]ssessment, and particularly outcomes assessment, challenges us to bring the same intellectual curiosity, creativity, and deep thoughtfulness to our teaching that we bring to our scholarship," Curcio, *supra* note 12, at 491, we are aware of no institutional incentives for our colleagues to rise to such a challenge. Indeed, Steven Friedland's litany of impediments resonated: "[E]nhanced assessment arguably impedes the coverage of substantive law; does not support perceived improvement of the teaching or the quality of an institution's legal education under the current ranking system; is difficult to create, especially without training; has few incentives for teachers to spend time and effort on it; and is used in legal education primarily as a sorter, with some assistance from enforced or aspirational curves. Consequently, few resources have been devoted to assessment institutionally . . . . [And a]nother significant impediment is politics—the perception that . . . assessment is a tool . . . to hold faculty members more accountable for their results." Friedland, *supra* note 12, at 600 (footnotes omitted).

52.   This may have proved a blessing in disguise, to the extent that the non-attorneys gained a lot from the perspectives of their attorney classmates and vice versa. We found the same unexpected (but, in retrospect, logical) benefit when government employees shared their papers with private-sector counterparts (and, again, vice versa). *See* Ndoye, *supra* note 35.

53.   In this context, we feel compelled to state the obvious: Even the most prolific Socratic instructors rarely, actively, affirmatively engage a statistically significant portion of a large class on a week-to-week basis. And, even in classes where students are expected to speak (e.g., answer a question or series of questions) once or twice a month, that small number of students need not generate the kind and quality of thoughtful, considered, individual work product that we required of every student on a regular basis. Of course, this brings us back to the staffing,

smaller distance-education cohorts (with cohorts capped at twenty, and most classes under fifteen), ensuring more individualized attention to each student.

Over time, we hope our ability to adapt and to solve problems will permit us to offer legal education to a larger, potentially global, audience of lawyers and nonlawyers at an affordable price point. As suggested previously, we foresee opportunities and benefits deriving from the ability to mix and match and "package" video content differently for different types of audiences, and to bring together different types of students—from different degree and nondegree programs. In addition to permitting attorneys, procurement professionals, and businesspeople to study together, share experiences, and perspectives, we perceive there may be opportunities for using this content to share best practices through platforms such as MOOCs (massive open online courses) in countries where the job market for acquisition professionals is booming.

We recognize that a number of uncertainties, or things we can't predict, will shape the trajectory of our program as much as, if not more than, our internal programmatic decisions or best efforts.[54] If, in response to the ABA's revision of Rule 306, governing distance education,[55] the faculty, all at once, gradually, or as a pilot allows us to include JD candidates in these courses—for example, as an option for students pursuing our JD concentration in government procure-

    scalability, and ultimately, sustainability, questions. But, in the context of this discussion, we feel that it answers the mail on the potential efficacy of distance learning.

54.   As we wrote the original version of this article, our law school was preparing to welcome a new dean, who could, among other things, have chosen to accelerate, slow (or stop), seek to reorient or alter, or simply ignore our efforts; it was unclear whether the law school or the university would—in the short or long term—partner with a provider that requires us to cede control and, possibly, start over or reconfigure our course delivery system to adopt new emerging technologies. Of course, since that time, the scholarly literature in this area continues to introduce and assess new approaches. And, as noted above, we are cognizant that, following the spring 2020 pandemic-driven abrupt shift to distance education, many more of our colleagues have a far greater familiarity, and some level of experience, with some aspects of (and tools used for) distance education.

55.   During the period discussed in this article, Section 306(e) of the ABA Standards and Rules of Procedure for Approval of Law Schools stated: "[a] law school may grant a student up to one-third of the credit hours required for the JD degree for distance education courses qualifying under this Standard." "More recently, proposed revisions to standard 306 and 311 will permit JD programs to offer up to 50 percent (previously 30 percent) of courses via distance education and add requirements for substantive interaction between faculty and students in such courses. These revisions were unanimously approved at a February 2023 ABA Council meeting, and will be presented to the ABA House of Delegates for review in August 2023. Description of the proposed new rules can be found in the February 8, 2023 memo of the Strategic Review Committee of the ABA Section on Legal Education and Admission to the Bar, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/feb23/23-feb-distance-ed-changes.pdf For summary discussions see Julia Brunette Johnson, *ABA Council votes to expand distance opportunities for law students*, National Law Journal, May 17, 2023 https://nationaljurist.com/national-jurist/news/aba-council-votes-to-expand-distance-education-opportunities-for-law-students/ and Karen Sloan, *Law Students can take 50% of classes on-line, with ABA rule change*, Reuters, May 12, 2023, https://www.reuters.com/legal/government/law-students-can-take-50-classes-online-with-aba-rule-change-2023-05-12/.

ment law—the number of cohorts we would need to offer and service would dramatically increase.

Looking Ahead: Ten Challenges

While for the most part we are pleased with our initial successes and satisfied with our progress to date, we readily concede that the challenges associated with delivering a high-quality distance-education experience are daunting, serious, and, depending upon institutional capacity and faculty culture, considerable and (in the short term) potentially insurmountable. Yet our experience suggests that this has much more to do with motivating and incentivizing faculty, and creating a positive working dynamic with staff, than introducing technology into the pedagogical equation. In that context, we have attempted to distill our ever-fluctuating list of challenges—most of which we hope to overcome, but some of which we expect to persist—into a manageable list.

   1.   Change Management—Decanal: First, law school leaders must embrace and acknowledge the potentially anxiety-inducing risk that many of the costs associated with the distance-education enterprise tend to be front-end loaded. In other words, you have to invest the money up front! In our experience, the investment, which should not be underestimated, includes, at a minimum: retaining expertise (likely outsourced) for market research to determine whether there is sufficient demand for the courses, adopting and deploying new technology, creating the capacity to generate high-quality (preferably studio-quality) video, faculty compensation (both for course creation and facilitation), and managing the process and its myriad moving parts. Without a dramatic change to allocation of, and compensation for, scarce faculty resources,[56] our sense is that the lion's share of our faculty will be unwilling to participate in, let alone consider expanding, the school's distance-education initiatives.[57] Fortunately, innumerable options (and models) are available for compensating faculty for distance-learning efforts. Do your homework, understand the options, and negotiate aggressively.

   2.   Change Management—Institutional: To succeed, you need broad-based buy-in, from faculty, the records office (or registrar), dean of students, etc. And you need money. Just to put this in context, our sense was that, initially, many of the preexisting resources available to our resident students—from orientation and curriculum planning to crisis counseling and

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56.   While these policies may change in the future, at the time of our writing, no faculty efforts associated with our distance-education offerings "count," or are taken into consideration, in calculating faculty course loads. Nor are distance-education courses treated in the same way as teaching a classroom "overload" (e.g., teaching an extra course or an additional section of the same course).

57.   We experienced a fair amount of tension between teaching faculty and the dean's suite on related issues. An Australian study found that, given competing demands for a professor's time, even innovators and early adaptors are often unlikely to take the time or make the effort to share their knowledge with fellow faculty unless rewarded. McLaren & Kenny, *supra* note 15, at 31.

career advice—through our well-resourced and student-focused records and dean of students and career development offices did not naturally translate to serving our distance-education students. Moreover, if it's not inherently obvious, distance-education students are not attuned to the temporal rhythm of the campus, and they expect to have the option to take classes throughout the calendar year. Among other things, we faced considerable institutional inertia when proposing new online courses (e.g., short or compressed courses) that did not conform to the traditional calendar entailing two thirteen-week semesters.

3. ***Change Management—Professorial:*** If you're willing to try something totally different, you may be amazed by the potential of distance education. But, *if you don't want to change what you're doing in the classroom, you may not be interested in experimenting with this methodology*. Teaching in distance mode is different from the conventional large classroom, and changing behavior can be incredibly difficult. Beyond disinterest in trying something new, we must expect and acknowledge that faculty may become distressed and distracted when trying new teaching methods in a setting where any number of factors feel out of their control. Among other things, the differences between videotaped lectures and classroom teaching—in terms of preparation, presentation, and dynamic feedback loops—are staggering. While many of us like to view the classroom experience as a guided conversation (albeit heavily one-sided), the studio—in a vacuum— provides no student feedback.[58] Of course, for some faculty, the sterility and controlled environment, devoid of student interaction and inquiry, may permit a higher level of focus and clarity. Acknowledging that we represent a very small sample, we, alas, did not find the studio sessions particularly pleasant or gratifying.

4. ***Appreciating the Distinction Between Course Creation and Facilitation:*** It is imperative not to declare victory and assume the hard work is done once the "packaged" distance course is created. As noted above, traditional law faculty may be uninterested in or intimidated by the process of building online courses; and, for any number of reasons, they may be unwilling to facilitate the course after its creation. In our experience, there is no need for full-time faculty to play both roles. Once the course is mapped and the video content is created and curated, the students may actually *benefit* from the diversity of instruction and perspectives that adjunct instructors bring. Our students appeared to enjoy it when full-time faculty partnered with a team of well-trained, well-managed adjunct faculty to lead weekly, small-group, synchronous videoconferences and

58. This affects everything from a dramatically reduced energy level to a complete absence of confirmation cues (such as head nodding, laughter, and, equally important, bored or puzzled looks). By analogy, consider the difference—for a professional actor—between making a movie or television show and giving a live on-stage performance. Those of us who find classroom teaching energizing (dare we say invigorating?) and feed on the adrenal rush of the live classroom experience expect we are not alone in finding asynchronous (or prerecorded) video sessions far less satisfying or gratifying and frequently painful.

provide feedback on writing assignments. For practitioners, this offers the familiar look and feel of webinars, which are increasingly popular. At the risk of belaboring the point, it is critical to appreciate that, *after* the distance course has been constructed, course facilitation, particularly given the advances in videoconferencing technology described above, provides the greatest opportunities for student learning and, therefore, must be carefully staffed.

5. ***Accountability and Authority: The Need for Senior Leadership:*** We have been uniquely fortunate to rely on three successive program directors (PDs) with (exceptional, but vastly different) subject-matter expertise and considerable credibility among our students and faculty. Three years into the interdisciplinary experiment, having experienced innumerable growing pains, leadership changes, and a painful loss of key personnel, we recruited and hired a new PD,[59] one of this article's authors. Her vision to expand upon our early successes in interdisciplinary distance education became her primary focus, and, within six months, she secured law faculty approval to offer our subject-matter LL.M. online. Nonetheless, the law school bureaucracy is traditionally conditioned to respond primarily to tenure-track faculty (and, at its worst, disrespect and undervalue lesser-status community members, despite, in our case, the PD's immense value to the program and our students, and her contributions to the law school's fiscal well-being). To succeed, in addition to marshaling resources, the PD must serve as an intermediary between faculty and the instructional design team and be able and available to spend time with, and become a trusted partner of, both. Learning something new makes faculty (and other mortals) uncomfortable and sometimes may even prompt misbehavior (or "acting out"—there's no other way to put it). Among other things, the PD must channel faculty stress into empathy for students who may also be new to online education, returning to school after a considerable hiatus, and eager to receive positive feedback. As a trusted colleague of both the production team and the faculty, the PD can strengthen the collaborative bond.

6. ***The Technology Matters—Consumer Choices Dramatically Influence Student Outcomes:*** It is beyond the scope of this paper to attempt to describe the extensive market of platforms for housing/offering/managing the course (e.g., Blackboard, Canvas, Moodle, D2L Brightspace, etc.), video creation (e.g., studios, cameras, sound recording and mixing, etc.) . . . and the people who manage them. We expect that, for many law schools, the decision may be simplified where the parent university has already

59.   Professor Thornton was an experienced government procurement lawyer, an alum of our LL.M. program with extensive experience teaching legal and scholarly writing, and, thus, fully immersed in the process and benefits of experiential education. As a member of GW Law's Fundamentals of Lawyering faculty, she co-created, with Professor Jessica Wherry (formerly our GW Law colleague, now at Georgetown Law), the law school's first online Analytical Writing course, for non-attorneys, with support from a Legal Writing Institute teaching grant.

invested in and, in so doing, borne the cost of one of these platforms. In our case, throughout the pilot, the university bore the cost of, and managed to efficiently support, the Blackboard application (e.g., by providing training and help desk services).

7. ***Dedicated Support Staff—Sweat the Small Stuff (or Delegate to Folks Who Do):*** You desperately need technological resources/staff on campus to provide platform training and to troubleshoot the occasional glitches. Loss of confidence in the technology will cripple the faculty's efforts to build a learning community and, of course, frustrate students. Our on-campus online learning IT team has empowered our faculty to make increasingly creative use of videoconferencing. And, among other things, for students, Blackboard (and its competitors, such as Canvas) post(s) an extensive library of frequently asked questions (FAQs) that can (remotely) guide them through just about any technical issue, day or night.

8. ***Playing Well with Others? Exploiting University Capacity?*** We find it difficult to imagine course production working as smoothly as we have experienced if our design/production team were not on campus and part of the university team. Moreover, working with an in-house team is vastly less expensive than outsourcing to white-glove service providers that bundle marketing, student services, and course production. There has been much in the popular and scholarly literature written about the potential for online education to reduce the financial barriers to enrolling in an elite educational institution.[60] Yet our impression remains that, even if one *could* discount the price for online education, university administration may be unwilling (for valid or other reasons, including inertia). For example, one popular trope is that discounting is harmful to the institution if it signals that the online education experience is diluted or substandard; frankly, we find this storyline unpersuasive.[61]

60. *See e.g.,* Paul L. Caron, *The Growth of Law School Online Master's Programs*, Tax Prof Blog (Jan. 4, 2018), https://taxprof.typepad.com/taxprof_blog/2018/01/the-growth-of-law-school-online-masters-programs.html; Huffman, *supra* note 12; Klinkner, *supra* note 34; Martin, *supra* note 19; Powell, *supra* note 20; Lawrence E. Singer, *Leadership in Online "Non-Traditional" Legal Education: Lessons Learned & Questions Raised*, 94 U. Det. Mercy L. Rev. 43 (2017); Philip G. Shrag, *MOOCs and Legal Education: Valuable Innovation or Looming Disaster*, 59 Vill. L. Rev. 83 (2014); Ward, *supra* note 43.

61. We hesitate to use the word "greed" here, and, more broadly, much ink has been spilled on the need for law schools to change their business models to increase access, diversity, and relevance. *See, e.g.,* Eric C. Chaffee, *Answering the Call to Reinvent Legal Education: The Need to Incorporate Practical Business and Transactional Skills Training into the Curricula of America's Law Schools*, 20 Stan. J. L. Bus. & Fin. 121 (2014); Linda R. Crane, *Interdisciplinary Combined-Degree and Graduate Law Degree Programs: History & Trends*, 33 J. Marshall L. Rev. 47, 80 (1999); Critchlow, *supra* note 21; Nora V. Demleitner, *Higher Education Under Pressure: What Will the Future Hold?*, 66 Syracuse L. Rev. 649 (2016); Marie Summerlin Hamm et al., *The Rubric Meets the Road in Law Schools: Program Assessment of Student Learning Outcomes as A Fundamental Way for Law Schools to Improve and Fulfill Their Respective Missions,* 95 U. Det. Mercy L. Rev. 343 (2018); Joni Hersch, *Increasing Diversity by a New Master's Degree in Legal Principles*, 67 J. Legal Educ. 86, 98–99 (2017); Matthew S. Parker, *The Origin of LLM Programs: A Case Study of the University of Pennsylvania Law School*, 39 U. Pa. J. Int'l L. 825 (2018); David I. C. Thomson, *How Online Learning Can Help Address Three Persistent Problems*

9. ***The Promise and Peril of Interdisciplinary—Nothing in Life is Incredibly
    Easy:*** Partnering across schools within the university to offer unique,
    interdisciplinary learning opportunities sounds great in concept, but it
    can be very challenging.[62] Our interdisciplinary online degree program
    with the School of Business proved unwieldy because, despite the best of
    intentions, the scholarly investment was lopsided, and our schools were
    growing in different directions. Ultimately, our shared desire to embrace
    technology to reach broader audiences proved insufficient to overcome
    the challenge of funding faculty with scholarly goals at the intersection
    of business and government procurement law.[63] In a resource-stretched,
    disaggregated environment of competing priorities (and leadership
    turnover), not every "profitable" win-win outcome guarantees survival.

10. ***Resources and Scalability:*** Our sense is that one of the best—or most valu-
    able—aspects of the distance-education platform is also one of the most
    challenging in terms of resources. We sense that our students learned (a
    lot more) by producing work product on a regular basis. To that end, we
    began with weekly assignments, but that burden proved unsustainable
    in terms of faculty grading and feedback (even with multiple faculty
    co-teaching the courses and sharing the burden). Over time, we've com-
    promised by reducing the volume of writing assignments, settling on,
    basically, assignments every other week combined with peer review, for a
    different type of learning.[64] Future advances in artificial intelligence (AI)

In Legal Education, 70 Syracuse L. Rev. 181 (2020).

62. The sunset of our MSGC experiment coincided with the launch of the M.S.L. degree, which
     is granted and administered by GW Law. The new degree allows us to directly manage admis-
     sions (and, thus, the student body) and, most importantly, to control our own pedagogical
     and economic fate. *See* Powell, *supra* note 20, at 294 (identifying reasons that collaboration on
     jointly owned programs may fail). Setting aside the interdisciplinary approach, extending legal
     education to a broader sector of the public, while remaining true to a law school's mission
     finds support in the scholarly literature. *See e.g.*, Hersch, *supra* note 61, at 98–99 (discussing
     the growing value of master's degrees generally and advocating for granting a Master of
     Legal Principles to first-year JD students to attract risk-averse lower-income students);
     Singer, *supra* note 60, at 43 (addressing the need to remain true to a school's mission even as
     law schools change their "raison d'être" from exclusively training future lawyers to a wider
     student group through a "veritable potpourri" of new programs and certificates); Stephen
     Colbran & Anthony Gilding, *MOOCs and the Rise of Online Legal Education*, 63 J. Legal Educ. 405,
     405–06 (2014) (observing the ability of technology to meet the needs of the post-industrial
     knowledge economy, disrupt traditional educational practices, and reach a new group of future
     students through a low-risk entry program); Crane, *supra* note 61, at 80 (1999) (describing the
     importance of non-JD graduate legal degrees in helping students specialize and adapt to a
     changing marketplace).

63. Sometimes collaborating across an ocean is easier than across campus. Distance education
     has allowed us to be much more proactive about working collaboratively with our colleagues
     around the world—an important consideration as universities seek to develop global reputations.

64. Of course, all this *could* happen in a large class, but generally, in our in-residence experience, it
     simply does not. One of us teaches in the 1L curriculum, and in most of our law school's non-
     Fundamentals of Lawyering 1L courses, practice exams are common, but midterm assignments
     are the exception rather than the rule. The obvious solution that would make this practice

may help address the scalability issues (that we, and others, confront) by increasing efficiency on administrative tasks including initial, high-level feedback on student assignments (but we claim no unique qualifications to predict that story arc). At the end of the day, providing feedback requires resources, which requires money, and that money historically has not been allocated to the traditional large law school classroom.

Conclusion: The Journey of a Thousand Miles Begins with a Single Step[65]

We hope that in sharing our (admittedly quirky) journey, the impediments we've overcome, the pleasant surprises and bitter disappointments we've experienced, and some (institution- and program-specific) lessons learned and lingering concerns, we will encourage others to take the plunge and empower those who do to more quickly navigate the circuitous, evolving path to student-focused distance learning. Our multiyear experiment convinces us that distance education offers unlimited potential as an alternative teaching and learning delivery and consumption platform. More importantly, if thoughtfully and responsibly managed, the student learning experience in distance education compares favorably with and may even surpass that found in the classic amphitheater, quasi-Socratic, or lecture-centric law course. Nonetheless, preparing to deliver and delivering quality distance education is time-consuming, labor-intensive, and, since there is no sugarcoating it, difficult. Accordingly, to reap the benefits and achieve the promise of distance education, law schools must embrace paradigm-shifting cultural change, which our experience suggests lies somewhere between a tall task and an insurmountable barrier for many faculty and institutions.

Technology is no longer the primary impediment. Rather, overcoming the myriad challenges—and benefiting from distance education's potential—requires, among other things, vision, leadership, teamwork, faculty buy-in, a growth mindset, technical competence, flexibility, some amount of capital investment (and no small dose of willingness to accept risk), incentives, and, ultimately, a commitment to student-focused learning. We look forward to learning from our readers' experiences as they embark upon their own journeys.

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more feasible, and thus more common, for our larger classes would be for faculty to employ teaching assistants, but that practice has generally been discouraged at our institution.

65. Chinese proverb, often attributed to—but not convincingly confirmed to have been written by—Lao Tzu (found in Chapter 64 of the Tao Te Ching).