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Linda C. Fentiman

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A Distance Education Primer: Lessons From My Life as a Dot.Edu Entrepreneur

Linda C. Fentiman¹

I. Introduction

We stand at the threshold of a major change in legal education. Recognizing the extent to which law students and lawyers alike rely on the Internet in both their professional and personal lives, the American Bar Association (“ABA”) has approved new standards for the J.D. curriculum which will greatly expand the opportunities for law students and lawyers to use the Internet to learn at a distance.² Under these standards, students can

¹ Professor of Law, Pace University School of Law. Professor Fentiman received her B.S. from Cornell University, her J.D. from S.U.N.Y. Buffalo Law School, and her LL.M. from Harvard University Law School. She teaches courses in health law, bioethics, mental disability law, public health law, criminal law, and white collar crime.

² Until 2002, ABA rules limited law students to taking three credits (out of a possible 80–90 at a typical law school) via distance learning over the course of their J.D. program and imposed additional requirements for course delivery, course size, etc. These “Temporary Guidelines” were developed in 1997 by the Office of the Consultant on Legal Education, at <http://www.abanet.org/legaled>. At the December 2001 meeting of the ABA’s Council of the Section of Legal Education and Admissions to the Bar, new standards for distance education were proposed that would significantly expand the opportunities for J.D. students to receive part of their legal education at a distance, although students would still be limited in the extent to they could take asynchronous courses. See *Commentary on the Changes to the 2002–2003 Standards (Including Marked-up 2001–2002 Standards)*, at <http://www.abanet.org/legaled/standards/archives.html> (last visited Nov. 16, 2004) (on file with the North Carolina Journal of Law & Technology). These requirements are consistent with the ABA’s overall goals of ensuring that asynchronous, as well as synchronous, distance education courses provide “good opportunities [for students] to interact with the instructor and with each other,” and that students whose legal education includes some distance education courses are still part of a professional and academic learning community, with all that implies for education and socialization into the legal profession. See *id.*

earn up to twelve law school credits through asynchronous³ courses, by taking up to four credits a semester, after they have completed 28 credits (roughly the first year of law school).

To date, few law schools have taken the plunge into distance education, although a handful have gotten wet toes. As the Director of the Health Law and Policy Program at Pace University Law School, I had the chance to swim in the deep end. I spent a two-year odyssey as a dot.edu entrepreneur, working with a group of dedicated colleagues to develop a distance learning initiative in health law.⁴ The Pace program was completely asynchronous, available via the Internet to lawyers, health care professionals, and law students, anytime of the day or night, anywhere the student had access to a computer and an Internet connection. In 2001, we launched the Pace Health Law Distance Education Program, beginning with two health law courses. The first course, Introduction to Health Law, provided a broad

The ABA Council of the Section on Legal Education and Admissions to the Bar adopted the proposed standards at its June 2002 meeting.

³ Asynchronous is a term of art in distance education. Literally, it means "the quality or state of being absent or non-concurrent in time," in contrast to synchronous, which means "happening, existing, or arising at precisely the same time." WEBSTER'S NEW COLLEGIATE DICTIONARY (9th ed. 1977). In practice, an asynchronous course is one in which all the course materials (lectures, assignments, discussion groups, etc.) are available to students at any time, regardless of the moment that the professor or teaching assistant is teaching or responding to a student question or concern. In a synchronous course the student/professor or student/teaching assistant interaction occurs in real time, even if it is mediated by distance.

⁴ From the outset, the process of designing and creating the Pace Health Law Distance Education Program was highly collaborative. I received much helpful advice from my husband, Arthur Levine, President of Teachers College-Columbia University; Valerie Carroll, Peter Cookson, Jomar Legaspi and Rob Steiner of Teachers College; Barbara Atwell, Julie Baker, Janet Belkin, David Cohen, Marianne Davy, Gretchen Flint, Janet Johnson, Kathy Lambert, Vanessa Merton, Margaret Moreland, Marie Newman, Audrey Rogers, and Gisella Tirado Tewes of Pace Law School, Susan Merritt, Marilyn Jaffe-Ruiz, David Sachs, and Jim Stenerson of Pace University; Carol Sanger of Columbia University Law School; and Mark Barnes, Jonathan Barnett, Jeff Becker, David Burke, Chris Stern Hyman, Joseph McAuliffe, Ruth Scheuer, Norton Travis, Susan Waltman, Robert Wild, and other members of the Pace Health Law Advisory Board.

overview of the health law field. The second, Health Care Fraud and Abuse, offered an in-depth look at that important aspect of health law.

Although the initial results of the program were quite promising, after less than a year in operation the decision was made to suspend the program because it did not immediately break even, and its pursuit was not viewed as central to the Law School's mission. While recognizing that academic leaders must make tough decisions in light of their institutional mission, I believe that this decision was short-sighted. In the long run, innovative distance learning programs can be both popular and profitable, as they provide an important complement to traditional law school courses by permitting students to take specialized courses not normally available in law schools.

Through my experience in developing Pace's innovative distance education program, I have learned some critical lessons about the potential and perils of providing legal education via the Internet. In the belief that my experiences are generic, not dependent on a particular law school's context, I offer these observations to assist others who seek to launch distance education initiatives in the not-for-profit sector. The following is an account of my life as an educational entrepreneur.

II. It Began with a Dream

In 1987 Pace University Law School⁵ established a certificate program in Health Law and Policy,⁶ becoming one of the first law schools in the nation to recognize health law's

⁵ The Law School was founded in 1975. Currently, reflecting its special expertise in environmental law, health law, and international law, it offers three certificate programs.

⁶ This certificate program was the first in health law in a law school east of the Mississippi River, and the only health law certificate program offered by one of New York State's sixteen law schools. In order to gain the Certificate, students have to take four required health law courses, reflecting the breadth and complexity of the area known as health law, earn at least 12 credits, and maintain a high grade point average.

importance as an area of specialization.⁷ By the time I joined the Law School faculty in 1995, the Health Law and Policy Program at Pace was attracting numerous students who were interested in health law as part of their J.D. degree. The Program also attracted practicing attorneys who were interested in making a transition from life as a corporate lawyer, real estate lawyer, or litigator to the specialty of health care law via Pace's certificate program. Most of these attorneys lived or worked in Westchester County, where Pace is located, just north of New York City. In my work, I frequently encountered lawyers from New York, New Jersey, and Connecticut who said they would like to earn the Certificate in Health Law and Policy if it did not involve traveling to the Pace campus.

Thus the idea was born to offer the certificate in Health Law and Policy via distance education to the growing number of health care lawyers and potential health lawyers in the greater New York Metropolitan area. Initially, this appeared easy. Pace University, with six campuses flung across forty-four miles in New York City and Westchester County, had recently invested heavily in magnificent videoconferencing rooms, which linked the campuses. It was a no-brainer, I thought, to teach health law courses to our J.D. students and simultaneously make them available through videoconferencing to lawyers from Manhattan and northern Westchester County. This would permit us to serve lawyers interested in making a career change as well as those already practicing health law who wanted to expand their expertise. At virtually no cost, I fantasized, we could provide quality continuing legal education, double our course enrollment, and bring in tuition revenues that would permit Pace to hire more faculty and enhance the law school's reputation in the rapidly growing health law specialization. Dollar signs danced in my head.

⁷ Indeed, given that health care now consumes 15% of the Gross Domestic Product, Robert Pear, *Health Spending Rises to 15% of Economy, A Record Level*, N.Y. TIMES, Jan. 9, 2004, at A16, there is undoubtedly a significant market to train lawyers and health care professionals to understand and solve the complex legal, financial, and policy problems of the health care field.

Alas, I had not reckoned with the complexities of university administration. The law school class schedule did not mesh with those of other schools in the university, which were all competing for the videoconferencing rooms. While the law school offered three-credit classes on Mondays from 6:00 to 7:15 p.m. and Wednesdays from 8:00 to 9:15 p.m., other parts of the university taught in larger, three-hour blocks one night a week. Since the law school would not be permitted to monopolize the videoconferencing rooms, we could not meet our regular class schedule and still offer health law courses via videoconferencing to working professionals. We also could not change the times at which health law courses were offered without interfering with our students' overall law school schedules. Chastened but not deterred by these scheduling realities, it was time to consider other options.

Plan B appeared in the guise of the Learning Anywhere Anytime Partnership, a grant program sponsored by the Fund for Post Secondary Education ("FIPSE"), part of the United States Department of Education. In 1999, FIPSE announced this competition, open to nonprofit organizations seeking to demonstrate that distance education could satisfy unmet needs in a cost-effective manner. Applicants were required to have a partner, satisfying the widely held view of grant makers that grantees should work collaboratively to benefit from each other's insights and share limited philanthropic resources, developing programs that could be successful in multiple settings.

Fortunately, Teachers College-Columbia University ("TC"), one of the nation's premier graduate schools of education, had begun offering online courses in 1998. The Distance Learning Project at Teachers College was interested in partnering with us to explore how Pace could transfer its certificate program in health law to the Internet. Pace could learn from TC how to develop a "course delivery" structure appropriate for the complex area of health law. Pace and TC submitted a joint proposal to FIPSE that utilized Pace's "content expertise," Internet-speak for Pace's substantive knowledge of health law, and TC's pedagogical and technological expertise in distance education. We were jubilant when our proposal made the first cut of the FIPSE approval process, but ultimately we did not receive funding.

Nonetheless, writing the grant proposal clarified my thinking about how the Law School might develop online health law courses. There were two complementary goals for a health law distance education program: to enhance the Law School's reputation in health law, and to attract additional students to Pace, which in turn could provide increased resources for the Health Law and Policy Program. Our prospective students included both lawyers interested in health law as well as health care professionals who were confused and challenged by the complex system of health care regulation and payment that has emerged over the last decade, as managed care has changed forever the way that health care is provided and financed.⁸

In order to secure funding for a health law distance education initiative, I enlisted the support of Pace's Health Law Advisory Board, a group of distinguished health lawyers and health care professionals and administrators in New York, New Jersey, and Connecticut. We embarked upon development activities with the health law bar in the metropolitan New York area, seeking financial support from prominent health care lawyers.

The response to this initiative was mixed. Although there was much enthusiasm about the distance learning initiative, few firms were prepared to contribute financially. In the New York metropolitan area, with more than one hundred hospitals and many more nursing homes,⁹ there were ample opportunities for health law firms to buy tickets to hospital charity balls and golf tournaments, which had a clear and immediate payback in client cultivation. Although we received generous gifts from some members of the Health Law Advisory Board, we did not receive significant financial support from the health law bar at large.

⁸ Concord University Law School, an online institution that is not accredited by the ABA, has aggressively courted health care professionals seeking education in health law and has developed an online Executive J.D. program in health law targeted at this group. See <http://concord.kaplan.edu> (last visited Nov. 16, 2004). Both Nova Southeastern School of Law and Virginia Commonwealth University have also targeted this market. See <http://nsulaw.nova.edu> (last visited Nov. 16, 2004); <http://www.vcu.edu> (last visited Nov. 16, 2004).

⁹ Interview with Susan Waltman, General Counsel, Greater New York Hospital Association (Jan. 22, 2002).

Happily, however, in early 2000, the Law School found itself with an unexpected budget surplus, and the dean committed \$90,000 to fund the Pace Health Law Distance Education Program. According to the budget that we had developed for our fund-raising efforts, this was enough to jump start our program, to permit us to develop and deliver health law courses, as well as pay for a modest marketing initiative. My life as a dot.edu entrepreneur was about to begin.

III. Learning to Think Like a Marketer

In the spring of 2000, we began interviewing research and marketing firms. Our objectives were to determine if there was indeed a market for health law courses offered via the Internet, and if so, to learn about that market's characteristics in order to tailor our courses and our marketing to reach that target audience. Only one of the higher education research and marketing firms who made presentations impressed us as Internet-savvy, with substantial experience in website development, Internet-based market research, and the ability to create and project a marketing image using both the Internet and traditional print media. We hired this firm, and began an extensive foray into the World Wide Web. I learned about bandwidth, bytes, the subtle differences between Internet Explorer and Netscape Navigator in terms of capturing web surfers, and the art and science of choosing images and developing copy to steer potential students to our program website and ultimately enroll in the Pace Health Law Distance Education Program.

In June 2000, our outside marketers came to campus to begin the "discovery" process. Discovery is aimed at forcing you, the client, to clearly identify your goals and at the same time, make sure that all players' views have been considered and all perspectives explored. Accordingly, we sought input from other health law faculty members, the co-chairs of the faculty curriculum committee, the faculty at large, the associate dean for academic affairs, the registrar, the assistant dean for external affairs, the directors of admissions, career development, computer services,

and continuing legal education, as well as members of the Health Law Advisory Board.

As the Director of the Pace Health Law Distance Education Program, my role as “client” was both powerful and intimidating. In theory, I could make any choice I wanted, but the decision must be made quickly and within very narrow constraints of time and money. I could seek perfection—the perfect website design, the perfect print ad, the ideal legal newspaper and health law journal in which to advertise—but such perfection would come at the price of the equally scarce resource of time, since our goal was to get our website designed and up on the World Wide Web within two or three months to begin “driving traffic” to it.¹⁰ My usual leadership style—seeking advice, mulling over different perspectives, and building consensus—and the normal leisurely pace of faculty dialogue had to be altered if we were to be able to achieve our goal: enrolling real students to take the courses that we were developing along with the Program’s website and media strategy.

Throughout the summer of 2000, we raced the clock relentlessly. After discovery, we conducted online “focus groups,” a slimmed-down, slicked-up version of qualitative social science research. We assembled two groups of eight to ten people in an Internet “chat room,” and asked them questions about their attitudes and conceptions about online learning, and particularly, online learning about health law.¹¹ A skilled moderator guided the discussion, while I sat behind the Internet version of a two-way mirror and made suggestions for follow-up questions.

Through the focus group research, we found that most lawyers, even those who used the Internet regularly, knew very little about distance education and were uncertain about whether they wanted to take a health law course online. Several participants wanted the immediate feedback of a traditional law

¹⁰ It is perhaps axiomatic that it is impossible, when seeking the goals of “good,” “cheap,” and “fast,” to achieve all three at the same time.

¹¹ We selected potential focus group members from our own health law alumni, attendees at Pace’s annual health law conferences, and, through bar association and other professional contacts, identified health lawyers who were just starting out and might be interested in getting a head start. Then our marketers randomly selected actual focus group participants from these potential recruits.

school class,¹² and others expressed surprise that a law school course online would cost the same amount as it would to attend a course on campus.¹³ The focus group research did give us a general idea of which courses were the most popular, and gave our marketing advisors a direction, so that they could begin devising a website and a print media strategy. However, in hindsight, I believe that the money we devoted to focus group research could have been spent more effectively elsewhere, probably in buying more print advertisements. Rather than relying on the focus groups for clues about the demographics and desires of potential online students, we might have done just as well assembling a group of lawyers interested in health law in a room on campus and quizzing them, saving much of the time-and technology-related costs of conducting focus groups online. Further, while the focus groups provided a rough understanding of potential students' attitudes toward distance education, there is obviously no direct link between attitude and behavior, *i.e.*, between being intrigued by an ad and buying a product.

IV. Designing the Website

Developing a website was a complex process. First came concept development: based on our ideas about our target audience, how can we reach them? After conducting the focus group research, our media consultants presented us with a basic marketing concept, designed to appeal to the dual markets of

¹² These concerns proved prescient: the lack of live interaction was a source of frustration and disappointment to several of our online students and faculty in the Health Care Fraud and Abuse course. See *infra* pp. 62–63.

¹³ Our pricing decision reflected a choice to be competitive both with continuing legal education (“CLE”) offerings and with LL.M. programs, as well as a practical concern that we should not be undercutting our on-campus courses. A multi-day CLE program can cost participants well over \$1,000, given tuition, transportation, and lodging expenses. LL.M. programs in health law cost more than \$20,000 in tuition alone, not to mention the loss of employment income that a full-time LL.M. program requires. Concord University Law School’s unaccredited LL.M. in health law recognizes these economic realities. Its tuition is about \$9,800, close to the \$10,000 that the Pace Certificate in Health Law and Policy would cost if a student took 12 course credits.

lawyers and health care professionals. We responded by indicating what we did and did not like. Working with our media consultants, we selected graphics and images to provide a distinctive image of our program, appeal to our dual professional audiences, and meet appropriate standards of gender, race, and age inclusiveness.¹⁴ We selected six photographs to exemplify our “online learning community”:¹⁵ a doctor in dress whites and a nurse in scrubs with a stethoscope draped around her neck conferring together, a lawyer working with her laptop, a group of law school professors and students animatedly discussing a problem in a small conference room, a suspender-clad lawyer poring studiously over materials on his desk, another lawyer pulling case reporters off a shelf, and finally, a current law student.¹⁶ Our aim was to produce web copy that was appropriate for the professional audience we were trying to recruit, yet at the same time sufficiently appealing to encourage non-specialists to apply.¹⁷ My role, as editor of the copy drafted by our media advisors, was to balance substance and accuracy with brevity and pizzazz.

¹⁴ Our website was formerly located at <http://healthlawonline.law.pace.edu>. For our main web page, we chose a somewhat restrained design—a background of grey vellum, with a subtle image of the main law school building, a solid nineteenth century Tudor fortress, appearing as a “watermark,” with text which was short and to the point: “Pace Law School: Your Terms, Your Time.”

¹⁵ My participation in this endeavor consisted of highly sophisticated techniques, such as cornering family members at my parents’ surprise anniversary party to ask what they thought of particular text and images, and racking my brain to remember what Michael Steadman and Elliott Weston did on “thirtysomething” when they were trying to launch a new ad campaign. Ultimately, I had to go with my gut instinct, a dubious choice given that my artistic skills had neither been used nor improved significantly since fourth grade, and that I had chosen to make a living based on the pursuit of justice and rationality, not aesthetics.

¹⁶ All of these images were on the main page of our website. Visitors to the main web page could click on “Tabs” which linked them to particular web pages, such as “Curriculum,” “Frequently Asked Questions,” and “Contact Us.” This last page permitted potential applicants to contact the administrative assistant for the Health Law and Policy Program directly, via email or a toll-free telephone number, without having to navigate through the law school’s website or phone system.

¹⁷ The web text addressed particular issues, such as course schedules, technology concerns, and topics like “What Is the Value of a Certificate in Health Law and Policy?” and “What Is My Time Commitment?”

Potential students learned about the Health Law Distance Education Program and its website through our ads in regional and national legal periodicals, as well as targeted emails and listserv notices to various bar groups and health care professionals, mailings to Law School alumni and CLE participants, and word of mouth. We also asked several websites with a health law or distance education theme to provide a direct link to our program website, and permission was usually forthcoming. In addition, our website was designed with metatags that made it easier to attract people who were searching on popular search engines such as Yahoo.

The choice of periodicals in which to advertise was based largely on the recommendations of our media advisors. With a very limited advertising budget, we focused heavily on journals or newspapers in the New York metropolitan area, figuring that Pace would have greater name recognition close to home. We did not anticipate how many potential students lived across the nation, who were attracted to the Pace program precisely because they were not near any law school, or could not attend on-campus classes even if they lived close by, because of their competing family and professional obligations. Thus, running even one ad in a journal with national circulation turned out to pay significant enrollment dividends.

V. Developing and Staffing the Courses

Meanwhile, back at the ranch, the hard work of developing the online courses began. We decided to offer two courses. The first was Introduction to Health Law: The American Health Care System in Transition, a basic introductory health law course required of all students who seek to earn the Certificate in Health Law and Policy. The course was a smorgasbord of health law issues, including disability laws, remedies for “patient dumping” and other access problems, Medicare and Medicaid, health care economics, tax issues, healthcare fraud and abuse, managed care accountability, ERISA preemption, and healthcare antitrust. We had not previously offered the second course, Health Care Fraud and Abuse, but it was a hot subject among health lawyers and

health care professionals. Because the ways that a health care provider can run afoul of federal and state fraud and abuse laws had grown significantly in recent years, many lawyers and health care professionals were struggling to stay abreast of developments. In addition, the United States Attorney for Kansas had just indicted two healthcare attorneys for violating the Medicare and Medicaid Anti-Kickback law¹⁸ in their representation of a hospital client,¹⁹ striking terror into the heart of the health law bar nationwide.²⁰

A. Recruiting Faculty

Identifying the right professors was essential to course development. We decided to go outside Pace for our online faculty because we thought a practitioner could best impart the very specific skills and knowledge that we wanted to convey. Since most of our online students would be attorneys, they already knew how to “think like a lawyer,” and how to find and analyze cases, statutes, and regulations. The goal of our distance education courses—to convey substantive health law principles and related legal skills in a concrete and accessible manner, with the same rigor and challenge as campus based courses—required a more practice-oriented approach than the typical law school course. Our aim was to offer an interactive online seminar, to enable the lawyers who took our courses to be fully prepared and practice-ready in a new area of the law. We sought to provide a detailed road map to the very complex area of health law, helping them learn through realistic problem-solving opportunities, facing the same constraints of limited time and monetary resources that they would in real life practice.²¹ Thus, we needed faculty who were

¹⁸ 42 U.S.C. § 1320a-7(b)(2) (2003).

¹⁹ See generally *United States v. Anderson*, 85 F. Supp. 2d 1047 (D. Kan. 1999); see also *United States v. LaHue*, 261 F.2d 993 (10th Cir. 2000); *United States v. McClatchey*, 217 F.3d 823 (10th Cir. 2000).

²⁰ See, e.g., Joan Burgess Kilgore, *Comment: Surgery with a Meat Cleaver: The Criminal Indictment of Health Care Attorneys in United States v. Anderson*, 43 ST. LOUIS U. L.J. 1215, 1230, 1238–44 (1999).

²¹ Of course, one could argue that much more of conventional legal education should be taught this way as well, and that students learn best when they have a practical context in which to approach the law, including clients with complex

experienced and articulate practitioners, who had a broad range of legal knowledge as well as the current hands-on experience necessary to guide other lawyers. We also thought that these practicing lawyers would be well suited to teach health care professionals, since they would have undoubtedly worked with similar individuals as clients.

Identifying talented practitioners was easy, but convincing them to teach in a new medium was difficult. New York is loaded with talented, dynamic, and ambitious health lawyers, some of whom were already teaching as adjunct law school professors. We anticipated that teaching via the Internet would be attractive because the professors would not have to travel to the Pace campus and could teach at their convenience, holding “online office hours.” Unfortunately, it was these lawyers’ very talents, dynamism, and ambition that precluded a number of those we asked to teach from doing so. Many people were too busy, billing hours and making rain, to commit to teaching for a full semester, particularly when this type of teaching required learning a new set of pedagogical skills, including preparing an entire semester’s substantive materials far in advance of the actual class “delivery date.” It is one thing for adjunct professors to come to campus on a given night for fourteen weeks to discuss the assigned reading (and perhaps tell a few war stories as well), and quite another to develop an entire semester of specialized course materials, including a syllabus, Power Point, and video presentation for each class. In addition, I suspect that some potential faculty were intimidated by the challenge of teaching in a new medium, in which they could not adjust their presentation based on immediate audience feedback,²² or rely on their finely honed skills as raconteurs to keep the class’s attention.

legal problems, rude or obstructionist opposing counsel, and overworked judges. Providing such a rich and varied learning context for students is a major part of clinical education at Pace and other law schools.

²² Indeed, one of the frustrations experienced by the faculty who taught one of our online courses was that they could not interact more readily with their students, and could not immediately gauge if the students were “getting it.” See *infra* pp. 62–63.

Despite these obstacles, we were ultimately successful in recruiting three outstanding faculty members, partners and senior associates at respected health law firms, with significant practice experience and a serious interest in teaching. Each one was enthusiastic about teaching in the new medium and committed to working as part of a team, which included the instructional support experts at Teachers College and the computer services staff at Pace, to develop some first rate health law courses and break new ground in legal education.

B. Developing the Courses

The whole concept of “course development” was novel. In the “bricks and mortar” world, we do not tend to think of courses as a “product,” which can be packaged for sale to interested students in different ways. Many, though certainly not all, law school professors focus primarily on identifying the subject matter they plan to communicate to their students during the semester, and they may not give separate consideration to identifying or implementing their learning goals.²³

In contrast, there is much less flexibility with online courses. Professors must have a very clear picture from the outset about their goals for the course, in order to plan effectively to achieve those goals through the multiple instructional media available. These include videotaped lectures, Power Point presentations, print materials (available on and off the Internet), faculty responses to weekly writing assignments, online discussion groups, and online office hours. In an online course, the framework of the course and specific coverage questions must be

²³ Although over the years I have spent considerable time in advance of each semester considering what to teach, how to present it, and how to assess students’ understanding of what has been taught, I have always had the luxury, or perhaps simply the habit, of thinking about these issues again as I proceeded through the term. Thus, I can make coverage decisions as the semester progresses, dropping topics due to the simple phenomenon of “syllabus drag” and adding new readings based on current events, or the availability of a guest lecturer, or the need to clarify a topic that turned out to be more difficult to grasp than I initially thought.

addressed at the beginning because the development and production of course materials is so labor and technology intensive. Professors are able to change some of their materials close to the “delivery date,” but it is not as easy as it is in a real-time, on-campus course, in which we can devise a hypothetical problem a half hour before class, make photocopies, and distribute it directly to our students for discussion.

An example of the necessity for advance planning was the decision about how long the courses should be. At TC, the typical online course was seven or eight weeks long.²⁴ Although our team considered developing courses of this length, we ultimately decided that this was too short a time into which to condense a semester’s worth of learning, and decided that the courses should be twelve weeks in length. In retrospect, this was probably the right choice, particularly since a few students had difficulty accessing all of the instructional media during the first two or three weeks of each course. However, in the Health Care Fraud and Abuse course, offered during the summer, student interest flagged as the semester progressed, suggesting that there may be an outer durational limit for online courses.²⁵

We developed the courses using a team approach. Working with the TC instructional support experts, the online professors prepared syllabi for their courses in order to begin the collaborative discussion of how best to present information and learning materials to our online students. Then, based upon these choices, they worked with the TC team, as well as the director of the law school’s computer services department, to consider how best to translate their ideas into concrete materials, looking at major questions such as the subject matter for each weekly session and the ideal way to pose an interactive hypothetical, and minor details such as typeface and font size. From the outset, we were

²⁴ This was the case at the time we developed our courses, but TC has now returned to a traditional fourteen-week course format. Personal communication with Dr. Robert Steiner.

²⁵ The reason for this lessening of student involvement was not clear. It could be related to the course content, the course length, the style of learning involved, or the simple fact that summer was ending and students were turning to fall commitments, including, for many of them, a new semester of law school.

committed to using a broad range of teaching media to ensure that every student had multiple opportunities for learning by different means.²⁶ We chose Blackboard's CourseInfo²⁷ as an easy to use, easy to adapt platform that gave us the ability to present materials in a wide variety of formats. In each course, students were required to make use of the following learning sources: 1) an assigned casebook or treatise;²⁸ 2) online materials, including cases, statutes, regulations, legislative hearings, and background resources, with links to relevant websites;²⁹ 3) a video lecture by the professor, highlighting the key issues in the readings, which students downloaded via RealPlayer;³⁰ 4) a complementary Power

²⁶ As is well known to learning theorists and other educators, different students learn differently. Some are aural learners; other process information best through verbal means, while others are visual or oral learners. M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 150-64 (2001).

²⁷ See generally <http://www.blackboard.com> (last visited Nov. 16, 2004).

²⁸ In the American Healthcare System in Transition we used HEALTH CARE LAW AND POLICY (Havighurst et.al. eds., 2nd ed. 1998), a highly regarded health law casebook used in a number of law schools. In Health Care Fraud and Abuse we used CARRIE VALIANT & DAVID E. MATYAS, LEGAL ISSUES IN HEALTHCARE FRAUD AND ABUSE: NAVIGATING THE UNCERTAINTIES (2nd ed. 1997).

²⁹ Much of these supplemental materials were provided by Pace Law School's Virtual Law Library, which offered students well-organized links to a wide range of materials available on the Internet. The Virtual Law Library also offered traditional library services to the distance education students, such as circulation of books from Pace's collection and interlibrary loans. In addition, Pace has an extensive online Health Law Library, which provides access to a wide range of health law and medical and health care resources. The Health Law Library was created by a law librarian knowledgeable about health law, who organized this site and evaluated all materials linked to. See <http://www.library.law.pace.edu/Healthlaw/index.htm> (last visited Nov. 16, 2004) (on file with North Carolina Journal of Law & Technology).

³⁰ Through trial and error, we experimented with a number of approaches to producing this video. Eventually, our computer services department and Teachers College consultants worked together to create a small filming studio where our online professors would tape several video class segments at a time. While in an ideal world, we would have "shot" a lengthy videotape with multiple takes, and then carefully edited it, our resources of personnel and time did not permit this. However, we expected that over the long run, as we repeated our offerings of distance education courses, we would be able to revise a few segments each semester, constantly improving the courses.

Point presentation; 5) a week-long online discussion group, in which students worked through problems devised by the professor, facilitated by a “Health Law Cyber Teaching Assistant” (“Cyber TA”); and 6) real-time faculty office hours, in which the professor and the students discussed the assigned problem and the issues arising from that week’s assignment and discussion.

VI. Delivering the Courses

Using these diverse teaching materials, students were able to learn substantive health law as well as the specialized skills and problem-solving abilities relevant to this area of the law. Because the materials were presented in a variety of formats and because students were provided with extensive opportunities for interactive communication—with the Cyber TA, the professor, and each other—they were able to learn a considerable body of doctrine and skills over the course of a twelve-week class.

A. The Health Law Cyber TA

The Cyber TA was a particularly important part of the teaching team, as he made it possible for the students, many of whom were not particularly computer savvy, to gain access to all course materials. In the two courses we offered initially, our Cyber TA was a practicing health lawyer who had earned the Certificate in Health Law and Policy while a student at Pace. He played an important facilitating role, working with the online faculty and the Law School’s Computer Services staff to enhance students’ access and ease communication problems among all course participants. Anticipating potential technical obstacles, our Cyber TA created online tutorials. Different tutorials provided an orientation to the course, explained the workings of CourseInfo, and offered instruction on how to download RealPlayer, PowerPoint, and other necessary computer tools. If generic instruction proved insufficient, the Cyber TA was available daily to help students log on with a password or gain access to a particular segment of the course, such as faculty office hours. Nonetheless, there were occasional glitches, and sometimes too

many people were involved in solving a student's problems, as students would seek help *seriatim* from multiple sources if their problems were not immediately resolved. In an ideal world, there would be "24/7" support for all students' computing needs, to assist traditional students as well as those whose learning is taking place in other time zones. Given that this Utopian vision is unlikely to be achieved at most universities any time soon, we recommend that there be clearly articulated roles and default responsibility rules for all people involved with course delivery in a distance education program. This will ensure both that students' concerns are promptly addressed and that faculty and staff do not devote time and attention to a problem that someone else has already solved.

B. What and How Our Online Students Learned

A study commissioned by the Law School by an outside evaluator found that students were likely to rely heavily upon traditional print materials, rather than the more innovative learning tools we offered via multiple media. Although the reasons for the students' preferences are not entirely clear, I can offer some educated speculation. Some students may have relied heavily on print materials precisely because they were familiar, and therefore comfortable. Lawyers and law students *read*.³¹ This is what lawyers do as professionals, whether we are litigators, transactional attorneys, arbitrators, or academics, and this is what professors train students to do. Thus, even as law school professors and other educators seek to offer diverse learning opportunities, in recognition of students' different learning styles and preferences,³² law schools may in practice select for students who learn best (or at least adequately) using traditional methods and materials. In addition, some students experienced technical difficulties logging on to the course or downloading certain files, which precluded

³¹ Historically, of course, that meant reading words on paper, rather than those appearing on a computer monitor.

³² See Jacobson, *supra* note 26 at 150–64 (describing different cognitive and learning styles and the implications of these learning differences for legal education).

them from taking full advantage of the asynchronous course format and alternative learning materials. Finally, both students and faculty expressed some concern that the interactive learning opportunities like extended online discussion groups and weekly synchronous faculty office hours were hard to use because they require typing, which may take more effort and may also feel less satisfying than the familiar oral exchange of views in an on-campus course.

Despite these difficulties, student responses to the courses we offered were largely favorable. The first course, *Introduction to Health Law: The American Health Care System in Transition*, was taught to students across the United States,³³ all of whom were practicing attorneys or health care professionals. Many of these students were effusive in their praise for the course, expressing satisfaction with the course's content and rigor and the quality and richness of the various learning materials, and welcoming the ability to be part of an adult learning community.³⁴ Some students were disappointed in the lack of interactivity compared with an on-campus course. A minority of students expressed concern about delays in receiving grades and other administrative aspects of the course (for example, getting credit in time to be reimbursed for tuition by one's employer), which points out some of the real "distancing" effects of distance education.³⁵ Although in reality a student could easily telephone the program administrator to resolve a problem before it became serious, it is important to address the sense of unconnectedness that can accompany distance education with aggressive, proactive measures to ensure that students are able to communicate readily with faculty and support personnel. This will ensure that the overall course experience is a success, both in terms of what students learn and the learning process itself. Overall, it appears that the attorneys and healthcare professionals enrolled in this course were pleased with their experience, as they were able to gain significant legal knowledge that they would not otherwise have the opportunity to learn.

³³ Students lived in Arizona, Connecticut, Florida, Montana, New York, and Texas.

³⁴ Personal communications with the author.

³⁵ *Id.*

We offered the course in Health Care Fraud and Abuse to Pace J.D. students, as well as to attorneys and health care professionals, as part of a pilot program approved by the ABA. Our goals were to provide our J.D. students with a very specialized course that could not normally be offered on-campus because of low enrollment, and to evaluate whether law students, attorneys, and health care professionals could learn together. We sought an outside review of the course's success by a team of assessment experts from TC who were experienced evaluators of distance education programs.³⁶ The team's report was comprehensive and identified a number of major strengths: a well-qualified faculty, a low faculty-student ratio,³⁷ clarity in articulating the course goals and expectations, well-developed assessment (*e.g.*, grading) tools, and the availability of strong supplemental services, including the Pace Virtual Law Library and student admissions, counseling, and other support services. However, this generally positive evaluation also identified weaknesses, including the technical problems noted above, students' reliance on print materials, a perceived lack of opportunities for student interaction with professors and each other, and the concomitant lack of occasions for students to demonstrate proficiency in oral, as well as written, advocacy skills. The evaluation team found that student involvement with the course declined as the semester progressed, suggesting perhaps that students became frustrated with technological obstacles or the lack of interactivity, or alternatively, that as the course wore on and a new semester of law school and/or work loomed, students simply wanted to finish the course. Finally, it appeared that lawyers and health care professionals were more satisfied with the course than law students, perhaps because they were more interested in acquiring substantive knowledge and skills and less interested in immediate feedback and reinforcement than were the law students.³⁸

³⁶ This was a different group than our course development consultants.

³⁷ The ratio was one faculty member for each six students, not including our Cyber TA.

³⁸ Personal communications with the author.

C. The Endgame

Our initial budget was only for one year. Within six months we realized that we would have to spend more to continue. In an effort to increase available resources, we explored several options for possible partnerships with other non-profit and for-profit organizations that could share the costs of marketing and program administration, and prepared several budgets and long-range plans. But ultimately it was decided that the program was not integral to the success of the Law School's core mission—educating J.D. students—and it was suspended. The long-term, intangible rewards of the Health Law Distance Education Program in enhancing Pace's reputation in the health law field among lawyers and prospective law school applicants were deemed insufficient to justify the program's shorter term costs without a guarantee that the program would quickly run in the black. Therefore, the program was suspended in the fall of 2001, with the possibility left open to offer courses in the future.

VII. Lessons from the Front

A. Overview

In light of the ABA's recent expansion of the opportunities for law schools to teach using distance education, and the anticipated rush by law schools to use these new pedagogies, there are important lessons about both the substance and the process of innovation in legal education to be learned from the Pace experience. Even a program that, like Pace's, is supported by the law school and university administration can encounter obstacles that make it difficult to achieve the promise of distance education.

B. Lesson Number 1: Distance Education Involves Trade-Offs Between Access and Face-to-Face Interaction

Our experience in delivering two online courses, one primarily to lawyers and health care professionals, and the other

primarily to law students, demonstrates that sometimes increasing access requires a trade-off in traditional methods of faculty-student interaction. However, in the near future, improved technology and better application of what we already know about how students learn are likely to lead to richer, more varied approaches to teaching and learning in the legal academy, with distance education providing more, rather than less, to students.

The first course we offered, Introduction to Health Law: The American Health Care System in Transition, was taken by lawyers and health care professionals from around the United States. The Pace Health Law Distance Education Program provided the only realistic opportunity for these practitioners to acquire the broad analytical framework in which to study and learn about a wide variety of health law problems and solutions, given their work demands, travel schedules, and for most of them, distance from a law school campus. These professionals' response to the course was largely favorable.

In contrast, the course on Health Care Fraud and Abuse, although ranked highly on many measures by our outside evaluators, was faulted for not offering as many opportunities for interactive learning as either the professors or students desired. Here, the enrollees were primarily law students, who took the course as part of their summer school program. It is perhaps not surprising that the concerns voiced about a lack of face to face and oral communications were consonant with those of the ABA, which has continued to stress the need for interactivity and continuing professional and academic education and socialization.³⁹ For students who are still learning to "think like a lawyer," the opportunity for immediate feedback from a professor and the chance to model legal analysis and presentation are critical components of the educational process.

Thus, while asynchronous distance education holds enormous promise for innovation in legal education, offering a much greater variety of learning experiences and subject matters than can be readily accommodated by the traditional large law school class, if distance education is to occupy a central role in the

³⁹ See *supra* note 2.

legal academy, it will be necessary to find ways to compensate for the lack of scholastic intimacy of a traditional law school class. Distance education courses must be high quality in terms of substance and teaching, have clearly articulated goals, and provide ample student support at the same time they give students meaningful opportunities to participate with each other and with their professors in a collaborative learning experience. It also appears possible, and indeed desirable, to combine J.D. students and practicing professionals in one class, where students' different backgrounds can enhance, not impede, the learning process. In light of the new reality of multidisciplinary practice,⁴⁰ the ability of Internet-based distance education courses to bring students from different disciplines together in a virtual classroom is a significant advantage.⁴¹

Our experience suggests, therefore, that changes in the "pure" asynchronous model should be considered. For example, once every three or four weeks, the course could be taught live on campus and recorded and made available via CD-ROM or Real Player to students who cannot attend. It might be possible to use new, less expensive videoconferencing techniques periodically, which would give students and faculty a greater sense of connection, without losing the convenience of not having to travel to campus that is a major advantage of distance education. In addition, as more flexible software is developed and professors accept the need to focus on learning rather than teaching, the enormous possibilities of using the Internet to increase learning through new types of interaction can be realized. Rather than seeing the goal of a distance learning course as replicating the classical law school classroom experience, innovators in legal

⁴⁰ See, e.g., Lowell J. Noteboom, *Professions in Convergence: Taking the Next Step*, 84 MINN. L. REV. 1359, 1398 (2000) (part of a symposium issue on multidisciplinary practice).

⁴¹ Professor Mary Daly has argued persuasively that law schools must teach law students how to work with professionals in other disciplines. Mary C. Daly, *What the MDP Debate Can Teach Us About Law Practice in the New Millennium and the Need for Curricular Reform*, 50 J. LEGAL EDUC. 521 (2000). Daly cites John Sexton's declaration that it is "'imperative' that an interdisciplinary approach become the standard for law school teaching." *Id.* at 544.

distance education should seek to assist students to learn in new ways. Thus, courses that are primarily asynchronous can still ensure that students acquire appropriate substantive knowledge and develop analytical rigor and problem-solving skills. Distance education courses can and should be viewed as important supplements to more accepted methods of law school teaching, rather than as stealthy supplantors of academic rigor and tradition.

C. Lesson Number 2: Everything Takes Longer and Costs More than Anticipated

Without a comprehensive three to five year plan and the money to back it, it is not prudent to embark upon a distance education initiative. Innovation in distance education, as in education generally, consumes significant time and financial resources, always more resources than one thinks. This includes the initial work of designing and implementing a website and marketing strategy, recruiting faculty and students, developing courses, and delivering them. For an Internet-based distance education program to be given the opportunity to succeed, it takes several years, and corresponding amounts of human and financial capital, before a fair evaluation can be undertaken.

Although the Pace Health Law Distance Education Program had an initial plan, it was only for one year. We made a number of overly optimistic assumptions: that each course would enroll an optimal number of students (fifteen to twenty), that courses could be developed and delivered within a six month period, that we could repeat the same courses readily to an equally large audience, and that we could add other courses gradually, permitting the program to grow in a predictable progression. Our student enrollment projections were predicated on the assumptions that our marketing efforts would be very successful and reach a broad and deeply interested audience that was fully prepared immediately to pay significant fees (comparable to normal law school tuition) for a new, unproven educational experience, as well as make a significant and long-term time commitment, taken away from work, family, and other personal and professional obligations. Based on these assumptions, we anticipated breaking

even within fifteen months, premised on the rapid “roll-out” of a number of courses and a corresponding growth in our student body.

About six months into our endeavor, we began to confront the economic realities that any new business faces: In order to grow one needs to invest significant capital upfront, in advertising, direct mail, and now, email marketing initiatives. But the revenues to support that initial investment must come from a large pool of potential buyers—here, students—and in order to attract and support these students, there must be both a sufficient variety of course offerings (four or five in the first two years of our program) so that students could earn the credential they sought—here, the Certificate in Health Law and Policy—and an administrative infrastructure to support this course development and delivery. All of this costs significant money, as well as time,⁴² and both of these resources were not ultimately available.

D. Lesson Number 3: Goals for a Distance Education Program Need to Be Clearly Articulated and Widely Shared

In order for a law school distance education program to succeed, it must have clearly articulated goals, with agreed upon tools of outcome measurement, which are shared within the institution. Pace’s Health Law Distance Education Program had two goals: to enhance the law school’s reputation in the field of health law and to attract additional students to Pace, which could provide increased resources for the Health Law and Policy Program. While these goals were complementary, their

⁴² We budgeted approximately \$18,000 for the first offering of each course, including the costs of the professors’ salaries, pedagogical and course development consultants, computer services personnel, and the Cyber Health Law Teaching Assistant. Subsequent offerings of the same course were expected to cost less. Although my services to the Health Law Distance Education Program were monetarily free, a distance education program cannot continue in this fashion over the long term. While it is debatable whether the director of a law school distance education program needs to be a lawyer or a skilled administrator (although of course the two are not mutually exclusive), it is essential that the director be a full-time professional. See *infra* pp. 68–69.

achievement, and thus their measurement, depended on different factors. Because there was not internal consensus on which of the goals was most important, it was inevitable that a lack of immediate success in meeting both goals would be viewed as failure.

The enhancement of a law school's reputation in a particular subject matter area depends on extensive efforts to improve a program's image and reputation, undertaken over time. These efforts can include hiring faculty with excellent reputations in that field and supporting their scholarly work, holding academic and professional symposia and conferences in the area, reaching out to alumni and other lawyers, and adding an innovative program. Implicit in each of these is the necessity of providing sufficient administrative staff to make each of these efforts possible and ceaseless publicizing of these successes.

In contrast, attracting students to a particular law school program requires a highly targeted marketing initiative focusing on a group of potential applicants with defined demographic characteristics, even though this initiative may be aided by a school's reputation in a particular field. Recruiting students for a specialized distance education program may well enhance a law school's reputation in a subject matter specialty, and even improve the school's overall reputation by demonstrating that the school is an educational innovator, but the reputational payback will not be immediate.

Thus, a law school must be clear from the outset about whether the goal for the distance education program is immediate recruitment of—and therefore revenue from—new students, or a more general polishing of the school's image. Institutional resources should be allocated based upon the goal chosen, and expectations for success (and the means of measuring that success) must be clearly defined in light of that goal.

E. Lesson Number 4: Directing an Innovative Program Is an Intensive, Hands-On Activity

The director must be heavily involved in a new distance education program, and must be proactive, rather than reactive.

Ideally, directing a new distance learning initiative should be a full-time position, rather than something tacked on to other teaching and administrative duties. The director must both be the creator and sustainer of the specific concept of distance learning that he or she propounds, as well as the public and private evangelist for the program, keeping both external and internal audiences interested in the program. This involves public presentations (e.g., to the law school's Board of Visitors, and relevant audiences of health lawyers and health law teachers) as well as meetings with the faculty as a whole, faculty committees, and law school and university administrators. In addition, potential bureaucratic and communication snafus must be anticipated, and if not dealt with in advance, addressed as soon as they arise.⁴³ Above all, the director must articulate a clear vision of a distance education program, and make it concrete. Although it is highly desirable to delegate responsibility, and to have clear

⁴³ One example of the investment of time necessary to coordinate the Program will suffice to illustrate the complexity of implementing innovation. Long before our courses were ready to go, we (a committee composed of the Director of Admissions, the Registrar, the Director of Computer Services, my administrative assistant, and I) had developed an online admissions form to permit applicants to the program to apply online. After I reviewed the applicant's file, a decision to accept or reject the applicant was made. Once students began enrolling in particular courses, they had to register for the course, just as an on-campus student would. This involved an incredibly cumbersome process. My assistant faxed a registration form (which included the option to pay by credit card) to the applicant, who completed it and faxed it back. Then my assistant hand-carried the form to the Registrar's Office, who made appropriate notations and sent it, again via human agency, to the Bursar, who would record and input the funds, and notify the Registrar that the student had paid for the course. The Registrar in turn would transmit this information to the director of computer services, who would give the student a password to use in logging on to the course. The whole process could take several days, despite the fact that students were choosing asynchronous courses *precisely* because they wanted the convenience of taking courses whenever they chose, without having to travel to campus, distance education students, in the bricks and mortar world, even if students register online, they can readily seek assistance from a real human being, who can direct them to a physical office where all problems can be resolved. On campus, the process of student registration is routine, while with the new distance education program, all aspects of student services were novel, and therefore took longer to be performed, as all concerned tried to address this new situation within an established, not entirely flexible, format.

lines of authority about who will handle particular problems, it is inevitable in the launching of a new enterprise that many issues will remain undefined.

In practice, the work of the director can be highly varied, ranging from recruiting faculty, assisting them in developing a syllabus, consulting with financial administrators and university counsel to expedite a professor's payment, and listening to and collaborating with everyone involved in course development and course delivery, from inside and outside the law school. In my experience, there was no problem too small to be handled, no hurdle too low to be surmounted, without a minimum of ten emails or phone calls, and the possibility of a number of meetings. Precisely because asynchronous distance education is so new, many unexpected responsibilities arise in this uncharted territory. Flexibility and the ability to live with significant uncertainty are essential in leading a distance education initiative.

F. Lesson Number 5: You Cannot Be a One Person Show

Although one person must oversee the entire operation of any new educational program, it is impossible for a law school-based distance education initiative to succeed without the support of many people, including faculty, staff, the dean, and other administrators. If a distance education initiative is seen just as one faculty member's "pet project," it is unlikely to receive the kind of concrete, consistent support of time and attention from other faculty and staff that is essential to its success. As Clark Kerr once observed, a university may be thought of "as a series of individual faculty entrepreneurs held together by a common grievance over parking."⁴⁴ This reality of academic life must be taken into account in developing any new curricular initiative, particularly in a law school, where autonomy is every professor's middle name. A new program must receive the consistent support of persons within the law school and university hierarchy who are committed to the use of law school and university resources both to make the

⁴⁴ CLARK KERR, *THE USES OF THE UNIVERSITY* 15 (5th ed. 2001).

program viable and to publicize its accomplishments. This is particularly necessary in the case of a law school that operates as part of a larger university organization, and lacks complete independence in its public outreach and development efforts.

The Pace Health Law Distance Education initiative was greeted by the law school's faculty, administration, and staff as an interesting venture, but not one in which many people had a strong personal or institutional investment. While I had support of my dean and the university provost, on a daily basis I was able to count primarily on the commitment of my administrative assistant and the directors of the law school's computer services department, who were excited about the opportunity to expand their technological skills and innovate in a new venue. The law school faculty was generally enthusiastic about this new educational initiative, although there was concern that offering courses via distance education would begin a slippery slope decline in the rigor and standards of the legal academy. Some faculty argued that we should not offer asynchronous courses to our own students, but solely to outside lawyers and health care professionals. But it was much harder to receive broad and consistent support from core university services, such as public relations and development, because the health law distance education program was not a top priority of law school and university administrators. Thus, for example, although we developed a marketing strategy with the help of our media consultants, consulted with all people involved in the law school's media outreach, and paid for as much advertising as we could afford, there were a number of opportunities for free publicity and other external outreach which were lost because law school and university resources other than money were not forthcoming. Without being able to count upon this type of institutional support, a distance education initiative faces an uphill struggle.

VIII. Conclusion

Entrepreneurs in both the for-profit and not-for-profit sectors are betting that Internet-based learning opportunities for law students, lawyers, and health care professionals will prove to

be both pedagogically sound and financially successful. Particularly in the programmatic areas of bar preparation and continuing legal education, the ability to reach and engage learners asynchronously holds vast promise. In the field of health law, the opportunity to serve judges, the practicing bar, and health care professionals, as well as to provide law students with the opportunity to take highly specialized courses which would not be offered on campus is highly appealing. But the success of any such program cannot be achieved without a clear vision and sustained commitment at both the individual and institutional level.