March 27, 2018

Dean Maureen A. O'Rourke, Council Chair  
ABA Section of Legal Education and Admissions to the Bar  
Attention: JR Clark  
Via e-mail: jr.clark@americanbar.org

RE: Vermont Law School’s Comment in Support of Proposed Revisions to Standard 306 Distance Education of the ABA Standards and Rules of Procedure for Approval of Law Schools

Dear Dean O’Rourke:

Vermont Law School ("VLS") submits this Comment in support of the proposed revisions to Standard 306 to increase the number of distance education credits from 15 to up to one-third of the credits required for the J.D. degree. These proposed changes will benefit our current and prospective students who deserve flexible learning pathways.¹

Our Students are “Digital Natives” Who Live and Learn with Technology  
The law students in the Class of 2020 were born circa 1995. They are digital natives who live, interact, communicate, and learn with and through technology. As of Fall 2016, almost thirty-two percent (31.6%) of students enrolled in higher education institutions have taken at least one distance learning course.² Of the approximately 6.4 million students engaged in distance learning (including one million at the graduate level), nearly half are enrolled fully and exclusively online.³ Students enrolled fully online normally are adult learners already employed and interested in advancing their current careers, transitioning to new careers, or engaging in lifelong learning.⁴ Commonly, if these students were required to relocate or even commute to a campus to complete a degree, they would not have enrolled or persisted with their education.⁵ Increasing allowable distance credits to JD candidates will attract more non-traditional students who otherwise could not commit to three years

¹ See generally, Distance Learning in Legal Education: Design, Delivery and Recommended Practices; Working Group on Distance Learning in Legal Education 2015. Available at https://www.cali.org/books/distance-learning-legal-education-design-delivery-and-recommended-practices
² Grade Increase: Tracking Distance Education in the United States, Babson Survey Research Group is released under a Creative Commons Attribution - ShareAlike 4.0 International license. http://www.onlinelearningsurvey.com/highered.html
³ Id. at 25.
⁵ Id. at 22.
of study away from family, community, or other professional obligations.

From 2012-2016, U.S. institutions of higher education experienced a 6.4% decline in the number of on-campus students (equivalent to 250 fewer students for each institution), but a 17.2% growth in the number of “distance” students. This data demonstrates that students prefer increasingly to learn through a significant virtual component due to personal or professional obligations or economic limitations. Realistically, the students with such obligations tend to be non-traditional students (demographically and ethnographically). Distance education provides flexibility, accessibility, and affordability predominantly to traditionally underserved students who are able to complete a portion of their studies in their home communities. Commonly, these communities have similarly underserved people with limited access to lawyers or legal services. It is reasonable to foresee that the spread of online learning in legal education will serve to increase access to a legal education as well as justice to diverse populations. Our current and prospective students, as well as the communities in which they live and will likely practice, deserve the flexibility distance education provides.

Distance Learning Encourages Legal Ed Innovation Without Sacrificing Quality
Distance education is no longer an innovation nor a disruption. Rather, the real innovation is the recognition of the need for flexible, dynamic, and affordable learning opportunities that do not sacrifice quality or attainment of competencies. Online learning is the catalyst for accomplishing that innovation. The literature recognizes the efficacy of online and technology-aided learning models as impactful educational tools – both in opportunities (to learn) and outcomes (evidence learning occurred). Additionally, online learning provides an opportunity to transform and continuously improve legal education and to prepare students to practice in an increasingly global and digitized society.

Through advancement in technology and applied pedagogy, distance education is no longer “distant;” it is simply learning. The convergence of technology (how we design/deliver courses), data (how we assess outcomes), and recent advances in cognitive science (how adults learn) tells us something important - namely, the Socratic Method in a physical classroom is not the only, or necessarily the best, model to ensure achievement of myriad competencies required of a 21st century legal practitioner.⁷

Online instructional design incorporates what cognitive science research reveals as the highest utility keys for learning. These include:

1. Frequent and formative low stakes practice assessments with immediate and relevant feedback;

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⁶ Grade Increase: Tracking Distance Education in the United States, Babson Survey Research Group is released under a Creative Commons Attribution - ShareAlike 4.0 International license. http://www.onlinelearningsurvey.com/highered.html

⁷ Data is likely the most important byproduct of online learning, often overlooked or overshadowed by the more glamorous attributes of distance ed. Data supports Outcomes Assessment initiatives.
2. Spacing or distributed learning triggering retrieval at pertinent intervals based upon how long the information needs to be stored in the brain; and
3. Interleaving of concepts within modules to build more and stronger neural connections (aka learning). The linear nature of our classic casebooks and the weekly breakdown of syllabi cause students to see concepts in silos on a “need to know for the final” mindset limiting the meaningful connections required for impactful learning.⁴

Increasing Allowable Distance Education Credits Benefits our Students and Legal Education

Online course design and delivery are conducive to the kind of flexibility necessary to maximize learning by using techniques that serve our current and future students. The primary result of the convergence of technology, neuroscience, and data is that students can, and do, learn online while remaining engaged with faculty and other student colleagues. Increasing the number of credits available at a distance enables law schools to provide adaptable, accessible, and affordable educational pathways that support students and further the state of legal education. Consequently, VLS supports the proposed changes to Standard 306. VLS looks forward to a time when credit limits on “distance education” do not exist. Rather, law schools will be trusted to leverage technology appropriately to further their respective missions, aid students in achievement of competencies, and serve society.

Thank you for your time and attention and if you have questions or concerns, please feel free to contact me.

Sincerely,

[Signature]

Thomas McHenry
President and Dean, Professor of Law