Five Recommendations to Law Schools Offering Legal Instruction over the Internet

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In September 1999, while speaking at a dedication for Rutgers University Center for Law and Justice, Supreme Court Justice Ruth Bader Ginsburg criticized distance legal education as it was being offered by Concord University School of Law.[2] Concord is an internet law school opened in 1998 by Kaplan Educational Centers.[3] Although Concord is not accredited by the American Bar Association (ABA), other states like California may soon be allowing its graduates and graduates of other non-accredited online law schools to sit for the bar exam.[4]

In her address at Rutgers, Justice Ginsburg admitted that the internet has opened up opportunities for professors to "bring the law to life" through discussion boards, websites and interactive role-playing simulations.[5] However, Ginsburg also warned of the dangers attached to "classes in which students learn entirely from home, in front of a computer screen, with no face-to-face instructors." [6] She defined legal education as a "shared enterprise, a genuine interactive endeavor" that ". . . inevitably loses something vital when students learn in isolation, even if they can engage in virtual interaction with peers and teachers." [7]

The same week, Jack Goetz, Concord's Dean at the time, responded that through email, telephone and online discussion, Concord's students may actually experience more interaction than the traditional on campus law student.[8] Barry Currier, the current Dean of Concord and former Senior Deputy Director of the ABA Section of Legal Education claims that "Concord's state-of-the-art technology provides . . .law students . . . greater access to professors and fellow students via instructor-led, online dialogues, interactive assessments that result in rapid feedback for students, and extensive online electronic research engines."[9]

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[2] www.Chronicle.com/free/99/09/99091302t.htm

[3] www.concordlawscool.com/

[4] *See* Nancy McCarthy, Online School Faces a Long Road to Respectability, California Bar Journal (March 2003) "Only two types of law schools exist under the California Business & Professions Code — fixed facility and correspondence. Since Concord's courses are not taught at a fixed facility, the State Bar treats it as a correspondence school, whose students are required to take the First-Year Law Students' Examination, otherwise known as the baby bar, in order to continue their legal education."

[5] Supra note 2.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] http://www.concordlawschool.com/info/custom/concord/schoolinfo/message.asp?GUID=25A268B4E7964 C5DBB2E315AEC2C5DDA601518606295383413. Barry Currier is also a former Dean of Samford University's Cumberland School of law. For a thorough comparison of Concord's pedagogy with the traditional law school format *see* Robert Oliphant, Will Internet-driven Concord University Law School Revolutionize Traditional Law School Teaching, 27 Wm. Mitchell L. Rev. 841 (2000).

A few months after Justice Ginsburg's criticism of Concord, the online school made its way back into the headlines because of a conflict between Harvard Law School and Professor Arthur Miller. Miller agreed to videotape 11 civil procedure lectures for Concord's students.[10] Harvard Law School sought to prevent the recordings based upon their policy preventing faculty from teaching at other schools during the school year with the Dean's permission. Ironically, Miller argued that because he was not interacting with the students, he was not teaching and thus not violating the school's policy.[11] The incident prompted Harvard's faculty to publish a new faculty handbook with a provision prohibiting professors from teaching or consulting for an internet based university without prior permission of the Dean and the corporation that governs Harvard.[12]

From the year preceding Ginsburg's comments and the Miller v. Harvard dispute (1998) to the year following (2000), enrollment in distance education courses at two and four year colleges doubled from about one and a half million to about three million. By the end of 2006, the number of online students is expected to increase to five million.[13] Concord Law School currently claims to have more than 1,800 enrolled students including alumni of such prestigious universities as Columbia, Harvard, Yale, MIT, the University of California Berkley, Duke and the University of Chicago.[14]

The door to distance education in law schools cracked open in August of 2002 when the ABA revised its Standard 306 to specifically permit the limited use of distance education courses.[15] A law school curriculum survey conducted by the ABA in 2003 revealed that of 153 responding schools, 82 offered real-time distance education courses during 2003-04 as compared with 49 in 2002-03.[16] The kinds of courses being offered

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[10] Amy Dockser Marcus , *Any student can have him*, The Wall Street Journal, Nov. 22, 1999.

[11] *Id.*

[12] *Id.*

[13] For statistics on the increasing number of college students taking distance education courses, *see* the study conducted through the National Center for Education Statistics (NCES) at http://nces.ed.gov/surveys/peqis/publications/2003017. For a discussion of these statistics *see* Michael Klein, "The Equitable Rule": Copyright Ownership of Distance-Education Courses, 31 J.C. & U.L. 143, 146 (2004); Michael Klein, " Sovereignty of Reason:" An Approach to Sovereign Immunity and Copyright Ownership of Distance-Education Courses at Public Colleges and Universities, 34 J.L. Educ. 7 199,201-203 (April 2005) *See also* Leslie Thornton, Beyond the Blackboard: Regulating Distance Learning in Higher Education, 3 Vand. J. Ent. L. & Prac. 210 (Spring 2001) claiming that as a consequence of higher education's reluctance to embrace new internet technologies universities have lost students to community colleges and businesses. Thornton also makes a bold claim that employers do not care whether degrees are online or traditional.

[14] www.concordlawscool.com/infor/custom/concord/schoolinfo

[15] http://www.abanet.org/legaled/standards/chapter3.html

[16] Dean David Partlett, Distance Learning: Loosening the Ties that Bind (not yet published but available at http://www.aals.org/international2004/Papers/partlett.pdf.) Dean Partlett is on the ABA's Section of Legal

were not only small seminars but also large core curriculum electives like classes in tax, insurance, business and intellectual property.[17] Law schools are also using distance education technologies to offer graduate programs,[18] to improve the quality of legal clinic and externship programs and to enhance cross-listed interdisciplinary courses.[19]

In 2004, as a response to ABA's revision of Standard 306, the Center for Computer-Assisted Legal Instruction (CALI) created a Consortium for Distance Education ("CODEC") "to foster the effective use of distance learning technologies in legal education."[20] CODEC was created as a platform from which law schools can engage in distance education by choosing to be active providers or recipients of distance education courses. CODEC already claims to have 49 participating member schools.[21] The Southeastern Association of Law Schools (SEALS) is also currently creating a distance learning sharing project that will provide a market place for buyers and sellers of distance education law school courses. [22]

Technology is transforming the way students encounter legal education. [23] Some law school professors are facilitating this transformation through the use of course management programs, websites and other internet technologies. Others are having the transformation imposed upon them by the use of wireless networks and laptops in the

Education and Admissions to the Bar, Curriculum Committee. This article also explains the survey's findings that on asynchronous courses which are not live and usually internet based only. Of the 153 in 2002-03, 15 schools offered them as compared with 23 in 2003-04.

[17] *Id.*; *See also* Joseph Harbaugh, Legal Education in 2010, 71 Fla. B.J. 57 (May 1997).

[18] Shepard Broad Law Center of Nova Southeastern University offers an online two-year, 30-credit Master of Science in Health Law program to non-lawyer, health care professionals. http://www.mhl.nsulaw.nova.edu/; New York Law School offers an online Mental Disability Law Program http://www.nyls.edu/pages/166.asp.

[19] *See* Paula E. Berg, Using Distance Learning to Enhance Cross-listed Interdisciplinary Law School Courses, 29 Rutgers Computer & Tech. L.J. 33 (2003).

[20] http://codec.cali.org/mod/resource/view.php?id=26

[21] http://www2.cali.org/index.php?fuseaction=conference.ViewAgenda&eventid=1

[22] *Id.*

[23] *See*, *e.g.*, Anna Shavers, The Impact of Technology on Legal Education, 51 Leg. Educ. 407 (2001); Henry Perritt, The Internet is Changing the Face of American Law Schools, 33 Ind. L. Rev. 253 (1999); Michael Geist, Where Can You Go Today? The Computerization of Legal Education from Workbooks to the Web, 11 Harv. J.L. & Tech. 141 (Fall 1997); Richard Warner, Stephen D. Sowle, and Will Sadler, Teaching Law With Computers, 24 Rutgers Computer & Tech. L.J. 107 (1998); Michael Heise, Closing One Gap But Opening Another? A Response to Dean Perritt and Comments on the Internet, Law Schools and Legal Education, 33 Ind. L. Rev. 275 (1999); Charlotte Bynum, The Role of Technology in Legal Education, 70- JUN N.Y. St. B.J. 34 (May/June, 1998). For a comprehensive annotated bibliography *see* Pearl Goldman, Legal Education and Technology: An annotated bibliography, 93 Law Libr. J. 424 (2001); The internet is also proven useful in offering Mandatory Continuing Legal Education. Kenneth Mortensen, Bridging the Gap: Internet Based Mandatory Continuing legal Education, 443 PLI/Pat 103 (June 1996).

classroom. In either case, the use of these technologies is blurring and expanding the boundaries of the traditional classroom.

The use of the same internet technologies is also blurring boundaries of distance education courses and programs because it is making it possible for such courses or programs to be potentially as interactive as "traditional" on-campus courses.[24] In the past, law schools have been reluctant to incorporate computer technologies into the classroom and even more reluctant to use these technologies to offer distance education courses or programs.[25] The revisions to the ABA regulations, decreased technological costs and the creation of legal distance education consortiums are supporting an emerging market for legal distance education.[26]

Through partnership with the Southern Regional Education Board's Electronic Campus, The University of Alabama School of Law offers an LL.M. in Taxation program to practicing lawyers throughout the Southeast. The program uses videoconferencing technology to offer in the words of Justice Ginsburg, "a genuine interactive endeavor" involving "face-to-face" interactions with professors and other students. Using the University or Alabama's Tax Program as an example, this article provides five practical recommendations to law schools interested in offering interactive legal instruction over the internet.[27] The first of these five recommendations addresses *what* to offer and the remaining four offer advice on *how* to offer distance learning. Together these recommendations are intended to advise law schools on how to successfully expand into

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[24] For an annotated bibliography specifically addressing the use of distance education in law schools *see* Arturo Torres and W. Clinton Sterling, Will Law Schools Go the Distance? An Annotated Bibliography on Distance Education in Law, 91 Law Libr. J. 655 (Fall 1999).

[25] For discussions of the reluctance of law schools to offer distance learning courses and programs, *see* Josh Ard, Serving over the Net: Legal Education Over the Internet, 79 Mich. B.J. 1050 (2000). Ard also responds to Justice Ruth Bader Ginsburg criticism of Concord University School of Law's use of online technology to offer legal education; *See also* Warner, supra note 23 at 164; Shelley Ross Saxer, One Professor's Approach to Increasing Technology Use in Legal Education, 6 Rich. J.L. & Tech. 21 (Winter 1999-2000); Jeff Ershler, The Reluctance to Embrace Distance Learning as an Essential Component of the Law School Curriculum, available at http://www.itdl.org/journal/Feb_04/article05.htm.

[26] *But see,* Stephen Johnson, www.lawschool.edu: Legal Education in the Digital Age, 2000 Wis. L. Rev. 85 (2000). Prior to these more recent developments, scholars like Johnson have argued that "law schools and the American Bar Association will [not] radically restructure legal education in the coming decades, regardless of any potential benefits."

[27]Alabama's program uses its partnership with the Southern Regional Education Board's electronic campus and videoconferencing and internet technologies to offer virtual classrooms in over ten different locations in Alabama, Georgia, Tennessee and Mississippi. The program makes it possible for attorneys to maintain their law practices while they work on this advanced degree and avoid most of the costs associated with moving to another state. For a discussions of advantages and disadvantages of using internet courses in law school *see* Richard Warner supra note 23 at 165 (arguing distance computer based courses foster independent thinking and analysis of legal issues, allow easy access to relevant expertise and help students to make contact with other customs and cultures); Berg, supra note 19; Using Distance Learning to Enhance Cross-listed Interdisciplinary Law School Courses, 29 Rutgers Computer & Tech. L.J. 33 (2003); Heise supra note 23.

distance learning while avoiding common administrative problems and pedagogical limitations.

Recommendation #1

Offer programs more generously than courses.

Standard 306 of the ABA's Standards for Approval of Law Schools defines distance education as ". . . an educational process characterized by the separation, in time or place, between instructor and student" ". . . including courses offered principally by means of:(1) technological transmission, including internet, open broadcast, closed circuit, cable, microwave, or satellite transmission;(2) audio or computer conferencing;(3) video cassettes or discs; or (4) correspondence." [28]

Although more permissive than the former version, Standard 306 restricts courses which use distance education instruction more than one-third of the time. A JD student can take only twelve credits of such courses, no more than four per semester, and then only after first completing 28 credits of traditional classroom instruction.[29] These limitations however, do not apply to courses blending distance education with at least two-thirds of a traditional means of instruction. As long as the courses provide enough interaction and monitoring of student effort, professors of these blended courses are free to incorporate internet technologies without further limitations[30]

ABA accredited schools are also free to offer graduate distance education courses and programs without limit. Although the ABA prohibits a law school from creating a graduate degree program without prior approval, such approval is only based upon "whether the offering would have an adverse impact on the law school's ability to comply with the Standards that the ABA establishes for JD programs."[31] Without adverse impact, the content, requirements and medium of instruction of graduate degrees

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[28] http://www.abanet.org/legaled/standards/chapter3.html In comparison, the National Center for Education Statistics, Distance Education at Degree-Granting Postsecondary Institutions: 2000-2001 available at http://nces.ed.gov/surveys/peqis/publications/2003017/ defines distance education as "education or training courses delivered to remote (off-campus) sites via audio, video (live or prerecorded), or computer technologies, including both synchronous (i.e., simultaneous) and asynchronous (i.e., not simultaneous) instruction.

[29] *Id.*

[30] ABA interpretation 306-3 provides that the limitations do not apply to such courses as long as there is ample interaction between the instructor and students and ample monitoring of student effort. See Interpretation 306-3 exempting such courses from 306(d) and (e) as long as they comply with 306(c)(1)and 306(c)(2). In effect, courses relying upon traditional instruction two-thirds or more of the time not defined as being distance education courses. JD courses offering distance education instruction one-third or less of the time should make full use of distance education technologies to enhance the level of interaction between students and professors, increase access to resources and offer other general support services

[31] ABA council statement on LL.M and Other Post-JD Degrees and Qualification for Admission to Practice available at http://www.abanet.org/legaled/standards/councilstatements.html

are otherwise unregulated. Although adverse impact is not clearly defined, it may require that the graduate program not take away money or faculty resources that would otherwise be used to support the JD program.

Thus, in addressing the threshold question, *what* to offer through distance education, law schools approved by the ABA should offer graduate programs generously and JD courses more sparingly unless the JD courses are supported by a market or consortium broader than local enrollment. Because the ABA does not "approve" graduate programs or their pedagogies, law schools should offer graduate distance education courses and programs to the extent there is a market for them. Graduate programs have the advantage that the technological infrastructure for one course usually makes it easier to offer subsequent courses. Websites can be easily modified, reservations for videoconferencing classrooms renewed, and mechanisms for streaming audio and video can be reused.

Graduate programs also have the benefit of providing a steady source of income which makes it easier to insure that there is no adverse impact on the JD program. The University of Alabama's LL.M in Taxation is offered to practicing lawyers throughout the Southeast via videoconferencing and internet technologies. The program runs on a two-year cycle, offering two courses per semester for six semesters. Although courses are also open to non-degree candidates, the twelve required courses provide a constant source of revenue that more than covers the costs of the program. The Law School is also able to focus marketing efforts on the entire program rather than each individual course because of the two-year cycle.

One important difference between offering a distance education graduate program and an individual JD course is that a graduate program will generally be marketed only to interested students, whereas an individual JD course may be marketed to interested students or other law schools. [32] The University of Alabama's LL.M in Taxation is marketed to students in Alabama, Mississippi, Georgia and Tennessee through the Electronic Campus of the Southern Regional Education Board (SREC).[33] The SREC offers a marketplace for online programs (or courses) from accredited colleges and universities throughout the South.[34]

JD distance education courses however, might be offered: 1) to students at your law school, or 2) to students at other cooperating law schools or, 3) to other cooperating law schools. First, the course can be offered to students at your school as long as such credits are limited to the estimated number of students at your school who would be

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[32] Cornell's Legal Information Institute offers Professor Peter Martin's Social Security Law class through participating schools during the spring term 2006. A full course description, procedural details, and an introductory unit demonstrating and describing its methods of instruction can be found at: http://www.law.cornell.edu/socsec/course/

[33] http://www.electroniccampus.org/

[34] For reasons detailed in the second recommendation of this article, it is not prudent to offer the LL.M. program through other cooperating schools.

interested in taking the course and who are able to based upon the restrictions in Standard 306. Next, the course might be offered to students at other law schools or to other law schools if there is a larger market to support the offering. In determining whether there is this broader market for a JD course, law schools should consider how a particular course might be sold, traded or cross-listed through a new legal distance education consortiums like those offered by CALI and SEALS.[35]

These consortiums, discussed more fully under the next recommendation, are creative market places for legal education courses offered over the internet which may make it possible to offer courses, previously limited by local enrollments, to a national or perhaps international market. Participation in these consortiums is important in offering courses to students at other law schools since those schools will have to approve the transfer credit.

Finally, some schools, like Cornell through its Legal Information Institute, have been able to market a course to *other law schools* for many years through their own efforts.[36] In Cornell's situation, the purchasing school pays a per student fee to offer the online course to their students. Although Peter Martin, a professor at Cornell "teaches" the course, he applies the participating school's administrative and grading policies.[37]

Recommendation #2

Collaborate with other schools in offering courses but not when offering programs.

The ability of law schools to improve their offerings through collaboration and a sharing of resources is often describe as a major advantage by those who mean to encourage the use of distance technologies in law schools. It is an advantage for a law school to be able to use distance education technologies to offer courses or programs which would not otherwise be supported by resources in the traditional setting. However, collaboration of such projects can involve so many administrative and political problems that they are ultimately rejected by one or both faculties at the cooperating schools. Faculty members may be unwilling to compromise on the decisions regarding things like admissions, curriculum, grade administration, and faculty resources in order to offer a new class.

Collaboration can also raise questions of ownership over online courses or programs between cooperating schools.[38] Under federal law, online courses likely

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[35] See the second recommendation of this article for further discussion.

[36] Supra note 32.

[37] *Id.*

[38] Klein, supra note 13; Andrea Johnson, Reconciling Copyright Ownership Policies for Faculty-Authors in Distance Education, 33 J.L. & Educ. 431 (October 2004); Gregory Kent Laughlin, Who Owns the Copyright to Faculty-Created Web Sites?: The Work-For Hire Doctrine's Applicability to Internet Resources Created for Distance Learning and Traditional Classroom Courses, 41 B.C. L. rev. 549 (May 2000). For other discussions of important copyright issues as they apply to distance education see also

belong to the university under the work-made-for-hire doctrine. Although professors may gain ownership of their courses through faculty polices or contract agreements, an institution may be protected from copyright infringement by sovereign immunity.[39] Law schools may choose to assert ownership rights over online courses or programs as a way of preventing faculty from developing courses for rival institutions. [40]

The best approach is for law schools to "own" their own program or course, applying all of their own administrative polices and procedures. Programs or courses available to students at other schools can be offered in a collaborative manner without being co-owned. To the extent possible, professors at other schools and experts in the private sector should be used as "hired guns" who offer instruction in the program through a distance form of technology. This is the best strategy at least until, as demonstrated by the Miller v. Harvard dispute, the competition in distance education increases and law schools develop particular interests in protecting the expertise of faculty members. [41]

The LL.M in Taxation offered by the University of Alabama employs its own faculty as well as adjuncts and experienced practitioners from throughout the Southeast. Initial efforts to partner with another law school to offer the LL.M. degree failed because of faculty disputes and administrative difficulties between schools. The faculties at partnering schools could not agree on academic standards and administrative polices.

Although the grading and administrative procedures and the degree are from Alabama, select courses in the 2006-2007 cycle are being taught through videoconferencing by some of the most qualified professors for each course. As a few examples, the 2006-2007 cycle of the program is offering courses in Capital Transactions taught by James Bryce from the University of Alabama, [42] the Income Taxation of Trusts and Estates taught by Jeffrey Pennell at Emory Law School, Corporate and Advanced Corporate Tax taught by Ron Blasi from Georgia State and Partnership Tax taught by Karen Green from the University of Mississippi.

Laura Gassaway, Distance Learning and Copyright: An Update, 49 J. Copyright Society U.S.A. 195 (Fall 2001); Laura Gassaway, Impasse: Distance Learning and Copyright, 62 Ohio St. L.J. 783 (2001).

[39] For a discussion of tension between schools offering distance learning and the academic freedom of professors see Risa Lieberwitz, The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?, 12 B.U. Pub. Int. L.J. 73 (Fall 2002).

[40] Klein, supra note 13 at 207.

[41] Although there is a concern that the top professors may be able to corner the market when it comes to online courses, see e.g. Steven Keeva, Stars of the Classroom: Will Top Profs Who Instruct Via Internet Dominate Teaching?, 83 ABA J. 18 (Dec. 1997), this concern is ameliorated by the fact that in order to be most effective, legal distance education still must remain interactive. Top schools might sell a better version of a course but without sufficient interaction with an administering professor it remains only a useful resource.

[42] James Bryce is former Director of Alabama's LL.M in Tax. Professor Bryce has been with the program since the first time it was offered in 1976. At that time, distance education meant he drove several hours, taught at a remote location, and then returned home.

While it may be impractical for law schools to co-offer courses and especially degree granting programs, this does not mean that law schools should not cooperate in their efforts to expand their distance education offerings. Law schools might use the distance education consortiums to buy and sell courses.[43] Law schools offering their own courses or programs can use a consortium to recruit students from other schools. Finally, distance education technologies like videoconferencing make it possible for consortium courses to be cross-listed with other degree programs or disciplines at other schools.[44] Cooperation among schools through consortiums is not inconsistent with the recommendation that one school retain control over important administrative and academic standards.

Although they are still in their inception stages, two consortiums have been created specifically for law schools. First, CALI has established CODEC [45] as a platform from which law schools can engage in distance education to the extent they deem desirable.[46] Member schools can choose to be active providers or recipients of distance education. Alternatively, they can choose to offer (or accept) only a single or occasional course by distance education means.[47] CODEC also intends to help member schools gain insight into how to construct and deliver distance learning courses.[48] CODEC addresses administrative issues like academic credit, registration and grading policies but maintains a flexible approach leaving most of the final decisions to participating law schools. The SEALS' Distance Learning Initiative is also already publicizing the availability of distance learning courses on a website.[49] Although the course sharing project has not yet decided upon the specifics, it will also provide a place to buy and sell distance education law school courses. [50]

Law schools may already offer their own courses or programs, like Alabama's LL.M in Tax program, through the Electronic Campus of the Southern Regional Education Board. The SREC is not restricted to law schools but already serves as a marketplace for online courses and programs from all accredited colleges and universities

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[43] Some recent scholarship criticizes law schools that use distance education to go beyond teaching of their students and sell the teaching. See, e.g., Lieberwitz supra note 39.

[44] Berg, supra note 19.

[45] http://codec.cali.ord/

[46] Codec: Consortium for Distance Education from Cali- June 2, 2004 available at http://codec.cali.org/mod/resource/view.php?id=27

[47] *Id.*

[48] *Id.*

[49] http://www.nsulaw.nova.edu/seals/Distancelearning.htm

[50] *Id.*

throughout the South. [51] The purpose of the SREC is to provide a system of offerings that, through the SREC's *Principles of Good Practice*, ensures the quality and maintains the integrity of distance education programs.[52] The electronic campus has recently expanded to also provide information and support services for students interested in higher education opportunities whether in a traditional setting or through e-learning.[53]

Recommendation #3

Use synchronous delivery of information, like videoconferencing, for the primary mode of instruction.

        Choosing the most appropriate method for the delivery of instruction is the next important decision a law school has to make in deciding to offer a distance education course. Distance education instruction is often distinguished by the "synchronous" or "asynchronous" delivery of information.[54] Synchronous distance learning refers to courses or programs where the instructor and the students have class at the same time but not at the same place. In contrast, asynchronous distance learning may occur between the instructor and students in both a different place and time. [55] Distance learning has been distinguished from "traditional" law school courses because law school courses have historically occurred in both the same place and same time. The gap establishing this distinction is narrowing as more "on-campus" law school courses support their

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[51] http://www.electroniccampus.org/.

[52] One major advantage of offering a program through the SREC is that it has been granted permission to offer courses and programs throughout the member states. Nearly all states have laws preventing schools from offering degree granting programs in their state without prior approval. Such approval processes can be extremely time-consuming and expensive, requiring large bonds. Schools offering such programs or courses through the SREC, depending upon state law, may not need further permission. Participants in the SREC's electronic campus retain their administrative polices and procedures as long as they are consistent with SREC's *Principles of Good Practice.* There is also a specific approval process for distance education courses offered by law schools accredited by the Southern Association of Colleges and Schools (SACS). SACS members must ensure that distance education courses and programs comply with the Principles of Accreditation. See http://www.sacscoc.org/pdf/081705/distance%20education.pdf.

[53] http://www.electroniccampus.org/

[54] Catherine Arcabascio, The Use of Videoconferencing Technology in Legal Education: A Practical Guide, 6 Va.L.J. 7 Tech. 5 (Spring 2001)

[55] Merriam-Webster's online technical definition of synchronous is "a digital communication (as between computers) in which a common timing signal is established that dictates when individual bits can be transmitted, in which characters are not individually delimited, and which allows for very high rates of data transfer. http://www.m-w.com/cgi-bin/dictionary Asynchronous" is used to refer to "digital communication there is no timing requirement for transmission and in which the start of each character is individually signaled by the transmitting device." http://www.m-w.com/cgi-bin/dictionary?va=asynchronous.

curriculum through the use of website technologies and as more "distance" courses begin to offer live instruction over the internet.

In planning a course, synchronous technologies should be used when it is important that students have an opportunity to have their questions answered immediately. These "real-time" technologies should be used for law school courses because normally such courses are dependent upon a high level of interaction.[56] Live web-based discussion boards, chat rooms, web-conferencing, telephone and videoconferencing are examples of synchronous technologies that allow for the most live and direct contact between students and instructors.

A.   Webconferencing and Discussion Boards

Although web-conferencing software has improved dramatically over the last few years, it is not yet a viable option for a primary mode of instruction for a law school class. Previously, web-conferencing referred to asynchronous technology that permitted group discussions via posted messages on an internet bulletin board. The term, however, has evolved with technology to refer to live meetings in which individual participants at their own computers are connected to each other over the internet. [57] In a web-conference the participants usually see what is on the instructor's computer screen and communicate with each other through telephone conferencing, voice connections over the internet or text chat.[58] Some web-conferences may even use web-cameras so that participants can see the instructor or students.

The problem with web-conferencing is that the software design and the traffic on the common internet make it too difficult for instructors and students to both communicate in actual time and to move between supporting documents. Instructors in a web-conference have to teach and move through documents while processing web-chat or audio questions that may arrive after they were relevant to the discussion. These delays on the common internet along with those associated with clicking through links for documents disrupt the presentation of material and discussion of the subject matter. Similarly, live discussion boards and chat rooms also provide immediate access to instructors but do not provide a good venue for the entire class to participate.

B.   Videoconferencing

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[56] Arcabascio, supra note 54.

[57] http://en.wikipedia.org/wiki/Web_conferencing

[58] *Id.* Webinar is used to refer to a seminar which is conducted over the World Wide Web. It is a type of web conferencing. In contrast to a Webcast, which is transmission of information in one direction only, a webinar is designed to be interactive between the presenter and audience. A webinar is 'live' in the sense that information is conveyed according to an agenda, with a starting and ending time. In most cases, the presenter may speak over a standard telephone line, pointing out information being presented on screen, and the audience can respond over their own telephones, preferably a speakerphone.

Of the synchronous technologies, videoconferencing is probably still the best medium of instruction for law courses because it is the most face to face, interactive medium.[59] Law students have traditionally been subject to an official attendance policy under the rationale that attendance helps create an academic environment where students discover the reasoning behind legal arguments through use of the Socratic method. [60] Videoconferencing is the best available technology for law school courses because it most closely approximates this interactive law school experience.[61]

During a videoconference class, the instructor can teach from one location and, through a direct (point-to-point) or bridge (multi-point) connection, maintain a live audio and video connection to another or other numerous site locations. The method of question and answering used in the traditional on-campus class is equally available during a videoconference because students at remote locations can ask or be asked questions by the instructor. A bridge connection between the site locations acts like a video conference call allowing students to also participate in a discussion with students at other locations.[62]

1.   The Equipment

Videoconferencing is an attractive option for law school distance education courses not because it is a new technology [63] but because the equipment needed for a conference has become less expensive to buy and less expensive to use.[64]
There are two different ways to participate in a videoconference. For courses involving more than a couple of students, videoconferencing delivery systems are more appropriate than desktop videoconferencing. [65]

Desktop conferencing uses a personal computer and a small web-camera as contrasted to the delivery system which involves a dedicated room containing television

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[59] There are several articles addressing the use of video-conferencing and limits etc. see e.g. Andrea Johnson, Distance Learning and Technology in Legal Education: A 21st Century Experiment, 7 Alb. L.J. Sci & Tech. 213 (1997); Helen Leskovac, Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing, Alb. L.J. Sci. & Tech. 305 (1998); Arcabascio, supra note 54; Charlene Smith, Distance Education: A Value-Added Model, 12 Alb. L.J. Sci. Tech. 177 (2001).

[60] Ershler, supra note 25.

[61] Id; see also Leskovac supra note 50 at 310, 311; Arcabascio supra note 54 at 14 (Videoconferencing helps overcome problems or spatial and temporal unity which are the two elements of classic education lacking in other non-traditional or distance forms of education).

[62] Arcabascio, supra note 54 at 39.

[63] *Id.* at 9 (Two-way videoconference classes have been offered since the early 1980s).

[64] Leskovac, supra note 59 at 313 (as applied to frame relay videoconferencing).

[65] Johnson, supra at 59 at 238.

monitors, microphones, a video-camera and a transmission line.[66] A desktop system can be used by a professor in tandem with a delivery system, if for example, the instructor teaches from an isolated location. However, most courses involving more than a few students at a given location require a system and designated videoconferencing room because the desktop camera offers a lesser quality and resolution.[67] Portable videoconferencing units, about the size of a VCR, provide for a higher resolution and can be purchased for as little as $4,000. [68]

The videoconferencing system should include the videoconferencing unit with microphones, monitor and either a stationary camera or a camera that moves with the instructor. Although it is also possible to have one monitor that switches focus on whoever is speaking whether the instructor or student is asking the question, the better system includes one television monitor that shows the instructor and a separate monitor for students who are asking questions from a remote location. In a bridge connection, most formats allow for as many as nine classrooms to be visible on the screen at the same time. Smaller conference style rooms work better for 10 to 15 students. These rooms should have systems that are loud enough and provide good lighting. Good lighting means that the students can see to take notes but are not distracted by glare on the monitor.

Student microphones may be part of an open or closed system. In an open system, the microphones are installed in the ceiling of the room. The problem with this system is that noise made in the room may be heard by all members of the videoconference. The closed or "push-to-talk" system is a better arrangement when the videoconference involves multiple sites because students can turn on their table-top microphones when they have a question. If your videoconferencing room has an open microphone system, a technical supervisor should turn off these microphones until students have questions in order to prevent background noise from disturbing the other locations.[69]

2.   The Connection

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[66] *Id.*

[67] *Id.*

[68] This does not include television or the cart. For current prices two popular vendors see http://www.polycom.com and http://www.tandberg.net. The picture quality is especially important if it is to be made available later in the form of streaming video; see recommendation 4.

[69] For other important considerations in setting up your video-conferencing room see Arcabrascio supra note 54 at 26-30.

The technology connecting the remote locations to each other through a bridge is also a very important consideration in planning a course or program offered through videoconferencing. Locations participating in a videoconference usually connect through either an Integrated Services Digital Network (ISDN) or Internet Protocol (IP) connection because satellite connections are usually cost prohibitive. An ISDN connection allows for the transference of digital audio and video over regular phone lines. In order to provide smooth interactions without disrupting video and audio, the ISDN connection must have enough bandwidth; or in other words, it must allow for enough data to travel across the line at one time.

Before reserving a location for a videoconference, be sure that the originating site, the remote classrooms and the bridge connecting all the classrooms all have an ISDN connection using a "T-1" or "T-3" line to carry the feed. Next to a fiber optic line, the T-3 is the best land line because it has the most bandwidth. Fiber optic lines allow for the transference of more information but are generally too expensive and thus not generally available to provide for the connection of remote locations. [70] When using multiple locations, site selection of the remote locations is as important because in a bridged videoconference the different participating site locations will all have to communicate at the lowest common bandwidth. [71]

Because the ISDN connection travels over the phone line, every minute of out-of-area connection time will incur a long distance phone charge. A less expensive option for a videoconferencing network is through an IP connection. The IP connection is simply a connection over the internet. It is less expensive than the ISDN connection because currently there is not a similar charge for travel across the net. However, traffic over the common internet makes the IP connection a less reliable option than an ISDN connection unless the IP connection is over Internet2.

Internet2 is a non-profit consortium network utilized mainly by educational institutions.[72] Supported by over 200 universities, it is a partnership of academia, industry and government.[73] It is probably the best option for connection because of the limited costs and because restricted access currently makes it much less crowded than the common internet.

Although many private companies offer videoconferencing services, educational institutions are the best choice for a law school class because they are more affordable.

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[70] Leskovac, supra note 59 at 315 criticizes ISDN technology as not being s reliable as Frame Relay technology which relies on fiber optic lines. She discusses how frame relay was used to offer courses through the Adirondack Area Network in New York.

[71] Acrabascio, supra note 54 at 44 (Most urban areas have an ISDN connection but substantial costs can be associated with the connection to the telephone company's central switching station).

[72] www.internet2

[73] *Id.*

Private companies offering videoconferencing services usually charge high rates for both the room reservations and ISDN connection time. For example, Kinko's charges between $265 and $335 per hour for a multi-point conference. [74] Educational institutions are a more affordable resource for videoconferences first simply because the room reservation rates and technical supervision charges are usually less. Most colleges and universities offer videoconferencing capabilities through their informational technologies or continuing education departments and charge between $25 and $100 per hour. If there are videoconferencing facilities located at several different schools on campus, this may result in lower rates for those that get less traffic. Supervision of programs or courses offered past regular business hours or on weekends may also be less expensive at educational institutions because their facilities are often already being used and monitored for other classes during those times.

Educational institutions may especially be a better option if their videoconferencing facilities have access to Internet2. Most private vendors do not use IP connections at all because there is a danger that with the IP connection, if travel over the common internet becomes too crowded, the videoconference will become jerky and delayed. Colleges and universities are more likely to be part of a large infrastructure supporting an internet connection and many now also have access to Internet2.

Currently, the LL.M in Taxation offered from Alabama makes use of both ISDN and IP (Internet 2) connections to offer courses to more than ten locations in Alabama, Georgia, Mississippi and Tennessee. Most states have a videoconferencing network that helps keep costs down when connecting to in-state site locations. Mainly through ISDN connections, the LL.M program connects to classrooms in five cities throughout Alabama by way of a bridge connection in Birmingham. Alabama uses Internet2 to connect to sites in Atlanta, Georgia and Jackson, Mississippi. The Internet2 connection is most useful when traveling out-of-state due to the potential increase in long distance charges on an ISDN line. The LLM in Taxation program also offers classrooms in Nashville, Knoxville and Memphis, Tennessee. But because these remote locations in Tennessee do not have access to Internet2, the program connects to them through another bridge connection in Knoxville, Tennessee. The bridge in Birmingham, Alabama uses Internet2 to connect to a bridge at the University of Tennessee in Knoxville.[75] The Knoxville bridge then connects to all the Tennessee sites using ISDN or other connections.

3.   The Problems with Videoconferencing

There are some unique technical difficulties when using videoconferencing technology for a primary mode of instruction. First, there is a slight audio delay because the information being delivered over the ISDN line must be compressed and travel to the delivery site and then be decompressed.[76] When numerous locations are connected, this

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[74] See http://www.fedex.com/us/customersupport/officeprint/faq/videoconf.html?link=4#anchortag19

[75] The University of Tennessee Knoxville charges an hourly bridge fee for this service.

delay can cause students to speak over each other or the instructor; similarly, it may cause the instructor to speak over a student's question.

Also, in delivery systems where the camera at a remote location moves to focus on a student asking a question, the visual of the student speaking may appear on the instructor's screen a second or two *after* the question begins to be heard through the audio feed. Depending upon the camera set-up, students preferring not to be called upon can find a seat in the room which is outside of the range of the camera. Finally, interruption of service can be caused by power-outages, computer system failures, or breaks in connections to the internet.

To address the more minor problems, program designers should establish a guideline for communication. Both students and the instructor should be taught how to use the videoconferencing technology effectively. When asking or answering a question, students and the instructor only need pause for a moment to avoid speaking over each other. When the conference involves numerous students at numerous locations, the instructor should provide a designated period for answering questions in which he or she calls on particular virtual classrooms one at a time or in groups.[77] Students sitting outside the range of the camera, just like students in the back of a traditional class, can still be called upon to answer questions.

The LL.M. program at Alabama has involved more than 10 classrooms and 80 students and, although the tax curriculum may not rely as heavily on a Socratic method, students in the program are allowed to interrupt with questions without being called upon in groups. Originally, questioning was opened up to the 10 sites in four regional groups but the pedagogy was later changed to permit open ended questioning throughout class. Disruptions caused by overlapping questions turned out to be minimal.

Because distance learning courses rely upon technology there will always be some difficulties like power outages or loss of internet connections that may affect synchronous delivery of instruction.[78] As discussed in subsequent sections of this article, at times, the best that can be done is to minimize the effect of such problems through the use of asynchronous technologies that allow students to go back and review important material or through the use of relational marketing which prepares students for these minor challenges. [79]

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[76] Acrabascio, supra note 54 at 64.

[77] The subject matter of the course also may determine how much class discussion is involved. Some courses may not require less structure applied to question and answer periods.

[78] Hurricane damage and occasional server problems have caused us to rely upon video-streams far a couple of classes for students at select sites.

[79] See the discussion of the use of streaming video under the second recommendations of this article and of relational marketing under the fifth recommendation.

It is true that teaching though videoconferencing can be more difficult than teaching in a traditional classroom. The instructor must encourage interaction and moderate discussion when it is harder to see students. At times, an instructor may have to juggle teaching with the handling of instructional technologies.[80] However, another reason the videoconferencing classroom most approximates the traditional law school class is because the same instructional technologies are available. Document cameras may be used to project materials to remote locations in the way that overhead projectors are used in a traditional classroom. A concert pod is available for projecting PowerPoint slides over the system. Devices called electronic whiteboards can be used like blackboards with the exception that they even allow previously "erased" information to be recalled for later use.

The costs, technical challenges and supervisory responsibilities associated with videoconferencing have led some professors to switch to purely asynchronous methods of instruction.[81] However, videoconferencing courses or programs which use the right equipment, utilize connections with adequate bandwidth, and which employ good bridge and classroom supervision, offer law students interaction with each other and the instructor in a way that a purely asynchronous form can not. Learning can occur when there is not face-to face interaction, but more effective instruction makes learning possible through both synchronous and asynchronous forms.

The University of Alabama School of Law has frequently considered but ultimately rejected offering the LL.M in Taxation in an asynchronous form. Surveys have revealed that students in the program and their potential employers agree with Justice Ginsburg that legal education loses something when students learn in isolation.[82] Students in the tax program who are mainly busy practitioners, nevertheless value the opportunity to ask live questions face to face with the instructor even when presented with an option of watching a previously recorded video of the class and asking questions by email or on a live discussion board.[83] They also value highly the opportunity to discuss the material or videoconference lectures with other students at their remote location. This peer-to-peer learning is perhaps the greatest loss in a purely asynchronous course even when the course provides opportunities for students to interact by email or on discussion boards.

Recommendation #4

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[80] Abrascio, supra note 54 at 61.

[81] Ellen Podgor of Georgia State, the chair of SEALS Distance Education Committee, prefers to offer her international criminal law class in an asynchronous form. During this last year she was able to offer the course to students from Tulane who were dispersed by Katrina. Peter Martin's Social Security class offered through Cornell's Legal Information Institute also relies heavily on asynchronous forms. Both courses maintain a high level of interaction with students through the use of emails, discussion boards and even groups assignments.

[82] Supra note 2.

[83] These surveys also reveal that students in online programs expect to pay less tuition than in those which also offer synchronous instruction.

Use asynchronous forms of delivery to increase the level of interaction and support the primary, synchronous form.

Asynchronous technologies like internet message boards, audio and video downloading or streaming, email, list serves or discussion threads are more useful in the situations where the students and the professor can not be available at the same time. This is true regardless of whether the course's or program's primary mode of delivery is offered through distance education technology. Often referred to as a "blended" pedagogy, many traditional on-campus courses are using asynchronous technologies to supplement traditional class lectures. Such courses may, for example, post discussion topics, links to secondary resources, video files or the like.

A distance education course, should also use asynchronous technologies when it is more important that students have time to research or think about an issue rather than be able to get immediate responses to their questions. But because the distance education course does not use traditional class lectures for its primary medium of instruction, asynchronous technologies should be used to support a primary synchronous one like videoconferencing. [84] Asynchronous technologies whether part of a distance education or traditional law school class, should be made available to students through a course or program website.

A.   The Website

A course or program website is the best means by which asynchronous technologies should be made available to students. Students need a central location where they may download and digest syllabi, course materials or other supplemental documents designed to facilitate learning both during and after class. The course or program website makes it easier to change assignments, alter the pace of the course or address student confusion about course materials.[85] Websites may be created by specific programs like Adobe's Dreamweaver or Microsoft's FrontPage.[86]

In planning a course or in setting up infrastructure for a program, informational technology personnel at the law school or university can help to select the best course management system.[87] Software systems like WebCt and Blackboard provide a platform

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[84] See Linda Fentiman, A Distance Education Primer; Lessons From My Life as a Dot.Edu Entrepreneur, 6 N.C.J.L. & Tech. 41,63 (Fall 2004)(discussing the problems with a pure online, asynchronous law school course. She argues the technology does provide new ways to teach students and encourage them to be independent thinkers but argues this should supplement more traditional teaching methods).

[85] Berg, supra note 19 at 47.

[86] Available at http://www.adobe.com/products/dreamweaver/ and http://office.microsoft.com/en-us/FX010858021033.aspx

for many instructional tools from posting messages on bulletin boards, to chat rooms to methods for submitting and commenting upon assignments. These programs also offer a closed email system if students in the program want to communicate about the subject matter only to the instructor or each other.[88] Westlaw also offers a platform for offering online courses through TWEN. TWEN provides valuable instructional tools and recently even added an option whereby instructors can get instant feedback by polling students. TWEN has the advantages that it is free for law schools and designed to link law students to important legal research materials. Most of these platforms also make it possible for distance programs to administer exams online.

Regardless of the format used, at a minimum the course website should post a syllabus. It might also make available some kind of electronic casebook. An electronic casebook, which is different from an electronic version of the course text, is a term often used to refer to a number of instructional tools. It may offer problem sets and/or solutions to problems, summaries of discussion topics, PowerPoint slides, or interactive assignments. [89]

The dissemination or sharing of supporting materials should be delivered through links on the website. Shared learning may be encouraged by discussion threads in which an instructor makes a website posting of a topic or issue and then students respond to either the original posting or one of the responses. Responses to discussion topics can be required or optional. By directing responses to the instructor before posting, they can also be moderated if needed, for example, to prevent misunderstandings.

B.   Streaming Video and Audio

Because of the complicated nature of the subject matter and the interactive nature of learning, one of the most useful asynchronous forms of delivery for law school classes is the downloading or streaming of audio and video files.[90] Audio or video files are a useful way for students to review class lectures in a distance education course or lectures in a traditional on-campus course. Audio and video streams that last more than one hour can be harder to listen to than the live videoconferencing of in-person presentations. But they may be especially useful when students have to miss class or want to examine more closely a particular discussion of complicated material. Students can make notes of when

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[87] For specific recommendations as to the usefulness of particular course management systems for law schools see Joan Hemingway, Caught in (or on) the Web: A Review of Course Management systems for Legal Education 16 Alb. L.J. Sci. Tech 265 (2006).

[88] See e.g. www.webct.com and www.blackboard.com.

[89] Johnson supra note 59 at 235.

[90] If the student downloads a video file to their computer or other portable playing device, it is available for later viewing. However, in a streaming video, the student watches the video as it is being delivered. If the student maintains connection to the internet there may be not practical difference because just as with downloading files on a portable device, students may fast forward, pause or rewind files being streamed to a personal computer.

certain questions arose in class and then review the relevant portions of the videostreams afterwards.

One of the more recent terms used to describe the availability and distribution of audio files and more recently, the availability and distribution of video files as well, is called Podcasting.[91] The term originated in 2004 from combining the name of the Apple Computer's portable digital audio player called an "ipod" with the word "broadcasting."[92] The term "podcasting" has been defended as "a digital recording of a radio broadcast or similar program , made available on the Internet for downloading to a personal computer."[93] Now that video portable players are also becoming available, "podcasting," among other terms, is also being used to refer to the downloading of video files. [94] However, students can use a personal computer instead of an Apple ipod or other portable device to listen to audiostreams or watch videostreams.[95]

Podcasting has become such a popular term not because the technology is new but rather because, as with videoconferencing, the technology has become easier and less expensive to use. Audio and video streams are now available through more devices than simply the personal computer.[96] The implication for educational institutions as a consequence of this developing technology is that with a little help from the audio-visual or informational technology staff, liberal arts universities including law schools, could begin to offer video and audio presentations of classes delivered by talented instructors.[97] Through the use of these "Profcasts" law students could receive primary or secondary course instruction by downloading a file and listening to it or watching it on a portable player in a variety of mediums like the library, home, car or recreation center. [98]

Many law schools are behind others in offering such technologies because they are unfamiliar with them. For other law schools, the lack of familiarity may not be the only reason they have not yet offered distance education courses or have been slow to incorporate the computer technologies in traditional classes. With the increased use of

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[91] Podcasting is a method whereby individuals post audio and now video content on the internet for automatic download. It does not easily fit into any of the current statutory or regulatory schemes that control the broadcast of copy right materials. See Matthew Astle, Will Congress Kill the Podcasting Star?, 19 Harv. J.L. & Tech. 141 (Fall 2005).

[92] http://en.wikipedia.org/wiki/Podcasting

[93] *Id.*

[94] Id .

[95] *Id.*

[96] Gardner Campbell, There's Something in the Air; Podcasting in Education, 40, oo.6 Educase Review, 32-47 (November/December 2005).

[97] *Id.*

[98] *Id.*

asynchronous technologies like email and discussion boards, instructors often find that they are even more available to online students than they were to traditional on-campus ones.[99] This benefit to the students may be preserved while the burden to the professor is minimized by placing some limits on availability in the same way that professors of traditional classes have done. For example, the professor might post office hours when they are available for text chat or they may provide a standard for how frequently they will respond to asynchronous communication like email.

Nevertheless, preparations for courses that offer both synchronous and asynchronous forms of technology usually do require more time than those for traditional campus classes because they are adding different ways to facilitate learning without taking others away.[100] Technologies like videoconferencing, internet chat or web-conferencing offer live interactive learning. In a purely asynchronous course students are not able to get immediate feedback and are more likely to lose the benefits of peer-to-peer learning. Synchronous programs that incorporate asynchronous methods are able to add to the pedagogy the benefits of individualized learning that comes from such forms.

Students in Alabama's LL.M in Taxation program use videoconferencing as a way to get immediate feedback and gauge their understanding of the subject matter. Because each site location is also a classroom, students are often able to ask each other for clarification even during class. Some sites have even created evening or lunch study groups to enhance their understanding of the subject matter. Although some sharing of information can be accomplished through the use of asynchronous forms of instruction, courses that rely only upon them may be underestimating the value this peer-to-peer learning.

The program website utilizes various web-based technologies to facilitate learning and make course materials easily available. It is also used to facilitate communication with faculty and among students in the program through email links and a student photo directory. The electronic case book is an important aspect of the LL.M in Taxation program because students can make a note of confusing topics during class and return to the solution to the problem set which addresses their question. [101] Students in the tax program also often go back and review particular discussions of complicated regulations and interpretations by making notes of when those discussions occurred and then reviewing the relevant portions of the videostreams.

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[99] Standard 306-4 says law schools shall take steps to provide students in distance education courses opportunities to interact with instructors that equal or exceed the opportunities for such interaction with instructors in a traditional classroom setting. http://www.abanet.org/legaled/standards/chapter3.html

[101] There is even technology available which allows students to take notes which special notebooks and pens that create links to the video-stream. Students connected to a computer can use the pen to click on there notes which then open the video-stream to the place where the topic was discussed. See e.g. http://www.tegrity.com/

In sum, successful distance education courses or programs will use asynchronous forms of delivery like websites, discussion threads, and email to increase the level of interaction with the instructor, with other students or with the subject matter of the course. They will use other asynchronous technologies like audio and video streaming as they are appropriate to the nature of the material and course and as they support the primary synchronous mode of instruction.

Recommendation #5

Use relational marketing to retain and recruit distance education students.

When recruiting students for a distance education program, it is natural to first consider the ways technology and transactional methods may be used to reach potential applicants. Law schools and bar associations sell space for internet advertisements, mailing labels and possibly email lists. Although limited by state and federal SPAM laws, email blasts have become a common way to advertise distance education courses or programs. Evaluating the effectiveness of these transactional methods of advertising, which are aimed at simply getting students to enroll, is beyond the scope of this article. Instead, this last recommendation makes the suggestion that, especially in a distance education program, at least equal attention should be given to relational marketing techniques.[102] Relationship marketing is a form of marketing that evolved from direct response marketing in the 1960s and emerged in the 1980s, in which emphasis is placed on building longer term relationships with customers rather than on individual transactions.[103]

Even with the various technologies and their capabilities as previously discussed in this article, there is still the possibility that with distance education courses, students can feel a greater disconnect than students physically present at a law school. Distance education programs should go further than the traditional class to include ways to encourage learning outside of the live classroom. This is true because when students are separated by space there are fewer opportunities to interact with the institution and other students. In a program offering remote locations, students at the individual sites have opportunities to join study groups or discuss the material with colleagues. But even with purely online courses, there are specific ways to ensure that students make use of each other and feel more connected to the institution.

First, degree granting programs should require an on-campus orientation where students can meet each other, instructors and administrative personnel. Students will be more likely to use each other as a resource if they have first met in person. The

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[102] I have adapted this recommendation from Najmuddin Shadik, Marketing Distance Learning Programs and Courses: A Relationship Marketing Strategy. The paper was one of three selected as "Best Paper" among DLA proceedings, Jekyll Island, Georgia, June5-8, 2005; see www.westga.edu/~distance/ojdla/summer82/shaik82.htm

[103] Audio Conference with Magna, Effective Marketing Strategies for Distance Education Programs, presented by Namjuddinj Shaik. (May 18 2006).

orientation session helps facilitate a face-to-face connection between participants in a program that may not occur again until graduation unless the program uses videoconferencing technology. Students may also feel more comfortable asking an instructor or administrative personnel questions throughout the course of a program if they have first met face-to-face during orientation. Finally, an orientation session provides an opportunity to explain academic policies and standards and to demonstrate how technology will be used to offer course instruction and supporting materials.

Professors in programs offering videoconferencing as the primary medium of instruction, should further support face-to-face connections by teaching from as many of the locations as possible rather than just the one most convenient. Relationships can be further encouraged by a web-directory containing pictures and contact information of participants in the program. Finally, listservs, chat rooms, and mailing lists are other ways to continually support the initial face-to-face contact established during orientation and to help students feel connected to the institution and each other.

The LL.M in Taxation from Alabama requires all students from throughout the Southeast to attend an orientation session at the University before the start of the two-year cycle. This gives students a chance to meet each other, the administrative staff and some of the professors in the program. Students are taught how to make the most effective use of available technologies and how to communicate with staff and each other. A program electronic facebook is created to foster these communications. Each classroom is asked to elect a representative who will be in charge of communicating common complaints or suggestions whether they be technological or pedagogical in nature.

Attention to relational marketing also means that great care should be given to make sure that the online program runs well technologically and administratively. With videoconferencing programs, virtual classrooms should be located at educational institutions that are well supervised by an informational technology or distance education department. Good site selection and competent technical supervision are critical to the success of a distance program offered through videoconferencing because the loss of connection with the bridge means the loss of the primary mode of instruction. Each virtual classroom needs a supervisor who can make sure the room is open, the equipment is on and the audio and video connection is made and not broken during class time.[104] A qualified technician at the bridge location is also required before and during class for programs or courses connecting several sites. Such personnel make sure that all the sites have properly connected to the bridge and that none have audio problems that are disrupting the class.

In regards to administration, online mechanisms for course registration, book ordering, and withdrawal from courses should be available on the website. The website should be maintained regularly and updated promptly especially if it contains materials to be digested before class or even video or audio streams useful in reviewing prior classes.

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[104] For a fee, this room supervisor may also be useful in ensuring the academic standards of the course by proctoring exams.

The program director should constantly problem-solve throughout the course or program term remedying any technical or administrative difficulties associated with matriculation, online registration, access to course materials, delivery of instruction and the administration of exams. Course and program evaluations that provide opportunities to comment on both instruction and technology should be emailed or made available through a website.

Good quality control measures are important to all programs whether they are based upon distance education technologies or not. However, a distance education program has the same concerns a traditional class has plus those associated with the technology. Quality control measures are more important in distance education courses because students separated by space may feel that the law school or program administrators are less available and involved. Thus law schools should do everything possible to facilitate connections with instructors, other students and the institution and minimize technical or administrative frustrations.

Conclusion

While the pace is still undetermined, there is an emerging market for legal distance education driven by recent changes in ABA regulations, as well as specialization in the curriculum, and expanding costs of traditional education. Legal distance education consortiums are being created to offer a platform for the trading or selling of courses and programs. However, much skepticism remains about the ability of distance education technology to offer law schools and law students a sufficiently interactive pedagogy. Concord Law School is a scary idea both because what it does and what does not offer legal education.

There are good ways and bad ways to offer instruction from a distance. To ensure that legal education remains a shared enterprise and an interactive endeavor between professors and students, asynchronous mediums of instructions should be used to supplement a more interactive and synchronous primary mode of instruction. To avoid common pedagogical limitations and administrative problems, law schools should be careful to "own" their course and program offerings and to use relational marketing techniques to keep distance education nearby.