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Leadership in Online Non-Traditional Legal Education: Lessons Learned & Questions Raised

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Leadership in Online "Non-Traditional" Legal Education: Lessons Learned & Questions Raised

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The raison d'être of law schools is changing. Long focused exclusively on students wishing to enter the legal profession, contemporary law schools are quickly converting to institutions devoted to providing a variety of degrees, continuing education programs, and a host of other services and supports, to a diverse educational cohort, including masters, LL.M., and continuing education or at large students.[1] Indeed, a veritable potpourri of "non-traditional"[2] programs geared toward attracting non-J.D. students to law school has hit full force.

Some of these programs are natural evolutions of J.D.-focused education that can be tweaked to serve other types of students. In other instances schools, spurred on by the decline in J.D. enrollments, have

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1. *See* Jennifer Smith & Ashby Jones, *More Often, Nonlawyers Try Taste of Law School*, WALL STREET J. (May 19, 2013, 7:35 PM), http://www.wsj.com/articles/SB10001424127887323463704578492932332188870. *See also* Derek T. Miller, *One in Ten Law School Enrollees is not a Part of a JD Program*, EXCESS OF DEMOCRACY (Jan. 22, 2016), http://excessofdemocracy.com/blog/2016/1/one-in-ten-law-school-enrollees-is-not-a-part-of-a-jd-program.

2. "Non-traditional" refers to all non-J.D. degree programs currently offered by law schools including juris master (J.M.), master of jurisprudence (M.J.), master of science (M.S.), master of studies (M.S.), master of professional studies (M.P.S.), master of legal studies (M.L.S.), master of laws (LL.M.), master of comparative law (M.C.L.), doctor of jurisprudence (J.S.D.), doctor of judicial science (S.J.D.), and doctor of comparative law (D.C.L.).

aggressively sought alternative degree or certificate offerings to address organizational needs.[3] Historically these programs have been campus-based, but many are switching to an online format.[4] In some law schools, my own being one of them, it is not far-fetched to assume that online non-J.D. students will ultimately dwarf the number of traditional law students graduated each year.[5]

These non-traditional programs raise numerous foundational issues, including the impact on the core purposes of the school as the J.D. population becomes one of several being served; faculty qualifications for hiring as students not wishing to enter the legal profession come to dominate the student body and require skills and perspectives different from traditional law faculty[6]; and reputational issues as historic means of valuing standing within the academy may have little relevance to these prospective students. Still other impacts on teaching approach, evaluations, and a host of pedagogical and administrative issues come into play.

Even before this legal nirvana or dystopia (depending upon your viewpoint) will be achieved, however, schools operating these non-traditional programs will have to be successful with them. Some have not been.[7] And still other schools treat these programs as marginal operations, not anticipating and adjusting for a new reality that may elevate them to core offerings (from both an educational and financial perspective) of the law school.

This Article is offered as an attempt to assist law schools to think through the myriad of issues which arise as they diversify their programs and student bodies by entering into, or more commonly expanding upon, non-traditional legal education degree programs. I particularly address online programs, as the online modality offers significantly more

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3.   *See* Smith & Jones, *supra* note 1.

4.   *See generally* Catherine Dunham & Steven I. Friedland, *Portable Learning for the 21st Century Law School: Designing a New Pedagogy for the Modern Global Context*, 26 J. MARSHALL J. COMPUTER & INFO. L. 371 (2009).

5.   Although the total number of non-J.D. students currently enrolled in ABA-accredited law schools is roughly 10% of the total student population, of the law schools which have more developed non-J.D. programs—and especially the thirty-six law schools with online non-J.D. programs—this percentage is likely to be substantially higher. For example, at Widener University's Delaware Law School non-J.D. students make up approximately one third of the student population but could grow to one half of the student population. Avi Wolfman-Arent, *New Paper Chase: Law School for Non-Lawyers*, MARKETPLACE.ORG   (Aug.   15,   2016,   3:48   PM), http://www.marketplace.org/2016/07/15/education/law-schools-offering-programs-non-lawyers. At Loyola, the percentage of non-traditional students is comparable to Widener.

6.   Anecdotally we see more schools hiring faculty with masters or doctoral degrees in combination with the J.D. These candidates often hold themselves out as capable of blending the fields of "law and" so as to better educate students and produce scholarship grounded in the legal and non-legal aspects of the discipline.

7.   *See* Linda C. Fentiman, *A Distance Education Primer: Lessons from My Life as a dot.edu Entrepreneur*, 6 N.C. J. L. & TECH. 41, 66-67 (2004).

challenges than campus-based programming, and is increasingly attractive to both law schools and students as a vehicle to provide non-traditional programs.[8] That said, many of the fundamental as well as practical issues raised by online programs are equally valid for campus-based and online J.D.-oriented offerings as well.[9] Beyond offering practical insights into the development, operation and administration of these programs, this Article raises some of the implications these programs have on "traditional" legal education.

Part I of this Article provides an overview of the state of non-traditional legal education, emphasizing its increasingly rapid growth and importance to law schools. Part II provides a brief background of Loyola's online experiences, setting the stage for lessons learned. In Part III, I set forth key areas requiring consideration in order to develop and operate a successful online program, and share our experience in addressing these. Broadly speaking these areas include understanding the reasons for pursuing online education and the institutional metrics for measuring its success; securing institutional support; identifying the market; curriculum development; faculty selection, training and oversight; marketing and promotion; enrollment and student services; and administrative oversight. In providing guidance in these areas I also discuss ways that these functions differ from a J.D.-oriented and/or campus-based approach and share my perspective on the implications of non-traditional programs on some of these core areas within a law school.

Finally, in Part IV, I offer concluding thoughts on why I am a passionate proponent of online non-traditional legal education. Traditional legal education has much to learn from these online programs, especially with respect to the intentionality behind the curriculum, the melding of the foundational and the practical, and the emphasis on iterative learning. By definition, non-traditional programs require a melding of legal doctrine and industry-specific and/or skills-based knowledge, areas in line with law schools' responsibilities to produce "practice ready" graduates.[10]

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8. *See* Tamar Lewin, *Law School Plans to Offer Web Courses for Master's*, N.Y. TIMES (May 8, 2012), http://www.nytimes.com/2012/05/09/education/law-school-plans-to-offer-web-courses-for-masters.html?rref=collection%2Ftimestopic%2FLaw%20Schools; *see also* Elizabeth Olson, *Law Schools Are Going Online to Reach New Students*, N.Y. TIMES (June 22, 2016), http://www.nytimes.com/2016/06/23/education/law-schools-are-going-online-to-reach-new-students.html?rref=collection%2Ftimestopic%2FLaw%20Schools&_r=0.

9. Nevertheless, J.D. programs raise their own unique issues and therefore deserve more extensive treatment than that afforded here.

10. *See* William M. Sullivan et al., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007). *See also* ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017, Objectives of Program of Legal Education § 301 (2016) [hereinafter ABA STANDARDS AND RULES].

For Loyola, we have been able to obtain a strong cadre of smart, talented, diverse and interesting students, a pool far deeper and wider than when we offered our programs only through a campus-oriented approach. These students have added richness to our student body through their experiences and networks.   Developing online programs has further enhanced our "traditional" offerings, as it has pushed us to meld the lessons learned from the online programs into our course development, classroom teaching, and administration. And, through diversification of our degree offerings, online non-traditional legal education has strengthened our financial position to the benefit of all School of Law constituencies.

I.   OVERVIEW OF NON-TRADITIONAL LEGAL EDUCATION

From the most seasoned faculty member to the least casual observer, if asked about the fundamental purpose of a law school all would say to educate potential lawyers. Full stop. And for more than two hundred years, this answer would be 100% correct.[11] But, for many law schools, and I believe ultimately most of the legal academy, this either is or will no longer be true. Certainly law schools will continue to focus on educating future members of the legal profession. Increasingly, however, law schools are diversifying their programming to reach not only practicing attorneys through LL.M. or continuing legal education offerings, but also individuals not interested in becoming attorneys but instead looking to understand how the law impacts their particular professional interest.[12]   Often these programs take the form of Masters of Jurisprudence ("M.J.") or Masters in Science in Jurisprudence ("MS.J.") degree programs, or even more commonly in certificate offerings.[13]

Some law schools dipped their toes in the non-traditional waters long ago. And many schools today offer campus-based LL.M. programs.[14] What is different now is that Master's and LL.M. programs are rapidly expanding, and increasingly going online.[15] Further, once thought of as

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11.   There is some debate as to whether the oldest U.S. law school is Harvard (1806), William and Mary (1779), or Litchfield Law School (1784). *See* Nate Oman, *The Oldest Law School,*   CONCURRING   OPINIONS   (Aug.   15,   2016), http://concurringopinions.com/archives/2006/08/the_oldest_law.html.

12.   The Working Group for Distance Learning in Legal Education, *Distance Learning in Legal Education: A Summary of Delivery Models, Regulatory Issues, and Recommended Practices*   22-23,   https://www2.stetson.edu/atc/wp-content/uploads/2013/11/Distance_Learning_in_Legal_Ed.pdf.

13.   *See* HANOVER RESEARCH, ALTERNATIVE NON-JD PROGRAMMING FOR LAW SCHOOLS (2013).

14.   166 of the 205 ABA-accredited law schools offer LL.M. degrees; the vast majority of these programs are offered on campus. *See Programs by School,* AM. BAR ASS'N,   http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d/programs_by_school.html (last visited Nov. 18, 2016).

15.   Michele Pistone, *Law Schools and Technology: Where We Are and Where We Are Heading,* 64 J. LEGAL EDUC. 586, 592-93 (2015).

niche opportunities to respond to a faculty member's academic interest or to provide relatively marginal funding (if successful) for a particular law school program, non-traditional legal education is rapidly becoming viewed as the strategy du jour and a core means to assure or strengthen the financial integrity of the law school.

Today, 176 of the 205 law schools in the United States offer some type of non-traditional program, beyond occasional continuing legal education offerings.[16] Of the 640 programs offered, the vast majority, 67.0%, are LL.M. programs, of which 83 of 429 are designed for international lawyers.[17] Twenty programs are non-J.D. certificates, typically requiring a sequence of 3-7 courses for completion.[18] One hundred twenty-six non-J.D. Masters level programs and eighty-four doctoral level programs are offered.[19]

The diversity of subject maters in these programs is astounding. While some are quite broad-based, such as American legal studies and international legal studies, programs are increasingly oriented toward highly specialized niches, including animal law, fashion law, global food law, and space law.[20] Most of these programs continue to be campus-based, or off-site but tied to a live classroom setting. More than ever, however, programs are transitioning to an online format. Importantly, not only are the number of non-traditional programs growing, but the number of law schools offering these programs is also increasing.[21] And, it appears that the total number of students enrolling in these programs is also growing, a rare bright spot for legal education.[22]

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16.   *See Programs by School, supra* note 14.

17.   *Id.*

18.   *Id.* ABA-accredited law schools which offer non-J.D. certificates include the University of Akron, Arizona Summit Law School, University of Arkansas, University of Baltimore, Boston University, Campbell University, Creighton University, DePaul University, University of Iowa, Mitchell Hamline School of Law, Seton Hall University, University of Nebraska, Northeastern University, University of Notre Dame, and the University of Toledo.

19.   *Id.*

20.   *Id.* Sixty-four programs are offered which focus on American law, thirty-four programs focus on international law, and ninety-one general degree programs are offered. Lewis & Clark Law School offers an LL.M. degree in animal law, Fordham University School of Law offers both M.S.L. and LL.M. degrees in fashion law, Michigan State University College of Law offers an M.J. and LL.M. in global food law, University of Mississippi School of Law offers an LL.M. degree in air and space law and University of Nebraska College of Law offers both an LL.M. and J.S.D. in space, cyber, and telecommunications law.

21.   *Id.* A total of thirty-six law schools are currently offering non-traditional degree programs in an online format.

22.   Although the total number of J.D. students enrolled in ABA-accredited law schools dropped 4.9% in 2015 to 113,900 (a far cry from the 147,525 J.D. students enrolled during the 2010-2011 academic year), the number of non-J.D. students increased by 17.5%, to 13,086 in 2015. Non-J.D. students now make up 10.3% of the total population of

To my knowledge, few schools have begun to grapple with, and even fewer are prepared to broach, let alone address, the myriad of pedagogical, political and mission issues raised by the elevation of non-traditional programming as core to the law school.[23] Often these programs have been the tail to the dog—what does it mean when they become the dog itself, from a class size and financial perspective?[24] How might the mission of the school change, and what is the impact on vision, values and messaging? What should be the effect on faculty selection, teaching style and expectations? How are resources allocated within the school, as an expanding, online, non-J.D. seeking student body seeks additional courses and supports? And what is the school's place within the profession as it spends more resources educating individuals who may arguably not supplement, but in certain instances supplant, attorneys?

There is no doubt that student demand for non-traditional programs is relatively strong, and growing more so. Law schools have deep expertise in many of the subject matters covered in these programs—deeper than the heretofore educational institutions seeking to cover the particular field. Further, law schools are known for academic rigor, providing comfort to students wishing to make certain that their degree is held in high regard.[25] And, law schools offer a vital source of knowledge to individuals working in heavily regulated industries or parts of industry, potentially providing a more effective and balanced approach to the subject matter than a non-legally focused educational institution might be able to provide.

Of course, non-traditional programs also involve significantly less time and tuition than seeking a J.D., making them a more feasible option for many students. Programs typically run several months for certificate

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students enrolled in law schools. *See 2015 Standard 509 Information Report Data Now Available,* AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissio ns_to_the_bar/governancedocuments/2015_fall_enrollment_announcement.authcheckdam.p df. *See also First Year and Total J.D. Enrollment by Gender 1947-2011,* AM. BAR ASS'N, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissio ns_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf. *See* Derek T. Muller, *Legal Education is Innovating by Educating More Non-JD Students,* EXCESS OF DEMOCRACY (Nov. 8, 2013), http://excessofdemocracy.com/blog/2013/11/legal-education-is-innovating-by-educating-more-non-jd-students (illustrating the decline of J.D. enrollment compared to the steady increase of non-J.D. enrollment).

23.   The law school accrediting body, the American Bar Association, has not ventured strongly into this area. Under Standard 313, masters-type programs are not accredited, per se, but only reviewed to make certain that they do not harm the J.D. program through a diversion of resources. ABA STANDARDS AND RULES, *supra* note 10, at § 313 (2016). Query as to what this means in the context of a law school heavily dependent upon a non-J.D. student body.

24.   Or more likely, a two-headed hydra, as the J.D. and non-traditional programs vie for resources and administrative focus given their equal importance to the school.

25.   Wolfman-Arent, *supra* note 5 (some skepticism remains among critics—even some who attended law school).

programs to two-years for degrees, with total tuition for the latter topping out at approximately $50,000 at the most expensive schools.[26] The advent of online education has made the time and tuition advantages even more compelling, as students are able to more effectively balance busy personal and professional lives with school. Further, the spacing of classes within online curriculums may enable students to pay for the program over a longer period of time, assisting in making education financially feasible.

With the drastic reductions in law school enrollments over the past six years, law schools are increasingly viewing online education as a lucrative market. While Section III, below, discusses why this is often not the case, the fact remains that many schools are entering the online world in an attempt to stabilize, if not grow, their bottom lines. Online education is often perceived as a vehicle to create new programs, especially LL.M. and non-J.D. Masters programs. And it is true that these programs offer the potential for significant expansion of prospective students, and financial returns.

As more schools have created online degree programs, or fold online education into their curriculums, online learning has gained increased respectability within the academy, encouraging more schools to take the plunge. Today, at least 36 law schools, including many of the "higher tier" schools, offer online programs.[27] Fears that offering online degrees would brand the school similar to the old "diploma mills" of halcyon days have largely disappeared.

In sum, it is more likely than not that eventually every law school will be dipping its toe into the online non-traditional waters, if not taking a full-throated dive. Loyola University Chicago School of Law is one of the larger providers of online non-traditional legal education, offering a variety of online degree programs for over eight years. Beginning in Fall 2016 the School will move even further into an online focus, transitioning its part-

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26. For example, the Post-J.D. certificate in estate planning offered at University of Baltimore can be completed in less than two years at $979 per credit hour. UNIVERSITY OF BALTIMORE, http://law.ubalt.edu/academics/post_jd_graduate_programs/certestateplanning/requirements.cfm (last visited Nov. 19, 2016). *See also* UNIVERSITY OF BALTIMORE, http://www.ubalt.edu/admission/tuition-and-fees/ (last visited Nov. 19, 2016). Total tuition for the 24 credit online LL.M. in U.S. Law at Washington University at St. Louis is $53,016. WASHINGTON UNIVERSITY IN ST. LOUIS, https://onlinelaw.wustl.edu/llm/tuition-and-financial-aid/ (last visited Nov. 19, 2016).

27. For example, both USC Gould School of Law and Georgetown University Law Center now offer online non-J.D. degree programs. *See* Press Release, University of Southern California, University of Southern California Launches Online Master of Laws with Optional Certificate in Business Law, http://onlinellm.usc.edu/resources/articles/press-release/. *See also* Press Release, Georgetown University Law Center, Georgetown Law Offers Two New Graduate Programs Online (Mar. 11, 2015), https://www.law.georgetown.edu/news/press-releases/georgetown-law-offers-two-new-graduate-programs-online.cfm.

time J.D. program to a weekend-only format, made possible by teaching 1/3 of each class online.[28]   While we have enjoyed solid success in our endeavors, plenty of mistakes have been made along the way, and there are important lessons to share and questions to be asked by any law school looking to grow its online presence.

II.   LOYOLA UNIVERSITY CHICAGO

Like many schools entering online education, Loyola's efforts (until recently) have focused on non-J.D. programs. Loyola has a long history of offering non-attorney master's as well as LL.M. degree programs. Loyola pioneered the first Master of Law offered by a law school in 1986, beginning with its Master of Jurisprudence (M.J.) in Health Law.[29] Originally conceived as a program to encourage dialogue between the medical and legal professions, the first several cohorts of students were clinical professionals who largely attended traditional law school courses, such as torts and contracts, along with some focused offerings, like reimbursement and health policy. The audience for the earlier offerings was interested in satisfying their intellectual curiosity about the health care industry, or at best were seeking career "enhancement" through the knowledge they obtained.

Over time, the degree program was able to align itself with the expanded need for legally trained professionals in the health care arena, as the fields of quality assurance, risk management and compliance, among others, saw the advantage of hiring masters prepared health care professionals (clinicians and others) who brought the combination of legal and health care experience to bear in their decision making. Still, class sizes were small, typically 15-20 students, with students attending evening classes twice/week, on campus.

Following health law's lead, in 1995 the School expanded the M.J. to encompass child law and, eventually, business law (in 1998). At its peak, campus enrollment for the three M.J. programs was approximately 60 students.

Loyola also expanded into the LL.M. market. Again, health law entered first, in 1987, followed by the other two programs. Eventually, the LL.M. offerings grew beyond the three legacy programs, today encompassing more than 120 students in 7 programs.

From the perspective of the health law program, there was a strong belief that this market could grow significantly through development of an online program. Discussions with the University administration to move

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28.   Press Release, Loyola University Chicago, Loyola University Chicago to Offer Innovative   Weekend   JD   Program   (Dec.   7,   2015), http://blogs.luc.edu/pressreleases/2015/12/07/innovative-weekend-jd-program/?date=.

29.   Thomas M. Haney, *The First 100 Years: The Centennial History of Loyola University Chicago School of Law,* 41 LOY. U. CHI. L.J. 651, 711 (2010).

the M.J. program in this direction had been tried several years earlier, to no avail. With the advent of a new law school dean and leadership within the health law program, however, the time seemed ripe to try again. Given our lack of experience in online education, however, we believed it imperative to work with a partner grounded in the online environment. Concord Law School, a fully online law school part of Kaplan Higher Education Corporation, was selected as our partner. Kaplan assisted in course development and policy formation, also providing the learning system technology and support, as well as program marketing oversight. Loyola, in turn, oversaw the curriculum development and application, faculty selection and retention, student enrollment/billing/collections, program administration and program marketing review. Loyola also granted the degree.

While the online M.J. in Health Law was originally conceived to be in addition to the campus offering, demand for the online program quickly outstripped the ability to effectively run a campus-based program. The campus program was terminated in 2009. About two years later, the M.J. in Child Law and LL.M. in Health Law programs moved online, followed by the M.J. in Business Law. In 2012 the LL.M. in Business Law and, later, two new offerings, the M.J. and LL.M. in Global Competition Law, joined the online family.

The Concord partnership ended in 2014. While successful, during the time of the partnership Loyola University Chicago's technology prowess had grown, as had our comfort level in providing and overseeing all facets of the online programming. With the ending of the partnership, Loyola now provides and manages all facets of the online degree programs. Combined, more than 300 students are in online degree programs offered through Loyola. Staffing dedicated solely to the online programs has grown to about ten individuals, with an additional 4-5 administrators spending a significant portion of their time on online matters. The School has also created a Center for Online Learning to provide an organized nucleus of professionals and administrators dedicated to our online students.

Finally, Loyola has begun to use its online expertise to engage J.D. students. Online specialty courses in health and business are increasingly open to J.D. students. Given reduced J.D. enrollments, offering highly specialized courses online for the combined J.D./LL.M. (and sometimes M.J.) audiences allows us to offer a broader curriculum than we might otherwise be able to do. In addition, beginning Fall, 2016, Loyola is transitioning its part-time J.D. program to a weekend model, where 1/3 of the class will be conducted online.[30]

Loyola has significant experience in online education. We have worked in a partnership model, and gone it alone. We have transitioned

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30.   Press Release, Loyola University Chicago, *supra* note 25.

existing campus-based programs to an online format, and started wholly new online programs. We have terminated campus-based programs as their online counterparts grew, and worked to maintain campus programming alongside online alternatives. And, given the prominence of the online programs we are in the early stages of grappling with some of the bedrock mission, vision, messaging questions raised by an expanding program. In short, we have much experience to draw from, and questions remaining to be answered, and it is to these lessons and questions that I now turn.

III. LESSONS LEARNED & QUESTIONS RAISED

A. Understand the "Why"

There are three primary reasons that law schools pursue the development of online programming: mission; money; and the bandwagon.

1. Mission

Development and operation of an online program is a lot of work and resource intensive.[31] It is imperative, therefore, that schools undertake these initiatives with a clear sense of why they are doing so, and what they wish to accomplish. In my view the strongest reason to develop an online program is because it fits with, and extends, the mission of the institution. What does this look like? In our case this meant first building upon historic programs, with solid reputations, that had a commitment to national outreach prior to developing related online programs. Loyola's health law and child law programs, in particular, have been nationally recognized for a long time.[32] Outreach via hosting national conferences, research and campus based programming was already in place, demonstrating a commitment to extend the mission of the institution and the relevant departments within the School.

Further, because we chose to build upon existing campus-based programs, we had a solid understanding of the type of student we were best able to serve, the commitment that we could make to them (and, similarly, the things that we were not good at and could not commit to) and how

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31.   Fentiman, *supra* note 7, at 66-67.

32.   The health law program is currently ranked eighth in the nation by U.S. News and World Report and has consistently been ranked highly in the past decade. U.S. NEWS AND WORLD REPORT, Best Grad Schools: Law 2017, Health Care Law, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/clinical-healthcare-law-rankings. Law Street, an independent reviewer of law schools, recently ranked both the health law and child and family law programs as first in the nation. *See Top 10 Law Schools for Healthcare Law*, LAW STREET MEDIA (Jul. 7, 2014), http://lawstreetmedia.com/schools/top-10-law-schools-healthcare-law/. *See also Top 10 Law Schools for Family Law: #1 Loyola University Chicago School of Law*, LAW STREET MEDIA (Jul. 6, 2015), http://lawstreetmedia.com/schools/top-10-law-schools-family-law-1-loyola-university-chicago-school-of-law.

offering an online program would benefit the totality of the population served by the discrete program and the school as a whole. This thinking, for example, led us to first turn to some of our long-standing adjunct professors and friends to solicit their involvement in the online health law program. It also caused us to deepen our contacts in the health law field through re-connecting with alumni and colleagues in markets distant to Loyola, who now would be in a position to be adjunct professors and mentors/preceptors given that the program would serve students across the country, and not just those resident in Chicago.

Similarly, a hallmark of Loyola's mission is "community."[33] At the School of Law we pride ourselves, and devote resources to, providing an especially welcoming, "open door" environment, where we work closely with students to help them achieve. True to our mission, our online programs have devoted considerable resources in these areas, including the retention of dedicated student advisers, career counselors, writing instructors, implementing standards regarding faculty and administration accessibility and the like, all to assure that our online students have the same welcoming community experience that our campus based students receive.

Mission-extension as an online program rationale is also vital because of its direct impact on program finances. Certainly, as just illustrated, the expenditure-side of the budget will be impacted by what your mission is telling you about resources that should be devoted to the program. But, the revenue side will also be impacted. The clearest point where this arises is applicant standards. As you work to build a class, it can become tempting to lower standards to reach enrollment goals. Relying upon mission as a strong touchstone, however, will often help you avoid this. Enrollment professionals and administration soundly grounded in the mission rationales for the program will be better prepared to make the hard choice of accepting a smaller class than anticipated, perhaps, but one that meets the school's standards for the graduates it is proud to produce.

Mission extension is also vital in securing faculty approval and buy-in. Suffice it to say that law faculty are rarely persuaded by arguments premised on finances. This is often especially true when the development of innovative programs is involved. Faculty are justly concerned that the reputation of the school not suffer as a result of the programming. Understanding how the online programs fit within, and extend, the school's mission is vital to securing faculty buy-in, including faculty trust that the

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33. Loyola University Chicago considers building a meaningful community as part of the transformative value of a Jesuit education and the law school shares in this vision. *See* Loyola University Chicago, *Transformative Education in the Jesuit Tradition*, at 4-5 (2015), http://luc.edu/media/lucedu/president/pdfs/FINAL-LoyolaTransformativeEducation-2015.pdf.

operation of the program will continue to support the mission, vision and values of the school.

One note of caution. "Mission" can be one of those concepts subject to "re-interpretation" such that almost any activity can be justified as fitting under its umbrella. Artificially construing mission fit in this way is a disservice to the institution, faculty, alumni, and the students admitted to the online program. This sort of approach can lead to very short term thinking, costing lasting harm to an institution's or program's reputation. No law school is good at everything. A clear-eyed examination of what the school is about, what its strengths and weaknesses are and how the online program plays to its strengths and supports the school's fundamental purposes is an imperative grounding to offer and operate an effective program.[34]

2. Money

It's true: there is money to be made in online legal education. But it's not as easy to do so as one might think, and it may not be as much as expected. And, of course, no reward comes without risk: it is just as possible to lose money, even significant sums, if the program is not successful.

Online education is a resource intensive enterprise.[35] Obvious costs include technology and its attendant support, to a now far-flung, multi-time zone student body that cannot walk into the campus I.T. department during its business hours for assistance. Online programming often stretches the capabilities of even schools and universities sophisticated in their technology platform, as these courses typically involve an intensity of resources not generally used in campus-based programming. And while partnering with an outside vendor can be of great assistance, these relationships have significant financial costs and necessarily raise important issues of control and reputation.[36]

Well beyond the technology delivery component, however, are significant costs related to course development, faculty development and oversight, marketing, enrollment and student services, among other things. Because of the asynchronous nature of online courses—students are generally able to access the course whenever and wherever they wish—all course materials (lectures, readings, assessments) are generally completed

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34. Fentiman, *supra* note 7, at 43. For example, despite initially promising results from a distance learning initiative in health law at Pace University Law School, after less than a year the decision was made to suspend the program because it did not immediately break even and pursuing this program was not considered to be central to the law school's mission.

35. *Id.* at 64.

36. *See* Risa L. Lieberwitz, *The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?* 12 B.U. PUB. INT. L.J. 73 (2002) [hereinafter Lieberwitz, *The Corporatization of the University*].

before the course begins.[37]   And these materials need to be presented in a way that they are meaningful to the student: engaging, anticipatory of questions that might be asked, and in line with workload expectations.   In many instances this requires the involvement of an instructional designer, an individual skilled in course development who is able to use their technology skills in concert with their understanding of learning styles and pedagogy to work with faculty to develop a course.   This is an expense that campus programming does not bear.

Faculty development and oversight is also important, and requires focused resources.   Teaching a wholly online course is different than classroom teaching.   Sound organization in lectures is imperative; a strong presence via video or audio lectures is important.   Faculty must be comfortable using technology, engaging with students they may never meet in person, and not receiving instant feedback following a lecture.[38] Frankly, it is not for everyone.

Depending upon the program's structure, faculty may also feel a loss of autonomy, and become uncomfortable with this.   Multiple sections of the same course may rely upon the same taped lectures for example, with section faculty focusing their attention on occasional "live" (synchronous) sessions, student email/phone conferences, and grading.   In other instances, faculty may be asked to collaborate more intensively with colleagues teaching in the program then they otherwise might in their campus teaching.   Formatting and technology choices may also be more limited, as the program strives for uniformity across courses, something typically not sought in the general law curriculum.

Program needs may also impact faculty oversight, with program administration potentially becoming more directly involved with faculty than often occurs in the general law school environment.   Standards might be developed for student feedback and engagement (for example, that all emails must be answered within twenty-four hours), empowering administration to police these protocols and to factor these standards into faculty evaluations.   Online programs may choose to own the copyright for the course, unlike the traditional law school approach where the copyright is maintained by the professor, providing administration with more leverage in faculty oversight matters as the course could be transitioned to another professor if expectations and standards are not fulfilled.[39]   In sum, a

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37.   This is not to say that additional materials cannot be added along the way, but online program students often work at their own pace and, therefore, piecemealing the entire course is not advised.

38.   For a description of the differences associated with teaching an online class, *see* Ellen S. Podgor, *Teaching a Live Synchronous Distance Learning Course: A Student Focused Approach,* 2006 U. ILL. J.L. TECH. & POL'Y 263, 270 (2006).   *See also* Fentiman, *supra* note 7, at 53.

39.   At Loyola, for example, standards are in place addressing all of these matters.

quality program demands significant, dedicated resources, at a cost of time and treasure.

As discussed in a later section, program marketing also can be a significant expense, as reaching a more national audience, often unfamiliar with the brand of the school, can be expensive.[40] New, expensive vehicles for marketing might also be used, stretching institutional resources more often comfortingly focused on "brand" as opposed to enrollment.

Enrollment and student services, too, often require additional resources, because if the program is successful a new population of students will be approaching the school. Perhaps most importantly, consideration of the opportunity costs associated with online program development/operation need to be considered. All of these resources, be they time or money, could be devoted to other initiatives.

All that said, there is certainly the opportunity to profit off of online programming, even handsomely. But given the intensity of time and financial resources necessary to effectively operate online programs, schools should only undertake these programs having a reality-based understanding of the revenues and costs they are likely to encounter as the program moves forward.

3. The "Bandwagon"

I have had numerous conversations with faculty and administrators from other schools seeking to develop an online program. More often than not these conversations devolve to one or more of three main points: (1) my dean told me to call you; (2) we are looking to expand revenue[41] and see online programs as the way to do that; and (3) "everyone" is moving into this, so we should too. While my clear bias is that mission extension should drive programming, there is absolutely nothing wrong with anticipating and using online programs to drive growth and profit. Joining the bandwagon, however, is the absolute worst reason to undertake these initiatives. This type of thinking will invariably lead to an under-resourced, poorly operated, substandard program, as it is not reflective of a sound commitment to a major educational enterprise. And it reflects shoddy thinking, as its underlying premise is false—not every school will offer online programming—and even if they were, that alone is not a reason to undertake any strategic initiative. Indeed, many schools should not pursue

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40.   Contracting with outside vendors with more expertise in reaching a broader audience can also be expensive. *See* WORKING GROUP ON DISTANCE LEARNING IN LEGAL EDUCATION, DISTANCE LEARNING IN LEGAL EDUCATION: DESIGN, DELIVERY AND RECOMMENDED PRACTICES 69 (2015) [hereinafter DISTANCE LEARNING IN LEGAL EDUCATION].

41.   Note: these conversations are often phrased in terms of revenue, not profit—itself a problem.

this route because they lack the resources, faculty support or desire to devote their time and treasure to the endeavor.

4. *Questions Raised: A Last Word on Mission*

While this section has focused upon mission as a driving force behind expanding non-traditional programs, the impact on institutional mission *from* these programs is worthy of consideration. Clearly the academy has not addressed this issue as a body, as accreditation standards provide "acquiescence" to these programs merely upon a showing that they will not detract from offering a sound J.D. program.[42] Legitimate questions arise as many schools move more toward multi-disciplinary institutions educating diverse degree (or certificate) populations.

Foundational, of course, is the question of the mission and purpose of a law school. Law schools exist to educate future attorneys and to promote justice through scholarship and service.[43] Law faculties take great pride in being an important part of creating a just society. Law students' experiences in law school provide a common bond of fellowship and meaning core to attorneys' identities as members of a learned profession.[44] Everything within the school—from teaching approach, expectations, policies and even building design—is intended to facilitate and instill norms of what it means to a be a member of the bar.

What does it mean as students not wanting to be lawyers enter law school, and programs serving these students proliferate and move from being a secondary interest to a core part of the school? I am not aware of any school that has truly grappled with this, and its implications. Many schools are likely to face this question, however, and the changes wrought in answering mission questions like this may be profound. Legitimate fears could arise that the school's role in the legal academy could falter, as time and resources are devoted to non-J.D. programs and students.[45] It is conceivable that potential rifts could open between "doctrinal" and "applied" faculty as the school's focus on the latter necessarily increases if non-traditional programming grows stronger within the school. Still other questions involving faculty hiring and evaluation, for example, raised later in this Article, will come to the fore as part of the mission discussion.[46]

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42. *See* ABA STANDARDS AND RULES, *supra* note 10, at § 313. The ABA is clear that it is not regulating these programs nor attesting to their quality.

43. *See* Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads,* 44 IND. L. REV. 735, 807 (2011).

44. Daniel C. Powell, *Five Recommendations to Law Schools Offering Legal Instruction Over the Internet,* 11 J. TECH. L. & POL'Y 285, 309 (2006).

45. This is exactly the ABA's concerns, hence the construction of the standards enabling "acquiescence" for non-J.D. offerings so long as they do not impinge upon the J.D. program. *See* ABA STANDARDS AND RULES, *supra* note 10, at § 313.

46. Moving toward more granular issues, many non-traditional programs rely upon adjunct professors to a proportional extent much greater than would be allowed in the J.D.

I believe, however, that the self-examination necessitated by non-traditional programs could be empowering. Schools have an opportunity to redefine their purposes to encompass professionals beyond lawyers; these professionals have opportunities to make a powerful impact on issues of justice. Attorneys do not have an exclusive hold on justice—the businessperson, the compliance officer, the child advocate and many others promote justice too. Non-traditional programs rooted in the core values of the law school, but expanding upon these values through their application to diverse professions and settings, can significantly grow the mission of the school. Law schools may be able to serve society in an even deeper, more profound way, as their influence and the influence of a wider law student community spreads.

J.D. students are likely to benefit by studying alongside and collaborating with their non-J.D. peers. New ways of thinking and disparate experiences will be shared across the student body, meaningful professional relationships formed and lifelong contacts made. The enhanced work and life experiences that non-traditional students often have, relative to many law students, will also bring helpful doses of reality and practical learning to classroom discussions of the law.

Each law school that chooses to grapple with issues of mission and purpose will do so in its own way, and there certainly is no one right answer. The growing importance of non-traditional programs within the legal academy, however, is beginning to call law schools to reshape their definition of self, presenting an opportunity for these schools to become an even more impactful force in the communities in which their faculties, graduates and students serve.

B. *Institutional Support*

More often than not, successful programs begin with an entrepreneurial faculty member/administrator who sees an opportunity to expand law school programming.[47] Very quickly, however, the reality of undertaking program development with an offering that cuts across so many different aspects of the institution—faculty development, curriculum, marketing, enrollment, financial aid, among others—calls the question as to the degree of institutional support behind the initiative.

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program. What is the proper balance? Should full-time faculty be required to teach in these programs or is an "all adjunct" program acceptable? Should the school promote scholarship within the discipline of the non-traditional program, and if so, how? Are these programs truly integral to the school and engendering a sense of "ownership" within the law faculty, or are they an afterthought, and what does this even mean for the particular school, its faculty and culture? Are resources, especially appropriate career counseling services, allocated to non-J.D. students? All of these questions drive at the notion of a J.D.-centric institution that may be no more, and encouraging faculty and administration to think through what this means to assure that students in non-traditional programs receive their "fair share."

47.   Fentiman, *supra* note 7, at 66-67.

This support takes numerous forms. Financial support, certainly, as significant dollars will need to be spent on program development, operation and promotion. Beyond allocation of dollars, there must also be support for staffing and space, two areas often tightly constrained in many schools. Securing appropriate resources before program launch, and buy-in on additional resources should the program prove successful is imperative.[48] And, there must be a clear understanding regarding what, if anything, will be a charge to the online program, as opposed to expenditures that might be considered as "contributed," i.e., subsumed within the larger department or school budget.[49]

But institutional support goes even deeper than financial commitment, as important as this is. It also reaches into areas of faculty prerogative and culture, such as whether online courses "count" toward the faculty teaching-load, and if additional compensation or course relief will be offered to faculty or the department responsible for developing, administering and/or sponsoring the program.[50] For junior colleagues, the impact of devoting time away from scholarly pursuits needs to be considered, and adequately addressed.

Political support for the programming is also essential. Law faculties typically raise initial questions about online programming directed toward quality of the educational offering, any associated adjunct faculty and the students being recruited. Full-time faculty may also fear that their courses will be downsized by students switching to online courses, with attendant concerns about what this might mean for their future.[51] Even if campus students are prohibited from taking online courses, there is always the proverbial camels' nose under the tent, with concerns that the prohibition will weaken over time.[52] And, of course, there are always concerns regarding the utilization of often-scarce resources, and the impact on existing or future initiatives.

All of these types of concerns are, of course, legitimate. Given the intensity of resources required for effective online programming in money, time and political capital, demonstrated (committed) institutional support, at all necessary levels, is absolutely essential. In my experience, lack of

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48.   *Id.* at 64.

49.   Use of currently employed administrative support personnel, for example, along with time devoted by tenured faculty members.

50.   *See* DISTANCE LEARNING IN LEGAL EDUCATION, *supra* note 40, at 52.

51.   The reverse may also be true, with faculty believing that they have a "right" of first refusal to teach in the online program, and to receive additional teaching stipends for this work. This situation was shared in confidence with me by a faculty member at one leading online program.

52.   Indeed, this has been our experience, due to student demand and a recognition that highly intensive specialty classes were best offered online, where the possibility of attracting enough students for the class was more likely than if it had been a solely campus-based offering.

clarity surrounding this issue is a clear red flag that the program should not forward.

C.   Identification/Definition of the Market

Successful businesses are proficient at market identification and developing services or products to serve the market.[53] This is generally not the skillset of educational institutions, particularly law schools. Law schools' missions are to educate prospective attorneys and prepare them for entry into the profession, and "we"—schools and faculty—know best what should be taught. The substantive differentiators between law schools, particularly within the core curriculum, are minimal.

Successful online programs, however, need to adopt more of a business paradigm, identifying the market, determining its needs, creating a curriculum to serve this market, and heavily promoting the "product."[54] The reason for this is that generally online programs are not geared toward "profession entering" education, like the J.D., where there is a uniformly accepted body of knowledge that all schools agree to provide. Rather, students typically come to online programs to either enhance their current skills and job prospects (i.e., achieve a promotion within their current company) or to transition into what may be a related career (general law practice to health law, corporate secretary to compliance officer). More often than not they arrive with clear goals as to what they wish to learn, often in narrowly defined categories, with a heavy emphasis on practical skills and application. The "return on investment" decision, both in time and money spent, is very much at the forefront of decision making to attend the program. Accordingly, understanding the size of the market is essential to making certain that the school's efforts are worth the potential reward.

Market definition demands an intricate knowledge of the world of experience, as programs grounded in pure academic theory are unlikely to prove successful. Students demand to leave the program having obtained knowledge that would have taken years to have learned piecemeal in practice or on the job, and require development of real world skills in problem solving, drafting, negotiating, etc.[55] While good programs will

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53.   *See generally* Rebecca O. Bagley, *How to Identify Your Market And Size Up Competitors,* FORBES (Oct. 2, 2013), http://www.forbes.com/sites/rebeccabagley/2013/10/02/how-to-identify-your-market-size-up-competitors/#5c8ec4052463 (discussing the factors and ability to identify the market).

54.   *See* Fentiman, *supra* note 7, at 47; *see generally* Cincinnati State University, *Online   Faculty   Resources,*   http://www.cincinnatistate.edu/contact-us/campuses/online/faculty-resources; *see also* NoExperienceNecessaryBook, *Tips For Creating   A   Distance   Learning   Program   –   Cincinnati   State,* https://www.noexperiencenecessarybook.com/GlXv/tips-for-creating-a-distance-learning-program-cincinnati-state.html.

55.   Professionals often choose to pursue non-J.D. degrees for advancement or to pivot into new careers and as a result expect programs to offer accelerated paths towards gaining

balance these desires with assuring that students receive a sound footing in the academic underpinnings of the particular field, it is fair to say that law schools are still at the nascent stages of solidly grounding their educational offerings in real world application.[56] And even those schools further along the practical application curve typically gear their offerings toward entry-level skills, often not the right pegging for online students who generally come to programs with significant, related experience.

Market definition also harkens back to institutional mission and reputation, as it calls into question the unique niches or expertise occupied by the institution, and hence its ability to serve the identified market. It is important to recognize, however, that while having a sound academic program as the basis for an online offering is an asset, not every academic program will be able to garner the widespread interest necessary to attract students expecting career-enhancing skills.[57]

Market definition further recalls the earlier discussion in Part III of this Article regarding program goals and values. Standards for acceptance into the program, be they prior academic performance, work experience, career trajectory or the like have a direct impact on the size of the market and the institution's ability to fulfill its goals. While not always the case, you have to be comfortable with the potential tradeoffs between quality, class size and economic return.

I note that this is not as cut and dried as it sounds. Measuring student quality is often less precise than the longstanding measures used by law schools.[58] Online law programs typically do not rely upon entrance exams. Online students have often been away from the academic setting for several years, and many times in their careers have risen above spotty academic performance, calling into question the validity of grades as a predictor of success. Online programs often attract a wider pool of applicants than campus programs, with more varied academic backgrounds and educational

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the knowledge and skills necessary to make these career moves. For an example of a M.J. student's description of his goals, *see* Smith & Jones, *supra* note 1. *See also* Avi Wolfman-Arent, *Are Non-Lawyers the Future of Law School? One School in Delaware Thinks So,* NEWSWORKS (June 15, 2016), http://www.newsworks.org/index.php/local/delaware/94595-are-non-lawyers-the-future-of-law-school-in-delaware-thinks-so.

56.   *See* Sullivan, *supra* note 10.

57.   This point is often neglected. A topic of academic interest may have limited draw in the competitive non-traditional legal education world.

58.   Not that they're perfect by any means, but several studies have provided support for the correlation between undergraduate GPA/LSAT score and law school GPA and bar passage. *See* New York Board of Law Examiners, *Impact of the Increase in the Passing Score on the New York Bar Examination,* 137 (Oct. 4, 2006), http://www.nybarexam.org/press/ncberep.pdf ("Candidates . . . with high undergraduate GPAs and LSAT scores generally do well in law school and then tend to do well on the bar examination. Candidates . . . with lower undergraduate GPAs and LSAT scores tend to do less well in law school and less well on the bar examination.").

institutions attended, again making applicant quality decisions more difficult.

Further, it is not a linear relationship between student quality, class size, and profit. Accepting more challenging students may indeed present a larger potential market, and even grow the size of the class. But, these students may demand a higher intensity of support, and may more readily encounter difficulties in completing the program, ultimately having an impact on financial return.[59] Conversely, admission standards must be supportable by the market. If standards are set so high so that the potential market is narrowly drawn to the extent that it cannot achieve other programmatic goals, this is not workable either.

Defining the market, the institution's ability to serve the market, and its place within this market have always been the key parameters for successful programming. This calculus is typically more challenging with online programming, however, because it often stretches law schools to approach these issues differently than they might for J.D.-oriented academic programming, given the varying needs and backgrounds of students seeking online legal education and the high costs associated with developing and operating these programs.

D. Curriculum

1. In General

Curriculum goes hand in hand with market definition. It is the culmination of the strategy of how best to approach the market. It obviously reflects the institution's analysis of market need and the school's role in addressing this need. Along with institutional reputation and affordability, and often even more important than these, curriculum drives interest in the program. As such, it is often the first "hook" to attract student interest.

As discussed earlier, LL.M. and non-J.D. Masters programs do not have mandated curriculums or even, necessarily, widely agreed upon course content.[60] Further, accreditation and state regulation plays a fairly

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59.   Providing this level of support may prove to be challenging when law schools already face challenges in providing adequate levels of support and means of resolving academic issues for students who are typically employed full time, largely unavailable during business hours, and not on campus. DISTANCE LEARNING IN LEGAL EDUCATION, *supra* note 40, at 53.

60.   There certainly are guideposts, however, including analysis of knowledge/skills sought by employers, necessary knowledge required for certification exams, and the like. The Loyola health and online business law programs, for example, are accredited by the Compliance Certification Board, enabling students to achieve various certifications offered by the Health Care Compliance Association and the Society for Corporate Compliance and Ethics. *See* Loyola University Chicago, *The Center for Compliance Studies,* http://www.luc.edu/law/academics/centers/compliancestudies/.

limited role in setting the parameters that the program must follow.[61] This enables programs to develop their own unique approach to the market. Strong programs carefully balance the academic side of the discipline with a heavy emphasis on practical application. The experience and credibility of the faculty teaching in the program becomes particularly important, as students seek to learn from professors who have actually, and recently, been involved with the issues they are presenting.

More so than the typical law curriculum, online courses and curricula need constant tweaking. In dynamic fields often targeted by online programs, change happens quickly. And the topical, practical focus of these programs means that courses and curriculum need to be continuously reviewed for timeliness. New issues arise, often demanding significant revision or expansion to offerings. Even vocabulary or industry "buzzwords" can change, requiring the program to update references and program focus if it is to be viewed as current and relevant to prospective students.

2. Questions Raised: Fit with J.D. Curriculum

Questions may arise regarding the availability of online M.J. and LL.M. courses for (campus-based) J.D. students. Should these courses be open to J.D. students at all? Are the faculty and administration truly comfortable with the quality of content and instruction to allow J.D. students into these courses? One would hope that the answer to these questions is generally "yes," but there could be legitimate differences in level of instruction or course focus where J.D. enrollment arguably is not appropriate, especially for non-LL.M. courses.

Other issues that can arise involve concerns that the online program may "cannibalize" the campus program, as J.D. students seek to enroll in these courses because of believed differences in rigor or their convenience. At the extreme this could have an impact upon the culture of the school, as already busy students may have yet another reason to not be present on campus, diminishing the give and take of a vibrant legal academic community. And faculty may feel threatened, as long-standing courses see enrollment declines if students flock to online offerings.

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61.   The ABA does not specifically approve non-J.D. programs. Instead the content and requirements of these programs are created by individual law schools and as such can vary widely from school to school. In order to offer non-J.D. programs, a law school must obtain the acquiescence of the Council of the Section of Legal Education; however, the ABA reviews non-J.D. programs only to determine whether offering such a program would have an adverse impact on the law school's ability to comply with the Standards that the ABA establishes for J.D. programs. *See* ABA Standards for Approval of Law Schools 2013-2014,   *Council*   *Statements*, http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_council_statements.authcheckdam.pdf.

I believe that these sorts of questions are impossible to avoid; a determination that J.D. students will never be allowed to take online courses from non-traditional programs is unlikely to stand. If I am right that non-traditional programs will continue to expand and become ever more specialized, schools are sure to find, as ours has, that students will increasingly seek to take these courses. Further, the decline in J.D. enrollments means that some of the specialty courses that we used to offer on campus can no longer be supported, while the large online enrollments mean that these courses can effectively be offered online. In sum, in many cases it is naïve to assume that the online non-traditional programming can be operated in a vacuum, somehow siloed from the J.D. program. Long-term, these walls will be breached. The law school and all its students will benefit from a thoughtful interweaving of the various offerings and student populations within the school.

E. Faculty

1. In General

Earlier, I discussed the importance of the tenured faculty supporting the offering of online programming. Here, I focus on the role of faculty teaching in the program.

As might be anticipated, the core requirements for faculty teaching online—commitment to student development and education, sound basis in the subject matter, effective communication skills—do not vary from that expected of traditional law faculty.[62] There is typically a heavy emphasis on practical experience, often to a degree beyond that present in traditional law faculties. And, depending upon subject matter, online programming may require faculty members who are not attorneys, individuals that law schools generally have little experience with identifying and evaluating.

Online teaching also demands a comfort level with technology. As much as the program may enjoy support from the I.T. department, problems will invariably arise during a course, and faculty need to be able to competently respond to these issues.

In addition, faculty need to be cognizant that online teaching involves a style of teaching different from that in the classroom.[63] In most programs the entire course's lectures and materials are posted to a website before the first day of class. This requires professors to be especially diligent and thorough in their preparation, as each lecture must logically flow from one to the next. Further, there is limited ability to "course correct" as can be

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62.   Joseph A. Rosenberg, *Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*, 12 SMU SCI. & TECH. L. REV. 19, 24-25 (2008).

63.   *See* Powell, *supra* note 44, at 303.   Such differences can also lead to an unanticipated positive impact on teaching methodology. *See* Rosenberg, *supra* note 62, at 24.

done in the campus classroom setting, as students are working at their own pace and may be well beyond the particular area causing concern by the time the professor is able to provide needed clarification.

Because taped lectures are prepared in advance, without an audience providing feedback, the experience of preparing them can be somewhat awkward. Further, online students often listen to these lectures in different modalities and in brief snippets—via i-pod, logging in during lunch hour at work, while driving—necessitating that the professor provide a particularly clear roadmap of material to be covered.

Perhaps where teaching in an online program differs most from traditional law teaching revolves around the areas of faculty autonomy and student expectations. I will preface my thoughts on faculty autonomy by stating that autonomy is the "third rail" of the academy and reasonable minds can differ.[64] Further, I am not advocating a "cookie cutter" approach where all faculty judgment and creativity is stifled. That said, I do believe that for a program to be successful it must establish clear standards of approach and content coverage that may be viewed by traditional law faculty as encroaching upon their autonomy. Examples include things such as mandating that a certain online platform be used (no more choosing between Westlaw, LEXIS, You-Tube or "Joe's new-fangled legal education" website), that lectures be structured in a certain way (mandatory PowerPoint's, lectures of no more than fifteen minutes of duration), specific evaluation tools be used (online quizzes) and that specific areas be covered (so that taped lectures can be used across multiple sections, and that advanced, "201" courses, taught by a different set of professors, can know exactly what was covered in "101"). Unique administrative policies may also come into play, such as responsiveness to student emails and evening or weekend office hours, for example.

Why do I believe that a standardized approach is essential? Several reasons. First, it is demanded by the curriculum. Students are coming to the program because they have identified it as providing them with the essential skills and experiences that they are seeking. Accordingly, the program has an obligation to assure that these expectations are met. Doing so demands that an administrative framework on accountability, above and

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64. *See* Risa A. Lieberwitz, *Faculty in the Corporate University: Professional Identity, Law and Collective Action,* 16 CORNELL J.L. & PUB. POL'Y 263, 301 (2007) (discussing faculty autonomy in tension with the growth of distance learning) ("These corporatization trends also create tensions between market activities and faculty professional norms."). *See also* Lieberwitz, *The Corporatization of the University, supra* note 36. *See also* Harold McDougall, *The Challenges of Legal Education in the Neoliberal University,* 72 NAT'L L. GUILD REV. 65, 69 (2015) ("Internet-based learning approaches . . . raise concerns about the centrality of the faculty's role in the transmission of knowledge."). *But see* Max Huffman, *Online Learning Grows Up-And Heads to Law School,* 49 IND. L. REV. 57, 75 (2015) (suggesting that faculty autonomy, which "is a core value of U.S. legal education" may be effectively maintained in an online program, but that preference for faculty autonomy will limit the scalability of the program).

beyond that typically encountered in the general law school curriculum, is provided.[65]

Second, the way that students engage with the program is fully online. They must have some uniformity of approach regarding their access to the technology and their courses for them to be able to easily access these materials. Not only does this make it easier for busy students, but it also enables efficiency for the I.T. support personnel, and faculty, attempting to address problems that may arise.

Third, a common approach to online content can open doors for content use beyond the particular class the materials were prepared for. At Loyola we are working toward developing a library of materials divorced from the assigned course, so that students interested in a particular topic can access materials even if they are not taking the course. A student writing a paper on racial disparities in health care, for example, will be able to access a presentation in a survey health course on the basics of insurance coverage. Students in an advanced course who feel deficient in a basic element of the subject matter will be able to review taped lectures from a prior semester. The ability to deepen learning by revisiting materials and allowing students to draw connections between them is profound.

Finally, there is a case to be made for efficiency. Putting thought and resources into developing the best program content and delivery mechanism possible is a lot of work. Disparate approaches to core aspects of the online program can lead to significant time being spent on issues that should have been resolved.

Faculty expectations of online students may also legitimately differ from those to which J.D. students are held. I do not believe that expectations should be higher or lower for one group or the other, but I do believe that the expectations are different. In part, this goes to the fact that faculty teaching J.D. students are responsible for assuring someone's fitness to enter the legal profession, with all that it entails. This certainly demands a heavy emphasis on statutory and common law construction, legal analysis, research and writing, etc.

Individuals pursuing Master's degrees are not coming to online programs to get law school "lite." Rather, their goal is to learn how the law impacts their particular field or industry, and the role that knowledge of the law should play in their decision-making. While not in conflict with the goals of J.D. legal education, the differences are enough that the expectations of the two student groups do vary. Even LL.M. students often have different goals and interests than J.D. students, necessitating a different set of expectations for these students as well.

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65.   Arguably there is little justification for differences in expectations between online and campus faculty, other than the tradition of faculty autonomy vested in full-time, tenured, typically campus-based faculty, which guards against administrative encroachment in these areas.

In addition, as discussed earlier the student body attracted to non-J.D. online programs tends to be more varied than the schools' J.D. population. The students are often older, returning to school after several years working. Their interests are different and often work-life balance is essential. I always say that "life is happening" for our online students in a way that our J.D. population often doesn't face, as they address issues of aging parents, sick children and serious illness, impacting their expectations of education and the way they wish to interact with the program.

These sorts of factors impact the expectations that faculty might have of students in their course. It doesn't mean that faculty should "teach down" to their students, or bend their assessment of acceptable, quality work. But it does mean that issues regarding the type, amount and due dates of assignments, are carefully considered so that the school is able to maintain its academic integrity while being cognizant of the reality that its students are facing.

2. *Questions Raised: Online Faculty*

Law schools have had relationships with adjunct (practitioner) faculty for some time. Each school has adopted its own approach to determining the quality of potential adjunct hires, monitoring performance and creating a sense of collegiality and community between the adjunct and full-time faculty. What can change with online non-traditional programs, especially if these programs grow and are offered on a multi-start basis (i.e., two or more "starts" per year, rather than the traditional Fall start as is common for J.D. programs) is that adjuncts are often teaching more, and more frequently, than campus-based adjuncts.[66]

At Loyola, for example, we have a core group of adjunct professors who may teach two sections of a course per term, 2-3 terms per year. For these individuals, adjunct teaching has become a professional commitment well beyond that typically made by "traditional" adjunct law professors. This provides great continuity regarding curriculum coverage and quality of teaching, but begins to have significant implications with respect to institutional responsibility for professional development for these professors, such as attendance at professional meetings and society memberships, areas generally not of concern for adjuncts with lesser time and teaching commitments to the school. Does the school have a responsibility to pay for continuing education for adjunct professors? As adjunct faculty are often compensated per course, should there be an opportunity for paid leave to prevent burnout?

Further, adjunct faculty often assume responsibility for "core" program courses, again something that often does not occur in full-time

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66. *See* Fentiman, *supra* note 7, at 53-54, for a discussion of the increased commitment required of adjuncts in an online setting.

J.D. programs. Inculcating these faculty members into the culture of the school, clarifying expectations and developing a shared understanding of student expectations takes on heightened importance when someone is teaching multiple sections, several times a year. How this learning should occur, and more generally, is there even a shared understanding within the full-time faculty on these issues, are areas for serious consideration.

F. Marketing

Historically, law school promotional efforts have been relatively modest, focused in many ways on an expectation that law students will find the school, whose curriculum will largely match every other school, and that, accordingly, outreach can largely be reactionary rather than proactive. This could not be further from the truth when it comes to online programs. First, these programs typically attract a heterogeneous student body, out of school for some time, and not plugged into the vehicles and resources students typically access to find out about J.D. programs. Accordingly, programs need to outreach to prospective students to educate them of the educational offering and what it can do for them.

Similarly, while prospective J.D. students may have disparate goals, such as working as an attorney, becoming a policy analyst or a business executive, these students typically have determined their reasons for choosing law school before they actually apply. This is often not the case in online programming, where prospective students may have identified an educational need or weakness in their career development, but have not necessarily put a label on it regarding a program that can fill this gap. Promotional materials, therefore, cannot merely describe the program, but must educate prospective students on what gaps they are designed to fill, how they intend to do it, and why attending the program is the most effective and efficient option to address these issues.

Further, for students wishing to become lawyers, there is only one option: attend law school. Marketing efforts are then geared toward why one law school is more desirable than another. For students seeking online education, however, there may be varied educational offerings that potentially address their needs. Students wishing to develop human resources expertise, for example, could pursue a human resources degree through a Master's program; secure a Master's in Business Administration, concentrating in human resources; seek an M.J. degree in employment law or an M.J. in labor law (different focus, allowing segmentation of the market); if an attorney seek an LL.M. degree; or instead rely upon some sort of certificate or continuing education program available through a professional society.

Schools marketing to prospective J.D. students also know generally where to find them: through the Law School Admissions Council process,[67] various publications geared toward law applicants and students,[68] through law school "fairs," and the like. As discussed above, students pursuing online degree programs often don't know that a particular program exists or will address their needs, have been out of school for a number of years and so are not plugged into the student counseling services available at undergraduate institutions, and they gain knowledge of the program through many disparate sources.

Accordingly, marketing and promotional efforts have to be extremely varied to reach these students. Common vehicles include attendance at industry-focused professional meetings, LinkedIn and search term advertising buys, a highly optimized website to drive interest as well as select publication buys. While strategies will vary greatly based upon the prospective audience, type of program and the budget available, the point is that both the type and placement of messaging for online programs varies significantly from that typically used to attract J.D. students.

Incorporating the discussion in Part C, above, regarding defining the market, promotional materials also need to be highly cognizant of the needs and characteristics of the market. In our experience, for example, beyond explaining the "why" and "what" of our programs, we have a heavy focus on convincing prospects that "you can do it:" you can go back to school, you can learn online, you can balance personal and professional life with school, and that we will help you do it.[69] This is messaging often different than that provided by J.D. programs, or at least not provided as explicitly as it must for online programming.

Finally, these types of marketing efforts often involve a level of sophistication and budget different from the law school norm. They are generally highly web-based and involve sources typically outside the range

of many law schools' experience base.[70] And they can be very costly. In addition, especially early on, a significant focus must be on brand building—letting the market know you are present and what you can do— which generally takes significant time before a return as measured by the applicant pool can be demonstrated. This is all the more reason that clarity around the reasons that the initiative is being undertaken, and commitment to the resources needed to develop and operate a successful program, is essential.

G. Enrollment and Student Services

From all that I have discussed so far, my belief that online program students present unique issues is evident. This has direct impact upon the enrollment and student services functions. Certainly there needs to be a heavy focus on counseling about the program and coaching as to why the program would, or would not be,[71] a good fit for the student. Also, as previously discussed, variation in educational backgrounds of online students as compared to the J.D. population, and often dated academic records, make seasoned enrollment professionals having a clear understanding of institutional goals and standards imperative.

The mechanics of an online student population also present challenges impacting enrollment and student services. A student body in multiple time zones pursuing their studies at non-traditional times of day means that the availability of necessary supports must be adjusted. Webinars, "Skype" counseling sessions, and a bevy of online resources become especially important for a student population which may rarely or never visit the school.

Different administrative policies other than those guiding the J.D. students also may come into play, in recognition of the needs and situations of a non-J.D. population and a non-resident population. We have encountered multiple examples of this at Loyola that we have had to work through, from our students initially being required to purchase Chicago transit cards as "all" law students do (obviously useless for non-Chicago-based students), to a requirement that each student complete a mandatory *local* emergency contact information filing (again, not possible for non-Illinois residents) to greater concerns revolving around academic integrity of work submitted.[72]

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70.   DISTANCE LEARNING IN LEGAL EDUCATION, *supra* note 40, at 67-68.

71.   The "would not" is really important. Schools owe an obligation to not accept students that they cannot serve, or to not allow students into the program whose needs will not be served.

72.   Plagiarism is of particular concern in any academic program, but a special issue in online education where students often have been out of an academic setting for some time, and need to be (re)taught the importance of academic integrity associated with written work products. *See* Carol A. Needham, *The Professional Responsibilities of Law Professors: The Scope of the Duty of Confidentiality, Character and Fitness Questionnaires, and*

The "melting away" of online students, something that rarely happens within the J.D. population, can also stretch student services. Online students can much more readily stop completing their work and disconnect from the program and school as compared to a campus-based student. It is important, therefore, to devote time to developing an engaged, cohesive online community. A focused, routinized emphasis on student tracking and retention also must be in place to address issues regarding timeliness of work, continuity of study and progress toward degree completion.

Financial aid questions also often have their unique spin, as students may be trying to balance existing loans from years ago, along with unique issues that may arise from employer tuition reimbursement plans, if these are available. Online students are much more likely to take a break in their studies or leave the program over finances than traditional J.D. students.

These sorts of issues call into question whether enrollment and student services can be handled by the existing law school services or if dedicated support must be made available. At Loyola, we have chosen the latter option as a means of assuring that these students' unique needs can be addressed. Separation also assures that energies which appropriately should be devoted to the J.D. students do not get compromised.

H. Oversight

My personal bent is that all programs should be subjected to careful, continuous monitoring against pre-determined goals, so in this vein there is nothing unique about online programming versus any other law school initiative. That said, the scope and scale of resources necessary to effectively develop and operate online programs are often significantly higher than most other initiatives undertaken by a school, mandating that particular time and attention be spent in this area.

It is especially important to have key benchmarks in mind early on in the program's development. These standards should tie directly to the rationales supporting development of the program, as well as quality and financial standards expected to be satisfied. Strong online programs typically involve multi-year commitments, as return on investment may be several years after launch.[73] Accordingly, benchmarks have to be realistic with appropriate adjustments over time to reflect enhanced expectations of the institution as well as changes to the market that may occur.[74]

Engagement in Governance, 56 J. LEGAL EDUC. 106, 111 (2006). *See also* Robin F. Hansen & Alexandra Anderson, *Law Student Plagiarism: Contemporary Challenges and Responses*, 64 J. LEGAL EDUC. 416 (2015).

73. The average breakeven point on a new online program is seven years. DISTANCE LEARNING IN LEGAL EDUCATION, *supra* note 40, at 67-68.

74. Environmental factors impacting a targeted industry will obviously impact enrollments.

Referring to the earlier discussion about "melt away" students, that issue becomes especially relevant when gauging financial performance of the program. Merely adding up new student enrollments from each semester, without accounting for the higher attrition typical of an online student population will lead to markedly skewed, and ultimately disappointing, financial results. Here too, of course, the goal is to have in place effective monitoring so that attrition can be anticipated for identified students, and steps taken to ameliorate this. It is important to note that many law schools may not have in place systems readily available to track this type of program performance, as J.D. attrition is often relatively minor and readily observable by faculty and administration. Additional effort must be undertaken, therefore, to develop benchmarks and collect the information required to routinely monitor student progress toward program completion.

Financial performance should also be carefully monitored. Contributed expenditures (if any) should be considered so as to get a complete financial picture of the program. Beyond the use of limited financial resources, the opportunity costs associated with online programs must be examined; these costs can only be reviewed if a thorough accounting of the program is undertaken and its performance effectively reviewed over time.

Aside from the more holistic goals which might be set forth for the program—admission, enrollment, retention, financial performance, for example—discrete parts of the program need focused monitoring. The primary example is marketing and promotional activities, as these represent some of the largest expenditures and inherently bring with them the need for constant adjustment. At Loyola, for example, it takes on average six to fifteen months for a student to enroll in an online program from the time she first interacts with our online admission office. Clearly, expecting an immediate payback of promotional funds expended in this scenario is not realistic.

Further, in our experience significant expenditures end up being made to "test" various marketing approaches, as the online market is varied and dynamic and there is no accepted guidebook on where and to what extent promotional resources should be directed. Being very clear on *why* particular expenditures are being made, and what will be considered a successful use of these promotional resources, is critical.[75]

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75. For example, significant monies can be spent on radio advertising. This may be very effective in building brand recognition about the program, but is unlikely to be tied directly to an immediate bump in enrollment. Conversely, repeat attendance exhibiting at a professional meeting may result in enrollment gains over time, so long as prior attendance has focused on brand building. The success (or lack thereof) of either of these initiatives cannot be judged without careful consideration of why the money is being spent, and what will be considered an appropriate return for the expenditure.

Benchmarks and monitoring are also critically important because sometimes initiatives just don't work. It is important to be able to detect warning signs and avoid compounding problems. My colleagues have grown weary of hearing me state that failure has two causes: it was a bad idea or it was poorly executed. Bad ideas (hopefully not too many!) occur in a healthy environment and are to be expected. We gain valuable insights from them and presumably use these experiences to help us do better in the future. Execution, however, is almost always controllable, and poor execution is never acceptable. Beyond causing failure in the specific initiative at issue, faulty execution hampers the ability to learn, leaving you unable to discern if the idea had merit but for the substandard manner in which it was performed.

CONCLUSION

Law schools are changing, perhaps more quickly than at any time in recent history. Declines in student enrollment, and a concerted effort by the bar, are calling schools to be more innovative and practical in their approach to legal education. These impacts on J.D. programs are driving a receptivity to expand non-traditional education programs, especially through online offerings. More schools will be offering these programs in the future, and more schools will grow dependent upon them to support the curriculum and finances of the J.D. program.

As these programs gain in importance, questions regarding how to successfully develop and oversee them, and their impact on the school, are likely to come to the fore. I am a strong proponent of online education in general, and online non-traditional legal education in particular. The positive impact that these programs can have in their students' lives and on the J.D. program—in terms of promoting creative teaching, widening curriculum, expanding the alumni network and geographic reach, and providing financial stability in challenging times—can be significant. Not every school should pursue these programs, and not every school will be successful. My hope is that the learnings shared in this Article, and the questions posed, will be of service to institutions contemplating expanding into this brave new world.

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