ARE LAW SCHOOLS POISED FOR INNOVATION?
THREE CASE STUDIES OF LAW PROFESSORS TEACHING ONLINE IN
AMERICAN J.D. PROGRAMS

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ABSTRACT

The purpose of this qualitative case study is to describe the characteristics of three law professors teaching online courses to determine what type of adopter they were. This study used the Rogers diffusion of innovation theory, and specifically analyzed the participants on whether they were innovators or early adopters. These analyses are typically done using a quantitative approach, but this study used a qualitative approach in order to provide a rich description of innovator characteristics.

Methods of data collection were online interviews with the three participants, all of whom were full-time faculty at American law schools and whose courses were available to J.D. students. Interviews were transcribed and coded, individual case studies described, and themes were explored.

The three participants were found to have the characteristics of innovators under the Rogers diffusion framework. The themes of self-motivation, problem-solving, and persistence were found, which placed them into the innovator category. The findings on the issue of communication revealed that the participants were not opinion leaders at their own law schools, but that they were actively involved in communications with peers at other law schools who were exploring the adoption of the innovation of online law school courses.

The results have implications for proponents of online education in law schools in terms of recognizing the differing characteristics of innovators and early adopters, and the reasonable expectations of each.
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CHAPTER 1. INTRODUCTION

Online education is a hot topic in higher education. According to one longitudinal national study, the number of students in higher education taking at least one online course has increased substantially each year for the past ten years, with the latest study indicating that almost a third of all students are taking at least one online course each year (Allen & Seaman, 2013). MOOCs – massively open online courses – are the latest educational buzzword (Daniel, 2012) – and are being offered by institutions including the Massachusetts Institution of Technology, Harvard, and the University of California at Berkeley ("EdX: Creating better solutions for their campus and the world,"). Distance learning also has an increasing presence in graduate schools – students can earn an online M.B.A. through Indiana University or an online master’s degree in nursing through the University of Michigan or an online professional degree in engineering through Columbia University. One discipline that has not embraced the distance learning paradigm is the field of law. This dissertation reviews the reasons for that reluctance, and will study the cases of three law school professors who have been pioneers in offering online courses.

There are two levels of educational degrees in the United States for those who are interested in working as a legal professional: the graduate level degrees, the juris doctorate (J.D.) for lawyers, and the undergraduate degree or certificate from paralegal programs for paralegals. A substantial portion of the material taught in paralegal programs overlaps with the basics of their law school counterparts. The fields of law, such as real property, criminal law, or tort law concepts that are taught to both lawyers
and paralegals are the same, although the levels and skills differ. Some of these
distinctions arise merely because the paralegal’s degree is a two or four year
undergraduate degree and the lawyer’s degree is a graduate one. Other arise because the
role of the paralegal and the lawyer in the law office differ. Yet there is a significant
difference in the pedagogy of the education for these two professions that is not based on
the different standards for graduate versus undergraduate capabilities, or the lawyer’s
courtroom presentation versus the paralegal’s organizational competence. That
difference was the acceptance by many paralegal programs of online education, and the
scarcity of online education in law schools.

American law school education is at a crossroads in several ways, and one of
those is that a few pioneering law professors are offering online education. The
roadblocks to doing so are substantial, so I became curious about those innovators who
had challenged the traditional face-to-face law school classroom experience by offering
distance education courses. This dissertation is a descriptive case study that examines the
characteristics of some of those law professors who have broken with tradition to teach
online to understand their role in the innovation adoption process and to see what
motivation and support would be likely to appeal to their counterparts at other law
schools.

**Statement of the Problem**

**Legal Education in the United States**

The hallmark of American law school education is the Socratic method, which is
over 140 years old. The Socratic method, made famous in film and television, requires
the professor to pose questions to the student, based on a case, to train the student’s
ability to “think like a lawyer.” It treats the uncovering of legal principles in the same way that sciences derive natural law from the formation and testing of hypotheticals (Kimball, 2007; Rubin, 2007). The Socratic method has become so much the hallmark of legal education that almost all law professors use it to some extent (Friedland, 1996; Weaver, 1991), and is so dominant that the 2007 Carnegie Report on Educating Lawyers, part of its Preparations for the Professions series, called it the “signature pedagogy” of law schools (Sullivan, Colby, Wegner, Bend, & Shulman, 2007). The Socratic method was designed for a face-to-face teaching environment. A discussion of the history of the Socratic method and what the methodology entails will be covered in more detail in chapter 2.

The American Bar Association (ABA) is the primary accrediting body for law schools for the juris doctorate (J.D.) program. Almost all states require that the student to have graduated from an ABA-accredited law school before they qualify to take the bar exam (Moran, 2006, p. 392). The current ABA rules are very restrictive in the number and timing of online courses that can be offered in a J.D. program (American Bar Association, 2011-2012, Standard 306(d); Powell, 2006). At present, therefore, very few online courses are offered in law schools. A few faculty members have explored the application of online education to their law courses. In 2011, a small group of pioneering law professors and law school deans interested in teaching online formed the Working Group for Distance Learning in Legal Education (Harvard Law School Program on the Legal Profession, 2011). A few of their members are offering online law school J.D. courses. What role are these faculty members playing in changing or not changing
law school education? What are the issues that lead them to undertake these challenges? These are the questions that have prompted this dissertation.

**Purpose**

The purpose of this qualitative case study is to carry out a descriptive case study on three law professors who are pioneering online legal education at their ABA-accredited law schools, using an innovations framework.

It is important that the law schools be American, as the Socratic method, the signature pedagogy of law schools, is an American invention and is not necessarily used in other countries. It is also crucial that the law schools be ABA-approved, as the vast majority of American law schools are ABA-approved. The few American law schools that are not ABA-approved are not likely to be influential on those that are, so I am focusing on those that are grappling with the ABA restrictions and are more likely to impact other law schools. Last, it is important that the online courses be for the J.D. (juris doctorate) degree, and not an advanced law degree (the LL.M. degree or other law masters degree), as the ABA does not accredit these other degrees; it only accredits the first professional law degree, the J.D. (ABA Council Statements). The LL.M. degree is generally a much shorter program, and does not substitute as a J.D. degree for the purposes of taking a bar exam or entitle the holder to practice law.

**Research Questions**

My research questions are:

1. What are the characteristics of the selected law professors relevant to the choice to teach law courses online?
2. How do they see their roles as an opinion leader for other law professors?

**Significance of the Study**

At present, very few law professors in this country are offering online education in J.D. programs. Due to the novelty of the idea and the scarcity of these professors, little is known about why these pioneering law professors choose to teach online and what influence they may have over their colleagues. There is considerable interest in the law school professors and deans I have contacted for background in this study in finding out about their colleagues’ motivation and background in teaching online.

The American Bar Association is considering a change to their standards by increasing the number of courses that a student can take from four to five, and allowing all those courses to be taken the same semester. That sets up a different dynamic in law schools. If passed, this change would allow a student to study for an entire semester off campus, which would increase the demand for these courses by students whose family or work obligations require them to be in a different location. This is also more attractive to law schools, as they can now design a full semester of online courses to meet those student needs. It is therefore projected that there will be considerable interest in law school administration and law school faculty in looking at the motivations for teaching law online and how these faculty members view their role as opinion leaders.

**Conceptual Framework**

The conceptual framework for this dissertation is the diffusion of innovations theory as propounded by Rogers (Rogers, 2003). This theory and its components are discussed in more detail in chapter 2. The diffusion framework is suitable for case studies; Rogers
includes many in his text, and examples can be found in education and other social sciences research (Faubert, 2009). One specific part of diffusion of innovations theory that will also be analyzed is the extent to which these law professors see themselves as opinion leaders for other law professors.

The framework impacts the instrument design as the interview questions need to be focused around bringing out elements of the subjects’ backgrounds and experiences that relate to the factors that play into the innovation categories, and their perceptions of themselves as opinion leaders.

**Summary of Methodology**

I will be using a descriptive, multiple case study analysis of three law professors who are teaching online law courses in J.D. programs (Stake, 1995, 2006). Case studies (Hader et al., 2007) are the preferred method of research when the research questions posed are how or why something occurred, the investigator has little control over the events, and the focus is on a contemporary phenomena (Yin, 2008). Case studies are effective tools for examining bounded groups (Cresswell, 2007) and phenomena that develop over time (Grant, 2004). Law professors teaching online courses qualify as both. They are a limited group and their adoption has occurred over at least two years.

Each professor was an individual case study. I collected rich and descriptive information and used it both in analyzing each individual case, and to allow me to conduct cross-case analyses. I located the participants using snowball sampling and purposive sampling (Merriam, 2009). I gathered information by speaking with two of the founding members of the Working Group for Distance Learning in Legal Education and attending their fall 2012 meeting. This enabled me to gather additional background
material and to use the organizers and the attendees as sources for the sampling. The extensive conversations I had with two members of the working group have assisted me in framing my inquiry.

The primary method of data collection was two interviews with two of the law professors, and one interview with a third law professor, conducted online and recorded. These were semi-structured interviews (Hader et al., 2007). I received IRB approval for the interview protocol and semi-structured interview questions, and tagged the questions to relate back to relevant portions of the characteristics of innovators portion of the Rogers’ framework (see chart in Chapter 3).

I transcribed the relevant portions of each interview and coded them using a CASDAQ (computer assisted qualitative data analysis software) program, Atlas.ti. I have already had conversations with two members of the Working Group for background material. Pursuant to Saldaña (2009), I built code books and drafted analytic memos to help me reflect and write on how I related to the participants and situation; my code choices and definitions; the emerging patterns, categories, themes, and concepts; the possible connections between codes, patterns, and concepts; any problems with the study; personal or ethical dilemmas; and direction of the study.

I followed the coding system as provided by Saldaña (2009), which bases the type of coding on the methodological needs of the study. I used first and second cycle coding. First cycle coding is comprised of seven different classes of coding methods, and Saldana notes that more than one method can be used. Second level coding is a more advanced way to reanalyze the data, and Saldana lists six different types, and which I used based on the results of the first cycle coding and the analytic memos.
Two of my colleagues analyzed portions of the transcripts and provided an alternate viewpoint on my coding. This provided intercoder reliability for an external check on my coding (Cresswell, 2007).

Role of the Researcher

I am a lawyer who has taught legal writing at two law schools, in the 1980s and the 2000s. My experience as an instructor piqued my curiosity about teaching at law school in general. I am currently an associate professor at Kapi’olani Community College and director of their paralegal program. As I have taught paralegal courses online, I am particularly interested in the ways in which legal education can be delivered online. Many paralegal programs offer online courses. Paralegal programs can elect to become approved by the American Bar Association (ABA), which is a mark of quality. The American Bar Association permits a much greater number of online courses in its approved paralegal programs – where ABA-approved law schools currently can teach only four courses online maximum, paralegal programs can offer all courses online except four. This is precisely the opposite of the ABA rules for law schools. This discrepancy intrigued me and started my inquiry into this topic.

The participants that I am selecting are not in the University of Hawaii system and were not known to me prior to the start of this research. I use Patton’s label of “empathic neutrality” as a starting point to help reduce my own bias, which requires a balancing between becoming too involved, which can cloud one’s judgment, and becoming too detached, which can reduce understanding (Patton, 2002, p. 50). The goal was to use the diffusion of innovations theory to describe what I see has happened with the participants. The use of a data collection protocol, external review by participants, and other methods
to establish credibility, consistency, and reliability are discussed in more detail in chapter 3.

**Limitations**

This multiple case study was limited to three participants. Selecting the number of participants was a design choice and was based on the intersection of breadth and depth (Patton, 2002). As I did not attempt to generalize from my three participants to the general population, I did not need a larger number to achieve my goal of purposefully selecting three rich cases to describe, with the intent of sharing their specifics in the context of my framework.

Interviews have limitations in that the interviewer may possibly receive distorted responses due to personal bias or politics, or due to anger or anxiety of the participant (Patton, 2002). In this particular situation, as the participants were highly educated adults talking about their online teaching experiences, it was not anticipated that emotional responses would affect the data collection. To the extent the participants had a personal bias, this was acceptable as this was a descriptive study, and the participant’s own perceptions, including their bias, were a part of what was described. To the extent that work place politics might have colored the issue, each participant was assured confidentiality during the data collection and analysis process, and will be referred to only anonymously in the dissertation. These procedures were structured to encourage participants to speak freely.

Data coding is complex, and as one authority states, “rarely will anyone get coding right the first time.” (Saldaña, 2009, p. 10). I realized that coding requires reflection, preparation, organization, and the ability to reflect, recode, and recategorize as necessary,
I developed a codebook and analytic memos to help me reflect on the emerging codes and themes, refine them, and determine my final coding methods. To help establish a reliable and consistent coding framework, I worked with two colleagues who provided intercoder comparison.

**Definition of Key Terms**

**ABA.** The American Bar Association, which is the accrediting agency for almost all American law school J.D. programs.

**Casebook.** The books used in law courses. Their primary content is excerpts from selected cases, which are used in classroom questioning in the Socratic method.

**J.D.** The juris doctorate law school degree. This degree entitled the holder to take a bar exam and, if he or she passes, to practice law.

**Langdellian method.** Technically, the teaching technique developed by Dean Langdell, involving the use of casebooks as outside reading and intensive classroom questioning, often referred to as the Socratic method, are, combined, the “Langdellian method.” Often the term “Socratic method” is used in place of this term, even though technically the Socratic method is only the in-class questioning. (Stropus, Jackson).

**Socratic method.** The Socratic method is the intensive classroom questioning technique, although generally the term is used to apply to the whole Langdellian method.

**Summary**

Online learning, an increasingly accepted concept in much of higher education, is very limited in law school J.D programs. One significant reason for that limitation is the
Socratic method, which is the signature pedagogy of American law schools, and which involves a rigorous series of questions and hypotheticals between a professor and student. This signature pedagogy is perceived to be not readily translatable into online teaching methods.

A second significant reason for this limitation is the role played by the accrediting body for almost all law schools in the country, the American Bar Association (ABA). The ABA presently limits online education to a maximum of four courses, one per semester, for a law student’s second and third years. The ABA is presently considering a proposal that would increase this number to five courses, a typical semester workload, and allow law students to take all online courses during the same semester. This opportunity for a semester away from the physical law school campus may be expected to encourage more students to take online law courses, and for law schools to offer them.

Who, then, would teach these courses? This study looks at three law professors who currently teach online to see what characteristics they share and how each views, or does not view themselves, as an opinion leader for online law school teaching.

Chapter 2 reviews the literature for this dissertation. Chapter 3 describes the methodology, including conceptual framework, instrumentation, data collection and analysis, and verification. Chapter 4 discusses the data collection and analysis of the individual participants. Chapter 5 compares the participants and looks for themes. Chapter 6 discusses the findings, limitations, relation to previous research, and recommendations for future research. I have 2 appendices; Appendix 1 is my interview protocol and initial set of interview questions. Appendix 2 is the set of supplemental questions asked at the second round of interviews.
CHAPTER 2. REVIEW OF LITERATURE

As described in Chapter 1, law schools have been restricted in the use of online education by their accrediting agency, the American Bar Association, and their signature pedagogy, the Socratic method, was designed for a face-to-face environment. Despite this, a few pioneering law professors have begun to teach online law school J.D. courses. This chapter will look at issues that promote or hinder their efforts.

To understand the context for this study, this chapter covers four areas that relate to the central question of this dissertation. The first is online education – how is it defined and how does it rate as an educational tool. The second is legal education. What is the traditional law school curriculum and pedagogy, and what is the current status of the field? How does the American Bar Association influence the offering of online education in law schools? The third is innovation theory. To the extent that some law professors are offering online courses, they are pioneers in the field. What ways of analyzing innovation might be helpful in analyzing their actions? Fourth, a brief analysis of case studies as an appropriate analytic tool for a qualitative report is provided.

Online Education in Higher Education

Very few online courses are offered in American law schools due in large part to the roadblocks imposed by the American Bar Association, the accrediting body for law schools, as discussed in Chapter 1. Due perhaps to this extremely limited use of online education, there are few studies by law professors on the use and the efficacy of online education in American law schools. Legal education therefore must look to other
disciplines to answer the question as to whether online education is effective in general, for if it is not, then there is no impetus for law schools to change.

Research does support the general effectiveness of online education in many other disciplines. While there was initial concern that online education was a threat to the traditional classroom (Singh, O'Donoghue, & Betts, 2002), online learning has become increasingly accepted in higher education. In 2003, there were only 1.9 million students enrolled in online education (Allen & Seaman, 2004), but the 2012 Babson Survey Research Group report (formerly known as the Sloan Online Survey) indicates that enrollment in online courses rose to 6.7 million for fall 2011 (Allen & Seaman, 2013). The current enrollment growth of online education is 9.3% in fall 2011, far outstripping the annual growth rate for total enrollment, which was -0.1% in fall 2011. Thirty-two percent of all students enrolled in degree-granting post-secondary took at least one online course, up from less than ten percent in fall 2002, the first year of the survey.

Figure 1. “Online Enrollment as a Percent of Total Enrollment: Fall 2002 - Fall 2011”

(Allen & Seaman, 2013, p. 19)
Not only has online learning become an increasingly larger segment of higher education courses, but it has improved substantially in versatility and sophistication of technology (Anderson, 2008; Dykman & Davis, 2008). Research on recent online education has focused, first, on studies of its efficacy, and second, with more sophistication, to what can make it better.

A recent U.S. Department of Education meta-analysis screened over one thousand articles in the literature relating online courses to face-to-face traditional courses. The meta-analysis found 46 studies involving a treatment and control group that compared online and face-to-face courses directly, and from that found that there was a modest advantage to the student in online courses (United States Department of Education, 2009). Other studies have found no statistically significant difference (Zhao, Lei, Yan, Lai, & Tan, 2005), including studies which compared the same course given both online and face-to-face versions (Koory, 2003; Sussman & Dutter, 2010).

Studies seem to be moving away from the concept of whether online education is as effective as traditional instruction to determining what makes good, and therefore effective, online learning (Zhao et al., 2005). Course design and pedagogy are two of the major areas that impact student learning (Guiney, 2012), aside from the characteristic of the learners themselves. Other online issues studied include the elements that indicate effectiveness of online instructors (Young, 2008), the effectiveness of virtual team learning (Huang, Luce, & Lu, 2005), student likelihood of taking additional online courses after previous experience with one (Booker & Rebman Jr, 2005), methods of reducing plagiarism in online courses (McCord, 2008), and social development through online learning communities (Swan, 2002).
Given the results from studies that show either that there is no significant difference between online and face-to-face education, and the many studies on the different elements that contribute to a successful online course, the question arises as to why online courses are all but non-existent in American law schools. In addition to external constraints imposed by the American Bar Association on the number of law school courses than can be delivered online, as discussed on Chapter 1, there is an even more challenging barrier: law school pedagogy.

**The Rise of the Socratic Method**

Law is a conservative profession. The task of lawyers is to represent clients within the bounds of the law. Cases that make new law – like the famous *Brown v. Board of Education* integration case, which overturned existing law - are not common; cases more often apply or extend the existing law to a specific fact pattern. This focus on the status quo is reflected in a lawyer’s education.

Law schools teach lawyers what the existing law is, and how to apply it. The Socratic method, made famous in film and television, requires the professor to pose questions to the student, based on a case, to test the student’s ability to “think like a lawyer.” The student must apply the principles gleaned from the case to other fact patterns. The student is not allowed to create new legal principles to deal with these hypotheticals; answers must come from an extension of existing law.

This focus on the existing law is a hallmark of American legal education. Law school education is focused on what has happened in the past; similarly, legal education keeps to the traditional legal teaching traditional, the tried and true. The Socratic method, created by Dean Langdell at Harvard Law School in 1870, has become so much the
hallmark of legal education that almost all law professors use it to some extent (Weaver, 1991). It is difficult to conceive of legal education without the Socratic method.

The Socratic method is particularly suited to being taught in a face-to-face environment. The Socratic method requires students to have read specified appellate case excerpts prior to class. During the class period, the professor selects a student and asks him or her to state the facts of the case. From there the professor asks questions designed to stretch the student’s application of the facts and holding of the case to other hypothetical situations. If a student fails to answer, the professor will go on to another student. The intense questioning process is intended to require the students respond on their feet and to be able to show intellectual flexibility. This also requires the professor to adapt on the fly to each student’s answers. Due to the close interaction between professor and student, the process has been tightly tied to a physical classroom.

A short history is necessary to understand the hold that the Socratic method had on legal education. Prior to 1870, a man became a lawyer in one of two ways: he either apprenticed with a lawyer and learned the profession on the job, or he took a short twelve to eighteen month series of courses in a law school. The law schools of that time offered just lecture-based courses, which were offered in rotation and could be taken in any order. There were no academic prerequisites (Kimball, 2005).

The Dean of Harvard Law School, Christopher Columbus Langdell, envisioned a different model, one based on scientific inductive logic, treating law as though it were a type of natural science (Kimball, 2007; Rubin, 2007). Instead of lecturing to the students on what the law was, he created “casebooks,” selected excerpts of judicial decision that the students were to read prior to class. During the class, the professor would ask
students to recite the facts of the case, and then present the student with a fact pattern and question the student as to whether the case would apply to this new fact pattern. The law would be derived from the cases similar to the way natural laws were derived from examination of natural phenomena. The strength of this method, to Langdell’s mind, was to strengthen a “specifically legal manner of thinking” (Kimball, 2007, p. 227) and not to actually teach the law.

Initially, this series of readings, hypotheses, and questions was referred to the “Langdell Case System of Instruction,” (Kimball, 2007), but then became known as the Socratic method or the case study method (Kimball, 2005). Dean Langdell called this the Socratic method, after the famous dialogues of Socrates, and although some critics claim that the Socratic method does not actually replicate Socrates’ methods (Neumann, 1989), the name has remained. Technically speaking, the readings are the case study, the in-class questioning is the Socratic method, and together they form the Langdellian method (Jackson, 2007; Stropus, 1996), but the term Socratic method is often used synonymously with Langellian method and is the more popular term, so I will use Socratic method to describe both parts of the Langdellian method in this dissertation.

The response to Langdell’s innovation, which included extending the law degree to two years, was “vehement opposition,” and enrollment at Harvard Law School dropped from 165 in 1870-71 to 117 in 1872-1873, and caused the creation of a new law school in town, Boston University Law School, as an alternative (Kimball, 2005). Over the next decade, enrollment rose to 405, despite additional reforms that increased the curriculum from two years to three years (Kimball, 2005).
A little over a decade after Dean Langdell introduced his innovation, the still nascent American Bar Association, at its fourth annual meeting in 1881, approved a policy that time spent in law schools should be considered the equivalent of time spent in at attorney’s office in preparation for the practice of law (Joy & Kuehn, 2008). The movement to tighten standards in law schools by giving greater weight to the classroom experience was on.

After the Socratic method incubated at Harvard for two decades, in 1890, other law schools began to turn away from the lecture system and adopted this new educational model. The Socratic method spread in a “tidal wave” by 1915, with 64% of all law schools adopting it in whole or in part, while the remaining 36% who did not do so by then were “marginal, less influential” law schools, most of which would convert to the Socratic method within the following decade (Kimball, 2007). The Socratic method became known as the “cachet of the crack law school” (Kimball, p. 195).

At the present time, the Socratic method has been called “universally accepted in American law schools,” “a long-standing paradigm,” and an “accepted fixture” (Friedland, 1996, pp. 1, 12). The 2007 Carnegie Foundation for the Advancement of Teaching report on legal education, which was written as a part of part of its Preparations for the Professions series, discussed further below, called it the “signature pedagogy” of American law schools (Sullivan et al., 2007).

The Socratic method is used in doctrinal law courses (also called “substantive” courses - courses that teach legal doctrine), but generally not in the skills courses, such as legal research and writing (skills courses are also referred to as “method” courses) (Jackson, 2007). The skills courses are not generally taught using the Socratic method,
but use lectures (Stanchi & Levine, 2001), individual and group exercises, and in-class writing (Jackson, 2007). These skills courses have a second-class status in comparison to the doctrinal courses (Fine, 2009). Legal research and writing faculty have had longstanding issues with being routinely treated as inferior to the substantive law faculty (Christensen, 2009; Stanchi, 2004; Stanchi & Levine). The basic skills courses are generally taught during the first year, although some schools have advanced research and writing in the second or third year. As the basic skills courses are taught during the first year, they are not eligible to be taught online under the ABA restrictions as they ban all online education during the student’s first year.

Another type of legal education, clinical education, is also not taught using the Socratic method, and its faculty are often treated as having a second-class status as compared to tenured or tenure track professors (Newton, 2010). “[T]here has been continued resistance to treating clinical faculty reasonably similar to nonclinical faculty … and additional debate over the status for clinical faculty” (Joy & Kuehn, 2008, p. 223). Prior to the predominance of the Socratic method in law schools and other attendant changes prompted by Dean Langdell, working with an attorney was an accepted method of learning the law and qualifying to practice it. The increased focus on theory “grew almost to the exclusion of experiential education” (Joy & Kuehn, p. 186). By the late 1950s, only 35 of the 126 ABA-approved law schools offered the opportunity for a student to participate in clinical education. In 1980, the ABA provided guidelines to programs seeking to establish clinical legal education (Joy & Kuehn). These guidelines did provide that one or more of the faculty in charge of the clinical courses should have the same underlying employment relationship as the faculty teaching the traditional
curriculum (i.e., be tenured or tenure-track) and that other clinical faculty should be offered long-term contracts. However, the ABA has since undercut this language by approving the use of short-term contracts for the clinical instructors and approving the denial of the clinical faculty’s meaningful participation in law school governance (Joy & Kuehn). As the clinical courses set up a real-world clinic for the students to practice handling real cases, they are generally not deemed suitable for an online course.

To sum up, there are three types of courses offered at law schools: doctrinal courses, skills courses; and clinical courses. The Socratic method only applies to the doctrinal courses, but they comprise over 90% of the typical law school curriculum. Many of the skills courses are offered during the first year, making them ineligible for online education under ABA restrictions, and the clinical courses are commonly recognized as not suitable for online education. Thus, even though the other two types of law courses do not use the Socratic method, they are normally not able to be taught online, which makes the Socratic method the potential barrier for all online law courses.

The dominance of the Socratic method in doctrinal courses does not mean that the method lacks critics. Some legal scholars have called for reform of the typical American law school education on a number of levels, including a revised use of, and even an elimination of, the Socratic method (Carasik, 2011; E. E. Johnson, 2010; Madison III, 2008; Stuckey, 2007; Tamanaha, 2012; Torrey, 2004). There has been some movement over the past three decades to use a wider variety of teaching methods, including clinical education (Moliterno, 1996) and problem-based learning (E. E. Johnson; Oliphant, 2002-2003) to expand education beyond the Socratic method, and there have been a number of significant reports – among them, the MacCrate Report, the Carnegie Report, and the
Best Practices Report – which critique and make recommendations about law school education in general (Carasik; Fine, 2009).

Some critics within the legal academy call the Socratic method inefficient and ineffective (Sonsteng, Ward, Bruce, & Petersen, 2007), humiliating and terrorizing (Jackson, 2007), and, simply, “tedium” (E. E. Johnson, 2010, p. 64). Other scholars have analyzed the emotional impact of law school, especially the first year curriculum, and found elevated levels of stress, anxiety, and alcohol abuse (Iijima, 1998; Peterson & Peterson, 2009; Schwartz, 2007-2008; Sheldon & Krieger, 2007) due in significant part to the Socratic method. Others allege that the Socratic method is ineffective in preparing students for the practice of law (Lien, 2002; Madison III, 2008; Newton, 2010), and there is a call from some reformers to limit or modify its use (Carasik, 2011; Oliphant, 2000; Stuckey, 2007). Yet the Socratic method still has its defenders (Stropus, 1996; Vitiello, 2005; Weaver, 1991). It is widely claimed that the Socratic method is the way in which a law school teaches a student to “think like a lawyer,” (Curtis & Karp, 2007; Friedland, 1996; Jackson, 2007; E. E. Johnson, 2010), implying that other methods of pedagogy, while of some use, are not doing the substantial work of transforming law students into attorneys. This a primary basis for the resistance to change is based on the position that the analytical skill of learning to think like a lawyer that is provided in the Socratic method cannot be substituted by any other method (Vitiello).

Therefore, despite the existence of criticisms, most legal commentators have come to the ultimate conclusion that “The history of the legal education system shows that in spite of criticism and attempts at reform, the system remains similar to that of the late
Despite criticism of the Socratic method, there is value to having a signature pedagogy, and law school is not the only type of education with a signature pedagogy. The Carnegie Foundation for the Advancement in Teaching has recently released reports in their Preparations for the Professions Program (Professions Program) series on educating physicians, nurses, engineers, and the clergy, in addition to their study on law school education. The Professions Program series looks at several dimensions in these professions referred to as “apprenticeships”: the learning of the theory of the profession (cognitive apprenticeship), the mastery of the practice of the profession (practical apprenticeship), and the formation of professional identity (normative apprenticeship) (Benner, Sutphen, Leonard, & Day, 2009; Foster, Dahill, Golemon, & Tolentino, 2006; Sheppard, Macatangay, Colby, & Sullivan, 2009; Sullivan et al., 2007). In law, engineering, and nursing, the Carnegie studies found that all or some of these apprenticeships existed and served the function of transmuting the student to the professional. In some of these professions, this was accomplished through a signature pedagogy; the study on educating the clergy found a “signature pedagogical framework” that served a similar function (Foster et al.). Signature pedagogies are designed to transform the intellectual knowledge to “knowledge in use” and to create the basis for a new kind of understanding suitable for each profession (Shulman, 2005).

The Professions Program study on engineering found that the field of engineering education primarily emphasized the acquiring of technical knowledge, the cognitive apprenticeship, and in distinct second place was the practical apprenticeship (Sheppard et
al., 2009). The dominant curriculum model was a linear model that started with a heavily technical and theoretical component that moved in one direction from theory-heavy lectures to practical application. The dominant pedagogy of the theoretical component was lecture and lab; the dominant pedagogy of the design component was project-centered learning. The study concluded with suggestions on improving engineering pedagogy.

In the Professions Program study on nursing education, the researchers found that the second and third apprenticeships were being met through nursing’s signature pedagogy, the clinical setting (Benner et al., 2009). Nursing programs were very effective in forming professional identity and ethical behavior through their clinical experience. The clinical experience again was rated highly in giving students ever-increasing responsibilities, which helped them to master the practice. The issue that the nursing report found was in the learning of the theory, the cognitive apprenticeship, as the report found that the classroom experience was not rigorous, and information that was taught in lectures was not tied in to clinical practice.

The Professions Program study on educating clergy used the apprenticeship analysis and found that seminaries tilted the focus of this type of education toward the cognitive due to their academic setting (Foster et al., 2006). This report reviewed clerical education across a wide spectrum of religious institutions that included Catholic, Jewish, and a range of Protestant Christian institutions. Due in part to the disparate religious backgrounds, which carry with them significant historical and sociocultural backgrounds, the report was unable to find a signature pedagogy that carried across the spectrum of clerical education. Instead, they found a broader “signature pedagogical framework,”
which are four shared intentions for student learning: developing the facility for interpreting texts, situations, and relationships; nurturing dispositions and habits integral to the spiritual and vocational formation of clergy; heightening consciousness of the content and agency of historical and contemporary contexts; and cultivating performance in clerical roles and ways of thinking (Foster et al., p. 33).

Nevertheless, while signature pedagogies are a recognized part of professional education, they are not without flaw. In particular, in a 2005 speech comparing the signature pedagogies of lawyers, doctors, nurses, and clergy, the president of the Carnegie Foundation for the Advancement in Teaching noted that “while the goal of signature pedagogies is to connect thought and action … law school fails miserably at this because the emphasis is to heavily on learning to ‘think like a lawyer’ that students are rarely expected to do anything” (Shulman, 2005).

**How Use of the Socratic Method Affects Online Education**

As discussed above, types of courses in which the Socratic method is used are the law school doctrinal courses, which are the substantial majority of all courses taught in law school. The focus on the intense questioning between professors and individual students and the posing of hypotheticals to test their acquisition of knowledge and theory is particularly linked to a face-to-face environment. Students are expected to actively participate in these discussions. While this could be replicated in a synchronous online environment, it is difficult to conceive of how it could be done in an asynchronous environment.
The Role of the American Bar Association in Online Legal Education

The American Bar Association (ABA) is the accreditation body for the vast majority of law schools. It places requirements and restrictions on many phases of legal education, including curriculum, skills to be taught, minimum and maximum years of study, and the length of the academic year for law schools. It also establishes a limit on the methodology by which they are taught (ABA 2001-2012). The ABA rules prohibit online instruction during a student’s first year of law school, and restrict online courses to a maximum of four courses that can be taught only during a student’s second and third years, limited to one per semester. Law schools that offer more online courses cannot be ABA-approved.

In practice, this makes the ABA the gatekeeper to the actual practice of law. After a student graduates from law school, he or she is still not entitled to practice law. As a prerequisite, the graduate must apply for and take the bar exam in each state in which the graduate wishes to practice (American Bar Association, n.d.). “All but a handful” of states require that the student to have graduated from an ABA-accredited law school before they qualify to take the bar exam (Moran, 2006, p. 392). The exceptions are limited, including California allows students who have graduated from its regionally accredited, unaccredited, or correspondence law schools to take the bar, and Vermont and Washington, which offer the option of apprenticeship followed by taking the bar exam. For this reason, at this time there are few J.D. programs in America that are fully online, the most prominent of which is Concord Law School in California (Oliphant), as that state, as described above, is among the few who will permit graduates of a non-ABA-accredited law school to take its bar exam.
The careers of those who attend a non-ABA-approved law school route are limited; they can only take their initial bar exam in the state in which their school is located, and some states prohibit them from ever taking that state’s bar exam, while other states will let them take their bar exam, but only after successfully passing the bar exam in their law school’s state, and after practicing for a required period of time, generally 5 – 7 years. In contrast, a graduate of an ABA-accredited law school can take the initial and any additional bar exam in any state, making their professional career much more mobile (American Bar Association, n.d.).

The impact of technology and its potential for wide-spread use in online law school courses prompted the ABA to publish Temporary Distance Learning Guidelines in May 1997 (Oliphant, 2000). In 2002, the ABA revised standard 306 of its Standards for Approval of Law Schools to permit limited use of distance education courses in J.D. programs (Powell, 2006). In 2012, the most current ABA standard at this time prohibits online instruction during a student’s first year of law school. The ABA restricts online courses to one per semester for the next two years, allowing a maximum of twelve credits (four courses) during the student’s law school career (American Bar Association, 2011-2012, Standard 306(d)). The ABA is currently considering a proposal to amend its standards to increase the number of credits from 12 to 15, and to permit the law student to take all of the online courses at the same time, which would permit a law student to spend a semester away from campus (ABA Section of Legal Education and Admissions to the Bar Standards Review Committee, n.d.).

Some researchers have recognized that one effect of the ABA’s thorough regulation of law school education is to limit experimentation and innovative reforms (Rapoport,
“Given this framework of comprehensive rules and regulations, no law school has been able to pursue radical innovations without jeopardizing its accreditation, its reputation, and its future” (Moran, 2006, p. 383). Many reforms have been suggested, among them moving to online education, which is claimed to be lower cost, sufficient for the task, and helpful in assisting law students to develop practical skills (Campbell, 2013). The ABA restrictions make it difficult for faculty to pursue innovative online education for fear of jeopardizing their school’s accreditation. Offering online education offers a law faculty member no tangible benefits; it goes against the norm, it requires additional work to prepare, and some law professors still label it an “inferior and cheap alternative,” especially for first year students, for whom at least commentator states that physical presence is a “pedagogical necessity” (Morrissey, 2006, p. 278).

Yet despite this, some law school faculty are pursuing online education. This is much more common in the LL.M. degree, the law masters degree, as LL.M. programs are not regulated by the ABA, but there is still a thin wedge of exploration in J.D. programs (Oliphant, 2000; Powell, 2006).

In 2011, a small group of faculty members from over twenty law schools formed the Working Group for Distance Learning in Legal Education, with the goal of identifying key issues for law schools to consider as they adopt online learning practices, to develop best practices for legal learning online, and to design a research agenda. The Working Group considers online education as a “high quality, academically successful experience that can, when well-designed and delivered, provide student outcomes superior to those of traditional in-class teaching” (Working Group for Distance Learning in Legal Education, 2013, p. 11). The Working Group takes the position the general
acceptance of online learning in higher education should help support law schools to consider adopting online education.

One additional barrier to the acceptance of online legal education emerged during the course of this study. For the first time, a state had held that a certain type of online course cannot count toward required number of courses needed for a law school graduate to be entitled to take the bar exam. The rules for the New York State Board of Law Examiners were amended effective April 1, 2012 to exclude course credit for online asynchronous J.D. courses (New York Court of Appeals, n.d.). The rules now state: “An applicant may qualify to take the New York State bar examination by submitting to the New York State Board of Law Examiners satisfactory proof that … the applicant … successfully completed the prescribed course of instruction” which is defined as a program where “a minimum of 83 credit hours must be required for graduation …. No credit shall be allowed for distance education courses offered principally by asynchronous means, where students and the instructor are separated in time as well as in place, including pre-recorded, non-interactive technologies, such as on-line courses” (New York Court of Appeals, n.d., §520.3). New York is the state with the highest number of bar applicants, so this exclusion has a widespread impact not only on New York law schools, but on many law schools outside the state. This ban is more restrictive that the ABA rules, which do not limit the type of online methodology. The long-term impact of this ban on asynchronous credit remains to be seen.
Framework for Dissertation: Diffusion of Innovations

The framework for this study is Rogers’ diffusion of innovations theory. Rogers’ Diffusion of Innovations text is a seminal work in the field of innovations research (Rogers, 2003). First published in 1962, it is in its fifth edition and has provided structure for analyzing innovation and change in multiple fields, including education and technology adoption, for over fifty years. The text is wide-reaching in its analysis of multiple factors involved innovation research, including a five-part model of the innovation-decision process, five attributes of innovations, a five-part spectrum of types of adopters, a schema of diffusion networks, and the role of organizations in innovations. Rogers’ frameworks have been described as one that “dominates much of the literature that address professional development for academic staff in relation to the use of information and communication technologies in the move to online teaching” (Wilson & Stacey, 2004, p. 34). Studies have used Rogers’ models as a predictor for adoption (Vocational Education Research Coordinating Unit, 1967), to analyze the results of an applied innovation (Kozma, 1978), and as a basis for additional innovation models (Taylor & Todd, 1995).

Other diffusion models were evaluated for this study. The Concerns-Based Adoption Model (CBAM) was also examined as a potential framework for innovation analysis (Hall & Hord, 1987). CBAM divides the process of education adoption into three parts: stages of concern, levels of use, and innovation components (Horsley & Louks-Horsley, 1998). The primary focus in CBAM is affective – how the potential user feels about the changes, the extent to which he or she is using the innovation, and each user’s level of mastery. This process appears largely reflective; the main focus is how the
potential adopter perceives the impact of the innovation on his or her current practices. There is little mention of the impact of others on the potential user’s decision, aside from Level V, integration, in the levels of mastery portion of the CBAM. Even within Level V, the focus is from the inside of the person making the choice, not on the person acting as opinion leader or innovator/early adopter. CBAM has also been criticized for reliability and validity issues in the stages of concern scale, and also for its tendency to disregard the teacher-adopter’s positive perceptions of an innovation (Straub, 2009).

Surry, Ensminger, and Haab constructed a model based on Rogers, Hall and Hord’s CBAM, and other innovation theories to devise a diffusion of innovations model entitled RIPPLES, an acronym for Resources, Infrastructure, People, Policies, Learning, Evaluation, and Support (Benson & Palaskas, 2006; Surry, Ensminger, & Haab, 2005). While this is a qualitative model, it is relatively recent and has been applied in a limited number of studies. Its focus does not provide the structure for studying of the innovators to the same extent that Rogers’ model does.

Davis’s Technology Acceptance Model (TAM) is another widely-accepted model for understanding why innovations are adopted (Davis, 1989; Jonas & Norman, 2011; Venkatesh & Davis, 2000). The original TAM model developed and validated new measurement scales for the perceived usefulness and ease of use of innovations (Davis, 1989), and traced external variables, and how they influence belief, attitude, and intention to adopt (Park, 2009). TAM has been compared to other quantitative models and was found to be more parsimonious, generally a favorable characteristic, but to provide less explanatory power for usage and behavioral intention (Taylor & Todd, 1995). TAM has
been extended into TAM2 to provide added insight into social influence, cognitive processes, and experience (Park; Venkatesh & Davis).

One criticism of TAM2 has been that its predictive capacity could be improved by integrating it into a broader model that includes organizational and social factors (Legris, Ingham, & Collerette, 2003). It has also been noted that the TAM models lack acknowledgment of individual differences and a way to analyze the characteristics of innovators (Straub, 2009). It is a quantitative based model, and while it does bring up some interesting and useful concepts for consideration, it lacks the rich data collection of a qualitative study. As there is so much that is not yet known as to why these law professors are choosing to break with tradition, a qualitative model is preferred so that this data, including social factors, can be explored in detail.

Another quantitative model that was considered was the Bass model, which is used largely, though but not exclusively, in marketing. This is another quantitative model that uses mathematical formulas focusing on predicting peak innovation adoption (Bass, 1969). Bass used Rogers’ model and revises it to focus on the timing of the adoption. The model has been revised by the author over time (Bass, 2004) and now includes decision variables in its calculations. However, like TAM and TAM2, the Bass model does not look at the individuals involved in the innovation. It reclassifies those involved into only two categories, innovators and imitators, and provides less focus on the characteristics of individuals in the adoption process. Therefore, the Bass model does not provided significant detail on the nature of those who are innovators or early adopters.

All these diffusion models have a common bias that needs to be acknowledged. Each model has an implicit pro-adoption bias, treating lack of adoption as a failure of the
process, not a stage of its own deserving of its own level of research (Straub, 2009). While this is also true of Rogers’ model, in this particular dissertation, the lack of a theory exploring failure to adopt is not relevant, as the situations I researched are innovations that are already occurred – the teaching of online courses in law school. This would only be an issue if I were studying whether any online courses are taught in law school, as then I might not have an analytical structure if I found that the innovation had not been adopted at all. As that is not the case, this objection is not relevant.

A related criticism of the Rogers’ model is that it is only dichotomous – it measures whether an innovation has been adopted or not adopted, but is not as useful in the cases in which adoption is an ongoing process (Hall, 2010). While this is another valid criticism, it is not relevant to this study as, similar to the point made above, this study involved participants who were already teaching online. They have already moved past the point of merely considering the adoption, and are into the implementation phase.

In addition to these points, another critique of Rogers’s model has been made based on the same equality that makes it most powerful – its comprehensiveness. While the Rogers’ model is acknowledged as one of the most influential adoption-diffusion models, its breadth and depth are an issue in application (Straub, 2009). As it covers attributes of innovators, characteristics of innovations, development of innovations, the five-part innovation process, diffusion networks, and the role of change agents, no one dissertation could apply the comprehensive model to a specific set of participants. Additionally, as it is so broad, application to a specific field may require tweaking to fit a particular set of circumstances (Straub) or context, as contrasted with CBAM, which looks primarily at teacher innovations, and the Bass model, which was developed for use
in marketing. There is no formula to apply or checklist to follow in doing this research. The researcher must provide a lens that focuses on the characteristics of the adopters.

No theory is without flaw. Rogers’ model was chosen as the framework for this study as it is one of the most comprehensive in the field (Surry & Farquhar, 1997) and it focuses to a greater extent on the characteristics of the innovators and early adopters in a way not provided for in these other models. The criticisms raised above either do not apply to this study, as the innovations were already being applied, or could be addressed through careful structure of the study and the interviews, which will be discussed further in chapter 3.

Figure 2. A model of five stages in the innovation-decision process
(Rogers, 2003, p. 170)
Rogers defines an innovation as an idea, practice, or object that is perceived as new by an individual or other unit of adoption. Rogers’ model of the innovation-decision process is composed of the primary structure of knowledge, persuasion, decision, implementation, and confirmation. The first step, knowledge, is further broken down into awareness knowledge, how-to knowledge, and knowledge of the principles underlying how an innovation works. The second stage, persuasion, is where the individual comes to a favorable or unfavorable attitude toward the innovation. There are two substantial components of persuasion, which will be discussed in more detail below: the perceived characteristics of the innovation, and individual’s place on the spectrum of types of adopters. The third step, decision, is whether the potential adopter chooses to accept or reject the innovation. If the innovation is rejected, the progress through the model stops here; if the innovation is adopted, the progression continues. In the fourth step, implementation, the innovation is put to use. In some cases, re-invention – modification or change - of the innovation occurs. As Rogers points out, for some adopters, the model stops here. However, other adopters of the innovation proceed to the fifth step, confirmation, in which the innovator seeks reinforcement of the decision to adopt the innovation, and may reverse the adoption.

This study will focus on the characteristics of adopters. The purpose of these labels, according to Rogers, is not for predictive purposes, to determine in advance who would fall into these categories, but to allow for better audience segmentation so that incentives and communication to help each group to adopt the innovation could be more appropriately targeted. The categories take a heterophilous group and break them into categories that are more homophilous, thereby allowing different treatments or incentives
to be offered to each group to allow a better reach into each subaudience. A key component discussed by Rogers is the spectrum of adoption personality types. He divides the types across a normal curve, with 16% laggards, 34% late majority adopters, 34% early majority, and then subdivides the 16% of those most likely to adopt into 13.5% early adopters and 2.5% innovators. He admits that this makes the categories asymmetrical around the mean, but found distinct differences between these last two categories that justified distinguishing them. In contrast, he found the category of laggards to be fairly homophilious and not distinctive enough to subdivide.

Figure 3. Adopter categorization on the basis of innovativeness
(Rogers, p. 281)

Spectrum of Innovators

Innovators

Innovators are adopters who are characterized by venturesomeness and an ability to understand and apply complex technical innovation. They are capable of coping with a
high degree of uncertainty about the success of the innovation and willing to cope with setbacks. The innovator tends to have more widespread social networks than local peer networks and plays the role of launching the innovation. Innovators do not necessarily have much direct influence on their local peers.

**Early adopters**

Early adopters are more integrated into the local social setting than are innovators and correspondingly, they have greater impact on peers, for whom they can act as opinion leaders. They are looked to by the lower levels of adopters as a role model for making the decision to adopt the innovation.

**Early majority**

The early majority adopt the innovation just prior to the average member of a social system. They interact with their peers but are not looked to for opinion leadership to the degree of the early adopters. They are more likely than the previous two groups to deliberate before making a decision.

**Late majority**

The late majority approach adoption of innovation with a certain skepticism. Most of the uncertainty surround an innovation must be resolved before the later majority is willing to try an innovation. Peer pressure is a factor is moving them toward adoption.

**Laggards**

Laggards are the last group in a social situation to adopt an innovation. They focus on tradition and past practices, and tend to be suspicious of innovations and change agents.
Rogers also includes a rather simplistic list of dyads relating to three general categories: socioeconomic characteristics, personality variables, and communication behaviors. These dyads combine Rogers’ five categories into just two – earlier adopters and later adopters – and include general statements about them, such as “Generalization 7-12: Earlier adopters have more intelligence than do later adopters” (Rogers, 2003, p. 289) (italics in original). These descriptors are not quantified and do not answer questions such as how much more intelligent or what the threshold might be between categories. They are not useful when comparing groups that fall on the same side of the mean, as innovators and early adopters do. It is hoped that one outcome of this study is a provide a more detailed look at

**Rogers as a Foundation for Other Diffusion Theories**

Many studies just use part of one of Rogers’ constructs as a framework, and sometimes not even the complete construct (Phillips & Vinten, 2010). Rogers’ whole construct is so comprehensive that it is not possible to address all of the issues in any individual academic article. Rather, researchers use selected portions to magnify discrete issues.

New Zealand did a study to determine the readiness of its public sector organizations to move to digital preservation of records under its Public Records Act of 2005. They surveyed the agencies with specific questions as to their current awareness of digital preservation, issues, threats, and needs. The survey was then analyzed in terms of Rogers’ five perceived characteristics of innovations (Dorner, 2009). The study concluded with a discussion of two types of innovators, champions and change agents,
also constructs of the Rogers model, who could be employed to promote the adoption of
digital preservation.

The primary roadblock to adopting online teaching technology for college
professors in general has been described as a three-pronged issue: issues with the
adoption of the technology, adoption of the new of modified pedagogy, and adoption got
a new or modified presentation style (Baltaci-Goktalay & Ocak, 2006). In a general
review of the literature on factors that influence faculty to adopt online technology,
Baltaci-Goktalay reviewed a number of adoption models to explain technology adoption
by college faculty, including a specific look at the way in which Rogers described the
adoption of information and communications technology as distinguished from other
types of innovations. The first two of the three points are most relevant here: (1) a
critical mass of adopters is needed to convince the majority of other teachers of the utility
of the technology, and (2) to ensure the success of the adoption, regular and repeated use
is necessary (Baltaci-Goktalay & Ocak, p. 41).

Hansen and Salter used Rogers’ diffusion theories in a case study at the University
of Western Sydney, including an analysis of the discuss the five perceived characteristics
of the innovation, the five-step adoption process, and the five types of adopters (Hansen
& Salter, 2001). The project used surveys that sampled potential adopter perceptions of
real or perceived problems in traditional teaching delivery and in moving to web-based
delivery. The issues with moving to web-based teaching were grouped into three main
areas: developing and learning the new technology, incorporating existing hard-copy
materials, and technology and network issues. The researchers drew up specifications for
the infrastructure based on these concerns. A pilot implementation of the technology,
called PlatformWeb, was conducted, followed by a major trial the following semester and a general implementation the semester after that. The PlatformWeb project served as the prime change agent, making use of opinion leaders in the university. The use grew from 15 faculty members in the pilot to over 430 faculty members within two years. The researchers reported that the project was rapidly adopted and became so routine that students were pressuring the laggard group into using the new technology, thus completing the diffusion of the innovation into all five adopter groups.

Kozma’s study involved comparing groups of college faculty: fellows who were given release time and financial support over a two-year period for developing and implanting classroom innovations; faculty who applied for the fellowship but did not receive it; faculty who received Instructional Development Fund grants; department chairs; and a randomly selected group of faculty (Kozma, 1978). The fellows were chosen in part on their potential to act as opinion leaders who could affect their peers. The structure of the fellowship was designed along Rogers’ model, using the four-step knowledge-persuasion-decision-confirmation schema. The fellows met weekly and were provided with materials that stressed Rogers’ elements of relative advantage, complexity, and communicability. Questionnaires were sent out twice to all groups.

Kozma used quantitative analysis to determine that the fellows used an average of 2.4 innovations per person. The faculty receiving the IDF grants increased their use of innovations by an average of 1.6 uses. There was a minor increase in uses by applicants for the fellowship, and a decrease in innovation uses for the department chair and the general faculty sample. Kozma also studied the potential diffusion of the innovations selected by the fellows into the broader faculty audience. Contrasting Roger’s opinion
leaders/early adopters model with another model that relied heavily on outside change agents, Kozma concluded that the Rogers’ model was superior as the change agent model had the potential to inhibit the adoption of innovations to the extent that faculty felt that the innovations were being imposed on them. To measure diffusion, the researcher tracked contacts between the fellow and other faculty members that dealt with general concerns about instructional development or use of various techniques and methods. The faculty members were then surveyed on the experience. Kozma found that the conversations increased awareness of innovations and influences attitudes, but relatively few adoption decisions were made by the general faculty. The discussion did play a role in increasing the fellows’ own use of the innovations. The researcher did consider the fact that the time period of the follow-up questionnaire was only eight months, and that a longer time period might have shown greater impact on adoption of innovations by the general faculty. Kozma concluded by stating that based on these results, the fellowship program could not be justified solely in terms of dissemination to the greater faculty group.

Looking at the individual user and their perceived needs was a key factor in one study on adoption. Hansen and Salter focused on adoption of a course management system using the Rogers model, basing its strategy in part of the needs of the individual adopters (Hansen & Salter, 2001). That study looked at the adoption of the PlatformWeb project, a course management system, and based its approach on a two-prong basis. One prong of the treatment, the design approach, was focused on the adopters, recognizing that the end-users are the primary force for change. The second prong used an innovation-decision process to affect change at the institutional level. The adopter-based
design was tested in a pilot study, which was a success, and which prompted further implementation. The focus on the participating staff was effective; the volume of use by adopters was significant, giving rise to the need for additional funding by the organization. The second prong of the adoption model was a detailed analysis of how the innovation would fit in with the organization, which led to larger-scale implementation. The innovation appears to have been successful; at the time the article was written, only the laggard group had not adopted the innovation, indicating that statistically about 85% of the academic staff had adopted the innovation.

One of the signs of soundness of Rogers’ constructs and theories is that they have been used as the foundation for additional diffusion models. One qualitative study on the innovation-decision framework was done on doctors and their adoption of clinical practice guidelines intended to increase the appropriate use of diagnostic and other services by doctors. The researcher used semi-structured interviews with representative doctors for data and Rogers’ diffusion of innovations as the framework (Hader et al., 2007). The study used the basic Rogers five-step process – innovation, communication, adoption, implementation, and maintenance – and added a second dimension by Orlandi composed of the four types of influence on innovation: characteristics of the intended adopter, the development system for the innovation, the innovation itself, and the linkage system connecting the development system to the intended adopter. Hader added the external environment as an additional element to the Rogers/Orlandi model.

Taylor and Todd used significant portions of the Rogers’ model in comparing the existing Technology Acceptance Mode (TAM) and the Theory of Planned Behavior (TPB), and deriving their own decomposed Theory of Planned Behavior (Taylor & Todd,
1995). They focused on three of the five perceived characteristics: relative advantage, complexity, and compatibility. Their study on use of a computing resource center by business students distilled Rogers’ qualitative measures into quantitative measures. They found that the decomposed TPB model was a better diagnostic tool than the original TPB and provided a better understanding of behavioral intention than TAM, although noting that the decomposed model was more complex, due to the integration of Rogers’ and others’ concepts, and thus less parsimonious than the earlier models.

Other studies have selected and examined portions of Rogers’ theory. Ajjan and Hartshorne looked at Rogers’ behavioral attitudes of perceived usefulness, ease of use, and compatibility while applying Taylor & Todd’s decomposed TPB to their study on assessing the awareness of faculty of the benefits of Web 2.0 to supplement in-class learning and an understanding of the faculty’s decision to adopt Web 2.0 tools (Ajjan & Hartshorne, 2008). The tool used was a faculty survey.

Surry and Farquhar divide innovation research in instructional technology into two classes: macro-scale theories that focus on change of an educational institution, and micro-scale theories that focus on the adoption of specific instructional tools. Each of these in turn were divided into two sub-categories, “Developer (Determinist)” and the latter as “Adopter (Instrumentalist)” (Surry & Farquhar, 1997). Developer-based theory focuses on the qualities of the innovation, and adopter-based focuses on the characteristics of the adopters. Surry and Farquhar found that instructional technologists tend to be innovators by nature and thus tend to assume that technological superiority will prevail in the innovation-adoption process, although there is a general consensus in the literature that this alone will not guarantee adoption. The authors conclude that adopter-
based theories, which focus on the “human, social, and interpersonal aspects on
innovation diffusion” are crucial as they view the user as the primary force for change
(Surry & Farquhar, "Adopter Based (Instrumentalist) Theory", para. 1). They thus
encourage the acceptance of adopter-based models as fitting more closely with observed
outcomes.

Another researchers found that most discussion on the Rogers model has focused
on the characteristics of the innovations, while generally ignoring the characteristiucs of
the adopters. Wejnert (2002) acknowledges this paucity of research in this area while
noting that the “characteristics of actors may substantially influence the perception of an
innovation’s costs and benefits” (p. 302) Her article discusses six sets of actor variables
that appear to affect adoption of an innovation, including the personal characteristics of
individuals. One of these key factors is psychological strength, which she defines as self-
confidence and independence. She notes that this area of research would benefit from
further study, which is the primary purpose of this study. The modifications to or
comments on the use of the Rogers’ model do not undercut the validity of its constructs.
The fact that others have built on it for fifty years is a recognition of its fundamental
soundness.

**Summary**

For American law schools, online education is an innovation poised on the brink of
adoption. Online education is a rarity in American law school education at a time when
the number of online courses in higher education in general is growing at a pace many
time that of traditional face-to-face courses. This chapter looked at the specific reasons
that make online education an elusive innovation for law schools. The two primary
reasons why law schools have been slow to adopt online education are due to factors relating to the American Bar Association and to the Socratic method. The American Bar Association is the accrediting body for American law schools and severely restricts the number of online courses that can be offered in general, thus discouraging law schools from adopting online courses. Furthermore, the Socratic method, the long-standing signature pedagogy of the American law school, involves intensive questioning that is perceived as difficult to replicate online. Online education thus faces challenges by law faculty who cannot envision how online education can fulfill the same role as the traditional face-to-face classroom.

Despite these barriers, a small pioneering group of law professors has been offering online courses, and the Rogers diffusion of innovation model was selected to help provide a framework for understanding their them. In the next chapter, the research design and methodology for this study of the characteristics of these law faculty members and their pioneering online courses is set forth.
CHAPTER 3. METHODOLOGY

The law professors who are described in this study are breaking out of the long-established mainstream of American legal education. They are serving both as either an innovator or early adopter themselves, and possible also as an opinion leader for their colleagues. A detailed data collection and analysis of how they see themselves and their roles is necessary to provide a meaningful, rich description of their traits and their position in the law school. This chapter will provide details on how that descriptive data was collected and analyzed.

Research Design

The Qualitative Paradigm

The concept of American law schools offering law courses online for the J.D. degree intrigued me, and one of my underlying questions is “why would law professors put the effort in to teach online?” When there is a standard signature pedagogy that is not well-suited to online education, when there are no overt rewards for moving to online courses, when there is substantial additional work to adapt a standard face to face law course to an online environment, what would motivate a law professor to do so? I selected a qualitative case study for an exploration of this area. My tentative initial hypothesis was that these law professors were either innovators or early adopters and opinion leaders, and in either case, I foresaw that I would need open-ended interviews to gather sufficient data. Therefore, I selected a descriptive qualitative study that looks at a few law professors in detail. This would provide what Stake terms a “critical
uniqueness,” steering away from a cause and effect, cut and dried type of data collection and toward a holistic view of select subjects (Stake, 1995).

As the number of law professors teaching online in American J.D. programs is quite limited, a statistical study would not be an effective tool as there is insufficient data for a normal curve to apply. Qualitative research is able to provide valuable analysis in situations where there are only a limited number of cases. The ability to provide rich, thick descriptions of a case is one of the hallmarks of a qualitative case study (Merriam, 2009; Stake, 1995). It is a more fine-grained analysis than a quantitative study as it is able to extract useful information from a small number of participants.

I used constructivist principles to implement this case study as they resonate very strongly in this type of inquiry. As Patton notes, quoting Shadish, social constructivism constructs knowledge about reality, not the reality itself (Patton, 2002, p. 96). The goal is to collect, analyze, and reflect on the reality of the background and decisions of the selected law professors.

The purpose of this qualitative case study is to analyze three law professors as they pioneer online J.D. courses at their ABA-accredited law schools, using an innovations framework to understand their role as an adopter, and whether they served as opinion leaders in their law school environment. The choice to use the diffusion of innovations framework with focus on the opinion leader status of the law professor participants is discussed more extensively in chapter 2.

My research questions are:

1) What are the characteristics of the selected law professors relevant to the choice to teach law courses online?
2) How do they see their roles as an opinion leader for other law professors?

**Multiple Case Study**

The methodology for undertaking this dissertation was a multiple case study analysis (Stake, 2006). The term “case study” is also referred to in the literature as not only a methodology but a strategy, inquiry, or comprehensive research strategy (Cresswell, 2007, p. 73). Three faculty members at different law schools were analyzed. Each faculty member is his or her own case. Case studies are the preferred method of research when the research questions posed are how or why something occurred, the investigator has little control over the events, and the focus is on a contemporary phenomena (Yin, 2008). Case studies are effective tools for examining bounded groups (Cresswell) and phenomena that develop over time (Grant, 2004), and law professors teaching online courses qualify as both. The cases studied were three law professors who were teaching online, and the context is the American law school setting as mediated by the restrictions placed on use of online by the American Bar Association as regulating agency. A case study is appropriate when the researcher is attempting to provide information about a new and unexplored development in pedagogy for a specific group of educators.

Questions that ask “how” or “why” something occurs look at relationship among pieces of data, what Yin calls “operational links” that need to be traced over time. These are appropriate for a case study which looks at data in a specific context, not just frequency of occurrence (Yin, 2008). According to Yin, while histories and experiments also are possible to use in examining data in context, a case study’s unique strength is in dealing with a wider variety of evidence in a contemporary setting. Cresswell also
recognizes case studies for their use of multiple courses and case-based themes, and their focus on a rich context of the cases (Cresswell, 2007).

Qualitative research in general, and case studies specifically, have their critics (Labuschagne, 2003). Criticism has focused on the lack of generalizability of results based on the lack of mathematical exactitude and the small sample size, which provides an insufficient basis for scientific generalization (Yin, 2008). However, this is not a defect but simply the nature of a different type of inquiry. The ability to generalize about one’s results is not the only reason for research. Case studies are related to theoretical propositions, and not to a specific population (Yin) – in other words, a case study is not an average of the real world occurrences being studied, but is a spotlight on one or more specific instances and how it reflects, expands upon, or differs from theory. Going deeply into a few areas sheds different insights than making a general observation and is a valid type of analysis. According to Fryvbjerg, a case study is a highly effective way to research: “the proximity to reality, which the case study entails, and the learning process that it generates for the researcher will often constitute a prerequisite for advanced understanding” (Flyvbjerg, 2006, p. 236).

Qualitative research has also been criticized for being subjective (Stake, 1995; Yin, 2008) and thus lacking in validity (Guba & Lincoln, 2005). However, subjectivity is considered to be an “essential element of understanding” and not a flaw in qualitative research (Stake, 1995). There is a general realization among scholars that there is no one objective truth in many types of research, and that an impersonal and value-neutral report is not possible (Patton, 2002; Stake, 2006). A responsible researcher is required to recognize his or her biases and to implement protections to minimize bias and increase
construct validity, external validity, and reliability (Yin, 2008). Some authorities on qualitative research are moving away from the use of these terms, which arose from quantitative research, using terms such as credibility, consistency, and transferability (Merriam, 2009) or quality, rigor, and trustworthiness (Golafshani, 2003) in assessing qualitative analysis. For the purpose of this study, I have selected Merriam’s alternative nomenclature. Ways to address these concerns are discussed in the verification section below.

Another issue that requires special attention is the issue of ethics (Cresswell, 2007). I address this concern by disclosing my positions and potential biases, and by protecting the participants through informed consent procedures, protecting their privacy, and anonymizing the reporting.

**Role of the Researcher**

I am a lawyer who has taught legal writing at two law schools, one in the 1980s and the other in the 2000s. My experience there as an instructor piqued my curiosity about teaching at the law school level in general. As I have taught paralegal courses online, I am particularly interested in the ways in which law school education could be delivered online. Many paralegal programs do offer online courses, and some are even fully online. The fact that one type of education in law uses a substantial amount of online education, and another’s use be almost nonexistent, intrigues me. I have no personal stake in this issue as I am a full-time associate professor and paralegal program director and am no longer affiliated with a law school.

The participants that I selected do not work in the University of Hawaii system and were not known to me prior to the start of this research. I use Patton’s label of
“empathic neutrality” as a starting point to help reduce my own bias, which requires a balancing between becoming too involved, which can cloud one’s judgment, and becoming too detached, which can reduce understanding (Patton, 2002, p. 50). The goal is to test the diffusion of innovations theory, not to prove it. I want to describe what I see has happened with the participants. The use of a data collection protocol, external review by participants, and other methods to establish credibility, consistency, and reliability are discussed elsewhere in this chapter.

**Conceptual Framework**

The conceptual framework for this dissertation is the diffusion of innovations theory as propounded by Rogers (Rogers, 2003). This theory and its components are discussed in more detail in chapter 2. The diffusion framework is suitable for case studies; Rogers includes many in his text, and examples can be found in education and other social sciences research (Faubert, 2009). Two specific parts of diffusion of innovations theory were used, the characteristics of adopters and, supplementally, the role of opinion leaders.

The framework impacted the instrument design as the interview questions needed to be focused on bringing out elements of the subjects’ backgrounds and experiences that relate to the factors that relate to the innovation categories, and their perceptions of themselves as opinion leaders.
Participants and Context

Participants

I selected three participants, as I needed more than one to be able to conduct cross-case theme analyses. I also wanted more than two as two case studies can set up a polar opposite analysis (i.e., each distinction tends to be seen as diametrically opposed rather than as points on a spectrum). I selected three rather than four to have sufficient time to provide the thick, rich description characteristic of a case study.

The professors were selected through a process of purposive sampling. Purposive sampling is appropriate to this study as the purpose of this study is to investigate what causes law professors to take the initiative in offering online courses, so generalization about all such law professors is neither required nor desirable. Within the larger category of purposive sampling, the specific technique of snowball sampling was used for two of the participants obtained through the Working Group for Distance Learning in Legal Education, as described below (Cresswell, 2007; Merriam, 2009).

I looked for maximum variation in law school ranking, geographical location, and online teaching modalities (Coyne, 1997). My research in this area led me to a paper written by two law faculty members, Dean Rebecca Purdom of Vermont Law School and Professor Larry Farmer at Brigham Young University School of Law. The paper proposed a study that would have compared face-to-face law school courses to online law school courses. Although the study was not funded, the paper and the ensuing discussion around it led Dean Purdom to begin the Working Group for Distance Learning in Legal Education, a national group of law school faculty, deans, and practitioners who are currently providing or exploring distance learning as a method of providing high quality
legal education. The Working Group has charged itself with identifying key issues for law schools to consider as they adopt distance learning practices, including providing information and model policies for law schools, and developing recommended practices and standards ("Working Group for Distance Learning in Legal Education," n.d.).

I spoke to Dean Purdom and Professor Farmer during my background research for this study, and I was invited to participate in the Working Group’s fall 2012 meeting at Thomas Jefferson School of Law in San Diego. While some of the Working Group members, which represent over twenty law schools, teach fully online courses, many of those are taught in an LL.M. or other law masters program. Professors who teach courses only for LL.M. or law masters programs were not eligible for this study, which focuses on the ABA-regulated J.D. programs, for reasons stated in chapter 1. Other members of the Working Group taught hybrid courses, part online and part face to face, and I excluded these faculty members as well as there is a different mindset in faculty in hybrid courses as compared to those who teach a fully online course, as the hybrid faculty member still retains a connection to the bricks and mortar classroom and thus to the traditional law school modes of teaching. I was searching for faculty who had cut the ties to the physical classroom and thus had to fully embrace the online paradigm.

Through the Working Group, I found two faculty members who met the basic requirements to be in the study, I asked those two if they would be interested in participating in this study. After each potential participant agreed, a consent form was sent to them and a follow-up call was made to determine a mutually convenient time for the phone interview. As the number of professors who qualify as a subject for this study is extremely limited, I was not able to obtain third participant from the Working Group,
although I did follow a number of leads suggested by members of the group. I found the third participant via a lengthy internet search, which included investigating a number of law school websites. Most of the searches led me to all-online law schools or LL.M. programs. ABA-approved J.D. programs do not appear to publicize their online courses. Many law schools do not even list their course offering on a public place on their website, much less the format in which that course is offered. One of the participants in this study noted that his own online course is only publicized by word of mouth by students. I did locate a few faculty members who taught online but were adjuncts, and this study was limited to full-time professors, as they have much greater decision-making ability in how to teach their courses, while often adjuncts do not have much choice in what to teach or in which format. I wanted to talk with professors who had the maximum amount of choice in making the decision to teach online. I also was looking for maximum contrast with my two existing participants, so I was looking for someone in a different law school, a different geographical region, and, if possible, someone who taught entirely online, as my one of my participants taught synchronously, and the other a mixture of synchronously and asynchronously. Therefore, I used a series of internet searches which eventually led to locating my third participant. Not only did he meet the requirements to be in the study, but he also met two other criteria I was using to show a diversity of experience: he was from a different part of the country than the other two participants and he was teaching a wholly asynchronous course. After I ascertained that he met the study requirements, I described the study and asked if he would be interested in serving as a participant. After he agreed, the IRB consent form was sent to him. With the addition of this third participant, I now had someone who taught in all three
modalities.

Each participant was assigned a pseudonym and all data was organized by the pseudonym to assure confidentiality and anonymity.

**Study Setting**

The interviews took place online, and I allowed the participants to select the dates and times most convenient for them.

**Instrumentation**

The primary method of research was through semi-structured interviews. Semi-structured interviews have been used to explore the adoption of innovations using the Rogers’ model (Hader et al., 2007), although using a case study to describe an adoption is not as common in the literature as studies that look at the rate or amount of an adoption. However, other researchers have noted the need to explore adoption of technological innovations in higher education in more detail (Soffer, 2010).

Using this method of data collection is appropriate for a descriptive study, and as such it is expected that the participants will have a broader, deeper, and richer experience than can be envisioned by the researcher in advance. The idea behind the semi-structured interview format is to allow the research to bring this experience to light in response to the situation at hand (Merriam, 2009). Patton uses the term “interview guide” to encompass the same concept of using question outlines to increase the comprehensiveness of the data collection (Patton, 2002).

The semi-structured interview also provides a basic structure so that most of the same information would be collected from all the participants so that there could be some
derivation of common themes (Patton, 2002). Variation in the order and phrasing of the questions and additional questions prompted by the subject’s response is permitted in the semi-structured interview format (Grant, 2004).

A copy of the set of questions for the initial interview is attached as Appendix 1 and was included in the IRB application. These questions were evolved from an analysis of the key characteristics of opinion leaders, innovators, and early adopters, as described in Rogers’ diffusion model. I had tested some of these questions in phone interviews with two members of the Working Group who served as background information for this study, which helped me to verify that these questions would help collect relevant information. I had two colleagues who analyzed portions of the transcripts to help determine intercoder reliability for an external check on my coding (Cresswell, 2007).

The follow-up set of questions for the second interview were based on responses received from the first interview and are contained in Appendix 2. Aside from demographic information, the questions were targeted at the two issues: Rogers’ diffusion of innovations spectrum (abbreviated in the chart below as DOI) and opinion leader status. The table below clusters the questions and briefly describes the primary reason they were selected.

<table>
<thead>
<tr>
<th>Question</th>
<th>Class of question</th>
<th>Purpose of question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal information</td>
<td>Demographic</td>
<td>Background</td>
</tr>
<tr>
<td>Previous background in online education</td>
<td>Experience</td>
<td>Background</td>
</tr>
<tr>
<td>Which course is taught online and why was it selected</td>
<td>DOI</td>
<td>Determine internal/external motivation, helps classify type of adopter</td>
</tr>
</tbody>
</table>
Data Collection

The primary data consisted of five interviews: two of the law school faculty members participated in an initial and follow-up interview, and one participated in only the initial interview and did not respond to requests to schedule a follow-up interview. As all participants were outside Hawaii, interviews were conducted via Skype. With their permission, I recorded the interviews with digital recording software.

The initial set of interviews began with verification that the participant had received the IRB form and consented to the interview, and also consented to the recording of the interview. I had emailed and spoken on the phone with them to verify their interest and set up a time for the interview, and I briefly recapped the purpose of the
study during their first interviews. As the third participant was a law professor whom I
had not previously met, I spent some time during the initial phone call setting up the
interview describing the purpose of the interview, my personal experience with law
school and law school education, and the topic of the dissertation.

As the interview questions were semi-structured, this allowed me to ask follow-up
questions during each interview. These follow-up questions sometimes generated
additional questions, so the purpose of the second round of interviews was to allow me to
review the first-round questions and data, and determine if additional questions needed to
be asked of all participant to fill potential gaps in the record. In addition to questions that
collected basic demographic information, there were fourteen questions approved for the
first round of interviews, and twelve further questions approved by the IRB as follow-up
questions. The study protocol with the initial set of questions are attached as Appendix 1.
The approved supplemental questions for the second round of interviews are attached as
Appendix 2. The first and second set interviews were approximately three months apart.

The interview order was determined by the participants’ schedules. After each
interview, I transcribed the relevant portions of the interviews using dictation software.
The data was kept in electronic format on my home or work computers, each of which is
used solely by me and each of which is password protected to ensure participant privacy.
Confidentiality was maintained by use of pseudonyms.

I then coded the interview, using a computer-assisted qualitative data software
(CASDAQ) program, Atlas.ti, for coding. Coding each interview before going on to the
next allowed me to see and highlight themes and provided a better focus for the next
interview (Saldaña, 2009; Stake, 2004). The second round of interviews allowed me to
follow up with the earlier participants on themes that emerged through the later interviews.

I had planned to interview each participant twice, for approximately an hour for the first interview, and as-needed for the follow-up interview. The actual initial interviews lasted between 41 and 52 minutes for the first round. Only two of the participants responded to my request for a second interview. The questions on the follow-up interview were helpful in clarifying and expanding on the initial answers, so while it would have been helpful to have follow-up interviews for all three participants, the major issues were all contained in the first set of questions, so the lack of follow-up for one participant was not deemed critical. Of the two participants who agreed to participate in the second round, one interview lasted 20 minutes and the other, 41 minutes.

**Data Analysis**

The coding procedures were taken from Saldaña, who describes coding as an “interpretive art” (Saldaña, 2009, p. 4). As envisioned by Saldaña, coding is a cycle in which the data are labeled, filtered, and focused to help understand and generate themes and concepts. Saldaña sees two large cycles in coding: first cycle coding, which involves managing and labeling the data, and second cycle coding, which is a more advanced way of reorganizing and revisioning the data to develop themes and synthesis. There are seven primary categories of first cycle coding and six primary categories of second cycle coding, with multiple subcategories for both cycles.

I kept myself open during the initial data collection before specifying which first coding method or methods seemed to be the most useful, which is a research style that Saldaña refers to as “pragmatic eclecticism” (Saldaña, 2009, p. 47). One or more methods
can be used in the first cycle of coding, and I used several. Provisional coding was used first, in which I tentatively conceived of codes that I was anticipated seeing in the data, given the fact that the interview questions were structured around the diffusion of innovations theory. These were derived from the conceptual framework, my literature review, and my background research and background interviews.

I had had background phone conversations with two of the members in the Working Group who were not going to be participants in the study to validate the questions and begin the coding process. Based on those phone conversations, I built a table of preliminary codes to enter into Atlas.ti, a professional qualitative data analysis tool, using provisional coding. The codes I derived from these preliminary discussions were the initial building blocks to construct a codebook. I also drafted some analytic memos, based on these background conversations, to shape the follow-up question in the interviews.

I selected Atlas.ti as its latest version (Atlas.ti 7) includes semantic network views to view coded data visually, which I thought would assist me in drawing connections between the data. It has additional features that allow data to be managed on a more granular level. This allowed me to sort and analyze the data, not merely store it. Atlas.ti can be set up to handle both first and second cycle coding, but I found that trying to keep two layers of coding in one document was confusing and so the second cycle of coding, which clustered data more broadly, was done on a hard copy of the printout containing the first cycle codes.

The provisional codes were edited and expanded on during the first cycle coding process. I had chosen four classes of first cycle coding: attribute coding (used for the
basic descriptive and demographic data), structural coding (conceptual phrases related to a specific research question used to frame the interview, generally broader than descriptive coding); descriptive coding (summarizing in a word or phrase the topic of a passage, generally more narrow than structural coding), and values coding (the participant’s values, attributes, and beliefs).

Once I began coding I found that the data made more sense when split rather than lumped. Saldana distinguishes “lumpers” (whose preference is to give large blocks of data general, and sometimes a more abstract, code) and “splitters.” My preference was to be a splitter – to use smaller, more focused terms to help see a more nuanced view of the data right from the start. I realized that I might need to collapse data categories in the second cycle coding, but for the initial analysis, splitting seemed more relevant, so my coding also involved simultaneous coding (in which the same datum might receive two codes) and nested coding, in which one coding term was embedded inside a larger term. For example, in a passage labeled “course design-process,” there might be included a smaller section labeled “course design-differs from F2F,” as the participant, in a long passage on how the course was designed, commented on how the design differed from the face to face version of the course.

The first round of coding also was used to help identify commonalities and missing elements in the data. I used code counting in Atlas.ti (counting the number of instances a coded term appeared in the data) to help focus on areas in which it was most important to ensure that I had adequate data. Code counting was not the sole element in deriving the second round of questions, as number of times a code was used did not always indicate its importance; for example, if a participant spoke at length about a topic,
it was coded as only one incident, but this lengthy discussion could contain more material than three brief mentions of another coding term.

The coding helped me move from inductive analysis through to deductive analysis – in other words, at the start, I was using the data to help form the categories, or improve my preliminary coding; at the end, I was using the coding to help look for more evidence that supported my choice of categories.

After I coded the first two interviews, I found that my provisional coding terms had not been structured as usefully as they could have been. For example, in keeping with the descriptive coding concept, I developed a pre-coding list of codes by person affected, such as the participant or the administration (e.g., administration-support), but then when actually coding and considering values, I focused first on the value and second on who shared it (e.g., benefits-faculty). I revised and recoded for better clarity by giving priority to the person or entity so that I could cluster my codes into “parent” classes of participant, administration, other tenure track faculty, adjunct faculty, and students, and then have the “child” designation follow, such as participant-benefit and student-benefit. I edited my list of codes accordingly and completely recoded the first two interviews. This standardization of the codes helped in categorizing them later and looking for themes, and is considered part of Cresswell’s “data analysis spiral,” through which a researcher moves in analytical circles, looping between data and analysis in a constant comparative process (Cresswell, 2007).

Once I was comfortable with my first cycle coding, to help ensure that I was accurately coding the data, two senior colleagues in my doctoral cohort with training in qualitative research were asked to review selected pages of the transcript, as discussed
above under the verification section. They were given the entire code list, which at that time had 54 terms, with brief descriptions of the terms if they were not self-explanatory, and asked to perform their own coding on those pages. They were also requested to add any additional codes that did not appear on the existing list. I then collected my colleagues’ coding and compared it to my own. The correspondence between the colleagues’ coding and the researchers was high. There were some minor discrepancies that were easily resolved. No additional coding terms were suggested.

The first cycle coding choices were selected by determining which were most likely to yield a substantive analysis. The second cycle coding type, pattern coding, were determined after all of the interviews were coded in the first cycle, which allowed me to reorganize the data and develop categories and themes. During the analysis, a number of analytic memos were generated to help me organize and clarify my perception of the data and the emerging themes.

<table>
<thead>
<tr>
<th>ABA (American Bar Association)</th>
<th>Acculturation (to the law school/legal profession)</th>
<th>ADA issues (Americans with Disabilities issues related to teaching OL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin-financial support</td>
<td>Admin-pressure (Any pressure from law school admin to offer/not offer the course)</td>
<td>Admin-support (Types of support offered by the law school admin – attitude, not financial)</td>
</tr>
<tr>
<td>Assessment (of OL course by the subject)</td>
<td>Benefits (Actual benefits to teaching OL)</td>
<td>Class size</td>
</tr>
<tr>
<td>Course-benefit (Projected benefits of teaching the course OL)</td>
<td>Course-design process (What design process was used for the OL course)</td>
<td>Course-diff from F2F (in what ways does the OL course differ from the F2F version. Does not include methodology (see next code).)</td>
</tr>
<tr>
<td>Course-methods (what methods are used to teach)</td>
<td>Course-revenue generator (is the course perceived as a)</td>
<td>Course-student interaction (what are the</td>
</tr>
<tr>
<td>Survey questions</td>
<td>Text in table</td>
<td></td>
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<tr>
<td>---------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td></td>
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<tr>
<td>the course)</td>
<td>revenue generator for the school)</td>
<td></td>
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<tr>
<td>specific ways OL students interact)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Course-who made decision to teach OL?</td>
<td>Course-why OL? (why did the subject decide to teach OL (in general))</td>
<td></td>
</tr>
<tr>
<td>(subject, admin, or other)</td>
<td>Course-why this one OL? (why was this course selected to be taught OL)</td>
<td></td>
</tr>
<tr>
<td>Demographics (subject’s background info, includes years of teaching)</td>
<td>Drawbacks (drawbacks to teaching this course OL)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Faculty-adjuncts teaching OL (relating to law school adjuncts teaching OL)</td>
<td></td>
</tr>
<tr>
<td>Faculty-support from other OL profs at law school (included adjunct &amp; TT)</td>
<td>Faculty-TT-attitudes toward OL (TT=tenured/tenure track faculty)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Faculty-TT-interest in teaching OL (TT=tenured/tenure track faculty)</td>
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<tr>
<td>IRB</td>
<td>IT support (what specific things does the IT staff do)</td>
<td></td>
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<tr>
<td></td>
<td>IT support attitudes (what is the IT staff attitude toward supporting OL courses)</td>
<td></td>
</tr>
<tr>
<td>Law school pedagogy</td>
<td>OL course-async (identifies the methodology as async)</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OL course-hybrid (identifies the methodology as both sync AND async)</td>
<td>OL course-sync (identifies the methodology as sync)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>OL course taught (which courses are taught OL at the law school)</td>
<td></td>
</tr>
<tr>
<td>Opinion leader (has subject shared info about teaching OL with colleagues)</td>
<td>Other OL courses at the law school (list)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Physical space issues</td>
<td></td>
</tr>
<tr>
<td>Prof-attitude (subject’s attitude toward teaching OL after having taught OL)</td>
<td>Prof-benefit (what are the benefits to the subject of teaching OL)</td>
<td></td>
</tr>
<tr>
<td>(compare to “Prof-why teach OL?” below)</td>
<td>Prof-Courses taught (background: list of all the courses subject teaches)</td>
<td></td>
</tr>
<tr>
<td>Prof-Courses taught-OL (which OL courses does the subject teach)</td>
<td>Prof-future OL courses (does subject plan to offer any other courses OL)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prof-plans to offer course again (would subject teach this course OL again)</td>
<td></td>
</tr>
<tr>
<td>Prof-previously taught this course F2F?</td>
<td>Prof-prior OL experience (what was the subject’s prior OL teaching experience)</td>
<td></td>
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<tr>
<td></td>
<td>Prof-technology background (the subject’s technical background prior to teaching OL)</td>
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</tr>
<tr>
<td>Prof-training (what type of training was the subject offered prior to teaching OL)</td>
<td>Prof-why teach OL? (why did the subject agree to teach OL the first time)</td>
<td></td>
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<tr>
<td></td>
<td>Quality (quality of the subject’s OL courses)</td>
<td></td>
</tr>
<tr>
<td>Socratic method</td>
<td>Students-attitude toward OL</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Students-benefit (what are the subject’s opinions as to the benefit to students of the OL course)</td>
<td></td>
</tr>
<tr>
<td>Students-engagement</td>
<td>Students-interest in OL (expressed attitude of students toward OL courses)</td>
<td>Students-needs (what specific student needs support/undercut offering an OL course)</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
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<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td>Students-outcomes</td>
<td>Teaching support – additional (what additional support, other than training offered by law school admin, did subjects receive? Includes informal peer support.)</td>
<td>Students-training &amp; tech support (what support is given to OL students)</td>
</tr>
<tr>
<td>(what are student outcomes compared to same/similar F2F course)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Working Group</td>
<td>Workload in teaching OL (subject’s description and perception of amount of time/effort needed to teach OL)</td>
<td></td>
</tr>
<tr>
<td>(references to the Working Group for Distance Education in Online Learning)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Verification**

Verification in this study was an ongoing process and was based on the data and the themes that emerged from coding the data. This movement between discovery and verification and back to discovery followed by subsequent verification involves both inductive reasoning – seeing the emerging themes – and deductive reasoning – and helped me focus on the actual data, rather than preconceived notions about the data, as it is flexible, not rigid (Patton, 2002). Patton cites Guba as depicting naturalistic inquiry as “a wave on which the investigator moves from varying degrees of a ‘discovery mode’ to varying degrees of a ‘verification mode.’” (Patton, p. 67). As patterns emerged in the first-cycle coding, which I did after the first round of interviews, I created a follow-up set of interview questions to investigate them. Verification was done through further questioning of the participants during their second interview.

Construct validity or credibility helps assure that the information sought is well
defined and operationally relevant. Methods used to support construct validity include multiple sources of evidence (triangulation of data), establishing a chain of evidence, and having the draft report reviewed by key informants (Merriam, 2009; Yin, 2008). In this study, while interviews with the law professors will be the primary source of information, I also established a chain of evidence, and allowed the participants to review the draft for their comments and input. A copy of the description of each participant was sent to them for their input. No corrections or comments were received.

External validity, or transferability, ties into the ability of a study to be used to make generalizations. While the external validity concept in a quantitative study focuses on statistical generalization, in case studies, the generalization used is analytical generalization, where a specific set of results is generalized to a broader theory – in this study, diffusion of innovations. Merriam, citing Eisner, notes that the knowledge shared from a quantitative study is horizontal, not vertical, as it “is an expansion of our kit of conceptual tools.” (Merriam, 2009, p. 226). This expansion allows the reader to extrapolate the information in a study to his or her particular situation. In this study, then, while there were some connections made between the cases, the primary connection was between the individual case and the diffusion of innovations theory.

Reliability centers around consistency: assessing whether another investigator who conducted the same case study of the same participants at the same point in time, would arrive at the same findings (Yin, 2008). This requires the researcher to document the procedures used by the researcher, specifically by creating a case study protocol and a case study database. At least one researcher rejects the idea that reliability can really be proven, which thus makes it irrelevant as a central concern in fieldwork (Wolcott, 2005).
However, I do not go that far, and attempted to address the reliability/consistency issue by implementing a case study protocol. This protocol included the project objectives; the field procedures, including the informed consent documentation for the participants; the data collection plan; and the case study questions, including the research questions and, for this study, the semi-structured interview questions, both sets of which were submitted as part of the IRB application. The informed consent document specified the voluntary nature of their participation and provides contact information for additional questions. It also informed the participants that they may withdraw any time during the process. In addition, pseudonyms were used for the participants’ names and law schools and their real names omitted from the report to preserve the privacy of the participants and encourage candid responses.

After the interviews were transcribed and coded, I provided a clean, representative sample to two of my advanced colleagues in the doctoral program and asked them to code them, based on my existing coding chart. I used both simultaneous and nested coding, so due to the complexity of the coding I was anticipating a close, but not an identical, match. My colleagues’ coding was very similar to mine. Where it did not coincide with mine, the differences were minor and were primarily based on a difference in lens (broader versus narrower) or due to some misinterpretation of the definition of the code. Their input, which generally verified my coding strategy, helped to provide triangulation of the data.

Internal validity is often mentioned as one of the four primary issues for case studies, but it is primarily relevant to explanatory studies, not a descriptive study, so it is not an area of concern as this study is a descriptive study (Yin, 2008).
Research bias is a claim that has been directed at qualitative research, based on allegations that the qualitative researcher selectively observes and records the information, potentially disregarding important and relevant information, and that the researcher’s personal view can affect how the data is interpreted (R. B. Johnson, Winter 1997). One key strategy to avoid researcher bias is reflexivity, in which the author “actively engages in critical self-reflection” about potential biases (R. B. Johnson, p. 284). I have created my reflexive practice as I documented my background in this chapter, and have considering the biases that this background might bring to bear on this topic. My reflection on possible biases was an ongoing activity as I collected, coded, and analyzed the data. I also used other techniques to minimize bias, including triangulation of data (Golafshani, 2003), as discussed above, to help minimize bias. My dissertation committee served the function of the “critical colleague” who helped me explore alternative interpretations of the data (Yin, 2008), which again helped to minimize bias.

**Product and Theme Development**

Each case has a separate write-up that was described within a lens of diffusion of innovations theory. Themes were developed from each case, and the cases were compared to each other to see if a larger theme developed, or if there was a thread that tied the cases together, or provided new and interesting insight into the cases.

The patterns that arose when I clustered the initial codes fell into eight areas. The first was demographic data, which was used for the purpose of pulling together a description of the background of each participant, but which was not coded in the second cycle. Quantitative studies of persons involved in the innovation adoption process are
often broken down into three categories: socioeconomic characteristics, personality variables, and communication behavior (Rogers, 2003, p. 287). For the purpose of this study, data on socioeconomic differences was not collected as law professors as a class tend to be homogenous: they all had to attend and do well in college, and attend and do well in law school, for example, so classic Rogers’ generalization of innovators having of “more years of formal education” and “more likely to be literate,” for example, are not relevant. Personality values and communication behavior, as appropriate, as discussed in the themes below.

The second category of data that was not further analyzed in second-cycle coding was the descriptions of how the online courses were taught. While this was a key piece of the case descriptions in chapter 4, and helped establish that the participants could appropriately be analyzed as some type of adopter who would qualify for this study, the actual teaching methods were not relevant to the personality characteristics of the participant or of his or her likelihood of communication with others regarding teaching online.

The six remaining patterns are displayed in the following table.

<table>
<thead>
<tr>
<th>First cycle codes</th>
<th>Second cycle codes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admin-financial support</td>
<td>Initial motivation</td>
</tr>
<tr>
<td>Admin-pressure</td>
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<tr>
<td>Admin-support</td>
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<td>Course-benefit</td>
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<td>Course-revenue generator</td>
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<tr>
<td>Course-who made the decision to teach OL?</td>
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<tr>
<td>Course-why OL?</td>
<td>Drawbacks</td>
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<tr>
<td>---------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Course-why this one OL?</td>
<td>Technology issues</td>
</tr>
<tr>
<td>Physical spaces issues</td>
<td>Workload in teaching OL</td>
</tr>
<tr>
<td>Prof-attitude</td>
<td>ABA</td>
</tr>
<tr>
<td>Prof-benefit</td>
<td>Acculturation</td>
</tr>
<tr>
<td>Prof-prior OL experience</td>
<td>ADA</td>
</tr>
<tr>
<td>Prof-technology background</td>
<td>Course-design process</td>
</tr>
<tr>
<td>Prof-trigger to teach OL</td>
<td>Course-diff from F2F</td>
</tr>
<tr>
<td>Prof-why teach OL?</td>
<td>Course-methods</td>
</tr>
<tr>
<td></td>
<td>Law school pedagogy</td>
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<tr>
<td></td>
<td>Prof-training</td>
</tr>
<tr>
<td></td>
<td>Socratic method</td>
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<tr>
<td></td>
<td>Teaching support-additional</td>
</tr>
<tr>
<td></td>
<td>Assessment</td>
</tr>
<tr>
<td></td>
<td>Benefits</td>
</tr>
<tr>
<td></td>
<td>IT attitudes</td>
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<tr>
<td></td>
<td>IT support</td>
</tr>
<tr>
<td></td>
<td>Quality</td>
</tr>
<tr>
<td></td>
<td>Students-attitude toward OL</td>
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<tr>
<td></td>
<td>Students-benefit</td>
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<td></td>
<td>Students-engagement</td>
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<td></td>
<td>Students-interest in OL</td>
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<tr>
<td></td>
<td>Students-outcomes</td>
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<tr>
<td></td>
<td>Workload in teaching OL</td>
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<tr>
<td></td>
<td>Faculty-adjuncts teaching OL</td>
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<tr>
<td></td>
<td>Faculty-support from other OL profs at the</td>
</tr>
<tr>
<td></td>
<td>school</td>
</tr>
<tr>
<td></td>
<td>Faculty-TT-attitudes toward OL classes</td>
</tr>
<tr>
<td></td>
<td>Faculty-TT-interest in teaching OL</td>
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<tr>
<td></td>
<td>Future of OL at your school</td>
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<tr>
<td></td>
<td>Other OL courses at your law school</td>
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<tr>
<td></td>
<td>Future of OL education in J.D. programs</td>
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</tr>
</tbody>
</table>

| Spreading the news across campuses |
The individual case studies are contained in chapter 4, and chapter 5 discusses these six themes: motivation, coping with frustration, problem-solving, the ongoing adoption, and communication within the campus and with peers outside the campus.
CHAPTER 4. CASE STUDIES

This chapter provides the detailed individual case studies for each of the participants. The themes that arose from the case studies are described in detail in chapter 5.

Participants

The participants in this study were three law professors who work at ABA-approved U.S. law schools. One female and two male professors participated in the study. They were from different geographic regions in the United States, with experience teaching in law schools ranging from 9 to over 30 years. Their online teaching experience varied from two years to five years at the time of the first interview. To preserve their anonymity, their names, the names of other faculty members at their school, and the names of their law schools have been replaced by pseudonyms.

Table 4: Characteristics of participants

<table>
<thead>
<tr>
<th>Pseudonym</th>
<th>Location</th>
<th>Years teaching law</th>
<th>Years teaching online</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor Jane Hitchman</td>
<td>Southern U.S.</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Professor Bob Russo</td>
<td>West Coast</td>
<td>30</td>
<td>2</td>
</tr>
<tr>
<td>Professor Martin Lee</td>
<td>East Coast</td>
<td>8</td>
<td>5</td>
</tr>
</tbody>
</table>
Participant Information

Professor Jane Hitchman

“But it is the wave of the future – I mean this is coming, and I think we want to be at the forefront, and at least in synchronous [courses], we have the technology to do it. And so it's fun.”

Background.

Professor Jane Hitchman was a tenure-track faculty member in a fourth-tier public law school in the Southern area of the United States at the time of the study. For the purposes of this dissertation, it will be referred to as “Southern Law School.” She graduated from law school in 1996. She had been a professor at her law school for nine years. She taught a variety of courses, including a standard doctrinal course, some common upper-level electives, and a skills course. She taught only one online course, and it was one of the upper level electives. At the time of the interview, she had taught it twice. There were four or five other faculty members at her law school who also taught online.

Professor Hitchman did not seek out an online teaching opportunity, but was approached to teach online: “it was our director of IT actually who came and said we have all this awesome technology and need folks teaching in that arena.” She was approached by the head of the Information Technology (IT) department at her law school to take advantage of two high-tech classrooms that had previously been acquired through a grant to support the school’s access to justice and clinical work: “[W]e weren't really using [the high-tech rooms designing for the clinical course] for teaching and so, about
two years ago, he really pushed people to start embracing that reality.” The result was that 4-5 junior faculty members chose to put upper-division elective courses online.

Professor Hitchman chose an upper division elective course, which she had not taught previously, as her online course, using the new classroom facilities. At law schools, the term “upper division” refers to any course in the second or third year of law school, as compared to the first year courses, which are mandatory and attended by all members of the entering class. After the first year, students have more flexibility in their schedules. Professor Hitchman started teaching online at the same time as four other faculty members did, all of whom were likewise solicited by the IT department to teach an online synchronous course in the new classroom facilities. Prior to that time, only one course at Southern Law School was taught online. This was an upper division writing course that was both synchronous and asynchronous. As the purpose of teaching online was in part to make use of the new facilities, Professor Hitchman structured her online course as a synchronous course, and offered it for the first time in 2011.

The other reason that Professor Hitchman structured her course as a synchronous course was due to the mission of her law school which is classified as a Historically Black College, which she described as follows:

We offered legal education to students that could not be educated in the state system [when we started], for race-based reasons, and we have continued as part of our mission to offer access to legal education to underrepresented populations. And that's certainly evolved from just the black students to Latinos, and certainly folks
that don't come to the table with the same strength of undergraduate education as other might. So what it means is that we have students who have real writing deficiencies, and we have to get them over that hump, and that's why I think there has been some resistance to online education, certainly asynchronous, because we want to see them, we want to put our eyes on them on a regular basis. And make sure we're not losing them.

As some of Southern Law School’s students typically enter law school with academic challenges, the faculty has been sensitive to the need to support them. Faculty contact has always been a critical element of this law school. The synchronous classroom was perceived by Professor Hitchman and the other Southern Law School faculty members as fulfilling a need to “have eyes on” the students on a regular basis to ensure that the school does not lose them. There has been no movement at Southern Law School to offer asynchronous online courses.

**Design and structure of the course.**

Professor Hitchman designed the course herself, which she had not taught before. She modeled the course on another course that she had previously taught in a related area. The course was primarily based on the statutes and regulations, and some case law was also reviewed. The course “is not heavily Socratic,” as compared to a traditional first-year property or contracts class. Professor Hitchman remarked that the course “doesn't require some of the rigorous Socratic method that law schools like to see in their basic curriculum.”
Professor Hitchman described the high tech classrooms as rooms with a PolyComm videoconferencing system consisting of a large wall of video monitors, one for each student, up to a maximum of 36. There were some physical desks in the room for students, and sometimes three or four students elected to come to the classroom in person. The in-class students also received a high quality video feed and their videos appeared on the wall of monitors, which enabled the students in remote locations to see them. In this system, when the faculty member was talking, all students saw her and whatever content she was directing to their computers. When a student was speaking, his or her video appeared on everyone’s screen. An IT person monitored the video feeds and the PolyComm system, but from a separate room. The IT staff person provided assistance to both Professor Hitchman and to the students. The IT staff person was able to speak to Professor Hitchman and to help with the smooth flow of materials that needed to be presented to the students during the class. The IT staff also worked directly with the students if they were experiencing issues with their connection to the class. The IT staff person did not participate in the instruction – in other words, the IT staff person did not monitor or report on a backchannel conversation. The only faculty development that Professor Hitchman received prior to the start of the course was a brief “fairly down and dirty training on the technology” from the IT department on using the technology in the classroom, such as how to direct the content from her computer to the student computers.

Each PolyComm session was recorded and made available to the students after class for their review. Watching these videos alone was not considered the same as attending the live class session due to the lack of interaction, and were for review only.
Professor Hitchman kept track of attendance at the live sessions, as lack of attendance would have raised issues with the ABA requirements (see further discussion in The Impact of the ABA section below).

Professor Hitchman reported that 90% of what she did in the class was the same as what she would have done in a face-to-face course, and only 10% of the course differed, largely in the area of monitoring student engagement. While she thought that the online course was a benefit for students due to the convenience of being able to take the course from other locations, she did not see it as a convenience for her:

Because of the way we do it, for me it's not really different from teaching a regular class. I'm still in the classroom, I'm still in my suit, I'm still in the front of the class for the most part, so I'm not sure there's a convenience to me.

As the technology was not always perfect, she found a certain challenge in teaching the course in terms of tracking student engagement and the need to make a greater effort to be attuned to what students were doing:

The technology is not always perfect, so I find it a little exhausting to teach, because you don't have quite the sense of how the students are tracking the way you do when everybody's in the same room and you can feel what the room’s doing, like working the crowd a little bit. I missed that piece of it a little bit. So you have to find other ways to gauge, “Are they with me? Am I losing them?”

Even though she could see all of the monitors, she reported that they did not give
her quite the same sense of how the students were tracking the discussion as a face-to-face course would have done. She noted that she had had to find other ways to gauge whether the students were with her, or were confused. She found that the assessment tools she used to track this student engagement to be very important, and noted that she did not typically feel the need to use them in a face-to-face class. Another difference between the face-to-face and online courses was that Professor Hitchman felt that she needed to be both more animated and also more deliberate in her presentations. Additional animation was needed due to the attenuated distance, but at the same time, she needed to be not as quick to move on to the next topic as she would have in a face-to-face class, due to the slight delay in receiving the video feed. She had to pause to give the students a little additional time to indicate if they had a question.

The faculty at Southern Law School had just promulgated some fairly rigorous guidelines, both for students and professors involved in online courses, which included requiring a professional appearance while online, the need for a quiet environment, and the need for broadband access.

Those of us who teach in the arena are kind of continually working to make sure we have strong guidelines and safeguards in place. I think sometimes it’s easy for a professor to say, “Oh, awesome, I’m going to teach an online course while I’m in Paris for the summer,” and it becomes really a talking head proposition. We want to be really certain that the quality of program we are offering is consistent with what our traditional classrooms offer.
The Southern Law School faculty had been continually working on maintaining strong guidelines and safeguards in place to assure that the quality of the online courses was consistent with the traditional face-to-face courses.

Professor Hitchman has offered the course to both the law school’s day and evening students, during the regular semester and during the summer. Her enrollment has been between 12 and 14 students.

**Impact of the American Bar Association on course design.**

Due to the ABA restrictions and requirements, the faculty, including Professor Hitchman, produced a written document detailing the expectations for teaching online, the quality of the programming, the types of engagement with students, and how to measure seat time so that they could address any ABA concerns. The school provided the students with laptops and broadband cards to ensure that students have the right tools to participate. The faculty who taught online, including Professor Hitchman, were very deliberate in constructing guidelines for the online teaching process: “We did some really good work in putting things in writing about what distance education would look like, and expectations and quality programming and the length of time you engage with students, and how you measure those minutes.”

Professor Hitchman and the faculty of Southern Law School were very cognizant of the ABA’s required class hours. While tracking class hours was easier to do in a synchronous course than it would have been in an asynchronous course, the synchronous setting posed its own challenges when technology failed. Southern Law School has a mandatory attendance policy, which a student would meet only if they were present in the live synchronous class. If their video feed was dropped too frequently, that would
become an issue for the school, whether the problem was on the student’s side or the school’s side, because that would negatively impact the student’s attendance. How to resolve this issue fairly is an area of ongoing discussion.

**Perceived benefits of offering the course online.**

The convenience factor for the students was cited as a primary reason for offering courses online. The course was scheduled as an evening course. The law school has both a day and an evening program, and this course was available to students in both programs. In particular, it was designed to help off-campus students as it allowed them to take the course without having to travel back to campus. It also allowed students to take a summer class while they were in another location for a summer job or internship. Professor Hitchman indicated that for her, teaching the online course was not very different from teaching a face-to-face course, as she still was required to come to campus, to dress professionally, and to spend the same time before the video cameras as she would have in a face-to-face version of the class.

In terms of student engagement, Professor Hitchman found that the students seemed about as engaged and performed about as well as in a similar face-to-face course. While she has not taught the same course face-to-face, she has taught a similar one face-to-face. She indicated that a number of students in that related face-to-face course also took her online course, so she had a baseline on these students’ engagement and abilities, and they seemed similar. For her summer course, she attributed any dip in engagement to the fact that it was a summer course, shorter in span and therefore moving more quickly, rather than it being an online course.

Another benefit that may be more for the law school than for the individual
faculty members is that, as the student population grows, space issues started to develop at the law school, and offering online courses freed up some of the traditional classrooms.

**Challenges in offering the course online.**

One drawback to Professor Hitchman’s online course was that sometimes issues arose with lost video connections with the students, which in turn affected their understanding of the course material, which would run afoul of the schools’ and the ABA’s attendance requirements, so Professor Hitchman needed to keep track of these dropped students for accreditation purposes:

We also have a challenge in that we also have a mandatory attendance policy. And so if a student gets dropped too frequently, and we can't resolve the issue, whether it's on their end or our end, watching the video is not a substitution for presence. So we have to deal with that, and that's one of the things we are still talking about, what that looks like in terms of policy and process.

She worked with the IT staff to address this, but found it frustrating:

Sometimes the student will get bumped from the class, sometimes I will lose them visually. Sometimes they’re really, really gone, to the dark side, so you can't see or hear them, so when that happens, the student will say “Professor X, I'm still here but you can't see me.” I’ve got IT in the other line, so IT, even as I lecture, as the course is continuing, the IT is going to work behind the scenes to get
the student back up, and often times they do. They might be off for 2 minutes. It's frustrating, I mean that's the kind of stuff that I say, “let's get this together! I'm tired of seeing people get dropped.”

Another drawback came up in the area of anonymity and compliance with the Americans with Disabilities Acts requirements. One of the typical ADA accommodations is to give the student additional time in writing an exam. Usually, these exams were assigned a number, and the faculty grade them anonymously. In a face-to-face course, a proctoring system could be set up with the registrar so that the faculty would not be not aware of who in the class received extra time on the exam, and there is no indication in the hard copy of the exam itself as to the length of time it took to write. However, in Southern Law School’s online courses, the course and the exams were conducted using the TWEN course management system. The system indicated the length of time of the exam, so even if the name was anonymized, the fact that one student’s time was longer than the others would have been enough to reveal the accommodation. In this case, the professor worked with the registrar to resolve this issue. The ability of the school to provide anonymous accommodations is still under discussion.

Administrative support or opposition.

The initial impetus to teach online at Southern came about two years prior to the interview from the law school IT director. The law school had previously received a grant to build high-tech classrooms for the purpose of the school’s clinical and access to justice programs to do clinical-like intakes and counseling across the state. The IT director encouraged other faculty members to take advantage of these classrooms for teaching.
The administration supported this move for two reasons: to improve access to elective courses, and to assist in generating revenue. There had been one advanced legal research course taught online prior to this, but it was prior to the use of the high-tech classroom. It was as much asynchronous as it was synchronous, because it was a skills class. After faculty members were solicited to teach online, five of the newer faculty members decided to adopt this new technology. The purely synchronous courses all started about the same time.

**Faculty attitude toward online courses.**

Professor Hitchman did not think that there was any opposition among the faculty members to the online courses. She thought that there would be “a certain pushback” from the more established faculty members if it were made mandatory, but that there was a laissez-faire attitude at present in regard to these optional online courses by the junior faculty. Professor Hitchman noted that the faculty who were offering online courses were comfortable with the technology and were interested in making courses available that otherwise might not be. While there were some professors who did not want to do this, they were not resisting the innovation for the school:

I think the new teachers are going to want to be doing this,

so certainly, institutionally, this is where things are going.

There'll always be some professors who won't want

anything to do with it, but they are not holding back those

who do.

Professor Hitchman did note that all faculty taught one or two of the first-year required courses, which cannot be offered online due to ABA prohibitions. There has
been more flexibility for faculty in general in teaching the upper-division seminars and elective classes. One professor who taught an online course declined to teach it again, but the others have continued to teach online, although at the time of this interview no other faculty member had joined the initial cohort of synchronous instructors.

**Student attitude toward online courses.**

Professor Hitchman reported that some of the students loved the online courses. When the online courses first started, there may have been some students who assumed that they would get easy A's, but the school has enough online courses established at this point so that the word has spread about their rigor and that was no longer the student expectation. Some students dropped the online courses as the commitment was more than they expected, but others, especially those who commute, loved the convenience of the online format: “Some students, especially our commuting students, love the option to be able to earn two or three credit hours, and not get in the car and drive over to the school.”

Professor Hitchman also reported similar student engagement in her online course compared to a similar upper-division course she teaches: “I thought the experience was very similar in terms of product, in terms of degree of engagement - you know, if there was a dip in engagement, I would allocate it to being a summer class, not to being a distance ed class.”

In terms of equipment, the school provided support through its laptop policy, in which it provided each student with a laptop for the duration of their time at the law school. For the summer online courses, as the synchronous format required broadband access, the school provided a broadband card if necessary which the student could use at
their remote location.

While there was no specific training in the online technology by the school, each student was required to test their technology from the location they anticipated accessing the course from the week before class started, so that the school could resolve any problems prior to the start of class. This entailed having the students access the course site, and work directly with IT to ensure the connection was working.

**Impressions of teaching online and future plans.**

Professor Hitchman indicated that she enjoyed teaching online:

I like it. It requires you, I think, to be a little more animated. You have to be more attuned to what the students are doing. You know, there is a millisecond delay, so I have to be not quite as quick about moving on. I need to breathe and pause and give students a chance to get their hand up, because by the time I see it, sometimes I'm moving on. But I think it has awesome possibilities.

She saw it as the wave of the future, and wanted to be at the forefront of it. She indicated that “I know that we are trying to increase our offerings around our distance education capabilities, so I would definitely offer [her online course] again.” She thought that within the next two to three years, she saw herself developing a second online course. A significant impetus for that would be space constraints at the campus.

**Opinion leader.**

Professor Hitchman was a member of the ABA Working Group on Distance
Learning in Legal Education and has exchanged information with the group members. Aside from that she has not engaged in discussion of online teaching with others outside her law school. Within the law school, as there were a small number of online faculty, there has been open discussion of teaching methodologies and sharing of information to assist the learning curve for future faculty who want to teach online.

I haven't done much encouraging, because IT does so much of that themselves. But we are very open about here's how I do it, and here's how this professor does it, and you know it shouldn't be quite the learning curve for subsequent professors as it has been for us. So we tried to share all of “this really worked, that totally didn't.”

She has not been particularly active in recruiting other faculty members to teach online as the IT department has taken the lead role in that

**Professor Bob Russo**

“I am a fan of distance learning, distance education, online instruction, as you call it. But only if it's done right. And doing it right requires a lot of time and resources.”

**Background.**

At the time of the interviews, Professor Bob Russo was a tenured faculty member at a second-tier private law school. For the purposes of this dissertation, it will be referred to as “Western Law School.” He graduated from law school in 1974, and was a faculty member for thirty years at the time of the interview. He taught upper division
courses. He taught only one online course, in conjunction with a colleague. At the time of the interview, they had team-taught it four times. There were no other faculty members at his law school who taught online.

Professor Russo became involved in online teaching when he was asked to co-teach an upper-level elective course at Western Law School during a time when he was a visiting professor at another law school.

About four years ago, I was asked if I wanted to teach a course in [a specific area]. This had previously been a regular classroom course of the law school. However, the semester that I would have taught it, I was actually teaching at [a law school in another country]. So I agreed to do it if I could do it online. So the first time I taught this course online was spring 2010. And I taught that actually from [outside the country].

The co-teacher had only taught the course face-to-face, so Professor Russo brought the technology skills to the table to put the course online. Professor Russo was aware of the fact that online courses are offered in law masters and LL.M. programs, and that there are even all-online masters programs in law, but that was not a factor in his decision to put this course online. He looked for other online J.D. courses, but did not succeed in finding a model: “I didn’t spend a lot of time investigating existing offerings, the ones I found I wasn’t really impressed with.” To prepare himself, he consulted with people familiar with offering online materials to law students through CALI, the Center for Computer-Assisted Legal Instruction, and looked at a couple of online courses. “I
learned early on that it was a completely different type of teaching from being in the classroom. I learned also that simply webcasting a live class doesn’t cut it.”

One of the other driving forces in his offering an online course was that Western Law School had both a day and an evening program, and the evening students were required to come to class at 6 p.m. four days per week for four years.

A driving force – I don’t want to say it was a single one -- is that we have an evening program, which has been under some stress these past few years because we are in [a downtown area]. Students have greater obstacles to coming to class at 6 p.m. four days a week for four years. And so one of the reasons we were exploring an online offering was to provide some alternatives for the evening program.

The students in the course, which was open to both day and evening students, was about evenly divided between the two groups..

The two professors had designed the course as a partly synchronous and partly asynchronous course. For the purposes of this dissertation, this will be referred to as a hybrid course, as it incorporates the two online modalities. This course was offered for the first time in 2010.

Professor Russo had no previous experience with teaching or taking an online course. As a former director of a law and technology program, he was “generally familiar with Internet and online technologies.”

**Design and structure of the course.**

As the course contained both synchronous and asynchronous components, a firm
timetable was imposed to enable the students to complete each week’s work on a timely basis. Each week was a module in the course that started on Fridays at noon. The module began with asynchronous content: a narrated PowerPoint presentation that typically took the students two hours to view. An online discussion forum opened at the same time, with specific questions provided based on the materials. By the following Tuesday noon, the students were expected to have watched the PowerPoint and read the assigned materials. Then they were required to prepare and submit questions for the synchronous live session for that week held on the WebEx platform.

According to Professor Russo, teaching this synchronous portion was substantially similar to a face-to-face course:

The synchronous part runs pretty much like the regular class, you prepare slides, you prepare your lecture, and you conduct it, I wouldn’t say there's a vast difference. I don't quite get the signaling back from the students that you would if you were looking at them. But I would say 90 to 95% the same as an in-person classroom.

However, he found that using WebEx provided an advantage not available in face-to-face courses:

The WebEx tool allows me to see whether the students have muted their microphones, they all have to have headsets, whether they have other windows open on their computers so they are distracted. Oh yeah. It is, it is a really nice tool, and it includes some features you wouldn't have
in a regular classroom. So I can tell if a student is
distracted, or at least if they are watching a different screen.

Another advantage of the online synchronous tool, which was facilitated by the fact that
the course is team-taught, was that during the synchronous session, both professors were
working:

What he and I do is we alternate responsibilities for each
week. So for instance, yesterday I taught the class, but he
then is active in the chat room with the students. It’s not
really a chat room, it's just a sidebar. And so a student who
misses something or has a question, rather than raising their
hand, they have the option of just putting it into the chat
space, and then the teacher who's not on that week will
respond to it, or if it's good question, will call my attention
to it, and I just raise it to the class as a whole.

The first three times that the course was offered, the live session ran for only one hour per
week, but for fall 2012, it was changed to an hour and a half, from 9-10:30 a.m. on
Wednesday. Professor Russo found that this design choice was a “big improvement”:
“The synchronous time you know when everyone is live online is really the most
productive time. So lengthening that, I think really added to the class.”

According to Professor Russo, the synchronous part of the class ran like a typical
law school classroom. All students were required to have headsets and to have all other
windows closed on their computers so that they would not be distracted. The class
session had “a combination of lecture, Socratic method, questions with the students,
problem solving, but since all the students have submitted questions in advance, we try to organize the class around questions.” Students could raise their hands using the WebEx tool to ask questions, they could be called on, and they could also be polled during class. There was a sidebar open during the session, which is a text chat window on the side of the screen. The class moved very rapidly, and covered a lot of material.

Immediately after the class, a quiz opened for the students. They had 48 hours to complete the quiz, and they received an immediate score. At the following Friday noon, the quiz, the module, and the forum closed, and the next week’s materials opened.

Professor Russo made the PowerPoint slides graphics intensive to keep the students interested. The IP staff member converted the narrated PowerPoint into MPEG-4 files, and the students could either watch the PowerPoint presentation as an MPEG-4 or as a PowerPoint in presentation mode.

Professor Russo noted that the assessments in this online course differ from the prior face-to-face version in that in the latter, the term paper was 100% of the student’s grade in the course. In the online version, the term paper became only 60% of the grade, due to the inclusion of grades for the weekly quizzes and forums.

**Impact of the American Bar Association on course design.**

The American Bar Association requirements played a significant role in the structure of Professor Russo’s course. Professor Russo was familiar with the ABA requirements, and he has kept his Dean informed of the latest findings of the working group. Western Law School takes the ABA rules very seriously, which is why:

- we have such a structured online course, with all these different components the students have to complete on a
weekly basis. They can't fall behind. And that's our way that we have of ensuring that they are quote unquote in class for three hours.

Each of the components was graded, so the overall course grade depended on the student’s participation in the forums, the weekly quizzes, and the questions contributed in class. The asynchronous components required the students to be “in attendance” an additional hour and a half week, in addition to the hour and a half synchronous class. These elements have been successful in ensuring that students were meaningfully in class for the requisite three hours per week. All of the participation elements were documented, so that the ABA could assure itself that Western Law School is in compliance with requirements.

**Perceived benefits of offering the course online.**

Professor Russo noted that this online format was very convenient for the students. Western Law School has both a day and a night program so he could open the course to both types of students. He usually had an enrollment consisting of about half day and half evening students, and the evening students usually participated in the course from their office computer. He saw this convenience as a real benefit to the students, as they did not have to be in a particular location to take the class. He estimated that out of 26 students per semester, few were on campus when they were in class. Western Law School did have a room set up in the library for students who were on campus taking online courses so they can be quiet and there will not be extraneous noise, but typically only one or two students used that room per class. Other students signed on from their office, their externship, or from their homes.
Professor Russo noted that it was convenient for him as well: “I sometimes teach it from my house, or sometimes I teach from the office, it really doesn't matter” and that he could have taught the course from home or from an alternate location, such as another campus. He noted that the synchronous part of the class ran very similarly to a regular class. He indicated that he did not quite get the same signaling back from the students as to whether they were engaged as he did when he is looking at them in a face-to-face classroom. He estimated that it is 95% the same as in person classroom. However, the asynchronous piece is “hard.” He said that the additional workload was considerable. It took much longer to prepare the asynchronous part than it did the synchronous part, and he referred to it as a “huge time sink” the first time he taught the class. It was less work in the subsequent semester, but still more work than a comparable face-to-face course. He prepared a PowerPoint for each class in advance, but between the time when student questions were due, which is was noon on Tuesday, and late the same afternoon, he was inserting their questions into the slideshow and adding more material that corresponded to those questions. The slideshow was posted at five o’clock on Tuesday afternoon, so that when the students were in class on Wednesday morning, the students could look at the slideshow ahead of time, or could download it and take their notes alongside the slides.

Professor Russo structured the course as he did to get the students engaged in the material before they come to class, so they have already thought about it. He found that implementing weekly graded quizzes and discussion boards made the students more conscientious about completing the readings on a timely basis. He did not do the same kind of pre-class preparation for his face-to-face students, because the prep work could
not be accomplished without the asynchronous portion. He has not tried to replicate this structure in his face-to-face courses.

**Challenges in offering the course online.**

Professor Russo emphasized how time intensive it was to teach this course: “It's the asynchronous parts that are hard. Huge. It takes much longer to prepare the asynchronous parts than it does the synchronous part.” This was especially true the first time he taught the course:

The first time it took me, it took me two days to prepare for each week's class. Very time intensive, but of course, as I updated from year-to-year, it's not nearly as time-consuming. I can probably update the slides in about half a day each year. So I'm improving them, number one based on experience the prior year, and to bringing in new material. And then I don't have to re-narrate the whole slideshow, I can just re-narrate individual slides.

Professor Russo stated that he spent more time preparing for this course than he did for comparable face-to-face course, which is the only downside to this format:

Even though some of the videos are in the can - they have already been recorded - I probably spend more time preparing for this course that I do for a comparable in class course. So that's the only downside to it really.

One of the tools he used, WebEx, was a challenge as it frequently crashed. His campus previously had a site license for a more robust version of the tool, but for the last
three semesters, the campus of which Western Law School is a part switched to the educational version of WebEx, which was less stable and required more troubleshooting:

So to tell you the truth, when I teach the class, I have two computers running, and I now take up two seats, so I log onto both computers, because, typically, WebEx will crash on me once every class. Yeah, I just pick up the other headphones and I’m online, and the students don't even notice that I've switched computers. But I have to do that because it's not as stable [as a previous tool].

Another drawback of teaching the online course was the need for substantial tech support by the IT department. It took a “huge amount of time.” The IT staff person was not enthusiastic about handling the first online course due to the time commitment. If the school offered more than two online courses, they would have to add additional staff. At the time of the interview, the IT staff was a three-person department, and they were already responsible for maintaining the classroom technology and doing the video recordings of each face-to-face class.

Professor Russo was asked about a potential drawback of the synchronous session, as reported in Professor Hitchman’s narrative above, of technical difficulties interfering with students’ ability to participate in the synchronous sessions. He reported that this rarely occurs, at most once or twice a semester. When the course was first offered, students tried to use their built-in camera and microphone instead of getting a headset, which led to some problems with audio feedback, but Professor Russo and his colleague have insisted on use of a headset, which has removed this problem in
subsequent semesters.

**Administrative support or opposition.**

Professor Russo stated that the deans at Western Law School were favorable to experimental courses, and they were generally supportive of his desire to turn his face-to-face course into an online course. He stated that he has no resistance to this idea, other than the cost issue. Structuring the course in this hybrid manner required the licensing of a virtual classroom site, and providing the services of an IT staffer to administer the course and be present at every synchronous virtual class session. While there was no facilities charge associated with this class as it did not use a physical classroom, there was some degree of administrative overhead for the IT support. When Professor Russo proposed teaching a second course online, “the Dean of faculty, her biggest concern was administrative support, and I have to say the tech person who sits in with us, wasn't all that keen on doing it, because it takes a huge amount for time. She reluctantly agreed to do it. If we were to offer more than two courses online, we would have to have additional staff.”

While most faculty at Western Law School were using TWEN for online course management, Professor Russo preferred to use Sakai, an open-source platform. TWEN, an acronym for The West Education Network, is online courseware that is specifically tailored for law schools (Newman, 2005).

An additional cost would be the costs of an instructional design specialist. Although Professor Russo and his colleague did not have the services of a staff instructional designer when they created their course, he saw that as a necessity for future faculty: “managing an online class is different, the structure is different, it’s an area
where you don’t have any innate knowledge and I think having outside or in-house specialists to design the class is really important.”

Professor Russo originally noted that the law school is not pressing any other faculty members to teach online. It was not a priority for the law school, partly because it is more expensive. If a faculty member came to the administration and wanted to teach an online class, he thought that they would support that, but the administration was not pushing online education. To encourage more faculty to teach online, Professor Russo stated:

So one of the things that I’ve been advising [the administration] for a while - I suggest is that we give stipends or releases to faculty who make the effort to put a course online…. Some form of recognition I think is indispensable to make this work—a stipend or course relief, or something of that nature, none of which we do.

The Western Law School administration did not support this idea at that time. However, at the time of the second interview, three months later, Western Law School had appointed a special committee to look into online teaching, and Professor Russo had been named to the committee.

Faculty attitude toward online courses.

Professor Russo noted that he had to obtain curriculum committee approval to teach his online course, so for two semesters someone from the curriculum committee sat in on the class, as had the associate dean and the head librarian. No one had any issues with the offering of the online course. Professor Russo has been advocating that Western Law School offer more online courses, and has been quite upfront about the fact that
doing so requires a tremendous commitment, both by the institution and the faculty member to do it properly. While some faculty members have expressed some “mild” interest in teaching online to Professor Russo, no one had actually taken steps to do so.

**Student attitude toward online courses.**

Students liked the online class format, and Professor Russo commented that “I get better evaluations on this than I do for my regular classes.” The course has filled up each semester that it has been offered, and there has been a waiting list for it. There was no specific training given to students to prepare for the course, as the students came to school with the basic computer skills necessary for the course. Due to the fact that students had to take weekly quizzes based on the materials, Professor Russo found that students in the online course were more conscientious:

The difference is that students have to take the quiz and they are based on the materials, so students are less likely to fall behind and put things off. In face-to-face courses students may not keep up with the readings…. I think the students are more conscientious, simply because of the way the course is structured.

He noted that “Of course we could have done that in our regular course, right?” but that as a practical matter, they do not.

He also noted that the students seemed more engaged to him, and to his co-instructor who previously taught the course in a face-to-face mode. The students asked more questions than the faculty could address in the 1.5 hour live synchronous session. Professor Russo reported being at a recent alumni event for Western Law School, and
some recent graduates were there who had taken his online course. They came up to him and told him what a great class it was. He has received more positive feedback on that class than on his face-to-face courses.

When asked if the students were asking for more online courses, Professor Russo commented that the online nature of the course was not advertised. It had just shown up in the course catalog as being an online class. Students seem to have found out about it by word of mouth.

Professor Russo reported that the flexibility of the online course setup was a significant positive factor both from the teacher and the student standpoint.

**Impressions of teaching online and future plans.**

Professor Russo reported a very positive experience with teaching online. He stated that he plans to teach the same course online, and will investigate offering another course online. He thought that law schools that were not exploring online courses will be out of business in thirty years.

**Opinion leader.**

Professor Russo has been a member of the ABA Working Group on Distance Learning in Legal Education and has exchanged information with the group members. He has also spoken about online teaching with other faculty at Western Law School, with no apparent results to date:

So I have been advocating that we offer more online courses, but I have been quite upfront about the fact that it requires a tremendous commitment, both by the institution
and the faculty member to do it properly. So the result of that is, I haven't found any takers.

Based on his experience, he did not believe that the move to online courses can be faculty driven, as the faculty appeared to lack sufficient knowledge of the online pedagogy and the online teaching possibilities. He thought law schools would be driven to implement online courses by people who were either in the administration or the IT department who understood the future of this new teaching methodology. He believed that while the faculty were not likely to be in the vanguard on implementing this change, they will adapt if the change is thrust upon them.

**Impression of the future of online education in J.D. programs.**

Professor Russo believed that the single largest impediment to getting more law faculty to teach online would be the amount of time that it takes to put the course together. He noted that even if a faculty member has taught the course for twenty years, moving to the online format is a “new prep,” which would be a barrier to participation:

> Number one, it’s a different course. Don’t just stick a camera in the back of the classroom. You need to think of it as a completely different course. Even if you taught the subject matter for 20 years. Secondly, unless you put the resources in it, in terms of curriculum design, it’s not going to succeed. You will be disappointed.

Due to this serious investment of time, Professor Russo has been recommending that Western Law School give faculty a stipend or course release time to address the issue of additional work. Professor Russo found that the barrier was not faculty distrust of the
technology, but the workload. At the time of this interview, Western Law School did not offer an incentive of this type to its faculty. Professor Russo’s solid background in technology combined with his desire to offer a specific course while he was teaching at another law school were the unique factors that led him to teach online despite the lack of an external incentive such as a stipend.

Professor Russo also believed that law school administration needs to be willing to invest in several back-end technology issues to successfully offer online courses. There would need to be instructional design specialists to help the faculty--the subject matter experts -- design the course. Without using the resources of an instructional design specialist, “you will be disappointed” with the product, and the course will not succeed. His position was that it is insufficient to just place a video camera in the back of a live course, and call that an “online course.” There also should be instructional technology (IT) specialists to support the technology, such as hosting the servers, installing and troubleshooting the various technology pieces, and supporting the course during the synchronous sessions. The technology and the instructional design skill sets are not skill sets usually found in the same person, so there would need to be additional consultants, outsourcing, or additional permanent staff. He estimated that due to these costs, it would be more expensive for a law school to offer an online course than a face-to-face course.

Professor Russo took the position that this investment would pay off for the school in terms of being able to offer a quality online course. While the synchronous part of the course would not scale, in the sense that the school would save money offering it, the asynchronous part – the PowerPoints, quizzes, and forums – could scale, so there would be the potential for cost savings if large courses or multiple sections were to be
Professor Russo’s opinion was that:

These things can’t be faculty driven, because the faculty
don’t know what they are and they have to be driven by
people who are either in the administration or the IT
department for example, who understand the future of this,
and faculty adapt. They may not be in the vanguard, but
they adapt.

He stated that “schools that aren’t experimenting with it at this point will be out of
business in 30 years. And I mean that seriously.”

**Professor Martin Lee**

“I think [online education] can be very effective. I’m struck by how much work it is, but
also struck by what you can do with it."

**Background.**

Professor Martin Lee was a full-time faculty member and program director at a
second tier public law school. For the purposes of this dissertation, it will be referred to
as “Eastern Law School.” He graduated from law school in 1986, and was in private
practice until he joined the Eastern Law School faculty in 2004. He was a full-time
faculty member and program director of a specialty LL.M program and had been a
faculty member for nine years when the study took place. His position is not a tenured
one. He taught required and elective courses within his specialty program, which has
been open to both LL.M students and J.D. students. Enrollment in the course was
generally evenly split between the LL.M and J.D. students. He taught only one online
course. At the time of the interview, he had taught it five times. There were five other
courses that were taught online in his speciality program, and one additional online
course taught in the general law school curriculum. Within his program, the other online
faculty members were adjuncts; the faculty member teaching the online course outside of
this program teaches a legal writing skills course.

Professor Lee had no specific background in instructional technology prior to
teaching his online course, only basic computer skills. The idea of teaching an online law
course arose as “an experiment.” He was approached by a colleague at the university’s
business school about collaborating in teaching an online law course in conjunction with
their Master’s program. Professor Lee did not teach in the specific area that the business
school needed, but the discussion did encourage him to consider putting one of the
courses in his specialty program online. He used the business school as a model as “they
have, maybe, the most extensive online program offerings at our university.” An
instructor who normally taught a face-to-face course within his program was leaving, and
Professor Lee was interested in covering the course:

So we talked to [the online instructors at the business
school] a couple of times, and had them come up and give
us a presentation at the law school, and this was about 2006
or 7, and we were intrigued, so I spent the summer and part
of the fall with this guy designing [the] course that we
offered for the first time in 2007
Of particular interest to Professor Lee was the fact that the business school developed their online courses with one of their professors who has a Ph.D. in education curriculum and design and development, Professor Daniel French. Professor Lee had no prior exposure to online law school education, “I didn’t know about online – other than what anyone reads in the papers- anything about online legal education” and he was not aware of the existence of any other online asynchronous LL.M or J.D. courses prior to this. “I think I tried [to look for models in asynchronous law school education], but I don’t think there was anything out there.” The only law courses he found just provided content through videostreaming, but that was not a model he wanted to use. He thought that his program may have been the first such online asynchronous law master's program in the United States.

Professor Lee approached his administration and proposed that he offer one online asynchronous course as an experiment. He received a stipend from Eastern Law School to work with Professor French over the summer to design this asynchronous course, and the law school also paid Professor French for his consultation work. The course was offered for the first time in 2007.

Professor Lee considered the online course to be successful, and based on this result, his program has worked extensively with Professor French to develop four other online courses. Within his program, Professor Lee has persuaded some adjunct instructors to teach online. Outside of his program, Professor Lee has experienced no opposition from the faculty at Eastern Law School. He prepared a report for the faculty when his program first assessed its online courses, and while faculty have been supportive of his program’s efforts, with one exception, no faculty members have delved
into the area or taken the initiative to develop and offer an online course.

**Design and structure of the course.**

In assessing his course design, Professor Lee stated that

I think law schools generally do a better job than they used to, but even before I entered law school teaching, I thought that law schools historically violated everything we know about how people learn. We have large classes with one point of assessment, an exam, in which there's no feedback except the grade. You couldn't design a system that is less user-friendly in terms of interaction, other [than] the classroom discussion.

In creating his online course, which involved a “fairly lengthy design process,” Professor Lee hoped to address some of the recent criticisms of American law school education:

There was an article yesterday in the New York Times -- there’s constantly articles now about law school admissions are down, is there a crisis in legal education, how do we make it better -- so absolutely, we thought about those things…. I very specifically thought about those things when I was designing the course. What are some of the critiques of legal education and … how can we address them in this online course?

Part of the design that Professor Lee ended up with differs from the typical, upper-division law school seminar in that “this offers the opportunity for frequent feedback –
small-group class with frequent feedback, and assignments that help mimic what the students would do in practice.” This online course was a completely asynchronous course. The materials were placed on a TWEN course management system, chosen as “it’s simply that it is a system that we already have, and have some general familiarity with, because that’s the system that the law school uses - there is a TWEN site for every course.…. We thought TWEN, being designed for the law school, would be most familiar to our students.” The course consisted of the same readings that would be required in a face-to-face course, plus asynchronous online discussion and written exercises, which were unique to the online version of the course. The online discussion provided the opportunity for frequent feedback, and the assignments helped students practice the specific skills that they would use in a law practice. The use of the scaffolded assignments was an attempt to address the criticism of law school that it does not focus on skills and preparing a student for the practice of law.

The first thing that Professor Lee was instructed to do:

seemed counterintuitive to me, [it] was [the instruction] to throw out your outline, don't start with the 14 week semester or anything like that. Figure out what you want to students to know when they leave your course, what should they do and what should they know, and what they wouldn’t have known before, and start from there[.]

The design process required considerable revision of the course, particularly as there was no textbook to provide structure. None of the courses in the specialty program have a textbook, which already required instructors to be creative in their course design. In
either the online or face-to-face version of this course, the faculty needed to create the readings. In the revision in this course, Professor Lee found that he was emphasizing different things than the prior faculty member who taught the course face-to-face.

Another significant difference was the number of and feedback on the written assignments. The course required “seven written exercises and – this is Daniel’s doing – they scaffold up,” building upon each other in a logical sequence. These regularly spaced exercises helped to ensure that the students kept up with the class.

Professor Lee referred to the “tyranny of the clock” in a face-to-face course, which puts a time limit on student engagement. He found that one particular benefit of his asynchronous course was “the ability to engage every student every week, which you really you can’t do -- at least certainly not to the extent you can do [it online] -- in a synchronous or live class.” The course also required students to make a substantive weekly contribution that brings in their own experience, other articles, links in the reading, or their own reflections and comments. “We define this [substantive contribution] as best that we can, but it also means that you hear from every student every week. And not simply, ‘Oh, yeah, I agree with that.’ That doesn't count. They are expected to bring in their own experience, comment, bring in other articles, points in the reading.”

The added benefit of this weekly discussion forum requirement arose from the fact that the students in the class were typically a mix of the J.D. students and LL.M. students. Many of the students in the LL.M. program were experienced lawyers, and they were able to contribute substantially to the class discussion without taking up the limited time that would be available in a course that was face-to-face. While a discussion board
differs in nature from a face-to-face classroom discussion, Professor Lee found that it has its own benefit:

[while] in some sense you lose the give and take of a live class, which particularly in law school as you know is important -- and I agree -- what you gain is the ability to get really a richer and deeper dialogue with students than you could have in a live class, because of the time, and just the nature of [the asynchronous course].

Professor Lee noted that, even knowing first-hand the benefits of his online course design, in terms of his face-to-face course, he retained the same pedagogical methods – one single final assessment - that he has always used. “And I still do that [the single final assessment], I do that in the fall, and I know there’s a certain deficiency to it, and there are some strengths as well. But we are trying to do the opposite [in the online course], so [I give] frequent feedback.”

An additional benefit of the lack of the limited time constraints of a live class was that Professor Lee was able to assign each student to another U.S. state, other than the state in which Eastern law school is based, as this particular specialty area of law is heavily state-based. Some of the exercises were based on each student’s state’s law; they were given a common legal issue in the area, and students reported different answers about the same legal language in their assigned states. This allowed the students to see how the law can be similar in different states and how it differs.

The asynchronous discussions also benefited the international students in the program. These students tended to be reticent about verbal participation, and Professor
Lee found that the online format allowed students to participate at a higher level: “We found, not for all, but for many of them, the online class gives them the ability to take as much time as they want to shape their answer and put it online.” This online course thus resulted in better participation with international students.

Class size was limited to 16 students due to two time factors. One time factor was the faculty’s; the time required to review student online posts and grade the written exercises (see further discussion below under “drawback”). The other time factor was the student’s; as class participation and frequent postings on the online forums were required, having larger classes could have made the discussion unwieldy and have discouraged students from reading other students’ posting.

While Professor Lee had not taught this specific course prior to teaching it online, based on his experience in teaching at Eastern Law School in general, he specified two design choices that added substantial value to the online course, and could be replicated in a face-to-face course. The first was the significant number of written assessments in his online course, which were scaffolded to help build student learning. He noted that typically, there is only one assessment in law school courses, a single, “winner take all” final exam. When he presented the results of his online course’s first semester to the Eastern Law faculty, a “couple of people came up and said, ‘You could do a lot of this [scaffolding] in your live class.’” Professor Lee said that, “now you can absolutely do that in a live class, of course you can,” but noted that law schools typically do not do that. Professor Lee thought that these assignments were one key to the value of this course, yet admitted that, even knowing this, he still used the default single final assessment in his face-to-face course.
The second design choice was to integrate three students surveys into the course to collect data about the student experience and gather input for the purpose of improving the course. The typical student survey for almost all courses at Eastern Law School has been a standard general end-of-course evaluation. The online course, as is discussed in more detail below, surveyed students three times during the semester on the online experience. The first survey took a minute or two, and the second took about three minutes, but the third took an hour to an hour and a half. The surveys collected data on the students’ backgrounds — for example, had they taken an online course before — and their experience with the course design, as well as each individual exercise and assignment.

**Impact of the American Bar Association on course design.**

Professor Lee had been aware of the ABA requirements prior to designing the course, and the designs choices reflected the need to comply with them. He indicated that in terms of “the ABA requirements, I don’t think they’re particularly onerous…. So we certainly looked at them, and made sure we complied with them, but I’ve never perceived them as an obstacle.” Part of the reasoning for that position was that the primary target audience for the course is the LL.M student, and the ABA neither regulates LL.M programs nor restricts the number of their online courses. However, Professor Lee believed that his course complied with the ABA requirements and provided sufficient interaction for the J.D. students who took the course. Eastern Law School underwent an ABA site visit in 2011 for the J.D. program, and all of the information about the online course was included in the site report to the ABA. Professor Lee met with one of the ABA accreditors, who “barely asked anything” about the online courses. The online
Perceived benefits of offering the course online.

Professor Lee found that the structure of his online course helped to address some of the criticisms of the traditional law school pedagogy.

But some of the critiques [of traditional law school education are] that students aren’t doing enough writing, that they’re not gaining experience that will help them as much as it serves them professionally. Now I don’t necessarily think that’s true, but this class, because I’ve practiced in this area for many years, this class deliberately has them do exercises linked to the readings that they would do if they were litigating [in this area of practice].

Professor Lee acknowledged that the give-and-take of the traditional live classroom was not available through his asynchronous course design, but that it supported other law school pedagogical goals:

Certainly I think the give and take is important. There’s always a sacrifice, [but] we have the dialogue that is in some sense – "richer" is the term I use, more detailed - than it can possibly be in a live class. Because again, because of the time, and because all of us, myself included especially, have more time to think about the answer, so in some ways there can be more enriching class discussions.

The lack of firm time constraints of a face-to-face classroom permitted this more
thoughtful level of student responses, due to the student’s ability to take time to craft more enriching class discussions.

A further benefit of offering an online course was the ability to tap into expert guest lecturers:

And there’s another advantage, it’s a small one, is the ability to engage experts or practitioners in the field to essentially make a guest appearance without ever having to leave their office. So if we’re talking about a specific case, for example, we might be able to get one of the advocates for the case to participate on line.

While he did not do this as much as he had hoped, this is an advantage of the asynchronous schedule.

Professor Lee also stated that one advantage for his law school in offering these courses online would be to give J.D. students who were abroad or who were simply out of state flexibility when they were off campus.

Aside from Professor Lee, who was a full-time faculty member, within his program there were four adjuncts within his program who taught online, and one full-time faculty member in the general law school faculty who taught an online skills course. As the program director, Professor Lee was in a position to approach his own faculty and offer them this opportunity and the assistance of Professor French in designing the course. The online format allowed the adjuncts who accepted online teaching assignments to teach the course from anywhere in the world. The instructor for one online course, who was previously based in the state, had moved to another country, and
still intended to teach the course again. This would not be possible if the course was face-to-face. A related advantage to the online course has been the ability of faculty at Eastern Law School to team up with faculty and from other countries to teach the international version of this program’s courses. One such online course involved online faculty members from three countries:

And that's something you know I think you can really only do asynchronous online. That's the easiest way. And we've done it, and it's worked. There is certainly additional challenges, for example like European, Chinese, and US law school calendars do not necessarily match up too well. You have challenges, but you can do it if everyone is a little flexible in the sense of what they can do, and our institution was great about that.

Students from all three countries were able to participate in this asynchronous course.

One benefit that was tied to the courses in Professor Lee’s program being online is the ability of Professor Lee to have engaged the practitioners in the field, who were on the cutting edge of what is needed in the actual practice of law, to determine what new courses should be offered at Eastern law school. Professor Lee has maintained a listserv for a large number of practitioners in the field, and he surveyed them to determine which courses his program should offer next. While this could be done for face-to-face courses as well, the incentive has been greater for practitioners to make suggestions when the online format makes it possible for them to take the online courses. One potential benefit that Professor Lee thought might occur when he first offered the course online was to
help his program develop “more of a presence” and help to serve as a recruiting tool for the law school.

Finally, one added benefit was that the asynchronous online format enabled the faculty to attend conferences off campus and not to have to worry about missing classes, making up classes, or getting a guest lecturer. Professor Lee considered this to be “a major convenience” for some faculty members. While he thought that an online course required more work from the faculty than a live course, he liked teaching both types of courses.

**Challenges in offering the course online.**

Professor Lee acknowledged that part of the traditional legal pedagogy was missing from his course, although it could be added to the class:

But as lawyers, not only are we taught to think on our feet, but there is a value to hearing people talk about things live instead of simply responding in writing, as that is one method that lawyers use to communicate and argue and advocate, so that’s a loss. Now we could have live chat sessions in which we do that, but I haven’t, and that’s simply my personal decision.

He pointed out that this course, as well as the other online courses offered at Eastern Law School, were designed for LL.M. and upper division J.D. students, and that the professional acculturation in these skills has already been instituted in the first year required courses, which use the Socratic method. For J.D. students, Professor Lee indicated that acculturalization via the Socratic method is not necessary in every course,
and that his online courses were only open to upper-division students, who have already
had a full year of law school courses.

I think that that acculturalization is important, but that
doesn’t mean it needs to exist in every class, and if we
mean the strict Socratic dialog, I don’t know - I know I
don’t do it, and I don’t know many of my colleagues who
use that classic technique.

The fact that LL.M. students, and sometimes practicing lawyers, took these courses along
with the J.D. students helped with professional acculturation:

In the LL.M. program [of which this online course is a part,
and is also open to J.D. students], some not all, but some of
our students are very experienced practitioners, and without
sort of dominating the class, or taking class time, they can
bring in their own experiences. So everyone can bring in
their own thoughts and experience and make it available for
everyone else to read.

One substantial drawback to the online course has been the considerable
additional time to prepare and to teach the course. After having not taught it for a year,
Professor Lee noted,

It’s a reminder of how much work it is. [laughter] You sort
of forget that after a while, because there’s a lot of things I
like about it, but in any event… I’m struck by how much
work it is, but also struck by what you can do with it.
He acknowledged that the online course did not run by itself, and that substantial
time has been needed by the faculty member both in the initial design and in the course
offering phases. As his online course had additional written exercises, designed to keep
the student engaged and current with the materials, the amount of grading was
concomitantly greater for him:

Frankly I think it does take more time. My one thought …
is how to get a grader, because the amount of written work.
I don't think would be necessarily appropriate to use
students, but I don't think you could even if I did think it
was appropriate because the ABA wouldn’t allow that. You
can have a TA, but they can't do any grading… So that's
one of the big problems, the challenges I have, I never keep
up.

He has investigated the possibility of getting a person who could serve as a
grader for the course. In other graduate programs, teaching assistants (TAs) were used to
help the faculty with significant amounts of grading, but according to Professor Lee, the
ABA would not allow a TA to be involved in grading, so the entire burden of grading
falls on the faculty member. The grading, and the necessity of reading the student online
postings, were some of the primary reasons that class size for Professor Lee’s course is
limited to 16:

There tends to be a lot of written exercises, which take a
while to do, so in that sense, but you want to encourage
class participation and frequent posting online, but it takes
time to read them, and if you have too many, students might get discouraged, or it gets too unwieldy.

**Administrative support or opposition.**

Professor Lee reported that not only was there no opposition by the law school administration to his decision to put several of his program’s courses online, but the Eastern Law School administration was supportive of his decision to start implementing online courses.

First, I got a summer research stipends to research the design of the course. So I was able to really focus a lot of work time that summer. The technology – our IT department, which is probably true of every IT true of every state entity in the world - is overstretched, not enough people, too much to do. And they thought this was exciting. They really worked with Daniel to provide their technical background – the TWEN site, the webpages -- to master it, to be able to do it. And they still do that.

The law school provided a consultation fee for Professor French, the educational curriculum design specialist, to work with Professor Lee. The IT department itself considered this experiment exciting, and they worked with Professor French to construct the course. There was no additional charge for the virtual classroom site, unlike Professor Russo’s experience, as the course used TWEN, and at Eastern Law School, all courses already have TWEN sites.

Eastern Law School continued to support the program’s online courses
financially, and they provided the consultation fees for Professor French for the other four courses that he has helped design for the program: “the law school has been happy to do that as he designs courses with other adjuncts. So they provided the financial support as well as you know the technical support.” Professor Lee also indicated that his dean had spoken favorably about the program’s online courses to others, especially one of the program’s courses that involved international law, as no other law school was providing a similar course, either face-to-face or online.

**Faculty attitudes toward online courses.**

Professor Lee stated that he has been straightforward in letting the faculty know of both the disadvantages and the advantages of the online format, and that if it is done “right,” that it has the potential for a “very rich” interaction with the students. Within his program, Professor Lee has been able to persuade some of his adjunct instructors to teach online, although “it’s not easy.”

One of the challenges of using adjuncts is that they work full time and it's not easy to keep up online asynchronous, because you really need to monitor and participate in the discussion forum every day, in addition to whatever else. So it's not like you can do all the work of designing the course and that runs by itself.

Outside of his program, Professor Lee has experienced no opposition from the faculty at Eastern Law School, “certainly no opposition, no,” but little interest in offering other online courses. He prepared a report for the faculty when his program first assessed its online courses in 2008, and while faculty have been supportive of his program’s
efforts, with one exception, no faculty members have explored the area or taken the
initiative to develop and offer an online course.

We've demonstrated this to a number of people and you
know it's always sort of gratifying, because you get a lot of
enthusiasm for it once they see what it is, because -- and
I'm sure you've seen this more than I, and I had this too at
first -- when you talk to someone about an online course,
whether you can see it or not, their eyes are rolling
somewhere, you know, and [thinking] “God has it reached
this level? Are we in that bad shape?” So you are always
sort of making sure, trying to tell people that it has its
disadvantages, but if you do it right, it can be a very rich
experience for the students, where they do things that they
otherwise can't do, or don't do in class.

So while there had been no opposition to his offering of an online course, and even a
certain amount of approval of Professor Lee’s own work, this had not in general resulted
in enthusiasm for developing an online course of their own.

I think it’s lack of interest combined with … not knowing
what you can do with it. Even though we try to combat that,
there’s still a certain sense that online learning -- whether
it’s too gimmicky, or too easy -- that somehow it doesn’t
provide the rich law school classroom experience, and why
would I want to do that? So in some sense, it’s a lack of
interest, in part fueled by lack of knowledge about what an online course can do.

The one faculty member outside of Professor Lee’s program who had initiated an online course was a research and writing professor who developed an online drafting course. She appeared to have been inspired at least in part by Professor Lee’s program’s online courses, as she spoke to both Professor Lee and Professor French during her decision-making process. “It gave her the idea, you know, and I certainly talked with her, and she talked with David, a little, and I talked with her, but she put it together herself.” It seems possible that the decision to create her own course, instead of following Professor Lee and French’s model, was based on the fact that her drafting course is considered a skills course (see chapter 2 for a discussion of doctrinal versus skills courses) while Professor Lee’s courses would be considered substantive courses.

**Student attitude toward online courses.**

Professor Lee took a detailed approach to assessment of the effectiveness of his online course. The students participated in three surveys.

We do a very brief survey at the beginning, basically asking, okay, what's your experience with online learning?

The second survey, which is maybe four weeks in, that asks a couple more detailed questions like how’s the course going, what you think, if there’re problems, to catch them early. And then we do a third, much more comprehensive, survey, that can take about an hour to complete, in which
they get a small amount of course credit for, which really
asks them different questions.

Students were given the incentive of a small amount of course credit to
participate, as they were very detailed: “At the end, we really go through literally every
exercise and assignment, what do you think of this, what do you think of that, what are
your suggestions?”

One key question was “do you think you learned more in this course then you
would have ever learned had been a typical live format, and most of the students said ‘yes’
to that.” When asked about student engagement, Professor Lee reported, “The reaction
has been largely very favorable, almost all favorable. At least in one class out of six, I
think there were two people who said at the end that they still preferred the live method.”

Professor Lee prepared a report for the Eastern Law School faculty on his first
year’s results in teaching online based on the student survey responses. Professor Lee
said that while students who have taken the course seem to like it, neither they nor
students who have not taken an online law course are really pushing for more of them:

It's been positive, but I can't say that the students have been
saying please give us more online courses. I mean, maybe a
couple have, [but] on the other hand, with one or two
exceptions, we haven't had students say I never want to do
distance learning.

**Impressions of teaching online and future plans.**

Professor Lee was a proponent of well-designed online courses, although not an
entire online J.D. program: “I would not be in favor of an online J.D. program. I think
you miss an awful lot. But that's far different than having online courses available.” He found value in the process: “working with Daniel, thinking about this, making explicit, and thinking about it, explicitly and detailed, about what we often do sort of implicitly when we design a course.” The key to his success was working with an educational curriculum specialist like Professor French:

What was different, at least for me, and I suspect for a lot of others, but I can only speak for me, is [that] you’re consciously thinking about how the assignments interact, how do the readings reinforce the writing -- the assignments, and then, adding to that – and this is David’s contribution… What do we know about how students learn best, and how do we apply what we know to your courses? So that’s one reason why we have frequent feedback, as well as a lot of writing, because that’s a far better way then the classic -- which I use in the fall -- classic law school assessment of a final exam at the end of the semester, which probably violates everything we know about how people learn best.

Due to his position as director of his specialty program, Professor Lee taught only one course per semester. His fall course was face-to-face, and his spring course has been online, although he skipped a semester online last spring. He indicated that the effectiveness of the course and the break made him forget how much work teaching the course online is: “I think it's more work than a live course, and I do both, and I like both.”
At the time of our first interview, Professor Lee was starting to planning process for a new online course in his specialty program by sending out a proposal to a listserv with hundred of practitioners, adjunct faculty, law school alumni, and others interested in the field asking for input on which course should be developed next.

We put out a sort of a request for proposal request – to everyone we deal with or whom we know in insurance, which is fairly extensive, saying tell us what you think our next course would be. We think we’re going to teach it online, this is what it means to be online, because most people don't know, and tell us what you think.

He already had collected some ideas for a new online course, although at the time of his second interview, the proposals had not yet been evaluated. If one is selected, the design process will begin, with the course tentatively to be offered for the first time in spring 2014.

At the second interview, Professor Lee brought up a factor that may have some impact on a new online course offering. New York amended its rules for bar examination applicants, effective April 2012, to discriminate between synchronous and asynchronous courses, allowing the former to count toward the credit requirement necessary to take the New York bar exam, but not the latter. New York has the highest number of people taking the bar exam each year, and a number of students at Eastern Law School choose to take the New York bar exam. There is a little flexibility for Eastern Law School, for as Professor Lee reported, “we are a little fortunate in that our students take 86 credits to get a J.D. at [Eastern Law School], so that means they can take that one course without
worrying about how it affects the New York bar.” Taking one asynchronous online course at Eastern Law School therefore would not impact a student’s ability to qualify to take the New York bar exam, but a student who took two such courses would be disqualified. This rule change potentially causes problem for Eastern Law School students, and decreases the desirability of asynchronous online courses for those students considering taking the New York bar. Eastern Law School sent a memo to all J.D. students informing them of this change in the bar rules, and Professor Lee “lost one student out of my online course, just because they might want to take the New York bar, maybe they’ve already taken one other online course, and I don’t blame them [for dropping]” for this reason. Professor Lee stated that “the New York bar rules does throw some water on our plans” to proceed with additional online courses.

The New York bar exam rules were not only a concern of Professor Lee’s; the ABA Working Group discussed this at the fall 2012 meeting and the January 2013 meeting at the Association of American Law Schools, and there was general discussion on methods by which the rule might be revisited. Professor Lee stated his intention on contacting the New York bar to see if the person who was the proponent of this rule is willing to participate in one of his online courses, so that that person can make an informed opinion on the suitability of online asynchronous courses.

Opinion leader.

Prior to the first interview with Professor Lee, he had not spoken to law school faculty outside of Eastern Law School about his program’s online courses. Professor Lee was not a member of the ABA Working Group on Distance Learning in Legal Education and was not familiar with the group prior to our first interview. In asking him if he was a
member, I needed to explain to him what it was. He then attended a Working Group meeting in January 2013, between our two interviews, and said that “it’s nice to be able to understand what others are doing, and … that information is out there, if I’m willing to take the time.” He found the potential for collaboration or information sharing useful.

As the director of his specialty program, he has been able to persuade several of his adjuncts to teach online, using the same course design process and consultant that he used in his first course. However, two of them have since stopped teaching online. One of the challenges of using adjuncts was that they work full-time and some found it difficult to keep up with monitoring and participating in the discussion forum every day, in addition to the other class preparation work.

When asked for his opinion on what, other than his own example, might make members of his law school develop an online course, Professor Lee’s response was that it would take “leadership from the top.” While he himself had presented a report to the faculty, and had talked “with anyone who was interested,” he found that the biggest barriers were a lack of interest fueled by a lack of knowledge of what a good online course could offer students. While his former dean had been personally encouraging about Professor Lee’s efforts, moving to online courses was not the dean’s own priority, and so he did not lead faculty in this direction. That dean has since left Eastern Law School, and they were undertaking a new dean search at the time of the second interview. What position the new dean would have on online education cannot be predicted. Professor Lee suggested that there need to be

a clear example from the Dean, or Associate Dean, or

whoever it is in the school, as to why [online education]
should work, why it can respond to some of the critiques
[of law school education], and why you, as a full-time
tenure or tenure-track faculty member should think about
doing that.

If the new dean were to have this as a priority, Professor Lee thought his or her ability to
affect change would be far more effective than the impact that Professor Lee has had: “I
mean I can talk about those things, but it’s far more effective for the dean [to do so].”

In addition to leadership, Professor Lee acknowledged that financial incentives
would be very important. He received a summer stipend to develop the course, and the
law school also paid for the course design. Professor Lee stated that it was “extremely
helpful to be able to have a co-designer” who was an expert in curriculum development
and educational theory, who understands the different ways that students learn and how
to support that, involved in creating the course. While he and his colleagues have had an
intuitive knowledge of how to build courses, working with someone who makes that
knowledge explicit was “really, really useful.” He found that these supports were
necessary as “it’s a lot harder to [create an online course] when you’ve been teaching the
course 'X' way for five years live.”

**Impression of the future of online education in J.D. programs.**

At Eastern Law School, Professor Lee saw “really modest growth” for online
courses. “I don’t think we’re going to retract, I don’t think we’re going -- how far we’ll
go, I’m not sure.” A large part of this was due to the uncertainty of what the priorities
will be for the new dean, and whether he or she will be willing to invest money and
resources in this area.
A smaller but still significant part going forward is the impact of the New York bar restrictions on accepting credits for online asynchronous courses. Professor Lee was willing to take an affirmative step toward addressing the New York bar exam restriction issue. He said, “I actually am going to call [the person responsible for introducing the bar rule change], not to argue with him, some people tried, to simply see if he’s willing to participate in my one of my online courses and observe, so he can see, simply see, what it is.”

In terms of the future of online education in American law schools as a whole, Professor Lee thought that the trend is moving toward online education. He saw it in the discussion of LL.M. programs when he attended the Working Group meeting in January 2013. Of the thirty or forty attendees, only about half a dozen indicated that their law schools were currently offering online LL.M. programs, but three-quarters indicated that their schools were thinking about it. He also noted the increasing number of online courses generally available in higher education. He would not like to see an all online ABA-approved J.D. program, and was concerned that that might be seen as a viable way to address the high cost of attending law school by dropping tenured professors, libraries, and other aspects of the “bricks and mortar” experience. He also urged against cheapening and dumbing down on online courses: “don’t take your existing course and throw it online, and think, ok, I’ll tape these lectures and stuff. I think you risk then replicating perhaps the worst features of an in person and online course. It’s the cheapest way, absolutely.”

He saw exciting possibilities in adding online courses to a face-to-face environment:
You know you can take advantage of different expertise so you want to co-teach a course in [a certain field] … where the expertise is not so much in one law school but in two law schools. Leaving aside the administrative issues, an online course open to both allows you to do stuff you couldn’t do live. I could work with a colleague in San Francisco, and we could teach the course to the students of both programs, which we would otherwise couldn’t do. We’d have my expertise and that person’s, so you could certainly, in that sense, you could really do some exciting stuff.

**Summary**

In this chapter, I have provided detailed descriptions of each of the case study participants, and presented their information in parallel sections for easier cross-case study comparison. While the format and design of each of their courses was different, the case studies shared some similarities in the areas of perceived benefits, challenges, administrative and faculty support, and impression of and future plans for teaching online. The themes that arose from these case studies are discussed in detail in chapter 5.
CHAPTER 5. COMPARATIVE FINDINGS

Chapter 4 explored the individual cases of three law school professors who have been teaching online. This chapter looks at common themes that developed, with the purpose of determining the characteristics they share, or do not share, and how that relates to where they fall of the scheme of adopters, and what that might mean for adoption of additional online courses in their law school.

Theme: Trailblazers

The first four patterns in the data illustrate characteristics of trailblazers. They describe the different types of motivation displayed by the three participants, how they coped with the frustrations of teaching online, what positive actions they took to overcome frustrations and issues in teaching online and how they addressed continuing challenges to teaching online, and what additional motivation they found that helps them continue to teach online. The fifth and sixth patterns relate to communication – with whom they communicated about teaching online outside of their law school, and what they communicated to their own law school faculty about teaching online. The following figure illustrates the themes and their relationship to the subthemes.
Subtheme: Motivation

In general, all three participants displayed multiple types of self-motivation, some shared, although the combination of motivations were unique to each of them. There was no overarching common type of motivation, aside from an interest in their specific technologies. It does seem clear that the motivations were not externally imposed, either through positive mechanisms such as solicitation and offer of remuneration from the administration, or through more coercive methods, such as requirement by the administration or an indication that failure to teach online would negatively affect the prospects of tenure or promotion. The variety of motivation does not seem to be linked to the career stage of each participant - tenured, tenure-track, permanent but not tenured position – but appear to vary according to personal preference. Motivation was an individual choice.
Those characteristics of self-motivation were seen in all three participants, although more prominently in Professors Russo and Lee. Professor Russo came up with the concept of teaching online on his own, and was not prompted, urged, or rewarded by his law school in doing so. Instead, he was self-motivated to move a face-to-face course to online as he was scheduled to be a visiting professor on another campus when he was asked to teach the course: “So I agreed to do it if I could do it online….It’s the first and only [online course at Western Law School].”

Another motivating factor for him was to provide options for Western Law School’s evening students:

- A driving force – I don’t want to say it was a single one - is that we have an evening program, which has been under some stress these past few years because we are in [the] downtown [area]. Students have greater obstacles to coming to class at 6 PM four days a week for four years. And so one of the reasons we were exploring an online offering was to provide some alternatives for the evening program.

Professor Lee was approached by a colleague from the business school at a children’s concert, a social setting. The colleague asked him if he was interested in teaching a joint course for their programs. Up to that point, Professor Lee was not aware of any other asynchronous online law school courses. As the director of his own specialty program, he had a certain degree of flexibility in his offerings, and investigated this and followed through, approaching his dean to investigate the possibilities. He stated that he was “intrigued” with the idea, and thought it would be a “recruiting feature” to show people that they could do in an LL.M program, as “you could do it from where you
want, you could do it on your own time.” While the course was part of the LL.M. program, it was also available as an upper division elective for the J.D. program, and its enrollment was usually composed of about half J.D. and half LL.M. students. Eastern Law School did pay Professor Lee a summer stipend to develop the course, and paid for his consultant, but these compensations did not appear to have been his motivating factor to initiate the course. These were just the supports that made it possible.

Professor Hitchman was approached by someone at her law school to teach online, but it was not at the administrative level. “It was our director of IT actually who came and said we have all this awesome technology, and need folks teaching in that arena.” Not only did she self-select to teach online, but she also was able to choose which course to teach online.

An additional motivational factor could be the participants’ confidence in their teaching abilities. At the time of their first interviews, they were experienced teachers, with a range of eight to thirty years of teaching experience. At the time that they first offered their courses, two of them had substantial teaching experience – seven and twenty-eight years – but one participant, Professor Lee, had only three years experience. He was also the only participant to enlist the help of an instructional design specialist in designing his course. It may be the case that the longer period of teaching experience gave Professors Russo and Hitchman sufficient confidence to design their own online courses without a paid consultant.

One factor that was not a motivating factor for the initial adoption for any of the participants was an actual request for online courses by the law students. It seems as though it was anticipated that an online course would be convenient for students, and that
this perception by the participants, particularly Professors Hitchman and Russo, was part of the motivation as described above, but this motivation was internal, not external – it was not based on demonstrated student demand or actual student requests.

According to Rogers, innovators have certain characteristics aside from being one of the first people to adopt an innovation. Being the first to do something does not necessarily make a person a trailblazer or innovator, if that person is being forced to do it. Innovators are characterized by “venturesomeness,” a willingness to take risks. This venturesomeness can arise from personal reasons, professional reasons, or a combination of the two. The key concept is that the motivation is self-directed, and that was demonstrated in all three participants.

**Subtheme: Coping with Frustration and Obstacles**

It is not uncommon for faculty to experience a certain amount of frustration or obstacles for each course that they teach. This section focuses not on the common frustrations of teaching but on the particular frustrations of and obstacles to teaching online. Most often, these involved the technology used by the participants, and this was particularly seen in use of synchronous technology. However, sometimes the frustration was not due to the failure of technology, but the consequences to the student of the use of technology. All three participants experienced this particular type of frustration, although they varied according to the type of course tools. The two participants who used a synchronous teaching methodology seemed to have the most challenges, which is at least in part due to its immediacy; there is little time to solve a communications breakdown when students are waiting and the class clock is ticking.

Student attendance appeared to be a cause of concern in Professor Hitchman’s
class when the student’s synchronous connection was dropped. Southern Law School provided students with computers and, when they took an online course, bandwidth cards, so that they could have a reliable connection. One of the drawbacks to this was that since the school provided the tool, it was the school’s responsibility when it did not work, yet the ABA attendance requirements dictated that the student face the consequences of being absent. Professor Hitchman expressed her response to this issue, saying “it’s frustrating. That’s the kind of stuff that I say, “Let’s get this together! I’m tired of seeing people get dropped.” She indicated that if a student is “dropped for two minutes, that doesn’t bother me. If you get dropped for half the class, it’s a problem, but if it’s our fault, should you be penalized? That’s a more complicated question.”

Professor Russo expressed his frustration at the WebEx tool that is used for the synchronous portion of his course. Initially the university to which Western Law School belongs had a license for the enterprise version of WebEx, which he used for the synchronous portion of the class and which he found to be stable. The campus then moved to the educational version of WebEx, which he found to be far less stable

[It]'s buggier. It is not as robust. And so I have grown dissatisfied with it, and I have lobbied for a replacement for it, And there are a ton of replacements, but since the University has a site license, I think I'm kind of stuck with it. So I don't particularly like it, to tell you the truth[.]

According to him, for the educational version, “typically, WebEx will crash on me once every class.” Professor Russo also noted that the asynchronous part of the course was a significant time demand, much more so than a face-to-face course. He expressed this more as an observation than a complaint, but he recognized this extra work was one of the key reasons other faculty at his school were not moving to teach online, indicating
that he perceived it as an obstacle: “It’s not a distrust of the technology, it’s just that it’s a lot of work. It really is. It’s a new prep. And getting faculty to that is not easy.”

Professor Lee said that “one of the big problems, the challenges I have” was the extra amount of grading that was required by his online course design. He noted that “my one thought, and I haven't been that really good in getting there, is how to get a grader, because of the amount of written work,” and that due to this large amount of written work, “I never keep up.”

I don't think would be necessarily appropriate to use students [to help with the course], but I don't think you could even if I did think it was appropriate because the ABA wouldn’t allow that. You can have a TA, but they can't do any grading.

An additional issue for Professor Lee was the fact that he was the director for his program and in charge of the adjuncts that he had been able to persuade to teach online, so he saw their issues with teaching online, which became his frustrations as well:

One of the challenges of using adjuncts is that they work full-time and it's not easy to keep up online asynchronous, because you really need to monitor and participate in the discussion forum every day, in addition to whatever else. So it's not like you can do all the work of designing the course and that runs by itself. Of course not.

Rogers indicates that one of the characteristics of innovators is their ability to tolerate frustration: “The innovator must also be willing to accept an occasional setback when a new idea proves unsuccessful, as
inevitably happens” (Rogers, 2003, p. 283). This helps to explain why the participants maintained their course methodology – synchronous, asynchronous, or mixed. Dealing with issues of connectivity or workload are part of the innovator experience. As is discussed below, all the participants felt as though they were offering a quality online course, and they were willing to tolerate its drawbacks as part of the price for doing so. This does not mean that it is required that innovators experience setbacks, frustrations, or obstacles, only that when they experience them, the innovators do not abandon the innovation. As is shown in the next section, the participants, in support of their adoption of the innovation, demonstrated a willingness to address their obstacles.

**Subtheme: Problem-solving**

The nature of the teaching profession often requires faculty to resolve problems they encounter in the process of teaching and administering their courses. However, resolving a problem does not necessarily indicate solving a problem, as issues can be handled by simply avoiding the situation, the technology tool, or the pedagogical method in the future, which does not address them. Problem-solving, on the other hand, requires faculty members to attempt to change the outcome, either by making a change themselves or by enlisting appropriate help to do so. All three of the participants demonstrated their problem-solving capabilities in the ways most relevant to them. These problem-solving strategies differed, as the underlying problems were specific to each participant, but the common thread was a willingness to actively work on a variety of issues related to the online course structure, and not to avoid the technology issues.

Professor Hitchman experienced technical difficulties in her synchronous course, and even though she had tech support staff sitting in on her online courses who could handle certain technical glitches, she had to participate in solving some of them. She was
given instructions such as “push the button to the left of the red dot” while she was trying to deliver online content, PowerPoints, or video to the students. She was able to multi-task when needed to resolve these issues.

She was also actively concerned about and involved with the issue of attendance, which is an ABA requirement, as she had to decide how to determine when a student is deemed not present when their connection to the synchronous session was dropped, whether it was a technical issue on the part of the student or the law school. She connected with the tech support staff to share these concerns and prodded them into finding solutions, saying that “it requires a little pushback [by me]” as the IT staff is “great, but they are not law professors.” She and the small cohort of other faculty members who began to teach online at the same time had taken the initiative to draft guidelines for teaching synchronously to ensure that the program was in line with the ABA guidelines: “We did some really good work in putting things in writing about what distance education would look like, and expectations and quality programming and the length of time you engage with students, and how you measure those minutes.”

She has also dealt with issues arising from Americans with Disabilities (ADA) Act compliance and the online final exam. In that case, a student was entitled to double time in which to take the final, and in a face-to-face course, the registrar would handle this so that the professor would not be aware of who the student was who needed the accommodation. However, in the online course, the final exam was submitted via TWEN, and the professor was the one with access to that course site and who was the one to set the length of time for the final. Professor Hitchman was concerned, stating, “if I know it is you [a specific student], your anonymity is compromised, so it created some
problems I hadn’t thought about.” She worked out a solution with the registrar to protect student anonymity.

Professor Russo had also been a problem solver with the technology in his course. To maintain student engagement and ensure that they participated in the asynchronous part of the course – which they must do so that the course meets the ABA’s attendance guidelines – Professor Russo created weekly quizzes, which he did not use in his face-to-face courses, to encourage the students to keep up with the readings: “The difference is that students have to take the quiz and they are based on the materials, so students are less likely to fall behind and put things off.” He also required each student to submit questions the morning before the synchronous session, and he spent hours that afternoon integrating them into the PowerPoint that formed the basis for the synchronous part of the class. He did not do either of these for his face-to-face courses in which attendance was merely measured by showing up to the class session.

As he found the educational version of the WebEx tool not reliable and crashed at least once every class, he dealt with the issue by doubling his use of resources: “I have two computers running, and I take up two seats, so I log onto both computers,” and when the first computer crash happens “I just pick up the other headphones … and the students don't even notice that I've switched computers.”

It should also be noted that while Professor Russo suggested that faculty could be encouraged to design and offer online courses through a stipend or release time, plus paid instructional design help, he had none of these in designing his own course. He had to do all his own research into online course design, including searching for online examples and consulting with people knowledgeable in the area, on his own time.

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Professor Lee had to throw out his prior conceptions on how to design a new course and design a course, not around a textbook or the prior instructor’s syllabus, but on determining what knowledge and skills he wanted his students to leave with, and then adding seven writing assignments that scaffolded off of each other so that students could apply the knowledge and build the skills. He also built in three separate assessments for the students, including an extremely lengthy one that takes between an hour to an hour and a half to complete, to gather data on the course experience and the contents, including queries on each of the seven assignments. The assessments allowed him to modify and improve his course. The assessments were time-consuming to review, and were far in excess of the standard law school end of semester survey.

Last, Professor Lee in particular faced an ongoing issue in regard to the recent barrier to asynchronous online education recently implemented by the New York bar. He was attempting to address this at the time of the second interview through inviting a bar representative to sit in on his classes so he could demonstrate their quality and perhaps have an impact on reversing that decision. “I actually am going to call that guy … to simply see if he’s willing to participate in my one of my online courses and observe.”

Rogers’ category of innovator includes the characteristic of the ability to cope with a high degree of uncertainty about an innovation and the concomitant ability to accept an occasional setback. It is implicit in these characteristics that the innovator is also willing to participate in resolving the uncertainty and the setbacks. The participants all displayed this related trait, which led to the next subtheme: the participants plan to continue with the adoption.
Subtheme: The Adoption is Ongoing

Participants could not be said to have adopted an innovation if they taught the online courses just once and then gave up on it, nor would their actions be likely to affect others on their campuses. Therefore, it was important to see if they are continuing with the adoption. All three participants had taught their online courses at least twice, and all indicated their willingness to teach it in the future. They have also indicated an interest in developing or helping to develop additional course to teach online.

Professor Hitchman indicated that she would perhaps develop another course “in the next two to three years,” and Professor Russo stated that he was “actually slated [to develop another online course] as soon as I have some free time.” Professor Lee was in the process of selecting another course for his program to offer online, although he was not developing the course to teach himself as, due to his administrative workload, he only teaches one course per semester. He had contacted his active listserv and had solicited and received proposals for his next online course at the time of his second interview.

All three participants indicated that they thought online law school courses will not fade away: “But it is the wave of the future – I mean this is coming, and I think we want to be at the forefront and at least in the synchronous, we have the technology to do it.” (Professor Hitchman); “I think that schools that aren’t experimenting with it at this point will be out of business in 30 years.” (Professor Russo); “While we may not see in the near future a completely online program, [we may see] more online courses.” (Professor Lee). Professor Lee’s more moderate opinion was based in part on the recently-added ban on asynchronous courses by the New York bar.
As noted above, while the initial adoption of an online course was not student-driven, there was a perception by all participants that students would find it convenient, and this perception seems to have been true. That actual convenience was an additional motivating feature for the continuance of the adoption: “We do have a lot of commuting students that didn't want to come back over for an evening class” (Professor Hitchman), “Maybe one or two [students] are on campus when they are in class….So the other students are either signing in from their offices, or they are externing someplace from their office there, or from home.” (Professor Russo).

The participants still continued to address ongoing issues. One of those issues was their acknowledgement that offering online courses is a drain on school resources by extended use of IT staff. Two of them indicated that their IT staff was interested in and supportive of their work: Professor Hitchman called her IT staff “aggressive” and “work[ing] behind the scenes to the student back up,” and Professor Lee stated that his IT department “thought this was exciting. They really worked with [Prof. French] to provide their technical background – the TWEN site, the webpages, to master it, to be able to do it.” However, Professor Russo stated that his IT staff “wasn’t all that keen” on helping with the additional online course he is planning, as it took “a huge amount of time,” and the IT director only agreed to do it “reluctantly.” He also noted the additional costs associated with overhead, servers, and the like. This is not seen by him as a reason to limit or avoid teaching online; rather, he indicated that the law school needed to step up and offer more resources to support the course: “You have to see it as an investment – it’s an investment that pays off, right?”

The other and more significant ongoing issue was the substantially increased
workload of an online course. Professors Lee and Russo discussed the increased prep
time for the asynchronous portions of their courses. Professor Hitchman did not stress
this aspect, probably because her synchronous lecture allowed her to hold a class without
major modifications from a face-to-face version, and without the additional time
commitment required to create asynchronous content. The participants using
asynchronous technology did mention the increased work several times. As discussed
above, while this was perceived as an issue, it was one that they were willing to tolerate
for the trade-off of being able to offer a quality online course.

Several things helped the participants cope with the ongoing issues relating to
teaching online. The first was quality. All of the participants were of the opinion that
their online course was equal to or in some ways even superior to the normal face-to-face
law school course. This assessment of the level of quality was either based on their
comparison of the student work in their online course and a similar face-to-face course
(Professor Hitchman: “I thought the experience was very similar in terms of product”)
attributing any drop in degree of engagement due to the fact of it being a shorter summer
class); student feedback (Professor Russo: “our recent graduates were [at an alumni
event], and some of them had this online class and they all came up to me, and said what
a great class that was. So I probably get more positive feedback on my class in any of my
other classes.”), or through a lengthy, three-tiered assessment process (Professor Lee:
“One of the questions [on the final survey] is do you think you learned more in this
course then you would have ever learned had been a typical live format, and most of the
students said yes to that.”).

Increased and measurable student interaction was noted by two of the participants.
Professor Lee found that freeing students from the “tyranny of the clock” encouraged more thoughtful participation and interaction, especially for international students:

We found, not for all, but for many of them, the online class gives [international students] the ability to take as much time as they want to shape their answer and put it online. …this gives them to time to feel comfortable that what they’re putting on line is grammatically correct and all that. So in some ways it develops better participation with international students, or at least has that possibility.

Professor Russo found that the structure of his online course made students more engaged and that it was more likely that they had kept up with the readings than in the face-to-face class. Although he had not taught the same course in a face-to-face format himself, his co-instructor had, and according to Professor Russo, “He is a big fan of this format, and he has told me students are much more engaged than they are in the regular bricks and mortar class.”

While Professor Russo noted the convenience to him, Professor Hitchman did not consider the course any more convenient to her, nor did Professor Lee, who commented that the convenience was “not for me,” as due to his administrative work he is in the office every day anyway. He thought it could convenient be for other instructors.

Professor Hitchman’s opinion seemed attributable to the fact that her synchronous course required very similar activities to a face-to-face course: “I'm still in the classroom, I'm still in my suit, I'm still in the front of the class for the most part, so I'm not sure there's a convenience to me.” The only participant who truly thought the online format was convenient to him was Professor Russo, as the format enabled him to teach from another campus: “The flexibility is a big plus, both from this teacher and the student standpoint,
[a] huge plus.”

Rogers’ model of adoption of an innovation is an S curve, which starts out with just a few innovators, then an increasing number of early adopters, building up to the increase in adoption by one of the two largest groups, the early majority adopters, then the equally large group, the later majority, and then finally ending with the relatively small group, the laggards. Rogers’ model anticipates builds upon participation by each class of adopters, as shown by the following figure.

**Figure 5. Rogers’s S curve showing adoptions over time**

*(Diffusion of Innovations figure 7.1)*

The implication is that those who adopt maintain the adoption to form the base of the groundswell; therefore, whether the participants maintained the adoption is relevant to
its further adoption. The offering of online courses in legal education is an innovation in the midst of its adoption process. It may be the case that the innovation fails, or at least is greatly delayed, even if the participants continue with it; however, it is more likely to fail if these participants abandon it, leaving no models or opinion leaders to support it. These three participants are continuing with their adoption, and are thus providing a basis that supports the future adoption by others.

**Theme: Effectiveness of communication of the innovation**

While all of these participants have communicated with their peers at their own law schools, this has led to very limited results in furtherance of the adoption of online courses. No additional faculty have started to teach online at either Professor Russo’s or Professor Hitchman’s law school. Professor Hitchman had not tried to persuade others to teach online who were not already doing so. Professor Russo had tried to gain some converts, but was unable to do so, and his frustration with the lack of movement of the faculty was evident in his statement that the only way that faculty will move to teach online would be if it became a mandate. Only Professor Lee had some success in getting faculty to teach online, but even that is a limited accomplishment as most of those were adjuncts in this program, over whom he could impose control.

The participants, particularly Professor Hitchman and Professor Russo, actively sought the opportunity to share their thoughts with their peers in the Working Group. The Working Group got its start at a 2011 Association of American Law Schools (AALS) conference, after an open invitation to the conferees from Dean Rebecca Purdom of Vermont Law School to meet during breakfast. So many conferees showed up that Dean Purdom and others constituted the Working Group, which was officially organized and
had its first meeting in November 2011 ("Working Group for Distance Learning in Legal Education," n.d.). Eighteen people, representing ten law schools and several law-related entities attended the November 2011 meeting, thirty people attended the September 2012 meeting, and “close to fifty” people attended the March 2013 meeting. The Working Group is an example of the kind of “cosmopolite” widespread network that innovators often seek in preference to a local community network. If one is an innovator, there may literally be no one on that person’s campus who shares what he or she are doing, or his or her interest in doing so, which means that the innovator must look outward for a peer group.

Subtheme: Sharing Outside of Campus

Professor Russo and Professor Hitchman have been members of the Working Group for Distance Learning in Legal Education. Both of these participants actively sought to participate in the Working Group. Professor Hitchman commented that “we participate in the Working Group,” and looked at the suggestions made in the group in assessing how she offered her course, “using some of the more frequent assessment tools that people talk about in this Working Group - certainly that are used in asynchronous offerings - I find that's really an important piece of it that I might not typically use in a face-to-face class.” Professor Hitchman is an active and participating member of the group and has attended meetings in 2012. Professor Russo also attended a Working Group meeting in 2012. Both Professors Hitchman and Russo shared information about their online courses at the Working Group’s September 2012 meeting.

After Professor Lee was made aware of the Working Group in his initial interview, he planned to and did attend the next Working Group breakfast at the AALS
meeting in January 2013, finding “it’s nice to be able to understand what others are doing.” He said that he had “drafted the first draft of a paper describing this, which would probably be good to do, but I haven't presented academically[.]” While he did not actually share his online teaching experience with others outside his campus due to time constraints, he did make an initial attempt at communicating outward to the wider law school community.

**Subtheme: Sharing with Peers on Campus**

All three participants also communicated their experiences to others on their own campuses, although only two of them, Professors Russo and Lee, have tried to convince their peers to consider adoption. Professor Hitchman has not tried to evangelize online course to others on her campus as her IT department has taken that role, but she did work with the small cohort of younger faculty who are teaching online to share experiences to develop a quality program:

> I haven't done much encouraging, because IT does so much of that themselves. But we are very open about here's how I do it, and here's how this professor does it, and you know it shouldn't be quite the learning curve for subsequent professors as it has been for us. So we tried to share all of “this really worked, that totally didn't.”

Professor Lee summarized the data from his first course, including his lengthy assessments, and presented it to his faculty after he initially taught the course. He also spoke about the benefits of the online courses with his dean, who liked the concept but did not himself push other faculty toward adoption. Professor Lee has been able to hire four adjunct instructors willing to teach online, although he has also had a couple of them
decline to teach online again after teaching an online course. One additional faculty member who taught a skills course did consult with Professor Lee, and has since put a legal writing course online using a different methodology. Professor Lee indicated that he thought that additional online courses would only progress at his school if there was “clear leadership from the top” that provided direction as to why someone, “as a full-time tenure or tenure-track faculty member, should think about [teaching online.” He indicated that “I can talk about those things, but it’s far more effective for the dean.”

Professor Russo has spoken with his faculty members about teaching online, and felt as though he has been very straightforward with communicating the amount of work it takes to create and run a quality course. He has been “been quite upfront about the fact that it requires a tremendous commitment, both by the institution and the faculty member to do it properly. So the result of that is, I haven't found any takers.”

Professor Russo concluded:

These things can’t be faculty driven, because the faculty don’t know what they are, and they have to be driven by people who are either in the administration, or the IT department, for example, who understand the future of this, and faculty adapt. They may not be in the vanguard, but they adapt.

It appears to be that the participants did not see themselves as opinion leaders – and except to a limited extent with Professor Lee, they were not opinion leaders. One of the participants, Professor Hitchman, was much more active with the outside Working Group than with spreading the innovation within her own faculty, and the other two participants who tried to spread the innovation have had little to no success in spreading the innovation to their peers. Professor Lee had been able to accomplish the most, but
even his success was limited to one legal writing professor and to his own adjuncts, and even among his adjuncts, two of them have taught online and then stopped. Both participants who tried to proselytize within their law schools were disappointed, and found that pressure from forces outside the faculty – whether administration or IT – are what is needed to encourage more faculty to teach online.

One of the characteristics shared by both the innovator and the early adopter is communicating to others about the innovation. However, the functions of those communications, and to whom they are communicated, is a significant dividing line between the innovator and the early adopter. Specifically, the early adopter, as compared to the innovator, communicates much more within his or her own community, and often plays the role of opinion leader to the next group of adopters, the early majority. Rogers refers to early adopters as “localites,” as compared to the “cosmopolite” innovators who communicate more with others outside of their local community (Rogers, 2003, p. 283). The early adopters are closer to the community norm than are the innovators, and it is this homophily that encourages the community to follow their lead. In order to keep this opinion leader status, their choice of adoptions must be judicious to keep them within sight of the norm. Early adopters are therefore more communicative within their local area, as it is by communicating with their networks that they have an on impact others to adopt the innovation.

Rogers notes that innovators tend to communicate with other innovators, who generally not in the adopter’s own geographic location, because by the fact that they are on the thin edge of adoption, there may be no one in their area who is also an adopter or who is even interested in hearing about the adoption. It is not necessarily the case that
innovators never speak to their local peers, or early adopters never communicate with peers outside their area. The tendency to do one over the other is an indicator of which category an adopter falls into, and in this case, it appears that all three fall into the innovator category due to the limited success in spreading the innovation in their local communities.

Summary

The themes described above demonstrate that all three participants showed characteristics of being trailblazers. These themes place the participants on the innovator side of the curve. Two of the participants were clearly in the innovator category, and one was closer to the category of early adopter, but the deciding factor which placed her more into the innovator category was that she did not have the characteristics of an opinion leader – she was not interested in proselytizing to others, but preferred to work with the small cohort of advanced faculty who started teaching online at the same time she did. Thus the answers to research question 1 is that these three participants fall into the innovator category. The answer to research question 2, on opinion leadership, supports the answer to research question 1, as the answer to question 2 is that they do not seem to have the characteristics of opinion leaders, a trait of early adopters. A further discussion of these findings, the limitations of this study, its implications, and recommendations for future studies is contained in chapter 6.
<table>
<thead>
<tr>
<th>Table 5. Summary of themes and highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Motivation</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>Frustration</strong></td>
</tr>
<tr>
<td><strong>Problem-solving</strong></td>
</tr>
<tr>
<td><strong>Ongoing adoption</strong></td>
</tr>
<tr>
<td><strong>Sharing outside of campus</strong></td>
</tr>
<tr>
<td><strong>Sharing within campus</strong></td>
</tr>
</tbody>
</table>
CHAPTER 6. CONCLUSIONS

Overview

The challenge for diffusion scholars of the future is to move beyond the proven methods and models of the past, to recognize their shortcomings and limitations, and to broaden their conceptions of the diffusion of innovations. (Rogers, 2003, preface at xxi)

The research questions asked by this study were “What are the characteristics of the selected law professors relevant to the choice to teach law courses online?” and “How do these professors see their roles as an opinion leader for other law professors?” These questions were asked in the context of Rogers’ "Diffusion of Innovations" model, to help understand the role that law school professors teaching online today play in the adoption of innovations process (Rogers, 2003).

While there is no bright line between innovators and early adopters in Rogers model, it is apparent that all three of the participants are not just pioneers; they are trailblazers. The difference between the two terms, “pioneer” and “trailblazer,” are evident in their names: A number of people can be pioneers, such as the “pioneers of the Old West,” but there can be only one individual or group of trailblazers. Once a trail is “blazed” or marked, those who come after are following the route, not creating it. Those who are trailblazers are the innovators, and, as shown in the previous chapters, all three of the participants fell onto the innovator end of Rogers spectrum.
In this chapter, the first section discusses the findings in the context of the Rogers model, answers the research questions, and notes additional relevant findings. The second section discusses the limitations of this study. The third section covers implications and conclusions, finally, the fourth section discusses suggestions for future research.

**Discussion of Findings**

Law schools have a long tradition of teaching their doctrinal courses in a specific way in which the professor is the “sage on a stage.” In recent years, there has been a small but vocal minority of law professors who have criticized the traditional American law school education, and that trickle of criticism has swelled to a significant chorus in a number of areas. One of those areas has been the almost total avoidance of online education in J.D. programs. This dissertation presented descriptive case studies of three law schools professors currently offering online courses in J.D. programs to see what characteristics they manifested, and, using Rogers’ diffusion of innovations as framework, to see if those law professors shared the characteristics of those who were early adopters and opinion leaders, or those of innovators. The goal is to create an analytical generalization that can be of use to those seeking to understand the shared and the disparate characteristics of these pioneers in legal education (Merriam, 2009).

**Overview of Major Themes**

**Self-motivation.**

The first theme that was observed was that each of the participants, in his or her own way, was very self-motivated. Rogers’ theory is that the “salient value of the
innovator is venturesomeness” (Rogers, 2003, p. 283), which includes a desire for the
daring and risky. Although Rogers does not specify motivation in his description of this
category, it seems apparent that persons who are venturesome must be self-motivated to a
certain degree, as an element of risk is to want to try something new. Thus the degree
to which each participant chose to teach online was a key investigatory point of this
study.

Interestingly, the motivations were not the same for all participants, aside from a
general interest by all three of the participants in the technology. The participant who
worked with an instructional designer to created a wholly asynchronous course seemed
most struck by the possibilities of his online course, which was particularly interesting as
a fully asynchronous course is the furthest type of methodology from a traditional law
school class setting. He therefore had to make the most radical changes in his course
structure. His motivation and enthusiasm led him to persuade some adjunct faculty
members to teach online, using the same instructional designer and planning process. It
may be that use of an instructional designer for faculty who already have some interest in
teaching online is a motivational strategy.

Another factor that appeared to be highly motivating was the perceived
convenience to students, particularly evening students, of an online course. Two
participants expressed the perception that their online courses would save the students
from having to take the time to come to campus as something that motivated them, even
in the absence of an expressed desire for online courses by the students themselves.

Another significant motivator, although it was only expressed by one participant,
was the desire to teach a specific course at his home campus when he was already
committed to be at another campus. It can be deduced from the interview that he would
have not put this course online at the time he did so if he had he been at his home
campus, although this was not specifically stated. The online format afforded him the
opportunity to teach a course that he wanted to, so it was convenient in the sense that it
made the course possible, but not in the time-saving sense. Convenience for this faculty
member was therefore not convenience in the same sense it was for the students:
convenience for students meant time-saving, but that was not the case for the participant.
In fact, the additional time that it took to prepare his online course and the time it took for
him to prepare for each synchronous class can be considered the antithesis of this
definition of convenience.

For one of the participants, there seems to have been a social aspect to motivation.
He was approached by a colleague at another school at his university at a social event
who suggested they work together to create a joint course for their programs. This
personal connection seemed to have sparked his interest in exploring further.

One factor that was hypothesized as a possible motivating factor, as it is a factor
in other higher education settings, is the ability of an online course to attract students to
the law school. Only one participant expressed this, however, saying that he thought
offering an online course would attract students to his program. It may be the case that
this was his motivation because he was the director of a program of study within the law
school, with a Master’s degree component, and so he had an interest in driving
admissions to his program, whereas the other two participants were teaching faculty and
as such did not have a role in increasing admission. One participant commented that her
school was trying to increase online offerings and that the administration’s concerns
appeared focused around access to elective courses, space needs, and revenue generation, but those concerns did not appear to be part of her own initial motivation.

**Obstacles and problem-solving**

The next two related characteristics that were examined in this study were situations in which teaching online became frustrating, and the extent to which the participants engaged in problem-solving to resolve them. Rogers states that innovators must also be willing to accept an occasional setback. While Rogers does not specify this, it seems that a concomitant value that should be explored in this context is the willingness of the participants to solve that frustration. An innovator who works on resolving his or her setbacks is more likely to continue with the innovation, and also to serve as a role model for others interested in the successful adoption of the innovation. One who drops the innovation is scarcely likely to inspire others.

All of the participants experienced some type of frustration, and the strongest complaints revolved around the technology, although there was a split between the problems found with the synchronous technology and with the asynchronous technology. The participant who taught in a fully asynchronous environment was the only one who did not mention technology failures as a particular frustration. The faculty with synchronous components faced and addressed issues with online connectivity, which was perceived as a serious concern as the synchronous classroom by its nature requires an immediate response. One participant expressed concern with student connectivity, tying that into ABA attendance requirements, whereas the other participant’s problem revolved around issues with his own connectivity to the online class. Another issue with the synchronous format was the need to protect the anonymity of a student with a disability
in test-taking situations.

Issues with the asynchronous portions of classes were not perceived as needing such immediate remedies, although they were more systemic than connectivity issues, which can vary from student to student and semester to semester. These biggest frustration of the faculty members using asynchronous technology was with the time commitment. Both participants cited a significant increase in time to create the course with asynchronous components, and also an increased time to administer the course. The participants were actively involved in resolving their problems, either by themselves or through law school resources.

**Ongoing adoption.**

While not stated explicitly by Rogers, one of the qualities that an innovator would have to have would be the ability to continue, and not to drop, the innovation. Innovators serve as role models for the system, particularly for the early adopters, who are the next ones in the adoption cycle to take up the innovation. While from the case studies in Rogers, it appears that he only considers someone an innovator or an early adopter if they continue to embrace the innovation, that is not specified on the list of characteristics of either. Nevertheless, it seems as though this is an important attribute to note.

All of the participants had taught their online courses at least twice, and were planning on teaching them again. In addition to continuing to teach their courses, they indicated their willingness to develop and offer additional online courses, with varying levels of commitment.
Communication.

The basis for research question 2 dealt with communication and its impact on the local community of each participant. This was tied into Rogers’ concept of “opinion leaders,” members of the community who are looked to by other members for advice and modeling of adoptions. Opinion leaders fall into the early adopter category. The key characteristic of early adopters is respect within the local social system. Their decision to adopt is more judicious, as they are “not too far ahead of the average individual in innovativeness” (Rogers, 2003, p. 283). They have two characteristics in which they surpass innovators: they share information about the innovation more with the local community than with outsiders, and other members of the community adopt the innovation based on their advice and their adoption of the innovation. They are their community’s guides to change.

In general, the participants did not have the characteristics of being an opinion leader. In determining this, the communications were coded by communications with people inside the law school–faculty members, adjuncts, administration – and communications with people outside the organization – their peers who teach online or are interested in teaching online at other law schools. One of the participants worked closely with a small group of her peers at her law school who started teaching synchronously at the same time she did, and did not try to persuade the other faculty members. The other two participants had spoken to their faculty members soon after they initially offered to their online course, with little to no success in gaining converts to online teaching. One participant was able to get four of his adjuncts to develop and teach other online courses in his program, but two of them subsequently stopped out. The only
other person on campus who subsequently adopted an online course taught a skills course, not a doctrinal course. Outside of their own schools, two of the participants attended a Working Group meeting in 2012, and the third attended a Working Group breakfast at the American Association of Law Schools annual meeting in January 2013. The first two participants also contributed to the Working Group Blue Paper, which summarized delivery models, regulatory issues, and best practices for law schools offering online courses. Based on this, the more satisfying communication that at least two of the participants had about their online course appears to have been with their peers at other law schools, rather than with their own faculty and administration, according to the frustration they expressed at the lack of interest at their own schools. The lack of ability to persuade faculty member is not a criticism of any of the participants; it is just a marker that shows that they are on the innovator portion of the spectrum, not the early adopter portion.

**The Socratic method and teaching online.**

Two of these online courses did not use the Socratic method, and one used it but in a limited way. All three courses were doctrinal, and provided instruction in a particular field of law. While two of them also taught some skills in the context of the course, such as drafting relevant documents, these courses were doctrinal classes, not skills courses such as legal research or legal writing, in which the skills taught are independent of a specific area of law. The fact that two of the courses did not use the Socratic method was interesting as they were the two outliers – the all-asynchronous and the all-synchronous courses. While it is easy to see why the asynchronous course could not offer this type of pedagogy, the all-synchronous course could have brought that in but did not. It was not
clear whether the participant chose this course because she thought it did not need to use the Socratic method or because she thought that her synchronous tool would not have handled it appropriately.

The participant with the hybrid course employed the Socratic method, but even then it was limited, as half of the course was asynchronous, which does not involve the Socratic method, and the synchronous half also involved significant other types of teaching activities, including lecture, problem-solving, polling, and answers to student questions. Therefore, even if his course did use the Socratic method, it was within a larger context of pedagogical tools and not the dominant methodology.

The actions of innovators and early adopters serve as a role model for the next, much larger, group, the early majority. To the extent that the rest of the law school faculty also use a relatively minimal amount of the Socratic method in their upper-division courses, all of these participants’ course could serve as a model. The course with the broadest appeal to a potential adopter may be the hybrid course described in detail in chapter 4, as it models both use of some Socratic method while also taking advantage of the unique characteristics of the online environment. However, it may be the case that none of these courses use enough of the Socratic method to appeal to faculty who rely more on that pedagogy.

**Face-to-face versus online courses.**

One of the most interesting findings in this study was the dichotomy between the conviction of the two participants who taught asynchronously that their online course was of substantial, even superior, benefit to students over a comparable face-to-face course, and their behavior in retaining their existing format for their face-to-face courses instead
of duplicating or paralleling those online elements. Both of these participants moved away from the traditional single final summative assessment to add formative assessments to their online courses, including quizzes and scaffolded assignments. They both clearly indicated that they considered these formative assessments valuable, yet they had not changed their face-to-face courses to add these elements. Although their reasons for not making a similar pedagogical change in their face-to-face courses was not specifically articulated, it seems likely that the efforts in the online class were not duplicated in the face-to-face class because they were simply too time-consuming. Both of the participants whose courses involved asynchronous content commented that it was substantially more work than a face-to-face course.

**Characteristics of Innovators**

Research question 1 was “What are the characteristics of the selected law professors relevant to the choice to teach law courses online?” All three participants demonstrated characteristics of innovators. They ventured beyond what anyone at their law school was doing at the time, and sought input from other similarly venturesome peers. They believed that they were offering a quality course, so when they encountered obstacles, they addressed them and overcame them. They attended meetings of a nationwide group of peers interested in driving the innovation forward. Their intent was to keep teaching their course online, and to develop another online course, thereby continuing to model the innovation for their respective law schools. The following section provides analysis of these essential qualities.

The three outstanding characteristics of the participants were motivation, dedication persistence and problem-solving. The following table sums up these attributes
and how each were manifested in each of the participants.

Table 6. How personality traits of the three participants are demonstrated

<table>
<thead>
<tr>
<th></th>
<th>Professor Hitchman</th>
<th>Professor Russo</th>
<th>Professor Lee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motivation</td>
<td>• Student convenience • Request from IT department to use new facilities</td>
<td>• Ability to teach a desired course while away from campus • Student convenience</td>
<td>• Desire to promote his program • Interest in the concept</td>
</tr>
<tr>
<td>Dedication</td>
<td>• Received only brief training • No perceived convenience to her</td>
<td>• Needed to research how to teach well online • Independent research on course creation</td>
<td>• Redesigned new course from scratch using very different pedagogy from traditional law school</td>
</tr>
<tr>
<td>Persistence and</td>
<td>• Classroom technology • ADA requirements</td>
<td>• Classroom technology</td>
<td>• Scaffolding student work • NY bar rules change</td>
</tr>
<tr>
<td>Problem-solving</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The following section discusses each of these three categories and their implications in broad terms. Using the framework set out in Rogers, the discussion will focus on the expectations in each of these categories, how the participants fit or do not fit those expectations, and some specific observations on how those characteristics are exhibited. Rogers paints these categories – innovator and early adopter – with a broad brush and does not provide much detail in how these traits manifest themselves. One of the contributions of this dissertation to the literature is to provide some detail that may be used of analytic generalization on these categories.

The first and most prominent characteristic of the participants is that they are self-motivated. This is a major component of the label that Rogers uses for innovators, that of
“venturesomeness.” The following table compares the motivations that were a factor in the participants’ decision to first offer a course online, compared to the motivations not found to be a factor.

Table 7. Comparison of motivational and non-motivational factors

<table>
<thead>
<tr>
<th>Factors that one or more participants cited as motivating them to teach online</th>
<th>Not motivational factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suggestion from colleague or co-worker</td>
<td>A demand or a request from the dean</td>
</tr>
<tr>
<td>Perceived convenience for the students</td>
<td>Actual student demand</td>
</tr>
<tr>
<td>Convenience/flexibility for the faculty</td>
<td>Stipend or release time</td>
</tr>
<tr>
<td>Willingness to provide options for evening students</td>
<td>Lack of physical classrooms</td>
</tr>
<tr>
<td>Desire to promote the law school</td>
<td>Previous online class experience</td>
</tr>
<tr>
<td>Desire to teach a specific course</td>
<td></td>
</tr>
<tr>
<td>Intrigued by the possibility</td>
<td></td>
</tr>
</tbody>
</table>

One of the advantages of using a qualitative research approach is that the questions related to motivation were open-ended. I did not give possible motivational factors to the participants to select or rank. They used their own, unprompted terms to describe their reasons for adoption. Not all motivations were shared by all participants, but all of the participants had multiple motivations. Stated motivations included student convenience, flexibility for the faculty member, a suggestion from a colleague, the desire to promote one's program, or just an interest in the technology. While the motivation were varied, the key factor is that they were self-directed. Self-motivation overcame lack of on-campus role models, the weight of traditional law school pedagogy (even where it
did not involve the Socratic method), and increased workload. In addition to being a powerful factor in creating the initial course, self-motivation was bolstered after the initial course offering by the perception that each participant had offered a quality course and students had reported a positive experience.

Some of the motivational factors were personal to the instructor: an interest in the technology, the desire to teach a specific course, the recommendation of a colleague, the opportunity for flexibility. However, a number of factors looked beyond the faculty member’s own personal interest, and these included promoting the law school, and the convenience of students - particularly the evening students. Student feedback supported the participants’ perception of the quality of their course, which was one of the unstated but obvious factors in the initial motivation process, after the course had been offered. There was general agreement among the participants that students were more engaged in their online class, and that most students - although not all students - liked the online format. This helped to confirm the participants’ perception that offering an online course was a good investment of their time, and was beneficial to students.

In contrast to the motivational factors listed above, it is useful to evaluate the things that were not motivators. There was no pressure from the administration or the deans on the participants to offer the original course online. Another factor that was not cited as motivational was the initial promise of any kind of release time or stipend. Two of the participants received no stipend or release time at all, so that could not have been a motivational factor. The one participant who did receive a stipend did so only after his initial interest, exploration, and research into online teaching. Thus the stipend was what enabled him to create the course, not the primary factor that encouraged him to put his
Another factor that was not a motivator was previous experience of any of the participants in an online environment, as none of them had taken an online course before. So a driving factor could not have been the desire to emulate a good course, or to do better than a substandard course that they had previously experienced.

One further factor that was not a motivator was any direct student demand for an online course. While convenience to the students played a significant role in at least two of the participants’ decision to teach online, the convenience factor was an extrapolation from their general knowledge of student backgrounds, and not a response to actual student requests. It should be noted that even after the initial online offering, student demand for additional online courses at these three law schools appears to have been mild. As there still did not seem to be a significant demand by students for additional online courses, the perception of convenience to the students, which was stressed by at least two of the participants, was not particularly reinforced by the students themselves.

A further personality trait that all three participants exhibited was dedication in adhering to the innovation. This is an unwritten but implicit element in Rogers for both the innovator and early adopter categories, as an adopter who abandons the adoption does not serve as a model for others or contribute to the innovation-decision process. All three participants offered their online course at least twice, including the current academic year, and had plans to offer it again in the future. Thus the participants continued to be part of the innovation-decision process.

Two outstanding and inter-related personality traits exhibited by the participants were persistence and the ability to problem-solve. All three participants indicated that
they had experienced additional difficulties with their online course that they would not have experienced in their face-to-face course. Two of the three participants had a number of technology issues, which they either had to solve themselves, or address with the help of their IT department. An additional issue that was encountered was modifying the online environment to accommodate a student under the Americans with Disabilities Act.

Not all of the problems reached a successful resolution. The key element was not that each problem was solved, but that the participant attempted to be part of the solution. Whether each problem is solved or not is not the essence of this trait; it is the ability to experience setbacks without being discouraged and dropping the innovation, or ceasing to be an advocate for the innovation, which supports this attribute.

In summary, in addressing Research Question 1, there is no single type of self-motivation that prompted these participants to teach online; however, it was clear that they were motivated themselves, and not directed or instructed to teach online by the administration. Additional work and technology hurdles did not dissuade the participants and they worked around problems, some resolved and some ongoing. All three perceived that the courses provided quality instruction to students and taught them at least twice, with plans to teach them again and a range of plans to create and offer additional online courses. This discussion answers Research Question 1, concluding that these characteristics have the hallmark of venturesomeness, and places the participants in the category of innovator.

The second Research Question was “How do these professors see their roles as an opinion leader for other law professors?” This question revolves primarily around
communication supporting the online education innovation between the participants and two primary groups, those inside the law school, and their peers outside the law school. The following table summarizes the findings.

<table>
<thead>
<tr>
<th></th>
<th>Communication within the law school about the innovation</th>
<th>Communication outside the law school about the innovation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor Hitchman</td>
<td>Discussion primarily with small cohort of peers also teaching online</td>
<td>Member of the Working Group for Distance Learning in Legal Education</td>
</tr>
<tr>
<td>Professor Russo</td>
<td>Discussion with all faculty; Discussion with administration</td>
<td>Member of the Working Group for Distance Learning in Legal Education</td>
</tr>
<tr>
<td>Professor Lee</td>
<td>Discussion with all faculty; Discussion with administration</td>
<td>Drafted unpublished article about online course; attended a meeting of the Working Group for Distance Learning in Legal Education</td>
</tr>
</tbody>
</table>

There was a distinct split in the participants’ communication within their own law schools, and the division seemed to based on whether there was some existing support at the law school for online education. Unexpectedly, it was in the law school with existing support for online education that there was little communication about the innovation by the participant with faculty who were not already teaching online. That participant took the position that it was not her role to spread the innovation, but the role of the IT department, which initially contacted her with the suggestion for teaching online. The focus of her own communication about the innovation was primarily with others who also began to teach synchronously at the same time. Within this group her communication was quite involved, including both sharing ways to make the online teaching work better and participating with the group to draft written guidelines to assure
quality control of the online courses.

In contrast, the other two participants without existing support at their law school for online teaching took a distinctly more evangelical role in trying to spread the word about the benefits of the online courses. They both spoke to their faculty, providing detail in how the course was structured and the benefits it provided to the students. One participant wrote up a report based on his very lengthy student surveys and presented it to his faculty. Both participants also spoke with their deans to try to get their support in promoting online education. Both were unsuccessful, and both took the position that their administration needed to take a much stronger role in persuading or requiring faculty to teach online.

The impact of the communication within the law school on other faculty offering an online course is contained in the following table.

<table>
<thead>
<tr>
<th></th>
<th>Additional faculty teaching online</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Southern Law School</strong>&lt;br&gt;(Professor Hitchman)</td>
<td>None (no attempt at impacting other faculty)</td>
</tr>
<tr>
<td><strong>Western Law School</strong>&lt;br&gt;(Professor Russo)</td>
<td>None</td>
</tr>
<tr>
<td><strong>Eastern Law School</strong>&lt;br&gt;(Professor Lee)</td>
<td>Four adjuncts within specific program taught an online course; two have since dropped out. One online skills-based course created by another full-time faculty member.</td>
</tr>
</tbody>
</table>

Of the three participants, only two tried to persuade other faculty to teach online, and only one succeeded. Even that success was limited, however, as most of those who were persuaded were adjuncts, and half of those have since stopped teaching online. The only
full-time instructor to develop an online course taught a legal writing course. It is unlikely, given the hierarchical structure of law school faculty, that full-time faculty teaching doctrinal courses will be persuaded to teach online by adjuncts or those teaching skills courses. Therefore, while the adoption had spread a little into Eastern Law School, the faculty to whom had spread were not themselves likely to be opinion leaders who would then be likely to lead to a more significant level of adoption.

While communication and persuasion within each participant’s community may not have borne significant fruit, the local community is not the only relevant avenue for communication in the innovation-decision process. While opinion leaders are strong communicators within their local communities, in contrast, innovators tend to look outward to a broader community in their communication. Rogers specifically provides that one characteristic of an innovator, as contrasted with an early adopter, is that the innovator communicates much more with a widespread group, as compared to a local group, which is referred to as a “cosmopolite” community. Reaching out to more distant groups is often necessary for an innovator who is looking for a kindred spirit, as other in the local community may not be ready for or interested in the innovation at the start.

Two of the participants have been active members of the Working Group, and have shared their online course offerings, their methodology, and their support for online education with members of the Working Group. The one participant who had not heard about the Working Group prior to his interview sought out the next meeting of the working group at a law school conference. Even he had tried to reach out to the wider law school community through the drafting of an article on his online course results, although it was not completed. So he did try to communicate about his school’s online
experience with others, but due to time constraints, the communication did not occur.

In looking at the communication patterns of the three participants as expressed in the interviews, it appears as though their communications outside of their law school was more rewarding than their communications with the peers within their law schools who did not teach online. In answer to Research Question 2, then, these participants are not opinion leaders, so they do not fall into the category of early adopters. This conclusion confirms the answer to the first Research Question that these participants fall into the category of innovators, who have more fruitful communication with a broader community.

**Implications and Conclusions**

One implication that was not brought up by the participants, but which is derived from the description of their courses, is whether law school students will support the offering of additional law school courses if they are perceived as requiring substantially more work. As can be shown in the cases studies of Professors Russo and Lee, their online courses appeared to be more work for the student than the typical face-to-face course – Professor Lee’s due to the extra number of assignments and Professor Russo’s for the necessity of pre-watching the narrated PowerPoints, writing required questions on the material, and taking quizzes. While students may appreciate the convenience offered by having one online course per semester, especially students in the evening program, the question arises as to whether students would be willing to take a full semester of online courses, if each course is noticeably more work than its face-to-face counterpart. Would the perception of additional work drive students away?

Another observation based on the data is that both faculty members who cited
perceived student need as a motivating factor cited this need specifically for their evening
course students. Professor Hitchman offered her course online for the first time as an
evening course. Although the day students also took advantage of the online courses, the
focus in the interviews seemed to be on the evening students: “Students have greater
obstacles to coming to class at 6 PM four days a week for four years, and so one of the
reasons we were exploring an online offering, was to provide some alternatives for the
evening program” (Professor Russo). It is easier to empathize with students who are
spending four out of five weeknights in class after a full day at work, than with full-time
day students whose first priority is to attend classes. The ABA enforces this priority for
full-time students by prohibiting them from working more than 20 hours during the
school year, which evening students have no such restrictions. It is thus easier to see why
law schools might seek an educational solution that would allow their evening students
some personal flexibility than their day students, as there is less of a perceived need to
address time constraint issues involved in class attendance for the day students. As a
result, it may be the case that directors of evening programs would be more interested in
offering a variety of law school courses online, both doctrinal and skills courses, to help
the evening students. It may be through the evening programs that online education at
ABA-approved law schools starts to be adopted.

While the socio-economic status of the participants was not deemed relevant to
this study, as provided in chapter 5, it may be the case that the equivalent for a law
school, which is law school rank, is relevant. Law schools are traditionally ranked in
quartiles, referred to as tiers, by the publication U.S. News & World Report (Moran,
2006). Schools in all four tiers have been about equally represented in the three Working
Group meetings in November 2011, April 2012, and September 2012, and two of the participants in this study work in second tier law schools, and one works in a fourth tier law school. Wejnert observes that status of a firm is relevant in the diffusion of innovations process, noting that “high-status” firms that adopt innovations stimulate adoption in similar firms (Wejnert, 2002). She also notes that where the adoption is “mainly noncontroversial and consistent with established norms,” higher status individuals lead the adoption, but that where they are more controversial, lower status individuals may initiate the adoption process “apparently because they are less fearful of losing popularity by nonconformist behavior” (Wejnert, p. 305). While a full discussion of the law school as the unit of innovation rather than the individual faculty member is beyond the scope of this study, further research into which tier of law schools are leading the online education initiative may provide other, complementary perspectives – for instance, if more second tier schools begin to offer online courses, will that have a greater impact on others within the second tier than it would for schools in the third and fourth tiers?

Another area of impact for law schools is their willingness to provide financial support for online instruction at this stage and subsequent stages. The three courses profiled in this case study involve the investment of additional resources by the law school, including investment in a high-tech classroom, in student hardware, in software site licenses, in stipends, in consultant fees, and in tech support. Support in this last category, tech support, may be even more crucial for other stages of adopters. One of the factors identified by researchers in assisting faculty to adopt online education is adequate IT support (Birch & Burnett, 2009; Covington, Petherbridge, & Warren, 2005). After the
self-motivated innovators have adopted online instruction and surmounted their own tech support challenges, a different tech support strategy is needed for faculty who are less venturesome and more measured in their response to change. The perspective demonstrated by Prof. Hitchman in letting her IT department spearhead the adoption of online courses at Southern Law School is foreseeable in this context. Prof. Hitchman’s reluctance to proselytize may be a realization that without a commitment by the IT department to support and monitor additional synchronous courses, any efforts she might make to increase interest on online education would be futile.

This gap between the willingness of innovators to deal with tech support and subsequent adopters who may be less willing, and the ability to identify who is an innovator and who is an early adopter, will have implications for resources. One article cautions against funding the “Lone Ranger” model of faculty development - direct support to a small number of individual faculty members – as their “faculty enthusiasm and self-reliance may not be sufficient to ensure the diffusion of these efforts institution-wide” (Hartman, Dzubian, & Brophy-Ellison, 2007). Given the application of the Rogers lens, this lack of institutional follow-through makes sense, as it is not the role of the innovators to serve as opinion leaders, but as the trailblazer that the early adopters can choose to follow. It may be that the supports provided to the “Lone Rangers” fit their needs but are insufficient for buy-in by other adopters. In that case, the problem is not that the Lone Ranger/innovators received too much support – it is that the rest of the faculty received too little.

**Relation to Previous Research**

Legal education’s adherence to tradition is in contrast with the significant and
growing use of online education in the rest of higher education. Thirty-two percent of all students enrolled in degree-granted post-secondary institutions in fall 2011 were enrolled in at least one online course, and over the past ten years, the growth of students in online course has and continues to outstrip growth in traditional face-to-face courses (Allen & Seaman, 2013). The Working Group is aware of this trend in other areas of higher education, which it has used in its support of online education for law schools, as it believes that “[t]he distance learning tide is coming in for law as well” (Working Group for Distance Learning in Legal Education, 2013, p. 11).

While growth in online education is trending upward, not all faculty are supportive of online courses even in the rest of higher education. The faculty acceptance rate of the value and legitimacy of online education in higher education in general was only at 30.2% in fall 2012, a decrease from a high of 33.5% in fall 2007 (Allen & Seaman, 2013). According to the Rogers model, this places overall acceptance of the innovation somewhere in the early majority stage. Even for higher education faculty outside of law schools, acceptance of the innovation of online education is still ongoing. Therefore the willingness of the case study participants to embrace an adoption that is not even fully adopted in higher education even more strongly supports their status as innovators.

American law school education has lagged behind the rest of higher education in the adoption of online learning due to use of its signature pedagogy, the Socratic method (Sullivan et al., 2007). Law schools have primarily focused on one part of their mission, to teach students how to “think like a lawyer” (Curtis & Karp, 2007; Friedland, 1996; E. E. Johnson, 2010). This method of teaching relies on intensive one-on-one questioning
between a professor and a student, which has not been considered easily translatable to
the online environment. Criticisms of the traditional law school pedagogy have been
mounting over the years, but, historically, law schools have been very resistant to change,
seeing themselves as continuing a long tradition of essential legal education (Carasik,
2011; Sonsteng et al., 2007).

Despite the weight of this history, some law school faculty have been
experimenting with upper-division online courses. Wide-scale adoption of online courses
has been inhibited by the restrictions on online education imposed by the ABA, the
accrediting body for almost all law schools. However, the ABA is currently considering a
change in their rules that would allow a student to take a full semester online, which may
attract some law schools to online education. Thus the time is ripe for law schools to
consider online courses, and those that are could benefit in promoting these courses by
focusing on faculty who match the characteristics of the case study participants, as they
have been successful adopters after schools.

Previous research in the field will be useful to law schools seeking to move
forward with adopting the innovation of online education. The ability to classify potential
adopters makes it easier to direct resources and support each class of adopters, and
thereby enhances the chances of adoption (Rogers, 2003). Looking at the characteristics
of innovators on a detailed basis, using a qualitative approach, can provide rich data on
which faculty to approach, and which motivation may be most useful in moving faculty
members toward adopting the innovation of online education.

Examining the characteristics of individual adopters is useful to this discussion as
they are the ones who ultimately choose to adopt (Hansen & Salter, 2001). Innovation
research in educational technology can be divided into macro-scale theory that focuses on the institution, and micro-scale theories that focus on the adoption of specific instructional tools (Surry & Farquhar, 1997). Each of these categories can be further broken down into developer-based theory, focusing on the technical superiority of the innovation, and adopter-based theory, which focuses on the person making the adoption. Adopter-based strategies that focus on the “human, social, and interpersonal aspects” of diffusion theory fit more closely with observed outcomes (Surry & Farquhar, 1997). This study has focused on the micro-scale part of this scheme, and on the adopter subcategory within it. Strategies using the Rogers characteristics (such as opinion leader) has been used to try to increase adoption by supporting those most likely to adopt (Kozma, 1978).

**Figure 6. Figure 2 from Surry & Farquhar, “Overview of Instructional Technology Diffusion Theories showing diffusion goal and philosophical view.”**

<table>
<thead>
<tr>
<th>PHILOSOPHY</th>
<th>GOAL</th>
<th>Systemic Change (Macro)</th>
<th>Product Utilization (Micro)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developer (Determinist)</td>
<td>Focus on the structure and establishment of an effective organizational framework.</td>
<td>Focus on process of designing, developing, and evaluating effective instructional products.</td>
<td></td>
</tr>
<tr>
<td>Adopter (Instrumentalist)</td>
<td>Focus on the social, political, and professional environment in specific organizations.</td>
<td>Focus on the needs and opinions of potential adopters and characteristics of the adoption site.</td>
<td></td>
</tr>
</tbody>
</table>

At least one researcher has found that insufficient research has been done on the characteristics of adopters as an important contributor to the diffusion process (Wejnert, 2002). While studies have been done on the adopter characteristics, the vast majority of those studies have focused on this data quantitatively. Statistical analysis can be helpful,
but not at the start of an innovation, as by Roger's own definition, innovators only comprise 2.5% of the total, and early adopters only comprise 13.5%. Alone, these adopter groups are both too small, and too homophilous to be adequately described through quantitative research. However, Rogers in general focuses on quantitative research, and studies following his diffusion of innovations theory have generally not looked to qualitative research of adopter groups. In discussing the innovation-decision process, Rogers states that most of the research in this area has been variance research – quantitative research – and not process research, which seeks to determine the sequence of a set of events over time, usually conducted using qualitative research. Rogers states that "the scarcity of process research on the innovation-decision process is the basic reason why we lack definitive understanding of the degree to which stages exist" (Rogers, 2003, p. 197). The same strong focus on quantitative research, to the neglect of qualitative research, exists in studying innovator characteristics.

Not all researchers agree that, in innovation research, a focus on the individual adopter is appropriate. In some areas, it has been argued that the focus is more appropriately on the economic, structural, and institutional environment (Heilesen & Josephson, 2008; Padel, 2001). It is probably the case that research on the environment in which an innovation is being considered is appropriate and will shed light on certain parts of the acceptance or rejections of the adoption. However, I am not making the argument that the individual is the only element in adoption. The point of this study is that an in-depth look at the qualitative nature of innovators and early adopters is an under-explored area of innovations research, and this study provides information to help fill that gap.
Recommendations for Future Studies

Most research on characteristics of adopters using the Rogers model, whether in education or in other fields, is done using quantitative research. This study has shown that important data can be collected using qualitative research. This research is particularly important for studies done in the early stages of an adoption, when quantitative research may be difficult due to a relatively small or homophilous pool of adopters. Future studies should consider a qualitative or a mixed-method inquiry into adopter characteristics to obtain more complete data on adopters as an important part of the innovation-decision process.

The latest trend in online education in higher education are massively open online courses (MOOCs). While it might be expected that law school would lag behind the trend to adopt MOOCs, a Harvard Law School professor is currently offering one during the spring 2013 semester, with a capacity of 500 students ("HLS1x: Copyright," 2013). The course is not part of the regular Harvard Law School curriculum but is taught by a Harvard law professor and 21 teaching fellows, who were students at Harvard Law School. Harvard is a tier 1 law school, and I was unable to locate another tier 1 law school that offered any online course, much less a type – MOOC - that is cutting edge even for higher education. A case study on this law professor in relation to the attributes observed from the innovator-participants in this study could provide valuable comparison into the characteristics of innovators in law school education.

Future studies in the area of legal education using the Rogers model should consider looking at the Working Group as change agent for law school adoption of online education. Change agent theory has not been discussed in this dissertation, but it is a part
of the Rogers model. It is closely tied to the category of early adopter, as change agents often work with early adopters to help provide resources to increase adoption of the innovation (Rogers). Change agent are people with a high degree of expertise who provide a link between resources and those to whom an innovation is targeted. Further research in this area could include a study of the Working Group as a change agent for this innovation. The Blue Paper produced by the Working Group, their Model Law School Distance Learning Policy, and other planned activities indicate that the group has the credentials and expertise to make it the hub for spreading online education to law school J.D. programs.

Finally, one piece of the Rogers model that has been neglected is the input, if any, of the students on the decision to adopt the innovation. This study and others on faculty adoption of innovations in higher education have focused on the faculty member as the adopter (Baltaci-Goktalay & Ocak, 2006; Hansen & Salter, 2001; Kozma; Li & Linder, 2007; Soffer, 2010). To the extent students are mentioned, they are secondary to the researcher’s focus on the faculty member. However, if the student does not take the online course, the adoption will fail. Two of the three participants indicated that their course was more work for the students, and this was seen as a demonstration of the quality of the online course. However, the impact on the student of extra work was not part of the analysis of the adopter characteristics, and it might not show up when there are a very small number of online courses offered at a law school, as the convenience to students and the novelty of the online course might mask any negative impact on enrollment. However, a complete study of the innovation-decision process should include an investigation into whether students would be willing to take multiple online
law school courses, if each course is noticeably more work than its face-to-face counterpart. This is part of the anticipated versus unanticipated consequences section of the Rogers model.

**Limitations**

The first and most obvious limitation is that this study only involved three participants. A study with more participants would have been able to bring up more points of comparison and contrast. This study also only looked at full-time faculty members. In doing background research for this study, one source observed that she was aware of a number of part-time adjuncts or full-time non-teaching faculty (i.e., law librarians) who had been instructed by the administration to put law school courses online. These categories of online instructors were excluded from the study as those types of instructors may have little choice in whether to teach online or not. To the extent that they do so unwillingly, they will not embody characteristics of either innovators or early adopters, and thus would not fit into the theoretical framework of this study. Even if these other groups were adopting online teaching willingly, they are hierarchically lower in terms of law school status as compared to the full-time faculty, and particularly to full-time faculty who teach doctrinal courses (as compared to skills courses). It is unlikely that moving from traditional law school pedagogy to online teaching would be driven from the bottom up – from adjuncts or law librarians teaching legal research to full professors teaching constitutional law, to give one example. My hypothesis in creating the structure of this study was that change was more likely to persist if it was adopted by the higher-level faculty. Two of the participants in the study noted that they thought change would have to be at even a higher level than the doctrinal faculty – with the deans
or other top-level administrators. To the extent that this study only looks at faculty as innovation-drivers, it is also limited, and, as discussed below, this is a topic that is ripe for further research.

A further related limitation is that this study only looked at faculty who taught in J.D. programs (although one participant offers a course that is taught to both J.D. and LL.M students) and not in fully online masters or LL.M. programs. There are a number of faculty members teaching fully online courses in the latter. However, they do that only because the ABA does not regulate the masters programs, so no matter how high the quality may be of those courses, they do not have to meet the ABA criteria or work within additional limitations that might be placed on taking the bar exam, such as the restriction discussed earlier by the New York bar on asynchronous courses. These masters courses are therefore likely to have a much less impact on the decision of J.D. programs to offer online courses, although many of them are offered at ABA-approved law schools and they provide a law-based model which J.D. programs could follow if they choose.

Last, this study does not look at the few all-online J.D. programs, as none of those are sanctioned by the ABA. The vast majority of law schools in the United States are ABA-approved, so the models set by the non-approved schools are not likely to have a strong impact on the ABA-approved law schools, at least at this time.

Summary

By better understanding the multitude of factors that influence adoption of innovations, instructional technologist will be better able to explain, predict and
account for the factors that impede or facilitate the
diffusion of their product (Surry and Farquhar, 1997,
“Diffusion Theory and Instructional Technology,” para. 4)

Unlike much of higher education, law schools have some long-standing
hindrances to implementing online courses, and issues that other higher education
programs have resolved, such as quality and methodology, are still very much in play in
the law school setting. Some of these changes seem to be happening rapidly: when I
began this study in 2010, the Working Group for Distance Learning in Legal Education
had not yet been created, and before I completed it in 2013, the group has formed,
organized, drafted, edited, and approved their Blue Paper, Distance Learning in Legal
Education: A Summary of Delivery Models, Regulatory Issues and Recommended
Practices (Working Group for Distance Learning in Legal Education, 2013). On the
other hand, over roughly the same two-year period since the Working Group was formed,
the American Bar Association has moved at a much slower pace, researching and still
considering the issue of whether it should allow law students to take one more online
course than the present restrictions allow. Previous research and experience in online
education in higher education can provide guidance for law schools that they can follow,
if they choose to.

This is an exciting time to study online education in J.D. programs. There are a
number of unanswered questions and many potentially fruitful areas for study. Online
law school education is truly an innovation that is poised on the brink on adoption.
Whether this is the time for its adoption by law schools or whether it remains in the hands
of innovators such as the ones profiled in this case study is to be seen. What can be seen
at this point is that a small group of innovators is doing their best to provide a quality
online experience for their law students, and that they can serve as a model for early adopters.
APPENDIX 1. IRB Exemption Application

IRB Exemption Application attachment – Susan Jaworowski

1. My research will interview selected law professors in American law schools who teach online courses to describe what characteristics they have that caused them to adopt online education, which is used very infrequently in American law schools.

2. I will be doing a descriptive case study focusing on characteristics of innovators and early adopters as described in Rogers’ Diffusion of Innovations construct.

3. Teaching online is an increasingly popular teaching methodology in secondary education. Approximately thirty percent of today’s college students will take one or more online courses for college credit. Therefore, online education is an educational practice as it is a teaching methodology “consistent with the process of formal education.” However, the focus of this student is on the professor, not the students, and no information relating to students will be collected.

4. I will not be using any existing data.

5. My research will not be observational. It will consist of interviews with law professors.

6. My participants will be law professors who teach online (all of whom are adults). This population is difficult to locate as online education is rare in law schools and this information is not regularly included on a law school’s website. I have located two law professor members of the Working Group for Distance Learning in Legal Education, a small group of law schools working on developing best practices in online education for law schools. They have offered to speak with me and to put me into contact with other members of the working group who teach law courses online. I can also contact members of the Working Group whose names are in the public record. I will contact the professors initially by email and by phone, according to their preference as indicated from my contacts.

   I intend to interview three law professors. They will not be compensated for their time. I will explain my proposed research to them and they will also see a description of the research on the informed consent form, which I have attached to this application.
University of Hawai‘i

Consent to Participate in Research Project:
Poised for innovation: Are law schools on the brink of adopting online education?

My name is Susan Jaworowski. I am a lawyer and a doctoral student at the University of Hawai‘i at Manoa (UH), in the College of Education. I am writing my dissertation about innovative law professors who offer online classes in a J.D. program. The focus is on the characteristics and motivations of the professor, and is not an assessment of the online course. I am asking you to participate in this project because you are a law professor who is teaching or who has taught an online course in an American J.D. program.

Project Description - Activities and Time Commitment: If you participate, I will interview you twice, via phone or Internet. The initial interview will last for about 30 minutes. The second interview will be several weeks later so I can follow up and clarify your responses, and will be shorter. I will record the interview digitally so I can later type a transcript and analyze the information from the interview. If you participate, you will be one of a total of three law professors whom I will interview individually. One example of the type of question I will ask is, “What do you see as the benefits of teaching your course on line?”

Benefits and Risks: I believe there are no direct benefits to you in participating in my research project. However, the results of this project might help me and other researchers learn more about what motivates law professors to teach courses online. I believe there is little or no risk to you in participating in this project. If, however, you are uncomfortable or stressed by answering any of the interview questions, we will skip the question, or take a break, or stop the interview, or withdraw from the project altogether.

Confidentiality and Privacy: During this research project, I will keep all data from the interviews in a secure location. I will be the only person to have access to the data, although legally authorized agencies, including the University of Hawai‘i Human Studies Program, have the right to review research records.

After I transcribe the interviews, I will erase the digital recordings. When I report the results of my research project, and in my typed transcripts, I will not use your name or any other personally identifying information. Instead, I will use a pseudonym for your name. If you would like a summary of the findings from my final report, please contact me at the number listed near the end of this consent form.

Voluntary Participation: Participation in this research project is voluntary. You can choose freely to participate or not to participate. In addition, at any point during this project, you can withdraw your permission without any penalty or loss of benefits.
Questions: If you have any questions about this project, please contact me at via phone (808) 734-9102 or e-mail (susanjaw@hawaii.edu). If you have any questions about your rights as a research participant, in this project, you can contact the University of Hawai‘i, Human Studies Program, by phone at (808) 956-5007 or by e-mail at uhirb@hawaii.edu.

Please keep the prior portion of this consent form for your records.
If you agree to participate in this project, please sign the following signature portion of this consent form and return it to ***.

--------------------------------------------------------------
Tear or cut here
--------------------------------------------------------------

Signature(s) for Consent:

I agree to participate in the research project entitled *Poised for innovation: Are law schools on the brink of adopting online education?*
I understand that I can change my mind about participating in this project, at any time, by notifying the researcher.

Your Name (Print): _____________________________________________
Your Signature: ________________________________________________
Date: _____________________________________
Initial interview questions – semi-structured interview - Jaworowski

Start with informed consent and make sure that they understand and have granted permission.

Question to establish respondent characteristics

(1) What year did you graduate from law school?
(2) Have you ever taken any online course and if so, what was your experience?
(3) How many years have you taught at the law school level?
(4) What courses do you teach? Online, face to face?
(5) Please describe your technology background prior to teaching online?
   (follow up as necessary)

Specific questions:

Which course(s) are you teaching online?

How did you come to make the decision to offer a course online?

How was that course selected (follow-up as necessary)?

What methods are you using to teach it online and how did you select those methods?

What did you see as the benefits of
   Teaching this course on line?
   Teaching it in the methodology you chose?

What type of encouragement or assistance did your law school offer you in putting your course online?

Did you receive assistance in teaching online from any other source?

How would you describe your online teaching experience?

Would you or have you encouraged your colleagues to teach online?

If you will teach an online course again, which one(s) and why?

What support (or opposition) did you have from the administration with the concept?
What support (or opposition) did you have from the faculty?
What support (or opposition) did you have from the students?
APPENDIX 2. Second set of interview questions

Have there been any changes in your law school's plans to offer online courses between our last interview and now?

Has there been any change in your overall perspective on teaching online between our last interview and now?

How did the ABA requirements affect the way in which you designed and/or taught your course?

Prior to teaching your online course, were you aware of online law masters degrees or online LL.M degrees in ABA-approved law schools?

To what extent, (Coyne, 1997)if any, did the existence of online law masters degrees or online LL.M degrees have an impact on the decision to adopt your first online law course?

Did you find that you needed to change your assessment for your online course compared to a face to face course, and if so, in what way?

Do you open up your online courses to students from other law schools or to lawyers?

Do you feel that your online course assists law students in their professional acculturation? If so, in what ways?

What factors, other than your own example, do you think would encourage your faculty members to teach online?

Do you have any advice for others who are considering teaching a course online?

What do you see as the future of online education for your law school?

What do you see as the future of online education in ABA-approved JD programs?


http://journals.iupui.edu/index.php/inlawrev/article/download/4108/4071

Christensen, L. M. (2009). The power of skills training: A study of lawyering skill grades as the strongest predictor of law school success (or in other words, it's time for legal education to get serious about skills training if we care about how our students learn). *St. John's Law Review, 83,* 795-826.


doi:10.1046/j.1365-2648.1997.t01-25-00999.x


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