

A Seven-Year Experiment in Distance Legal Education: Some Preliminary Findings

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For me, as for many of you, this term's teaching is done – all that remains is a stack of student exam papers that should be ready

for my attention when I return to Cornell. But unlike you all of my teaching this past term was carried out on-line. My sixty-five students did not gather with me regularly at some designated hour in a room like this. Indeed they had no such meetings at all.

Now I have no idea what vision such a statement brings to your mind, but if my experience in the States is any guide there is one, and it is likely to be substantially off the mark. For example, colleagues at other US law schools would be quick to assume that I used high-bandwidth video conferencing technology to connect up classrooms at several different spots. Many of our schools have installed the equipment for such hookups and it has seen some use. Most members of the bar would imagine I had stuck a video camera in my Cornell classroom and redistributed whatever it recorded, unedited – the most common form of on-line professional education in the States. And those familiar with America's only fully on-line law school Concord (of which more subsequently) might leap to the conclusion that like Arthur Miller I had gone to into a studio where a professional crew taped my lectures for subsequent student access. My on-line teaching has taken none of these forms.

My principal aim this afternoon is to explain and, to the extent possible, show you what I have done, and how, and why ... concluding with some observations and questions.

But to understand the particulars and have any chance of relating them to the potential uses of on-line or elearning in Scotland, we should first review the context into which my courses fit.

I. The Context: US Legal Education

The program

- Three year graduate program (nominally) or four years part time

Unlike here, law study in the US follows a four-year bachelor's degree in some other field. Most commonly it is political science, history, or business; but it can be chemistry (my case), music, or mathematics. Our students are older. Most do not come straight on from their undergraduate studies. They are experienced students, researchers, and writers ... and today "computer users."

The JD course of study is three-years, full-time. Most major cities have at least one law school offering a part-time JD for those who want to secure a law degree while continuing full-time employment – with classes scheduled for evenings and weekends.

- Qualifies graduates to practice law as soon as they pass a state-administered qualifying exam

The JD degree from an accredited law school qualifies the holder to sit for a state bar exam. These exams are scheduled for a month to month and a half after graduation.

- Costly (aver. out-of-pocket cost for the class of 2002: \$61,076, public; \$102,960, private)

Legal education like US higher education generally is expensive (aver. out-of-pocket cost for the class of 2002: \$61,076, public; \$102,960, private). **The average student mortgages his or her future to pay the enormous out of pocket cost – with median debt incurred acquiring a law degree currently in the range of \$80,000 to \$90,000. Public funding**

(which in the US is state funding) of higher education generally, and legal education in particular is declining rapidly so tuition and fees at public institutions is climbing at an alarming rate.

In addition to the out-of-pocket costs there are, for those pursuing a law degree full-time, significant opportunity and often relocation costs.

- Numerous (excess capacity)

Law schools are numerous (180 with American Bar Association accreditation) and have, in relation to the demand, excess capacity. In some areas, at least, that capacity continues to grow. Florida is about to open two new state-sponsored law schools and is home to at least one new religiously sponsored one.

- Run as fiscally autonomous units (entrepreneurial)

America has a number of “free-standing” law schools – institutions not part of a larger university. But even within the university the typical US law school operates as a relatively autonomous fiscal unit – charged with raising its own revenue. Deans are obliged to be entrepreneurial.

- Engaged in fierce competition for students

The most direct form of inter law school competition is over students. Schools at the bottom compete for sufficient enrollment of students with reasonable prospect of passing their state's bar exam. Schools toward the top compete for the very best students – knowing that the most direct path to improved performance in the annual US News & World Report rating of law schools is to improve the credentials of your matriculated students.

- Highly stratified

As my reference to top and bottom, and the US News and World Reports ratings, suggests law schools are high stratified. Crudely sketched there are schools that compete nationally, schools that draw from a significant region, and schools tied to a single metropolitan area – in some cases a large one, Chicago say, in others small and declining, Akron.

The students

- Bright (compared to those going into other fields)
- Diverse, not only in terms of educational and employment background, but ethnicity and gender.
- Engaged in fierce competition for class rank during the first year
- Subject to a huge tailing off of interest and engagement thereafter
- Heavy computer users (compare lecture hall 183 yesterday)

The regulatory regime

- The peculiar role of the American Bar Association
- The ABA's stance on DL
- California, the altogether different state
- Concord

Very pertinent to my topic is the way professional legal education in the US is regulated. Even though admission to the practice of law is a matter of state control, nearly all states (thankfully not all) include as a threshold requirement that the individual seeking admission have graduated from an American Bar Association

accredited institution. Thus it is that this membership organization consisting of but a small fraction of the country's lawyers promulgates and enforced standards that prescribe the length and content of the education program, as well as the methods of instruction at most American law schools. No matter where a law school is located in the US if it wants its graduates to be employable in New York, Illinois, Texas and so on, it must comply. And while the association as a whole formally enacts the standards, the section of the bar association that drafts and enforces them has long been dominated by the very interests it regulates – namely the faculties and deans of US law schools.

In 1997, frightened by the specter of on-line legal education, the administrator of the association's accreditation process issued a set of "Temporary Guidelines on Distance Education." The guidelines set up a confusingly restrictive clearance process for virtual courses. It was only last summer that those temporary guidelines were replaced, replaced by a permanent set of restrictive rules. They are fully consistent with other rules that severely other likely breaks in the existing paradigm – e.g., weekend programs, use of satellite facilities.

It is only because one major state (California) remains outside the ABA cartel that America has one fully on-line law school. Perhaps you've heard of it; its name is Concord. It offers a very sophisticated four-year part-time program (at a total price less than one year's tuition and fees at a school like Cornell) that graduated its first class last November. While the name may evoke a green on the outskirts of Boston, this commercial on-line venture is a subsidiary of the Kaplan test preparation company, which is in turn a subsidiary of the Washington Post. It is seriously capitalized. Its long-term business plan is not naïve.

The standard pedagogy

The important fact about the bulk of the teaching that goes on in US law schools is that it is carried out in classes of from 50 to 120 with a single instructor, and no complementary tutorials; all the interaction, all the exchange in a subject is led by the single instructor. Some manage to teach quite interactively, despite the numbers, but most lecture especially with upper-class students. Students get little if any assessment other than a grade on the final

exam. This is one of the reasons student engagement falls off so markedly after the first year.

II. Legal Information Institute (LII) and Distance Learning

The institute as a research and public service activity, with huge external audience and visibility

Oldest, most heavily used non-commercial legal resource on the Internet

Established in 1992 as an applied research activity our institute's web server has been on-line, delivering key US legal materials for the full decade during which the Web grew from a research venue to a true world-wide information and communications pathway. Currently our servers contend with over a million data requests a day. When the US Supreme Court hands down a decision, as it did on Tuesday, an immediate data transfer from the Court places it on our server and launches the preparation of an email bulletin that distributes summaries with a link to the full text to close to 20 thousand subscribers (including at least one on this faculty). Our collections enjoy pride of place in Google.

- Electronic publisher of core materials used in law-related courses at all levels of US education
- Technology partner on the Harvard Law School "Bridge Project"

First course offered via the Internet to students of three other law schools in 1996, current set of courses launched in 2000

In 1996 we (Cornell's Legal Information Institute or LII) invited a number of law schools to join us in an Internet-based course. Three accepted: the University of Colorado, Chicago-Kent College of Law, and the University of Kansas. For three successive years students at those institutions and Cornell studied "Copyright and Digital Works" with me and each other. The course made use of "off the shelf" Internet software (Web pages, Web-based conferencing, desktop video conferencing, and e-mail) and succeeded in adapting the US law school teaching paradigm to this quite different educational environment.

In the spring of 1999, we concluded that, rather than continuing to evolve the initial model further, we should take what we had

learned about available technology and appropriate pedagogy, pause a year, and create a fresh pair of distance learning courses. In doing so, we hoped to break free from the weekly “real time” video conference sessions that were central to the original model. We carried through with that plan and did, in fact, offer two totally asynchronous distance learning courses for the first time during academic year (2000-2001).

**Financial, administrative, and regulatory
framework for past and current offerings**

- Courses offered to upper level professional degree students

Both are upper-class electives. Although they carry no prerequisites, 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 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. As taught in most schools 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. Instead they are organized around their respective legal domains. Whether taught in a classroom or on-line, they characteristically aim to build a solid understanding of the salient features of the respective fields, plus a sense of how to approach key issues from several important lawyer perspectives such as those of advocate, counselor, advisor, arrangement-maker, policy analyst or critic. Since neither area is static, topics of proposed or imminent change regularly prompt analysis of contending policies and political forces. And they lie within that sector of the law school program where conventional instruction is least successful.

- Participating schools add the course to their curricula and buy the instruction from the LII/Cornell (\$500 per student per course)

In this framework, all participating schools retain responsibility for course registration, exam administration, and related logistical matters. Students registered not with Cornell but with their home institution. Grades and credits are local. Participating schools are also responsible for front-line technical support for their own students (with LII back-up), for assuring that their students have adequate computer resources and Internet connection, and for providing a meeting room suitable for local discussions among enrolled students.

In order to take the course students have to have regular access to multi-media capable computers with sound and Internet connections capable of delivering streaming audio reliably – either in the law school or elsewhere. Participating schools are encouraged but not required to designate a local faculty member to be included in all course communications.

The Legal Information Institute's responsibilities include: preparation and distribution of course materials (free in digital format to the students), all instruction, performance monitoring (the on-line analog of attendance), student evaluation and grading. Participating schools pay a fee of \$500 per student per course.

- Fit comfortably within the revised ABA rules which allow a total of 12 credit hours of distance education

I won't unless you force me go further into the new ABA rules. For now, it should be enough to observe that until this year our courses operated in a zone of accreditation uncertainty (not for us, but for the receiving institutions). At precisely this time last year, I was testifying against a very bad set of proposed new accreditation rules on distance education, that I am happy to say were, in the end, supplanted by a commendably clear and even-handed (though frightfully conservative) new standard that allows students at accredited institutions to receive up to 12 course hours of credit over their 3-year (80 credit) degree program for work in courses like ours.

Reasons for schools to participate (or not)

- Course fills a curricular void
- Course allows resident faculty to offer greater curricular depth

Were distance education arrangements like this widespread, with many law schools participating as providers and receivers, the

basis for a school's decision to participate or not as to any particular course would be straightforward. Assuming adequate assurance about the quality of the materials and instruction, the issue would reduce to considerations of curricular fit, faculty deployment, and budget – e.g., does the course add an important subject the regular faculty cannot cover (Social Security) or provide desirable flexibility and increased options in an area of strong student demand (Copyright) at an acceptable cost?

Because interest in distance education is high and experience rare, there has been a further reason for schools to join in. The experiment has offered an opportunity to observe carefully designed and executed distance education at first hand. Few, if any, other law schools have experience in Internet-based legal education comparable to the LII's. Participating schools were invited to designate one of their own faculty members as an "auditor/observer." Every effort was taken to open up the process of course construction and delivery. Schools were encouraged to use interviews, questionnaires, and other means to evaluate student response and educational

effectiveness. In short, participation provided a means of experimenting with distance education for schools that had not yet done so and of exploring an alternative model for schools that had.

- More economic with a small enrollment than use of full-time faculty

Social Security is a subject that receives negligible curricular attention in U.S. law schools despite great importance and legal complexity. It is one of a host of important legal topics around which a critical mass of student interest and faculty expertise may not be found within a single institution. Courses covering such topics are non-controversial candidates for a distance learning structure that enables schools to pool teaching resources and students.

- Two considerations, less openly acknowledged - status and turf

I'll merely observe that nearly all the law schools that have participated in Cornell's offerings lie significantly below Cornell's place (currently #10) in the all powerful US

News and World Report ranking. And that all schools with members of the permanent faculty teaching in the vicinity of these courses have given them a de facto veto over participation.

III. Current Courses

Subject: Social Security Law

- Participating institutions (last year and this): Cornell, Concord, Duke, Nova Southeastern, Rutgers-Camden, Rutgers-Newark, William Mitchell
- Students: Approximately sixty-five (spread from Florida to Alaska, Minnesota to North Carolina, California to Germany)

Subject: Copyright

- Participating institution: Cornell University
- Students: Undergraduates majoring in information science, the arts, journalism, etc.

IV. Principal Components and Alternatives

The basic components of our current distance learning model include:

- digital readings (with a print-on-demand option)
- scheduled progression through a sequence of topics
- hypermedia presentation (streaming audio linked to assigned texts and supplementary materials)
- 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
- 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

Let me demonstrate these components in turn.

Readings (3 types - Assigned text, reference materials, and background reading)

- LII approach: On-line distribution directly to individual students

There are no readings for the students to buy. There are certain key readings, including a printable version of my treatise, that are downloadable in a format intended for printing.

The balance of the readings, assigned or listed as background, topic by topic can be printed in whole or part, read from the screen, or some of both. Student practice varies widely. I warn the class upfront that if they print all the readings, as well as the written exchange that takes place in the course discussion area, the bulk and expense will be considerable.

- Alternatives: Print distribution of a commercially published or self-published text, CD-ROM (with local printing)

Lecture plus illustrative texts, charts, etc.

- LII approach: Digital recording with streaming, asynchronous delivery directly to individual students, key references (legal texts, illustrative charts and graphs) linked to the audio

Several different components substitute for the work that students and I do together in the classroom when I teach conventionally.

Look at a typical week's "course of instruction."
(If we look at the course syllabus and schedule <
<http://www.law.cornell.edu/socsec/course/syllabus.htm> >
you'll see that each topic, a week's block of material, has both a reading assignment and a "course of instruction.")
This is the "course of instruction" for Topic 6. It lists two background presentations and one entitled "Approaching the readings." Those consist of streaming audio linked to an outline, relevant charts and graphs, the pertinent provisions of the statute and regulations.

As my presentation proceeds the audio file takes charge of the student's web browser so that she is, perforce, looking

at the very statutory language I am discussing as I refer to it. The student has a control panel allowing her to pause or jump back to a portion of the presentation that confused her. The student can also block and copy portions of the illustrative material into his notes.

- Why not video?

In faculty workshops and other settings where these courses have been described and demonstrated, one question that recurs is why we chose audio rather than video for the “teacher presentation” components. The reasons are numerous.

To begin, there is a stark cost-benefit difference between the two. 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, volcanic eruption or cross-examination at trial – the educational gain from adding a head and gesture to the 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.

On the cost side, the gap is enormous. 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 ongoing rate of course revision in successive years, even at levels as low as 10-20% per year video, being far more complicated is, therefore, more costly to maintain.

Bandwidth is a totally separate matter. The streaming audio, multi-media technology used in the LII courses operates quite 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.

Most law teachers 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 comfortable and as skillful before a camera.

For these and other reasons, a mode of multi-media course production that begins with a microphone attached to the law 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 prepare audio files to accompany their PowerPoint slides can be readily adapted to the creation of presentations that refer to a wider range of Web-based material. With a set of course materials on-line, the teacher can speak about a statutory section or passage in an assigned case and have the 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 to follow hypertext links that connect to related material, as for example, another statutory section defining key terms or qualifying its apparent meaning.

Within a modular architecture, such content can be assembled in different combinations and configurations. It can, in successive years, be altered by adding, subtracting, or substituting small bits of new audio and textual material, without the need to rebuild from the beginning.

- Alternatives: Audio or video tape, CD-ROM or DVD, delivery to classroom rather than individual student

Means for student self-evaluation

- LII approach: Drills and exercises with immediate programmed feedback

After the student has done the assigned readings, the next step is a page entitled "Some illustrative and problem situations." It too has voice over, encouraging the student to identify the contents of that page with the hypotheticals law teachers commonly pose in class. The problems allow each student to gauge his or her own mastery of the material, for problem by problem they deliver immediate programmatic response to the student's answer. These

have proven very popular. Indeed, this is one dimension in which students express a desire for more: "The pop up windows for the illustrative questions were great. I wished they popped up for each question."

- Alternatives:
 - CD-ROM
 - Exercise books for local teachers or individual student use

Discussion (student and teacher)

- LII approach: On-line threaded discussion, combined with regular solicitation of questions and issues for discussion from the entire class

The next item is a page designed to give me information about the entire class in advance of our period of discussion. Unlike the interactive problem page for a topic this one gathers student input in a database that I consult before beginning the online discussion.

All of this is done at the student's own pace and timetable, but on a schedule that points toward the commencement of discussion on the week's topic on Thursday morning (the last link on a topic's "course of instruction" page). Since the students are scattered across many time zones, the discussion itself is asynchronous and since we need not close one topic as we move on to another you will find postings to some topics by students or me after their weeks are past.

- Alternatives:
 - E-mail
 - Local discussion led by a local teacher or teaching assistant, perhaps combined with periodic communication with remote teacher

Student assessment

- LII approach:
 - Periodic mastery exercises with on-line submission and e-mail feedback

The course tempo and my expectations are reinforced by email messages that begin each week and its new topic. And anchoring the structure are four "mastery exercises" spaced through the term. Here is one of them. Each problem is posted a week before answers are due. Failures to meet the deadline get my swift stern attention. (The students know that their performance on these exercises along with other forms of "class performance" can lead to a grade either above or below their exam score.) Within 48 hours, the class gets a "generic feedback" message by email, permitting self-critique.

- Final exam distributed by e-mail to participating schools and administered by them
- Alternatives: Countless (e-mail, mail, fax ...)

V. The Full Cycle

Create (we now have template, tools, process, and infrastructure)

Conduct

- Course structure (LII)
- Keeping students on task and in reasonable parallel in an asynchronous course
 - Why?
 - How?
- Numerous possible role allocations (one teacher need not both create and conduct)

Revise, update, reconfigure (and reuse)

- If course creations is done carefully, with suitable modularity, much of the recorded course content, though by no means all, should still be in use 4-5 years later
 - Revised to take account of experience gained in conducting the course and
 - Updated to take account of changes in the law and high-profile legal events and
 - Where possible, reconfigured for other audiences
- The critical importance of a sustainable economic and institutional framework

- Who does, who "owns" and who pays?

VI. Principal Findings and Some Larger Questions

Students

- For a majority of these experienced law students the educational outcomes and levels of satisfaction compare favorably to those from courses with similar content, conventionally taught

At the end of each course I ask the students (who are predominantly in their last year of law study) to compare the on-line course with "other specialized law school courses with comparable credit." Specifically they are asked about: (1) the total time and effort required, (2) their own success in mastering the material covered, and (3) the quantity and quality of teacher feedback and amount of discussion with teacher and other students. Answers are consistent across the two courses and years with a strong majority of students reporting that they worked harder, achieved comparable or greater mastery, and

experienced more feedback and exchange than in a classroom course of similar content.

The structure of our courses allows students to organize their work for more successful learning. The fixed length class at a standard meeting time imposes significant burdens to which most law faculty members and students are blinded by familiarity. The duration is often too long, sometimes too short. In terms of student readiness and attention, the moment is arbitrary and, therefore, frequently the wrong one.

Students taking these on-line offerings have enormous flexibility in how they fit the multiple course elements into their weekly schedules. Such control over the exact time and place of their learning was, for the students, the most highly valued feature of the asynchronous course architecture. Not only could students to take up a given module when they were ready and able to focus, they could run it, pause, take notes, and return to puzzling points. In numerous ways they could exercise a degree of control over each step of the process quite impossible in a real-time classroom session.

Course questionnaire results indicate that more students than not took advantage of the capacity to pause and replay the course presentations and also to block and copy the presentation outlines and visited text (e.g., statutory provisions) in the course of note-taking. As one student explained: "What was great about the [format] was that I was able to go through the [presentation] once but pause many times. I would write what you said and then stop Then I would look at the statute or regulations and highlight it and make notes in the margin."

The on-line class discussions had both fans and detractors with the obvious base for comparison being discussions in a conventional class of similar size. Objectively several things seem clear to me. Including the forms which asked every student to submit a question or take a tentative position on a hypothetical problem before the related on-line discussion began many more students were involved in the exchange throughout the course, topic by topic, than I have ever been able to bring into "real time" classroom discussion. The evident degree of reflection and level of discourse are high and I observe more frequent introduction of personal experience and references to

material outside the assigned readings, including current events. However, just as some students find this a less inhibiting venue for expressing themselves than a classroom, others exhibit at least comparable reluctance to "speak," perhaps in part because the class includes others they do not know, from different law school communities. Some reluctant posters said they liked the discussion environment, nonetheless: "I like the discussion area. I like to read all the messages even though I didn't put anything there. :-)"

The interactive features draw near unanimous praise, both the programmed problems and the set of four "mastery exercises". A typical student reaction to this course component reads: "I thought the mastery exercises were useful and the feedback was very helpful too." Another student, perhaps more candid, wrote: "The mastery exercises were a necessary evil. I am thankful they were included insomuch as it is too easy to fall behind. Those exercises forced me to keep up with the material and review it again and again until I found the appropriate

answers." Yet another exclaimed: "Finally a law school class where a question is not answered with another question."

Dissatisfaction?

Overall, most of the students who have taken our courses were pleased with their on-line instruction. A number pronounced it their best law school learning experience. What were the complaints? Anyone who has taught an upper class law school course can imagine many of them. To some my voice was soothing, to a few it was monotonous. The expectation of involvement struck a handful as "unrealistic." Said one: "I have never been in any class where EVERY person has something to say on EVERY topic!"

Based on a review of the full range of student feedback, I have concluded that most individual student frustration and dissatisfaction can be traced to one of three sources: 1) technical problems, 2) specific expectations of what an on-line course would or should be that were not fulfilled by this one, and 3) the challenge of dealing with digitally-delivered course readings.

Faculty (sample of one)

- Effort is heavily loaded on the front end

I am invariable asked by colleagues about the amount of time such teaching requires. My answer is a simple one. Amortized over a 3 to 5 year cycle the time is comparable to that required by conventional teaching, but the front end investment – recording lectures and selecting the linked illustrative material, preparing the interactive exercises, developing the on-line discussion strategy – needs to be viewed as at least the equivalent of writing a book. Updating and conducting the course in years 2 and 3 requires significantly less time than engaging the same number of students interactively in a classroom 3 times a week.

- Time and space flexibility is very attractive
- The experience lacks both the electricity and the tedium of performance for a "live audience"
- Division of labor becomes possible
- And the learning outcomes are rewarding

The students enrolled in these two courses represented 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 law school student body. Since some of the participating schools had part-time divisions, the mix of students in both courses included significant numbers who brought directly relevant work experience to the exchange. Taking account of that diversity, I judge the quality of student work product I have seen in these courses (the weekly problem submissions, on-line discussion contributions, mandatory mastery exercises, and final exam) to be of very high quality. 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 I would expect to achieve with the same students meeting thrice a week through the 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 the large upper-class course provides plenty of cover for students who opt for a “wait and then cram for the exam” approach. In contrast, on-line teaching methods enable a teacher to be far more attentive to the progress of individual students. The model of asynchronous instruction represented by our courses include weekly progress expectations and four mandatory progress checkpoints (the “mastery exercises”). Placed in a work environment that logs student contributions, it facilitates prompt intervention when any student falls behind. As teacher I have experienced an unfamiliar level of confidence that I was detecting student difficulty or simple procrastination in time to make a difference.

Receiving institutions

- Most, having joined, continue to participate

- However, during periods of fiscal distress or administrative change such a course is an easy casualty

Technology and pedagogical choices: Basically sound

The inhibitors

- Legacy skills and mindset
- Faculty preference for autonomy
- Relative priority of teaching/learning
- Concern about brand

Few experienced classroom teachers are eager to become beginners again.

But the attraction of traditional modes of classroom instruction goes beyond their familiarity. For faculty members the classroom is:

a place of performance (and who would teach if she or he didn't find some satisfaction in performing?)

a zone of control

a source of reassurance (The students' presence, apparent attention, and engagement encourage the belief that one's teaching efforts count for something.)

Furthermore, in an indirect but nonetheless powerful way the classroom supports the scholarly agenda, for it isolates and walls off the teaching function.

To the individual faculty member, particularly one not yet tenured or tenured but dreaming of recruitment by another more prestigious institution, a change of teaching assignment or mode of instruction that entails additional effort of uncertain, but significant dimension, carries a serious price – reduced time for research and writing. Since incremental quality and quantity of scholarship counts toward career advancement while innovative teaching does not the tension resolves easily.

In many disciplines, law being among them, classroom teaching offers a high degree of autonomy. By contrast effective use of digital technology to create and conduct courses necessitates collaborative working relationships among domain experts teaching in the same field plus technology specialists and experts on course design and learning. The culture and status arrangements of most institutions of

higher education make such joint work very difficult to initiate and sustain.

To a majority of students making decisions about where to study, the strength of the brand name is more important than programmatic details. The annual ratings by US News and World Report exert a powerful influence over the application flows in nearly all fields.

An institution with a strong brand attached to expensive, residential programs and degrees, will not willingly allow it to be diluted. That is why Harvard Law School reacted so forcefully to Arthur Miller's involvement with the on-line Concord Law School. That is why on-line offerings of Harvard Law School's Berkman Center must be called programs, not courses. That is one of the reasons the LII's on-line courses for students at other law schools receive credit from the receiving institution and not Cornell. Under Cornell University regulations academic credits bearing its name must carry a premium brand price (currently \$ 720 per credit and thus \$2,160 for a 3-credit course).

Future developments in the US: Not a question of whether but where and when

- Strong brand schools selling courses to weaker brand schools
- Law schools generally responding to student interest in a more work-friendly curriculum after the first year
- Law schools moving into new non-JD markets -
Masters in health law
- Entrepreneurial middle tier schools invading the geographic markets of schools operating in a single locality
- Concord a dramatic success

Elsewhere?

- Different needs + Different context = Different outcomes
- Institutional factors (including the economic) are more important than the presence of the relevant technology

