

Best Practice Recommendations of Distance Learning for Legal Education 2.0 (2015-16)

**By the Work Group of Distance
Learning for Legal Education**

Introduction

The Work Group of Distance Learning for Legal Education (Work Group) is pleased to have the opportunity to share with the academy its Best Practice Recommendations of Distance Learning for Legal Education 2.0 (2015-16).

In 2014 the American Bar Association (ABA) revised Standard 306 “Distance Education”, expanding opportunities and flexibility for institutions to leverage technological advances within the JD academic curriculum. Unlike other sectors in higher education, law schools have little experience with distance learning or online education. The American Bar Association initially acquiesced to an online LL.M. in 1998. Yet, it is since the initial inception of the Work Group in 2010 that most of the 47 LL.M.s offered online by 29 ABA full approved law schools have been founded. As of 2015, a majority of ABA law schools offer the opportunity for an online academic experience for J.D. students. One ABA law school has received a variance to offer a hybrid, partially residential / partially online, JD.

Deans, Administrators, and Faculty from at least 83 ABA law schools and other stakeholders, such as foreign and U.S. academic institutions, publishers, and technology companies, collaboratively engaged in the discussions, writing, and editing of these recommendations. These best practice recommendations are either adoptable by institutions and stakeholders through tailored adaption to form a component of its Distance Education policy, or at a bare minimum present an institution a starting point for developing alternative policies.

The Work Group of Distance Learning for Legal Education emerged, and initially met at the 2010 Future Ed conferences of April and October. From 2011 it has met bi-annually, hosted by several law schools, in a workshop format, as well as gathered for informational breakfasts at the American Association of Law Schools annual congress. Representatives of the academy have had the opportunity to exchange information on the breadth of current practice and to explore issues around developing a set of best practices.

The collaborative work for a version 3.0 of the recommendations will occur from 2015 through 2016. Information about the Work Group of Distance Learning for Legal Education is available via <http://www.wgdile.org/>.

Definitions

- (1) “Asynchronous” means "not at the same time." An asynchronous course is one in which the instruction is delivered at one time and the work can be done at a different time. In asynchronous classes, students and teachers use e-mail, discussion boards, listservs, wikis, and other technologies, which allow them to communicate without having to be in the same virtual or physical space at the same time.
- (2) “Class” means an individual one-time offering of a course.
- (3) “Chat” means a synchronous, interactive text-based tool that allows two or more participants to hold a written conversation.
- (4) “Course” means a focused body of instruction offered by an education provider. A course may be made up of one or more classes.
- (5) “Delivery Mode” means the primary method or technology used to deliver instructional information to the student and used for communication between the instructor and the students. Delivery methods may include streaming video or web-based synchronous systems to individual computers or group-gathering sites, interactive asynchronous systems, or static post systems.
- (6) “Distance Learning” means learning that takes place when the instructor and student are separated by space and/or time. The gap between the two can be bridged through the use of technology such as videoconferencing, and online technology.
- (7) “Discussion Boards” means online web tool which allows multiple users to post asynchronous comments to a single or multiple conversations.
- (8) “Learning Management System” means online classroom portal through which faculty and students access information, learning material, and course activities.
- (9) “Listsers” means mailing list program for communicating with other people who have subscribed to the same list. Using e-mail, you can participate in listservs pertaining to your topics of interest. When you submit a message to the server, your message is relayed to all those on the listserv. You receive messages from other participants via e-mail.
- (10) “PC-based Videoconferencing” means online video technology that allows two or more people to participate synchronous conversations from individual PC stations. Conferencing tools may be video and audio, or only audio.
- (11) “Post” means the act of adding a piece of information to a website, discussion board, wiki page, or other common online group site.
- (12) “Posted Material” means resources, written materials, video clips, podcasts and audio clips, websites, articles, and other written material placed in a common location for review and discussion, typically by faculty.

- (13) “Room-based Videoconferencing” means synchronous videoconferencing technology that feeds an interactive video into a classroom or other group setting. Monitors at the front of the room project activity at a distant site, and students speak to the distant site using a microphone system.
- (14) “Self-paced Course” means a set of static material which students may access and work through at his or her own pace. While some assignments may be required, students are not required to submit those assignments in a specific order, or in cooperation with the instructor or any other person. There is little or no interaction with other participants, and all work is due at a single, final deadline.
- (15) “Synchronous” means a communication where two or more people occupy the same physical or virtual space at the same time and are able to communicate and interact with each other live and in real time within that space.
- (16) “Video Streaming” means live video streamed into a classroom or group setting from another location. Unlike room-based videoconferencing, video streaming provides little or no opportunity for meaningful interactivity unless supplemented with additional tools.
- (17) “Wikis” internet tools that allow multiple individuals to contribute to a single draft document, spreadsheet or presentation from common webpage.

2015-2016 Standards for Distance Learning for Legal Education

As an increasing number of law schools embark upon implementing distance learning courses, as well as entire distance learning programs, into their curricula, best practices for providing student services and ensuring student engagement are needed to provide guidance to program directors, deans, administrations, and faculty. Understanding best practices in providing student services and ensuring student engagement and interaction can assist program directors, deans, administrators, and faculty involved in these distance learning programs, as well as those developing or interested in developing distance learning programs, to build a robust distance learning program. Key aspects of such a program include the provision of student services, access to information, distance learning student registration, financial aid, billing, and accounting, career services and scheduling, alumni relations, accessibility, academic advising, and technology.

Standard 1. BEST PRACTICES: RESOURCES FOR PROVISION OF STUDENT SERVICES

Standard 1.1

A school must maintain an adequate infrastructure for distance education, including, but not limited to, staffing, technology and infrastructure sufficient to meet the needs of distance learning students, the faculty and staff that serve them and system security sufficient to adequately protect/prevent release of sensitive, confidential information.

Standard 1.2

The infrastructure for the provision of student services for distance education should be sufficient to provide a level of services that is of equivalent quality, though not necessarily identical, to those provided for residential post-J.D. students in comparable degree programs.

Standard 1.2 Interpretation

Resources accessible to online students should include, at minimum, the following:

- (A) *An online admissions process that has effective (as tested) fraud protection but provides applicants the ability to “sign” their admissions application and enrollment agreement electronically.*
 - *Real-time communications utilizing Skype, Facetime or other live video enabled communication platform with applicants may be used to verify English-language ability of foreign students.*
- (B) *Financial aid application assistance, by a trained Financial Aid officer, for students who may be eligible.*
- (C) *Secure systems for course registration, billing and accounting, and posting of grades. (Reference Blue Paper on System and Data Security For Distance Learning Programs).*

- (D) *Secure student access to registration, billing and accounting, grade information, and applicable forms (preferably via an online portal). (Reference Blue Paper on System and Data Security For Distance Learning Programs).*
 - *Online forms are the norm in distance learning and should be used when feasible.*
- (E) *Online library and legal research resources that are adequate for the student's academic program, and training on how to use them (e.g., through Webinars, LibGuides, etc.).*
- (F) *Sufficient interaction between professor and student to meet mandated interactivity requirements (where applicable), optimize learning and facilitate assessment (e.g., tutorials in asynchronous and hybrid courses, online chat sessions, Ask Your Professor discussion forum), as well as meet all relevant mandated interactivity requirements.*
- (G) *Technical support available to students and faculty 24/7. For hybrid classes, technical support should, at minimum, be available during all synchronous instruction times and times when students are likely to need support (e.g., exams or projects).*
- (H) *Career services and counseling resources.*
- (I) *Academic advising resources, including but not limited to:*
 - (1) *Writing clinic;*
 - (2) *Advising appointments by phone, Skype, facetime, webinar or other "face-to-face" interactive methodology;*
 - (3) *Academic success program participation;*
 - (4) *Alumni mentoring; and*
 - (5) *Subject matter tutoring.*
- (J) *Online textbook ordering and textbook information for those courses requiring the purchase of textbooks.*

Standard 2. BEST PRACTICES: ACCESS TO INFORMATION

Standard 2.1

A school must provide distance learning students with access to information that is comparable to information provided to residential students and sufficient for the smooth functioning of the distance education program.

Standard 2.2

A school must provide detailed orientation for new distance learning students, addressing how to access all aspects of the distance learning experience, including but not limited to, school policies and procedures, program-specific policies and procedures, student services, applicable program policies and procedures and other available programs.

Interpretation 2.2.1

Information may be provided to students in a welcome letter, in an online orientation program, and/or in a student handbook made accessible to the students.

- (A) *Welcome Letter. A welcome letter to admitted students should indicate how to access the orientation program, any supporting materials, and/or the student portal where information can be accessed. The welcome letter may also include:*
 - (1) *Notification to students on how to obtain a hard copy of an acceptance letter (some employers need this).*
 - (2) *A link to an “Intent to Enroll” form confirming a student’s acceptance of the offer, terms and conditions of admission, intended start date, and whether they intend to secure financial aid.*
 - *The “Intent to Enroll” form should be signed by the student and should include acceptance of the school’s term of enrollment, which should be made available on the school’s website.*
 - (3) *Reference to the student Code of Conduct and an acknowledgment that the student has read and agreed to abide by them.*
 - (4) *A link to the Financial Aid forms, including FAFSA, Entrance Loan Counseling and Master Promissory Note, along with deadlines for completion and contact information for assistance.*
 - (5) *Notification to students that they should expect to receive an email from the Technology Department creating a school email account and instructions on how to set the password.*
- (B) *A school should provide a robust online student orientation program, specifically targeted to the online learning community, sufficient to ensure that the student has all of the necessary tools and equipment to succeed in an online class.*
 - (1) *Attendance and completion of orientation should be required prior to commencing studies.*
 - (2) *Orientation may be synchronous or asynchronous, but a record must be kept of student attendance and completion of the orientation program.*
 - (3) *Orientation should cover, at minimum, the following topics:*
 - (a) *Policies regarding student conduct;*
 - (b) *Curriculum and degree requirements;*
 - (c) *Course registration;*
 - (d) *How to apply for financial aid, and all applicable deadlines;*
 - (e) *How students will be billed for tuition and fees, and how to make payments;*

- (f) *Policies on withdrawal from courses and from the program (including tuition refund policy), and requirements for leaves of absence;*
- (g) *How to set up a school email account, and what it will be used for;*
- (h) *A warning to check school email regularly for course and billing related communications; federal privacy laws require use of secure email for official communications.*
- (i) *How to obtain a student ID;*
- (j) *How to obtain information about available courses;*
- (k) *How to order any required textbooks;*
- (l) *How to access the academic calendar and class schedule for their courses;*
- (m) *How to access library resources, and set up accounts with Lexis, Westlaw, & other providers;*
- (n) *The required technology for accessing the classroom*
- (o) *How to access the 24/7 Helpdesk and how to get help in case of a technology problem;*
- (p) *How to obtain academic advice;*
- (q) *How to obtain career counseling and job placement assistance;*
- (r) *Contact information including the availability of counseling in case personal issues interfere with their studies.*

Standard 2.3

A school should provide distance learning faculty sufficient access to all information they require to perform their duties.

Interpretation 2.3.1

- (A) *A school should provide adequate training, orientation and supervision to online faculty so that they have access to all information they need.*
 - (1) *Training should include both how to use relevant technology, how to address/resolve frequently encountered technical/system issues, and the pedagogical aspects of online teaching.*
 - (2) *Training should be provided in sufficient time before the faculty member begins teaching to permit the faculty member to utilize the platform, achieve a reasonable level of comfort and have all questions answered and issues addressed.*
- (B) *A school should implement a plan for monitoring and evaluating the performance of online faculty so they have adequate feedback, and to ensure that online faculty who fail to perform adequately are provided with the tools to improve performance.*

Standard 2.4

Academic policies and procedures governing distance education should be clearly articulated and made accessible to all students to whom they apply.

Interpretation 2.4.1

- (A) *The Student Handbook should be readily accessible online and new students should sign an*

acknowledgment that they have reviewed it and agree to comply with it before being permitted to start the program.

- (B) *The Handbook should be introduced in a welcome letter and explained in orientation.*
- (C) *The Handbook should include all major policies applicable to the program, in easily accessible and searchable form.*

Standard 2.5

Academic policies and procedures, including the applicable Code of Conduct, should be tailored for the distance learning environment and cover the kinds of misconduct that are known and/or reasonably foreseeable in a distance learning environment.

Interpretation 2.5.1

- (A) *The Handbook should include a Student Code of Conduct with particular emphasis on the Honor Code for Academic Integrity and Honesty and a list of Prohibited Conducts and Violations. (e.g., Plagiarism)*
- (B) *The Code of Conduct should cover prohibited online conduct such as bullying, flaming and hacking.*
- (C) *A school should maintain adequate policies to protect its intellectual property rights in content made available to online students, and should use technological and other means to prevent online students from unauthorized copying and misuse of that content.*

Standard 3. BEST PRACTICES: REGISTRATION FOR DISTANCE LEARNING STUDENTS

Standard 3.1

Distance learning students should have access to a registration process that, to the extent feasible, is comparable to the process of registration for residential students, and that adequately protects their rights as consumers in choosing courses.

Interpretation 3.1.1

- (A) *Adequate information should be made available to students at the time of registration for them to make an informed choice of courses.*
- (B) *Adequate time prior to the commencement of classes should be allowed for students to register for classes and purchase any required textbooks or materials.*
- (C) *Students should be permitted to drop courses without charge during institution's standard "Add/Drop" period.*
- (D) *Registration forms should be available online and electronic signatures on online forms should be accepted, using e-sign technologies that are widely available, so as not to disadvantage online students. Examples of online forms include, but are not limited to,*

Leave of Absence, Course Withdrawal, Program Withdrawal, Deferment, Credit Transfer, Request to Graduate, Intent to Enroll, and Enrollment Agreement.

Standard 3.2

Registration information should be promptly communicated to faculty and reflected in the learning management system (LMS).

Interpretations 3.2.1

- (A) *LMS's should be set up to interface with registration systems so that registrations and withdrawals are reflected automatically in the LMS.*
- (B) *Withdrawals not communicated to faculty can result in faculty spending time on assessment and monitoring of students who are no longer enrolled. LMS's and/or registration systems should include emailed notifications to faculty of withdrawals and late registrations.*
- (C) *Unregistered and withdrawn students should be denied access to the LMS.*
- (D) *Guest registrations may be permitted with an administrator's consent if there is a valid academic purpose but only if security protocols are followed.*

Standard 4. FINANCIAL AID, BILLING AND ACCOUNTING

Standard 4.1

Financial aid, billing and accounting practices should be adapted for distance learning students so as to alleviate the disadvantages caused by their not being on campus.

Interpretation 4.1.1

- (A) *Dedicated personnel should be made available to assist online students with their Financial Aid application forms to the same extent that such assistance is provided to residential students.*
- (B) *Students should be able to access their anticipated financial aid award and billing statement.*
- (C) *Students should have the option of paying tuition online.*
- (D) *Students should have access to a secure link with appropriate security protocols in place (e.g., password, CAPCHA) to provide a Social Security number to obtain 1098-T information.*
- (E) *Students should be able to update their contact information online, and should be warned of the possible consequences of failure to keep it up to date.*
- (F) *Contact information should be provided to online students who believe there has been a billing or accounting error.*

- (G) *Financial Aid practices should be divorced from admissions and enrollment to the same extent as they are for residential students.*

Standard 5. CAREER COUNSELING AND PLACEMENT SERVICES

Standard 5.1

Career counseling and placement services should be made available to meet the needs of distance learning students that are comparable to the services provided to residential students, to the extent feasible. Distance learning students should not be discriminated against because of their status.

Interpretation 5.1.1

Any limitations on career counseling and placement services made available to online students relative to those available to residential students should be fully disclosed in advance prior to a student's commencement of the program.

- (A) *For example, if placement services are not provided to online students, or if placement services provided to online students do not cover certain regions, this information should be disclosed.*
- (B) *Career counseling and placement services for online students should be provided by persons experienced or trained in the provision of these services, to the same extent as for residential students.*

Standard 5.2

Career counseling should be reasonably adapted to the distance learning medium.

Interpretation 5.2.1

- (A) *Effort should be made to overcome geographical limitations through the use of online databases, alumni networking, and invitations to alumni events.*
- (B) *Relevant job opportunities should be posted and publicized in a medium that is accessible to online students.*
- (C) *Schools offering online programs should take advantage of their technology to facilitate serving students in geographic areas remote from the school.*
- (1) *For example, videoconferences and Webinars with recruiters knowledgeable about particular job markets might be offered both live and in recorded form.*
- (2) *Similarly, career counselors can take advantage of Skype and Web conferencing where necessary to avoid undue cost to students in other countries who are seeking assistance.*

- (D) *Career counseling and placement policies and advice should be included in an online manual available to students. This should include advice on resume preparation, interviewing, and identifying job opportunities.*

Standard 6. SCHEDULING

Standard 6.1

Scheduling should take advantage of the distance learning medium, e.g., by offering multiple starting points and asynchronous class options.

Standard 6.2

Scheduling of classes should accommodate the needs of distance learning students who are employed, have familial or other critical obligations, or are situated in different time zones.

Interpretation 6.2.1

Synchronous classes should be scheduled for times when the largest number of online students is likely to be able to attend.

- (A) *If many students are located in the U.S., late afternoon/early evening starting times (in U.S. time zones) should be considered. Where a significant number of students are located in the Eastern Hemisphere, early morning (in U.S. time zones) starting times should be considered.*
- (B) *Weekend times should be considered for synchronous classes; however, it should be borne in mind that students who have children in school may find weekdays preferable.*

Standard 6.3

Because many distance learning students have competing commitments, such as family and work duties, class schedules and the dates and times of examinations and other assessments should be established well in advance, with adequate notice to registered students.

Interpretation 6.3.1

- (A) *Class schedules and examination schedules, if any, should be posted online and made available to students at the time of registration.*
- (B) *Absent an emergency, not less than one week's notice should be given of exceptions and changes to the class schedules.*

Standard 6.4

While one of the advantages of distance education is flexibility in the number and frequency of entering points for students to begin their studies, scheduling should allow adequate time between terms.

Interpretation 6.4.1

- (A) *Adequate time needs to be left at the end of the term for assessment, e.g., open-book exams or completion of term papers.*

- (B) *Terms should be scheduled to allow sufficient time after the end of the term for grading and posting of grades, SAP review, and completion of registration for the following term. Normally this requires a minimum of two weeks between terms.*

Standard 7. ALUMNI RELATIONS

Standard 7.1

Distance Learning alumni should be given the same opportunity to participate in alumni activities and events as alumni of a residential program, to the extent feasible.

Interpretation 7.1.1

- (A) *Graduating distance learning students should be included in the alumni databases for purposes of fundraising and other activities. However, a separate distance learning alumni database should also be maintained to facilitate communications uniquely for or targeted to distance learning alumni.*
- (B) *Graduating distance learning students and alumni should be encouraged to serve as mentors for other distance learning students in need of career contacts and advice.*
- (C) *All distance learning alumni should be included in alumni events. Due to the distance factor, online events should be considered/scheduled specially for alumni of the distance learning program.*
- (D) *Online technology should be considered for use in general alumni events.*

Standard 8. ACCESSIBILITY

Standard 8.1

Online programs should be accessible to persons with disabilities, in compliance with applicable federal (ADA) and state laws.

Interpretation 8.1.1

- (A) *Procedures and forms should be established so that online students in need of accommodations due to disability can obtain them.*
- (B) *Any necessary forms should be accessible online, and electronic signatures should be accepted. (e.g., Disability Accommodation Request form)*
- (C) *Online content should be made accessible for students with hearing and vision disabilities, to the extent feasible and required by law.*
- (D) *The school should provide a dedicated counselor to assist students with accommodation requests, regardless of whether the students are online or residential.*

Standard 9. ACADEMIC SUPPORT AND STUDENT ENGAGEMENT

Standard 9.1

Academic support should be made available to distance learning students to an extent comparable to the academic support made available to residential students enrolled in similar programs.

Standard 9.2

Due to the challenges of maintaining student engagement in a distance learning program, especially if the program is asynchronous, a school should have an early alert system to identify at-risk distance learning students and provide timely intervention.

Interpretation 9.2.1

Each student's participation should be monitored on a weekly or biweekly basis.

Standard 9.3

Academic counseling should be made available to distance learning students by faculty or by staff who are knowledgeable about the subject matter of the program.

Standard 10. TECHNOLOGY AND STUDENT ENGAGEMENT

Standard 10.1

Distance learning instruction should significantly engage students and take full advantage of the unique benefits of the distance learning medium. Instructional technology should promote these goals.

Interpretations 10.1.1

- (A) *Technology for synchronous instruction should allow the professor to see the students, and the students to see the professor.*
- (B) *Production values in recorded asynchronous modules should utilize the richness of the medium.*
 - *Production values should be strong and include both lecturer and message.*
- (C) *Consistent with existing research findings, recorded lectures should be delivered in pods of 5 to 15 minutes, to keep students engaged and limit bandwidth problems.*
- (D) *Even in asynchronous courses, reasonable opportunity should afford the student to interact with the professor and to ask questions.*
 - *Weekly or biweekly tutorials or office hours can satisfy this requirement.*

Standard 10.2

Distance learning technology should be user-friendly.

Interpretation 10.2.1

- (A) *The learning management system (LMS) should be both user-friendly and visually engaging.*
- (B) *High-quality video and audio in recorded and live content are important in student retention.*
- (C) *Technical problems can be a cause of low participation, which, in turn, leads to low retention. Adequate training must be given to students and faculty on how to use the LMS and virtual classroom. Use of a facilitator in synchronous classes to troubleshoot technical problems in real time is encouraged.*
- (D) *800 number and Skype audio options should be available for students experiencing audio or connectivity problems.*
- (E) *Asynchronous classes can achieve a “live and current” feeling through multimedia content, multiple links to other content, multiple formats, and questions for the student.*

Standard 10.3

Tech support for distance learning students should be available 24/7 or at the hours when students are most likely to need it, and such support should be prompt to respond and easy to access.

Standard 10.4

A LMS should include features that facilitate the monitoring of student participation.

Standard 10.5

To accommodate distance learning student schedules, technology for synchronous classes should enable such content to be recorded in a format that can be made available to students outside live class hours.

Interpretation 10.5.1

Recorded content should be resident on or transferrable to servers controlled by the school in order to avoid losing content in case the school decides to change technology providers.

Standard 10.6

A school should utilize an assessment system in its distance learning courses that includes adequate controls against cheating and plagiarism.

Interpretation 10.6.1

- (A) *Controls against cheating should include verification of student identity through password protection, and online proctoring or other verification method for timed examinations to ensure that the student registered for the class is the person taking the examination. (See*

Standard 306(g) and Interpretation 306-2, American Bar Association Standards for Approval of Law Schools ["ABA Accreditation Standards"].) Any fees or charges regularly imposed for online proctoring or other verification methods must be disclosed at the time of registration or enrollment. (ABA Accreditation Standard 306(g).)

- (1) Verification of student identity may include the use of an online exam proctoring service such as Acxiom, Secureexam, and Webassessor.*
 - (2) This may be required by the Higher Education Act of 2008.*
- (B) Plagiarism checking must be done for at least a sample of submitted assignments, which checking should include the use of systems such as Turnitin and SafeAssign (Lexis Web Courses) and integrated into the LMS.*

Standard 10.7

The LMS should interface in real time with the school's registration and accounting systems.

Chapter 1

Delivery Methods and Practices

This discussion will focus on the models for delivering distance education and on the subject matters being taught in current programs. The delivery model discussion often leads to partisanship between those using the “synchronous” model, which more closely resembles traditional, in-class instruction, and those using the “asynchronous” approach, which untethers the pedagogy from the necessities of being “all together” with an instructor at the same time. In reality, both approaches have strengths and challenges, and, in practice, are often blended into a “hybrid” approach. The key feature of good distance instruction is designing pedagogy that can effectively use the medium to help students achieve superior educational outcomes, and no particular methodology has a monopoly on this approach.

Delivery Models: Synchronous Model

Synchronous learning occurs at one time, while participants occupy different spaces. Experimented with by schools since the 1970s invention of interactive television, new technological advances make the development of live, real-time interaction between faculty and students useful and exciting. Free platforms like Skype and Google Hangouts as well as a growing number of well-designed cloud-based and generally affordable proprietary video conferencing systems allow faculty and students the ability to interact in ways similar to a live, classroom space. A host of more sophisticated virtual teaching platforms have also begun to emerge, at varying price levels, but almost all far less expensive than earlier custom developed options.¹ Proprietary systems add valuable online classroom components, such as presentation slides, screen sharing, digital whiteboards, quizzes, polling, shared documents, chat windows, recorded “lecture capture” and multiple breakout rooms for small group work. The invention of high definition systems delivered via high speed internet has all but eliminated the inconvenience, expense, time delay, and fuzzy video and audio quality of earlier systems, and the technology and bandwidth will only continue to improve.

Strengths of Synchronous

Synchronous systems can connect faculty, students, and other participants from around the globe in real-time settings. Real time, interactive exchange among participants and data sharing best parallel the traditional law school classroom; making it easier for instructors to make the transition to online teaching in this model. Current technologies are often so good that subtle interactions (e.g., the confused expression on a student’s face) can be engaged immediately. For example, the Socratic method can be retained under the synchronous model as well as other types of instruction (e.g., moot courts, client counseling exercises, etc.). In addition, a synchronous classroom may include various “bonus” features not found in a traditional classroom without additional technology investment. For example, breakout groups can be assembled instantaneously with students brought back to present their work to the main

¹ These include Blackboard Collaborate, Adobe Connect, Cisco WebEx, Vidyo, Zoom, Vantage Point.

group with little or no time wasted.

Operational Considerations for Online Synchronous Education

While technological advances have made synchronous education possible and easier to set-up and maintain, these systems still require some level of technical user competence and support. Additionally, there are subtle differences between a live class and an online experience that must be attended to (e.g., which way is the camera pointing? Are all the students “present”?). In some respects, the instructor’s transition from the traditional classroom to the virtual classroom is analogous to the actor’s transition from the stage to television. There are also significant technological considerations that must be managed and accounted for, and appropriate training and tools for both faculty and students are essential.

Chapter 2

Challenges, Solutions, and Best Practices

The field of distance education in law is still young so it is hard to make authoritative pronouncements around best practices. Nonetheless, the experience of our working group points toward a number of common challenges, suggests good solutions, and indicates some responses and approaches that are indeed best avoided. The Working Group has already developed a model policy for law schools adopting forms of distance learning practices in their curriculum. That policy, included in this document as Appendix D, incorporates many of the best practice possibilities. This section will explore five distinct domains of challenge: i) educational theory and technological resources; ii) technology training and management; iii) technology training and management; iv) intellectual property and v) business and financial models.

Education Theory, Technology Resources and Teaching Techniques

Online education provides a new lens through which to explore learning theory and pedagogy. Most online learning modalities presume a “constructivist” approach instead of traditional learning modalities.² Many web 2.0 tools lead to learning that creates an active process of constructing knowledge rather than acquiring it and where instruction supports construction rather than simply communicating knowledge.³ Some authors go so far as to suggest that modern online tools go beyond simply allowing students to construct knowledge, but actually provide “education” by allowing students access to increasingly abundant and evolving knowledge.⁴ Siemens calls this new learning “connectivism” i.e. learning is a process of connecting specialized nodes or information sources, nurturing and maintaining connections to evaluate and acquire new knowledge, and developing skills to “choose what to learn and the meaning of incoming information as seen through the lens of shifting reality.”²⁰⁵

These new trends are particularly challenging for law schools, which largely still operate on the knowledge-acquisition paradigm. The very tools that provide the ability for constructivist or connectivist online classrooms seem unwieldy or cumbersome in the hands of traditional education. Any examination of online tools should understand the context in which they may be best applied, and that this context may differ from the knowledge acquisition models law schools traditionally prefer.

The following description of various online tools and discussions of best practices is intended as an introductory examination for educators beginning to explore distance learning opportunities,

² R. Mason & F. Rennie, *E-Learning and Social Networking Handbook: Resources for Higher Education* (2008)

³ See also TM. Duffy & DJ Cunningham, *Constructivism: Implications for the design and delivery of Instruction*, in *Handbook of Research for Educational Communications and Technology* 1236 (D.H. Jonassen, 1996) (arguing that students should be empowered to learn rather than passively educated).

⁴ Mason and Rennie, *id.*

⁵ George Siemens, *Connectivism: A Learning Theory for the Digital Age*, elearnspace.org (December 12, 2004).

as well as the Working Group's sense of recommended practices in law school context.

Instructional Technology Tools

Instructional Technology tools can be incorporated into teaching to achieve a variety of goals from course management to enhancing knowledge acquisition. Depending on the application, technology tools can be used to encourage group collaboration, provide active engagement, present immediate feedback and prepare students for their future in a digital world.

Webcasts

The primary method for synchronous online education, a live faculty member or speaker provides a lecture or guided discussion through a web-based broadcast. The webcast is then presented in a way that can be watched on at least one other device at a distance. Webcasts can be developed for three specific audiences:

Site-to-site.

Some webcasts, particularly dedicated web conferencing systems, link two or more specific sites through an internet connection.

Closed Broadcast.

Webcasts broadly available, but which can be accessed only by someone who has a password or other method of entry.

Open Broadcast.

Public webcasts posted on sites that can be visited by anyone, whether enrolled in the course or not.

Visual Two-way vs. Visual One-way.

In some systems, faculty can see students and students can see faculty. In other systems, students can see faculty, but faculty cannot see students. One-way visual technologically easier to maintain and stream.

Audio Two-way vs. visual One-way.

In its simplest form, students can hear a professor and not “talk back” via an audio channel. In other systems, students can have audio access to a faculty member, and engage in conversation. Note that visual and audio channels need not be linked: in some cases the visual feed will be a one-way feed from the faculty member, but the audio a two-way channel, so students can ask questions. Mixing these tools, as appropriate for the institution's particular needs and technical capabilities, can provide both the delivery of information and the possibility of interactive exchange.

Recommended Practices: Webcasts

Synchronous webcasts should, at a minimum, be sufficiently well designed and developed that the face and voice of speakers are clear and that any visuals used in a simultaneous webcast are clear and easy to see and access. In this context, the quality currently provided by Skype is probably insufficient for anything other than the occasional use in exigent circumstances. Platforms that provide strong bandwidth/connectivity (e.g., Cisco products,

Fuse, etc.) can be expensive and today are not necessarily compatible with other systems. Webcasts with interactive features (i.e., the ability of students to interact, either via video or other means) should ensure that the timeliness of transmission to-and-fro is sufficient for interactive elements to occur in relative true-time. (i.e., minimal delay). Most synchronous practitioners note that interactivity allows faculty to see participants as well as for participants to see the faculty member -and therefore enough control over the incoming student feeds to allow audio sharing across the entire class. Faculty also report the ability to “see eyeballs” (see faces of participants, either all participants during a synchronous session or at least the face of a person asking a question) enhances the instructor’s ability to deliver a dynamic synchronous class. While not yet defined as a best practice, we recommend schools with synchronous classes seek some means to achieve the “eyeball view” of the class.

Synchronous classrooms can and often do go beyond simply the 1- or 2-way video stream. Rich media, where a live capture of the professor plus a simultaneous display of slides or other material, can enhance the live experience. In addition, synchronous classes often have a third “conversation stream” flowing during the course: a Twitter feed or other live backchannel conversation can occur while the faculty conducts the live class. As one professor has noted, “Students these days have split attention spans. If they’re going to be looking at several screens at the same time, I want all of those screens to be about my class.” In the synchronous space, providing more than one live information stream can actually enhance attention among students accustomed to multitasking.

Regardless of the platform, the law school must take responsibility for ensuring that all participants have sufficient software, bridging systems, and connectivity options to participate in synchronous environments. Average student consumers should not be responsible for ensuring their own connectivity, given the complexity of bridging systems, software plugins, and so forth. At a minimum, schools should provide students with technological specifications, software or appropriate plugins, and a testing phase before the class begins to ensure the student can access the synchronous platform. As noted elsewhere, in-person support during class should also be provided.

While web-based consumer products like Skype and Google Hangouts may be insufficient platforms for a synchronous class, they can serve as good student-to-student interactive platforms, as one-on-one and office hour tools, or for other short term or limited audience interactions. One concern regarding use of these systems, however, is the challenge of tracking interactivity over these platforms. The ABA requires minimum interactivity time for certain courses, which can be easily tracked by an institution's primary delivery source. Once a class begins mixing multiple tools, tracking interactivity time becomes more challenging.

Video Feeds/Video Links (asynchronous video)

Unlike live webcasts, video feeds/links allow students to access a pre-recorded video at any time. Because the video is “canned,” it is not possible to use an interactive link within prerecorded video, but interactive elements (see Discussion Threads, below) can be used in conjunction with static video presentations for analysis and discussion.

Recommended Practices: Video Feeds/Video Link

Students use video feeds differently than they use live webcasts in two important ways. One of the many benefits for students is the opportunity to review videos multiple times, thereby providing them the opportunity to re-watch the presentation several times. Given that students have a more concentrated viewing experience, and the opportunity to replay specific segments, the information presented in a static video must be presented clearly, carefully, and with a greater degree of accuracy than might be demanded by a live webcast. Many course developers believe that this means videos should be carefully prescribed, with scripts developed for presentation before shooting. Presenters must speak precisely and carefully. Many schools and experts who work with static video also suggest that video feeds should be “chunked” or broken into 5-to-7 minute segments, each of which is easily identified and repeatable. This segmentation of videos and material allows students to easily access and review specific content on demand. To accommodate students with a variety of needs, best practices suggest that any video posted for student use be accompanied by a written transcript.

As with live webcasts, good video feeds and video links are produced with sufficient quality and clarity that speakers are both easily seen and easily heard. High quality video typically requires professional equipment, professional engineers and editors. Delivery of high quality video to individual users can require high bandwidth. Some practitioners recommend using a source outside the school’s hosting capacity, like a private channel on YouTube, to host video links for such material. As a result, best practices suggest that a school should develop both a method for dealing with the storage and protection of such files as well as a means of ensuring that participants have sufficient bandwidth to download and view videos.

Schools using video links and materials should take careful note of two technical issues. First, most video will need some level of post-production work and review to meet adequate quality standards. Ensuring both time and staff are available to edit and produce video is key to ensuring quality material. However, note depending on the video project chosen there maybe additional resources needed as current staffing models may not be adequate to support these processes. Second, to meet accessibility standards, post production processes should include the production of a written transcript of all asynchronous video and audio material. Transcripts should posted alongside all video links for students who may have special needs as well as for students to review the material as necessary.

Podcasts

Podcasts are audio-only pre-recorded sessions of one or more speakers. Podcasts have been used by radio journalists for years and are easily recorded on most handheld devices and mobile telephones.

Recommended Practice: Podcasts

Audio files should be clear and easy to hear. Many schools embed podcasts within their courses, playable as streaming audio from within the learning management system. Where this is the case, providing a separate file in a downloadable format will allow students to download the podcast to separate devices (e.g., iPods, etc.) and play it in other environments. As with static videos, students will often replay portions of the audio file several times to master particular content and ideas, so material presented should be carefully worded and of

sufficient delivery and quality that they can be heard with clarity on appropriate devices.

As with pre-recorded videos, podcasts are best developed in small “chunks” of 5-7 minutes to help students access information in digestible and reviewable pieces. Many students review podcasts while commuting, and short, searchable pieces are easier to identify, find and review than longer programs.

As with pre-recorded videos, all podcasts posted as part of an online learning experience should be accompanied by a transcript to accommodate student needs and learning styles.

Live Dialog (aka “Chats”)

A live chat can either be conducted in video, audio, or text-only formats. Chats are characterized as a platform in which two or more students interact with the professor or with each other, thereby expanding beyond the one-to-one interaction of an individual tutoring session. An open chat runs something like a conference call, where all participants have equal access to speak.

An open dialog/open chat can work well for small groups: either one member (the professor) leads the audio stream and allowing others to speak at specific intervals, or all members of the group discuss specific ideas in any format the group agrees is sensible. The challenge with open chats is the propensity for many voices to talk over one another, mudding the audio channel.

A moderated chat allows one person to have primary audio control, and additional participants to participate by indicating their interest in speaking (“raise a hand” protocols that signal a moderator to turn on a particular participants channel) or allow textual comments to be submitted in side channels (e.g., a text box on a web page that accompanies the call where students post questions that are then responded to by the moderator or professor).

Video

Video chats, not unlike live video webcasts, allow students and professors to see one another, and, if the medium allows, students to see each other. Video chats can be run with open audio channels in which everyone who is visible can also speak and be heard by all participants or like a moderated chat with turn-taking access to audio. Some commercial ventures, such as Google Hangouts, allow participants to toggle between participants as speakers.

Audio

Audio chats can be run either as audio-only exercises akin to a conference call or as audio feed over a manipulated video feed. For example, some audio chats run through a computer modulated space where the faculty can present static or manipulated PowerPoint or white board exercises. As students ask questions, the professor can type out examples, manipulate data, or demonstrate materials.

Text

Interestingly, many students prefer text-only chat forums. Indeed, they remain popular not only because the technologies are well developed and the bandwidth requirements are relatively low, but because students appreciate the anonymity that text-based chat can allow. Shy students, in particular, can thrive in the relative anonymity of text-only forums.

Voice-to-text

Technologies that render spoken word to text, or text to spoken word, is rapidly evolving. Most famously, the iPhone's Siri can take spoken directions and read back written emails. While a few programs are currently available and used to enhance accessibility we feel this technology still must mature a bit before it can be recommended as a teaching tool. At the rate of current technological advancement, voice-to-text and text-to-voice technology will likely be available and an important teaching tool within the next two years.

Discussions and Chats Broadly Speaking

Discussions in any forum should provide two elements: First, the medium should allow more than one student to interact with one professor. Good chats allow students to not only interact with a faculty member, but to also see or hear what other students are asking and how conversations within the course of the chat develop. Thus, a chat may allow a whole class to participate in the experience or may be limited to subgroups. Second, chats that take place within the context of a class should be recorded or archived, so faculty and students may go back and view the material presented in that format. This allows not only the live and spontaneous exchange of information, but the opportunity to review that information later for better comprehension and retention.

Unlike webcasts, static video feeds, and podcasts, chats do not demand a high level quality production. So long as participants can adequately see, hear, and access the appropriate participants, professional quality can be diminished in favor of informal interactivity. Several free or inexpensive services currently used for teleconferencing (e.g., Google Hangouts, Skype, GotoMeetings, WebX, Megameeting, etc.) as well as elements embedded within most learning management systems can provide adequate tools, provided all participants have sufficient bandwidth to participate. Appropriate connectivity, especially in interactive discussions, is important: chats are discussions, and if slow bandwidth prevents participants from interacting in a way that facilitates easy exchange, the underlying pedagogical benefit of a chat is lost. It should be noted that many, but not all, commercial systems do not allow for recording of sessions (or, when they do, some processing is required to make those recorded sessions available for review).

Online Discussion Forums

Made popular at the end of many news articles and YouTube videos, the concept of the online discussion forums is familiar to many internet users. Nevertheless, the employment of the discussion forum in online learning is significantly different than its popular, let-me-get-my-say counterpart. Less a comment feature, online chats provide opportunities for students to explore material and provide graded responses. Online discussions appear in two primary forms:

Broad Discussions

Broad discussions give students an opportunity to explore material, ask questions, posit opinions, and consider concepts provided in class. Often a supplement to synchronous webcasts or asynchronous video posts, broad discussions give students an opportunity to delve more deeply into concepts presented, to present questions to classmates, and to provide group feedback on learning concepts and ideas. Broad discussions are typically graded on participation, with few specific goals.

Directed Discussions

In directed discussions, students are given a particular assignment, and asked to develop a concept over the course of interactive conversations with faculty and students. The discussions that follow are intended to either expand or critique the initial entry, and can be used to further develop or argue an initial posting student's point. Directed discussions are typically assessed based on specific criteria for both the initial poster and for the discussants. As noted elsewhere, the use of rubrics that specifically identify both the requirements and criteria for an initial post, and for subsequent posts, provide both clear guidelines for student submissions and clear and manageable grading criteria for faculty reviewing discussion posts.

Chats.

Chats, typically conducted synchronously or in close time, are largely informal written discussions among two or more people. Many faculty use chats for questions, clarifications, or as a method of interaction available for "office hours." Chats typically do not have a specific learning goal, but are used as a supplemental conversational tool.

Recommended Practices: Discussion Forums

To use discussion boards effectively, the discussion board should be related clearly to course objectives, and targeted to those objectives. Setting formative or graded assessments that require students to post specific information, read each other's posts and comment in particular manners, or provide other feedback, will encourage useful and productive discussion board use. The use of legal citation, including appropriate footnoting and blue book form, should be part of any substantive discussion. Discussion posts should be held to the plagiarism and honor code requirement of any other paper or written assignment that a law student might submit in a law school class.

ABA standards on interactivity, and in particular Standard 311 on Distance Learning, allow online discussion times to be counted toward interactive class time. Therefore arranging the capacity to track the amount of time students spend on discussion is an important element of any discussion board set up. Most learning management systems ("LMS") provide time and tracking capabilities.

Blogs (aka "Social Space")

Blogs are online web page, typically developed in the form of an online journal. Individuals can share news, events, knowledge or ideas, and disseminate those ideas widely to others. Readers can provide feedback through a comment feature, to which the original author can respond. In educational settings, blogs may be used in several ways. Two of the most productive include:

Information Dissemination

(e.g., faculty lectures) followed by student comments/questions and feedback.

Journals, Student Reflections with Faculty Response

Many schools use the blog feature as a journal-keeping exercise during externships, where faculty may respond in a closed or open setting. Students may also keep blogs on particular subjects (each student follows on case or event, for example) subject to comments by others.

“Vlogging”

Like regular written blogs, students can submit video blogs (often simply video commentaries, but sometimes more substantively produced video excerpts). Faculty and students may then submit written comments on the student’s video.

Recommended Practices: Blogs

To use blogs effectively, the blog should be related clearly to course objectives, and targeted to those objectives. Setting formative or graded assessments that require students to post specific information, read each other’s posts and comment in particular manners, or provide other feedback, will encourage useful and productive blog use.

Wikis

Wikis are open, group written documents in which two or more people can create, edit and develop materials. Wikis typically provide not only a group “writing space,” but also a data history so each keystroke change can be attributed to each participant. Wikis can be used as group project space for class groups, or as a moderated compendium space for information gathering and dissemination.

Recommended Practices: Wikis

In cases where the wiki is used as a group project space, students should have clear instructions on how final products will be evaluated, and made aware to the extent participant data is collected, and how that data will be evaluated (if at all). In cases where wikis are used as moderated information spaces, submission guidelines, and the principles by which submissions will be evaluated and included or excised from the space, clearly delineated before submissions are accepted. Many instructors find wikis work best when students are given at least two separate spaces in which to work: the wiki, and a separate chat board, discussion space, or other spot. As with the wiki itself, the extent to which these moderated spaces will be evaluated should be clear to students at the outset.

As most wikis have traceable histories (an instructor or administrator can see who submitted information or made edits, and when those submissions or edits occurred), students should be informed the degree to which their group work can be tracked, and how, if at all, information from their working experience will be used in their grades.

Faculty who construct wiki exercises should be aware of IP implications. If a group of students constructs new work, the nature and ownership of that work should be identified at the outset.

Student Assessment

Assessment of Student Performance

The online learning paradigm, which emphasizes clear learning goals, interactive feedback and outcomes-based assessment, provides a new paradigm for legal instruction. Traditionally many law schools provided doctrinal classes with little or no assignment work or feedback during the semester and that concludes with a single written exam and a grade at the end of the semester.

In contrast, online learning almost always involves a series of assignments, each of which offers high levels of interactivity between faculty and students as well as among students themselves. This interactivity provides multiple opportunities for faculty to offer feedback, grades, and coaching to improve student performance and teaching pedagogy. It also, however, creates new challenges particularly for those accustomed to a limited number of graded events.

Recommended practices: Student Assessment

In the online learning space, learning objectives are specifically and concretely identified. Those learning objectives are mirrored and measured in assignments and feedback on one's progress toward those goals is routinely given. Where possible, multiple opportunities to develop skills and deepen knowledge, coupled with increased feedback and faculty interaction, provide students with new learning tools and methods. Faculty availability (or, as appropriate, teaching assistants or other personnel) remains key to providing appropriate and timely assessment.

Rubrics

Each assignment or assessment opportunity should provide a specific rubric that states: (a) the learning objective of the assignments, (b) the knowledge or skill the assignment is designed for students to demonstrate or develop, and (c) the specific criteria by which each student will be evaluated. These rubrics should be provided to students before they begin work on an assignment and then be used as the primary grading criteria.

It is worth noting that learning objectives, goal-based assessment and rubric-bound grading are philosophically distinct from the anonymous curve-based grading traditionally deployed in law schools. The notion that students should be “shown the goal posts” and be rewarded if they hit targets regardless of the accomplishments of their peers stands in stark contrast to the curve-based sorting function law schools typically deploy and where students are ranked against one another and in which achievement is a subjective and relative measure. This is not to say that curves cannot be used in online courses, but that they must be carefully designed to harmonize both with the assessable learning outcomes increasingly required by accreditors and clearly explained so students can manage expectations, identify appropriate goals and accurately measure achievement.

Feedback

Students should be provided timely feedback on all assignments. Grades and feedback ought to be provided in sufficient time such that students may incorporate lessons learned before attempting the next assignment or activity. Using rubrics, faculty should indicate both student performance and opportunities for improvement. Wherever possible, narrative evaluation, in addition to numeric scoring, will provide students with the added information and incentive needed to improve performance. Because students perform work at a distance, they have little opportunity to meet with faculty face-to-face, gain a sense of their work performance, or ascertain the faculty's general impression of the assignment's importance to real-world skill building. To moderate for that displacement, faculty should provide extra attention to assessment and feedback.

Peer Grading

To provide significant feedback on student work in light of the volume many online assignments can generate, many professors use peer grading and feedback tools to both build assessment, and increase overall group learning and skills. Without providing detailed recommendations here, peer grading is both acceptable and recognized as highly beneficial, provided it is designed and weighted so that the overall authority – the faculty member – both has final say and a weighted evaluative role. Many learning management systems provide tools for intricate weighting and grading devices wherein peer and faculty assessment can be combined. Faculty can also leverage other tools (e.g., comment features within discussions) to allow peers to provide corrective feedback before final submissions. Peer ranking (e.g., students vote for the “best” assignment) can not only provide grading criteria, but can provide faculty with valuable feedback on overall student understandings of best concepts and desirable skill development.

Attendance as Assessment

In some classes, particularly synchronous classes, assessment tools may be used as proxies for attendance and attention (e.g., short quizzes along the way to ensure students are attentive and understanding the material). The use of modified “clicker” or poll technology, quizzes, and other tools can provide immediate and interactive attention-testing moments that demonstrate the group understanding of concepts or material. In these instances, the purposes of such assessments should be made clear to students, and feedback mechanisms adjusted to meet this goal.

Gradebook/Dashboard

Most learning management systems provide a gradebook feature that is available to students at all times. This “dashboard” progress report provides students immediate information on their progress. Depending on design, students can see not only their current grade and feedback (typically provided in spaces directly within the grade book) but a sense of their progress on individual learning goals. Because students are learning remotely, constant access to their progress and grades is an important element not for ongoing student achievement, but simply for ongoing student engagement.

Online Quizzes

There are a variety of online quiz tools that allow faculty to present anything from a short multiple-choice quiz to a highly complex assessment, depending on the nature of the learning management system.

Quizzes can be used as one-shot assessments, time-limited tests, or open ended opportunities. Students may be allowed multiple attempts, and instructors can block access to other portions of a course until a certain success rate is achieved on a quiz. Feedback on individual answers can be given immediately, withheld until the end of quiz or released at a later set date. Faculty currently use online quizzes for everything from formative assessment tools to self-assessment opportunities.

Recommended Practices: Quizzes

The use of quiz, and the deployment of a quiz, should be part of the overall design of a course. While quizzes can enhance the learning environment, they are not tools to be deployed as the only assessment opportunity for students. Quizzes, whatever their nature, should be used as supplements to, and not substitutes for, interactive discussions and opportunities.

Assessment of Course Effectiveness

Student tracking, through grade book functions as well as more broadly in assignments, online classrooms, and other forums, allows for a variety of other benefits, including retention and program assessment. Traditional students have both a residential classroom to go (the classroom) and a series of reinforcing lifestyle choices (moving to a new city, peers and social networks also engaged in the same school). Online students are often isolated, without the physical routine that reinforces class work and with limited in-person access to supportive student networks. Closely tracking student achievement, including attendance, performance, and nuanced differences in performance in response to feedback, can give significant insight into a student's progress, and, in turn, give faculty and administrators tools to retain students.

Similarly, careful tracking of overall student interactivity and progress will provide faculty and administrators valuable information on the success of the course. Thoughtful feedback can be amalgamated and studied for trends. For example, if students are routinely told over the course of a class to "improve legal research and citation," and this comment persists from the second week to the last week of class, faculty and administrators can identify a needed skill. Similarly, administrators can determine through data from study over several course offerings which students (and what percentage of overall students) master particular course goals. Adjustment to curriculum, pedagogy, or even orientation and selection criteria, may be considered as a result of data. Tracking data, and demonstrating the use of such information is of increased importance to a variety of accreditors.

Recommended Practices: Course Assessment

Rigorous student surveys should be coupled with data collected from the class (attendance, participation, assignments, qualitative and quantitative feedback analysis) to assess whether learning objectives have been reasonably attempted and appropriately met. Each iteration of a class should be studied for its effectiveness and subsequent course offerings adjusted appropriately.

Technology Training and Management

The ABA's Standard 311 requires that all faculty and students who participate in online classes receive sufficient training and technical support. A school's minimum obligation to fulfill this requirement is recommended to include the following facets.

Faculty Training

While many faculty members reach the front door of their first classroom without any specific pedagogical or technical training, it is unwise—if not nearly impossible—for faculty to enter the world of online learning without training in a variety of areas. Appropriate training will both enable faculty to be self-sufficient in appropriate areas, and set expectations for best practices

distance learning instruction. Note that some online learning models scale their offerings by placing one supervising instructor (often a highly qualified faculty member) in charge of a number of instructors who in turn deliver different sections of the same course. All involved should be provided training appropriate to their role, including training for supervising faculty, facilitators, teaching assistants, and anyone else in an instructional or support role.

Pedagogical Training

Faculty training should include both pedagogical and technical training sufficient to give the faculty the ability to perform teaching duties within the medium of instruction. Pedagogical training should include both the rationale for goals-based education, the mechanisms for appropriate assessment, and the methods employed by tools used in the system. Developing faculty should have a deep understanding of outcomes based education, and sufficient assignment design training to both craft appropriate learning goals based on their context expertise, and to craft assignments that will adequately assess student's ability to master those goals. Teaching faculty should have sufficient training in pedagogy and content to be able to accurately direct student activities and appropriately assess student outcomes.

Technical Training

Revised rule 1.8 of the Model Rules of Professional Responsibility requires that attorneys must keep abreast of technological changes relevant to the profession.⁶ While distance education does not necessarily overlap with technical proficiency in digital drafting, ediscovery, document mining, electronic filing, and other recent technical advances, general familiarity with online access, discussion, etiquette and remote interaction skills are directly within the scope of the proposed Model Rule.

Depending on the institution's model, faculty may need different levels of technical training. Faculty should have sufficient training to interact appropriately with students online, and to access each part of their course. Faculty should also have sufficient training so that they can perform all grading and grade book functions without assistance.

Recommended practice: Faculty Training

Before participating in any distance learning experience, faculty should receive both pedagogical and technical training. At minimum, faculty should be trained in outcomes-based course design, appropriate feedback and responsiveness for the medium, and develop sufficient technical capacity to operate effectively in the distance learning environment.

Student Training

Online classes, whether synchronous or asynchronous, can be very different than a traditional

⁶ Model Rules of Professional Conduct, Rule 1.8 Maintaining Competence.

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1.html

classroom. Student training should include both an orientation toward the technical aspects of class, and clear expectations around interactivity and quality of work. Because students often use technology for a variety of purposes, many of them highly informal, clear and specific quality guidelines should be articulated as part of initial training.

Pedagogical Training

We strongly recommend students have orientation to the program and the institution's goals and expectations sufficient to enable them to reasonably understand and attempt to meet them. Students should learn the levels of appropriate formality or informality for the program, appreciate the importance of their individual contributions, and be versed in appropriate netiquette (online behavior).

Technical Training

Prior to beginning a class, students should have sufficient technical orientation to ensure they possess all the relevant programs, downloads and plug-ins necessary for the class. Students should have training dedicated exclusively to exploring the online space and practice with all key learning components (e.g., video streaming, connectivity, posting, submitting assignments, accessing grade book, etc.). Students should have an opportunity to work with a technical advisor to ensure all aspects of online learning materials are working adequately before the start of class.

Recommended Practices: Student Training

Students should participate in a targeted orientation program that, at minimum, acquaints them with online learning techniques, technology, and expectations. Students should test all necessary technology, including connectivity and software, prior to the start of any distance learning class.

Support Staff Training

A variety of different kinds of staff support may be provided in distance learning programs. In some programs, faculty will be asked to fill each role; in other programs, each function will be assigned to a different staff member. While this Blue Paper does not advocate a specific staffing plan, we acknowledge each of these separate tasks. Whoever is performing these tasks—developing faculty, staff members, or others—should have adequate training for the roles they pursue. A fully developed program, using each of these professionals, is notably expensive. Upfront investment, however, can provide strong student outcomes and satisfaction, and address issues that are likely to be raised by accreditors down the line.

Content Expert

The content expert, almost always the faculty member, is the person who identifies the pedagogical goals of the course and provides the appropriate content guidance to develop a satisfactory academic experience. At minimum, this person should be primarily responsible for developing course goals, the appropriate literature, material, resources, and exercises that will provide students with adequate exposure and practice to accomplish course goals. The content expert also determines the appropriate assessments to measure student achievement. Content experts are expected to know the field of instruction, and will almost always be sufficiently credentialed to teach the course upon completion.

Course Designer

A course designer (sometimes called “instructional designer”) is a partner with the content expert/developing faculty member who ensures that the pedagogical goals of a distance learning course are adequately developed and delivered. To this end, course designers must have sufficient training to understand educational pedagogy, technical course development, statistical analysis, and program development.⁷ This technical expert will guide content experts in the development of resources and exercises within the media of instruction (e.g., learning management system). Course designers will have sufficient technical expertise to develop and appropriately incorporate course materials, develop and program exercises, and provide quality control assurance for courses based on institutional policies and procedures. Course designers are responsible for design before live instruction, or, in the case of asynchronously delivered courses, prior to student participation.

Technical Support

Technical support should be available to faculty and students throughout the actual running time of a synchronously delivered class and more continuously during an asynchronously delivered class. This support is necessary to deal with both primary delivery and system challenges. In synchronous systems, technical support should be available throughout live sessions to both setup and ensure one time delivery, monitor delivery throughout the synchronous session, and provide troubleshooting should problems arise. To that end, technical support personnel should be adequately trained in all portions of the synchronous system as to be able to both deliver and troubleshoot systems. Technical support should have appropriate authority to be able to modulate systems to ensure interactive delivery with students enrolled in the course. In asynchronous systems, technical support should be well versed in all deployed technologies, and able to provide support to faculty and students on systems challenges and glitches. Technical support should have sufficient authority to fix all technical problems, and available at times when students will need such support (including evenings, weekends, and any time students may reasonably be expected to work on asynchronous programs).

Minimum Technical Support

All programs should have accessible technical support for both faculty and students during the period of instruction. For synchronous instruction, technical support should be available for a reasonable period prior to the start of class, throughout the live session, and for sufficient period at the end of class to allow for appropriate recording and program shut down. In asynchronous environments, technical assistance should be available to both faculty and students 24/7, through both computer and non computer based means (e.g., call center).⁸

⁷ Several universities now offer undergraduate and graduate degrees in instructional design, including Florida State University, Boise State University, University of Texas at Austin, Brigham Young University, and University of Georgia. See also M. Orey & P. Fortner, *Worldwide List of Graduate Programs in Learning, Design, Technology, Information, or Libraries*, in *Educational Media and Technology Yearbook* (2012).

⁸ It is worth noting that year-round, 24/7 support can be an expensive undertaking for startup programs. This function can be outsourced, and need not be live. Chat-based support, or specially delineated “warm” support (a promised response within a three-hour window) can typically suffice, provided the level of service and expectations are carefully set with students at the start of classes.

Student Services

Most online students access a distance learning opportunity because they cannot afford the luxury of participating in a residential campus experience: jobs, families, illness, or other factors make distance learning the only option for pursuing further education. Because these students have significant life events competing with their attempt to attend school, they must be provided customized student support services.

Advising

Online students should have adequate access to appropriate advisors who can provide course selection and other appropriate academic advising. Distance Learning students have unique needs, including competing priorities and work conflicts, that may impact their capacity to participate in courses. Online resources, and adequate access to advising functions—sometimes outside traditional office hours—are critical to providing online students sufficient academic counseling. Most current online programs identify a strong advising program as the most effective retention tool.

Career Services

At this time, few schools have a fully developed career services program specifically designed for their distance learning students. The schools that have developed such programs report success, but note that delivery is difficult. At this time we do not have a recommendation on what kinds of career planning or other student assistance services should be provided by such program, but do note that it is incumbent on programs to carefully articulate to students what services will and will not be available to distance learning students.

Recommended Practices: Student Services

All offices with which students interact (Financial Aid, Business, Registrar, etc.) should provide means of contact and/or alternative hours to accommodate distance learning students. Students with illnesses, emergencies, in need of leave, or other experiences that inhibit capacity to participate should have an office with whom to interact on such matters. All information, resources and forms required of students should be provided in electronic form, and allow for electronic signatures.

Library resources, technical services, and any other services students may require during the course of a class experience must be available in a form and at a time that it can be reasonably employed to meet the needs of the student while in the class (e.g., hours that match course access times, resources available on schedule with student needs, etc.). Similarly, schools must have in place an appropriate method for students to request appropriate accommodations, securely provide necessary medical documentation, and discuss accommodations needs with appropriate and expert personnel.

Institutional Integration and Administration

Many institutions are currently considering the degree to which online offerings should be interchangeable with, or integrated within, traditional residential offerings. In many non-law school programs, schools offer the same classes online and in residential formats, and students may pick the session that best fits their needs. To date, because of the ABA's limitation on online credits, this mixed program has not been proposed at any law school. That said, as

integration of both JD and non-JD programs increases, there are several curriculum management decisions to consider.

Instructional integration

Some schools employ their core residential faculty to develop and teach their online courses. These schools feel using core faculty both protects the integrity of the brand, and the quality of the course content. By using largely long term faculty who have vested interest in the institution, and a known teaching reputation, the school may feel the integrity of the program is maintained.

Other schools use almost exclusively adjuncts to develop and teach online courses. Because adjuncts are typically cheaper than residential (particularly tenured) faculty, this decreases overall program costs. However, the fluidity of adjunct teaching pools makes quality control more difficult to manage, and requires additional management and oversight.

Administrative Integration

Some schools integrate online offerings into their regular instructional budget, registration systems, business office functions, and other school offerings. Initial set up challenges should not be underestimated: online offerings typically occur at different cycles than residential classes, requiring all business functions within an institution to adopt new terms, billing cycles, financial aid cycles, and student contact protocols. Often policies within existing student handbooks will take on unintended outcomes when applied to online course offerings. Moreover, because students are not typically on campus, their ability to reach appropriate business offices and resolve problems is limited. Careful review of all business systems, and specific plans for student contact and information, should be developed prior to the first online offering.

Some schools have set up parallel business processing units for online programs, akin to a continuing education office with its own registration and billing systems. Schools that choose to set up parallel and independent systems for online programs should pay careful attention to following all Title IV financial aid and billing requirements as well as identifying student registration and privacy concerns. Despite the initial attraction of setting up a self-contained billing system for online programs, when programs increase in size, and the complexity of student billing and financial aid increases as well, programs often find the expense of running parallel systems greater than the benefits.

Student Support Integration

Distance Learning students have very different needs and support access opportunities than traditional residential students. First, because they are typically not on campus, they do not have the opportunity to resolve issues by visiting various offices and commanding individual attention. Instead, issues are typically resolved over the phone or by email. Second, because distance learning students are typically employed full time while pursuing online courses, they are often not able to call appropriate offices to resolve issues during normal business hours. These two facts alone can mean students have less access to support and fewer avenues to resolve academic issues than traditional campus based students.

In addition, distance learning students often have very different student support needs than campus based students. For example, online students who experience computer difficulties typically need their technology issues addressed immediately—they can't access class, work on assignments, or be "present" when their technology is down. Online students are also often fully employed and many have families and other time consuming responsibilities and priorities beyond their coursework. Family emergencies, workplace demands, and other life events can prevent students from participating successfully in online classes. Because most online students are individually isolated, as noted previously, they tend to work from their computer and do not have immediate access on a daily basis to classmates for emotional support. Crises can occur without anyone being aware of a student's circumstance. Even when students request accommodations or assistance, the nature of the assistance classmates and faculty can provide is very different when students are participating in a class from different parts of the world.

Student Support

Schools make specific plans for student support. These plans should include a single point of contact or a limited and responsive contact person in each appropriate office, and methods to resolve questions and challenges outside of regular business hours. Best practices will also include some method for monitoring of individual student progress, and the ability for accommodation requests to be processed and addressed specific to online classes and programs.

Chapter 3

Intellectual Property Law as Applied in Distance Education

Traditional copyright law applies in distance education. In a distance education class, material may exist online and may be accessed by more than the enrolled students. This may impact the copyright analysis:

- (A) Posted items exist in the online space longer than in a physical class.
- (B) Purchased items should not be copied, re-recorded, etc. without regard to copyright.
- (C) Online materials are more susceptible to wholesale copying and distribution than physical materials.
- (D) Material found online may be copyrighted or may have been posted in violation of copyright laws; exercise care when reproducing or linking to online material.

When using copyrighted material in a distance education class, faculty should consult an intellectual property expert. Additionally, schools must conform to the T.E.A.C.H. Act, which specifically addresses distance education content.

Ownership Issues Particular to Distance Education

Schools need to reach clarity regarding ownership of online courses developed for use by the law school. For example:

- (A) If a professor leaves an institution, what is the professor's right to the course and its content.
- (B) If a professor leaves an institution, what is the institution's right to the course and its content.
- (C) What rights does an institution or the professor have to update a course?

Institutions have a direct investment in the tools of online course development. The institutional investment creates additional issues related to ownership of the course. For example:

- (A) Technology investments; hardware and software
- (B) Course designer assistance
- (C) Technical staff support; including help desk support
- (D) Other third-party consultants, etc.
- (E) Marketing costs
- (F) Institutions are particularly interested in the transferability of courses in an online environment.

There are a number of types of contractual agreements regarding online course development, ownership and use rights. All of these contracts must address intellectual property rights.

Student-Created Work

Copyright attaches to all original work fixed in a tangible format (including born-digital documents). This includes student-created work. Online instructors should not reproduce, distribute, or incorporate student work except with permission or within the defense of fair use.

Chapter 4

Netiquette Policies

The following document is designed to be a draft policy paper for use by programs that have some form of online delivery (synchronous, asynchronous, and hybrid). It encompasses suggested policies and best practices useful to online law programs as well as to individual faculty and students in those programs. It is divided into four parts: (a) description of general computer and email guidelines applicable to both residential and online programs, given that students in residential programs also utilize online communication tools; (b) policies applicable specifically to synchronous online delivery; (c) policies applicable specifically to asynchronous online delivery; and (d) faculty netiquette.

Computer and Email Guidelines

Computer Best Practices

- (A) Confirm that your computer is compliant with requirements of your distance learning program or class
- (B) Keep your current email address on file with the school
- (C) Install, update, and use virus protection

Email Best Practices

- (A) Do not use all CAPS in your emails
- (B) Be professional in all communications
- (C) Use official Law School email addresses and follow applicable School codes of conduct
- (D) Be mindful of using the REPLY ALL feature

Overview

The administration and faculty want to help you succeed as you work and learn in the online environment. The online program will use the Internet as a medium for instruction and communication. Email is used extensively to send and receive messages to and from the school and professors. Computer and Internet security will make these communications both safe and effective for everyone. Here are some key guidelines to get you started.

Students will be communicating with administrators, faculty members, and fellow students across the nation and globe, some of whom students will never meet in person. The law school community expects its members to respect each other's individual dignity at all times, including when communicating by email. Students can achieve better communication – and results – with special sensitivity to the effect of words and actions upon the recipient of a message. Please follow commonly accepted email protocols and behaviors when emailing the school or other students. A guide to these is set forth below.

- (1) **Set-up Your Email Filter:** Important email messages and notices will end with the law school domain. Please make sure that your email spam filter does not reject messages from

this domain. You should “whitelist” the law school domains or place them in your “trust List” in your email filter. Please re-check these settings several times a year to ensure you are receiving all communications from the law school.

- (2) **Keep the Law School Informed of Email Address Changes:** If you change your email address (or any of your personal information), you are responsible for updating your permanent records on the school site. You need to be vigilant to ensure that you receive all critical school email announcements.
- (3) **Install, update, and regularly use appropriate virus protection software:** Antivirus software computer programs attempt to identify, neutralize or eliminate malicious software. Examples of virus protection programs include Avira, Cisco Security Agent, eSafe, LinuxShield, McAfee VirusScan, Norton AntiVirus, PC Tools, AntiVirus and Windows Defender. Be extraordinarily careful when downloading "free" software, collections of emoticons, weather bugs and the like. These almost always contain spyware (to report to others what you are doing on the Internet) and/or viruses.
- (4) **Strongly consider using spyware protection on your computer:** Spyware is computer software that is installed surreptitiously on a personal computer to intercept or take partial control over the user's interaction with the computer, without the user's informed consent. Many programmers and some commercial firms have released products designed to remove or block spyware.
- (5) **Strongly consider using a firewall on your PC:** A firewall is a device or set of devices configured to permit, deny, encrypt, or proxy all computer traffic between different security domains based upon a set of rules or other criteria. A firewall's basic task is to regulate some of the flow of traffic between computer networks of different trust levels. Typical examples are the Internet, which is a zone with no trust, and an internal network, which is a zone of higher trust. A zone with an intermediate trust level, situated between the Internet and a trusted internal network, is often referred to as a "perimeter network" or Demilitarized zone (DMZ).
- (6) **Expectations Regarding Electronic Communications:** All email to and from the law school is governed by the law school's Code of Conduct, the Academic Use Policy and any other relevant rules and policies set forth by the law school. Students should review these codes as part of the orientation process.
- (7) **If your Law School requires you to use the email address provided to you by your institution then you should check that email at least once daily and communicate using that email.**
- (8) **DO NOT USE ALL CAPS in your emails. It is considered SHOUTING. DON'T SHOUT!**
- (9) **Use symbols for emphasis, rather than CAPS. For example: “That *is* what negligence means.” Use underscores for underlining. For example, “_War and Peace_ is my favorite book.”**

- (10) Use smileys to indicate tone of voice, but use them sparingly, and we suggest that they be completely avoided in professional communications . :-) is an example of a smiley (Look sideways). Do not assume that the inclusion of a smiley will cure an otherwise insulting comment.
- (11) Think before you email. If in doubt, leave it out. If not sure, wait overnight. If you are upset, wait overnight to send emotional responses to messages. You should not send heated messages even if you are provoked.
- (12) Do not attack or insult another, even if it is meant as a joke.
- (13) Make an effort to spell check or proofread before you send.
- (14) Avoid using Text Messaging style.
- (15) If you have a technological problem, call or email [Insert Law School] Tech. Support. Please be kind and courteous, even if you are frantic. You will get help just as fast and the exchange will be more pleasant for all.
- (16) You should assume that your email is not secure. Never put in a mail message anything you would not put on a postcard.
- (17) Respect the copyright on material that you reproduce. Almost every country has copyright laws.
- (18) If you are forwarding or re-posting a message you've received, do not change the wording. You may shorten the message and quote only relevant parts, but be sure you give proper attribution and use ellipses or "[deleted]" to indicate redactions.
- (19) In general, it's a good idea to check your email messages in reverse chronological order before responding to a message. Sometimes a person who asks you for help (or clarification) will send another message which says "Never Mind". Also make sure that any message you respond to was directed to you. You might be cc:ed rather than the primary recipient.
- (20) Always include your name and student ID number on an email.
- (21) Make things easy for the recipient. Many mailers strip header information which includes your return address. Be sure to include a line or two at the end of your message with contact information. You can create this file ahead of time and add it to the end of your messages (a "signature" file.) (Some mailers do this automatically.)
- (22) Keep your signature short; no longer than 4 lines. Do not include quotes or extraneous material.

- (23) Be careful when you reply; you may actually be replying to a group or "reply to all." Do not reply to emails sent to you from the law school that instruct you not to reply.
- (24) Avoid forwarding chain mail of any kind. This is considered spam, and it clogs inboxes.
- (25) Take care when forwarding email. Be sure you have permission from the sender to circulate.
- (26) Watch cc's when replying. Don't continue to include people if the messages have become a 2-way conversation.
- (27) Remember that you communicate across the globe. If you hope for an immediate response, the recipient might be asleep when it arrives. Give them a chance to wake up and login before assuming the mail did not arrive.
- (28) If your message is truly time sensitive, consider using the "high-importance" function in your email. .
- (29) It's courteous to include the word "Long" in the subject header for messages that will take time to read. Over 100 lines is considered "long".
- (30) Know whom to contact for help at your ISP. Most have "Postmaster" aliases to a contact person, so you can send mail to this address to get help.
- (31) Remember that the recipient's culture, language, and humor have different points of reference from your own. Be careful in using slang. Under all circumstances, avoid sarcasm.
- (32) Mail should have a subject heading which reflects the content of the message. Avoid forwarding confidential information by mistake. Also, change subject lines when you forward, if applicable.
- (33) Be alert to "phishing" emails that appear to be from a reputable source. These often ask you to supply personal information: address, phone number, even your social security number. Never, ever fall for one of these messages. Call the company first to confirm.
- (34) Be extraordinarily careful when downloading "free" software, collections of emoticons, weather bugs, and the like. These almost always contain spyware (to report to others what you are doing on the Internet) and/or viruses. Often these viruses do not activate for some time, long after you forgot downloading something interesting.
- (35) If you do not have time, reply briefly to an e-mail, letting the sender know that it was received, even if you will send a longer reply later.
- (36) Know how large a message you are sending – and how large an attachment. For large attachments, consider zip software to compress the material. Alternatively, a cloud storage

system can be used to share files.

- (37) Don't send unsolicited information.
- (38) Delivery receipts and vacation programs are invasive and especially problematic when sent to mailing lists; many consider delivery receipts an invasion of privacy. In short, do not use delivery receipts. If a vacation program is used, filters should be set so the message is not sent to a list serv as a whole..
- (39) If you find a personal message has gone to a list or group, immediately send an apology to the person and to the group.
- (40) If you strongly disagree with one individual on a group discussion, respond directly and privately to that individual rather than to the list or the group.
- (41) Don't get involved in flame wars. Neither post, nor respond to, incendiary material.
- (42) Avoid messages or postings which are no more than "I agree, too!"
- (43) Plain text will reach everyone. Html may not. Choose wisely.
- (44) Never use gender, ethnic, or racial slurs.

Asynchronous Courses

Asynchronous delivery of online courses can be both beneficial and challenging, as it gives students a chance to reflect outside of the "real-time" classroom setting but can require stronger time management skills to effectively interact with one's peers. Knowing the proper contacts for different types of questions (technology vs. course content, etc.) and being familiar with the technology being utilized are imperative for working within the parameters of an asynchronous course.

In general, the asynchronous course model can be viewed as a precursor to one's professional life, with responses, deadlines, and interactions taking place on a less-structured level than a synchronous course.

Communication

- (A) When composing an email, discussion response, etc., ensure that you are following the appropriate style guidelines (APA, MLA, etc.) and that your writing follows proper grammatical and mechanical rules.
- (B) Do not use 'text-speak,' all-caps, or emoticons
- (C) Opportunities for written response should generally be treated as professional writing exercises. Proofread and review your responses carefully.
- (D) As a general rule, copying and pasting of outside source material should be avoided unless

you are specifically asked to include such content; in these cases, proper style guidelines must be followed, and attribution to the source material made, to ensure compliance with Fair Use and [*university plagiarism/academic honesty*] policies.

- (E) To avoid confusion, start new discussion threads or email chains when shifting away from a previous topic.

Any online discourse should be substantive; thoughtful analysis that adds new elements to the conversation and furthers the discussion should be used. Promoting feedback from others and supporting your comments with examples or relevant outside sources (articles, media, etc.) is encouraged.

Behavior and Privacy

- (A) Remember that tone is subjective
- (B) Be respectful, positive, and constructive when responding to your peers and/or instructor.
- (C) Use of profanity or obscene content should be avoided.
- (D) Be aware that cultural differences among your peers could cause sarcasm or certain types of humor to be misconstrued. To avoid offensive or insulting behavior, avoid humor related to controversial subjects (religion, sex, gender, ethnicity, etc.) or personal attacks.
- (E) Avoid comments of an extraneously religious or political nature, as such comments can be distracting, disruptive, or potentially offensive to others and are generally considered unprofessional.
- (F) Threatening or abusive comments, online bullying, and cyber-stalking will not be tolerated [*and will be subject to institutional policy*].

Online privacy continues to be a sensitive area, so be aware of any institutional policy with regard to social media. Use of social media varies widely among students and faculty, so don't be offended if a faculty member or peer doesn't respond to a friend/follow request, etc. - in the interest of professionalism, he/she may not be comfortable with such a connection. In general, avoid posting photos or videos of classmates without their explicit permission on social networks or elsewhere. If you have additional questions, FERPA policies are commonly located on institutional websites.

Asynchronous Best Practices:

- (A) Be “present” in the classroom by posting often
- (B) Be clear and concise in expressing your thoughts
- (C) Respect others’ opinions
- (D) Cite to outside resources

Synchronous Courses

Students in regular law school classes generally govern their behavior by adhering to widely recognized norms. For many students, these norms do not automatically carry over to synchronous online classes where, no longer guided by conventional classroom norms, they comfortably and regularly engage in “on camera” behaviors that significantly distract others in the class. These behaviors are particularly disruptive in synchronous classes because they are uniquely visible to other students and to the instructor. Because of the medium, they call attention to themselves and away from class discussion and focus. The following is proposed as a policy intended to minimize and manage these behaviors in synchronous classes.

On-Camera Behavior Policy

As a general rule, it is important that you maintain the same norms of behavior in online classes that you adhere to in a traditional classroom setting. This means that you will avoid behaviors that could disrupt class activities and distract other students from participating in those activities. In addition, you should follow norms of civility when dealing with others in the class.

On-camera behavior in online classes also presents unique problems covered by the following netiquette guidelines. Unless you have specific permission from the instructor, your behavior in your online class should be governed as follows:

- (A) No eating
- (B) No babies or animals on camera (including the background) (no third parties)
- (C) No side conversations
- (D) No side activities (emailing, texting, etc.; the cameras capture everything)
- (E) Use headsets to insure quality audio
- (F) Beware of background noise makers
- (G) Be mindful of safety issues (don't access while driving, etc)
- (H) Turn off your camera if you have low bandwidth
- (I) Tweet about it later (be attentive)
- (J) Be on time
- (K) Get acquainted with the tech/login
- (L) Be present
- (M) Be polite
- (N) Be professional
- (O) Be respectful of instructor, classmates, and the virtual classroom environment
- (P) Mute your microphone if no handset
- (Q) No multi-tasking (it is distracting to yourself and others)
- (R) No capture or distribution of online classes

Level of Preparation

What if anything do you tell them in terms of having to do readings, engagement in discussion, respectful and vibrant environment, intellectual exchange of ideas

Deadline online is not respected.

- (A) Take off points
- (B) Close the box? Closing assignments after the deadline

Synchronous Best Practices

- (A) Technology for synchronous sessions should be tested in an orientation prior to an actual class session.
- (B) Consider your background scenery and noises – you cannot see what is behind you but others can, and everyone can hear noises.
- (C) Consider muting everyone and using a “raise hand” feature to avoid speaking over each other.

Faculty and Instructor Netiquette

Technology and Pedagogy

- (A) Instructors should ensure that academic materials have been edited and proof-read before going ‘live’.
- (B) Instructors should facilitate test runs of new courses, courses delivered on new LMS platforms, and courses that are substantially revised, in order to ensure that materials are coherent, consistent, and free of errors. A best practice is using an objective third party, such as a graduating student, to conduct a ‘beta test’ of the course. With each reiteration of the course, it is recommended that a graduate student conduct ongoing reviews to ensure internal consistency with deadlines and materials.
- (C) Ensure proficiency with the technology being used—instructors should learn how to use the technology properly, and should not “scapegoat” it when things go wrong.
- (D) A best practice is for instructors to create a teaching manual to communicate to potential future instructors the teaching goals, course structure, materials and other relevant information related to the creation of the course.

Policies

- (A) Instructors should respect deadlines (internal, institutional deadlines as well as those specific to their own classes) related to assessments, grade due dates, etc.
- (B) While it is extremely difficult, if not impossible, to effectively prevent circulation or posting/reposting of materials related to classroom materials, discussions and activities, instructors should ensure that there is an explicit policy that prevents students from engaging in such distribution without authorization.
- (C) Instructors should ensure that all relevant policies have been transparently communicated to students.
- (D) Instructors should ensure they are familiar with all relevant academic and other policies. Faculty can assist in identifying areas in which adequate policies have not yet been formulated at their host institution.

- (E) Instructor policies and actions should be consistent (e.g., rewrites, accepting assignments late).
- (F) One model is liberate faculty from the challenges of enforcing deadlines and policies related to waivers, extensions, etc. (e.g., department chair/ academic dean responsible for approving all such requests). This also offers the benefit of having one person who is able to see student performance in a longitudinal setting.
- (G) Respect students and student time—be punctual for class, return assessments in a timely manner, foster an engaging and ‘safe’ classroom environment.

Communication

As communication is integral to an effective learning environment, it is important that instructors model effective, respectful and professional communication skills and engage with students in a manner conducive to positive student-faculty interactions. Faculty are both part of the problem when problems with communication occur, as well as the primary solution to those issues.

- (A) Instructors should communicate their policies with students regarding relationships on social media. Faculty should not consent to ‘link’ or ‘friend’ current students on any form of social media, optimally until after the student graduates (if at all), or at a minimum after the student has completed the faculty member’s course and the academic term
- (B) Instructors should take all reasonable steps to facilitate being accessible to students for academic matters, including the use of regular virtual office hours, creating live classes (e.g., through Adobe Connect, Google Hangout), etc.
- (C) Students have the right to expect that their questions, concerns, and comments will be responded to by instructors in a timely, respectful, and helpful manner. As a best practice, we recommend that responses be communicated to students within 24 hours.
- (D) Responses by instructors should model the type of behavior expected of students— instructor comments should be substantive, professional, respectful and helpful.

Chapter 5

Technology Evaluations

This section is written to assist law school administrators, faculty, library, and information technology staff to understand the decisions and impacts of selecting technology to be used as a part of the teaching and learning process of the law school. This guide aims to cover the process from initial selection to the implementation of the learning management system (LMS).

To establish a controlled vocabulary, it is important to define the differences between a learning management system and a content management system. A learning management system is a software application for the administration, documentation, tracking, reporting and delivery of e-learning education courses or training programs. In contrast, a content management system is to provide the capability for multiple users with different permission levels to manage a website or a section of the content. Though these terms are often interchanged, these systems are used distinctively differently and should be considered as such.

Establishing a Relationship: Determining In-House Services vs. Outside Contractors

- (A) Service Level Agreements
 - Hosting location
 - Warranty
 - Maintenance downtime schedule
 - Uptime guarantee
- (B) Help Desk support: 24 x 7 x 365
 - Check who offers first-tier support: Law IT department? LMS / CMS vendor?

Course Management System

There are numerous considerations to be reviewed before adoption of a course management system (CMS).

The selection process for a course management system will vary from institution to institution, and will depend on whether it is a public or a private institution. Considerations in the selection process may also depend on whether the law school is independent or is affiliated with a larger university.

If the law school is public, or affiliated with a larger university, a law school will need to determine whether the university has an enterprise course management system that they can use for little to no cost. If there is an enterprise course management system, a dedicated technology staff (at the university level) who is responsible for the maintenance of the network traffic, server infrastructure, and backups. There may also be instructional technology specialists, such as instructional designers, who are also available as a resource for law schools who are public or affiliated with a larger university.

Law school administration should ensure that centralized university staff resources are able to

meet the pedagogical and curricular needs of the law school.

Regardless of the type of educational institution, if law school administration decides to select its own CMS, there are a variety of open-source and fee-based options to choose from.

The central cost and configuration of any online program will be the course management system. Blackboard, Moodle, eCollege, and Canvas are all examples of robust learning environments with varying learning curves; before any other element is considered, it's important to determine how much continual support and administrative supervision will be needed internally.

It should be noted that it is rare that a course management system is ready as an “out-of-the-box” solution. Law schools must allocate staff resources and time to hire programmers to configure the course management system. Law schools must also determine whether the CMS will integrate with other existing enterprise systems, such as the student administration system, course catalog, financial modules, and other administrative systems.

Platform Neutrality

Platform neutrality has become a larger issue in the past few years with the widespread introduction of tablets, smartphones, more streamlined laptops, and hybrids. It is vital that the CMS be adaptable to multiple platforms and that any inconsistencies (browser incompatibilities, need for additional software, etc.) are addressed with users to ensure smooth access. (For example, as of this writing, Moodle is problematic in Apple's Safari browser, but functions normally in Firefox and Google Chrome.) Students will have expectations of universal accessibility regardless of device used.

Along with platform neutrality, the law school must also determine what kinds of content files can be uploaded to the system. For example, it would be important to note whether the CMS accepts MPEG files vs. SWF files. As BYOD continues to become a trend, law schools must be able to produce and post content that is accessible to everyone.

Scope of Usage

One consideration regarding the CMS selection should be the anticipated scope of usage. Will the CMS be used for individual courses or departments, or will it be adopted by the entire institution? Institutional CMS licenses are often based on a number of users and/or the amount of space used for course materials, files, etc., so focusing carefully on both the short and long term goals of the program, and tailoring the usage of the CMS to those goals, will have a significant financial result.

CMS Training

Regardless of an instructor or developer's experience with CMS platforms, a certain amount of training is a necessity to ensure that all users are equally familiar with the functionality and features of a new system. Certain CMS providers may provide training resources in the form of video tutorials or walkthroughs to teach system usage; however, depending on the needs of the institution, the decision may be made to create training materials in-house to ensure that faculty, staff, and students are using the system in the way that administrators determine to be the most effective. Costs associated with CMS training will depend upon whether the training is handled

by existing or additional staff, or the CMS provider.

Additional Tools

A robust CMS platform doesn't guarantee that all of its internal resources will be used or preferred by users. If plugins for Google products (Drive, Hangout, etc.) or other third-party services will be utilized within the CMS, there may be licensing costs associated with such usage. Additionally, training must be made available for any third-party product that will be utilized within the CMS. To this end, a repository of training materials is often a good starting point for users, with library and technology staff collaborating on tutorials, video lessons, PDFs, etc. Readily available, downloadable resources of this nature will ease potential strain on support staff.

Integration with Student Administration System

- Considerations: FERPA
- Authentication options: LDAP, CAS
- Directory service integration: Does CMS dynamically check AD? Does CMS keep its own copy of AD?

Integration with School Website: Consistent branding

- SSL certificates

Information Security

Why is this relevant?

Information security is important to many law schools. Privacy of videos, access to grades, and other online information submitted by students should be secured. This section will outline the important considerations for a law school that is considering implementing an LMS.

- (A) FERPA
- (B) Authentication
- (C) Firewalls
- (D) Staff time:
 - Systems administrator
 - Who else has access to the servers?
- (E) Password reset mechanism
- (F) If using vendor services, what is their privacy policy?

Hardware, Software, and Peripherals

Why is this important?

Some LMS environments require the addition of hardware, software and peripherals in order to increase efficacy of the technology. This section will outline the considerations involved in this implementation.

- (A) Servers
 - (A) Considerations: Physical or VM build
 - (B) OS

- (C) Server backup schedule: daily?
- (D) Backup: Appliance? Appliance-less?
 - (S) Encryption
 - (T) Firewall
 - (U) Vaulting
- (B) Computer(s) – synchronized software
- (C) Audio and video software
 - (A) Free tools
 - (B) Fee-based tools
- (D) Media Storage:
 - (A) Retention policy
 - (B) Short-Term: SD cards, Lecture capture solution
 - (C) Long-Term: Servers, NAS
- (E) Camera(s)
 - (A) Video Cameras - Quality: Need for HD?
 - (V) IP-based, PTZ cameras
 - (W) Streaming capabilities
 - (B) Webcams - Quality: Need for HD?
 - (C) Lighting: Need for light kits?
- (F) Conferencing
 - (A) Bridge connections: Need to consider cost per connection, set up time, scheduling options
 - (B) Streaming capabilities
 - (C) Restriction on the number of participants?
- (G) Microphone(s)
 - (A) Professional v. consumer
 - (X) Needs of usage - are instructors using them to record in their offices, or are these being used in a studio environment, or is it being used to capture audio in a synchronous classroom environment?
 - (B) If microphone is being used in a synchronous classroom environment:
 - (Y) Ceiling-mounted microphones
- (H) Backup audio

A backup solution for audio must be determined before a synchronous class (or a series of synchronous classes) are run. A law school may consider investing in audio conferencing phones as a backup solution for audio. There are a variety of different options, such as Polycom phones or Skype, that a law school may choose from.

Pricing

There may or may not be pricing implications in the event you choose a backup audio conferencing system. Some, such as Skype, are ubiquitous and easily accessible. Others, such as Polycom conferencing system, can be expensive. Selection largely depends on the needs of the school and the anticipated number of participants that will be involved in a call.

Typically, there are a number of pricing models for audio conferencing services. For example, the law school must determine whether the cost of the call is per minute, or per connection. Other considerations include the number of participants that can join the call. Training options must also be arranged for students, IT staff, and faculty members to provide in-time troubleshooting support.

Additional Considerations

- (A) Faculty training
 - (1) Studio preparation for shooting
 - (2) Usage of handheld recorders
 - (3) Mobile-based recording tools (iOS voice memos, etc.)
- (B) Student expectations
 - (1) Minimum processing requirements
 - (2) Technology audit

Technology for Testing and Other Assessments

Does your CMS offer a testing module? Will you need a separate product? How does the school handle electronic proctoring?

Off-Campus Support for Library Resources

- (A) EZ-Proxy: Server (Physical or VM)
- (B) Directory services, authentication

Assistive Technology and Accommodations

Considerations:

- (A) Lecture capture
- (B) Transcription

Internet/Bandwidth Considerations

Necessity for a high-speed network

Appendix of Institutions

From 2011 through 2014, approximately one hundred academic institutions and corporations have had faculty and senior staff participate in Work Group communication and collaboration, including for these Recommendations of Best Practices.

American University School of Law
Athabasca University, Canada
Australia National University
Barry University School of Law
Blackboard
Boston University School of Law
Brigham Young University School of Law
CALI
California Western School of Law
Chapman University School of Law
Charlotte Law School
Chicago-Kent College of Law
Cordozo University School of Law
Drexel University School of Law
Duncan University School of Law
Elon University School of Law
Emory University School of Law
Florida Atlantic University School of Law
Florida A&M University School of Law
Fordham University School of Law
George Mason University School of Law
Georgetown University Law Center
Golden Gate School of Law
Hamline School of Law
Harvard Law School
Hofstra University School of Law
Indiana University School of Law
InfiLaw
John Marshall School of Law (Chicago)
Kaplan University Concord School of Law
LexisNexis
Lewis & Clark University School of Law
Louisiana State University College of Law
Loyola University School of Law (Chicago)
Loyola University School of Law (Los Angeles)
Loyola University School of Law (New Orleans)
Massachusetts School of Law
Michigan State University School of Law
New York Law School

Nova Southeastern University Law Center
North Carolina University School of Law
North Carolina Central University School of Law
Northeastern University School of Law
Ohio State University School of Law
Pearson
Penn State University School of Law
Roger Williams University Law
St. John's University School of Law
Seattle University School of Law
Suffolk University School of Law
Southern University School of Law
Southern Illinois University School of Law
Southwestern Law School
Stanford University School of Law
Stetson University School of Law
Syracuse University School of Law
Temple University School of Law
Texas Southern University School of Law
Texas Tech University School of Law
Thomas Cooley School of Law
Thomas Jefferson School of Law
Touro University School of Law
University of Akron School of Law
University of Arkansas School of Law
University of California, Hastings
University of Connecticut School of Law
University of Dayton School of Law
University of Denver College of Law
University of Hawai'i
University of Houston Law Center
University of Miami School of Law
University of Minnesota School of Law
University of North Texas College of the Law
University of New Hampshire School of Law
University of New Mexico School of Law
University of the Pacific, Mc George College of Law
University of Pennsylvania School of Law
University of Pittsburgh School of Law
University of Southern California School of Law
University of St. Thomas School of Law
University of Tulsa School of Law
Valparaiso University Law
Vermont Law School
Villanova School of Law
Wake Forest University School of Law

Washburn University School of Law
Washington University School of Law
Western New England University School of Law
West Virginia University College of the Law
Widener University School of Law
William Mitchell School of Law