

BEYOND BRICK-AND-MORTAR: HOW (CAUTIOUSLY) EMBRACING INTERNET LAW SCHOOLS CAN HELP BRIDGE THE LEGAL ACCESS GAP

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TABLE OF CONTENTS

I.	Introduction	496
II.	Background	499
	A. The Brick-and-Mortar Law School Paradigm	499
	B. The Internet Law School Alternative	501
	1. Concord’s Pedagogical Approach via Internet Technology ..	502
	a. “Classroom” Instruction	503
	b. Library Facilities and Legal Research	504
	c. Exams and Performance Assessment	504
	2. Concord’s Administrative Functionality via Internet Technology.....	505
III.	Analysis.....	506
	A. The Legal Establishment’s Skepticism of Internet Law Schools as Manifested in the ABA’s Accreditation Standards and State Bar Admissions Policies	507
	1. The American Bar Association and its Accreditation Policies.....	507
	a. Standard 306: Distance Education.....	508
	b. Standard 606: [Library] Collection.....	508
	c. Standard 701: General [Facilities] Requirements	509
	2. State Bar Admissions Policies.....	509
	a. ABA-Approval Required: Nineteen States.....	509
	b. ABA-Approval <i>Not</i> Required but No Exception for Online Legal Education: Twenty-six States	510
	c. Explicit Acceptance of Online Legal Education: Five States and the District of Columbia	511

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B.	The Persisting Legal Access Gap and the Trend of Encouraging Democratic Engagement by Utilizing Internet Technology.....	513
1.	The Legal Access Gap.....	514
a.	Access to Legal Services	514
b.	Access to the Legal Profession	516
2.	The Democratic Engagement Gap and Internet Technology.....	518
C.	Common Criticisms of Internet Legal Education and Responses Related to Closing the Legal Access Gap.....	520
1.	Criticism #1: There Are “Too Many Law Schools” Already	520
a.	Response #1: The Problem to Be Solved Is One of Equality of Opportunity, Not the Market.....	521
b.	Response #2: There Are Too Many <i>Identical</i> Law Schools Resulting in Little Differentiation in Legal Education	522
2.	Criticism #2: Internet Law Schools are Largely For-Profit Ventures.....	523
a.	Response #1: The ABA Currently Accredits Brick-and-Mortar For-Profit Law Schools	524
b.	Response #2: For-Profit Online Education is Here To Stay, Therefore the Legal Establishment Must Mold It While Still Possible	524
IV.	Recommendation	525
A.	Internet Law Schools Can Be Viewed as Tools to Help Solve the Legal Access Problem by Enabling Low SES Individuals to Enter the Profession.....	525
B.	The Legal Establishment May Embrace the Potential of Internet Law Schools While Maintaining the Integrity of the Profession by Encouraging States to Provide Greater Opportunities for Admission for Online Law Grads	528
V.	Conclusion	530

I. INTRODUCTION

For the students who matriculate at the two hundred American Bar Association-approved (ABA) law schools,¹ the thought of being able to complete a law degree in the comfort of their own home sounds like either an unattainable ideal or a concept so antithetical to legal education it is unnatural. However, for a small group of law students, this is reality. In total, five “distance-learning” law schools, all registered in California, educate their students by “conduct[ing] instruction and provid[ing] interactive classes

1. *ABA-Approved Law Schools*, A.B.A., http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Sept. 25, 2012).

principally by technological means,” namely via the Internet.² The most notable, Concord Law School, was founded in 1998³ by Kaplan, Inc.⁴ and formally merged with Kaplan University in 2007.⁵ The school has large corporate support,⁶ and graduated its first class of ten students in 2002.⁷ Since its formation, it has grown rapidly with approximately 1,200 current students in its Juris Doctor and Executive Juris Doctor programs.⁸ Accordingly, it is one of the most vocal proponents of online legal education.

Despite the money and support behind Concord, its growth is stymied by factors beyond its control. Current ABA approval standards prohibit accreditation of online law schools,⁹ and as such, their graduates have limited options post-graduation. By effectively prohibiting the accreditation of a law school that utilizes an entirely Internet-based teaching methodology, the ABA demonstrates a belief that a school like Concord is incapable of advancing its mission. However, in contrast to the ABA’s hesitation, several state-level bar organizations have been more willing to embrace Internet law grads as members of the bar.¹⁰

Notwithstanding increasing numbers of law school graduates,¹¹ significant inequities in access to legal counsel and the legal profession persist, largely along income lines. Yet, the Internet presents a unique opportunity for broader awareness of social issues and access to legal and democratic

2. *Law Schools*, ST. B. CAL., <http://admissions.calbar.ca.gov/Education/LegalEducation/LawSchools.aspx#icals> (last visited Sept. 25, 2012).

3. Robert J. Salzer, *Juris Doctor.Com: Are Full-Time Internet Law Schools the Beginning of the End for Traditional Legal Education?*, 12 COMMLAW CONSPECTUS 101, 104 (2004).

4. Josh Ard, *Serving over the Net: Legal Education over the Internet*, 79 MICH. B.J. 1050, 1050 (2000), available at <http://www.michbar.org/journal/article.cfm?articleID=119&volumeID=10&viewType=archive>.

5. Brock Read, *Concord Law School Mergers with Kaplan U.*, CHRON. HIGHER EDUC. WIRED CAMPUS BLOG (Oct. 30, 2007, 10:42 AM), <http://chronicle.com/blogs/wiredcampus/concord-law-school-merges-with-kaplan-u/3456>.

6. See Press Release, Kaplan Higher Educ., First Concord-Educated Attorneys Admitted to U.S. Supreme Court Bar in Open Court Ceremony (Mar. 18, 2008), available at <http://www.kaplan.com/aboutkaplan/newsroom/Pages/newsroom.aspx?ID=22> (noting that Kaplan University is part of Kaplan Higher Education and Kaplan, Inc., a subsidiary of The Washington Post Company).

7. Martha Neil, *Virtual Lawyers: Online Law School Produces its First Graduating Class*, A.B.A. J., Dec. 2002, at 27, 27.

8. *About Concord*, CONCORD L. SCH., http://info.concordlawschool.edu/Pages/About_Concord_Law_School.aspx (last visited Sept. 25, 2012).

9. See AM. BAR ASS’N, 2012–2013 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 25–27 (2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf (setting forth Standard 306 governing distance education, including Internet transmission, and limiting credit for such courses to twelve hours).

10. See generally NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2012 (Erica Moeser & Claire Huisman eds., 2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2012_comp_guide_for_web.authcheckdam.pdf (detailing bar eligibility requirements for the various states).

11. See Joe Palazzolo & Chelsea Phipps, *With Profession Under Stress, Law Schools Cut Admissions*, WALL. ST. J. (June 11, 2012, 6:45 PM), <http://online.wsj.com/article/SB10001424052702303444204577458411514818378.html> (“The number of law graduates per year spiked to 44,495 this year from 42,673 in 2006, and the American Bar Association accredited 10 new law schools over the same period.”).

institutions.¹² In the United States, the trend has been to use the Internet and its accompanying technology as tools to promote democracy and greater access to lawmaking processes.¹³ This Note argues that Internet-based law schools can be viewed as a means to increase access to the legal profession and legal counsel in light of this broader trend to utilize the Internet to facilitate and support democracy.

Part II begins by providing background information regarding the use of Internet technology in both traditional law schools as well as their online counterparts. Part III analyzes three primary concerns. First, it discusses the barriers faced by online law schools as they seek ABA accreditation and state bar admission for their graduates. Second, it presents an overview of the status quo with regard to access to legal counsel and the legal profession as well as evidence of a broader movement to use Internet technology to promote access to democratic and lawmaking functions. Third, it examines common criticisms of online legal education and seeks to respond to those criticisms with specific reference to the various aspects of the legal access problem.

Finally, Part IV begins by suggesting that Internet law schools may be viewed as in line with the trend of harnessing Internet technology to increase access to legal services and the economic diversity of the bar. It offers a proposal as to how the legal establishment may embrace online law schools while ensuring the integrity of the profession. It acknowledges the limitations of the current ABA system by suggesting a more pragmatic approach of state-level change.

The recommendations made in this Note are not intended, nor designed, to function as an across-the-board solution to the problem that is the growing legal access gap. Furthermore, while this Note addresses various criticisms of Internet law schools, it does not dispose of all of these arguments, of which there are many. Rather, this Note focuses on examining the opportunities presented by Internet law schools with regard to the specific goals of increasing the economic diversity of the profession and addressing the legal access gap, by suggesting mechanisms through which to achieve those objectives while ensuring the competence of online law grads. As will be demonstrated below, it is clear that this is one area in which traditional law schools are failing and Internet-based law schools present an opportunity for improvement.

12. For example, one need only look at the so-called “Arab Spring” uprisings to witness the power of social media to topple oppressive regimes. However, the Internet alone is insufficient to lead to greater democratization and can easily serve as both a tool for oppression and revolution. See Alec Ross & Ben Scott, *Social Media: Cause, Effect and Response*, NATO REV., http://www.nato.int/docu/review/2011/Social_Medias/21st-century-statecraft/EN/index.htm (last visited Mar. 22, 2012) (discussing the opportunities and challenges created by social media in creating social and political movements).

13. See generally Sally Katzen, *Governing in the Information Age: Technology as a Tool of Democratic Engagement*, 32 CARDOZO L. REV. 2285 (2011) (discussing the Internet and social media’s importance for the 2008 Obama campaign and movement toward e-Rulemaking).

II. BACKGROUND

The Internet has radically transformed education as both a supplemental tool and replacement for brick-and-mortar institutions. During the 2007–2008 school year, 4% of undergraduate students completed their entire degree through distance education, with an even higher percentage (9%) completing a post-baccalaureate program via non-traditional means.¹⁴ At least part of distance education’s appeal lies in the fact that online programs provide a combination of convenience and economy unparalleled in traditional education.¹⁵ Accordingly, distance education appears particularly attractive to post-baccalaureate students with significant personal responsibilities.¹⁶ Such demand has allowed a great deal of Internet-based education to flourish.¹⁷ However, with regard to the law school market specifically, there is an undeniable hesitation to embrace an entirely online education.¹⁸

This section begins by providing a brief history of legal education as well as an outline of the incorporation of the Internet into the functions of traditional, brick-and-mortar law schools. Second, it discusses the entirely Internet-based educational approach advanced by online law schools such as Concord. It suggests that, although there are many similarities between the two forms of legal education, the differences are so fundamental that they predominate the comparison.

A. *The Brick-and-Mortar Law School Paradigm*

In many ways it is difficult to imagine a law school paradigm other than the model engrained into our popular consciousness through films like *The Paper Chase*. However, legal education has by no means remained stagnant throughout the past two hundred fifty years.¹⁹

14. NAT’L CTR. FOR EDUC. STATISTICS, U.S. DEP’T OF EDUC., NCES 2011-033, THE CONDITION OF EDUCATION 2011, at 120 (2011), available at <http://nces.ed.gov/pubs2011/2011033.pdf>. It should be noted that for the purpose of these statistics, “distance education courses include live, interactive audio- or videoconferencing; prerecorded instructional videos; webcasts; CD-ROMs or DVDs; or computer-based systems accessed over the Internet.” *Id.*

15. Angela Benson et al., *Distance Learning and the Low-Income Student*, in INTERNATIONAL PERSPECTIVES OF DISTANCE LEARNING IN HIGHER EDUCATION 273, 273 (Joi L. Moore & Angela D. Benson eds., 2012), available at <http://www.intechopen.com/books/international-perspectives-of-distance-learning-in-higher-education>.

16. For example, statistics indicate that over 60% of such students care for at least one dependent. NAT’L CTR. FOR EDUC. STATISTICS, *supra* note 14, at 120–21.

17. See Andrew Stern, *Online Education Expands for U.S. Need, Awaits Innovation*, USA TODAY (Oct. 4, 2009, 6:30 PM), http://www.usatoday.com/news/education/2009-10-04-online-degree_N.htm (noting that the online education industry had estimated revenues of \$12 billion and growing).

18. Compare *ABA-Approved Law Schools*, *supra* note 1 (noting that there are 202 ABA-approved law schools, none of which are Internet-based due to Standard 306), with *Law Schools*, *supra* note 2 (noting registration of only five “distance-learning” law schools which utilize primarily Internet-based teaching).

19. See generally Stephen M. Johnson, *www.lawschool.edu: Legal Education in the Digital Age*, 220 WIS. L. REV. 85, 86–92 (2000) (providing a brief summary of the history of legal education); Minow Addresses “*The Past, Present and Future of Legal Education*”, HARV. L. SCH. (Apr. 22, 2010), http://www.law.harvard.edu/news/spotlight/classroom/minow_hls-and-beyond.html [hereinafter *The Past, Present and Future of Legal Education*] (detailing lecture given by Harvard Law School Dean Martha Minow on the topic).

Legal education in early America borrowed from the traditional British apprenticeship model, which in large part exists in Britain to the present day.²⁰ Apprentices were required to put in a minimum commitment of five years before being admitted to the bar, with some variation for those who had previously completed a college degree.²¹ Beginning in the late eighteenth century and proceeding into the early nineteenth century, several small independent law schools supplemented, along with additional courses at existing universities, the predominating apprenticeship system.²² Finally, the reigning “case method” took shape at Harvard Law School during the late nineteenth century and signified a shift toward a more consistent, university-based approach to legal education.²³ There has been little change in teaching methodologies since the wide-scale adoption of the case method; however, law schools have grown to provide increased skills-based courses²⁴ and electives, particularly related to international law, legislation, and regulation, to keep pace with the modern legal context.²⁵

Although technology has been incorporated into traditional legal curriculum, for the most part, Internet technology has merely supplemented predominating teaching practices.²⁶ Class assignments are frequently distributed via the Internet²⁷ while some schools have experimented with online message boards to facilitate and encourage greater discussion.²⁸ Others provide digital recordings to make class lectures more accessible to students.²⁹ Additionally, written materials are more readily available online, making legal research easier and faster.³⁰ Clearly, the Internet’s usefulness in supporting law school operations should not be understated.

The limited impact of the Internet on existing *teaching methodologies* appears to stem from the widely held belief that legal education is most effective when conducted in the presence of the instructor and fellow students.³¹ Justice Ginsburg, speaking at Rutgers University Center for Law

20. Johnson, *supra* note 19, at 86.

21. *Id.* at 86–87.

22. *Id.* at 87.

23. *Id.* at 87–88; *The Past, Present and Future of Legal Education*, *supra* note 19.

24. Johnson, *supra* note 19, at 88.

25. *The Past, Present and Future of Legal Education*, *supra* note 19.

26. See Michael Heise, *Closing One Gap But Opening Another? A Response to Dean Perritt and Comments on the Internet, Law Schools, and Legal Education*, 33 IND. L. REV. 275, 284 (1999) (“That is not to say that law schools, students, professors, and legal education have not been influenced by the Internet. However, the magnitude of influence at most law schools does not yet appear to have reached a level sufficient to dislodge the general character of law schools or legal education.”); Richard L. Marcus, *The Impact of Computers on the Legal Profession: Evolution or Revolution?*, 102 NW. U. L. REV. 1827, 1831 (2008) (“Although there have been some attempts to shift to online legal education . . . this attempt has not significantly affected the actual operations of most law schools.”).

27. Henry H. Perritt, Jr., *The Internet is Changing the Face of American Law Schools*, 33 IND. L. REV. 253, 266 (1999).

28. See, e.g., Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 RUTGERS COMPUTER & TECH. L.J. 33, 40 (2003) (discussing such an experiment).

29. See, e.g., *Video Operations – Current Students*, U. IOWA C. L., <http://www.law.uiowa.edu/students/services/video/index.php> (last visited Sept. 25, 2012) (providing that students may request a class be digitally recorded).

30. Marcus, *supra* note 26, at 1831.

31. See, e.g., Brian Burnsed, *Online Law Schools Have Yet to Pass the Bar*, U.S. NEWS & WORLD REP.

and Justice in September of 1999, famously professed her belief that interaction is at the heart of a quality legal education: “[s]o much of legal education and legal practice is a shared enterprise, a genuine interactive endeavor. The process inevitably loses something vital when students learn in isolation, even if they can engage in virtual interaction with their peers and teachers.”³² Opponents of online law schools often argue that distance learning can have an isolating effect that is particularly trying for first-year students who need the most guidance.³³ They contend that classroom instruction conveys subtle nonverbal messages that often indicate classroom expectations and information crucial to comprehension.³⁴

Although the Internet has been widely incorporated into the administrative functions of traditional law schools, the entrenchment of face-to-face Socratic interaction has left administrators reluctant to allow significant experimentation with regard to Internet-based teaching methodologies. This hesitation has created a unique opportunity for Internet entrepreneurs willing to take a risk on shaping the future of legal education.

B. *The Internet Law School Alternative*

The Committee of Bar Examiners of the State Bar of California recognizes five unaccredited “distance learning” law schools.³⁵ As stated above, this Note focuses on Concord primarily because it is widely analyzed and discussed,³⁶ likely due to its size and significant corporate backing. However, other online legal education institutions utilize similar teaching methods.³⁷

In many ways it is difficult to compare an Internet law school to its more traditional counterparts. Its point-of-view is distinct from that of a brick-and-mortar law school, and therefore, its approach will be qualitatively different. For example, according to Andrew S. Rosen, current Chief Executive Officer

(Mar. 23, 2011), <http://www.usnews.com/education/online-education/articles/2011/03/23/online-law-schools-have-yet-to-pass-the-bar> (quoting Donald Polden, chair of the ABA’s Accreditation Standards Review Committee: “[F]or a high quality program, you have to have students together because so much of learning happens in that interaction in the classroom space.”).

32. Salzer, *supra* note 3, at 108.

33. Heise, *supra* note 26, at 282.

34. Perritt, *supra* note 27, at 267.

35. *Law Schools*, *supra* note 2. These schools include: Abraham Lincoln University School of Law, American Heritage University, California School of Law, St. Francis School of Law, and Concord Law School of Kaplan University. *Id.* This Note specifically mentions California’s recognition of Internet-based law schools because, as will be established below, it has the most liberal bar admissions policies with regard to online law grads.

36. See generally, e.g., Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 WM. MITCHELL L. REV. 841 (2000); Andrew S. Rosen, *Concord University Law School’s On-Line Law Degree Program*, 15 ST. JOHN J. LEGAL COMMENT. 311 (2001) [hereinafter Rosen, *Concord University*]; Johnson, *supra* note 19; Salzer, *supra* note 3 (all analyzing Concord).

37. See, e.g., *JD Educational Format*, ST. FRANCIS SCH. L., <https://www.stfrancislaw.com/jd/online-jd-format.php> (last visited Sept. 24, 2012); *Prospective Students for Law School*, ABRAHAM LINCOLN SCH. L., <http://www.alu.edu/prospect/welcome.php> (last visited Sept. 24, 2012); *Welcome to the California School of Law*, CAL. SCH. L., <http://www.californiaschooloflaw.com/> (last visited Oct. 2, 2012) (each discussing their teaching methodologies).

of Kaplan, Inc.,³⁸ a Concord student is unique from a traditional law student because the school “[is] not really seeking people who are right out of college or have a few years of experience. [It is] focusing on people who have job responsibilities, who are in the work force and typically have jobs that extend beyond 9 to 5.”³⁹ This statement echoes the trend that the vast majority of distance learners have significant personal commitments above and beyond their education.⁴⁰ Although nearly all applicants to brick-and-mortar law schools are under the age of thirty,⁴¹ the average Concord student is forty-three years old.⁴² Furthermore, 40% of Concord’s student body possesses a previous graduate degree.⁴³

Concord’s mission statement reflects this uniqueness and provides that: “Concord Law School, using state-of-the-art technology and the Internet, delivers a sound program of legal education that is accessible and affordable. Concord’s program helps career-focused learners achieve their personal and professional goals.”⁴⁴ When analyzing Concord’s use of the Internet to advance this mission, we must examine both its pedagogical approach and administrative functions.

1. *Concord’s Pedagogical Approach via Internet Technology*

Concord provides three distinct academic programs: the Juris Doctor (J.D.), Executive Juris Doctor (E.J.D.), and Master of Laws.⁴⁵ Both the J.D. and E.J.D. programs have an annual tuition of approximately \$9,984 (2011–2012) for which students are eligible for federal financial aid and loan programs.⁴⁶

The four-year J.D. course load enables students to qualify for the California bar exam while its three-year E.J.D. counterpart does not.⁴⁷ Regardless, both programs utilize similar teaching methodologies and share identical first-year curricula, consisting of contracts, torts, criminal law, and

38. *Biography of Andrew S. Rosen*, WASHINGTON POST COMPANY, <http://www.washpostco.com/phoenix.zhtml?c=62487&p=irol-businessbio&ID=187239> (last visited Sept. 24, 2012).

39. Rosen, *Concord University*, *supra* note 36, at 312.

40. See NAT’L CTR. FOR EDUC. STATISTICS, *supra* note 14, at 120 (discussing the prevalence of distance learners with dependents).

41. 81.9% of applicants to ABA-approved law schools during the 2009 admissions cycle were under the age of thirty, a number that had stayed more or less consistent within the 2005–2009 period more generally. KIMBERLY DUSTMAN & PHIL HANDWERK, LAW SCHOOL ADMISSION COUNCIL, ANALYSIS OF LAW SCHOOL APPLICANTS BY AGE GROUP: ABA APPLICANTS 2005–2009, at 3 (2010), available at <http://lsac.org/LSACResources/Data/PDFs/Analysis-Applicants-by-Age-Group.pdf>.

42. *Concord Law Students*, CONCORD L. SCH., http://info.concordlawschool.edu/Pages/Concord_Students.aspx (last visited Sept. 26, 2012).

43. *Id.*

44. KAPLAN UNIV., KAPLAN UNIVERSITY CATALOG CALENDAR YEAR 2011–2012, at 358 (2011), available at http://info.concordlawschool.edu/uploadedFiles/CLS_Concord_Law_School/Concord_Law_School_Documents/KU_Catalog_2011_2012.pdf.

45. *Id.* at 359–60.

46. *Id.* at 381–83.

47. *Id.* at 360. As such, the E.J.D. is geared toward individuals who do not intend to become practicing attorneys, but seek an understanding of the U.S. legal system to supplement a current career. *Id.*

legal writing and test taking.⁴⁸

a. “Classroom” Instruction

Concord parallels the brick-and-mortar law school paradigm in one important way: it has retained traditional casebooks.⁴⁹ According to Rosen, the case method “equips . . . students to analyze legal doctrine by defining, contrasting and systematizing rules from appellate decisions.”⁵⁰ However, this is where the instruction similarities end: at Concord, lectures and classes are presented over the Internet.⁵¹

Professors lead Concord’s online classes once a week.⁵² During one of these synchronous⁵³ classes, audio is streamed from professor to student during which students, via text, may ask questions or respond to problems posed to the class.⁵⁴ These communications are not visible to other students in the class, although professors do have the option of sharing some or all of the student responses by using the online interface⁵⁵ if he or she considers them helpful in the discussion.⁵⁶ Class sessions are supported by asynchronous⁵⁷ message boards, through which students and professors can continue discussion or pose additional problems.⁵⁸ In addition, Concord utilizes online video lectures.⁵⁹ Students may access recordings of previous video lectures and class sessions asynchronously if they feel the need to do so.⁶⁰ Required materials outside those in the casebook are also available online at any time.⁶¹

The Concord model does not place heavy emphasis on the traditional Socratic method because it believes that its curriculum is designed to provide a more intensive and interactive learning environment.⁶² Certainly there are some legitimate criticisms of Socratic teaching,⁶³ however, it is this rejection

48. *Id.*

49. *Id.*

50. Rosen, *Concord University*, *supra* note 36, at 314.

51. KAPLAN UNIV., *supra* note 44, at 365.

52. Oliphant, *supra* note 36, at 854.

53. “Synchronous” is defined as “happening, existing, or arising at precisely the same time.” *Synchronous Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/synchronous> (last visited Sept. 26, 2012). Here, synchronicity refers to the fact that teachers and students interact during the class in real time.

54. KAPLAN UNIV., *supra* note 44, at 365.

55. *Id.*

56. Oliphant, *supra* note 36, at 855.

57. “Asynchronous” is defined as “of, used in, or being digital communication (as between computers) in which there is no timing requirement for transmission and in which the start of each character is individually signaled by the transmitting device.” *Asynchronous Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/asynchronous> (last visited Sept. 26, 2012). Here, asynchronicity refers to the fact that students may listen to previously conducted lectures and class sessions whenever they wish to do so.

58. Oliphant, *supra* note 36, at 854.

59. Salzer, *supra* note 3, at 105.

60. KAPLAN UNIV., *supra* note 44, at 360.

61. *Id.*

62. Ard, *supra* note 4, at 1050 (discussing such a comment made by Candace Person, Professor and Director of Health Programs at Concord Law School).

63. See, e.g., Steve Bachmann, *Lawyers, Law, and Social Change – Update Year 2010*, 34 N.Y.U. REV. L. & SOC. CHANGE, 499, 514 (2010) (arguing that the Socratic method fails to connect logic with real

of what many see to be the very essence of legal education that is the most controversial.

b. Library Facilities and Legal Research

Concord also disputes the necessity of a physical library facility. Rather, students have access to the “Internet’s free legal library.”⁶⁴ The school argues that although, in the past, physical libraries were required to house large numbers of reporters, in the Internet Age, this information is now readily available online.⁶⁵

Accordingly, once J.D. and E.J.D. students have been enrolled with Concord for one month, they are given access to Westlaw’s online legal database.⁶⁶ Students are then provided with research tutorials by the Concord Librarian and Westlaw representatives, directly through the Concord and Westlaw websites.⁶⁷ Students are also given access to HeinOnline and its database of law journals and historical documents.⁶⁸

c. Exams and Performance Assessment

Aside from its unique instruction model, Concord’s exam and assessment structure is perhaps its most distinguishing feature.⁶⁹ Concord evaluates student progress and comprehension using three separate forms of testing, all of which are highly routinized.⁷⁰

i. *Modular Quizzes*

As a student progresses through the material covered in the lectures, his or her understanding is regularly tested through what are called “modular quizzes,” which are available asynchronously over the Concord website.⁷¹ Modules represent approximately a week-and-a-half’s worth of study material.⁷² First-year subjects are divided into over ten modules, with the first ten modular quizzes of each first-year subject taken under untimed, “open book” conditions.⁷³ The remaining modular quizzes for a given first-year or upper-level course are taken under timed, “closed book” conditions.⁷⁴

One particular benefit of the modular quiz is that it can provide students

practice); Oliphant, *supra* note 36, at 861 (summarizing various critiques, including that it stifles participation, fails to involve women, creates performance pressures, and is overly oppressive); Salzer, *supra* note 3, at 108 (arguing that the Socratic method may not be helpful to students not pursuing a career in litigation).

64. KAPLAN UNIV., *supra* note 44, at 365.

65. Oliphant, *supra* note 36, at 866.

66. KAPLAN UNIV., *supra* note 44, at 365.

67. *Id.*

68. *Id.*

69. See Oliphant, *supra* note 36, at 857 (noting that most law schools continue to use a single exam format).

70. KAPLAN UNIV., *supra* note 44, at 370.

71. *Id.*

72. Oliphant, *supra* note 36, at 852–53.

73. KAPLAN UNIV., *supra* note 44, at 370.

74. *Id.*

with continuous and immediate feedback, indicating both trouble areas as well as those in which a student clearly understands the material.⁷⁵ Accordingly, the Concord online system will not allow a student to progress to the next module until the prerequisites of the previous have been met.⁷⁶ If a particular student appears to be having any problems, the online system automatically generates a progress report that can be used to monitor the student in the future.⁷⁷ In these instances, reports are sent to administrators who contact the student directly.⁷⁸

ii. Essay Writing Assignments

In addition to modular quizzes, each course includes various writing assignments that require essay-style responses.⁷⁹ First-year courses include nine essay assignments given under untimed conditions.⁸⁰ Upper-level assignments vary in recommended length.⁸¹ Concord monitors student response time from download to submission through its online system.⁸²

iii. Final Exams and First-Year Midterm Exams

Final exams, similar to those at brick-and-mortar law schools, are administered synchronously at fixed dates and times and are conducted under timed, "closed book" conditions.⁸³ To be eligible to take a final exam, students are required to have completed 80% of the modular exams for a given course⁸⁴ and "attended" at least 80% of the course's classes.⁸⁵

Concord's curricular design sets it apart in the world of legal education. Its corporate backers have taken significant financial risks by creating an institution that wholeheartedly rejects many of the industry's practices and norms.

2. Concord's Administrative Functionality via Internet Technology

Despite these fundamental differences with regard to a pedagogical approach, Concord and traditional law schools have many administrative commonalities. For example, Concord relies primarily on LISTSERV and email to maintain contact with its students; however, students and faculty also interact through the aforementioned online message boards.⁸⁶ Faculty members, law advisors, law librarians, IT support, and administrative staff-

75. Oliphant, *supra* note 36, at 853.

76. *Id.*

77. *Id.* at 858; Salzer, *supra* note 3, at 106.

78. Salzer, *supra* note 3, at 106.

79. KAPLAN UNIV., *supra* note 44, at 370.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 370-71.

85. *Id.* at 370.

86. *Id.* at 365.

members also respond to questions via phone and fax.⁸⁷ In addition, students can access an online student roster, separate from the rest of Kaplan University, which enables them to find contact information for classmates.⁸⁸ These qualities are not unique to Internet law schools, as many traditional law schools have similar services. Again, this is where the similarities end. Two major differences distinguish the administrative functions at Concord: attendance and admissions.

Concord's online "learning management system" monitors student attendance by capturing log-on and assignment completion data.⁸⁹ This system operates as the school's official record for attendance purposes.⁹⁰ As previously stated, attendance records are directly tied to final exam eligibility and course progression.⁹¹ Furthermore, while Concord accepts results from the Law School Admissions Test, it does not require them for admissions purposes.⁹² Rather, students take Concord's proprietary admissions test provided on its website.⁹³

It is clear that Concord's use of Internet technology makes a Concord student's educational experience qualitatively different from that of a student at a traditional law school. Internet technology is directly incorporated into its pedagogical model. However, many similarities are present, most notably the continued use of casebooks, the case method, and the Internet's support of administrative functions.⁹⁴ Nevertheless, as demonstrated by Justice Ginsburg's remarks above, the legal establishment is particularly skeptical of Concord's blatant disregard of legal education norms.

III. ANALYSIS

This section presents three arguments. First, that the legal establishment's skepticism of online legal education has manifested in ABA accreditation standards that effectively bar approval of Internet-based law schools. It suggests that the most practical possibility for inroads into bar admissions requirements lies with several states that provide for alternatives to attendance of an ABA-accredited law school. It examines these exceptions while acknowledging their limitations and the overwhelming skepticism as to the adequacy of an Internet-based legal education.

Second, it discusses the persisting legal access gap under the ABA status quo, as evident from the prevalence of unmet legal needs and unequal access to the legal profession. It argues that this gap is particularly burdensome on low and middle socioeconomic status (SES) individuals, and examines how similar

87. Rosen, *Concord University*, *supra* note 36, at 312; Salzer, *supra* note 3, at 106.

88. KAPLAN UNIV., *supra* note 44, at 366.

89. *Id.* at 367.

90. *Id.*

91. *See supra* Part II.B.1.c.iii (noting that students' final exam eligibility is tied to online course attendance).

92. KAPLAN UNIV., *supra* note 44, at 362.

93. *Id.*

94. *Id.* at 360.

concerns in the democratic realm have led to wider incorporation of Internet technology to facilitate access.

Finally, it recognizes two common critiques of Internet law schools and responds to these criticisms with specific reference to the two facets of the legal access gap discussed earlier in the section. In so doing, it seeks to further define the scope of the problem addressed by the recommendation set forth in this Note.

A. *The Legal Establishment's Skepticism of Internet Law Schools as Manifested in the ABA's Accreditation Standards and State Bar Admissions Policies*

Generally speaking, the licensing of attorneys is a state function with each providing its own standards of admission.⁹⁵ However, the ABA wields significant power in shaping eligibility requirements because many states base eligibility on graduation from an ABA-approved law school.⁹⁶ Therefore, the most significant obstacles in the path of online law grads seeking admission to the bar are several ABA accreditation standards that effectively prohibit the approval of schools such as Concord.

1. *The American Bar Association and its Accreditation Policies*

The U.S. Department of Education has certified the Council and Accreditation Committee of the ABA Section of Legal Education and Admissions to the Bar as the official accreditation agency for J.D. programs,⁹⁷ and in this role, the ABA sets forth its annual *Standards and Rules of Procedure for Approval of Law Schools*.⁹⁸ Among various other requirements, accreditation of a law school is prefaced upon its compliance with these standards,⁹⁹ which are founded upon five basic principles: (1) assuring education quality; (2) advancing the core mission of legal education; (3) law school accountability; (4) clarity and precision for compliance; and (5)

95. *Bar Admissions Basic Overview*, A.B.A. – SECTION LEGAL EDUC. & ADMISSIONS TO B., http://www.americanbar.org/groups/legal_education/resources/bar_admissions/basic_overview.html (last visited Sep. 25, 2012).

96. See *United States v. Am. Bar Ass'n*, 135 F. Supp. 2d 28, 29–30 (2001) (discussing the ABA's function as the Department of Education-recognized accreditation agency for law schools); *In re Batterson*, 687 S.E.2d 477, 478–79 (Ga. 2009) (denying admission to the Georgia state bar because a graduate did not attend ABA-approved law school); Salzer, *supra* note 3, at 110–12 (examining the role of the ABA's accreditation policies and states' reactions to them).

97. However, in recent years the ABA's continued certification has come under fire from prominent politicians who have argued that the economic downturn has exposed significant flaws in the ABA's accreditation policies and procedures. See Mark Hansen, *Sen. Grassley Questions ABA's Law School Accreditation Process*, A.B.A. J. (Jul. 13, 2011, 12:57 PM), http://www.abajournal.com/news/article/grassley_seeks_answers_on_abas_law_school_accreditation_process/ (discussing the concerns of U.S. Senator Charles Grassley, the ranking Republican on the Senate Judiciary Committee and U.S. Senator Barbara Boxer).

98. AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *THE LAW SCHOOL ACCREDITATION PROCESS 3* (2010), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2010_aba_accreditation_brochure.authcheckdam.pdf.

99. See *generally id.* (setting forth the accreditation process and standards).

assessment of program quality and student learning.¹⁰⁰ Several current standards function as considerable barriers to the accreditation of Internet-based law schools, although others may also be relevant. By enacting standards that are fundamentally conflicting with online teaching methodologies, the ABA reveals its bias toward preserving the legal education status quo.

a. Standard 306: Distance Education

Standard 306 regulates the ability of law schools to offer credit for study via distance education, including Internet transmission.¹⁰¹ Standard 306(d) limits credits granted to no more than twelve toward the award of a J.D.¹⁰² It also establishes guidelines for minimum interaction and monitoring of student participation during distance education courses.¹⁰³ Interpretation 306-2 acknowledges that “distance education presents special opportunities and unique challenges for the maintenance of educational quality,” which requires heightened scrutiny from law schools and the Accreditation Committee.¹⁰⁴ This statement echoes the sentiment expressed by Justice Ginsburg.¹⁰⁵ Although Standard 306 provides for some flexibility in providing Internet-based courses, it is far from allowing an entirely online law school.¹⁰⁶

b. Standard 606: [Library] Collection

The ABA also requires that accredited law schools maintain “a core collection of essential materials” in its law library.¹⁰⁷ Among other things, it mandates that access to these materials must support the research needs of students, faculty, and related law school projects.¹⁰⁸ On its face, Standard 606 does not expressly prohibit a solely electronic library collection. However, Interpretation 606-2 states “[that] a collection that consists of a single format may violate Standard 606.”¹⁰⁹ The lack of accreditation of Internet-based law

100. Donald J. Polden, *Comprehensive Review of American Bar Association Law School Accreditation Policies and Procedures: A Summary*, B. EXAMINER, Feb. 2010, at 43–45. It is important to note that the ABA Standards themselves are not universally embraced and have been subjected to considerable criticism, particularly on the grounds that they do not achieve their professed goals. See, e.g., George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091 (1998) (setting forth numerous criticisms of the ABA system).

101. AM. BAR ASS'N, *supra* note 9, at 25. “Distance education” is defined as “an education process characterized by the separation, in time or place, between instructor and student.” *Id.*

102. *Id.* at 26. Notably, Standard 306 was revised in 2002 to allow at least this limited amount of credit. Daniel C. Powell, *Five Recommendations to Law Schools Offering Legal Instruction over the Internet*, 11 J. TECH. L. & POL'Y 285, 288 (2006).

103. AM. BAR ASS'N, *supra* note 9, at 26.

104. *Id.*

105. See *supra* Part II.A (“[S]o much of legal education and legal practice is a shared enterprise, a genuine interactive endeavor. The process inevitably loses something vital when students learn in isolation, even if they can engage in virtual interaction with their peers and teachers.”).

106. Salzer, *supra* note 3, at 112.

107. AM. BAR ASS'N, *supra* note 9, at 45.

108. *Id.* at 46.

109. *Id.*

schools does seem to indicate that the ABA has taken this exact position.¹¹⁰

c. Standard 701: General [Facilities] Requirements

Standard 701 further provides that “a law school shall have physical facilities that are adequate both for its current program of legal education and for growth anticipated in the immediate future.”¹¹¹ Interpretation 701-2 specifies that “adequate physical facilities” include class space, faculty and administrative offices, co-curricular activity areas, and relevant storage facilities.¹¹² While Concord does maintain administrative facilities,¹¹³ it lacks physical classrooms and faculty offices because such spaces are unnecessary under its model.

As a result of the ABA’s accreditation policies, it does not currently accredit J.D. programs such as Concord’s.¹¹⁴ Furthermore, there are indications that the ABA has no intention of doing so in the near future and will remain steadfast in its belief that online law schools cannot provide a satisfactory education.¹¹⁵

2. *State Bar Admissions Policies*

Despite the ABA’s unwillingness to approve online law schools, each state bar sets its own licensing specifications.¹¹⁶ There is, of course, variation, but a given state’s approach to attendance of an ABA-accredited law school as an eligibility requirement generally falls into one of three camps. It should be noted that within the past four years there have been a few notable attempts by online law grads to obtain waivers for ABA-approval requirements from state high courts;¹¹⁷ however, these challenges have been met with mixed results.¹¹⁸

a. ABA-Approval Required: Nineteen States

Sixteen states explicitly limit bar eligibility to graduates of ABA-approved law schools without exception.¹¹⁹ An additional three states provide

110. See Oliphant, *supra* note 36, at 866 (stating that the ABA’s standards indicate a belief that entirely online research facilities are inadequate).

111. AM. BAR ASS’N, *supra* note 9, at 47.

112. *Id.* at 47–48.

113. See KAPLAN UNIV., *supra* note 44, at 366 (noting that Concord’s administrative offices are located in Los Angeles, California).

114. Mitchell v. Bd. of Bar Exam’rs, 897 N.E.2d 7, 12 (Mass. 2008).

115. In October 2007, three special committees were asked to make recommendations to the Section’s Council regarding the accreditation process; however, Donald Polden, current chair of the ABA’s Standards Review Committee, does not believe that this will result in any significant changes to accreditation practices. Polden, *supra* note 100, at 49.

116. *Bar Admissions Basic Overview*, *supra* note 95.

117. See generally, e.g., *In re Batterson*, 687 S.E.2d 477 (Ga. 2009); *Mitchell*, 897 N.E.2d at 7.

118. Although there is some evidence of a correlation between the outcome of a challenge to an ABA-accreditation requirement and the state’s general bar admissions requirements, there simply have not been enough of such challenges by online law grads to determine the strength of any potential relationship.

119. These states include: Arkansas, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Mississippi, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Carolina, and South Dakota. NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS

a single exception for individuals holding foreign law degrees.¹²⁰ As established above, a student who has received a J.D. from an online law school is ineligible to seek admission to the bar in these jurisdictions because the ABA does not currently approve Internet-based law schools.¹²¹

These states appear to be committed to maintaining the ABA-approval requirement because it is seen as an effective tool for ensuring that an individual admitted to the bar will be a competent legal practitioner. Accordingly, challenges to such requirements have been met with skepticism.¹²² For example, in 2009, the Georgia Supreme Court denied a request for a waiver by a graduate of Northwestern California University School of Law (NWCULaw), an Internet-based law school,¹²³ because the applicant had not provided clear and convincing evidence that the education received from NWCULaw was equivalent to that of an ABA-approved school.¹²⁴

b. ABA-Approval *Not* Required but No Exception for Online Legal Education: Twenty-six States

A greater number of states (twenty-six) allow significant exceptions to their standard ABA-approval requirements but fall short of fully embracing online law grads.¹²⁵ Examples of exceptions include graduation from a unaccredited law school and one of several additional factors: approval of the school by a state authority, an additional minimum number of hours taken at an ABA-approved school, bar passage in another state, and a specified number of years in practice.¹²⁶

These exceptions fall short of accepting online law schools but challengers in these states may have better luck. In 2008, the Massachusetts Supreme Court ruled in favor of Ross Mitchell, a 2004 Concord graduate, by granting his request to waive Massachusetts' ABA-approval requirement.¹²⁷ Massachusetts already had an exception for graduates of schools that its own Board of Examiners had independently approved; however, Concord was not

TO THE BAR, *supra* note 10, at 8–9.

120. These states include: Illinois, Louisiana, and Ohio. *Id.*

121. *Mitchell*, 897 N.E.2d at 12.

122. *See, e.g., In re Batterson*, 687 S.E.2d at 479 (denying a waiver request).

123. Northwestern California University School of Law is officially registered with the State Bar of California as a “correspondence law school” which includes schools that do not utilize solely Internet technology. *Law Schools*, *supra* note 2. However, the school’s website describes itself as “the oldest continuously operating degree-granting online law school in the country.” *Welcome*, NW. CAL. U. SCH. L., <http://www.nwculaw.edu/> (last visited Sept. 25, 2012).

124. *In re Batterson*, 687 S.E.2d at 478–79.

125. These states include: Alabama, Alaska, Arizona, Colorado, Connecticut, Florida, Hawaii, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New York, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 10, at 8–9.

126. *See id.* (providing a chart summarizing the states’ various bar admissions policies).

127. *Mitchell v. Bd. of Bar Exam’rs*, 897 N.E.2d 7, 12 (Mass. 2008); *see also* Kristina Horton Flaherty, *Court Win for Online Law School Grad*, CAL. B.J., Jan. 2009, <http://archive.calbar.ca.gov/Archive.aspx?articleId=94802&categoryId=94651&month=1&year=2009> (discussing Mitchell’s win).

among them.¹²⁸

The court found waiver proper for two reasons.¹²⁹ First, Mitchell's Concord education was deemed "substantively very similar to the core content offered by ABA-approved law schools."¹³⁰ Mitchell had excelled academically, taken and passed the California bar, and competently represented himself.¹³¹ Therefore, "in Mitchell's case, the underlying purpose of [the] ABA approval requirement—to insure an appropriate level of legal education—[was] met."¹³² Second, the court cited the ABA's recently announced review of its accreditation standards, including those dealing with distance education, as weighing in favor of granting the waiver request in light of Mitchell's qualifications.¹³³

However, the court made explicitly clear that it was *not* holding that graduation from an online law school was sufficient to fulfill the state's educational standard or that it was altering the ABA-approval requirement in any way.¹³⁴ Mitchell was sworn into the Massachusetts bar in June 2009¹³⁵ after previously being admitted in California and to the U.S. Supreme Court's bar in the spring of 2008.¹³⁶

c. Explicit Acceptance of Online Legal Education: Five States and the District of Columbia

Finally, a small minority of five states and the District of Columbia explicitly allow online law grads to seek admission to their bar, although there is some variation as to the ease of admission for these individuals.¹³⁷

i. *California*

California has the most extensive and accepting scheme with regard to online law grads. First, non-ABA-approved law schools must register with its Committee of Bar Examiners.¹³⁸ Second, students attending these schools must pass the First-Year Law Students' Examination, or "baby bar," after the

128. See *Mitchell*, 897 N.E.2d at 8 n.1 (setting out Massachusetts Supreme Judicial Court Rule 3:01 § 3.3 and explaining its exception); see also NAT'L CONFERENCE OF BAR EXAM'RS & AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 10, at 8 (chart showing Massachusetts' bar admissions requirements).

129. *Mitchell*, 897 N.E.2d at 10.

130. *Id.* at 11.

131. *Id.* at 12.

132. *Id.*

133. *Id.*; see also Polden, *supra* note 100, at 49 (discussing the ABA's review of its accreditation standards).

134. *Mitchell*, 897 N.E.2d at 12.

135. Sheri Qualters, *First Online Law Grad Admitted in Massachusetts*, NAT'L L.J., June 24, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202431735337>.

136. Mitchell had met U.S. Supreme Court Bar requirements as a member, in good standing, of the State Bar of California for three years. Press Release, Kaplan Higher Educ., *supra* note 6.

137. These states include: California, Minnesota, New Mexico, Oregon, and Vermont and the District of Columbia. NAT'L CONFERENCE OF BAR EXAM'RS & AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 10, at 8–9.

138. *Id.* at 10.

completion of the first year.¹³⁹ Eligibility for the full state bar exam is predicated upon passage of this exam.¹⁴⁰ Schools that are subject to this procedure must disclose these requirements, as well as their “baby bar” and general bar exam passage rates to their students whenever fees are paid.¹⁴¹ So long as these requirements are met, online law grads may be admitted to the State Bar of California.

ii. Vermont

Vermont reserves the right to impose an additional requirement of two years law office study in addition to an online law degree before eligibility.¹⁴² However, individuals admitted and practicing in another jurisdiction may also be eligible without this additional requirement.¹⁴³

iii. District of Columbia

The District of Columbia provides that graduates of Internet-based law schools are eligible for admission only if they have completed a minimum of twenty-six semester hours from an ABA-approved school.¹⁴⁴ Despite the exception, it is difficult to imagine that individuals seek admission to the D.C. bar under this provision with any noteworthy regularity.

iv. New Mexico, Oregon, and Minnesota

New Mexico allows individuals who have graduated from any law school, online included, to seek admission to the state bar if they have practiced law for four to six years in a state where they are currently licensed and in good standing.¹⁴⁵ Similarly, Internet law grads are eligible in Oregon if they received an education equivalent to that of an ABA-approved law school, are currently admitted in another jurisdiction with similar admissions requirements, and have been practicing for three to five years.¹⁴⁶ Evaluation of the adequacy of the education received “is made without regard to whether the education was received via traditional fixed-facility courses or online courses.”¹⁴⁷ Finally, Minnesota allows graduates from non-ABA-approved

139. *Id.*

140. The logic behind the “baby bar” requirement is, in part, that it provides a mechanism for eliminating students unlikely to pass the full bar exam at an earlier stage in the process, thereby protecting the students from making an investment to which they are unlikely to see a return. *See Salzer, supra* note 3, at 109 (discussing the rationale behind the “baby bar”).

141. *See, e.g.,* CONCORD LAW SCHOOL – KAPLAN UNIV., JD STUDENT DISCLOSURE STATEMENT 1–3 (2011), available at http://info.concordlawschool.edu/uploadedFiles/CLS_Concord_Law_School/Concord_Law_School_Documents/CLS%20JD%20DS%2010.11.pdf (disclosing that Concord’s “baby bar” passage rate is approximately 25% while its general bar exam passage rate is significantly higher at approximately 50%).

142. NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 10, at 12.

143. *Id.*

144. *Id.* at 10.

145. *Id.* at 11.

146. *Id.* at 12.

147. NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS

law schools to seek admission to the state bar if: “(a) [they have obtained] a J.D. from any U.S. law school, (b) [possess] a bachelor’s degree accredited by an agency recognized by the U.S. Department of Education, and (c) [can provide] evidence that [they have] lawfully practiced law in a U.S. jurisdiction for [sixty] of the preceding [eighty-four] months.”¹⁴⁸ Given that California is the only state that effectively allows online law grads to seek admission to the bar immediately upon graduation, New Mexico, Oregon, and Minnesota seemingly only admit these individuals once they have been members of the State Bar of California for a significant period of time.

It is clear from the ABA’s unwillingness to embrace Internet-based law schools that the legal establishment is not only skeptical of the pedagogical approaches of schools like Concord, but that it also believes that if such programs are openly accepted they will undermine the values of the profession. Furthermore, although individual states have been more willing to consider admission for online law grads, their actions to do so have been cautious at best.¹⁴⁹ As a result, the State Bar of California effectively functions as a gateway through which all Internet law graduates must pass regardless of where they may hope to practice.

B. The Persisting Legal Access Gap and the Trend of Encouraging Democratic Engagement by Utilizing Internet Technology

Even in the face of the legal establishment’s use of admissions requirements to protect legal education norms, significant inequities persist with regard to both access to legal services and the legal profession for low and middle SES individuals. However, similar concerns in the democratic realm have led to projects that have embraced the Internet’s power to promote democratic engagement, as exemplified by the shift toward e-Rulemaking. Such initiatives take advantage of the opportunities created by Internet-technology, and in particular, rapidly increasing access and decreased communication costs. Conversely, there is little advocacy in favor of Internet law schools as being in line with this broader trend of using the Internet to promote access to our democratic and legal institutions.

TO THE BAR, *supra* note 10, at 12.

148. *Id.* at 11.

149. It bears mentioning that bar admissions requirements do indeed shift from year to year. For example, from 2011 to 2012, five states altered their bar admissions policies. In particular: Maryland, Rhode Island, and Utah abandoned a strict ABA-only requirement but remained short of accepting online law grads; Pennsylvania withdrew its previous acceptance of online law grads but did not shift to an ABA-only policy; and Minnesota moved from ABA-only to explicit acceptance of online legal education. Compare NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2011, at 8–9 (Erica Moeser & Claire Huisman eds., 2011), available at http://www.americanbar.org/content/dam/aba/migrated/legaled/publications/20110201_Comp_Guide.authcheckdam.pdf (detailing bar eligibility requirements for the various states in 2011), with NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 10, at 8–9 (detailing bar eligibility requirements for the various states in 2012).

1. *The Legal Access Gap*

Despite recognition of rising inequality in this country, a very pronounced disparity of access to legal services and the profession remains. Unsurprisingly, this burden falls disproportionately on the poor and those living outside major urban centers. Although there has been progress in identifying these problems, improvement is slow at best.

a. Access to Legal Services

In 1994, the ABA published a survey measuring access to legal services with specific focus on the needs of low and middle-income Americans.¹⁵⁰ While recent studies indicate that there is an overall lawyer surplus in all but three states,¹⁵¹ the ABA survey found that anywhere between two-thirds and nearly three-quarters of legal situations faced by low and middle SES households did not make it to the justice system.¹⁵² In particular, the report concluded that the two principle reasons for the lack of representation of low SES clients were “[a] sense that legal assistance will not help and fear of the cost,” despite the fact that such individuals were more likely to be satisfied with the resolution of a legal problem if it was brought to the justice system.¹⁵³

Although this is the most recent comprehensive legal-needs survey conducted by the ABA, there is an obvious problem in relying on nearly twenty-year-old statistics. However, several state-level organizations have led their own investigations¹⁵⁴ in addition to comparable projects by the Legal Services Corporation, which piloted legal needs assessments in 2005 and 2009.¹⁵⁵ The overall trend indicated by these studies is the consistent underserving of low SES individuals, as initially discussed in the ABA’s 1994 report. Specifically, the Legal Services Corporation found that the recent wave of state-level studies was particularly helpful in “documenting that only a small

150. The ABA interviewed more than 3,000 low and moderate-income individuals and based its conclusions on this data. AM. BAR ASS’N, LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS 7 (1994), available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/legalneedstudy.authcheckdam.pdf>.

151. The deficit states include: Nebraska, Wisconsin, and the District of Columbia. Catherine Rampell, *The Lawyer Surplus, State by State*, N.Y. TIMES ECONOMIX BLOG (June 27, 2011, 11:00 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>.

152. The statistics differ somewhat between income levels with 71% for low-income and 61% for moderate-income households. AM. BAR ASS’N, *supra* note 150, at 27–28.

153. *Id.* at 28.

154. See generally, e.g., BARTON ET AL., REPORT FROM THE STATEWIDE COMPREHENSIVE LEGAL NEEDS SURVEY FOR 2003 (2004), available at <http://www.tals.org/files/TN%20TALS%20LNS%20final%20full.pdf> (Tennessee legal needs survey); TASK FORCE ON CIVIL EQUAL JUSTICE FUNDING & WASH. STATE SUPREME COURT, THE WASHINGTON STATE CIVIL LEGAL NEEDS STUDY (2003), available at <http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf> (Washington legal needs survey); ACCESS TO JUSTICE COMM. OF THE STATE BAR OF WIS., BRIDGING THE JUSTICE GAP: WISCONSIN’S UNMET LEGAL NEEDS (2007), available at http://www.wisbar.org/am/template.cfm?section=bridging_the_justice_gap (Wisconsin legal needs survey).

155. See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 1 (2009), available at http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf (discussing the 2005 Justice Gap Report in the introduction to the 2009 update report).

fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer.”¹⁵⁶ Other studies have indicated that the cost barriers discussed above are exacerbated by lax pro bono advocacy and dwindling legal aid budgets.¹⁵⁷

In addition to the high-income bias of legal representation, several states are struggling with the rural-urban divide and encouraging young attorneys to consider small-town life.¹⁵⁸ The lack of attorneys in these communities presents unique challenges including conflicts of interest preventing many pro bono services, geographic distance, and scarce resources.¹⁵⁹ For example, the State Bar of South Dakota recently launched “Project Rural Practice” to evaluate the needs of the state’s rural communities and promote the benefits of a “main street practice.”¹⁶⁰ This problem extends beyond the Midwest and states with major urban centers, such as California, are facing similar problems.¹⁶¹

In part to combat such shortcomings, several traditional law schools harness the Internet “to facilitate dissemination of primary legal information.”¹⁶² For example, Cornell University Law School’s Legal Information Institute, founded in 1992,¹⁶³ publishes various legal resources online for free, creates materials that assist the public in understanding law, and explores new technology that increases access to law.¹⁶⁴ IIT Chicago-Kent College of Law’s Center for Access to Justice & Technology has a similar mission of assisting the public and pro se litigants through teaching and the creation of software tools.¹⁶⁵ Additionally, Villanova University School of Law offers the Federal Court Locator service, which provides access to information related to the federal judiciary and court opinions.¹⁶⁶ These are

156. *Id.* at 1.

157. Mark Lloyd, *The Digital Divide and Equal Access to Justice*, 24 HASTINGS COMM. & ENT. L.J. 505, 510–11 (2002).

158. See Kristi Eaton, *Rural Areas Struggle with Lack of Lawyers*, MINN. PUB. RADIO (Dec. 12, 2011), <http://minnesota.publicradio.org/display/web/2011/12/12/rural-lawyers/> (mentioning rural shortages in South Dakota, Minnesota, Iowa, and Nebraska); see also Sarah McCammon, *For Jobs, Some Young Lawyers Are Keepin’ it Rural*, HOUSTON PUB. RADIO (July 16, 2012), <http://appl.kuhf.org/articles/npr1342477299-For-Jobs,-Some-Young-Lawyers-Are-Keepin-It-Rural.html> (discussing law schools in Iowa and Nebraska that encourage their graduates to consider rural employment).

159. ABA STANDING COMM. ON PRO BONO & PUB. SERV. & CTR. FOR PRO BONO, RURAL PRO BONO DELIVERY: A GUIDE TO PRO BONO LEGAL SERVICES IN RURAL AREAS 7 (2003), available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/probono/aba_rural_book_authcheckdam.pdf.

160. Patrick Goetzinger, *President’s Page – Patrick Goetzinger*, ST. B. S.D. NEWSL. (State Bar of S.D., Pierre, S.D.), Sept. 2011, at 2, available at <http://www.sdbar.org/newsletters/sept2011web.pdf>.

161. See e.g., Nancy Villareal, *Improving Legal Aid to Rural Communities in California*, 20 LA RAZA L.J. 191, 201–02 (2010) (discussing possible solutions to the rural-urban justice gap in California).

162. Perritt, *supra* note 27, at 261.

163. *LII Staff*, LEGAL INFO. INST. – CORNELL U. L. SCH., <http://www.law.cornell.edu/lii/staff> (last visited Sept. 25, 2012).

164. *About LII*, LEGAL INFO. INST. – CORNELL U. L. SCH., <http://www.law.cornell.edu/lii/about-lii> (last visited Sept. 25, 2012).

165. *Center for Access to Justice & Technology*, IIT CHICAGO-KENT C. L., <http://www.kentlaw.edu/cajt/> (last visited Oct. 2, 2012).

166. *Federal Court Locator*, VILL. U. L. SCH., <http://www.law.villanova.edu/Library/Research%20Guides/Federal%20Court%20Locator.aspx> (last visited Sept. 25, 2012).

only a few examples of such law school initiatives.¹⁶⁷

b. Access to the Legal Profession

Although access to legal services is a significant problem, it is merely one aspect of the access gap. Given the strength of the ABA-accreditation requirement in state bar admissions policies, traditional law schools serve as gateways to a profession that often prides itself on serving as the guardian of the democratic system.¹⁶⁸ However, entry is carefully protected¹⁶⁹ and notwithstanding attempts to the contrary, the legal profession remains stratified.

Although many law schools had undoubtedly sought to increase diversity before 2003, the U.S. Supreme Court ruling in *Grutter v. Bollinger*¹⁷⁰ provided a clear roadmap for formally implementing diversity-focused admissions policies.¹⁷¹ This goal was embraced by the ABA, which formally codified *Grutter*'s ruling into its accreditation standards in August of 2006.¹⁷² The revised Standard 212 requires that approved law schools take "concrete action" to demonstrate a commitment to diversity and equal opportunity in admissions, education, and staffing.¹⁷³

These efforts have been met with some success, and in the nine years since the *Grutter* decision, minority law school enrollment has increased from 28,318 to over 35,000 in 2010.¹⁷⁴ However, some believe that such diversity initiatives have focused almost exclusively on race to the detriment of other valuable considerations.¹⁷⁵ As evidence to support this argument, Standard 212 refers specifically to underrepresented groups based on race, ethnicity, or gender but excludes mention of socioeconomic status or age.¹⁷⁶ Furthermore, statistics indicate that not all aspects of diversity have seen growth. Female

167. See Perritt, *supra* note 27, at 261 ("Now, dozens of law schools maintain Web sites that facilitate access to specialized bodies of legal information available through the Web.").

168. See Kenneth M. Rosen, *Lessons on Lawyers, Democracy, and Professional Responsibility*, 19 GEO. J. LEGAL ETHICS 155, 169 (2006) [hereinafter Rosen, *Lessons on Lawyers*] ("Lawyers have a greater capability than many others in our democratic system of laws to be America's watchmen.").

169. See Wendy R. Leibowitz, *Law Professors Told to Expect Competition from Virtual Learning*, CHRON. HIGHER EDUC., Jan. 21, 2000, <http://chronicle.com/article/Law-Professors-Told-to-Expect/15071> (quoting Ethan Katsch, then professor of legal studies at the University of Massachusetts at Amherst: "The profession is well-protected [from virtual law schools].").

170. See *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (upholding a race-conscious admissions policy at The University of Michigan Law School under the Equal Protection Clause).

171. See *id.* at 334–35 (finding that taking any number of diversity factors into account during an admissions evaluation is not an impermissible racial quota).

172. *Equal Opportunity and Diversity in Legal Education*, ABA NOW (Aug. 10, 2007), <http://www.abanow.org/2007/08/equal-opportunity-and-diversity-in-legal-education/>.

173. AM. BAR ASS'N, *supra* note 9, at 14. Interpretation 212-2 provides that the Standard is intended to be consistent with *Grutter* in that "a law school may use race and ethnicity in its admissions process to promote equal opportunity and diversity." *Id.* (emphasis added). However, Interpretation 212-3 makes clear that the Standard does not require any particular form of "concrete action" but that compliance is viewed from the totality of the circumstances. *Id.*

174. *Total Minority Enrollment 1989-2011*, LAW SCH. ADMISSION COUNCIL, <http://www.l sac.org/jd/pdfs/TotalMinorityEnrollment.pdf> (last visited Sept. 25, 2012).

175. See, e.g., Richard H. Sander, *Class in American Legal Education*, 88 DENV. U. L. REV. 631, 645 (2011) ("I believe that nearly all of the actual diversity effort has focused on race.").

176. AM. BAR ASS'N, *supra* note 9, at 14 (Standard 212).

matriculation has more or less remained unchanged between 2003 and 2012—with some minor fluctuations in the intervening years¹⁷⁷—and the overwhelming majority of students at traditional ABA-approved law schools are under the age of thirty.¹⁷⁸

Additionally, a recent study by UCLA School of Law professor Richard H. Sander indicates that although racial diversity has increased significantly in the past several decades, those non-white students admitted to traditional law schools come from “relatively elite backgrounds.”¹⁷⁹ While statistics indicate that non-white households tend to have lower incomes¹⁸⁰—and therefore support the assumption that race-conscious admissions policies would increase representation of low SES students in law schools—Sander’s research indicates that the educational advantages that accompany high SES backgrounds effectively counteract any race-based advantage provided to low SES minorities when applying to traditional law schools.¹⁸¹

Sander’s research supports the assumption that as legal education shifted from a predominately apprenticeship model to the traditional law school paradigm, the corresponding change in state bar eligibility requirements meant that low SES individuals were easily denied access to the profession because the new model required a substantial financial commitment.¹⁸² Therefore, the SES make-up of traditional law schools has remained largely the same since the early-1960s,¹⁸³ with about 5% of students at the most elite law schools coming from the bottom half of the national income distribution.¹⁸⁴ Accordingly, since the 1960s “racial inequality has steadily diminished,

177. *LSAC Volume Summary Archive: Matriculants by Ethnic and Gender Group (2010-2011)*, L. SCH. ADMISSION COUNCIL, <http://lsac.org/lsacresources/data/vs-ethnic-gender-matrices.asp> (last visited Sept. 25, 2012); *LSAC Volume Summary Archive: Matriculants by Ethnic and Gender Group (2000-2009)*, LAW SCH. ADMISSION COUNCIL, <http://lsac.org/lsacresources/data/vs-ethnic-gender-matrices-archive.asp> (last visited Sept. 25, 2012). However, although a greater percentage of men are currently matriculating at ABA-approved law schools, there has certainly been great improvement in gender diversity over the last sixty years. See *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_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf (last visited Oct. 15, 2012) (showing an increase from a 96.5%/3.5% distribution for 1947–1948 to a 53.2%/46.8% spread in 2011–2012). Arguably, female enrollment in law schools may have reached, or is at least nearing, its practical peak.

178. For example, 81.9% of applicants to ABA-approved law schools during the 2009 admissions cycle were under the age of thirty. DUSTMAN & HANDWERK, *supra* note 41, at 3.

179. Sander, *supra* note 175, at 633.

180. For example, the median annual income for a white household in 2009 was \$51,861 while that for black and Hispanic households was \$32,584 and \$38,039 respectively. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, at 452 tbl.691 (2012), available at <http://www.census.gov/compendia/statab/2012edition.html>. Although Asian and Pacific Islander households are outliers with a median annual household income of \$65,469, generally speaking, non-white households tend to have lower annual incomes. *Id.*

181. See Sander, *supra* note 176, at 655–56 (“Law schools do not try to pick out and admit the most ‘disadvantaged’ black and Hispanic applicants, because they see nearly all of these applicants as already handicapped by low credentials. They therefore try to admit the very strongest blacks and Hispanics in the pool, as measured by traditional criteria, and these strong applicants come from predominantly advantaged backgrounds.”).

182. Bachmann, *supra* note 63, at 515. Socioeconomic status is most often gauged by the characteristics of an individual’s parents, including their education, occupation, and income. Sander, *supra* note 175, at 634.

183. Sander, *supra* note 175, at 633.

184. *Id.* at 632.

[while] economic inequality has steadily increased.”¹⁸⁵

This research suggests that, despite diversity efforts, those seeking entry into the bar through traditional law schools have remained relatively young and well off. The logical result of this trend is the protection, promotion, and insulation of ideologies favorable to the largest demographic groups comprising the profession.¹⁸⁶ This effect has the potential of undermining faith in the legal profession and institutions if incongruent with society at-large.¹⁸⁷

Professor Sander, at the very least, appears to agree. In May 2012, he filed an amicus curiae brief with the U.S. Supreme Court in *Fisher v. University of Texas* in which he discussed and elaborated on his research.¹⁸⁸ The lawsuit challenges an affirmative action program implemented by the University of Texas in the wake of *Grutter*.¹⁸⁹ At the time of publication, *Fisher* has not yet been handed down, however, consideration of the case calls into question the stability of the *Grutter* decision, and therefore threatens race-based diversity initiatives at traditional public law schools.¹⁹⁰ Perhaps this reconsideration will bring greater attention to economic inequality and SES preferences as a race-neutral alternative.

2. *The Democratic Engagement Gap and Internet Technology*

In the democratic realm, similar inequity concerns have led to initiatives that embrace the Internet’s power to promote democratic engagement. The Internet presents a unique opportunity for cooperation and civic involvement by connecting individuals in previously unimaginable ways. This potential has seen a great deal of publicity in the recent past, particularly as a result of the Obama campaign’s engaging of the Internet and social media to promote its platform of openness and transparency.¹⁹¹ However, the Internet is not without its flaws.

For example, critics point out that data suggests that income level correlates positively with Internet access, leading to what some have termed the “digital divide.”¹⁹² However, recent statistics indicate that the financial viability of Internet use is less of a barrier than ten years ago. Internet usage in

185. *Id.* at 669. Professor Sander argues that admissions preferences on the basis of class could be utilized to combat both income *and* racial inequality, as exemplified by the admissions policies at UCLA School of Law. *Id.* at 662–63. He also argues that socioeconomic preferences are more appealing to the general public while creating smaller academic costs because socioeconomic status is an “invisible” characteristic. *Id.* at 664–66.

186. Bachmann, *supra* note 63, at 515.

187. See Rosen, *Lessons on Lawyers*, *supra* note 168, at 210 (noting that consideration of the interests of a broader range of individuals is a significant element of democratic improvement over time).

188. See Brief for Richard Sander and Stuart Taylor, Jr. as Amicus Curiae Supporting Neither Party, *Fisher v. Univ. of Texas*, 631 F.3d 213 (5th Cir. 2011), *cert. granted*, 132 S. Ct. 1536 (2012).

189. *Fisher v. Univ. of Texas*, 631 F.3d 213, 216 (5th Cir. 2011), *cert. granted*, 132 S.Ct. 1536 (2012).

190. Adam Liptak, *Justices Take Up Race as a Factor in College Entry*, N.Y. TIMES, Feb. 21, 2012, <http://www.nytimes.com/2012/02/22/us/justices-to-hear-case-on-affirmative-action-in-higher-education.html?pagewanted=all>.

191. Katzen, *supra* note 13, at 2285–86.

192. Lloyd, *supra* note 157, at 523, 525; see also Robert E. Litan, *Law and Policy in the Age of the Internet*, 50 DUKE L.J. 1045, 1049–50 (2001) (stating that unequal access has the potential to undermine the political benefits of the Internet).

households with an annual income of less than \$30,000, the lowest income level measured by the U.S. Census Bureau, has nearly doubled from 35% in 2000 to 63% in 2011.¹⁹³ The information for households with an annual income higher than \$30,000 is even more striking, with at least 85% adult Internet users in 2011.¹⁹⁴

Critics also focus on the power of corporate media to dominate the forum.¹⁹⁵ This argument emphasizes that commercialized mass media is unlikely to express unpopular or unorthodox ideas such that the Internet's potential as a "marketplace of ideas" is undermined.¹⁹⁶ This is a formidable concern; however, Internet users are not unaware of this problem. The rise of the "blogosphere" has allowed the Internet to serve as a check on the government and mainstream media by facilitating communication between individuals whose views are underrepresented.¹⁹⁷ Similarly, charities and political campaigns have begun to tap into this resource as a source of organizational support.¹⁹⁸

Although the Internet has the potential to give significant power to the vocal minority, its potential for countering political and social apathy is undeniable.¹⁹⁹ Such a benefit is exemplified by the move toward e-Rulemaking as an improvement of the regulatory process.

During the recent Bush Administration, the federal government began to move the rulemaking process online in an attempt to streamline and enhance accessibility.²⁰⁰ The intent of the transition was not to create a new online democracy but rather to make rulemaking more transparent.²⁰¹ The ABA's Section of Administrative Law and Regulatory Practice played a particularly significant role in making recommendations for the future and issued a 2008 report to that effect.²⁰² The bulk of the improvements recommended by the Section were intended to strengthen civic participation and democratic governance through the regulatory process.²⁰³

193. U.S. CENSUS BUREAU, *supra* note 180, at 725 tbl.1158.

194. The exact statistics for 2011 are as follows: 85% for households with an annual income of \$30,000–\$49,999, 89% for households with an annual income of \$50,000–\$74,999, and 96% for households with an annual income of \$75,000 or greater. *Id.*

195. See, e.g., Anthony E. Varona, *Toward a Broadband Public Interest Standard*, 61 ADMIN. L. REV. 1, 28–29 (2009) (summarizing this argument); see also Lloyd, *supra* note 157, at 506 (stating that corporations increasingly dictate how technology is used).

196. Varona, *supra* note 195, at 28–29.

197. *Id.*; see also Litan, *supra* note 192, at 1048 (advocating that the creation of "cyber-communities" be viewed as a social benefit of the Internet); Lloyd, *supra* note 158, at 534 (arguing that technology should be used to increase political communication and put pressure on political forces to increase access to the Internet and technology).

198. Litan, *supra* note 192, at 1048; Varona, *supra* note 195, at 41–42; see also Lloyd, *supra* note 157, at 534 (stating that the Internet is useful as an organizing tool).

199. Varona, *supra* note 195, at 43–46.

200. Katzen, *supra* note 13, at 2287.

201. Barbara H. Brandon & Robert D. Carlitz, *Online Rulemaking and Other Tools for Strengthening our Civil Infrastructure*, 54 ADMIN. L. REV. 1421, 1423 (2002).

202. Katzen, *supra* note 13, at 2287. See generally COMM. ON THE STATUS & FUTURE OF FED. E-RULEMAKING, *ACHIEVING THE POTENTIAL: THE FUTURE OF FEDERAL E-RULEMAKING* (2008), available at <http://ceri.law.cornell.edu/documents/report-web-version.pdf> (the ABA report discussed by Katzen).

203. Katzen, *supra* note 13, at 2289. Katzen also notes that the Obama Administration has not significantly implemented the Section's suggestions, but that the issue does have strong bipartisan support so

Despite some criticisms that the transition did not go far enough,²⁰⁴ the shift toward e-Rulemaking is nonetheless evidence of a movement to look to Internet technology as a means of increasing participation in shaping the laws that govern the nation. Furthermore, many other government functions and services have already been transferred onto the Internet, such as licenses renewals, car registrations, and paying taxes.²⁰⁵ It seems unlikely that this only a fleeting trend.

The Internet provides a simple mechanism for allowing direct communication with citizens while reducing communication-related costs.²⁰⁶ Although widely used to promote engagement in democratic institutions, there is certainly an argument to be made that greater willingness to consider Internet-based law schools would be in line with this broader trend. Doing so would recognize the potential for Internet law schools to increase access to legal services and the economic diversity of the legal profession by harnessing its openness, decreased communication costs, and ease of use.

C. *Common Criticisms of Internet Legal Education and Responses Related to Closing the Legal Access Gap*

Despite common acceptance of the democratizing power of the Internet, when inquiring as to any given legal practitioner's, academic's, or student's thoughts on the concept of online legal education, more often than not the individual will provide a response ranging somewhere between suspicion and outright disgust. Given the fact that only a small proportion of legal professionals have actually interacted with such institutions,²⁰⁷ these reactions are typically founded upon traditional and personal understandings as to what legal education actually is, rather than what it *should be*. Although most often based in a desire to ensure competence in the profession, the ways in which they are normally expressed fail to appreciate the nature of online legal education or the traditional law school status quo.

1. *Criticism #1: There Are "Too Many Law Schools" Already*

Perhaps the most common criticism is that there are currently "too many law schools" such that online law schools are unnecessary and will contribute to a glut of lawyers with little in terms of job prospects.²⁰⁸ Certainly it is not

future implementation is possible. *Id.* at 2290.

204. See, e.g., Cary Coglianese, *The Internet and Citizen Participation in Rulemaking*, 1 I/S: J.L. & POL'Y FOR INFO. SOC'Y 33, 34-35 (2005) (arguing that e-Rulemaking should only be embraced if it *truly* changes the process to allow greater public participation); Brandon & Carlitz, *supra* note 201, at 1423 (recommending that the government consider creating an electronic docket room and online policy dialogues).

205. Litan, *supra* note 192, at 1047.

206. *Id.*

207. Given the small number of Internet law schools as compared to traditional, ABA-approved law schools, the vast majority of lawyers and law students have had no interaction with schools such as Concord. Compare *ABA-Approved Law Schools*, *supra* note 1 (noting that there are 202 ABA-approved law schools none of which are Internet-based due to Standard 306), with *Law Schools*, *supra* note 2 (noting registration of only five "distance-learning" law schools which utilize primarily Internet-based teaching).

208. See, e.g., Amanda Lowrey, *A Case of Supply v. Demand*, SLATE (Oct. 27, 2010, 4:14 PM),

difficult to imagine that the economic and professional viability of online legal education is perhaps the most formidable critique facing Concord proponents. Admittedly, this Note does not seek to entirely dispose of this criticism because it is beyond the scope of the issue of economic diversity of the bar and access to legal services for low SES individuals. However, several responses related to both aspects of the legal access problem bear mentioning.

a. Response #1: The Problem to Be Solved Is One of Equality of Opportunity, Not the Market

At least insofar as it is aimed at attempts to use Internet law schools to close the legal access gap, this criticism fails to appreciate that the problem sought to be solved is one of equality of opportunity and not the market. Therefore, this Note operates from the premise that the true measure of “too many lawyers” is not the disparity between individuals holding J.D.s and those in J.D.-required employment. Rather, it is determined by some combination of the economic diversity of the legal profession and the disparity between the number of lawyers and the fulfillment of the legal needs of society at-large, regardless of income.

In terms of the economic diversity of the profession, it is clear that traditional legal education is not practically accessible to large swaths of the population, and in particular, individuals coming from low SES backgrounds.²⁰⁹ Furthermore, Concord’s rapid growth indicates that brick-and-mortar law schools cannot meet current demand.²¹⁰ On the other hand, the findings of the legal needs studies discussed above clearly indicate that the legal needs of low and middle SES households frequently go unmet.²¹¹

Accordingly, the “too many law schools” critique often fails to distinguish between a general oversupply of lawyers in the marketplace and a glut of lawyers only looking to do a predominant type of work, such as that for corporate or business clients.²¹² Although undoubtedly oversimplified, common sense indicates that low and middle SES clients are frozen-out from meeting their legal needs for two reasons: the work provided by such clients (1) is not economically viable for many lawyers and (2) does not carry the

http://www.slate.com/articles/business/moneybox/2010/10/a_case_of_supply_v_demand.html; Molly McDonough, *N.Y. Dean Complains of ‘Glut’ of Law Schools*, A.B.A. J. (Apr. 23, 2008, 5:35 AM), http://www.abajournal.com/news/article/ny_dean_complains_of_glut_of_law_schools/ (examples of such critiques).

209. See *supra* Part III.B.1.b (discussing the economic stratification of the legal profession).

210. See *Law School History*, CONCORD L. SCH., http://info.concordlawschool.edu/Pages/School_History.aspx (last visited Sept. 25, 2012) (providing a year-by-year review of Concord’s growth).

211. See *supra* Part III.B.1.a (discussing legal needs assessments and the legal access gap).

212. See Kendall Coffey, *Underserved Middle Class Could Sustain Underemployed Law Graduates*, NAT’L L.J. (Aug. 15, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202567602357&Underserved_middle_class_could_sustain_underemployed_law_graduates&slreturn=20120816140545 (noting that “while thousands of new law graduates fret about the chronic joblessness that awaits them” there is an abundance of work available for non-corporate clients); Stanley Fish, *The Bad News Law Schools*, N.Y. TIMES (Feb. 20, 2012, 9:00 PM) <http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/> (discussing Professor Brian Tamanaha’s conclusion that there are large populations of the underserved despite an “oversupply” of lawyers).

prestige available from other—namely, corporate—work.²¹³ While the allocation of prestige is more difficult to tackle because it requires adjusting the attitudes of individuals, decreasing the cost of legal education can significantly increase the financial viability of work for middle and low SES clients.²¹⁴ Internet-based law schools can serve as low-cost options, which empower their graduates by providing greater flexibility to pursue less lucrative legal work.

b. Response #2: There Are Too Many *Identical* Law Schools Resulting in Little Differentiation in Legal Education

Some legal scholars point to the structure of the ABA system itself as, at the very least, a partial cause for the economic stratification of the legal profession.²¹⁵ For example, Professor Brian Tamanaha of Washington University School of Law argues that the “too many law schools” critique fails to appreciate that the true problem is too many *identical* law schools. His belief is that the true crisis in legal education lies, in part, with the ABA’s accreditation standards.²¹⁶ Specifically, he opines that although originally intended to ensure a quality legal education, the ABA standards have resulted in a single legal education model: that of an expensive research institution.²¹⁷ The consequence of “imposing a ‘one size fits all’ template [is that the ABA] standards ensure that there is little differentiation among law schools—no lower-cost options and no range of choices comparable to what exists at the undergraduate level among community colleges, teaching colleges[,] and research universities.”²¹⁸ As a result, many low and middle SES students are effectively priced-out of legal education.

Furthermore, not all law schools need be intended to prepare students for the same career opportunities.²¹⁹ Due to the common connection between law school ranking and legal recruiting,²²⁰ the choice of a law school is, and should be, an intensely consumer-specific choice. For example, those looking to work

213. See Brian Z. Tamanaha, *How to Make Law School Affordable*, N.Y. TIMES, May 31, 2012, <http://www.nytimes.com/2012/06/01/opinion/how-to-make-law-school-affordable.html> (arguing that law schools’ fixation on prestige and students’ debt loads push them into high-end corporate firms).

214. See *id.* (“If we don’t change the economics of legal education . . . the next generation of American lawyers will consist of the offspring of wealthy families who have freedom to pursue a variety of legal careers, while everyone else is forced to try to get a corporate law job.”).

215. See, e.g., John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education From the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1141 (1997); Shepherd, *supra* note 100, at 2182–84 (examples of such criticism); Tamanaha, *supra* note 213.

216. Tamanaha, *supra* note 213; see also Fish, *supra* note 212 (discussing Professor Brian Tamanaha’s suggestion that different types of law schools should cater to different types of markets).

217. Tamanaha, *supra* note 213; see also Elson, *supra* note 215, at 1141 (arguing that there is no free market for legal education because all law schools elevate research over instruction as a result of ABA Standards that reinforce the primacy of research, such as Standard 606 which governs library facilities).

218. Tamanaha, *supra* note 213.

219. See Shepherd, *supra* note 100, at 2182–84 (discussing innovation in legal education and suggesting that students be able to choose the best form of legal education for their career aspirations).

220. See William D. Henderson & Rachel M. Zahorsky, *The Pedigree Problem: Are Law School Ties Choking the Profession?*, A.B.A. J., Jul. 1, 2012, http://www.abajournal.com/magazine/article/the_pedigree_problem_are_law_school_ties_choking_the_profession (discussing elitism in law firm recruiting).

in a high-end M&A law firm would not be wise to attend Concord just as much as they would be poorly served by attending a non-elite traditional law school.²²¹ On the other hand, those looking to begin their own rural “main street practice” need not be as restricted in choice due to persisting needs in those communities and the resulting decrease in emphasis on law school prestige.²²² It seems obvious that the same legal education is not required for standard, day-to-day wills and estates work—or other work commonly required by low and middle SES clients—than is required for complex corporate litigation. However, it is undeniable that in order to make such decisions, prospective students’ access to accurate information regarding the various legal education options is crucial.

The presence of Internet-based law schools simply provides an additional option to aspiring lawyers. Distance learning clearly fills a market niche and, although it won’t provide the same career training or prospects as elite brick-and-mortar law schools, this fact alone does not mean that such institutions are unnecessary.²²³ Again, this Note does not delve into these concerns to the degree they deserve; however, within the context of looking to increase the bar’s economic diversity, Concord’s student body demographics indicate that its students choose an Internet education for reasons related to its teaching methodology and its resulting reduction in cost.²²⁴

2. *Criticism #2: Internet Law Schools are Largely For-Profit Ventures*

Finally, a unique criticism focuses on the for-profit nature of online law schools such as Concord. Among other things, this concern emphasizes that such schools seek only to increase shareholder profits²²⁵ and, therefore, engage in all sorts of distasteful behavior at the expense of their students, including the exaggeration of career prospects so as to generate increased enrollment fees.²²⁶

221. *Id.* (“[L]aw degrees from lower-ranked schools can create enormous uphill struggles for even the most talented and determined lawyers. A student from a nonelite law school may still get a foot in the door with high marks, but very few opportunities go to law students just because their schools more effectively develop core skills and knowledge or adopt innovative curricula or teaching methods.”).

222. *See supra* Part III.B.1.a (discussing rural legal needs).

223. *See Neil, supra* note 7, at 27 (quoting Richard Warner, director of the Center for Law and Computers at Chicago-Kent College of Law: “Distance learning ‘certainly has a place, where you want to reach students who are geographically spread out, or have time commitments or family commitments where they just can’t get down to the law school Those people, in a traditional format, would be left out. And now they don’t have to be. OK, maybe it’s not a Cadillac, but at least they’re driving something.”).

224. *See infra* Part IV.B (discussing the typical online law student).

225. *See, e.g.,* Risa L. Lieberwitz, *The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?*, 12 B.U. PUB. INT. L.J. 73, 73–77 (2002) (critiquing distance education without specific reference to online law schools, but arguing that for-profit distance education will force institutions of education to adopt goals and structures similar to those of corporations at the expense of academic freedom and educational integrity).

226. Within the last three years, the Obama Administration has sought to curtail the predatory recruiting of students in order to obtain greater amounts of readily available, government-backed student loan revenue. The Administration has argued that these practices have resulted in high rates of default on student loans due to unrealistic career prospects. *See* Jamie Goldberg, *For-Profit Colleges Win Ruling Against Obama Regulations*, L.A. TIMES, July 4, 2012, <http://articles.latimes.com/2012/jul/04/nation/la-na-forprofit-colleges-20120704> (noting that Obama Administration regulations have been met with strong opposition by for-profit education lobbying groups and were recently blocked by the courts); *Schools of Hard Knocks*, ECONOMIST,

a. Response #1: The ABA Currently Accredits Brick-and-Mortar For-Profit Law Schools

Again, without a doubt, making the correct law school choice for each individual requires access to accurate information regarding the quality of education and realistic career prospects. However, this criticism focuses too specifically on online legal education because the ABA currently accredits many for-profit traditional law schools.²²⁷ In fact, the ABA is enjoined and restrained from *prohibiting* the accreditation of for-profit law schools by a federal final judgment.²²⁸ Furthermore, traditional non-profit law schools have themselves faced immense backlash over their own self-reported career statistics.²²⁹

b. Response #2: For-Profit Online Education is Here To Stay, Therefore the Legal Establishment Must Mold It While Still Possible

Due to its rapid growth, the for-profit online education model is in flux. Internet-based learning is increasingly accepted as a viable method of educating the masses, with professors at prominent brick-and-mortar institutions such as Stanford, Princeton, University of Michigan, University of Pennsylvania, Harvard, and MIT embracing the opportunities presented by for-profit online learning.²³⁰ Although no major university has moved into the realm of for-profit online *legal* education specifically, these proponents bring a new level of credibility to the endeavor. “For-profit online” need not be synonymous with a “bad investment” if the bar acknowledges its growing presence and fights to mold it while still presented with the opportunity. By bringing schools like Concord into the fold, the legal establishment can tame and reform them, rather than leave them as remote outposts on the educational landscape.

As the legal profession is increasingly faced with the need to reevaluate its stance on online legal education, it must take care to resist the urge to dismiss such institutions out-of-hand as a mere function of its desire to resist

Sept. 9, 2010, <http://www.economist.com/node/16990955> (discussing predatory recruitment practices).

227. See, e.g., Press Release, Phoenix School of Law, Phoenix Law Receives Full Approval from ABA (June 15, 2010), available at <http://www.phoenixlaw.edu/about/default.asp?PageID=149&ID=452> (noting that Phoenix Sch. of Law received full ABA-accreditation in 2010 and was the fourth for-profit law school to do so at that time).

228. *United States v. Am. Bar Ass'n*, 934 F. Supp. 435, 436 (D.D.C. 1996), *modified on other issues*, 135 F. Supp. 2d 28 (D.D.C. 2001).

229. See, e.g., Carl Bialik, *Job Prospects for Law Grads? The Jury's Out*, WALL ST. J., Mar. 17, 2012, <http://online.wsj.com/article/SB10001424052702304692804577283691965596610.html#> (highlighting recent developments in law school career statistics reporting, including lawsuits by former students alleging misrepresentation).

230. See Dan Lyons, *Cheaper than Harvard: An Ivy Education Online—for Free*, NEWSWEEK, May 14, 2012, at 13 (discussing Coursera, a for-profit online learning platform started by two Stanford professors, as well as other similar online learning platforms started by academics at prominent traditional universities); Jeffrey R. Young, *Inside the Coursera Contract: How an Upstart Company Might Profit From Free Courses*, CHRON. HIGHER EDUC., July 19, 2012, <http://chronicle.com/article/How-an-Upstart-Company-Might/133065/> (analyzing the contract signed by universities working with Coursera and discussing how the platform might operate to turn a profit).

paradigm-shifts. Doing so would do a disservice to the profession and deny a valuable opportunity for introspection and improvement.²³¹ Rather, leaders of the bar must carefully “unpack” the relative opportunities and challenges inherent in Internet-based law schools. Whatever the eventual conclusion, the growth in enrollment at schools like Concord demonstrates that they do indeed fill a perceived gap in the market and, therefore, the bar must come to terms with the persisting legal access gap to ensure continued public faith in the profession.

The below recommendations do not seek nor pretend to be a comprehensive scheme through which to allow greater integration of online law grads into the profession. They do not aim to address any and all criticisms of Internet-based legal education, of which there are many. Instead, their focus is on increasing the economic diversity of the profession and ensuring that individuals of all income levels have access to counsel. They suggest mechanisms through which to achieve these goals while ensuring the competence of online law grads. As demonstrated above, it is clear that this is one area in which traditional, brick-and-mortar law schools are failing and in which Internet-based law schools present a unique opportunity for improvement.

IV. RECOMMENDATION

It is clear that, although there are many similarities between brick-and-mortar law schools and their online counterparts, the differences between the two are so fundamental that they predominate the comparison. However, it is also apparent that online education is here to stay, despite what critics would prefer. Although at this time, the eventual prevalence of Internet-based *legal* education is unclear, the establishment must begin to truly come to terms with what institutions such as Concord mean to, and for, the profession.

A. *Internet Law Schools Can Be Viewed as Tools to Help Solve the Legal Access Problem by Enabling Low SES Individuals to Enter the Profession*

Despite arguments that institutions of higher education should refrain from taking an active role in teaching morality,²³² law schools play a unique educational function and are central to the health of this nation’s legal and political society.²³³ As such, lawyers, and by extension law schools, have a

231. See Henderson & Zahorsky, *supra* note 220 (“[T]he legal profession is in dire need of fresh ideas and broader skills for lawyers to effectively adapt to the changes brought on by technology, economic duress and globalization.”).

232. See, e.g., Stanley Fish, *Why We Built the Ivory Tower*, N.Y. TIMES, May 21, 2004, <http://www.nytimes.com/2004/05/21/opinion/why-we-built-the-ivory-tower.html?pagewanted=all&src=pm> (“Universities could engage in moral and civic education only by deciding in advance which of the competing views of morality and citizenship is the right one . . . [b]ut that task would deform (by replacing) the true task of academic work: the search for truth and the dissemination of it through teaching.”).

233. See *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003) (“Moreover, universities, and in particular, law schools, represent the training ground for a large number of our Nation’s leaders.”).

duty to support democracy and act in the public interest.²³⁴ If the public is to relinquish its skepticism of the profession, the legal establishment must actively advocate for the interests of underrepresented and underserved groups.²³⁵ This responsibility extends beyond the carrying out of job-related activities and must necessarily include the structures that shape the profession. Therefore, as Internet usage becomes increasingly commonplace across the socioeconomic spectrum, Internet law schools can serve as a useful tool for promoting access to the law and legal profession.

Online law schools cater to a unique market comprised of individuals with significant personal commitments and varied life experiences.²³⁶ As indicated by Concord's enrollment statistics, these programs are in high demand by hopeful students that fall outside the law student norm.²³⁷ Accordingly, schools like Concord can be viewed as mechanisms through which the legal profession can seek greater inclusion of low SES, and likely older, individuals.

Internet law graduates are typically more mature, more experienced, and looking for educational opportunities that fit their non-traditional student life.²³⁸ These individuals are unable to pursue a brick-and-mortar legal education as a result of their continuing careers, family life, financial burdens, and/or the perception that they are not an "ideal candidate" for law school admission. However, their unique perspectives are rare commodities that can help improve the diversity of the bar. Additional advanced degrees, age, and previous or ongoing careers are lenses that color one's view of the law. Therefore, these individuals can greatly contribute to the goal of enhanced legal understanding. Although these are qualities sought by many traditional law schools, age-distribution statistics indicate that brick-and-mortar law schools are simply not admitting these individuals in significant numbers.²³⁹

Additionally, online law schools provide an unparalleled opportunity for admission into the legal profession for low SES students that cannot afford a traditional law school education.²⁴⁰ For example, Concord's 2011–2012 tuition of \$9,984²⁴¹ was less than one fifth of Cornell University's 2011–2012 tuition of \$53,150, the most expensive tuition rate of any private law school.²⁴²

234. Rosen, *Lessons on Lawyers*, *supra* note 168, at 163; *see also Grutter*, 539 U.S. at 332 ("All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide [legal] training.")

235. *See* Rosen, *Lessons on Lawyers*, *supra* note 168, at 210–11 (discussing benefits of having a more diverse student body to represent the "interests of a broader swath of society").

236. *See Concord Law Students*, *supra* note 42 (noting the unique characteristics of Concord's student body).

237. *See supra* Part I (noting Concord's rapid growth).

238. *See* Rosen, *Concord University*, *supra* note 36, at 312 (discussing the unconventional type of student sought by Concord).

239. For example, 81.9% of applicants to ABA-approved law schools during the 2009 admissions cycle were under the age of thirty. DUSTMAN & HANDWERK, *supra* note 41, at 3.

240. *See* Benson et al., *supra* note 15, at 273 (noting the educational barriers facing low-income individuals and their success in undergraduate distance learning courses).

241. KAPLAN UNIV., *supra* note 44, at 382.

242. *What Are the Priciest Private Law Schools?*, U.S. NEWS & WORLD REP., <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/private-cost-rankings> (last

Although Cornell is on the higher end of the spectrum, a significant disparity is not uncommon. Averages calculated using 2009 tuition rates put an in-state public, out-of state public, and private traditional legal education at \$18,472, \$30,413, and \$35,743 respectively,²⁴³ all of which have likely increased since 2009 and significantly exceed Concord's 2011–2012 tuition. These high numbers are extremely burdensome on even traditional law students,²⁴⁴ whom tend to come from more affluent families.²⁴⁵ Therefore, these tuition rates are significantly more onerous on low SES students who cannot turn to their families for financial support. Without the low-cost, flexible option exemplified by online law schools, many of these individuals are unlikely to obtain access to the legal profession. Furthermore, the low cost of Internet law schools may offset their lower bar passage rates.²⁴⁶

Moreover, low and middle SES individuals bring a unique perspective to their education and are more likely to be sensitive to the needs of the low and middle-income individuals due to their varied, and typically less elite, backgrounds.²⁴⁷ While it is certainly presumptive to suggest that all online law grads will seek to address the legal access problem in their post-graduation work, and in fact many online law grads are merely obtaining J.D.s as supplements to their existing careers,²⁴⁸ the combination of greater potential for sensitivity to the needs of low and middle-income Americans and significantly reduced student-loan debt, increases the likelihood of such work.

Simply put: “the kind of lawyering poor and disadvantaged communities require does not bring enough money to attract newly minted lawyers trailing clouds of debt.”²⁴⁹ Therefore, as Professor Brian Tamanaha suggests, a legal education industry which allows the creation of less expensive law schools with a different educational focus, will lead to differentiation in the market and greater flexibility for law students to seek less lucrative employment.²⁵⁰

As a result, online law schools can aid in closing both facets of the access gap. They provide greater opportunity for older and low SES students to seek

visited Nov. 1, 2012).

243. *Law School Tuition 1985–2009*, A.B.A., http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/lstuition.authcheckdam.pdf (last visited Mar. 25, 2012).

244. A recent slew of publicity questioning the financial viability of traditional legal education has emerged since the beginning of the recession, which has led to substantial reductions in legal hiring. See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, http://www.nytimes.com/2011/01/09/business/09law.html?_r=1&src=me&ref=homepage (providing an example of such critiques).

245. See *supra* Part III.B.1.b (discussing the high SES of most traditional law students).

246. Compare CONCORD LAW SCHOOL – KAPLAN UNIV., *supra* note 141 (disclosing that Concord's general bar exam passage rate is approximately 50%) with AM. BAR ASS'N, *supra* note 9, at 17–18 (setting forth Standard 301(a) and Interpretation 301-6 which states that Standard 301(a) generally requires a bar passage rate of 75% average within the past five years).

247. See Shepherd, *supra* note 100, at 2195 (arguing that the ABA systems draws lawyers from privileged backgrounds or those who become saddled with debt and are therefore less sympathetic to low SES clients).

248. See Salzer, *supra* note 3, at 109 (noting that Concord's lack of ABA accreditation isn't a problem for students seeking their J.D. merely as a supplement to their current career).

249. Fish, *supra* note 212.

250. Tamanaha, *supra* note 213; see also Fish, *supra* note 212 (discussing Professor Tamanaha's research and recent book, *Failing Law Schools*).

admission into the legal profession, while at the same time promoting recognition of the legal needs of the low and middle-income by admitting individuals who are more sensitive and able to address those concerns.

B. The Legal Establishment May Embrace the Potential of Internet Law Schools While Maintaining the Integrity of the Profession by Encouraging States to Provide Greater Opportunities for Admission for Online Law Grads

Regardless of the potential of Internet law schools, there is no doubt that the legal establishment has a reasonable interest in ensuring the competence of its membership and the integrity of the profession. It is clear that the ABA has taken the position that accrediting online law schools is inconsistent with this goal.²⁵¹ Furthermore, despite an ongoing review of the ABA's accreditation procedures, which was initiated in 2007, substantial changes that could indicate a shift in this thinking are unlikely.²⁵² While some critics argue that the ABA is self-serving in its hesitance to embrace structural change,²⁵³ in this case it is not incorrect. Proponents of online legal education may suggest that national leadership is required in the interest of equity; however, this argument fails to appreciate the gravity of our two-tier licensing structure.

The ABA is limited in its handling of schools like Concord because its size and influence force it to take a conservative stance on unique and risky endeavors. Given the direct tie between the ABA's accreditation standards and effectively automatic eligibility for any state bar organization, it is not in the position to promote relatively recent, potentially paradigm-altering changes in legal education. Drastic changes in ABA accreditation standards, or the perception of drastic changes, would have consequences on a national scale. They could trigger a backlash of reforms by individual state bar associations through which states could further entrench the ABA accreditation requirement. The ABA, which has recently faced disparagement for its handling of law school accreditation,²⁵⁴ would risk an outright revolt against its continued certification as an accreditation agency. Accordingly, the ABA is not the proper mechanism through which to force the legal establishment to accept Internet law schools, particularly when the majority of states refuse to recognize their viability.²⁵⁵ However, as acknowledged by the Massachusetts Supreme Court, "ABA approval requirement[s] . . . [are] not an end in [themselves], but rather a practical way to ensure generally that prospective

251. See *supra* Part III.A.1 (discussing several ABA accreditation standards that effectively prohibit accreditation of online law schools).

252. Polden, *supra* note 100, at 49.

253. See, e.g., Elson, *supra* note 215, at 1142–43 (pointing to several characteristics of the ABA structure that discourage reform, including internal politics that have eliminated reformers from within the organization and the predominance of legal educators with little incentive to alter the educational paradigm); Shepherd, *supra* note 100, at 2195 (arguing that the ABA is unlikely to reform the barriers it creates within the legal market because those within the ABA benefit most from the status quo).

254. See Hansen, *supra* note 97 (discussing relatively recent skepticism as to the ABA's continued certification as the law school accreditation agency).

255. See *supra* Part III.A.2 (noting that the majority of states do not allow online law grads to seek admission to the bar organizations).

attorneys have received an adequate level of appropriate legal education.”²⁵⁶ That the vast majority of states have come to rely on the ABA accreditation requirement as a shortcut to determining fitness to practice should not foreclose the possibility that more individualized competency requirements or analyses could reveal non-ABA law grads as capable legal practitioners.

Therefore, the more likely—and proper—avenue for change lies in the hands of individual state bar associations that choose to follow in the footsteps of California and others by providing greater flexibility and acceptance for online law grads. These smaller bodies, with their limited jurisdictional reach, provide unique laboratories for experimentation with new bar admissions standards without risking a national reaction. Furthermore, state bodies can adapt to the overall needs of the jurisdiction based on local economic and social realities.

For example, states could shape bar membership by revamping exam structure through inclusion of new practical skills elements to ensure that online—and traditional—law grads are capable of day-to-day practice. States should not underestimate the use of the bar exam to ensure competency, but must adjust their exams to mirror the changing legal market. As an added benefit, the bar exam allows the state to directly test the skills of would-be lawyers and not rely on a third party to effectively deem who is competent to practice in the jurisdiction.²⁵⁷

In addition, states with either attorney deficits, problems satisfying rural needs, or inadequate representation of the low and middle SES, may adapt their admissions policies so as to encourage Internet law graduates to fill these gaps.²⁵⁸ A state could ensure the credibility of its bar membership by subjecting online law grads to its typical character and fitness standards in addition to potentially heightened admission requirements. Possible formulations of supplemental admissions policies could mirror an approval structure similar to California’s, a graduated licensing system requiring monitoring by a more senior attorney, or Vermont’s requirement of additional law firm training.²⁵⁹ States looking to funnel attorneys into legal aid or rural careers could construct targeted training and admissions paths for online law graduates willing to practice in these areas. Such programs could create competitive positions in legal aid offices or willing rural law firms that would sponsor an individual throughout a specified training period with some monitoring from the state bar. The effects of such programs would be twofold. First, they would provide practical experience that would ensure competence and quality of future service. Second, they would provide inroads into legal service providers and potential long-term career opportunities with those organizations.

256. *Mitchell v. Bd. of Bar Exam’rs*, 897 N.E.2d 7, 11 (Mass. 2008).

257. *Shepherd*, *supra* note 100, at 2253.

258. *See supra* Part III.B.1.a (evaluating the legal access gap with regard to the poor and those living in rural areas).

259. *See supra* Part III.A.2 (discussing various state bar admissions policies, including California and Vermont).

Clearly, online law schools can have a positive impact on legal services and the profession. Therefore, while a certain amount of skepticism of the Concord model is warranted, it is possible for the legal establishment to encourage educational innovation, focus on closing the access gap, and protect the integrity of the profession by allowing greater flexibility for online law graduates.

V. CONCLUSION

Although it is apparent that online education is here to stay, the future of Internet-based *legal* education is unclear. Furthermore, despite the many similarities between traditional and online law schools, skeptics argue that schools such as Concord embody a rejection of the very foundations of legal education, and in many ways, the common experiences that bind the bar's membership. In particular, the lack of face-to-face Socratic instruction worries those who believe that interaction is at the heart of quality legal training.

This suspicion has manifested in various rules and regulations that govern the profession. The ABA and the vast majority of state bar organizations are apprehensive of Concord's reinvention of legal education and therefore prohibit its graduates from being admitted to their bar organizations. As a result, online law grads face significant barriers in obtaining access to the profession not present for their brick-and-mortar counterparts.

The legal establishment must begin to acknowledge that such institutions present unique opportunities to engender a more inclusive profession and to counteract many of the persisting access to justice problems. Rapidly increasing access to the Internet across the socioeconomic spectrum can prove invaluable in promoting access to the law and bar. Despite otherwise well-intentioned criticisms, broader acceptance of Internet law schools would allow greater access to legal counsel and the legal profession for middle and low SES individuals.

However, the ABA is both incapable of and improper to promote such a largely untested take on legal education. Its size and influence over the bar admissions policies of nearly all state bar organizations makes it poorly suited to wholeheartedly embrace such a paradigm-altering shift in legal education.

On the other hand, individual state bar associations can acknowledge the potential of Internet-based law schools while still regulating bar admission to ensure competence. Their limited jurisdictions and flexibility in adapting to local realities enables them to sculpt bar admissions requirements for online law grads that can both increase access to counsel and the profession while protecting bar integrity.

Traditional law grads drastically outnumber their Internet counterparts; however, online education is becoming commonplace and increasingly embraced by prominent academics. Once there has been significant movement among the state bar organizations to recognize Internet-based law schools as viable modes of legal education, the ABA must give way to the forward march of inclusivity of the profession and access to our nation's legal institutions.