CLOSING ONE GAP BUT OPENING ANOTHER?: A RESPONSE TO DEAN PERRITT AND COMMENTS ON THE INTERNET, LAW SCHOOLS, AND LEGAL EDUCATION

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INTRODUCTION

Dean Perritt is surely correct when he writes that "The Internet's potential for changing the face of American law schools is profound."[1] Some might take issue with the implicit suggestion that American law schools share a single "face."[2] Others might emphasize the Internet's important influences that are already manifest.[3] And perhaps some might press Dean Perritt for a more precise definition of what he means by "profound." But, on balance, these points rise to little more than mere quibbles that take little away from the overall thrust of Dean Perritt's general observations. Indeed, after examination, Dean Perritt's main premises remain standing: Information technology—as deployed in the Internet's World Wide Web—is changing traditional areas of the law,[4] fueling new law,[5] altering how legal institutions function, and transforming lawyers' roles within those institutions.[6] Dean Perritt's conclusion—that the Internet and

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

2.   To get some flavor of how law schools might differ, see, e.g., INSIDE THE LAW SCHOOLS: A GUIDE FOR STUDENTS BY STUDENTS (Sally F. Goldfarb ed., 6th ed. 1993).

3.   *See infra* Part I.

4.   *See, e.g.*, Saba Ashraf, *Virtual Taxation: State Taxation of Internet and On-Line Sales*, 24 FLA. ST. U. L. REV. 605 (1997) (tax); Stephen P. Heymann, *Legislating Computer Crime*, 34 HARV. J. ON LEGIS. 373 (1997) (criminal law); Corey B. Ackerman, Note, World-Wide Volkswagen*, Meet the World Wide Web: An Examination of Personal Jurisdiction Applied to a New World*, 71 ST. JOHN'S L. REV. 403 (1997) (civil procedure).

5.   For example, President Clinton signed into law the Communications Decency Act of 1996, which constitutes Title V of the Telecommunications Act of 1996. *See* Communications Decency Act of 1996, Pub. L. No. 104-104, § 502, 110 Stat. 56, 133-36 (1996) [hereinafter CDA]. The CDA was ruled unconstitutional by the Supreme Court in *Reno v. Shea ex rel. Am. Rep.*, 117 S. Ct. 2501 (1997), *aff'g* 930 F. Supp. 916 (S.D.N.Y. 1996).

6.   *See* Richard A. Matasar & Rosemary Shiels, *Electronic Law Students: Repercussions on Legal Education*, 29 VAL. U. L. REV. 909, 910 (arguing that the legal profession is pushing law schools to embrace technology to a greater degree); Catherine G. O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485 (1998).

Internet-related technology are changing American law schools[7]—strikes me as similarly persuasive. Indeed, I argue that his conclusion has already proved accurate. More specifically, to some degree the Internet has already changed American law schools.

However, even if one assumes that Dean Perritt's observations are basically correct, where they lead us remains decidedly unclear. What does it mean to say that the Internet's increased integration into legal education fuels changes in how law schools educate their students? Obviously, more specificity would assist this inquiry prompted by Dean Perritt's Article. Perhaps regardless of the precise directions that the Internet will point legal education or even how one might construe them, I respectfully suggest that the Internet's influences on legal education make three related but slightly distinct questions ripe for consideration.

One question raised by Dean Perritt's Article concerns the magnitude of the changes to legal education that will result from the Internet's increased integration into law schools. A second question dwells on how the Internet's influence on law schools will manifest itself. Perhaps even more important is that the combination of the first two questions generates a third question. Embedded within this third question lurks a potentially troubling paradox. While the increased use of the Internet as an educational tool may well help close technological gaps,[8] at least those suggested by the overarching theme of this conference,[9] whether such gaps can be closed without generating new gaps between law schools and their students and among law students remains far from certain and warrants careful consideration.

Criticism of Dean Perritt's observations is not properly inferred from this Article's focus on the three questions described above. Indeed, just the opposite inference is more appropriate. The issues that Dean Perritt ably discusses are critical and concern (or should concern) all legal educators as well as law students, particularly future law students. The implications of Dean Perritt's remarks are especially important for those who produce and consume legal education services. Moreover, his discussion of the multiple intersections of technology and legal education contributes to a welcome and much-needed base that will support and fuel further elaboration.

That neither I nor anyone else that I am aware of—not even, dare I say, Dean Perritt—really knows the answers to my questions is not a reason to avoid them. Rather, the questions' difficulty provides yet another reason to pursue answers with vigor. This is particularly so if, as Dean Perritt suggests, it is inevitable that

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7. *See* Perritt, *supra* note 1, at 253.

8. Dean Perritt briefly notes that leading American business schools already deploy Internet technology, especially through distance learning programs. One obvious thrust of Dean Perritt's observation is to illustrate that in relative terms American law schools lag in their implementation of Internet technology. *See* Perritt, *supra* note 1, at 265; *see also* Andrea L. Johnson, *Distance Learning and Technology in Legal Education: A 21st Century Experiment*, 7 ALB. L.J. SCI. & TECH. 213, 227 n.54 (1997).

9. *A Symposium on Law and Technology in the New Millennium: Closing the Gap*, 33 IND. L. REV. 1 (1999).

law schools will continue to explore new ways to harness the Internet.[10] That the questions uncover even a small sector of uncertainty should give thoughtful and concerned people pause. However, pause should not be confused with paralysis, at least in this context. The uncertainty surrounding the Internet's present and future influence on legal education is no reason to shy away from its continued deployment so long as its use is accompanied by the necessary care and judiciousness.   Instead, my small point is that as the Internet becomes increasingly integrated into legal education—as it in many ways should and, like it or not, will—legal educators need to think through this powerful and potentially useful educational tool as well as its implications for our students and how we go about teaching law.

I. The Internet Has Already Changed Law Schools in Ways Both Big and Small

Dean Perritt correctly notes that the Internet "is changing the law, the functioning of legal institutions[,] and the role of lawyers."[11] The implications for the rule of law, citizenry, commerce, and the host of other aspects discussed in Dean Perritt's Article are products of the Internet's "modular character and [ ] universality."[12] Indeed, now that the Internet is, essentially, ubiquitous, one can take its infrastructure—indeed, its very existence—for granted.[13] Those who endeavor to resist the Internet and Internet-related changes, even if resistance was feasible, will quickly learn that such efforts will largely fail. Not only is the cyberspace "genie" out of its bottle, but the bottle has been shattered—effectively precluding any chance that the Internet will disappear or that its influence might wane. As far as legal education is concerned, the Internet has arrived and it will remain germane for the foreseeable future.

From this, Dean Perritt correctly concludes that the Internet is changing American law schools. This conclusion safely follows for two main reasons. First, the Internet has already changed numerous institutions—political, legal, social, and economic institutions—which surround and influence law schools. For example, as Dean Perritt and others note, the Internet influences political and legal processes[14] and commerce.[15] Consequently, the Internet's influence on institutions that surround and influence law schools indirectly bears on law schools themselves. This result is hardly surprising, especially to those who

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10.   *See* Perritt, *supra* note 1, at 263.

11.   *Id.* at 253.

12.   *Id*. at 255.

13.   *See id.*

14.   *See id.* at 253 n.2.

15.   *See, e.g.*, Kerry L. Macintosh, *How to Encourage Global Electronic Commerce: The Case for Private Currencies on the Internet*, 11 Harv. J.L. & Tech. 733 (1998); Henry H. Perritt, Jr., *Legal and Technological Infrastructures for Electronic Payment Systems*, 22 Rutgers Computer & Tech. L.J. 1 (1996).

understand the nexus between law schools and the world around them.[16] One obvious example involves law firms, many of which have turned increasingly to Internet technology. As law firms continue to incorporate Internet technologies, one will almost certainly find increased pressure brought to bear on law schools by law firms to follow suit.[17]

Second, as Dean Perritt notes in the title of his Article and discusses throughout, a second set of changes implicates law schools directly. Notable is Dean Perritt's bold point about law schools' role in fueling the "revolutionary phenomena" ushered in by the Internet.[18] Thus, in Dean Perritt's view, law schools not only respond to the Internet's influence, but are well positioned and structured as institutions to help shape the Internet's development.

It is on the second set of changes that I take small issue with Dean Perritt. My issue relates to his choice of verb tense. I argue below that Dean Perritt is simultaneously correct, but too timid and cautious. A small adjustment to Dean Perritt's title would address my point and result in a more accurate characterization. Specifically, I argue that the Internet has already changed the face of American law schools, albeit in modest ways. Moreover, the changes that have already arrived—however small or subtle—provide important clues to even greater changes that lie ahead.

A. Scholarly Resources

While it is certainly much more, the Internet is already among the world's most powerful and rich sources of information. As such, it can serve as the world's virtual library. Just as the law library serves as an integral part of a law student's legal education, the Internet is now likewise an integral part of the law library. It is already difficult to imagine a law library without Internet access. Indeed, by as early as 1996 some argued that the migration to electronic information and technology in all aspects of legal education, particularly law libraries, was a "fait accompli."[19] In time, the Internet might rank among—perhaps even be—the most important component of a law library.

The implications of increased Internet accessibility as a scholarly resource for law schools, principally through law libraries, are large. As the principal

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16.   *See* Michael A. Geist, *Where Can You Go Today?: The Computerization of Legal Education from Workbooks to the Web*, 11 HARV. J.L. & TECH. 141, 182 (1997) (arguing that "[t]he development of the Internet is likely to mark a turning point in the computerization of legal education").

17.   *See* Matasar & Shiels, *supra* note 6, at 910.

18.   *See* Perritt, *supra* note 1, at 255 (arguing that law schools have an important role to play in connection with the Internet's development). *But see* Geist, *supra* note 16, at 161 (downplaying law schools' contribution to the development of web materials for law students).

19.   Richard A. Danner, *Facing the Millennium: Law Schools, Law Librarians, and Information Technology*, 46 J. LEGAL EDUC. 43, 43 (1996) (quoting Robert C. Berring, *The Current State of Networked Information in the United States and Why You Should Care About It*, 26 LAW LIBR. 246, 246 (1995)).

engine of new legal knowledge, law schools have a special responsibility and role to play in virtual law libraries' development. Not only do legal scholars need to generate new legal knowledge with an eye towards the Internet, but they must also think through how this new medium can be best deployed within the context of a law library's system of services. If law libraries continue down the path already embarked upon, it is difficult to overstate their potential for generating social change flowing from the increased availability of information. The Internet is our generation's vehicle to vastly increase information's reach. The Internet and its capability to construct a virtual library pose a serious threat to many information monopolies, public and private.[20] With greater access to information comes, as the saying goes, greater power. Greater power, more widely dispersed, reaffirms Madison's insight into the structural benefits of off-setting competing political factions.[21]

B. Scholarship

A second example of how the Internet has already influenced legal education relates to scholarship, particularly its production and distribution. On the production side, many—if not most—legal scholars avail themselves of Internet-driven listservs, websites, and e-mail. Access to information now available on the Internet enables legal scholars to blunt challenges to research posed by geography. One consequence is the greatly increased potential for scholars to interact with one another. Scholars now collaborate more easily and effectively with colleagues whom they might otherwise not collaborate but for the Internet. Increased interaction and collaboration among scholars increases the flow of information among them. On balance and over time this should contribute to increases in scholarly productivity and quality.

The Internet has already influenced the distribution side of legal scholarship. For example, scholarly outlets, what we traditionally have come to know as law reviews or journals, no longer appear exclusively in a form that can be touched by the human hand. On April 10, 1995, the University of Richmond's T.C. Williams School of Law launched the *Richmond Journal of Law and Technology*, purportedly the world's first student-edited, scholarly legal journal published exclusively on-line.[22] Setting aside the perennial debate among legal academics about the merits of student-edited law reviews,[23] the development of an entirely

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20.   One interesting example of public and private information monopoly is the functional control over documents generated by the federal government. Traditionally, Washington D.C.-based lobbying firms levered their physical location to gain economically by influencing the legislative processes. The advent of the Thomas website, however, blunts some of the comparative advantage flowing from geography. Now any individual with access to the Internet can benefit from current access to governmental documents and information. *See* <http://thomas.loc.gov>.

21.   *See* THE FEDERALIST NO. 10, at 122-28 (James Madison) (Isaac Kramnick ed., Penguin 1987).

22.   *See* <http://law.richmond.edu/general/student.htm>.

23.   In the world of scholarly journals, typical law reviews stand in stark contrast to blind

on-line law review raises interesting questions of its own.[24] On the one hand, an electronic journal possesses the distinct advantages of timeliness and mass distribution or circulation. Although it might not yet be realized, electronic journals have the potential for speedier turn-around time as their production time should be less than that of their traditional paper counterparts. In fast-moving areas of the law, this might yield strategic and comparative advantages. It also might placate some law professors who tire of waiting for law review printing companies to generate and ship their Article reprints. Also, electronic journals typically are distributed free to those who can access cyberspace. Such a potentially broad and low-cost distribution system might further disseminate legal scholarship to a wider audience. Of course, even paper law reviews can blunt this potential comparative disadvantage by placing their volumes on-line. Finally, the notion that a professor can "publish" a scholarly article in a medium that exists only in cyberspace might generate interesting questions for promotion and tenure committees.

The Internet's influence on scholarship extends far beyond its own medium. The Internet has been the subject of much scholarly focus recently and shows no sign of abating.[25] The subject of this symposium is yet another example that the intersection of the Internet and legal scholarship is rich, and its surface has only been scratched thus far.[26] Although I am not aware of any journal devoted exclusively to Internet law issues,[27] many journals and reviews specialize in law and technology topics that frequently include Internet and Internet-related issues.[28]

C. Law School Teaching

Few law professors today can walk into a law school classroom and not find a sizable, though varying, number of students using laptop computers equipped

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peer-reviewed journals. For a discussion of related issues, see, e.g., Symposium, *Law Review Conference*, 47 STAN. L. REV. 1117 (1995) (discussing various issues relating to student-edited law reviews).

24.   *See generally* Bernard J. Hibbitts, *Last Writes?: Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615 (1996) (arguing that the Internet reduces the usefulness of current, more traditional law reviews).

25.   As one crude proxy, Dean Perritt points to the number of sessions at the most recent American Association of Law Schools annual conference devoted to some aspect of the Internet. *See* Perritt, *supra* note 1, at 264.

26.   In a footnote, Dean Perritt notes that as of January 30, 1999, a search of the "JLR" database in Westlaw revealed 772 documents with the word "Internet" in their title. *See id.* at 262 n.20. My identical search conducted just eight months later revealed 953 such documents, reflecting a 23% increase.

27.   Given the recent and sustained proliferation of law reviews and journals, such a specialization is not beyond the pale.

28.   *See, e.g.*, JURIMETRICS: J. L. SCI. & TECH.; BERKELEY TECH. L.J.; HARV. J.L. & TECH.; IDEA: ; J. L. & TECH.; RICHMOND J.L. & TECH.

with Internet access and web browsers. Many schools are examining the feasibility of direct Internet access availability at each student station in law school classrooms. This is particularly true at the small but growing number of law schools that require students to possess computers upon matriculation.[29] An already sizable number of faculty regularly interacts with those students technologically equipped and inclined on-line through e-mail and websites.[30] A related development involves on-line class discussion through moderated or unmoderated listservs.[31] Such developments parallel movement outside law schools' walls. Increasing litigation over such questions as whether employers can "snoop" or "eavesdrop" on employees' e-mail "conversations"[32] and whether archived or stored e-mail is discoverable material hints at the proposition that e-mail is fast becoming increasingly woven into the fabric of how people

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29.   For example, the University of Oregon School of Law requires all students to possess laptop computers upon matriculation. Notably, because the University of Oregon requires its law students to have laptops, their cost is included in a law student's financial aid package. *See* <http://www.law.uoregon.edu/support/comprec/compreq.shtml>. At Dean Perritt's Chicago-Kent College of Law, only those students who elect to participate in that law school's E-Learn program are required to own laptops. Similar to the University of Oregon, Chicago-Kent includes the cost of laptops into a student's financial aid package. *See* <http://www.kentlaw.edu/academics/elearn.html>. Presumably, given Chicago-Kent's progressive posture on law and technology, it actively encourages its other students to possess computers.

30.   A reliable number eludes. Common sense and experience suggest to me, at least, that it is far from the exception anymore. For a related discussion about the importance of students' active engagement in the law school process, see, e.g., Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1 (1996); Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943 (1995-96).

Presumably, many—if not most—law schools provide students with access to terminals equipped with Internet access browsers. Most universities equip their students for little or no cost with e-mail accounts. This provides those students who do not own the necessary hardware or software with access to the Internet and, as a consequence, access to classroom listservs along with e-mail capabilities.

31.   *See* Geist, *supra* note 16, at 169-71. It is notable that concurrent with increased use of moderated listservs by law professors for courses (deploying university-owned and operated servers) is increased litigation on issues surrounding an array of liability questions that arise out of the Internet technology. *See, e.g.*, Kevin F. O'Shea, *The First Amendment: A Review of the 1997 Judicial Decisions*, 25 J.C. & U.L. 201 (assessing the implications of the case, *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329 (1997), on college and university's exposure to criminal sanctions for obscene material that finds its way onto college and university computers); Joseph R. Price, *Colleges and Universities as Internet Service Providers: Determining and Limiting Liability for Copyright Infringement*, 23 J.C. & U.L. 183 (1996) (discussing possible university copyright liability exposure due to their status as Internet service providers).

32.   *See, e.g.*, Bohach v. Reno, 932 F. Supp. 1232 (D. Nev. 1996); *see also* Scott A. Sundstrom, *You've Got Mail! (and the Government Knows It): Applying the Fourth Amendment to Workplace E-Mail Monitoring*, 73 N.Y.U. L. REV. 2064 (1998).

communicate.[33]

Some students enjoy the ready access to faculty that the Internet provides. Perhaps these students, for an array of reasons, prefer to interact with law professors or classmates with the distance provided over the Internet.[34] As a law professor I have come to appreciate the benefits of a medium that requires students to commit their queries to writing before posing them. I often find that the discipline of reducing a question to writing helps students focus, fuels clarity, and more quickly identifies related or collateral points requiring explication.

However, it is important to note that not all commentators agree on the utility of Internet interaction with law students.[35] Internet proponents point out that e-mail communication between professors and students has the potential to overcome some constraints presented by time and distance and, as a result, complement the educative processes by increasing student access to professors.[36] On balance, such a development—increased student and faculty interaction—is positive and should be encouraged as it can enhance the law school experience for many law students, administrators, and professors. On the other hand, some skeptics point out that this newly emerging electronic mode of communication may displace some "one-to-one" student-faculty conferences and discussions.[37] That is, rather than supplement important face-to-face contact between student and faculty, e-mail or electronic communication may supplant such contact. If so, the development of e-mail may increase one form of communication at the expense of another. The true threat posed by increased reliance on e-mail interaction, at least to one commentator, "lies in an almost insidious loss of the sense of community."[38] The comparatively depersonalized Internet (or e-mail) communication threatens to further isolate law students, particularly the less experienced first-year law students.[39]

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33. *See* Uniden America Corp. v. Ericsson, Inc., 181 F.R.D. 302 (M.D.N.C. 1998) (civil case); New York v. Jovanovic, 676 N.Y.S.2d 392 (Sup. Ct., N.Y. County 1997) (rape defendant sought to discover victim's e-mail to evidence past sexual conduct).

34. Some commentators advance another benefit, arguing that Internet listserv discussion groups "help counteract the unfortunate tendency for classroom discussion to be dominated by only a few students." Richard Warner et al., *Teaching Law with Computers*, 24 RUTGERS COMPUTER & TECH L.J. 107, 150 (1998).

35. *Compare* Geist, *supra* note 16, at 143 (speaking positively of the Internet's role in law schools), *with* Robert H. Thomas, *"Hey, Did You Get My E-Mail?" Reflections of a Retro-Grouch in the Computer Age of Legal Education*, 44 J. LEGAL EDUC. 233 (1994) (presenting a dissenting view about the benefits of increased technology in legal education).

36. *See* Geist, *supra* note 16, at 160 (extolling the speed and convenience of e-mail).

37. *See* Thomas, *supra* note 35, at 238.

38. *Id*. at 242.

39. *See id*. at 244-45 (arguing that "being a lawyer, thinking like a lawyer, is an intensely human enterprise" and that over-reliance on impersonal modes of communication erodes the human dimension.).

D. Law School Building Architecture

The influence of emerging technology in general and the Internet in particular becomes quite evident for those charged with the task of helping design new law school facilities or re-model existing physical facilities.[40] Assigned the daunting task of designing a new law school facility, a faculty or, more likely, a faculty committee can spend numerous hours thinking and re-thinking assumptions about what a law school building should look like and how it should function. Faculty members' perceptions about what legal education should look like inform their opinions of what designs for new law school buildings should look like. The stakes are exceptionally high as the opportunity to design new law school buildings comes around, if a law professor is lucky, perhaps once during a career.

Paramount to law school building design are questions concerning what directions existing, emerging, and wholly unforeseen technological forces will take legal education. The magnitude of the influence technology exerts on the physical and conceptual design of a law school building will likely surprise those who have not had occasion to consider the issue directly. To take one extreme hypothetical, suppose "technocrats" argue that in the not-too-distant future virtual libraries will render obsolete libraries as we now know them. What is a responsible response to such an argument by a law faculty building committee? After all, many law schools are built with a desired or contemplated useful life of, say, thirty years. Most American law school libraries occupy, on average, anywhere between thirty-three to fifty percent of a law school's total square footage.[41] Obviously, it is difficult to overstate the importance of decisions concerning a law library to a law school. Should law schools simply forego constructing a library on the hunch that the technocrats' prediction proves correct? If the collective hunch is correct, the faculty looks like a collection of geniuses; if wrong, the faculty looks beyond foolish. It would have either constructed a "dinosaur" of a law school building perhaps even before the concrete dries or it would have constructed a building without an essential part—a library. Neither alternative is particularly attractive.

E. Bluebook

Another small but significant mark of the Internet's growing influence in the legal academy is that even the venerable *Bluebook*, the bane of all too many first-year and law review students, now formally recognizes the Internet's influence. Specifically, Rule 17.3.3 ("Internet Sources") in the current edition of the *Bluebook* provides citation form guidance for Internet sources.[42] Moreover, the

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40. By way of full disclosure, I had the good fortune of serving for two years on a law school building committee.

41. I am grateful to James F. Bailey, III, Director of Law Library, Indiana University School of Law—Indianapolis, for his assistance in formulating this rough estimate.

42. *See* THE BLUEBOOK, Rule 17.3.3, at 124 (16th ed. 1996). It is perhaps notable that the Bluebook expressly discourages citation to Internet sources because of their "transient nature." *Id*.

Bluebook now includes citation form guidance for journals that appear only on the Internet.[43]

F. How to Assess These Changes

Having briefly described a few examples of how the Internet has already influenced law schools, it is useful to return to my original queries. Is it possible to fairly characterize the magnitude or degree of change to legal education traceable to the Internet? Moreover, how have these changes altered the production and delivery of legal education? Finally, has legal education's dabbling in the brave new world of Internet and cyberspace generated new gaps between law schools and their students and among law students?

Firm answers to these questions, if they exist, are elusive. On the other hand, opinions are plentiful. What follows are the latter. Despite fast-moving changes surrounding law schools, commentators note that the degree to which such changes have penetrated law schools and legal education is not yet sufficient to define a "Web culture."[44] That is not to say that law schools, students, professors, and legal education have not been influenced by the Internet. However, the magnitude of influence at most law schools does not yet appear to have reached a level sufficient to dislodge the general character of law schools or legal education. The core of legal education appears to have proceeded through much of the Twentieth Century remarkably intact. Consequently, because the Internet's overall influence thus far on law schools and legal education cannot fairly be described as major, distributional or equity concerns for students lacking Internet capability or access flowing from the increased deployment of Internet technology appear neither significant nor systemic, at least at this juncture. Of course, the lack of any significant distributional or equity problems may only reflect the reality that Internet technology has not yet penetrated into the core of law students' daily lives. However, the Internet's role in legal education will certainly increase over time. Consequently, the relative absence of distributional or equity problems today is no guarantee that such problems will not emerge in the future.

Hindsight provides some assistance in assessing the Internet's past and present roles in legal education. However, hindsight falls short with respect to important aspects in this context. It does not answer the counterfactual question of what law schools and legal education would look like today but for the Internet. Finally, hindsight does not reflect changes already in place but not yet noticeable, nor does it reveal influences on legal education that have not yet emerged. Despite these imperfections, a quick glance backward illuminates discernable changes to legal education, however small or large, that have already manifested. This glance backward also provides some insight into future changes to legal education flowing from increased deployment of the Internet.

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43. *See supra* note 22 and accompanying text.

44. Geist, *supra* note 16, at 159-60 (arguing that a Web culture for law schools is still at least "several years" from fruition).

II. CHANGES LIKELY TO BE IMPORTANT IN THE FUTURE

By figuratively turning one's gaze from legal education's past and present to its future, particularly how that future might be further shaped by the Internet, two immediate points quickly emerge. First, existing changes, including the few I have identified above, will continue to evolve. Second, new changes and influences will emerge. Among the potentially vast number of possible changes, one stands out starkly—distance learning. The Internet makes distance learning a much more viable proposition for law schools. Because of its potential import to legal education, I will limit my discussion of future changes to distance learning's potential influence on legal education.

A. Distance Learning

It is important to realize that the term "distance learning," at least as it is bandied about within the context of legal education, can mean vastly different things to different people. Distance learning includes continuing legal education programs, such as those in states where Continuing Legal Education is required, that involve satellite transmission of instruction generated from one site and delivered to (potentially) many others. Distance learning is also used to describe nascent programs such as these at Chicago-Kent College of Law ("Chicago-Kent"), ably described by its dean in his Article. Chicago-Kent proposes to begin with an Internet "enhanced" evening division program in the fall of 1999.[45] From what Dean Perritt describes, however, Chicago-Kent intends to enhance the traditional legal education paradigm with Internet technology. Regardless, it is axiomatic that in virtually all conceptions of "distance learning" the Internet will serve as an integral component.

Distance learning can also mean much more, and recent announcements offer a glimpse at potentially how much more. For example, the Regent University School of Law recently petitioned the American Bar Association's ("ABA") Section of Legal Education, the office that performs many of the law school accreditation tasks, for recognition of a graduate level international taxation degree to be completed entirely on-line.[46] Bolder still, Kaplan Educational Centers, a for-profit corporation, recently announced plans to launch a new law school that will provide instruction exclusively over the Internet.[47]

At this juncture how the legal education establishment will respond to the forces of technology is anyone's guess. Accreditation will be one early vehicle for the ABA and law schools to shape, traject, or re-traject legal education's present and future course.

One preliminary sign—a memorandum from James P. White, the ABA's Consultant on Legal Education to the deans of ABA-approved law

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45.   *See* Perritt, *supra* note 1, at 272.

46.   *See generally* Randall T. Shepard, *Our Evolving Policy on Distance Learning*, SYLLABUS (ABA Sec. Legal Educ. and Admissions to the Bar) Winter 1999, at 5.

47.   *See id.*

schools—evidences caution with respect to distance education's application to the legal education setting.[48] The memorandum contains a brief discussion of the underlying principles for distance legal education as well as a set of temporary guidelines.[49]

B. Will "Virtual" or Distance Legal Education Be Good for Students?

To some, perhaps many, the value of the Internet in law school classrooms in general and distance education in particular seems self-evident.[50] Further expansion of distance learning into the legal education market will certainly benefit some interests. Whose interests will be advanced is not entirely clear. One clear winner would be the Internet industry. No doubt the Internet industry salivates at the prospect of formal or "traditional" legal education migrating onto the Internet. Rather than endeavor to assess the array of possible "winners" and "losers," the focus of this Article is to consider whether the Internet will be good for law schools and legal education. My even narrower focus dwells on the interests of law students.

Good reasons support the optimism that flows from Dean Perritt's Article about the Internet's potential for influencing and changing how legal education is delivered. On a purely visceral level, it is difficult to imagine how law students and law schools would not be assisted by a well-crafted integration of the Internet. Indeed, it is already difficult to imagine a law library at any accredited American law school that lacks Internet access. The Internet and access to it by law students and professors are already indispensable. Because the Internet has become the world's information highway, legal educators need to understand how it can be used to improve legal education. Even if it does not fulfill its current promise, the medium is already important enough to warrant greater integration into the various aspects that comprise legal education. Also, as Dean Perritt makes clear, the Internet is changing how lawyers function as professionals and how they serve clients. Law schools need to be aware of and, ideally, ahead of such changes. As a result, all law students, but particularly those preparing to enter the constantly evolving legal market as attorneys, would be well served to acquaint themselves as much as possible with the Internet and related technology. Law students who actively ignore the Internet during law school risk handicapping themselves as newly-minted attorneys.[51] Law firms will soon come to expect new associates to be as familiar with e-mail as they are with

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48. *See* Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools (May 6, 1997) (on file with the *Indiana Law Review* or available on-line at: <http://www.abanet.org/legaled/distance.html>).

49. *See id.*

50. Dean Perritt's teaching is one prime example. But, as he makes perfectly clear in his Article, Dean Perritt views distance learning as one of an array of possible tools to train law students. *See* Perritt, *supra* note 1, at 266-67.

51. For a discussion about how law practices now incorporate Internet technology, see, e.g., Mark Pruner, *The Internet and the Practice of Law*, 19 PACE L. REV. 69 (1998).

Shepherds. Consequently, the belief that the Internet will change legal education should surprise few.

1. Pedagogical Issues.—As important as the Internet may prove to be in the future, at least two issues warrant careful thought. First, legal educators need to get a better sense about whether the Internet will assist law students to learn and, if so, how. Those who study technology's role in education (not legal education per se, but rather education generally) readily acknowledge that no one really knows whether the technology deployed in today's classrooms help students learn better or more.[52] Empirical evidence on the efficacy of virtual classrooms is sketchy, at best, and severely limited by a paucity of data.

One prominent example involves Professor Andrea Johnson who taught, on a pilot study basis, an advanced telecommunications course simultaneously to students at the California Western School of Law in San Diego and the Cleveland-Marshall College of Law in Cleveland. The course enrolled eight law students from both schools and incorporated Internet, teleconferencing and videoconferencing, e-mail, and an electronic casebook. Notably, Professor Johnson, acutely aware of the pedagogical ground she was breaking, employed a "control" telecommunications course, which met in a regular law school setting in the conventional manner. On the basis of her experience, Professor Johnson concluded that enhanced technology served as a significant supplement to the student learning processes, with students in the Internet section of telecommunications law exhibiting the same or deeper understanding of the covered material.[53] Clearly, a single case study with the potential for self-selection bias limits substantially what can properly be inferred. But it will be from such experiments that, over time, a helpful empirical base will emerge.

2. Distributional and Equity Issues.—A second set of concerns relates to distributional and equity concerns stemming from increased use of distance learning in legal education. How differences between "traditional" law school instruction and instruction provided through distance learning technologies will be distributed among law students is not entirely clear. One crucial, potential difference is in instructional quality. For purposes of this discussion, I will construe instructional quality wholly in terms of the efficacy of student learning and comprehension of the material presented. Justice Ginsburg recently offered her perceptions of instructional quality differences distinguishing traditional and distance learning in legal education.[54] Because Justice Ginsburg feels that so

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52.   For a fuller articulation of this point, see, e.g., David Skinner, *Computers: Good for Education?*, 128 PUB. INTEREST 98 (1997) (discussing evidence of computers' efficacy in the K-12 educational setting).

53.   For a fuller description of this experiment, see Johnson, *supra* note 8, at 245. Interestingly, Professor Johnson, one who is clearly in the vanguard of incorporating the Internet into legal education, concludes that "[d]istance learning and technology will never replace professors or negate traditional teaching methods. The dynamics of human interaction and feedback are too critical to the development of legal skills and problem-solving." *Id*. *See also* Geist, *supra* note 16, at 177 nn.174-77.

54.   *See* Katherine S. Mangan, *Justice Ginsburg Raises Questions About Internet-Only Law*

much of legal education and practice is a shared, genuinely interactive endeavor, she feels that instructional quality is threatened for law students exposed only to distance learning methodologies.[55]

Cost might be another variable distinguishing traditional learning from distance legal instruction. Indeed, one of distance learning's key selling points pivots on its relative cost-effectiveness.[56] It will be interesting to see how law schools price distance learning credit hours, especially in relation to traditionally taught credit hours. Given limitations imposed by classroom size and faculty fatigue, ceilings exist that effectively cap how many students a law professor can teach in the traditional classroom format. No analogous limitation exists for distance learning.

The quality and cost variables may well interact. That is, should the quality of instruction delivered through distance learning programs fall short of the quality level achieved by the traditional classroom format, whether quality differential is rooted in reality or merely perception, the distance learning program might be priced lower to reflect the quality differential. Lower price for lower quality legal education may result in the calcification of law school "tiers." Such tiers, should their roots deepen, may manifest in terms of student self-selection. What may culminate is a law school within a law school with less (or more, depending on one's perspective) desirable distance learning program serving a certain student profile and the traditional law school program serving yet another.

It is certainly conceivable that such differentiation might generate net educational gains. Some students might benefit from an alternative to today's law school environment. It is assuredly true that the pool of potential law students increases when geographic barriers to legal education fall. The questions are provocative enough to generate excitement and anticipation about novel programs such as the one that Dean Perritt describes.

Possible distributional and equity issues also flow from law schools' more general increased deployment of the Internet and related technology. Ethical considerations flow from access issues relating to the requisite technology, especially hardware. What affirmative steps, if any, should law schools take to maximize access to Internet technology for all students and thereby blunt possible advantages enjoyed by some students over others? Ideally, law schools would take steps to ensure that their students do not artificially organize into the technological "haves" and "have nots." Moreover, it is obvious that even among students comfortable and fluent in cyberspace some will simply take a greater interest in it than others. That, of course, is fine and raises no structural

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Schools (visited Sept. 16, 1999) <http://chronicle.com/free/99/09/99091302t.htm>.

55. *See id.*

56. *See, e.g.*, Johnson, *supra* note 8, at 227 n.53 (arguing that law schools will soon follow the lead taken by colleges and universities in exploring distance education programs partly in response to enduring pressures to contain costs). For a related argument about the cost-effectiveness of incorporating Internet technologies into traditional law firms, see, e.g., Pruner, *supra* note 51, at 79.

problems. Potential problems do arise, however, if it turns out that some students are structurally advantaged over others due solely to matters relating to access to the Internet and related technologies. If some of the Internet's strongest supporters are correct—and the Internet stands ready to revolutionize the way law is taught—then those without access to the Internet might be harmed.

In many ways, the personal computer market may help minimize potential distributional issues. As the cost of personal computers—hardware and software—continues to fall, law students' economic barriers to the Internet similarly fall.[57] Perhaps those law students lucky enough to grow up in well-to-do households with easy and early access to computers and Internet technology might benefit from a slight, initial advantage over law students not as fortunate. But the skills necessary to successfully avail oneself of the Internet are ones that can be picked up with relative ease and speed. Also, as some law schools are already doing, personal computer costs can be folded into a student's overall loan package.[58] Many of the needs of students whose financial situations preclude them from owning their own Internet accessible personal computer can be met through law school-owned computers placed in public locations throughout a law school, especially in a law library. Finally, for those students who might lack the background or familiarity with Internet software or hardware, law schools can organize training sessions to equip such students, or at least those students desiring such training. While important equity issues linger, clear thinking and strategic planning by a law school can adequately and responsibly address many of these issues.

In some ways the nub of the larger issue concerning distance learning education delivered over the Internet might resemble a burden placement question. Do legal educators need to affirmatively persuade that the Internet should *not* be an integral part of American legal education because distributional and equity issues will arise? Or, rather, should those promoting the Internet bear the initial burden of demonstrating why and how it can assist the legal education processes through such programs as distance learning. Given the uncertainty of our current knowledge base, the burden placement may well be determinative. In time, and with some effort and foresight, however, the placement issue can become less important.

CONCLUSION

As Dean Perritt correctly notes, the Internet is changing American law schools and, consequently, how we educate and train law students. Internet technology has already seeped into law school classrooms as well as law libraries. Most law students now arrive at law school already Internet savvy and possessing relatively sophisticated cyberspace navigational skills. Increasingly, they lever these skills in their efforts to learn the law, particularly as the skills

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57. *See* Marc Friedman & Kenneth R. Buys, *'Infojacking:' Crimes on the Information Superhighway*, 13 COMPUTER L. 1, 2 (noting computers' lower cost and increased availability).

58. *See supra* note 29.

relate to manipulating vast sources of information. The Internet's influence within law schools will assuredly increase over time.

The Internet's increased influence on law schools and legal education also is assured in part by forces surrounding the legal academy. Notably, the Internet continues to fuel explosive growth in electronic commerce. Information is becoming increasingly Internet friendly. As a result, many economic, political, and social institutions now routinely harness Internet technology. Moreover, law firms that serve such clients or find a need to access information sources realize the need to tap into the Internet simply to remain competitive. Many of the attorneys working in law firms today—especially the younger ones—enter law firms already comfortable working with various Internet technologies. Those not yet comfortable with Internet technology might find themselves at a distinct disadvantage. With all such changes occurring around law schools it is inevitable that law schools and legal education will adjust to a newly emerging environment.

Consequently, I find little with which to quarrel in Dean Perritt's Article. One not-so-subtle thrust of his Article is that American law schools need to catch up with the fast-moving Internet technologies and find ways to use them that will enhance legal education. Because I am largely persuaded by Dean Perritt's arguments, my Article dwells on questions that flow from a world of law schools that increasingly uses Internet technologies. Assuming that Dean Perritt's observations about the Internet are correct, the implications for legal education in the future are important and warrant careful consideration. The pedagogical value created by Internet-related law teaching tools and how law schools will incorporate these new tools generate important questions. Distance learning is one obvious avenue that will receive increased attention from legal educators in the future. Finally, while greater use of Internet technologies may succeed in helping law schools close technological gaps, whether such gaps can be closed in a manner that avoids creating new gaps endures as a possibly important issue. The trick, of course, will be for law schools to lever the Internet's desirable attributes in a way that minimizes the costs, both direct and collateral. I remain optimistic that a successful balance can be achieved. However, my optimism does not dislodge my concerns over a potential set of distributional and equity issues. These issues certainly can be addressed in a responsible manner. The Internet has spawned issues that will warrant attention from legal educators, but has also helped thrust law schools into the new millennium.