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Employing Distance Learning Approaches to Improve and Expand Access to Part-Time JD Programs

These reflections are divided in two parts. The first considers potential gains flowing from inclusion of significant amounts of distance learning within the framework of existing part-time programs. The second sketches key elements of a radically reconfigured part-time format that I believe will, when and if realized, offer immense opportunity to one or more ABA-accredited institutions – a format that combines distance learning approaches with coordinated programmatic changes to reach well beyond a commuting range student body.

Both take the current ABA standard and interpretations on distance learning (which I view as unduly restrictive) as givens. Fortunately we have Concord to teach us all what is possible outside that box.

For an individual contemplating a JD and, perhaps, comparing it to alternative graduate professional degrees, the options are more complex than the full-time, part-time dichotomy suggests. For some fields and many locations there are at least four types of degree programs; let us call these formats: 1) “move to” 2) “commute to” 3) “periodically travel to” and 4) “wherever, whenever.” Part-time JD programs, a relatively small part of the total JD education system (roughly one out of five students), are, as currently constituted, a “commute to” variant. Today, ABA-approved law schools offer only the first two formats. Concord, operating outside ABA accreditation rules, is an example of “wherever, whenever” education. I’ll return to category three shortly. Whatever the theoretical range of choice, for any individual, place of residence, life situation, and admission credentials may severely limit the options.

Let me add flesh to these categories, drawing on personal experience. For most of my career I’ve taught at a school that is close to a pure “move to” example – Cornell, located in a small community in upstate New York (3 hours drive from Buffalo, 4.5 from New York City or Philadelphia). There are next to none for whom Cornell Law School’s program is “commute to.” The school’s proposition is straightforward: “If you want our JD you must move to idyllic Ithaca, NY, and devote 3 years to full-time study.” And they do come, at enormous out-of-pocket, relocation, and opportunity cost. The vast majority are non-New Yorkers. Few, if any, members of an entering class are from the upstate region. Simultaneous employment opportunities are limited not only as a matter of formal policy (as the ABA rules require) but in practical fact. As a consequence, full-time is, for most, truly that.

The school at which I began, the University of Minnesota, offers a mixture of “move to” and “commute to” legal education. For non-Minnesotans and residents of such in-state communities as Duluth, Moorhead, and Rochester its degree requires a move. However, large numbers of prospective students do live within commuting distance. Over 2.5

million people, more than one-half the state's population, reside in the Twin Cities metropolitan area. This is not the law school's sole applicant pool, but an important one – being drawn by program quality, proximity, and resident tuition rates currently \$10,000 less than the full fare at competing institutions.

Relatively few older individuals with families and jobs view the “move to” format as a viable option. However, for those living in places like Rochester, New York, Duluth, Minnesota, or El Paso, Texas, it is, as things stand, the only option. Even for those living within commuting range of a law school, attending scheduled law school classes three or four days a week may seem a daunting prospect. It is, thus, not surprising that most law students are comparatively young. How young? Drawing upon Law School Admission Council data for the 2001-2002 academic year one finds the following: Nearly 70% of those matriculating in US law schools are 25 or younger. Add in those 26 and 27 and you have nearly 80%. This youthful profile is more pronounced still if one focuses on women. It is also the case that older applicants (those over 27) are less likely, in the end, actually to attend than younger ones.

It is instructive to compare with law the age profile of the men and women applying to graduate management programs, where all four formats are available and “periodically, travel to” and “wherever, whenever” programs are numerous. Less than one-third of those taking the GMAT (Graduate Management Admission Test) in 2000-01 were 25 or younger. Only one-half were 27 or younger. The striking difference between the law and management pools can be seen in the segment 28 through 34. The percentage of management applicants in that age range is more than twice that for law (36.5 versus 13.7).

Enough background, it is time to turn to the potential of distance learning methods. For students obtaining a JD within the “move to” framework, distance learning approaches have significant promise, but that is a subject for a different day, a different panel, and, I might add, the weighing of a different set of distance learning approaches.

“Commute to” programs, especially those allowing course work to be spread over four years or more, are designed for older students – students for whom the costs of relocation and relinquishment of current employment demanded by schools like mine are not an acceptable proposition. As current part-time programs are structured, in compliance with ABA accreditation rules, these students must live within commuting distance of a school offering a degree on these terms, for they must attend as many regularly scheduled classes as full-time students, albeit spread out over a slightly longer period. Many are juggling family commitments and work-related travel plus the steady demand of a full-time job in addition to legal studies.

For four years going on five, I have taught students in this situation not “at Cornell” but “from Cornell” using the Internet. My online Social Security course, which this coming term will be taken by students enrolled at nine schools other than Cornell, has found many of its greatest fans and most enthusiastic participants among part-time students. That is not because the course is less undemanding. Through an end-of-term questionnaire, students report that they work longer hours in this course, achieve equal or greater mastery, and experience higher levels of engagement, exchange, and feedback than in other upper level courses. The beauty of this course for the part-time student is

that its time commitment, though heavy, can be fit into the interstices of densely packed lives. Week by week the work must be done (to a degree not true of many if not most classroom courses) but there are no scheduled classroom meetings, absolutely none. While for nearly all these students the rest of the credits for the term do require traveling to the school on schedule, being relieved of that burden in a single course is immensely attractive not only in anticipation but after the fact. The vast majority of students who have taken my online course say they would enroll in more courses if offered in this format.

This is not the occasion for elaboration on the components I use and techniques I employ to bring rigor, interactivity, and engagement to a totally asynchronous course. I've brought a handout for any who may be interested.¹ But I do need to stress the importance of that word asynchronous. To a dismaying number of my colleagues distance learning is still synonymous with teaching via videoconferencing into one or more classrooms. While this provides an attractive way for some schools to expand their curricular offerings and tap remote faculty, it does not offer students the measure of control over time and place that asynchronous methods do – a degree of control that in my experience both generates large pedagogical payoffs and holds particular attractiveness to part-time students.

The 2002 accreditation standard dealing with distance learning and its accompanying interpretations provide a great deal of room for schools to reduce the insistence of the classroom attendance metronome for their part-time students – full-time students too, but I've already explained why I believe the change has, on the whole, greater value for part-time ones.

The most obvious move is for schools, individually or working in collective arrangements like those employed with my course, to offer an array of upper-class electives in asynchronous distance learning format – holding up the prospect for their part-time students of a full 12 hours of course credit earned in this fashion.

Less obvious but in both quantity and perhaps quality more important is the opportunity rendered explicit in Interpretation 306-1, which defines the boundary between what is and what is not a distance course. It allows substitution of distance methods for classroom meetings for as many as 1/3 the credits carried by a classroom course. Implemented to the limit this would allow a part-time program to reduce its class attendance demands substantially beginning in the very first term. Implemented well it might allow all sorts of curricular innovation, including greater integration of writing and other skills work with substantive courses. One of the country's leading experts on learning, John Bransford, now at the University of Washington, led several sessions at the most recent AALS workshop for experienced law teachers. There he expressed the conviction, reflected in his own teaching practice, that a mix of asynchronous online methods together with face-to-face sessions is, where feasible, optimal. For a faculty prepared to rethink how it teaches, the potential for configuring a JD program so that it

¹ Peter W. Martin, Cornell's Experience Running Online, Inter School Law Courses – An FAQ (2005) (available upon request).

fits more flexibly into the lives of men and women with substantial other commitments there are, I am convinced, both large education returns and access to an additional pool of qualified part-time students, individuals unable or unwilling to pursue a JD on the currently available terms and conditions.

However, to any institution prepared to engage in that degree of innovation I would urge exploration of an even more radical change – into the format suggested by my “periodically travel to” category. I claim no originality whatsoever for the following sketch of what that might look like; the blueprint is commonplace in other fields.

A short while ago, when she was a young woman in her mid-fifties, my wife was awarded a doctorate by Columbia Teachers College. Our three grown children and I joined her in New York City to celebrate the immense accomplishment. While the entire family traveled to Columbia for her graduation, none of us had to move there. Throughout the preceding years of course work, research, and dissertation writing leading up her degree, my wife held a demanding full-time position and lived with me in Ithaca, NY. (For those of you weak on New York geography I should, perhaps, repeat that Ithaca is not a suburb of the Big Apple but lies some 4.5 hours drive away.) Ann had student colleagues who lived and worked in Cincinnati, Florida, Boston, Albany and numerous other locales remote from Manhattan. They were participants in a part-time program called AEGIS designed for fully employed mid-career professionals, one not limited to the population within commuting distance of Columbia. Like the executive MBA programs offered by the very best schools of management, the face-to-face time with faculty and other students in the same cohort was compressed into very intense weekend periods (in this program once a month) plus one 3-week period each summer, with the intervening times away from campus filled with heavy assignments and ongoing student-student and student-faculty interaction, by phone, email, and other electronic means.

For an ABA sponsored conference last April, I interviewed those responsible for the Wharton executive MBA program. Howard Kaufold, the program’s director, began by explaining that when it was established in the mid-seventies the faculty was insistent that although the requirements were to be allocated differently across the calendar they should be no less demanding, including specifically time in the classroom and admissions standards, than in the school’s “regular” MBA program. The prevalence of MBA programs in a variety of executive formats, formats that have come to involve extensive use of Internet-based distance learning methods in between on-site periods, is an important reason for the much greater accessibility of the MBA to the population ten years or more past college.

Let me invite you to visualize what a part-time JD program in this model might look like. Even here originality is not required. During 2000 a group of Chicago-Kent faculty created the blueprint for an executive JD program. Framed as an option within the school’s existing part-time program it would have contained the same number of contact hours on site at the law school but bunched in classes meeting at the law school during three periods of intensive work each semester, one at the beginning, one in the middle, and one at the end. In between these on-site days, distance learning tools would have been employed for teacher presentation, discussion, mentoring, and the submission and critique of student written work. The business plan imagined drawing on a nationwide

pool of part-time students, prepared to travel to Chicago three times a term. Formally framed as an option within a conventional part-time program it would not have offered the school's full curriculum in this format, but only an appropriate set of courses for students desiring to specialize in intellectual property. The projected costs and revenue showed positive returns beginning in the third year, a prospect which led the university to invest significant sums in program planning. For complex reasons falling under the general heading "faculty politics" this venture was voted down, by Chicago-Kent faculty, in the fall of 2000.

The blueprint has not yet been picked up by another school. For success, it seems to me this would most likely be a school, like Chicago-Kent, with an existing part-time program, located in a metropolitan area with good transportation connections and appropriate short-term accommodation. Its degree should have some national recognition, but not be so strong as to cause alumni who earned that degree the old-fashioned way to rise up against offering it on such "new fangled terms."

As Ron Staudt, who led the Chicago-Kent planning effort, explains so compellingly in a "virtual panel" discussion accessible at the Cornell LII site², the challenge in creating such a program (and the exciting educational opportunities it opens) have more to do with the use of the intensive on-site periods than with designing the program's distance learning elements.

The Chicago-Kent plan was shaped prior to the 2002 accreditation changes. Because of those changes the amount of on-site time such a program would have to include, today, has been reduced by over a third.

I speak as though the classroom minute requirements were the only accreditation hurdle. As those of you who study these matters more closely than I know they are not. Interpretations of Standard 304 disallow the counting of more than 5 class days in a week toward the required 130 day total and make it clear that the classroom minute and 130 days of scheduled classes requirements are independent. A vague concept of residence weaves in and out of the rules, presumably satisfied by a student commuting to attend classes several nights a week or over a weekend but hard to reconcile with students flying in for three periods of on-site work per term. Chicago-Kent's approach to these matters, was as I have noted, to frame the eJD as but one of several course scheduling options for its part-time students. A more straightforward approach would be to seek and obtain a variance under Standard 802.

I predict that before long some entrepreneurial school will blaze this trail. If done well the program should bring great success to that first-mover. Inevitably the initiative will energize the faculty involved and draw faculty from elsewhere (my hand is raised) eager to engage in collaborative and integrative approaches to professional education. Marketed effectively it should not only draw able students but raise the overall profile of the school. That is its promise (not "Nirvana" but a fascinating opportunity). For all I know one of the schools represented in this room harbors this dream. On the other hand, should this model be implemented by one or more schools, and should it succeed in pulling strong

² <http://www.law.cornell.edu/background/distance/otb/>

students from beyond commuting range that will, to some degree, be at the expense of conventional part-time programs, which as matters now stand have a lock on their respective metropolitan regions. That is a threat, only a distant one and contingent, hardly “Apocalypse Now.”