Peter W. Martin
Jane M.G. Foster Professor of Law and
Co-founder, Legal Information Institute
martin@lii.law.cornell.edu

Cornell's Experience Running Online, Inter-School Law Courses – An FAQ

Abstract

For eight years Cornell's Legal Information Institute has offered online law courses to students at other US law schools. Using a paced asynchronous approach, with streaming audio linked to referenced Web materials, interactive problems, online discussion, and a series of written exercises, the courses offer a successful model of how law schools can pool teaching resources and students to enrich curricula. The article reports on and explains the choices, challenges, student response, and educational outcomes of this ongoing experiment, organized around ten frequently asked questions. It also ventures some cautious conclusions about the near-term prospects for distance learning in US legal education, noting both inhibiting forces, including importantly constraints imposed by accreditation rules, and recent grounds for optimism.

Introduction

Cornell Law School's Legal Information Institute (LII) first added a fully online course to its range of activities in 1996.[1] In the years following, its distance courses, offered to students at over a dozen other participating US law schools, have enrolled approximately 500 upper-class law students and exerted a liberalizing influence on law school accreditation standards dealing with distance education. The pedagogical, technical, and administrative structures developed for these courses have produced measurable gains for both students and schools – gains one might imagine propelling this model and variants to widespread acceptance. But major change comes slowly in professional education. While various forms of computer-mediated learning have achieved relatively high degrees of penetration in US law schools that has largely been in support of or as a supplement to conventional classroom-based teaching. To the extent schools have experimented with distance learning, it has mostly taken the form of linking teacher with students in one or more remote classrooms via video conference.

The LII's quite different approach has prompted numerous questions – from regulators, potential institutional partners, prospective students, as well as those contemplating

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[1] The LII was founded in July 1992 and began distributing hypertext course materials on disk that fall. The following year, 1993, it established the first law Web site < http://www.law.cornell.edu/ > and released Cello, the first Web browser to run under Windows.

similar ventures. This article is organized around the ten questions most frequently asked. In order to assist non-US readers to understand the basis for several of the questions as well as the nature of their answers, it begins with a brief sketch of features of the institutional context that bear most directly on the pace of implementation and the form taken by distance learning law courses in this country.

Context

Admission to the practice of law in all fifty US states and the District of Columbia requires successful completion of a three-year graduate program leading to the JD degree. With but a single important exception (that being California) work for that degree must be begun and completed at one of the 187 law schools accredited by the American Bar Association (ABA). Accreditation by the ABA depends upon compliance with detailed specifications. Importantly, its accreditation standards specify to the minute the time law students must spend in classroom meetings, how those meetings are to be scheduled through a week, and how the weeks comprising a term should be spread within a year. Clinical programs and other forms of experientially based learning are dealt with as limited exceptions to the pervasive classroom meeting paradigm. What law schools teach and how (beyond the use of classroom meetings) is largely unregulated. After the first year, most US law schools give their students full discretion over course selection. Outside the "skills" portion of the curriculum (e.g., clinics, legal research and writing courses, trial advocacy, negotiation) instruction is in the hands of individual faculty members working alone. There are no tutors or teaching assistants. Class sizes commonly range between 50 and 120. Academic schedules are quite various, as are schemes for grading and evaluating students. In most courses there is little formative assessment beyond what students can infer from classroom discussion, and the sole graded performance is an end-of-term written exam.

Fitting distance learning into this environment

Prior to 2002 how distance learning fit within the ABA regulatory structure was a matter of controversy and confusion. That year, following a lengthy period of hearings and debate in which the LII courses figured prominently, the organization approved distance learning as a substitute for classroom instruction but imposed tight limits. Under its revised accreditation rules courses conducted primarily by distance methods can substitute for approximately 18% of the required classroom instruction. They may not, however, be taken until after the first year of law study and then at a rate of no more than one full course or the equivalent per term. While constraining, these rules finally bestow legitimacy on courses taught by distance methods. Moreover, in laying down the boundary between what is and what is not to be considered a distance course for purposes of the limits they provide a test that may well encourage experimentation with distance learning as part of classroom-anchored courses.[2]

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[2] *See* ABA Accreditation Standard 306 and accompanying interpretations, < http://www.abanet.org/legaled/standards/chapter3.html >.

Concord

Despite ABA controls the US has one totally online law school. Established in 1999, the Concord University School of Law offers a four-year JD program delivered via the Internet that qualifies its graduates to sit for the California Bar Exam. [3] (As previously noted California does not restrict bar admission to graduates of ABA-accredited schools.) In five years Concord's online student population has risen to over 1,400. Its existence and evident success have drawn attention to the promise of distance learning in law.

The LII courses - Ten frequently asked questions

1. What sort of courses has the LII offered and how?

The LII's first distance course, which ran for three years, was constructed within a seminar framework. It covered a narrow topic, had limited enrollment (no more than eight students from each of four schools), and called on students to undertake independent research and writing projects that were shared for comment by the class. This first generation venture proved a very useful experiment. It tested the administrative and financial framework the LII courses have since employed and helped identify major challenges confronting inter-school course offerings (different student expectations, grading norms, and academic calendars, to name three). Finally, its success encouraged the LII to think in larger-scale, of online courses enrolling at least as many students as are commonly assigned a single faculty member in non-seminar teaching.

In 1999 rather than continuing to evolve that initial model further, we decided to pause a year in order to create a fresh pair of distance learning courses. One aim was to break free from the weekly "real time" video conference sessions that were central to the original course but created enormous coordination problems. We carried through with that plan and offered two totally asynchronous online courses in 2000-2001, one on Copyright, the other a survey of Social Security Law. The Copyright course has since been adapted for instruction of non-law students.[4] The Social Security course has now run for four successive years, drawing significant enrollments (over sixty students each year). Eighty-seven students from six law schools took the 2004 version. These students were spread across four time zones in the US and at least one in Asia.[5]

The basic components of these second generation courses include:

- digital readings (with a print-on-demand option)
- scheduled progression through a sequence of topics (one per week) paced by Web-based discussion and mandatory student submissions
- hypermedia presentation (streaming audio linked to assigned texts and supplementary materials)

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[3] Concord's online home is < http://www.concord.kaplan.edu/ >.

[4] The current version of the course is accessible at < http://www.law.cornell.edu/copyright/courses/law410/ >.

[5] The current version of the course is accessible at < http://www.law.cornell.edu/socsec/course/ >.

- computer-based tutorials and exercises (similar to those CALI has long distributed) tightly integrated with the readings and presentation material

- asynchronous but paced teacher-student, student-student written discussion

- four short writing and problem-solving assignments submitted via the Net for teacher evaluation and feedback

- an end-of-term exam for final evaluation of student performance

All three courses the LII has offered online have been upper-class electives. Their position in the curriculum assures that students enter with a solid understanding of the types of legal materials that frame the respective areas (statutes, regulations, appellate decisions), with skills of study and analysis developed during at least one full year of law school study, and with a command of legal concepts and vocabulary that can be deployed to gain understanding of these new fields. Neither course focuses significantly on the development of professional skills or involves experiential learning in the way a clinical course does or an evidence, procedure, trial practice or negotiation course may.

2. What is the relationship between Cornell and other "participating" law schools?

From the outset the LII's online courses have been offered to non-Cornell students through their schools rather than directly. A course is only available to students of law schools that have agreed to include it in their curricula. Participating schools retain responsibility for course registration, exam administration, and related logistical matters. Students register not with Cornell but with their home institution. Grades and credits are local. Participating schools also carry responsibility for front-line technical support for their own students (with LII back-up) and for assuring that their students have adequate computer resources and Internet connection. They are invited, though not required, to designate a local faculty member to be included in all course communications.

The Legal Information Institute's responsibilities are: preparation and distribution of course materials (free in digital format to the students), instruction, performance monitoring (the online analog of taking attendance), student evaluation and grading. Participating schools pay a per-student fee for the course. For Cornell this constitutes a return on the teaching and other resources devoted to the course. For participating schools it represents a cost of instruction comparable to the amount they might pay a part-time instructor to cover a single course.

3. Why should Cornell or any US law school offer a course to students of other (competing) institutions?

Technology-enabled approaches to education that allow teacher and students to be separated in both space and time open a wide range of opportunities. That pursued by the LII's courses is the possibility of assembling a class of sustainable size by enrolling students from multiple institutions. For the sponsoring school the evident gains are economic, reputational, and curricular. For the faculty member(s) creating and conducting such a course, expansion of the available student pool can support regular

teaching in an area of specialty which enrollment from any one institution would not justify. For receiving schools the arrangement enables curriculum expansion without the need to commit resident faculty.

Important legal topics like Social Security around which a critical mass of student interest and faculty expertise may not be found within a single institution are prime candidates for a distance learning structure that enables schools to pool teaching resources and students. Pooling can also enable cooperating schools to provide a greater range of courses in important areas (e.g., intellectual property, taxation, international trade) than any one of them would be able to mount on its own.

4. If a school is going to offer such a course, why not offer it directly to students rather than through other law schools?

Nothing in the regulatory scheme of US legal education prevents students from acquiring credits toward the JD of their home institution for courses taken at another school. In nearly all cases, however, such credits represent substantial additional educational cost for the student. By providing courses wholesale to schools rather than retail to students, the LII has been able to shield enrolling students from incremental charges. For students electing an LII course it is simply one of the curricular options of their own school covered by their base tuition.

Of perhaps greater importance this approach places all issues of student selection, authentication, academic integrity, grading norms, and student support with the students' home institutions. Finally, by treating students from each participating school as a separate cohort for grading purposes, we have been able to forestall student concern about competition for top marks with students from other, more selective institutions.

5. Why has the LII adopted a totally asynchronous approach?

Because the LII's first generation distance learning course included a weekly video conference it could not be fit completely within a single academic term. Inconsistent start times and vacation patterns among schools required distribution of those real-time class meetings across two semesters. The current model, being more flexibly constructed, does not require all students to be "in session" at the same time. This permits a course to be completed within one term.

The shift to fully asynchronous components freed instruction from the scheduling constraints inherent in assembling students at the same moment across multiple time zones and academic schedules. Less obviously, it allowed larger enrollments without loss of interactivity or accountability. This, in turn, made investment in reusable multi-media content economically attractive.

For students a fully asynchronous course holds many advantages. To begin, by eliminating class meetings all potential for course scheduling conflicts is removed. Students need not choose between Social Security Law and other courses they want to take. An asynchronous approach also reduces conflict with non-academic demands – e.g., job search, current employment, and family obligations. Last and not least, significant learning gains are realized by giving students greater control over the pace and

timing of their course work, a wider range of delivery options and content sources, and the simple capacity to replay.

6. Doesn't this form of teaching demand much more teacher time?

The short answer is that creating a full distance course of the sort the LII has offered does call for major authorial investment, in order of magnitude comparable to that required to complete a book or similar large-scale scholarly project. Conventional teaching can be conducted with high levels of improvisation, with session-by-session adjustments to both course agenda and schedule. Those teaching a course for the first time need only select a respected text, set a path through it, and proceed down that path far enough ahead of the students to post future reading assignments. By contrast, the scope, schedule, and instructional content of an effective distance course must largely be complete before the course gets underway. Viewed in the short-term, creating a distance course involves far greater effort than conventional teaching.

On the other hand, considered from a lengthier time perspective, the comparison becomes far more complicated. Once built, a course consisting of recorded presentations, programmed exercises, and previously prepared discussion questions demands far less teacher time and effort to conduct. In subsequent years, lectures need not be repeated, merely updated. Furthermore, the flexibility that comes from not having to attend class sessions at set hours several times a week can hold even greater value for a teacher than her students. When working with a class asynchronously, one need not put aside a scholarly project at some arbitrary point to get ready for class nor be anywhere near the school.

7. For the presentation component why use audio rather than video?

The reasons have, to us, seemed compelling. To begin, there is a stark cost-benefit advantage to audio. While the educational gain from using video can be enormous when the medium is being used to show process or action – whether the topic be marine biology, migration trends of the past century, volcanic eruption or cross-examination at trial – the educational gain from adding a head and gesture to a teacher's voice is minimal. No doubt some psychological value flows from students being able to visualize their professor, but that can be realized through a short video introduction to the course. Experience of others using "talking head" video in legal instruction suggests that students tend to listen more than they watch, their eyes being drawn instead to note-taking and to any reinforcing or illustrative material being delivered to the computer screen.

On the cost side, the difference between media is huge. Video imposes several different types of added cost. Most obvious is the greater expense of initial production. Students bring expectations of broadcast quality to video material. Creating video content to that standard is more expensive than first-rate audio by several orders of magnitude. Furthermore, whatever assumptions one makes about the amount of initial editing and the ongoing rate of course revision in successive years, video, being far more complicated is, therefore, more difficult and costly to edit and maintain.

Bandwidth is a totally separate matter. The streaming audio, multi-media technology used in the LII courses operates reasonably over a dial-up Internet connection. Streaming

video does not. Its use requires students to have more capable and more expensive network connections, and it also obliges the offering institution to have greater serving capacity.

Finally, audio offers a much lower threshold to course authors. US law teachers tend to create in relative solitude. They write, they prepare and deliver their courses by themselves. Use of teaching assistants is rare. Effective though they may be in live lecture and discussion formats, few are as comfortable or skillful before a camera. A mode of multi-media course production that begins with a microphone attached to the professor's office computer is accessible to many more teachers than one requiring use of a studio and video crew. With current authoring tools, high quality audio can be prepared, edited, and revised by a faculty member, alone, in his or her office. Software tools designed to allow presenters of all kinds to associate audio files with their PowerPoint slides readily permit creation of presentations that refer to a wider range of Web material. With a set of course materials online, the teacher can speak about a statutory section or passage in an assigned case and have that very text automatically loaded in the student's browser as it is being discussed. The student can, in turn, pause the audio in order to reflect on the text, copy portions into his or her notes, or follow hypertext links that connect to related material.

If prepared with a modular architecture, such content can be assembled in different combinations and configurations. Finally, it can, in later years, be altered by adding, subtracting, or substituting new audio and textual material, without the need to rebuild from scratch.

8. How do you prevent students from slacking off until just before the exam (the virtual equivalent of regularly cutting class)?

Face-to-face class meetings set a tempo and provide benchmarks for student progress through a course. Years of prior instruction in this pattern condition students to depend on class meetings for time management. Inevitably, students who must balance the demands of a single asynchronous law course against three or four other courses driven by class meetings (or scheduled hours in a clinic) face a powerful temptation to defer the "virtual" work in favor of the "real".

In such a learning environment, it is critically important for an asynchronous course to have clear temporal expectations. While students are not required to be in the same space at any one moment, they need to understand that they are expected to have mastered particular material by specified dates. Collective educational interests are at stake. Without roughly parallel progress useful peer-peer exchange is not possible, and a teacher's ability to gauge and respond to points of shared confusion or difficulty is severely reduced.

LII courses employ multiple measures to hold students on pace without scheduled class meetings. These include weekly modules with specified completion dates, regular communication of expectations via email, release of new material only one week in advance (enforcing approximately parallel engagement), and a sequence of required written exercises, each based on the proceeding three weeks of material, following by swift feedback and discussion.

9. How have the students responded?

At the conclusion of each LII course students are urged to complete a detailed questionnaire. Response has been quite high (82% in 2003, 75% this past year). For a substantial majority of those responding the model worked as envisioned. Most would take another course offered in the same format. That is despite a recognition that the experience was quite demanding. Cumulating the past two years, well over seventy-five percent of the respondents reported that the time and effort required by the LII's Social Security course was more than that required by other upper-level law courses covering comparable content in their home institutions. Only 5% or so rated it less demanding.

Asked to characterize their ultimate success in mastering the course content, again in comparison with conventionally taught courses, over seventy-five percent rated it equal or higher.

Concerning the quantity and quality of teacher feedback and discussion with other students and the teacher, over two-thirds judged such forms of interactivity greater than in conventionally taught law courses with similar enrollment and an additional one-fourth rated it comparable.

As with any course, some students found the material dry; others were fascinated by it. Presentations that many judged to be "perfect" or "easy to listen to" and "at a good pace" struck others as "monotonous," "too rapid," or "too slow".

A large number of students commented on distinct advantages they found in the course design. One of this group wrote:

> Overall I enjoyed the experience and found it as informative as a traditional law school course. It was superior in many ways as I could go back and listen to the lectures again and all of the primary law was sorted out for me by topic and it was just a click away.

> I would take another online course if one were available.

Several qualified their endorsement. For example, a student wrote: "I would take another online course, but only in another course in which I had a great interest, since you have to be pretty self-policing about doing the work." Having pre-recorded presentations that one can pause and replay is not an unmixed blessing. A student who responded very affirmatively to the online structure of the course, noting that "the time-shifting advantages to an evening student with a full-time job are great," also observed that material in this format demands more time from a serious student:

> [P]er unit time, the [recorded] lectures of this course contained at least twice the information as a live class lecture; there are no interruptions by students questions and the professor never has to slow down or repeat a point for emphasis, because the student has the ability to rewind or pause a lecture at any point.... The canned nature of the lectures also allows for more speaking perfection and less repetition than extemporaneous lectures.

This past year forty-one percent of the responding students indicated that their regular approach to the online presentations involved pausing them for note-taking and reflection; thirteen percent generally ran them more than once.

The asynchronous structure didn't work for everyone. Some discovered (often to their surprise) that they missed the stimulation and discipline of classroom meetings. One student expressed this reaction as follows:

> I learned that I do not learn well in this environment. The process and procedure worked well, but I learned that I am a student that requires going to a class and actually hearing the course material and the questions and answers. This is not the fault of the course, but rather my ability to learn under the circumstances.

Two features regularly draw close to unanimous student endorsement: (1) the interactive problems coming at the end of each topic, which allow students to assess their own level of comprehension immediately after completing the readings and online presentations, and (2) the four mastery exercises spaced at equal intervals through the term.

Students have been of mixed views about the value of the online discussion area (to be distinguished from the material they submitted for programmatic or teacher feedback). A significant number of students, whether or not they participated in discussion, were positive. But from others came views like: "People seem to post things just to see their own words and name! A lot of things posted went off on tangents and were not at all beneficial to me after I spent so much time reading through them." The asynchronous nature of the discussion and the fact that a few students were very active and quick to participate led to related feelings of frustration. Some in the class reported that often by the time they were ready to express a view the point had already been made by one of these swift posters. (In the controlled environment of the classroom a teacher can more readily control eager and assertive student contributors.)

10. How well have the students performed?

Coming from multiple schools, the students enrolled in these courses represent a greater range of language and analytic skills, work and life experience, and facility in doing "law student work" than a teacher is likely to confront in a single school's student body. Taking account of that diversity, the quality of student work product (the weekly problem submissions, online discussion contributions, mandatory mastery exercises, and final exam) was quite high. Measured in terms of: 1) understanding and mastery of course content, 2) sustained engagement, and 3) learning from one another – the course outcomes were, overall, better than previously experienced with comparable students meeting thrice a week through a term.

With a classroom-anchored course culminating in a final exam, there are few reliable mechanisms for monitoring individual student progress during the term. Attendance may or may not be effectively tracked. Class preparation may or may not be audited by periodic queries directed at non-volunteers. Even with the most rigorous application of "Socratic" teaching large upper-class courses provide plenty of cover for students who opt for a "wait and then cram for the exam" approach. In contrast, online teaching methods enable a teacher to be far more attentive to the progress of individual students. The model of asynchronous instruction represented by the LII's courses includes weekly progress expectations and four mandatory progress checkpoints (the "mastery exercises"). Aided by a work environment that logs student contributions, the structure facilitates prompt intervention when any student falls behind.

Some Tentative Conclusions about this Model and the Near-Term Future of Distance Learning in US Legal Education

Numerous factors inhibit both creation and spread of inter-school courses in the LII model, notwithstanding the new space opened by the 2002 accreditation rules. Creating and sustaining such a course requires serious institutional commitment rather than mere approval of individual faculty initiative. Status differences among institutions, budget constraints, plus individual and collective faculty apprehension over letting outsiders into the curriculum limit acceptance of courses produced by other schools. Nonetheless, there are some grounds for optimism.

Among the 187 ABA approved law schools in the US a significant number are at once small and local – local in the sense that they draw nearly all their students from a single metropolitan area and its adjacent region. While schools with these characteristics do compete with institutions of stronger reputation in the state and nation, they rarely fight for students with one another. Their size and location invariably limit the curricular offerings open to their students. Distance learning has awakened some of these schools to the possibility of course sharing. A faculty member at one institution who possesses the competence to teach a specialized course can via distance technology provide instruction to the students of one or more others. A consortium to foster inter-school course exchanges in this model has just this year been established under the aegis of the Center for Computer Assisted Legal Instruction.[6] This institutional framework together with the legitimacy furnished by the ABA's new accreditation standard may foster the spread of distance courses of diverse types, including variants on the LII's asynchronous model. The Institute is assisting the new consortium with faculty training materials and advice about interschool administrative arrangements.[7]

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[6] *See* < http://codec.cali.org >.

[7] *See* < http://www.law.cornell.edu/background/distance/codec/ > (providing greater detail on how the LII courses are created, conducted, maintained, and administered).