Teaching a Synchronous Online Business Organizations Course to J.D. Students: A Case Study

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TEACHING A SYNCHRONOUS ONLINE BUSINESS ORGANIZATIONS COURSE TO J.D. STUDENTS: A CASE STUDY

Ronald J. Colombo*

Although distance learning, in one form or another, is no longer a new phenomenon, its employment by American law schools remains relatively recent. As such, there are few resources, and even less data available, to the legal educator who wishes to pursue this increasingly prevalent method of teaching. This Article hopes to address this paucity by contributing a case study, of one particular experience at one particular school, to the body of literature available.

The first half of this Article reviews the literature available to date regarding distance learning as applied to legal education. This literature review should serve as a valuable resource for anyone researching or otherwise interested in the subject.

The second half of this Article features a personal case study in teaching an online, synchronous distance learning class at a law school accredited by the American Bar Association. In summer 2019, the course “Business Organizations” was offered to Juris Doctor students at Hofstra University’s Maurice A. Deane School of Law in such a format for the first time. The course was completely synchronous, conducted primarily via group videoconferencing technology. As will be explained in the pages to follow, the experience exceeded expectations set for this undertaking on a number of fronts. In a nutshell, rather than serving as a second-best form of instruction, justifiable on grounds of

* Professor of Law, Maurice A. Deane School of Law at Hofstra University. I am indebted to my colleagues on the faculty for affording me the opportunity to teach online courses at the Law School, and particularly for their approval of my course proposal to teach Business Organizations online (the subject of this Article). I have benefited from the feedback and support provided to me by many of them, and in particular, from the insightful, thought-provoking comments that both James Hickey and Amy Stein generously shared with me. I would like to thank my colleague Jennifer Gundlach (herself an innovator in legal education) for first suggesting that I set forth my personal experiences in teaching an online version of Business Organizations in an Article. Finally, I express my appreciation to the staff and administration of the Law Library at the Maurice A. Deane School of Law at Hofstra University for its assistance with this undertaking; to Brian Kaspar, Associate Dean for Academic Records and Registrar, for his invaluable efforts in connection with this project; and for research assistance ably provided by Dominique Manzolillo.
convenience and efficiency, the course demonstrated that no sacrifice in educational quality necessarily accompanies online legal education. Moreover, the conclusion drawn from this experience is that online legal education has the potential to exceed traditional, in-person forms of legal education.

Along the way, my philosophy of education, and my approach to teaching, will inevitably be revealed in bits and pieces. I hope this serves to enrich the Article, rather than to detract from it.
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I. INTRODUCTION

The term "distance learning" has been used interchangeably over the years with "distance education" in reference to instruction that does not adhere to the traditional, live, in-person approach to education with which most are familiar.\(^1\) Although distance learning has been a component of undergraduate education for several decades, its adoption by American law schools has been a relatively recent phenomenon.\(^2\) So recent, in fact, that little direct data and few available case studies exist to aid those in the legal academy interested in pursuing distance learning. This gives rise to a classic "chicken-or-the-egg" problem for the typical legal educator. For as a trained attorney, the legal educator is inclined to require evidence-based justifications for changes to his or her pedagogical approach; the more significant the change, the greater the evidentiary burden.

Taken to its logical extreme, the traditional reticence of the legal educator would, of course, preclude the taking of those first steps needed to generate a body of evidence. Thus, pioneers are needed: individuals and faculties willing to take thoughtful, reasonable, calculated risks with the hope of achieving genuine progress in the field of legal education, while at the same time ready to accept the disappointment of a lesson learned in what not to do.

Critically, innovative undertakings must be documented, and such documentation made available for examination by others, if the experiences gleaned are to contribute fruitfully to the legal academy as a whole. This is especially so with regard to distance learning in legal education, for the reasons expressed previously. This Article is an attempt to provide such documentation by shedding light on one particular experiment undertaken at one particular law school. More specifically, the Maurice A. Deane School of Law's decision to offer its traditional Business Organizations course to Juris Doctor ("J.D.") students in an online format for the first time in summer 2019. The hope is that the sharing of this experience will help build the body of evidence available to those interested in exploring the burgeoning yet still largely unfamiliar phenomenon of distance learning in legal education.

Another motivation for publishing this Article has been my own personal frustration, as instructor of the aforementioned online Business Organizations course, in attempting to locate similar, on-point

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2. Id. ¶¶ 9-10, 18; Helen Leskovac, Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing, 8 ALB. L.J. SCI. & TECH. 305, 307-08, 311-12 (1998).
scholarship to assist me with the course’s development. As will be explained below, the course was completely synchronous and conducted primarily via group videoconferencing. Very little distance learning scholarship is centered on legal education, and practically all of the scholarship on distance learning concentrates upon *asynchronous* models (in which teacher and students are separated not only by distance, but also by time). Rare is the article that focuses upon *synchronous* models of distance learning (in which instructors and students interact live, in real time, but, in contrast to traditional methods, within the context a virtual classroom made possible via videoconferencing technology), and rarer still is the article that focuses upon synchronous distance learning in legal education. Thus, this Article has been written not only to address the paucity of scholarship on distance learning in legal education generally, but also to address the dearth of scholarship on synchronous distance learning in legal education more particularly.

Following this introduction, Part II of this Article will provide some background on distance learning (first as a general matter and thereafter with regard to legal education). Part III will proceed to address the online Business Organization course taught at Hofstra University’s Maurice A. Deane School of Law in summer 2019. It will cover the instructor’s (my) background, the rationale for offering the course in an online format, the reasoning behind the specific course chosen, the faculty approval process, and the structure and conduct of the course.

My observations, insights, and analysis regarding the online course will be set forth near the end of Part III; it is there that I will tackle the degree to which the course achieved its learning objectives, covering both formative and summative assessment. Part III will also include a

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4. For important examples of such scholarship, see generally, for example, Arcabascio, *infra* note 1; Steven C. Bennett, *Distance Learning in Law*, 38 SETON HALL LEGIS. J. 1 (2014); Andrea L. Johnson, *Distance Learning and Technology in Legal Education: A 21st Century Experiment*, 7 ALB. L.J. SCI. & TECH. 213, 214-15 (1997) (recounting the author’s personal experience in teaching the first online course offered at an American law school and utilizing now-obsolete videoconferencing technology); Ellen S. Podgor, *Teaching a Live Synchronous Distance Learning Course: A Student Focused Approach*, 17 U. ILL. J.L. TECH. & POL’Y 263 (2006); Charlene L. Smith, *Distance Education: A Value-Added Model*, 12 ALB. L.J. SCI. & TECH. 177 (2001).

5. See infra Part II.

6. See infra Part III.

7. See infra Parts III.A–D.

8. See infra Part III.F.
description of, and excerpts from, the feedback received from students in their course evaluations. 9

It should be noted that my focus in this Article is primarily upon the pedagogical soundness of distance learning—the quality of instruction. There are other reasons to embrace distance learning, separate from its pedagogical value. These would include the inter-related desiderata of reducing the cost of legal education, increasing access to legal education, 10 and improving the convenience and flexibility of legal education. 11 Distance learning, delivered online, could also better familiarize law school graduates with the tools and technologies they are likely to utilize in practice in our increasingly online world. 12 It could also help better serve students with disabilities by nature of the modular format typically associated with distance learning, and by eliminating the particular challenge that transportation poses for some such students. 13 It could also help attract non-traditional students to law school. 14 Some have suggested that the experience of designing and teaching an online course can serve to make one a more effective instructor in the traditional classroom. 15 Although some of these issues will be touched upon, they are largely outside the scope of this Article.

9. See infra Part III.E.
11. See Bennett, supra note 4, at 6-10.
12. See Frank Ready, How Law Schools’ Online Classes Are Supporting Rise of ‘Virtual Law’, LAW.COM (Aug. 9, 2019, 9:00 AM), https://www.law.com/legaltechnews/2019/08/09/online-students-may-be-a-step-ahead-in-virtual-workplace-skills?sh=20190810145128 ("More law schools are beginning to offer students the opportunity . . . to participate in online courses, potentially allowing candidates facing geographical or employment-related barriers to pursue a legal education and—eventually—a legal career. But there may be another unexpected fringe benefit awaiting those students once graduation rolls around. The shift toward online coursework also complements a larger, industry-agnostic trend toward remote working and virtual offices, which requires employees to be fluent in digital communication skills and possess an ability to work independently."); see also Shelley Ross Saxer, One Professor’s Approach to Increasing Technology Use in Legal Education, 6 RICH. J.L. & TECH. 21, ¶ 2, ¶ 31 (2000).
The last section of Part III will recapitulate the key observations gleaned and lessons learned from this experiment.16

Finally, this Article will close, in Part IV, with a brief conclusion summarizing my findings.17 In short, the experience exceeded expectations set for this undertaking on a number of fronts. Rather than serving as a second-best form of instruction, justifiable on grounds of convenience and efficiency, the experience suggests that no sacrifice in educational quality necessarily accompanies distance learning in legal education. Moreover, the evidence also suggests that distance learning in legal education has the potential to be qualitatively superior to traditional, in-person forms of legal education. Due to the existence of confounding variables, however, and the small sample size, it must be recognized that additional data would be needed before one could conclusively accept these propositions.

II. BACKGROUND ON DISTANCE LEARNING

A. History and Development of Distance Learning

In its Standards and Rules of Procedure for Approval of Law Schools, the American Bar Association ("ABA") defines a "distance education course" as "one in which students are separated from the faculty member or each other for more than one-third of the instruction, and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously."18 "Synchronous" refers to interactions that are live, simultaneous, and in real time.19 This would include interactions conducted via videoconferencing, teleconferencing, and live chatrooms, for example. The traditional, in-person classroom experience is, of course, fully synchronous. Conversely, "asynchronous" refers to the opposite: interactions that are not conducted live and simultaneously, but on each party's own time.20 This would include, for example, communication via email, discussion boards, or any other means by which one party posts or otherwise transmits a message at one time, and the other party (or parties) responds at some later time. A bulletin board outside a

16. See infra Part III.F.
17. See infra Part IV.
20. Id. at 476-77.
professor’s office in which questions are posted and answered would constitute a low-tech version of asynchronous education.

Arguably, distance learning has been around for a few hundred years, ever since the advent of “correspondence courses” conducted by mail.\textsuperscript{21} Formal undergraduate and graduate distance learning courses have been offered by Wesleyan University since the late nineteenth century.\textsuperscript{22} Again, such distance learning was via the correspondence approach: “Textbooks, syllabi, and course materials are mailed to a student. The student then completes the work and returns it by mail for grading whereupon the instructor evaluates the work and returns it to the student, again by mail.”\textsuperscript{23}

Such correspondence approaches to distance learning are quintessentially asynchronous. The instructor, and the learner(s), are separated not only by place, but by time. Roughly put, the professor’s “teaching” and the student’s “learning” are not occurring simultaneously, but rather at different times.

With the advent of radio and television, distance learning began to incorporate audio and video technology into its repertoire.\textsuperscript{24} Students would now sometimes be required “to complete assignments in conjunction with watching or listening to . . . broadcasts.”\textsuperscript{25} To the extent that such broadcasts were live, they could be deemed the first efforts at formal synchronous distance learning.\textsuperscript{26}

A significant corner was turned in 1980 with the introduction of “two-way video technology, commonly known as videoconferencing.”\textsuperscript{27} For even if prior broadcasts had been live, they never permitted the person-to-person interactions that constitute the core of what “synchronous” education is understood to encompass. Videoconferencing, in many ways, permits a replication of the classroom experience between or among individuals separated by distance. The major difference being that instead of viewing and listening to one another in person, the class conducted via

\begin{flushleft}
\textsuperscript{21} See Arcabascio, supra note 1, \S 6 (“[T]he concept of distance education may have made an even earlier appearance when an advertisement appeared in the March 20, 1728, Boston Gazette offering shorthand lessons by mail.”); see also GEORGE SIEMENS ET AL., PREPARING FOR THE DIGITAL UNIVERSITY: A REVIEW OF THE HISTORY AND CURRENT STATE OF DISTANCE, BLENDED, AND ONLINE LEARNING 15 (2015), https://www.researchgate.net/publication/284023691_Preparing_for_the_digital_university_a_review_of_the_history_and_current_state_of_distance_blended_and_online_learning.
\textsuperscript{22} See Arcabascio, supra note 1, \S 7.
\textsuperscript{23} Id.
\textsuperscript{24} Id. \S 8.
\textsuperscript{25} Id.
\textsuperscript{26} A one-on-one telephone call between a student and a teacher would also constitute distance learning.
\textsuperscript{27} See Arcabascio, supra note 1, \S 9.
\end{flushleft}
videoconferencing consists of viewing and listening to one another remotely, through the airwaves.

Initially, despite its adoption by some institutions, videoconferencing technology suffered from issues of "quality, reliability, and cost."²⁸ Advancements since that time have essentially eliminated these concerns, such that today, the technology for "high quality virtual education is finally within reach of all academia."²⁹

According to a report of the Babson Survey Research Group published in 2018, distance learning enrollments in the United States have increased for fourteen straight years.³⁰ As of fall 2016, distance learning courses comprised 31.6% of all higher education enrollments.³¹ As of fall 2017, over six million students were enrolled in a distance education course at a Title IV degree-granting, postsecondary institution.³²

Among law schools in the United States, the situation is different, as "[l]aw schools have been slower than their undergraduate and graduate counterparts to incorporate online [distance] education into their J.D. academic programs."³³ Of the 202 ABA-accredited law schools in the United States, only ninety-six, less than half, appear to offer any distance learning courses to their J.D. students.³⁴

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²⁸ Leskovac, supra note 2, at 306.
²⁹ Id. at 306-07.
³¹ Id. at 11.
³³ Dutton, supra note 3, at 498; see John A. Sebert, ABA Accreditation Standards and Quality Legal Education, 11 TEX. REV. L. & POL. 395, 396 (2007) ("I actually have been very surprised that so few law schools are using the flexibility they presently have to the maximum, to use distance education to reduce costs and work in collaboration with other law schools.").
³⁴ For the total number of accredited law schools, see Search Results, LSAC, https://officialguide.lsac.org (follow "View All Schools") (last visited July 10, 2020). A self-conducted survey of schools, completed in 2019, revealed ninety-six that offer at least one online program open to J.D. students; this number does not reflect those schools that offer online courses to non-J.D. students, such as M.A., LL.M., and Continuing Legal Education ("CLE") students. See U.S. Law Schools' Online Course Offerings Survey (2019) (on file with author). Another survey, conducted in July 2018, revealed that "at least thirty of the top one hundred schools offer online courses as part of their law school curriculum." Dutton, supra note 3, at 494. Our survey did not extend to non-accredited law schools—such as Concord Law School—some of which offer fully online J.D. degrees. See Search Results, supra; CONCORD L. SCH., https://law.concordlawschool.edu (last visited July 10, 2020); see also Cahak, supra note 10, at 496-97 ("In total, five 'distance-learning' law schools, all registered in California, educate their students by 'conduct[ing] instruction and provid[ing] interactive classes principally by technological means,'
A number of reasons contribute to legal academia's reticence to embrace distance learning, ranging from the innate "conservatism" of the field to "the resistance of entrenched elites." From my own personal experience, as someone who has been closely engaged with distance learning over the past five years, the primary obstacle to the adoption of distance learning by American law schools stems from genuine concerns over pedagogical soundness.

Regardless of its causes, resistance to distance learning in legal education historically asserted itself through the ABA—the organization deputized by the U.S. Department of Education to accredit law schools in the United States. The ABA had traditionally prohibited all forms of distance learning. Such experimentation was only permitted pursuant to a waiver granted by the Accreditation Committee of the ABA's Section on Legal Education and Admission to the Bar. To facilitate such experimentation, however, the ABA adjusted course and adopted "Temporary Distance Education Guidelines" in 1997. The Temporary Distance Education Guidelines were eventually made permanent, adopted by the ABA as Standard 306, and were liberalized as recently as 2018. In its current form, Standard 306 permits law students to take "up to one-third of the credit hours required for the J.D. degree" via distance learning courses, and up to ten of those credits may be taken during the student's first year.

B. Data on the Effectiveness of Distance Learning

Professor Andrea L. Johnson is credited with teaching the first distance learning course at an American law school in the United States. This occurred in 1996, and utilized "the Internet, videotapes, videoconferencing, and an electronic casebook." Professor Johnson considered the course a "success," remarking that "videoconferencing, to

namely via the Internet.

35. See Bennett, supra note 4, at 2; see also Dutton, supra note 3, at 499.
36. See infra text accompanying notes 205-14; Max Huffman, Online Learning Grows Up—
37. See Herb D. Vest, Felling the Giant: Breaking the ABA's Stranglehold on Legal
Education in America, 50 J. LEGAL EDUC. 494, 499, 501 (2000).
38. Leskovac, supra note 2, at 323.
39. Id.
40. Id. at 323-24; see also Harry J. Haynsworth, Temporary Distance Education Guidelines
Provide Opportunities for Flexibility and Innovation, 34 IND. L. REV. 47, 48 (2000).
41. See Dutton, supra note 3, at 499-500.
42. See id. at 502.
43. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018-2019
Standard 306(e) (AM. BAR ASS'N 2018).
44. See Leskovac, supra note 2, at 311.
45. See Johnson, supra note 4, at 214-15.
facilitate distance learning, is an effective medium to learn and exchange ideas." She ultimately concluded, however, that "[d]istance learning and technology will never replace professors or negate traditional teaching methods" because "[t]he dynamics of human interaction and feedback are too critical to the development of legal skills and problem-solving."

Professor Johnson's observations and conclusions may remain relevant and accurate, and they certainly resonate with many of those who are skeptical about distance learning, but a lot has changed since 1996. Much of the technology utilized by Professor Johnson in her experiment is now obsolete, and certainly archaic. Further, she is no longer alone in teaching a law school distance learning course as many others have now done so—some of whom have reached different conclusions. Perhaps most importantly, with the proliferation of distance learning, a vast amount of data regarding efficacy and learning outcomes has been generated.

An excellent starting point for a review of the literature on distance learning is set forth in Research on the Effectiveness of Online Learning: A Compilation of Research on Online Learning, authored by The Future of State Universities in September 2011. The first seven pages of this document survey a number of significant studies-of-studies examining the effectiveness of distance learning—in its online form, in particular—on learning outcomes. The first such study was conducted by the U.S. Department of Education in 2010, and involved the "systematic search of the research literature from 1996 through July 2008" which identified "more than a thousand empirical studies of online learning." Analysts then "screened these studies to find those that a) contrasted an online to a face-to-face condition, b) measured student learning outcomes, c) used a rigorous research design, and d) provided adequate information to

46. Id. at 220-21.
47. Id. at 245; see also Leskovac, supra note 2, at 311-12.
48. See supra note 4.
51. See generally THE FUTURE OF STATE UNIVS., supra note 50 (compiling current literature on the topic of online distance education).
52. Id. at 1-7.
53. Id. at 1.
calculate an effect size.”54 The key findings identified from the U.S. Department of Education study-of-studies were as follows: “[s]tudents who took all or part of their course online performed better, on average, than those taking the same course through traditional face-to-face instruction”; “[e]ffect sizes were larger for studies in which the online instruction was collaborative or instructor-directed than in those studies where online learners worked independently”; [m]ost of the variations in the way in which different studies implemented online learning did not affect student learning outcomes significantly”; and “[t]he effectiveness of online learning approaches appears quite broad across different content and learner types.”55

A further examination of “experimental and quasi-experimental studies”—contrasting varying kinds of online learning practices—found: that “[w]hen a study contrasts blended and purely online conditions, student learning is usually comparable across the two”; “[e]lements such as video or online quizzes do not appear to influence the amount that students learn in online classes”; [o]nline learning can be enhanced by giving learners control of their interactions with media and prompting learner reflection”; and “[w]hen groups of students are learning together online, support mechanisms such as guiding questions generally influence the way students interact, but not the amount they learn.”56

Another meta-study, performed in 2003 by M. Shachar & Y. Neumann, examining eighty-six studies covering over 15,000 students, concluded that “in two thirds of the cases, students taking courses by distance education outperformed their student counterparts enrolled in traditionally instructed courses.”57 A second meta-study by the same two authors, completed in 2010, examined studies covering over 20,000 students, and concluded that the data “clearly demonstrat[ed] that in 70 percent of the cases, students taking courses by distance education outperformed their student counterparts in the traditionally instructed courses.”58

Five other studies-of-studies were examined;59 the most negative conclusion drawn was that distance learning had “no significant difference” upon learning outcomes as compared to traditional

54. Id.
55. Id. at 1-2.
56. Id. at 2.
57. Id. at 3 (quoting Mickey Shachar & Yoram Neumann, Differences Between Traditional and Distance Education Academic Performances: A Meta-Analytic Approach, INT’L REV. RES. OPEN AND DISTANCE LEARNING, Oct. 2003, at 1, 1, 11).
58. Id. at 2.
59. Id. at 3-7.
educational approaches. Much of the data supported the position that distance learning was superior to traditional, in-person education.

A more recent compilation of studies on distance learning was authored by Tuan Nguyen in 2015. Nguyen observed that the vast majority of studies on the subject found that "there is no significant difference in the learning outcomes for the traditional face-to-face format versus mediated instruction [that is, distance learning]." Next, Nguyen observed that "a large number of studies" found "positive statistically significant effects for student learning outcomes in the online or hybrid format compared to the traditional face-to-face format." These positive effects ranged from "improved learning as measured by test scores, student engagement with the class material, improved perception of learning and of the online format, stronger sense of community among students, and reduction in withdrawal or failure." Finally, Nguyen found a "much smaller" number of surveys, "by a full order of magnitude," indicating "mixed or negative significant effects" associated with distance learning. Nguyen ultimately concluded:

It would be too easy altogether to jump on the online learning bandwagon or to dismiss it as a fad that will go away (and come back as many educational fads have been known to do). Overall, there is strong evidence to suggest that online learning is at least as effective as the traditional format, but the evidence is, by no means, conclusive. Online learning is a story that is still being written, and how it progresses will likely depend on those present.

C. Distance Learning in Legal Education

In contrast to Professor Johnson, and with the benefit of over a decade of research since Professor Johnson’s experience in distance learning, law professors Rebecca Purdom and Larry Farmer have observed: "[E]arly and continued evidence suggests that students using technology in distance education have at least similar learning outcomes to students in traditional classrooms." It is difficult to contest that

60. Id. at 1.
61. Id. at 1-4.
62. See Nguyen, supra note 50.
63. Id. at 312.
64. Id. at 310.
65. Id.
66. Id. at 313.
67. Id. at 316. For an interesting study on the success of minority students in distance education courses, see Alex Kumi Yeboah & Patriann Smith, Relationships Between Minority Students Online Learning Experiences and Academic Performance, ONLINE LEARNING, Dec. 2016, at 161.
68. Richard A. Westin, The Need for Prompt Action to Revise American Law Schools, 46
observation. Unfortunately, none of the aforementioned studies focused on legal education. To date, the only study to have done so has been that conducted by Y. Dutton, M. Ryznar, and K. Long, titled Assessing Online Learning in Law Schools: Students Say Online Classes Deliver ("Assessing Online Learning"), which was published in the Denver Law Review in 2019.69

Assessing Online Learning does not examine learning outcomes per se, but rather, more modestly, “the quality of asynchronous online teaching and learning in the law school context using student perceptions.”70 That is, it is a study of how students feel about the quality of online distance learning, and not the objective quality of online distance learning directly considered. The study’s authors acknowledge the limitations of this approach, but hasten to add that “law schools seek student input on other important aspects of the curriculum, including through course evaluations” and that “student preferences should contribute to course design because students are responsible for their own learning in an autonomous setting such as an online classroom.”71 The study was based on data gathered from anonymous student-survey responses collected from “more than 300 students in different sections of two different fully asynchronous online classes” at Indiana University’s Robert H. McKinney School of Law.72

The survey respondents indicated, overwhelmingly (eighty-five percent for one section, seventy-four percent for another), that they would take another online course if afforded the opportunity.73 The survey’s authors argue that even this high percentage does not adequately capture the students’ preference for online courses because “some students were coded as nonresponsive to the question [of whether they would take another online course] because they answered . . . ‘No, because I am graduating.”74 The respondents identified the following items as factoring into their preference for online distance learning courses: flexibility “allowing them to work” or “care for their family”; time saved from not having to commute to campus as often; ability to complete course work “whenever and wherever they wanted”; the opportunity to “learn at their own pace”; access to resources not

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69. See Dutton, supra note 3.
70. Id. at 497.
71. Id. at 496-97.
72. Id. at 515. The vast majority of students taking these courses completed the survey: 326 out of 380. Id.
73. Id. at 521.
74. Id.
typically available in a traditional in-person course; and "flexibility in scheduling."\textsuperscript{75}

In focus group conversations, the survey participants indicated that student engagement varied just as it did in traditional, in-person courses: "[D]epending on the topic being taught, the type of course, and the professor."\textsuperscript{76} In other words, the students did not notice a difference in engagement keyed to its format as distance (online) versus in-person.

Not surprisingly, "[m]any students highlighted the importance of quality teaching in their comments about online teaching and learning."\textsuperscript{77} As one student stated, ""[t]he professor really is the key to any class, an in-person or an online [class]."\textsuperscript{78} The students also expressed a belief in their responsibility, as students in an online class, to "do the work."\textsuperscript{79} As one student explained, if a student does all the work that is assigned, he or she would be learning just as much in the online course as he or she would be learning in an in-person course.\textsuperscript{80} As another student explained: "It would be hard for me not to recommend an online course to anyone because I feel like I've learned so much in the online courses. Again, it goes to the type of student that you are . . . I've gotten out of each of my classes . . . what I've put in."\textsuperscript{81}

A number of students found their distance learning classes superior in terms of promoting student engagement and learning.\textsuperscript{82} The students credited the various assessments and activities typical of asynchronous distance learning for that.\textsuperscript{83} For in an online, asynchronous distance learning class, there are typically ""activities where you could actually apply what you're reading or learning [to what] the lecture is on [which] really helps you learn."\textsuperscript{84} With such a class, ""every time you do something with the class, you're engaged."\textsuperscript{83} This is in contrast to the typical, traditional, in-person class, where "if you know you're not going to be on call, [you can] go to class unprepared [and] sit back."\textsuperscript{86}

\textsuperscript{75} Id.
\textsuperscript{76} Id. at 522.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id. at 523.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{82} Id. at 524.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
\textsuperscript{85} Id.
\textsuperscript{86} Id. This carries over into the grading models for online, asynchronous classes versus typical, in-person classes. In an online class, a student's final grade is typically comprised of his or her performances on a number of activities, including discussion board submissions, essays, and multiple-choice quizzes—each typically administered on a weekly basis throughout the semester. See id. at 527-28. This contrasts starkly with the situation in a typical in-person class, prompting one student in the survey to complain:

[H]e or she found little value in live classroom learning, stating that in live classes,
Some students did note that they missed the "spontaneous interaction with the students and the professor" that is so heavily featured in the typical, well-run, in-person class. Some also expressed regret over the inability to ask a professor questions for immediate clarification or amplification during a lecture, and one student noted that he or she simply felt "more comfortable in the live setting." Having reviewed all the data, and after conducting all their focus interviews, the authors concluded that their study shows "that law students can be just as engaged and learn just as much, if not more, in an online course as a traditional classroom." They hasten to add that for this to be so, "an online course and the professor running it must be organized, offer engaging content and lectures, and provide multiple opportunities for course assessment and professor feedback."

Although other articles have been written urging the legal academy to embrace distance learning, none, to date, have incorporated data culled from the law school experience as did the Dutton, Ryznar, and Long piece discussed above. Rather, most of this scholarship sets forth arguments for the reform of legal education predicated upon reason, logic, and data culled from other fields of study. Some writers do rely, in part, upon their personal experiences in distance learning in support of their exhortations. For example:

Since 2001, the author of this article has designed and taught multiple online J.D. program courses in Commercial Law, International Business Transactions and Writing, Jurisprudence and Writing, and Conflict of Laws to many groups of students. He has also taught online courses in Torts, Contracts, Criminal Law, Contract Drafting, and Corporations and Business Associations. It is not boastful for the author to observe that he is almost certainly more experienced in teaching law school courses online than any other member of a law faculty at a brick-and-mortar facility accredited by the American Bar Association. That experience has taught the author that online legal education can be consistently as effective, and often even more effective, than the traditional classroom, despite the alchemy claimed

"[Y]ou show up for class, 10% of your grade is if you happen to be paying attention the day that you get called on, and then the rest is based off your final exam, but that's it."

Id. at 524.

87. Id. at 524-25.

88. Id. at 525. I am aware of professors who allegedly do not typically entertain questions during their lectures, but this remains, I trust, an exception to the general rule.

89. Id.

90. Id. at 530.

91. Id.


for the latter by those who have had little or no experience with online course design or delivery.94

However, genuine case studies drawn from legal academia continue to be published on occasion. The more recent case studies on the subject of online distance learning are consistent with the results observed and conclusions reached by Dutton, Rynzar, and Long.95

Commenting upon his online, asynchronous law school course, Professor Huffman found that “[t]he level of student involvement and comprehension demonstrated by students’ substantive written products far exceed[ed] what I experienced when I last taught the class as a live seminar.”96 He found that the discussion boards in his asynchronous online class “accomplish[ed] the interactivity goals of law school classes as well as, or better than, live classes,” adding that they “permit fuller and broader student participation, create artifacts for student review and instructor evaluation, and allow for more careful instructor assessment of student performance.”97 Professor Huffman drew the following positive conclusions:

Experience with online course design and presentation shows two areas in which the asynchronous online course consistently produce[s] results that are superior to what can be achieved in the live classroom setting. First is an interactivity strategy—the use of discussion boards to achieve substantive engagement among students and between the professor and the students. Second is an assessment strategy—the use of formative assessments to ensure student comprehension and adjust teaching during the semester.98

Similarly, Professor Perlin, having taught full time for twenty-three years, with six years of experience in teaching online courses at the time of his 2006 article on the subject, concluded that his personal experiment in distance learning had been a “total success.”99 More specifically, he found that:

[Online] students are consistently better prepared, more intellectually engaged, employ more critical thinking, and participate at a greater rate in online courses than in traditional classes. Students contact me far more often seeking suggestions for additional or supplemental readings, and in the two terms that I have taught the same material in

94. Id. (emphasis added).
95. By more recent, I mean every case study aside from Professor Johnson’s seminal 1996 experience, described earlier. See supra text accompanying notes 44-47.
96. Huffman, supra note 36, at 77.
97. Id. at 82.
98. Id. at 78.
an online course and in a traditional class, online students performed strikingly better on exams.\textsuperscript{100}

Professor Perlin's courses feature both synchronous and asynchronous components, an approach he recommends as it "appeal[s] to individuals with the full array of learning styles."\textsuperscript{101} He attributes the success of his courses to a number of factors, including the fact that "certain students—whose shyness and averseness to the potential humiliation inherent (or perceived to be inherent) in classroom interchanges (both with faculty and other students) leads them to be 'back-benchers' in large classes—flourish in the online environment."\textsuperscript{102}

Professor Landrum described her experience in incorporating online distance learning components into her academic support classes in \textit{Drawing Inspiration from the Flipped Classroom Model}, published in 2015.\textsuperscript{103} The biggest drawback she identified was how time-consuming the undertaking was for her—the instructor.\textsuperscript{104} As she explained:

Although each video [posted online] lasts only ten to twenty minutes, depending on topic, they each require the creation of a script and corresponding PowerPoint presentation and the time it takes to record and edit the video and closed captioning text. Even if the instructor has experience with whatever video program he or she is using, several hours to a few days will be needed to create each video. There are also other materials that must be created for each module, including instruction sheets, tasks (such as logic exercises, issue spotting exercises, and practice exams), and feedback rubrics. The first time that the course is taught, the start-up costs in terms of time are therefore substantial.\textsuperscript{105}

On the positive side of the ledger, Professor Landrum found that this approach made her in-person workshops with students "more productive."\textsuperscript{106} She expanded on this:

When students then came into the workshop, they were primed to ask questions and participate actively in a dialogue about that skill. Depending on the workshop, there could even be opportunities for further practice of the skills they were learning, such as practice multiple-choice questions or even a practice essay exam.\textsuperscript{107}

\textsuperscript{100} Id. at 995.
\textsuperscript{101} Id. at 996.
\textsuperscript{102} Id. at 995.
\textsuperscript{103} Landrum, \textit{supra} note 13, at 269, 276.
\textsuperscript{104} Id. at 277.
\textsuperscript{105} Id. In addition to this, there is the frequent grading and feedback typically required in such courses. \textit{See id.}
\textsuperscript{106} Id. at 274.
\textsuperscript{107} Id.
Professor Landrum also believed that integration of online distance learning components into her classes helped her maximize formative assessment.\textsuperscript{108}

In an article published in 2018, Professor Swift sets forth "seven principles for good practice" with regard to teaching asynchronous, online law school classes.\textsuperscript{109} Assuming that these principles were followed, Professor Swift concluded that: "While not a substitute for personal, in-class interaction between professors, students, and amongst classmates, the online course has many advantages over brick-and-mortar courses. In particular, advantages can be found in the critical principles of active learning, cooperative learning, and formative assessment."\textsuperscript{110}

In an older piece published in 2001, Professor Charlene Smith recounts her efforts teaching a synchronous distance learning Torts seminar.\textsuperscript{111} Based upon both her reading of the relevant scholarship and her own personal experience with the seminar, Professor Smith concluded that "[t]he absence of face-to-face contact is not in itself detrimental to the learning process."\textsuperscript{112} Rather, what determines the success of a class, "distance or otherwise," is "how well it is designed, delivered and conducted."\textsuperscript{113} Professor Smith thereafter shares her advice on what ingredients and techniques contribute to the success of an online class.\textsuperscript{114}

A fascinating article authored by Professor Oliphant in 2000 recounts the story of Concord Law School—the first wholly online law school in the United States.\textsuperscript{115} As a wholly online law school, Concord does not qualify for accreditation under current ABA standards.\textsuperscript{116} Professor Oliphant was positively impressed by what Concord had been accomplishing, concluding that the school "provide[s] hard working men and women in American [sic] with the opportunity of obtaining a good legal education at a modest cost, who, without it, would not have received this opportunity."\textsuperscript{117}

Some support for Professor Oliphant's positive conclusions comes from Professor Gleason's paper, authored seven years later, examining data from the 2005 Annual Law School Survey of Student Engagement

\textsuperscript{108} Id. at 275.
\textsuperscript{110} Id. at 161.
\textsuperscript{111} Smith, supra note 4, at 179.
\textsuperscript{112} Id. at 184-85.
\textsuperscript{113} Id. at 185.
\textsuperscript{114} Id. at 185-86.
\textsuperscript{115} Oliphant, supra note 49, at 843-46.
\textsuperscript{116} Id. at 871, 873-74.
\textsuperscript{117} Id. at 879.
According to a Concord press release, the LSSSE showed:

Concord students report being more challenged, more likely to prepare for class, and more engaged in their studies in each year of their law studies than the overall group of respondents [34,000 students from 73 law schools]. Moreover, Concord students stay more engaged, prepare for class, and continue to be challenged by the program throughout the four-year Concord J.D. program, counter to the results of the overall survey.\(^\text{119}\)

Also of relevance is the feedback received by the ABA when, on two recent occasions (in 2008 and in 2018), it solicited comments from the public with regard to distance learning. In response to the ABA’s call for comments in 2018, specifically with regard to the revision of its distance learning standards, Thomas McHenry—President, Dean, and Professor of Law at Vermont Law School—submitted a comment.\(^\text{120}\) The comment voiced support for the ABA’s proposal to increase the number of permissible credits capable of being earned toward a J.D. degree from fifteen credits to one-third of total credits required,\(^\text{121}\) asserting, among other things, that the “literature recognizes the efficacy of online and technology-aided learning models as impactful educational tools—both in opportunities (to learn) and outcomes (evidence learning occurred).”\(^\text{122}\)

In 2008, the ABA’s Council of the Section of the Legal Education and Admissions to the Bar began soliciting comments in connection with a comprehensive, multi-year review of the *ABA Standards and Rules of Procedure for the Approval of Law Schools*.\(^\text{123}\) A number of these comments addressed the issue of distance learning.\(^\text{124}\)

Several of such comments stressed the importance of expanding access to distance learning to help expand access to legal education more generally.\(^\text{125}\) All were in favor of liberalizing the ABA’s distance

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119. *Id.* at 9.


121. *See id.*

122. *See id.* at 2.


124. *See infra* notes 126-38 and accompanying text.

125. See, e.g., Email from Akilah King to Charlotte (Becky) Stretch (Nov. 16, 2011, 10:49 AM) (on file with author); Letter from Anne Roberts to Am. Bar Ass’n Standards Review Comm. (Sept. 10, 2011) (on file with author).
learning rules.126 Some of the comments came from individuals with higher education experience in both traditional and online distance formats,127 they were unanimously in favor of liberalizing the ABA's distance learning rules.128

Many comments came from students with first-hand distance learning experience at a law school.129 All remarked favorably upon their distance learning experiences, with many doing so via recourse specifically to the quality of education they received.130 Put differently, not a single commenter with distance learning experience, either in law school or otherwise, expressed a negative opinion about distance learning. Rather, most provided glowing reviews of the practice.131

An eight-page letter was submitted on behalf of the ABA Section of Legal Education: Technology and Education Committee.132 While not commenting upon the merits of distance learning per se, the letter urged the ABA to increase the number of credits permissible in the distance format from twelve credits to twenty credits, so as to help make "distance education viable for schools that wish to pursue this route."133 Similarly, the Working Group for Distance Learning in Legal Education134 (discussed at greater length below) submitted a letter in

126. See infra notes 128-36 and accompanying text.
128. See, e.g., id. ("I have found that online learning is a real enhancement that requires a lot more discipline.").
129. See Email from Cristina Canazares to Charlotte (Becky) Stretch (Sept. 8, 2010, 6:14 PM) (on file with author); Email from Clay Finley to Charlotte (Becky) Stretch (May 13, 2010, 3:44 PM) (on file with author) (concluding, as a student who attended both an online and traditional law school, that "both law schools provided the education necessary to practice law" and that the "ABA should seriously consider allowing accredited law schools to begin experimenting with a broader use of online tools in providing a quality legal education"); Email from Jonathan Huber to Charlotte (Becky) Stretch (Apr. 1, 2010, 1:09 PM) (on file with author); Email from Marc A. Hyman to Charlotte (Becky) Stretch (Mar. 17, 2012, 5:16 PM) (on file with author); Email from Michael Jeffries to Charlotte (Becky) Stretch (Sept. 25, 2012, 5:33 PM) (on file with author); Email from Christopher J. Schweickert to Charlotte (Becky) Stretch (Mar. 31, 2010, 3:56 PM) (on file with author); Email from Lin Singleton to Charlotte (Becky) Stretch (Dec. 7, 2009, 5:32 PM) (on file with author) (marking, as a student who began her legal education at a traditional law school (Baylor) but finished it at an online school (Concord), that "I have found my online experience with Concord to be every bit as challenging and educational as my experience at Baylor"); see also Dewhurst, supra note 10, at 71.
130. See Dewhurst, supra note 10, at 71 ("[T]here is no practical difference in the education... Having taken numerous classes of both persuasions I can attest to the higher level of information retention I have experienced with the online courses... I have found my online experience with Concord to be every bit as challenging and educational as my experience at Baylor.").
131. See, e.g., Email from Lin Singleton to Charlotte (Becky) Stretch, supra note 129.
133. Id. at 1-2.
134. See infra Part II.D.
support of increasing the allowable distance education law school credits from twelve to fifteen.\footnote{135}

Of the dozens of comments received, I could only find one that addressed distance learning in a way that was not squarely positive: a letter from the Association of American Law Schools (“AALS”) that addressed multiple subjects.\footnote{136} Nested within this ten-page letter was one paragraph addressing distance learning, which mildly “encourage[d] the Standards Review Committee to reexamine the liberality of [distance learning standards] before so significantly abandoning the traditional value of in-person instruction.”\footnote{137}

Although a scientifically sound examination of the effect of distance learning on bar passage rates has yet to be performed, some indirect data can be consulted. As of 2019, only California, Maine, Maryland, Minnesota, New Mexico, Oregon, and Vermont permitted graduates of an online law school to sit for the bar exam.\footnote{138} One could compare the bar passage rates of students from online schools in taking each of those states’ bar examinations with those of other, non-online schools. Unfortunately, with the exception of California, the relevant bar examination data for each of these states is not readily available (if available at all).\footnote{139} As such, our examination will be necessarily limited to California.

California has published detailed bar examination statistics for all schools with more than eleven applicants who completed the July 2018 state bar examination.\footnote{140} These statistics distinguish between schools that are (1) ABA-accredited, (2) non-ABA-accredited but accredited by the state of California, (3) fixed faculty and accredited by neither the ABA nor California, and (4) wholly online and accredited by neither the

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135. Letter from Rebecca Purdom, Chair, Working Grp. for Distance Learning in Legal Educ., et al., to Jeffrey E. Lewis, Chair, Am. Bar Ass’n Standards Review Comm., Dean Emeritus, Professor, Saint Louis University School of Law & David Yellen, Dean, Loyola Univ. Chi. Sch. of Law (July 9, 2012) (on file with author).


137. Id. at 9 (on file with author). No data, scholarship, or other evidence was provided in support of the AALS’s suggestion. Id.


ABA nor California. The bar passage rates for first-time test takers within each of these categories is as follows: graduates of ABA-accredited law schools: 64% (in-state schools)/58% (out-of-state schools); graduates of non-ABA-accredited, California-accredited law schools: 16%; graduates of non-ABA-accredited, non-California-accredited law schools, fixed facility: 12%; graduates of non-ABA-accredited, non-California-accredited law schools, wholly online: 23%.142

The most obvious takeaway from the data set forth above is the disparity of performance between students graduating from ABA-accredited law schools versus those graduating from law schools lacking ABA accreditation.

Once that factor is controlled for, however, the next takeaway is how the online law schools outperform all the other unaccredited schools. At least two preliminary, divergent conclusions can be drawn from this data. The first is the arguable superiority of the ABA’s approach to legal education (at least with regard to the issue of bar passage), which includes a sharp limit on distance learning credits. However, if this superiority is, in some way, a function of the ABA’s limitations on distance learning, one would expect that the difference in bar passage rates between accredited and unaccredited law schools would increase as one moves from unaccredited physical institutions to unaccredited online institutions. The statistics reflect precisely the opposite.144

This prompts a second conclusion to be drawn from the bar passage data: online legal education is arguably superior to traditional, in-person forms of legal education, ceteris paribus (again, at least with regard to the issue of bar passage). For if one believes that the qualitative differences between ABA-accredited and non-ABA-accredited law schools justifies setting aside the ABA-accredited schools for purposes of this inquiry, the (necessarily) unaccredited online institutions compare favorably to their brick-and-mortar counterparts.

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141. Id. at 3-7. No wholly online school is accredited by the ABA or California. Id.
142. Id.
143. See supra Part II.A.
144. See STATE BAR OF CAL., supra note 140, at 3-7.
D. Working Group for Distance Learning in Legal Education

As the foregoing has made clear, distance learning is no longer alien to legal education. Indeed, it has reached a critical mass. Not surprisingly, for the past several years, legal educators who have experimented with distance learning have shared experiences and collaborated on best practices.146 This has given rise to the Working Group for Distance Learning in Legal Education ("WGDLLE"), and no discussion on this subject would be complete without mention of the WGDLLE.147

In its publication Distance Learning in Legal Education: Design, Delivery and Recommended Practices ("Design, Delivery"), the WGDLLE recounts the history of its formation and the growing adoption of distance learning within the legal academy.148 Of most relevance is what could perhaps be called the animating principle of the WGDLLE: that distance learning, "at its best, creates a remarkable, engaging, high quality, and academically challenging experience."149 Moreover, "when well-designed and delivered, distance education provides student outcomes on par or even superior to those of traditional in-class teaching."150 The authors of Design, Delivery reach this conclusion based upon their own collective experience in teaching distance learning courses, their review of the data available, recourse to relevant scholarship, and the insights of cognitive psychology.151 In short, Design, Delivery is not simply the result of shared anecdotal experiences, but rather that of serious reflection after substantial research and investigation.152

Design, Delivery walks the reader through the structure of an online course, the organizational support necessary for the instructor interested in offering online courses, methods of student assessment, technological requirements, and many other pertinent topics.153 Each section ends with a useful, concise summary of recommended practices.154 Several
appendices are attached, setting forth relevant definitions, checklists, model policies, ABA standards, and other items.155

Design, Delivery acknowledges that more data and research is needed with regard to the efficacy of distance learning on learning outcomes,156 but it does so not to determine whether distance learning ought to be a part of legal education, but rather to determine how to best incorporate distance learning into legal education.157 The legal academy’s eventual embrace of distance learning is largely viewed as a fait accompli by the WGDLL— the critical question is how to best create quality distance learning courses and programs given that assumption.158

III. THE ONLINE BUSINESS ORGANIZATIONS COURSE AT HOFSTRA

In summer 2019, the Maurice A. Deane School of Law at Hofstra University (“Hofstra Law” or “the Law School”) offered to its J.D. students, for the first time ever, an opportunity to take a wholly online version of its four-credit Business Organizations course.159 This Part will describe the thinking that went into that decision, the structure of the course, and observations formed from the experience.160

A. Distance Learning at Hofstra Law

In the fall of 2011, pursuant to the ABA’s Standards and Rules of Procedure for Approval of Law Schools, Hofstra Law adopted guidelines to govern distance learning at the Law School.161 It offered its first course with a substantial distance learning component (Logic Skills for Legal Reasoning) during the fall 2014 semester.162 This two-credit course used distance education technology to create a “flipped

155. See id. at 74-131.
156. See id. at 123.
157. See id. at 11, 21.
158. See id. at 8-9, 11, 72. Although not focused solely on legal education, the organization “Quality Matters” has been at the forefront of generating detailed standards for quality online education which have become widely adopted. See QUALITY MATTERS, https://www.qualitymatters. org (last visited July 10, 2020).
159. See Summer Courses, HOFSTRA L., https://law.hofstra.edu/currentstudents/academics/sum merprograms/summercourses/index.html (last visited July 10, 2020). This course has not previously been offered online at Hofstra Law.
160. See infra Parts III.A–F.
161. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2011-2012 Standard 306, Interpretation 306-8 (AM. BAR. ASS’N 2011); see supra text accompanying notes 38-43. The guidelines have been revised to keep pace with evolving ABA and New York State regulation of distance education.
The course was designed to conform (and did conform) to the strictures imposed at the time by the New York State Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, which substantially limited what could be done in terms of offering a distance learning course. Logic Skills for Legal Reasoning was a two-credit elective course designed and taught by Professor Vern Walker, and its enrollment consisted of twelve upper level (2L and 3L) J.D. students.

In January of 2016, the Law School simultaneously launched two online degree programs: an M.A. degree program in Health Law and Policy and an LL.M. degree program in Health Law and Policy. To launch these programs, the Law School partnered with an outside organization. The partner provides marketing, recruiting, and student support assistance. It also provides instructional design help and takes responsibility for the program’s learning management system. The courses in the two online degree programs are taught by a combination of full-time and part-time members of the Law School faculty. None of the courses are open to J.D. students—they are offered exclusively to students enrolled in the online degree programs. Every course in the program is asynchronous in format. I helped launch these programs while serving as Associate Dean for Academic Affairs of the Law School (from 2013 to 2015) and have continued to oversee them as

163. Id.; Landrum, supra note 13, at 269.
164. See N.Y. COMP. CODES R. & REGS. tit. 22, § 520.3(c)(6)(iii) (2000) (“No credit shall be allowed for distance education courses offered principally by asynchronous means, where students and the instructor are separated in time as well as in place, including pre-recorded, non-interactive technologies, such as on-line courses, [I]nternet videos, videocassettes or discs.”) (amended 2014).
165. See Walker Syllabus, supra note 162.
167. For a discussion of how such partnerships typically operate, see DESIGN, DELIVERY, supra note 146, at 69-70.
168. Id.
169. A Learning Management System is the online platform in which a program’s courses are hosted—an “online classroom portal through which faculty and students access information, learning material, and course activities.” Id. at 21-22, 97.
Associate Dean for Distance Education; I also teach one of the courses in the M.A. program.172

In summer 2018, the Law School offered its second distance learning course to its J.D. student population: Controversies in Corporate Law.173 As with Logic Skills for Legal Reasoning, Controversies in Corporate Law was a two-credit elective course open only to 2L and 3L students. It was predominantly synchronous in format and had an enrollment of ten students. I designed the course based upon an on-the-ground version of the course that I had taught for several years and served as its instructor.

B. Online Course Proposal

In the fall of 2019, I decided to prepare a course proposal for offering Business Organizations as an online distance learning course to the J.D. students at the Law School. Although Business Organizations was already a fixture in our J.D. curriculum, the Law School’s distance learning policy requires independent approval to teach any course, even a previously approved one, as a distance learning course.174 This decision was predicated upon my own first-hand experience in teaching online courses, both synchronous and asynchronous, in both the Law School’s M.A. and J.D. programs. The decision was also prompted by the scholarship I had continued to encounter with regard to the efficacy of online education (much of which has been referred to in this Article), and the experiences that others who had taught online had shared with me. In short, I had become largely convinced, through both my familiarity with the relevant literature and my own personal observations, of the pedagogical soundness of online, distance learning.175

I chose Business Organizations as the subject course because of my expertise in the subject, having taught the traditional, in-person version of the course regularly since 2007. There were also a couple of

173. See infra note 219.
174. See supra note 161 and accompanying text.
175. As I will discuss further, for a distance education class to be pedagogically sound, it must be carefully designed and well-taught. See infra Part III.F. But this is axiomatic for every course. The most critical difference between the two forms of instruction, distance versus in-person, is not their pedagogical soundness or quality, but rather those skills that an instructor must have, and those commitments that an instructor must make, to see each form of course delivery to its successful completion. In other words, it is not the outcomes that differ between distance versus in-person courses, but rather the inputs necessary to achieve said outcomes. See infra Part III.F.
institutional reasons behind my desire to offer an online section of Business Organizations.

First, all indications suggest that distance learning will continue to proliferate in legal education.\footnote{176} Eventually, this growth is likely to plateau—but that could be several years away. With few exceptions, I believe that a twenty-first century law school will need some level of distance learning integrated into its curriculum to remain a competitive—indeed, a viable—entity. In my eyes, a slow and steady expansion of online course offerings is a good way to develop the institutional proficiency needed to secure a law school’s future as an attractive, credible option for prospective students. For reasons that will be discussed further below, the proposed online Business Organizations course would not merely be an additional online course offering, but, moreover, it would constitute the most ambitious distance learning offering to the Hofstra J.D. student population to date.\footnote{177}

Second was my concern for our existing law students. Once I became convinced that an online Business Organizations course could be just as effective a learning experience as the traditional version, I imagined other value-added aspects of the course. Hofstra Law is largely a commuter school, and some of our students live significant distances away.\footnote{178} The time saved in driving to and from campus every day could easily add up to hours each week. Fuel costs and carbon emissions would similarly be reduced.\footnote{179} All this time and money could be much better spent.

Indeed, by minimizing their need to travel to campus, students would be able to avail themselves of more internships, externships, and similar opportunities. A large number of Hofstra’s students live on Long Island or in one of New York City’s outer boroughs, yet work in Manhattan.\footnote{180} Work and campus can be, and often are, located in opposite directions. An online course, especially a four-credit course such as Business Organizations, could help a student compose a schedule that permits for such important off-campus activities while simultaneously making progress toward his or her degree.

\footnotesize{176. See DESIGN, DELIVERY, supra note 146, at 8-11.  
177. See infra Part III.C.  
These value propositions would be at their greatest during the summer months. Indeed, during the summer months, students are ideally working at potential future employers, or in some other experientially valuable undertaking. For good reason, many students wish to take a summer course or two in addition to their internships or jobs; however, many have a tremendously difficult time fitting such courses into their schedules. As mentioned, most do not live on campus and many do not even live close to campus. Indeed, some may need to, or otherwise wish to, move out of state for the summer for reasons that might be professional, personal, or both. An online summer course would not only make such balancing of work and school more convenient, but for some students, it would be the only means through which such a productive summer could even be possible.

It should not be overlooked that an online summer course yields similar productivity benefits to its instructor as well. There is typically little reason for an instructor to commute to campus over the summer, except to the extent that he or she happens to be teaching a summer course. By offering Business Organizations online, I, too, would benefit from time and fuel savings alongside my students.

Finally, summer courses typically attract far fewer students than courses offered during the semester. A typical fall or spring Business Organizations course could easily attract from eighty to one-hundred students per section; a single summer section of Business Organizations invariably attracts but a fraction of that amount. As this online course was an experimental undertaking, it seemed wise to offer it during a term when its expected enrollment would be lower.181 Thus, I decided to present my course proposal as a summer offering.

C. Faculty Approval Process

My course proposal for the summer 2019 online Business Organizations class was submitted to the faculty for its consideration during the spring 2019 semester and was taken up at one of the first faculty meetings that semester. As per our guidelines for online course proposals, I set forth a statement of anticipated course materials, learning objectives, means of assessment, and other pertinent information. I also explained my rationales for wanting to offer the course in an online format and over the summer, as articulated above.182

181. Alternatively, the course could be offered during the semester with an enrollment cap, but this would not be a wise allocation of teaching resources and would generate unnecessary disappointment among the students. See supra Part IIIA (noting the small number of students enrolled in the both the Logic Skills for Legal Reasoning and Controversies in Corporate Law summer courses).

182. See supra Part III.B.
I explained to my faculty colleagues that the course would be, in all material respects, identical to the traditional, in-person version of Business Organizations that I had taught since 2007 with one exception: class sessions would be conducted online, via live video chat technology powered by Zoom.183

In other words, the course would be entirely synchronous. It would “meet” at set times on set dates,184 and it would be conducted in real time—just not in person. Interactions, both between instructor and student and among the students, would be through computer, smartphone, laptop, or tablet monitors rather than in the shared space of a classroom. The class would literally be “face-to-face,” but virtually.

I explained that due to my own personal dual-monitor set-up, I would be able to see, at all times, each and every student’s face. Indeed, it would be made very clear to the students that access to the necessary technology was a sine qua non of their enrollment in the course: they needed (1) a robust Internet connection, (2) a computer, smartphone, laptop, or tablet with the requisite processing power, and (3) a videocam, microphone, and speakers.185

Students, who presumably would not have a dual-monitor set-up, would instead select among three viewing options for their classes: (1) “Active Speaker,” (2) “Gallery,” and (3) “Mini.”186

The Active Speaker view enlarges the video feed of the active speaker, causing him or her to occupy the majority of one’s video monitor.187 The active speaker will typically be the course instructor; but to the extent that someone else becomes the active speaker, due to a student’s question or a student’s response to the instructor’s question, the video display changes, and the newly active speaker displaces the old one.

Gallery view sets forth a Brady Bunch-like display of all videoconference participants simultaneously.188 The greater the number

184. These “set times” and “set dates” were Mondays and Wednesdays from 5:00 p.m. to 9:00 p.m. The evening hours were chosen to best accommodate student work schedules. See supra Part III.B.
185. See System Requirements for PC, Mac, and Linux, ZOOM, https://support.zoom.us/hc/en-us/articles/201362023-System-Requirements-for-PC-Mac-and-Linux (last visited July 10, 2020). These requirements are easily met and well within the means of virtually every student currently attending law school. Indeed, most if not all students already possess the requisite technology for participating in an online course such as the Business Organizations course I offered in summer 2019; see, e.g., Buying Computers, WM. & MARY L. SCH., https://law.wm.edu/about/ourtechnology/buying_computer/index.php (last visited July 10, 2020); Computer Recommendations, DUKE L., https://law.duke.edu/actech/incomingstudents (last visited July 10, 2020).
187. See id.
188. Id.; see also The Brady Bunch, IMDB, www.imdb.com/title/tt0063878 (last visited July 10,
of students in the class, the smaller the box transmitting the video feed from each student becomes.

Mini view replicates the Active Speaker view, but in miniature form, taking up only a portion of one’s video monitor.189 This enables the student to take notes, for example, on the same monitor with which he or she is viewing the class.

Students participating in the class have the ability to select among these viewing options at most times, so as to best suit their preference.

My Business Organizations (and Securities Regulation) courses feature heavy use of PowerPoint slides (unlike my IL Contracts class, which does not). The online Business Organizations course would be no different—I would use the same exact slide deck for that class that I have always used in my in-person Business Organizations class (tweaked, of course, only to account for legal developments). The Zoom video chat technology would enable me to do so via its “Screen Sharing” feature.190 With Screen Sharing enabled, the viewing modes identified above are replaced by a display in which the PowerPoint slides (or any other document or item, for that matter) become the most prominently displayed feature on the students’ screens.191 This is very much akin to the Active Speaker view, with the slides serving as the active speaker instead of an individual. When Screen Sharing is enabled, the active speaker is minimized into a small box above the shared PowerPoint slides.192 As an instructor, the benefit of the dual-monitor setup is my ability to maintain a full gallery view of all the class’s students on one screen while displaying my slideshow on the other. This way, at all times, I could see each and every one of my students. When Screen Sharing is engaged, students can still view the active speaker, albeit in a smaller box, but can no longer enjoy the full Gallery view option.

A nice feature of Zoom video chat is the display of each participant’s name directly under his or her individualized video feed. With this, a name is truly attached to each face. This facilitates getting to know each student by name—an important part of the teacher-student relationship and of the educational experience.193

Finally, throughout the Zoom video chat session, students would have the ability to send me private messages.194 This could be used to

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189. See How Do I Change the Video Layout?, supra note 186.
192. See How Do I Change the Video Layout?, supra note 186.
193. See id.; see also Tamara Glenz, The Importance of Learning Students’ Names, J. BEST TEACHING PRACT., Apr. 2014, at 21, 21.
194. See In-Meeting Chat, ZOOM, https://support.zoom.us/hc/en-us/categories/201146643-
discretely point out a misstatement on my part, or some other item, without interrupting the entire class via spoken remarks to all.

As a platform for communication outside of our class sessions, and for the distribution of materials, I would be using The Westlaw Education Network ("TWEN")—Westlaw’s "classroom management tool for law school faculty and students." TWEN is a platform that I have used for all of my courses ever since I started teaching in 2006, and is, I believe, used by most of my faculty colleagues as well.

I noted that the final examination would be on campus and in-person, administered in accordance with the same protocols that typically apply to every other law school final examination.

In summation, I characterized the proposed experiment in distance learning as "low risk, low reward." I explained that, as a wholly live, synchronous class, the course was "low risk" because it would largely replicate our existing educational model. As the Working Group on Distance Education has opined, "[o]nline learning employing synchronous teaching and the Socratic Method delivers a nearly identical learning experience, including the subtle feedback from the professor that guides student interpretations and meaning." The students would be exposed to the same kind of lecture, the same kind of cold-calling, the same kind of Socratic dialogue, and would have the opportunity to ask the same kinds of questions as they do in their typical law school classes.

The course would be "low reward," I posited, because the most ambitious promises of distance learning—those associated with asynchronous delivery models—would be bypassed. For it is within the context of asynchronous approaches to distance learning that the most groundbreaking and potentially value-enhancing innovations to education are taking place. Most of all, the "flexibility [for students] to access educational resources at times convenient to them," under an approach that is more "self-paced" and frequently involving "high interactivity" via discussion boards and other regular weekly activities, would be missing. Indeed, in an asynchronous course "there’s no back of the class" as "no student can skip class, fail to interact, or sit in a discussion and let classmates carry the day." With regard to our

Meetings-Webinars (last visited July 10, 2020).


196. TWEN is similar to "Blackboard," the learning management system with which most in higher education are familiar. See BLACKBOARD, www.blackboard.com (last visited July 10, 2020).

197. See DESIGN, DELIVERY, supra note 146, at 12. For an excellent discussion of the differences between synchronous and asynchronous educational models, see id. at 14-17.

198. Id. at 15, 17.

199. Id. at 15-16.

200. Id. at 16.
synchronous online course, the primary benefit for the students, as discussed, would be the flexibility to attend class from the location of their choice, and without the need to commute to and from campus. The students would not have the flexibility to participate in the class when they most desired, nor would they be challenged by the plethora of activities and responsibilities that an asynchronous course typically features (to compensate for the lack of live instruction and interaction in such courses).

A vigorous discussion of the course proposal ensued. Although two distance learning J.D. courses had been approved previously, and without controversy, this was different. Those courses were discretionary, two-credit electives with an appeal to a limited number of students. Business Organizations, on the other hand, is a four-credit course that virtually every law student takes before graduating. Additionally, Business Organizations is tested on both the Uniform Bar Exam and the New York Law Exam—both prerequisites for admission to the New York State Bar. Faculty members were very concerned about the effectiveness of the education that students would receive in the course, along with the precedent its approval would be setting.

A recurring theme was, bluntly, fear of the unknown. More specifically, fear that the distance learning format would be a disservice to our students. I had circulated a representative sampling of the scholarship on distance learning that was currently available at the time, but this seemed to do little to assuage concerns. For, although some of the scholarship did address graduate schoolwork, none addressed the study of law, per se. There was concern that the study of law is so different from other fields that the results demonstrated in the circulated scholarship was not really applicable.

There was particular concern over students in the bottom portion of the Law School class. Some faculty members expressed concern that these students might be the ones most likely to seek out an online class, and, moreover, least likely to learn in one. This would undermine our

201. See supra Part III.A.
204. Huffman, supra note 36, at 61.
205. DESIGN, DELIVERY, supra note 146, at 9.
206. Leskovac, supra note 2, at 310-11.
208. See id.
collective efforts to help these students, who need the most help to succeed in law school and, ultimately, to pass the bar examination. A suggestion was made, therefore, to limit the online course to students who had already obtained a minimum GPA in law school.209 This suggestion was not adopted, for by that same logic, many other opportunities should be denied to such students.

All of these arguments ultimately boiled down to a reticence on the part of some to approve such a distance learning course without sufficient data supporting its efficacy. I pointed out that individual faculty members routinely make a number of decisions—from the selection of assigned readings to the means of assessment—that, I suggest, have an even greater impact upon student learning and outcomes, none of which are subject to general faculty input, and certainly do not require faculty approval. Moreover, more significant reforms, some to the entire law school curriculum, had been previously adopted with far less data provided in support thereof. A higher standard, I posited, should not be required in order to approve a summer course offering that only a small number of students would be expected to take.210

Another series of comments came from those with personal experience in online education. For although most of my faculty colleagues do not have such experience, a small handful do—either through their teaching in one of our online degree programs or through other contexts. With one exception, these comments were extremely favorable.211 Such faculty members remarked that their experiences demonstrated to them that distance learning could certainly be as effective as traditional forms of education.212 The dissenting view expressed the perspective that online courses could only be useful in transmitting information, not in teaching critical legal thinking.213

A final layer of discussion focused on the technology of distance learning. At least one faculty member expressed dissatisfaction with Zoom in particular.214 Others feared that students would struggle with

209. This was done with respect to admission into the J.D./M.B.A. program at Hofstra. See MAURICE A. DEANE SCH. OF LAW AT HOFSTRA UNIV., STUDENT HANDBOOK 2019-2020, at 16 (2019) [hereinafter STUDENT HANDBOOK] (describing a minimum GPA requirement of 2.8 for acceptance into the J.D./M.B.A. program as well as maintenance of a 2.8 GPA throughout the duration of the program).

210. Although the preference for data-driven change may be a good thing, it necessarily impedes innovation. Moreover, it is not a good thing if applied selectively. But human nature being what it is, one should expect individuals disinclined to a particular undertaking to desire more evidence in support thereof in order to be persuaded.

211. See Gannon, supra note 15.


213. See Huffman, supra note 36, at 61-62.

214. See Kate Murphy, Why Zoom Is Terrible, N.Y. TIMES (Apr. 29, 2020),
the technology, either through equipment issues or human failure, thereby ruining the course for themselves and possibly others.\textsuperscript{215} Although everyone conceded the risks that come with using technology, the majority view, echoed by the faculty Head of Information Technology Services for the Law School, was that the technology in question was robust enough to ensure a smooth class experience.

Ultimately, the proposal was adopted by a lopsided supermajority, with only four faculty members voting in opposition. It should be noted, however, that this was not necessarily a lopsided majority in favor of distance learning per se. Rather, it was a majority in favor of approving this particular course, under my personal direction, on an experimental basis. Although there was not necessarily an overwhelming consensus in favor of expanding the Law School’s distance learning offerings generally, there was broad consensus that the school should continue to build upon its experimentation with distance learning, especially under the right circumstances and under the supervision of those faculty members who have both the necessary interest, training, and background. In rendering its decision, the faculty requested that I report back upon my experience with the course and added a proviso that the course would need to obtain re-approval in order to be offered again.

\textit{D. The Rollout}

Shortly after the faculty approved the online Business Organizations course, the Dean’s Office finalized its roster of summer course offerings, and the same was communicated to the student body. As mentioned previously, only a fraction of students take summer courses. Whereas sufficient enrollment to run a course offered during the academic year is rarely a problem, the same is not so with regard to proposed summer offerings. Students have to be “sold” on the benefits of sacrificing additional time and money in order to take any classes during the summer months. Although I anticipated that the online nature of the course would be an attractive feature, this was but an assumption. For perhaps other factors, such as the aforementioned fear of the unknown, would weigh more heavily upon the students’ decision.

As mentioned, I have taught Business Organizations over the summer at Hofstra on several occasions. And although summer courses frequently feature enrollment of ten to fifteen students (one of the attractions of taking such courses), my summer Business Organizations


sections have consistently enrolled substantially more students than that (as many as thirty-six students at one point, and thirty students the last time I taught Business Organizations over the summer). However, in the past summers in which I taught Business Organizations, I had just come off a year of teaching Contracts I (in the fall), and sometimes also Contracts II (in the spring), to multiple sections of 1L students. Moreover, with the exception of a hiatus during my academic deanship, I have taught at least one section of Contracts Law every year since my arrival at Hofstra in 2006. This made me very much a known quantity to students contemplating their summer options. I also had an opportunity to discuss the course with my 1L students, explaining to them the pros and cons of taking it over the summer. All this, I believe, contributed to the strong enrollment numbers of my past summer course offerings.

But as fortune would have it, for a variety of reasons, I did not teach Contracts at Hofstra in either the 2017-18 or the 2018-19 academic years. Thus, unlike years past, there was not a single law student in the school eligible to take Business Organizations in summer 2019 who had previously had me as a professor. I was an unknown quantity, offering to teach an important course in an unknown format—a format that none of the students had previously been exposed to in law school.\textsuperscript{216} I recognized that it was incumbent upon me to introduce both the course, the distance learning format, and myself to potentially interested students.

To that end, I hosted an information session about the course during one of the common hours late in February—a couple of weeks before spring break, and about the time that students start seriously considering their summer options. The session was well attended by a diverse group of about twenty students. The students asked several good questions and were keenly interested in how the online course would differ from (a) law school courses generally, and (b) the in-person Business Organizations class in particular.

Two things struck me most about these students. The first was their level of engagement and their dedication as students. Contrary to what some of my faculty colleagues had feared, none of them seemed to be looking for an easy way to earn four credits.\textsuperscript{217} Rather, they appeared genuinely interested in receiving a sound educational experience.\textsuperscript{218} To

\textsuperscript{216} Although, as mentioned, two distance education courses had been offered in the J.D. program at Hofstra Law before, the first (Logic Skills for Legal Reasoning) was offered before any of the existing J.D. students matriculated to the Law School (Fall 2014), and the second (Controversies in Corporate Law) required the successful completion of Business Organizations as a pre-requisite. See supra Part III.A.

\textsuperscript{217} See supra notes 207-09 and accompanying text.

\textsuperscript{218} To the best of my knowledge, I lack the gift of extra-sensory perception. As such, I cannot claim to read the minds of my students, but rather must base it upon my instincts as an educator for
help assure the students that they would receive such an experience, I distributed a draft syllabus of the online course, along with a copy of the syllabus to my spring 2019 in-person Business Organizations class. The two were identical in terms of course content and coverage.

Second, despite all the chatter about the law students of today being "digital natives," the students expressed many of the same apprehensions about online education as my faculty colleagues did. This came as a surprise to me, as I had simply assumed a comfort level with the technology that was not there. Fortunately, over the course of the information session, I was able to describe, in detail, the technology, how it would be used, and class expectations with regard to the students' proficiency thereof. This seemed to do much to allay the students' concerns.

The information session was important for a second reason as well: it helped me set student expectations regarding the course. In other words, it not only served to satisfy student curiosity, and allay (or perhaps confirm) potential student concerns, but also served as my opportunity to make clear to potential students that the course would be every bit as rigorous and demanding as an in-person course. The students would be taught, and expected to learn, the same exact material as the students who were then currently taking my spring 2019 Business Organizations class. And as students talk and gossip, I trust that word filtered out throughout the student body. Indeed, throughout the remainder of the semester, other students continued to stop me in the hallway or come to my office to ask about the course.

I monitored student enrollment in the course in the weeks leading up to the summer semester. Whenever a new student registered for the class, I would reach out to him or her with a welcome message and a copy of the latest version of the draft syllabus. I would occasionally email the registered students collectively about matters regarding the course. In short, I strove to impress upon the students, through my communications, that the online summer Business Organization course would be (a) a demanding experience; and (b) taught by a professor who was fully committed to their success in the course. My hope was to ensure that no student would register for the course lightly, or with a misunderstanding of what they were signing up for.

Ultimately, twenty students enrolled in the course, making it one of the larger summer courses for 2019 (second only to the summer

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219. See James B. Levy, Teaching the Digital Caveman: Rethinking the Use of Classroom Technology in Law School, 19 CHAP. L. REV. 241, 242 (2016) ("Law students who have never lived in a world without computers or the Internet are known as 'digital natives.").
Externship Seminar course), and on par with past summer sections of Business Organizations.

E. Course Administration and Student Performance

1. The First Class Session

For me, at least, the first day of any class is always a particularly challenging one. This is because I set two critical, but conflicting objectives. First, I think it is essential to go over key course policies, such as rules regarding attendance, assignments, class participation expectations, the final exam, and how grades will ultimately be determined. Yes, this information is all contained in the syllabus. Sometimes in bold print. But, alas, not every student reads the syllabus. As such, I spend considerable time on such matters to impress upon the students their importance and to help ensure that no student in the class can plead ignorance thereof.

Second, I want to pull the students into the subject matter: grab their attention, pique their curiosity, and excite their interest. First impressions are important, and I want the course to make a good one. Ideally, the students would depart from the first class looking forward to the second one; at a minimum, they would not be dreading it.

But it is difficult to generate excitement about one’s course when the topic of conversation is the class attendance policy. So, I endeavor to get through the administrative material as expeditiously as possible, and to reserve the greater part of the first class session to substantive course content. I sacrifice the first part of the class, but thereafter endeavor to awake and engage the students with something interesting in the second part of the class and aim to finish strong with a really compelling case or two to help whet the students’ appetites for what is to come.

As much as it pained me to do so, I felt compelled to dedicate an extraordinary amount of time in our first online Business Organizations class session to administrative and, moreover, technological, matters.

As to the administrative matters, this discussion largely mirrored the one I typically have with my students on any first day of class, as mentioned above. However, there were some differences that merited elaboration on my part. The most obvious was that of office hours. Although I have an open-door policy, my schedule is such that my


221. See, e.g., Robert M. Jarvis, Anatomy of a Baseball Law Course, 29 MARQ. SPORTS L. REV. 381, 405-06 (2019) (“When I pointed out that the syllabus explained the foregoing in detail, the students admitted they had not read the syllabus before enrolling in the course.”).
availability cannot be guaranteed to the student (or colleague, for that matter) who drops by my office unannounced. Thus, it is my practice to set aside a few hours each week as dedicated office hours for my students. Although no appointment is necessary, students who have made an appointment will be seen at the time of their appointment even if someone else happens to be already meeting with me at that time.

It did not seem appropriate to set physical office hours for an online course. Indeed, a key feature of the course is that it could be taken by students otherwise disinclined or unable to set foot on campus. As such, I adopted a different office hours policy for the online course: I would meet any student at any mutually convenient time via a private, one-on-one video conference call (employing the same Zoom technology utilized in the course). Although students could no longer swing by my office without an appointment during a set block of time each week, they were also no longer confined to making appointments within that set block of time. Moreover, I was willing to accommodate them in ways that would not be possible for an in-person, on-campus meeting, from very early in the morning to very late in the evening. Thus, the approach I adopted actually served to make me more accessible to these students than to those in my typical, in-person classes.222

The bulk of the opening class session was dedicated to familiarizing the students with the Zoom video chat technology. I deemed this critical, as a lack of comfort and facility with videoconferencing technology (or audio/teleconferencing technology, for that matter) can undermine its use to the point of making it worthless, if not counterproductive. I have witnessed this first-hand in interviews conducted by Skype, in online webinars, and even with regard to something as simple as a conference call.223

Thus, I made it a point to methodically go over the video chat technology with the students during the first class session, including all of the features that the students would be utilizing.224 I made the students try out these features in real time, asking them, for example, to take turns

222. Unfortunately, students did not avail themselves of this opportunity to meet with me via my virtual office hours. That is, however, on par with regard to the other summer courses I have taught. Even during the academic year, a very small number of students frequent my office hours—and half of them, typically, do so to discuss matters unrelated to the course per se (which is entirely appropriate in any event). The exception to this is after final grades are released. At that point, students do make appointments to meet with me to go over their final exams. Students from my online Business Organizations course have exhibited the same pattern of behavior.

223. Who has not suffered through a conference call where at least one of the participants cannot or otherwise fails to mute his or her microphone, thereby subjecting everyone else to background noise ranging from barking dogs to extraneous conversation, impeding any effort to follow the conversation being attempted?

224. See supra text accompanying notes 185-94.
muting themselves, unmuting themselves, and then muting themselves again (I had them do that while introducing themselves one-by-one). I enabled screen sharing\textsuperscript{225} to show them some sample slides and to ensure they could all view the slides well. Only after I was convinced that they were all sufficiently comfortable with the technology did I forge ahead and commence the substantive lesson.

2. Laptops in the Classroom

Paradoxically, for my in-person classes, I have strongly dissuaded my students from using laptops for quite some time. I do this for reasons that are both paternalistic and pertain to the common good. Paternalistically, I have been persuaded by those studies suggesting that use of laptops in the classroom converts students into stenographers, in which they feverishly type into their notes everything being said, without discriminating between what is relevant and what is not particularly relevant.\textsuperscript{226} Worse still, the discussion seems to travel directly from their ears to their fingertips, bypassing their brains.\textsuperscript{227} And this assumes that the students are not distracted by all the other content available to them via the Internet—some of which might actually be more interesting than the Parol Evidence Rule.\textsuperscript{228}

With regard to the common good, a single laptop user can undermine the educational experience for a large number of other students around him or her.\textsuperscript{229} From the noise of incessant typing to the distractions appearing on a laptop’s screen, one student’s laptop use can be unfair to other students struggling to pay attention.\textsuperscript{230}

\textsuperscript{225} See supra notes 190-93 and accompanying text.
\textsuperscript{226} See Kevin Yamamoto, Banning Laptops in the Classroom: Is It Worth the Hassles?, 57 J. LEGAL EDUC. 477, 483 n.27, 485, 491 (2007).
\textsuperscript{227} Id.
\textsuperscript{228} See Doug Rendaleman, Remedies: A Guide for the Perplexed, 57 ST. LOUIS U. L.J. 567, 576 (2013) ("Students’ use of laptop computers in class has two opposing risks: that a student will become a stenographer and be so busy capturing everything that he won’t use his mind or, on the other hand, that a student will disengage, tune out, and play games or gamble on the stock market."). Although I believe that most students will personally benefit from the tough love of a laptop ban, I also recognize that some students may actually be hurt by such a ban. A minority of students may have the discipline to avoid the distractions of the Internet and, moreover, may actually perform better in class, for one reason or another, with laptop in hand. See Kristen E. Murray, Let Them Use Laptops: Debunking the Assumptions Underlying the Debate over Laptops in the Classroom, 36 OKLA. CITY U. L. REV. 185, 202 (2011). It is for that reason that I do my utmost to dissuade students from using laptops, but do not implement an outright ban. For the sake of the common good, however, I do require that students who opt to use laptops seat themselves in the back row of the classroom, or along the extreme left or right edges of the room. This creates a "laptop free zone" for most of the students, free of the distractions that come from listening to a neighbor’s typing and overseeing whatever distracting material may be displayed on his or her screen. Approximately eighty to ninety percent of my students follow my suggestion and shed their laptops for my classes. Many have thanked me for encouraging them to do so.
\textsuperscript{229} See Yamamoto, supra note 226, at 477, 483 n.27, 485, 491.
\textsuperscript{230} Id.
To help entice students to abandon their laptops for my classes, I pledge three things in return. First, I will pause frequently during my lectures, solicit questions, and be quick to repeat anything that needs to be repeated. Second, to the extent that my lectures incorporate the use of PowerPoint slides, I will make those slides available to students after each class. Third, I will have each of my classes recorded and made available as a podcast for the students.

For my online class, I could not, of course, ban laptops. Fortunately, the reasons motivating my desire to prohibit them were significantly reduced. The common good rationale, which I prioritize, evaporates. What one student does on his or her laptop does not affect the other students in the class. Even the paternalistic rationale is diminished. Unless a student was viewing the class on one device, and had a separate laptop for taking notes, he or she would not be transformed into a stenographer, but rather would be taking notes the old-fashioned way—by hand (which, according to studies, supports superior learning outcomes). Second, the real estate on a laptop screen or computer monitor is limited. It is unlikely that a student would minimize the class window (that is, the Zoom video chat window) in order to view some other extraneous content on his or her laptop simultaneously—especially when the class video feed features not merely a talking head, but rather, PowerPoint slides. In my online Business Organizations class, I saw absolutely no evidence that students were multitasking in such a way; each seemed locked into the lecture, taking notes and staring at their screen—none were witnessed fiddling with their keyboards or mouses. Paradoxically, therefore, an online class can arguably serve to achieve the aims, and mimic the effects, of the laptop ban.

Recognizing, as I traditionally have, the discomfort with which students abandon their laptops, I continued my policy of making my PowerPoint slides available to the students after every class. I also continued my policy of having every class recorded—but such recordings were now significantly enhanced. Whereas, for my in-person classes, only an audio recording is captured, for my online class, a video recording is captured. This is significant because my slideshow presentation is closely integrated into my lecture. I frequently use the mouse and cursor to point out key slide text or graphics. A student


listening to the podcast misses out on this; a student watching a Zoom video chat recording does not.

Admittedly in both cases, the temptation exists for a student to skip class and simply listen to the recording or watch the video. To the extent that the video recording is superior to the audio recording, this temptation is exacerbated.\(^{233}\) However, attendance is mandatory and taken regularly. Students are only afforded a small number of absences, after which they are administratively withdrawn from the class (this holds true for all of the classes I teach).\(^{234}\) That said, students could still be incentivized, by virtue of these recordings, to push the envelope and miss the maximum number of classes permissible before incurring a penalty. Although I recognize that possibility, I have not witnessed it in either my in-person or online classes. To the contrary, students typically email me apologetically ahead of time if they anticipate an absence, despite no requirement to do so.

3. Student Engagement and Assumptions Revised

In embarking upon this experiment of offering Business Organizations in an online distance learning format, I had proceeded under the assumption that the course would benefit my students primarily via the convenience it afforded, as explained previously, without any sacrifice of educational value or pedagogical quality.\(^{235}\) I was surprised, however, to find that the students, in my opinion, outperformed the students in my in-person J.D. courses. More specifically, I found that the students came to our virtual classes better prepared and remained more engaged throughout each session than their counterparts in my other classes. I base this observation upon the students’ responses to the questions I posed to them, and the students’ questions asked of me. With regard to the former observation, not once did I encounter the “sorry, I did not do the reading” response, and exceedingly rare was a “would you please repeat the question?” response.\(^{236}\) Most impressive were the responses received when I would cold call on students. Their answers, almost invariably, reflected that they had done the required readings for the session and, additionally, were clearly following the class discussion closely.

With regard to the latter observation, the students asked questions of me that were every bit as insightful and every bit as probing as those

\(^{233}\) Austin Canary, How College Professors Capture Lecture Recordings to Enhance Student Learning, REV (Aug. 29, 2019), https://www.rev.com/blog/college-professors-capture-lecture-recordings (“Lecture videos are the most engaging . . . .”).
\(^{234}\) Colombo Syllabus, supra note 220, at 3.
\(^{235}\) See supra Parts III.B–C.
\(^{236}\) Both of which are, unfortunately, not as uncommon as I would prefer in my in-person courses—at least until I do what can be done to dissuade some responses from proliferating.
students in my other classes. What was remarkable, however, was how broad the participation was. In one of my typical, in-person classes, approximately twenty to forty percent of the students constitute the population of regular volunteers.\textsuperscript{237} In my online Business Organizations course, approximately three-quarters of the students regularly volunteered to answer my questions or ask questions of their own. Moreover, whereas male students typically constitute the predominant portion of my volunteers, for this particular class, the participants were rather evenly split between male and female. Again, a surprising and welcome observation.

Fearing bias, I did not want to trust completely my own observations of the class’s performance. To guard against that, I distributed a recording of one of the class sessions to my colleagues at the Law School and encouraged them to review it. I did so along with an “interim report” I sent to the faculty one week into the course, in order to share my initial impressions of how things were faring. I received one private email from a colleague who described the class as “extraordinary.” My colleague also noted: “I am especially fascinated how this pathway doesn’t disturb the teacher-student relationship during class. Perhaps it makes it even more intimate and focused than a physical classroom. (I had thought it would be the other way round).”

To what do I attribute these phenomena? First, certain factors unrelated to the online format must be addressed. Namely, the interrelated facts that the course was a summertime offering and that, as such, it featured a class size that was about a quarter to a fifth of the size of a typical section of Business Organizations or Contracts.

With regard to these factors, I have observed that, generally, students in my smaller classes are indeed more engaged than students in my larger sections. This observation is consistent with the scholarship on class sizes and student performance.\textsuperscript{238} As such, the mere fact that my summer online Business Organizations section consisted of twenty students, instead of one hundred students, should account for some of the increased levels of student participation and engagement. But even controlling for this, the students in the online course exhibited greater levels of participation and engagement—not as pronounced as that compared to my typical 100-student classes, but significantly greater, nonetheless.

\textsuperscript{237} Closer to twenty percent in larger classes; closer to forty percent in smaller sections and seminars.

\textsuperscript{238} See Brent E. Newton, The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure, 64 S.C. L. Rev. 55, 101–02 (2012) ("Smaller class sizes allow for more meaningful pedagogy and student engagement.").
Based upon my past experiences, the smaller class size could possibly account for the decreased gender disparity in class participation for the online course. I seem to recall my female students participating more vigorously in my seminar class discussions versus the discussions in my larger classes. I recall a similar, although less pronounced, improvement in the class participation rates of female students in the small sections of my doctrinal courses (that is, Contracts, Securities Regulation, and past summer sections of Business Organizations). Unfortunately, this is based entirely on memory, and I have no means by which to corroborate these impressions.

Moving beyond these factors, I do believe there was something about the online experience that contributed to the students’ increase in engagement and participation. Namely, the online class created (1) an environment that was more comfortable and less intimidating, and (2) a connection between instructor and student that was more direct and intimate.

Many individuals (even, alas, future lawyers) are uncomfortable with public speaking.239 This discomfort is greatest in front of large groups but persists somewhat in front of small groups as well.240 Unfortunately, as per my personal observation, and consistent with scholarship on this subject, this phenomenon is particularly pronounced among female students.241 The online class format appears to have significantly diminished the discomfort of the typical class environment. Put differently, or on a related note, students were simply less intimidated in the online class. This was quite obvious from the students’ body language and facial expressions. The students looked at ease and comfortable. Many were lounging on couches, cross-legged in bed, or seated at their kitchen table. Some would be eating dinner with impunity during the class. Their facial expressions did not betray nervousness, but rather relaxation. And when the students spoke, their words and tone did not betray the hallmarks of nervousness, but rather comfort and confidence. I am led to conclude that the students performed better in class, in part, because they were, to a large extent, taking the course in the environment that was most ideal for them. Neither too hot, nor too cold; neither too bright, nor too dark. Free to eat


240. Id. (“Professors should keep in mind, however, that certain students might still experience major anxiety even in small groups, where dominant extroverts can still take over.”).


https://scholarlycommons.law.hofstra.edu/hlr/vol48/iss4/3
if they are hungry or to drink if they are thirsty. Not cramped sitting at a law school desk, but able to spread out to their heart’s delight. Not worried about the traffic home, nor distracted by the fear of having to contend with wet roads during a summer downpour.

Also, perhaps, contributing to the less intimidating class environment is that the students were not required to “speak up” and project their voices across a crowded lecture hall. They did not encounter the unfortunate social cues that sometimes inhibit class participation in the form of the occasional sigh, snicker, or shuffling of papers by classmates.\(^{242}\) Instead, each interaction looked and felt as though it were a private one between the instructor and whichever student happened to be participating at the moment. From the perspective of the participating student, the other students literally faded away from view as their screen no longer portrayed them, but rather simply me, their instructor, and themselves, for as long as our dialogue continued.

This leads to another phenomenon that my faculty colleague, referred to previously, had observed: the online experience was more intimate and direct than the typical classroom one. Classrooms are large, and even the closest students are typically at least ten feet away. In our online class, I was face-to-face (virtually) with my students as never before. Despite the fact that some of us were in separate cities and states, it felt as though there was very little space between us. Plus, there was no place for students to hide. There was no back row—each student was as front and center as every other student.\(^{243}\)

Add to all of this the fact that many of us, myself included, participated from our own homes. This made for an experience that was not merely more comfortable, but, moreover, warmer and more personal. Whereas I typically teach from a podium in a business suit, for this course I taught from a chair in my home office in business casual attire. Photographs of my children and their artwork were visible over my shoulder. On occasion, I would witness one of my student’s cats\(^{244}\) crawling over a lap or a keyboard during the class. In short, we caught


\(^{243}\) I analogize this to the difference in intensity that I have noticed in watching a baseball game in person, versus on television; or in watching a play performed on stage, versus a film on screen. Given the quality of my typical seats, the in-person experiences are viewed at a considerable distance. This contrasts with the video experience, in which every athlete’s muscle twitch (or tear in an actor’s eye) is readily visible. In short, despite the excitement of live attendance, I have found, quite frequently, a greater intensity and intimacy in viewing a performance, athletic or thespian, on screen.

\(^{244}\) I learned throughout the summer, via sight and sounds, that at least four of my students had cats, and at least one had a bird.
glimpses of each other’s private worlds. The veil of formality was effaced, and I think all of this combined to create an environment quite conducive to learning.

This runs contrary to several of my educational instincts to date. Prior to my online Business Organizations class, I believed that a formal educational environment was essential to learning. The students should be sitting up straight. If necessary, a bottle of water could be permitted, but I certainly frowned upon their eating during class. I require the students to call me “Professor,” and I, in turn, refer to each of them by their last names (such as “Mr. Ramos” or “Ms. Chen”). Indeed, if it were up to me, I would seriously consider instituting a dress code in law school.245

I am not ready to abandon all of my past presuppositions regarding education just yet, but I am forced to seriously rethink them. At this point, I theorize that those factors that I traditionally believed supported the best possible educational environments and outcomes still do so, but perhaps only within the context of a traditional classroom. But in the world of online distance learning, these same factors appear to no longer contribute positively. By analogy, techniques that work well for indoor photography do not work well for outdoor photography.246 Perhaps the formal classroom demands a more formal approach to instruction in order to maximize its benefits, whereas the less formal environment of one’s home (or other private place of choice) is more conducive to instruction if such informality is embraced rather than resisted. Another analogy: although teaching from a podium in a large classroom of one hundred students is typical, and apparently can be quite effective, it would probably be off-putting and not particularly effective if replicated in one’s living room with an audience of three listeners.

4. Summative Assessment

As with most law school courses, the summative assessment of the online students was conducted via a cumulative final examination. With


a desire to compare the summer course with that of previous Business Organizations courses, I decided to administer a final examination that was substantially identical to the one I had given in spring 2019. I set forth, in the chart below, the raw scores obtained by the students on the multiple-choice portion and on the essay portion of that exam. I also set forth the average GPA of the students in each course (that is, the GPA of the student population of the course prior to receiving their final grades for the course). Finally, I set forth information on the composition of the class, in terms of law school experience.

Table 1: Comparison of Student Performance in Distance Learning Versus In-Person Business Organizations Courses

<table>
<thead>
<tr>
<th>Course</th>
<th>Mean Number of Multiple-Choice Questions Correct (out of 10)</th>
<th>Mean Essay Raw Score (out of 70)</th>
<th>Mean Total Exam Raw Score (out of 100)</th>
<th>Class Mean GPA / Class Median GPA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spring 2019 Business Organizations</td>
<td>6.6</td>
<td>42.5</td>
<td>63</td>
<td>2.20/3.22</td>
</tr>
<tr>
<td>Summer 2019 Business Organizations (online)</td>
<td>6.2</td>
<td>37.5</td>
<td>59</td>
<td>2.83/3.04</td>
</tr>
</tbody>
</table>

As can be seen, after taking the same examination, the students in the traditional, in-person spring 2019 Business Organizations class performed better on both the multiple-choice and essay portion of the exam compared to the students in the online summer 2019 class. Out of

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247. I grade my students’ essays according to a rubric in which I reward points for identifying issues and in accord with how thoroughly and insightfully each identified issue is examined. I am not generous in rewarding points, but thereafter convert the raw scores obtained into a final grade in accordance with the Law School’s grading curve. See STUDENT HANDBOOK, supra note 209, at 21-22.

248. I include both the mean and median GPA for the students in the class to help control for outliers at either the high or low end of the student spectrum.

249. “1L” indicates a student who just completed his or her 1L year in spring 2019; “2L” indicates a student who completed his or her 2L year in spring 2019; “3L” indicates a student scheduled to graduate in May 2019.

250. The “other” student was a student from another law school.
ten multiple-choice questions, the spring students got an average of 6.6 correct, versus 6.2 correct in the summer class (a 7% difference). On the essay portion, the spring students earned a mean raw score of 42.5 points, versus 37.5 points in the summer class (a 13% difference).

The statistical significance of these differences is difficult to assess given the small sample size (simply one comparative experiment). For those tempted to draw conclusions, however, the context of these numbers must be taken into account—namely, the composition of the students in the two different sections. The students in the spring 2019 class had a mean GPA of 3.20 and a median GPA of 3.22; the students in the summer 2019 online class had a mean GPA of 2.83 and a median GPA of 3.04. This amounts to a difference of 13% and 6% respectively. In other words, based upon past law school performance, one would have expected the students in the spring 2019 class to perform 6% to 13% better in a given class than the students in the summer 2019 online class. And that’s exactly what transpired: the students in the spring 2019 class performed 7% better on the multiple-choice portion of the final exam, and 13% better on the essay portion of the final exam.

Another critical, noteworthy fact is that the students in the spring 2019 section of Business Organizations consisted entirely of 2L students, 3L students, and one LL.M. student, whereas the students in the summer 2019 section of Business Organizations consisted primarily of those who had just completed their first year of law school (eleven out of twenty). If one subscribes to the belief that each additional semester of law school ought to increase a student’s ability to analyze legal problems and answer legal questions, one would expect the more experienced, upper-level students to perform superior to less experienced, lower-level students on a given law school examination. Indeed, it would be surprising for a class of mostly 1L students to surpass a class of mostly 2L students on the same exact law school exam. Viewed from this perspective, the statistical results on student final examination performance should not be particularly surprising.

From the data set forth above, one of three possible conclusions could be drawn, if any: (1) that the difference in performance between the traditional, in-person section versus the online, summer section exceeded the difference that would be expected, after controlling for GPA and student body composition, thereby suggesting that the online course format had a negative impact on student performance; (2) that the difference in performance between the traditional, in-person section versus the online, summer section fell short of the difference that would be expected, after controlling for GPA and student body composition, thereby suggesting that the online course format had a positive impact on student performance; or, (3) that the difference in performance
between the traditional, in-person section versus the online, summer section approximated the difference that would be expected, after controlling for GPA and student body composition, thereby suggesting that the online course format had no material impact on student performance.

For my part, I do not find the data is conclusive enough to draw any firm conclusion one way or the other on the extent to which the online format of my summer Business Organizations class affected student performance on the final exam. That said, the fairest reading of the data, in my opinion, would be that the online format had either a positive or no material impact on the students’ final examination performance. Moreover, it seems to me that any reading of the data suggesting that the online format had a negative impact on the students’ final exam performance would be unjustifiable under the circumstances.

5. Student Feedback

Throughout the course, I received universally positive feedback from the students. But since this was not anonymous and was sent to me before grades had been entered, I take such remarks with a grain of salt. More probing, I believe, is the feedback received via our anonymous course evaluations. For the online Business Organizations course, the same evaluations were administered as for all other courses, with two differences: (1) the evaluations added three extra questions regarding the online format of the course; and (2) the evaluations were not administered in person, via pen and paper (as is typical), but rather online via Survey Monkey in a way such that anonymity could be preserved.251 Of the twenty students in the class, eleven completed the evaluation.252

Statistically, the results received were on par with those I have typically received in my Business Organizations classes. To this end, I set forth the results received in this class with my spring 2019 Business Organizations class. As mentioned, there are confounding variables to take into account, chiefly the smaller class size and the summertime setting. For this reason, I also set forth the statistical results I received from students the last time I taught the course in the summer (in 2017). (Questions seven, eight, and eleven on the course evaluation call for non-statistical responses,253 and, as such, are not set forth below). For

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252. Individual Responses, supra note 251, at 21; Summary Responses, supra note 251, at 16.

253. Individual Responses, supra note 251, at 1-2. Question seven reads: "What are the best aspects of this instructor’s teaching?"; question eight reads: "Do you have any suggestions for improving the teaching?"; question eleven reads: "I am taking this course primarily because (choose
each of the questions below, the scale ranges from one ("Strongly Disagree") to five ("Strongly Agree").

Table 2: Comparison of Course Evaluation Student Responses in Distance Learning Versus In-Person Business Organizations Courses

<table>
<thead>
<tr>
<th>Question</th>
<th>Summer 2019 Business Organizations Course (online)</th>
<th>Spring 2019 Business Organizations Course</th>
<th>Summer 2017 Business Organizations Course</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1: The instructor demonstrates mastery of the subject.</td>
<td>4.91 (out of 5)</td>
<td>4.91 (out of 5)</td>
<td>4.92 (out of 5)</td>
</tr>
<tr>
<td>Q2: The instructor presents the course material in a way that is intellectually stimulating and challenging.</td>
<td>5.00 (out of 5)</td>
<td>4.67 (out of 5)</td>
<td>4.71 (out of 5)</td>
</tr>
<tr>
<td>Q3: The instructor is appropriately responsive to questions in class.</td>
<td>5.00 (out of 5)</td>
<td>4.88 (out of 5)</td>
<td>4.96 (out of 5)</td>
</tr>
<tr>
<td>Q4: The instructor is accessible outside of class.</td>
<td>4.55 (out of 5)</td>
<td>4.76 (out of 5)</td>
<td>4.88 (out of 5)</td>
</tr>
<tr>
<td>Q5: The instructor clearly communicates course policies and expectations.</td>
<td>4.91 (out of 5)</td>
<td>4.91 (out of 5)</td>
<td>4.88 (out of 5)</td>
</tr>
<tr>
<td>Q6: Overall the instructor is an effective teacher.</td>
<td>5.00 (out of 5)</td>
<td>4.93 (out of 5)</td>
<td>4.96 (out of 5)</td>
</tr>
<tr>
<td>Q9: The subject matter covered in this course made a valuable contribution to my legal education.</td>
<td>5.00 (out of 5)</td>
<td>4.78 (out of 5)</td>
<td>4.63 (out of 5)</td>
</tr>
<tr>
<td>Q10: The course improved my ability to analyze legal problems.</td>
<td>4.91 (out of 5)</td>
<td>4.52 (out of 5)</td>
<td>4.54 (out of 5)</td>
</tr>
</tbody>
</table>

one, or select other and provide a comment)." *Id.* None of the responses to these questions addressed the online format of the course.

254. *Summary Responses, supra* note 251, at 1-6, 9-12.
Statistically, my effectiveness as an instructor appears not to have suffered as a result of teaching my students online versus in person. Nor did it appear to diminish the importance and effectiveness of the course content in the eyes of the students. Rather, the students in the online course rated it as being equally strong or superior to the in-person course in every statistical category except one.\textsuperscript{255}

Question twelve of the evaluation addresses the issue of course workload. This is a relatively recent question, added to the Law School’s course evaluation forms only within the last few years. Question twelve reads as follows:

Pursuant to the Law School’s academic policy, a credit hour must consist of at least 50-minutes of in-class time per week, plus two hours of out-of-class work per week, or any other combination of work and instruction of equivalent effort. Out-of-class work can include weekly reading, group and individual study/review time, outlining, consulting texts/hornbooks, doing practice questions, etc. With that in mind, to what extent did this course satisfy the Law School’s policy?\textsuperscript{256}

The responses to this question are set forth below, along with those received in past years:

<table>
<thead>
<tr>
<th>Response to Question Twelve (number of responses/percentage of respondents)</th>
<th>Summer 2019 Business Organizations Course (online)</th>
<th>Spring 2019 Business Organizations Course</th>
<th>Summer 2017 Business Organizations Course</th>
</tr>
</thead>
<tbody>
<tr>
<td>The workload was significantly less than the Law School policy.</td>
<td>0</td>
<td>43 (63.2%)</td>
<td>[question not asked]</td>
</tr>
<tr>
<td>The workload was somewhat less than the Law School policy.</td>
<td>0</td>
<td>5 (7.4%)</td>
<td>[question not asked]</td>
</tr>
<tr>
<td>The workload met the Law School policy.</td>
<td>7 (63.64%)</td>
<td>12 (17.6%)</td>
<td>[question not asked]</td>
</tr>
<tr>
<td>The workload somewhat exceeded the Law School policy.</td>
<td>3 (27.27%)</td>
<td>0 (0.0%)</td>
<td>[question not asked]</td>
</tr>
</tbody>
</table>

\textsuperscript{255} The exception being the instructor’s accessibility outside of class, which, at 4.55 was lower in the summer section than in the spring, in-person section (which was 4.76). See supra Tbl.2. To put this in perspective, however, the Law School average (for the spring 2019 semester—the last semester for which an average is available) was 4.26.

\textsuperscript{256} Individual Responses, supra note 251, at 2; Summary Responses, supra note 251, at 12.
The workload substantially exceeded the Law School policy.  

| 1 (9.09%) | 5 (7.4%) | [question not asked] |

Although the same exact amount of reading was assigned for each course, the students in the online course differed significantly with respect to their assessment of the workload. Over 63% of them felt the workload was appropriate for a four-credit course, whereas the same percentage of students in the in-person course believed that the workload was “significantly less than” that required for a four-credit course.\(^{257}\) I cannot attribute this difference to the online format of the summer course, as this had no bearing whatsoever upon the amount of reading that a student needed to complete for the course. Rather, I attribute this difference to the accelerated/condensed format of the summer course, in which fourteen weeks of material is covered in seven weeks. Thus, the students in the summer online course needed to read twice as much material per class as did the students in the spring course.\(^{258}\)

As mentioned, three questions asked the students to comment specifically upon the online nature of the course.\(^{259}\) These questions, and all narrative responses received, are set forth below\(^{260}\):

Question 13: Was the online format of this class a positive, negative, or irrelevant factor in your decision to take this course? If so, why?

[Responses received:]

[Participant 1:] Irrelevant[].
[Participant 2:] Yes. I would not be in town to take the course[].

\(^{257}\) Interestingly, the spring 2019 survey included a free-response question regarding workload and the answers received were universally positive. They included descriptions of the course workload as: “very reasonable,” “manageable,” “fantastic,” “perfect,” “great,” “well crafted,” “[he] understands what [it] is like to be assigned massive amounts of reading,” “not overbearing,” “allows you to focus on what each case says rather than having to reach [sic] so many cases.” See Course Teacher Evaluation: Spring 2019 (on file with author). This is, of course, exactly what I was striving for: a workload that was manageable enough to permit careful reading and re-reading of the assigned material, and no more than that which I would be covering in the classroom. Apparently, such a workload constitutes significantly less than the eight hours of out-of-class reading per week (“two hours of out-of-class work per week” per credit) required by the ABA. See Colombo Syllabus, supra note 220, at 6. This gives me substantial pause and alerts me to an issue to address that goes beyond the scope of this Article.

\(^{258}\) This has been the case for all of my summer course offerings.

\(^{259}\) See generally Individual Responses, supra note 251 (providing participants’ answers to survey questions thirteen, fourteen, fifteen, and sixteen).

\(^{260}\) There are less than eleven responses for each question set forth because some students decided not to provide a response to one or more of these questions.
[Participant 3:] I have taken many online courses in the past and HATED them. I considered myself more of an “in-class” learner. Now, I am sold on this online format. Easy to use and will definitely do it again!

[Participant 4:] The online format was fine and it helped me immensely because I wasnt [sic] in Long Island this summer so I could not have taken it otherwise[

[Participant 5:] Positive[

[Participant 6:] Positive. It allowed me to work over the summer in New Jersey where I live and still help me further my legal education.

[Participant 7:] Irrelevant, because I really wanted to understand the class as best as possible, with as much one on one help as possible.

[Participant 8:] It was good. Personally, for me, it is a little hard to concentrate unless I’m in the class. But, this was a good class because the Professor was always there on time and willing to a[nswer] any questions. Only once did we have a technical issue.

[Participant 9:] Positive. I was able to take the challenging course in a comfortable environment while still being able to maintain a summer internship.

[Participant 10:] It was a positive factor because it allowed me to work and fulfill my other responsibilities (work, other class) while getting the credits I needed.

[Participant 11:] [P]ositive[

Question 14: If the online format of this class was either a positive or negative factor in your decision to take this course, has it fulfilled your expectations in this regard (if the online format was not a relevant factor in your decision to take the course, please write “n/a” or leave this answer space blank).

[Responses received:]

[Participant 2:] Yes[

[Participant 3:] Beyond expectations. Great experience. I can be in class from anywhere and on my phone or computer. Great system.

[Participant 4:] I didn’t [sic] have any expectations for the online-ness of the class. I thought it was fine, the only problem was the length of each class but that is more because of the constraint of the class schedule[.] 261

[Participant 6:] Positive, without it, I would be unable to attend class at all.

[Participant 7:] [N]/a[

[Participant 8:] It fulfilled my expectations. Usually, I’m not good at online classes but I liked this format.

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261. Author’s note: because of the condensed, seven-week summer schedule, each class session of the online Business Organizations class met for four hours, twice per week.
[Participant 9:] I was worried about the online format at first - it was a negative factor. However my opinion has completely changed to positive.

[Participant 10:] Yes.

[Participant 11:] [Y]es[.]

Question 15: Has the online format of this course contributed positively or negatively to your learning experience as a student in the course (in ways other than those anticipated and addressed above)? If so, how?

[Responses received:]

[Participant 1:] Positively[.]

[Participant 2:] Positively as it allowed a class like structure without having to be in class[.]

[Participant 4:] I dont [sic] think it has effected [sic] me. [H]aving this class online wouldn't [sic] make me more or less likely to take another one. [I] still prefer in person [sic] classes but this was still perfectly fine[.]

[Participant 5:] Positively[.]

[Participant 6:] Positively, even though I was not physically in a classroom, I felt that the online format was actually more engaging and more of a collaborative learning environment. Also, the teacher was able to promptly read any questions submitted and delve more into subject matter.

[Participant 7:] [C]ontributed positively, it has made me interested in corporate law, a path I hadn't considered before this class.

[Participant 8:] I think it was fine. It would have been the same had it been in person.

[Participant 9:] Positively contributed to my learning[; a]ble to analyze problems in a new way.

[Participant 10:] Positively because for some reason, it was easier to maintain my attention and focus with the perfectly-timed breaks and I also found it easier to actively participate than in an in-person class—which I usually have slightly more trouble doing.

[Participant 11:] [P]ositive[.]

Question 16: Based primarily upon your experience in this course, please share any additional comments you wish to regarding online JD education.

[Responses received:]

[Participant 3:] I vote for more online courses.

[Participant 4:] [I] think it is good for summer classes because it makes it easier for people to work further from the law school[.]
[Participant 5:] Online education is essential for those of us with difficult schedules—-it makes education more readily available and I believe it is an important element for any educational establishment to have.[\]

[Participant 6:] I feel very fortunate to have taken this class with Professor Colombo. He made some really difficult subject matter seem attainable and inspired me more as a student.

[Participant 7:] The [Z]oom sessions were amazing, it kept me really engaged throughout.

[Participant 8:] I liked this format and I loved the teacher. One thing is I think he would go a little fast, but overall a good Professor.

[Participant 9:] It can be effective with the right professors—-that makes the most difference. Prof. Colombo make[s] [business organizations] interesting, which I didn’t think was possible.

[Participant 10:] I think for some upper-level courses, this method is incredibly effective.

[Participant 11:] N/A.\textsuperscript{262}

The narrative student responses confirmed my predictions and observations. They also alerted me to other benefits of the online format that I had not foreseen.

As expected, the student responses confirmed that the online format was more convenient for the students than the traditional, in-person format. But “more convenient” fails, I believe, to adequately capture the significance of this attribute, for the word “convenient” is thrown around in connection with items as superfluous as “active park assist” in automobiles\textsuperscript{263} and “wireless charging” stations for one’s smartphones.\textsuperscript{264} By “convenience,” some students essentially meant that the online course format helped enable them to pursue their hopes and dreams by making possible the completion of essential coursework that would otherwise have been impossible or impracticable. In their own words, the students revealed, when referring to the online format: “[I]t helped me immensely because I wasn’t [sic] in L[ong] I[sland] this summer so I could not have taken it otherwise;”\textsuperscript{265} “It allowed me to work over the summer in New Jersey where I live and still help me further my legal education;”\textsuperscript{266} “[I]t allowed me to work and fulfill my other responsibilities (work, other class) while getting the credits I

\textsuperscript{262} See generally Individual Responses, supra note 251.

\textsuperscript{263} An “active park assist” can be defined as a “convenient driver’s aid that helps make parallel parking easy.” Active Park Assist, FORD, https://owner.ford.com/how-tos/vehicle-features/convenience-and-comfort/active-park-assist.html (last visited July 10, 2020).

\textsuperscript{264} “Wireless Charging, also known as Inductive Charging, is a convenient and cable-free way to charge your electronic devices.” The Wonderful World of Wireless Charging, BELKIN, https://www.belkin.com/us/Resource-Center/Wireless-Charging (last visited July 10, 2020).

\textsuperscript{265} Individual Responses, supra note 251, at 8.

\textsuperscript{266} Id. at 12.
needed."\textsuperscript{267} "[I w]as able to take the challenging [Business Organizations] course... while still being able to maintain a summer internship."\textsuperscript{268} As one student noted, "Online education is essential for those of us with difficult schedules."\textsuperscript{269}

The responses also supported my impression that the course format made for a genuinely more comfortable environment which, in turn, contributed to (rather than detracted from) the educational experience. One student made a point of noting that this was a "challenging course in a comfortable environment."\textsuperscript{270} Another commented that "the online format was actually more engaging and more of a collaborative learning environment."\textsuperscript{271}

As mentioned previously, I had discerned that in addition to being more comfortable, the online course felt more direct and intimate. This contributed to deeper engagement among the students. One student explicitly recognized the superior engagement in the class, albeit without identifying its cause: "The [Z]oom sessions were amazing, it kept me really engaged throughout."\textsuperscript{272}

Tellingly, only one student offered comments regarding the online course that were not positive. He or she wrote: "Personally, for me, it is a little hard to concentrate unless I’m in the class,"\textsuperscript{273} and, in addition to this, made reference to an isolated technical issue.\textsuperscript{274} Different students learn differently, and no one approach can be all things to all people. In fact, going into this course I had expected a greater divergence of opinion regarding the online format—I had expected its reception by the students to vary significantly. From that variance, I had hoped to somewhat discern for which students the distance learning approach worked best, and for which students it did not. Indeed, I believe that to be a critical line of inquiry. However, no such divergence appeared, for the one mildly negative comment quoted above was an outlier, not echoed by any other student in the course. Indeed, most of the responses

\begin{footnotesize}
\textsuperscript{267} Id. at 20.
\textsuperscript{268} Id. at 18.
\textsuperscript{269} Id. at 10.
\textsuperscript{270} Id. at 18.
\textsuperscript{271} Id. at 12.
\textsuperscript{272} Id. at 14.
\textsuperscript{273} Id. at 14.
\textsuperscript{274} Id. A power surge on my end knocked me offline during one of our classes. This led to about five minutes of downtime. Anticipating this as a possibility, I had, fortunately, advised my students in advance that should any such technical hiccup occur, they were to give me fifteen minutes to sort the matter out. In other words, the students should remain logged in, or keep attempting to log in to the class (if necessary) for up to fifteen minutes. If the issue had not been resolved by then, they should consider the class session canceled (and then expect a make-up class at some other time). I hasten to add that when teaching on campus, I encounter multiple technological issues per semester, far outstripping, both in number and proportion, the one technical incident I encountered in the online class.
\end{footnotesize}
were emphatically positive. The only other response that was not explicitly positive was one in which a student referred to the course as “fine,” adding that it “would have been the same had it been in person.”

One student remark alerted me to a benefit of live, online classes that I had not previously considered. The student stated, “[F]or some reason, it was easier to maintain my attention and focus with the perfectly-timed breaks and I also found it easier to actively participate than in an in-person class—which I usually have slightly more trouble doing.” As already discussed, the comfortable environment, or the more intimate, direct feel of the class could have helped maintain the student’s attention and focus. In addition to this, however, a student in a live, online class (1) has complete control over the volume of the teacher’s and other students’ remarks, and (2) a clear, unobstructed view of whatever material (in our case, the PowerPoint slides) the teacher chooses to display to the class. He or she is also freed from the various and sundry distractions that are sometimes posed by other students. This is a far cry from the situation in a typical classroom, where students routinely request that I repeat their colleague’s questions and I field complaints about seating configurations that inevitably make it difficult for a handful of students to see the projector screen—not to mention the occasional request for a seating change on account of one’s neighbor.

Finally, I think it is important to recognize that the positive feedback obtained is not necessarily a function of self-selection on the part of the students who enrolled in the course, for at least three students entered the class as skeptics with regard to online education, yet emerged as fans: “I have taken many online courses in the past and HATED them. I considered myself more of an ‘in-class’ learner. Now, I am sold on this online format. Easy to use and will definitely do it again,” “Usually, I’m not good at online classes but I liked this format;” “I was worried about the online format at first[—]it was a negative factor. However[,] my opinion has completely changed to positive.”

That said, it is also important to note that the students who participated in the online Business Organizations course did indeed self-select into the class. This, and factors relating to the way I conducted the course (as noted previously), helps explain one last

275. Id. at 16.
276. Id. at 20.
277. See supra Part III.C.
278. See supra notes 226, 241 and accompanying text.
279. Id. at 6.
280. Id. at 16.
281. Id. at 18.
observation I wish to mention. Namely, in past semesters when I have used Zoom video chat to conduct an isolated make-up class session for a course being regularly conducted in-person and on campus, the experience was quite different. The students in that situation came across as ill at ease, and class participation plummeted. A colleague of mine confided a similar phenomenon observed in his make-up class sessions conducted via Zoom. From this dichotomy, I draw two conclusions. First, it is important to avoid forcing online, distance learning courses upon unwilling students. Although at least three students in the online Business Organizations class had a change of heart as a result of their experience in the course (from a negative perspective of distance learning to a positive perspective), one student expressed persistence in his or her inclination toward in-person courses. Unless the course in question happens to be wholly elective, if at all possible, students ought to be afforded an opportunity to choose either an in-person versus online version of the same course. Second, it is critical to ensure the students’ comfort and familiarity with the requisite online technology used by that particular distance learning course at the outset. Failure to invest the necessary time upfront to assure this will, I suggest, result in inferior class participation on the part of most students throughout the course.

F. Lessons Learned

As a result of my teaching an online section of Business Organizations in summer 2019, I have made certain personal observations and reached preliminary conclusions regarding online, distance learning. Although I have identified most of these throughout the progression of this Article, I pull them together in this Subpart for both ease of reference, and moreover, to present them as a coherent whole. As the class in question was a fully synchronous online course, my observations and conclusions are necessarily limited to such courses. As far as I can discern, my observations and conclusions serve to reinforce and supplement, rather than undermine and oppose, those reached by others who have taught online distance learning courses.

282. Id. at 8.

283. This is not to suggest that online technology ought to be avoided in the holding of make-up classes. Quite the contrary—I have found doing so to constitute the least of multiple evils. Make-up classes, often meeting on odd days and at irregular hours, are seldom optimal experiences. But there is a difference between conducting a one-off class session under suboptimal circumstances, occasioned by necessity, versus conducting an entire semester’s worth of class sessions under such circumstances.

284. I am not proposing that my observations and conclusions are necessarily irrelevant to asynchronous courses, but am merely explaining that their application to such courses is not something I am positively suggesting here.
1. The first and most significant conclusion I have reached is that an online, synchronous distance learning course can be as academically rigorous and as pedagogically sound as a traditional, in-person course. This particular format of course delivery, *ceteris paribus*, does not necessarily entail an inferior educational experience.285

2. The virtual classroom that characterizes a synchronous distance learning course can potentially offer students an educational environment that is less intimidating and otherwise more comfortable than a traditional, in-person classroom.286 This, in turn, can bring out the best in students, many of whom find it easier to remain engaged and more willing to participate in class conversation in such an atmosphere. This phenomenon appears particularly pronounced with regard to female students, thereby minimizing the male/female disparity in participation that frequently surfaces in the traditional classroom.287

- Significantly, this suggests that the instructor of an online, synchronous course be careful not to impede the development of such an environment by, for example, attempting to impose a more formal one.

3. The technology necessary to offer an effective synchronous distance learning course exists and is readily available, to both instructor and students. That said, familiarity and proficiency with such technology is essential to the course’s success.288 Thus, it is imperative that an instructor offering a synchronous distance learning course undertake the training necessary to ensure that he or she is up to the task of using it properly.289 It is also imperative that students in the course, at the earliest possible opportunity, are similarly oriented to the technology and receive whatever instruction is necessary for them to utilize it effectively.

- To the extent that a school offers only a small number of online courses, taken by a small number of students, such orientation and training will necessarily form an essential component of each course. To the extent that a critical mass of online courses is offered by a school, a more efficient way of providing said orientation and training might be via a stand-alone session or seminar, conducted by the school’s Information Technology staff or an interested member of the

285. The qualification that all other conditions must be held constant in order to reach this conclusion is essential. An online course can be inferior to an in-person course if it features an inferior instructor, inferior course materials, or an inferior student body.

286. See supra Parts III.E.3-4.

287. See supra note 251 and accompanying text.

288. See supra Part II.C.

289. See supra Part II.C.
faculty. This one-time session or seminar could qualify the student to take any number of online courses thereafter and obviate the need for each such course having to feature a similar training module of its own.

4. Class size in a synchronous online class must be limited to approximately twenty to twenty-five students in order to permit an instructor to effectively gauge and maintain each student's engagement in the class. Moving beyond this number, it becomes increasingly difficult for an instructor to monitor the students' facial expressions and body language via current videoconferencing technology.

5. Students should not be forced into taking an online course (at least not at this time). It is not the norm, and not what students expect when they enroll in law school. Consequently, only elective courses ought to be offered in an online distance learning format. Or, if the course is required, it should be a course that is also offered in the traditional in-person format just as frequently.

6. The convenience offered to students via online distance learning courses is difficult to overestimate. It is a convenience that goes beyond merely saving time, money, and energy, and extends to enabling a student to achieve key educational and life objectives. Online courses, especially when offered in the summer, afford a student all the advantages of taking a summer course, without having to sacrifice potential internships, employment, or other important personal opportunities during the summer months.

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291. There are limits to the size of an effective in-person class as well, but depending upon a classroom's layout, it would seem that at least twice this upper limit could be accommodated by an instructor with reasonable eyesight in a traditional classroom. Beyond that, however, some students simply move outside the instructor's effective field of vision.

292. As indicated, a number of students who were initially skeptical about online education came to embrace and support it as a result of their participation in the summer 2019 online Business Organizations course. See supra Part III.E.5. This reminds me of my experience with laptop bans: students typically react negatively at first, but by semester's end frequently express to me how beneficial they ultimately found the ban to be. Nevertheless, for the time being, it would seem advisable to not force an online course upon students, as it might generate apprehension and perhaps even resentment. It is important to note that those skeptical students referenced above, who eventually underwent a change in opinion toward online education, voluntarily chose to take the online Business Organizations course.

293. Although it should go without saying, I will nevertheless suggest that instructors not be forced into teaching an online course, but rather be permitted or invited to do so voluntarily. Instructional quality would most likely be impaired by drafting someone into creating and teaching a course with which he or she is not able, comfortable, and/or interested in teaching.

294. See supra text accompanying notes 73-75.

295. "Summer courses give law students an opportunity to satisfy graduation requirements or to lighten their course load during the school year." Summer Programs, HOFSTRA L.
• Of secondary, but not inconsiderable, importance is the benefit offered to faculty as well. Especially during the summer months, when faculty are not ordinarily needed or expected to be on campus, teaching a course online can save an instructor valuable time and energy, by eliminating what could be a difficult and lengthy commute.

• For both students and instructor alike, online courses save money in the form of reduced gasoline and toll expenses. For a school that suffers from space issues, regarding classrooms, parking, or both, the proliferation of online course offerings could serve to help alleviate these problems—especially if such courses are offered during the fall or spring semesters when such issues are most salient.

• For the benefit of everyone, fewer greenhouse gas emissions are generated by a reduction in miles driven when online courses are offered in lieu of in-person courses.

7. Law students appear to enjoy online education. Virtually all of the students in the online summer 2019 Business Organizations class found the experience as good as, if not better than, their traditional in-person classes. This is consistent with the results of other surveys of students referenced previously. Thus, offering online distance education courses serves a school’s students well: it provides them with a learning experience that can be both as effective and even more positive than that of the traditional classroom.

• In a world more interconnected than ever due to social media, and as positive experiences with online courses multiply, students will eventually begin to request more online offerings. Students at schools not offering a sufficient number of online courses will question why, and the absence of such courses may factor into their decision to stay at the school or transfer to another. Similarly, prospective students will most likely begin to factor a law school’s online course offerings into their decisions regarding where to apply and where to matriculate.


296. See supra text accompanying notes 73-75.
297. See supra note 179 and accompanying text.
298. See supra Part III.E.5.
IV. CONCLUSION

In embarking upon this experiment in teaching an online Business Organizations course, I had, admittedly, expected success. Indeed, I would not have proposed such an undertaking had I expected otherwise. Based upon my own personal experience in teaching online classes, and based upon a study of the available literature, I was confident in my ability to teach, and my students’ ability to learn, via the online, distance learning format. As indicated, my expectations were surpassed.

Quantitatively, my review of the students’ performance on the final examination demonstrates to me no cause for concern. I discern nothing in the data that could, I submit, fairly be read as an indication of inferior learning outcomes as linked to the online, distance learning format. The modest discrepancies are best explained, I suggest, by the difference in the class demographics (more specifically, the students’ GPAs and years of law school experience).300

My reading of the course’s effectiveness is bolstered by the students’ own perceptions on how well they learned the material, based upon the feedback provided in their course evaluations. Students who rarely speak in unison did so with respect to their assessment of the quality of the education they received in this online course.

Qualitatively, I was impressed with the students’ class participation. It was certainly more vigorous, more broadly based, and more gender-balanced than that achieved in my typical, in-person sections of Business Organizations. As I think back upon my in-person summer sections of Business Organizations (which provides a fairer comparison given the similarly smaller class sizes), I still cannot recall a superior classroom experience (although I can recall inferior ones).

All of the preceding combines to confirm something I had long surmised: distance learning will not transform a competent, effective educator into an incompetent, ineffective one.301 The success I have had in teaching past courses was replicated in the online Business Organizations course. Arguably, for the reasons set forth in this Article, the online course was superior to my previous courses. Critically, it certainly does not appear to have been inferior. In short, an instructor is likely to teach as well or as poorly as he or she usually does, regardless of whether a course’s format is online or in-person. Once familiarity with the requisite technology is obtained, the same skill set and abilities that make one an effective in-person instructor will likely make one an effective online instructor as well.302

300. See supra Part III.E.4.
301. Conversely, it is unlikely to transform a poor educator into a good one.
302. This is, I am convinced, certainly true with regard to live, synchronous courses. I also
As mentioned, this experience forced me to rethink my own understanding of what constitutes sound pedagogical practices. Put very roughly, I have traditionally embraced the perspective that students needed to “rise to the occasion” and conform themselves to a certain level of formality in order to be best prepared to learn. Now, I am more open to meeting the students where they are—in crafting a learning environment that may be less formal in order to be more comfortable. For I perceived that greater personal comfort, in general, appeared to lead to a greater ability on the part of my students to follow the class discussion and participate therein. Contrary to my biases, comfort and informality did not detract from their ability to engage with the material, but rather seemed to enhance the students’ ability to do so.

Finally, my focus throughout this experiment was primarily on the quality of education. But the student responses impressed upon me the importance of convenience. Certainly, convenience was a factor I identified as justifying this online course, but I underestimated the depths of its significance. By “convenience” I had in mind the avoidance of a tedious commute to and from campus, after a long day (for many of the students were interning or otherwise working), and at uncomfortably late hours. But for many of the students, “convenience” did not mean merely the avoidance of tedium. “Convenience” meant the ability to pursue and achieve various critical educational and professional goals. It meant making progress toward their objectives in life, on a timetable important to them. The term “convenience” fails to adequately capture the benefits that distance education, when well executed, promises to offer.

V. Postscript

As this Article was being finalized for publication, the world was transformed (temporarily, at least) by the COVID-19 pandemic of spring 2020. Most, if not all law schools moved classes online, subjecting both instructors and students to an involuntary “crash course” on distance education. Additionally, newer scholarship not captured when this Article was first researched has come to light, and still more think it is likely to be true with regard to asynchronous courses as well, but I am less certain of that given the substantial difference in teaching such a course.


305. E.g., Michael F. Toyne, James E. Briley & Terrance Jalbert, Comparing Learning
is undoubtedly being generated. All of this may serve to confirm, or perhaps undercut, the conclusions drawn herein. This brief Postscript has been added to afford me an opportunity to reflect upon said conclusions in light of my own personal adventure in online education during the spring 2020 semester.

For the spring of 2020, I was assigned to teach a 5-credit Contracts Law course to a class of ninety-two 1L students. Originally (in January 2020), the course was taught in person. In March, this course, along with all other courses at the Law School, was moved online.306

The differences between my spring 2020 Contracts course and my summer 2019 Business Organizations course were profound. The former consisted of ninety-two students, the latter only twenty. Contracts contained only 1L students, while Business Organizations consisted only of students who had already completed their 1L year. Finally, whereas the students in the Business Organizations class elected to take that class as an online course, having had numerous opportunities to discuss its format with me in advance,307 the students in Contracts were thrown involuntarily into an online course in response to a worldwide crisis.

Although the spring 2020 Contracts class went well, it was unlike my summer 2019 Business Organizations class in significant ways.

First, class participation in the Contracts class was inferior to that which I had witnessed in person, within the same class, before transferring the class online. It was also inferior to the high level of class participation that characterized my summer 2019 Business Organizations course.308 I attribute this to a number of factors:

- In my experience, smaller courses generally feature superior class participation over larger courses. This alone could explain the difference between the online Contracts class (ninety-two students) and the online Business Organizations class (twenty students). It could not explain, however, the decline in class participation within the course itself after its transition from in-person to online.
- The students in the online Contracts class were traumatized, to a greater or lesser degree, by the COVID-19 crisis that precipitated the transition to online education. Many were dislocated, some forced to vacate their on-campus dorms.309

307. See supra Part III.D.
308. See supra Part III.E.3.
309. See Alex Costello, Coronavirus Forces Hofstra to Close Dorms, Send Students Home.
Many had parents or loved ones who had contracted the virus; some students themselves contracted the virus. Many had parents, siblings, or roommates who had lost their jobs as a result of the economic lockdown designed to “flatten the curve” of the virus’s spread. All of this could reasonably combine to reduce the focus and attention that students devoted to their studies.

- The Law School adopted a mandatory “pass/fail” grading system a few weeks after classes went online (a move that other schools had done earlier, and that Hofstra’s own students were pressing for). This could have also reasonably reduced the incentive to participate in class.
- None of the students in the online Contracts class “opted in” to the distance education format; all were subjected to it involuntarily. Undoubtedly some, if not most, if not most, were uncomfortable with the online format.

Second, whereas my online Business Organizations class, to a large degree, replicated the experience of my in-person Business Organizations classes, the online Contracts course did not “feel” very much like my in-person Contracts course at all. The main reason for that was the simple fact that I could not easily scan the room and see all of the students. The Zoom videoconferencing technology that was utilized for the course only permitted twenty-five individuals to be on screen simultaneously. To see the other sixty-seven of my students required me to scroll through multiple pages of video feed. That is something I did occasionally, but was generally impractical, for I would need to either pause the class in order to do so, or conduct the scrolling while actively teaching. The former option would lead to restlessness among the students, and the latter was unduly distracting to me.

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313. See Zoom Rooms Display Options, ZOOM, https://support.zoom.us/hc/en-us/articles/11500322603-Zoom-Rooms-Display-Options (last visited July 10, 2020) (“Gallery [view] displays up to 25 participants on each screen . . . . For meetings with more than 25 participants, an arrow displays next to the icon. Tap the right arrow to display the next group of participants on the screen, and tap the left arrow to display the previous set.”).

314. Id.
As a result, Contracts no longer resembled a typical law school class. Instead, it resembled more of a “talk show” of sorts, where I would largely lecture on a topic, periodically pause and take questions, and then continue. Although I did also ask questions of the students, and maintained some level of Socratic dialogue, I found myself drawing from a dwindling pool of volunteers rather than cold-calling (my traditional practice is to engage in a mixture of both). That was largely driven out of my concern for the students’ plights. Although even in the traditional classroom each student brings with him or her the baggage of personal problems and nonacademic concerns, such distractions were both more acute and widespread in light of the COVID-19 situation. As such, I avoided calling upon non-volunteers, not knowing how particularly dire their own personal situation might be. This was, however, to the detriment of the class discussion.

Although the circumstances surrounding the spring 2020 Contracts class were quite unique, they do reinforce for me the importance of the following best practices with regard to online education:

- Online education ought to be voluntary. Students and instructors ought to opt-in to such courses. Those who are not comfortable with the online format are less likely to participate or otherwise fully engage.
- Online education ought to be preceded by some form of orientation. Students in online courses should be made aware of course expectations up front, and should only enroll in such courses if they are comfortable with said expectations. This allows the instructor to conduct the course as he or she deems best, without fearing that it is beyond anything the student signed up for.

Despite the superior level of class participation in the summer 2019 Business Organizations class over the spring 2020 Contracts class, and despite the fact that the former resembled a traditional law school class whereas the latter did not, I hesitate to conclude that online courses ought to be restricted to twenty-five or fewer students.

First, there were several confounding factors, discussed above, that could explain why class participation in the Contracts course was weaker. These factors could very well have little to do with the fact that it was an online course of more than twenty-five students.

Second, “different” does not necessarily mean inferior. The key question is whether the students learned the material as well in the online version of the course as they would have in an in-person version of the course; this is difficult to gauge. The final exam scores for the course were actually quite strong, but it is difficult to assess the importance of
that fact in light of the peculiar format: they were administered as take-home, open-book, pass-fail examinations. Indeed, over my last decade of teaching, none of my final exams featured any one of those three characteristics.

Moreover, “different” does not mean devoid of particular benefits. Although it was less convenient to scan the faces of my students in the online ninety-two-person Contracts class, when a student did participate, he or she was invariably quite visible (as his or her video feed would be highlighted and/or enlarged on my screen), and quite audible. This is an improvement over my large, in-person classes, where any student sitting in the middle row or beyond is both difficult to see and difficult to hear (for me at least).

Further, students near the middle or back of my large in-person classes frequently complain about their inability to read the whiteboard I frequently use. Either my marker’s ink is too faint, my writing too small, or some interposing student’s head too large. These problems do not present themselves when I use an on-screen, electronic whiteboard via Zoom.

What “different” does invariably suggest, however, is that instructors in large, online courses adapt their teaching methodology for such courses. One must not commit the folly of attempting to fit a square peg into a round hole, so to speak. Instructors of large, online courses must find ways to ensure that learning outcomes are being met despite the lack of visual cues and other nonverbal feedback more readily obtainable by a scan of the traditional classroom. And should class participation genuinely suffer from taking a large class online, attempts must be made to address that difference as well.

At this juncture, aside from what has already been discussed, I am unable to provide advice on how exactly the instructor of a large, online class ought best to adjust his or her approach to teaching the subject in question (and indeed different subject matters may best be handled via different adjustments). There is, however, one modest recommendation I am comfortable passing along. In my in-person classes, there are typically a handful of students who approach me right before class begins, during each class break, and right after class ends, with a variety of questions. For whatever reason, these students would rather ask their questions in that context—rather in the less private atmosphere of the live class session, or the more private atmosphere of my office hours. I discovered that this phenomenon replicates itself online. Meaning, if I open the online class session ten minutes early, and make it known to the students that I am willing to field questions during the time before class officially commences, students who do not otherwise participate in class will take advantage of that opportunity to ask me questions. Similarly, if
I announce at the end of class that I will remain logged on to field any questions that students wish to ask me after class, the same thing happens. As such I would heartily encourage online instructors to build a little time into their schedules in order to accommodate such questioning before and after their classes.