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## CONCORD UNIVERSITY SCHOOL OF LAW'S ON-LINE LAW DEGREE PROGRAM

ANDREW S. ROSEN\*

We started off today with Professor Elson describing, or making a case that there has been a barrier, a wall set up by legal educators and lawyers to freeze legal education in a very traditional mode.<sup>1</sup> Then we heard from Dean Abrams and Dean Glickstein who spoke about some innovations, and remarkable ones that they are doing or seeking to do within those walls.<sup>2</sup>

My talk today is about one of the most interesting things going on outside of the walls. This, I think, in some ways answers the concerns raised by Professor Elson. I am referring to Concord University School of Law, which was the nation's first school to offer an online law degree.<sup>3</sup> Kaplan chose law school as its first venture in online degree-granting programs because there was a large, untapped demand for quality legal education among those who could not attend a fixed facility campus. Moreover, law is a field in which there is a clear measurement of learning outcomes, in

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<sup>1</sup> See generally Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 217 (1998) (discussing textbook method versus lecture method of law school teaching); Roderick A. MacDonald, *Recommissioning Law Reform*, 35 ALBERTA L. REV. 831, 875 (1997) (discussing agenda of Law Reform Commission); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View for the First Floor*, 28 AKRON L. REV. 463, 464 (1995) (discussing traditional methods of teaching); "Thinking Beyond My Own Interpretations:" *Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 977 (1999) (discussing teacher as integral part of legal education).

<sup>2</sup> See Howard A. Glickstein, *The Masters of Professional Studies of Law Program*, 15 St. John's *Journal of L. Comm.* 303, 303-10 (Spring 2001).

<sup>3</sup> See Concord University, *Home Page*, at <http://www.concord.kaplan.edu/> (last visited Nov. 21, 2000). Compare Saratoga University, *Catalog*, at <http://www.saratoga.edu/cat3.html> (last visited Nov. 21, 2000) (Saratoga University is offering Juris Doctor degree through distance learning).

the form of the Bar Exam.<sup>4</sup> It is a law school that exists in cyberspace. We are here in Finley Hall, so we could tour St. John's Law School, but we could also tour Concord Law School because it is wherever you are, wherever your have access to a computer and a modem phone line.

At the outset, I should note that Concord is really not designed for the same student audience as traditional law schools. We are not really seeking people who are right out of college or have a few years of experience.<sup>5</sup> We are focusing on people who have job responsibilities, who are in the work force and typically have jobs that extend beyond 9 to 5. More than one third of Concord's students already hold advanced degrees, and while Concord students have very diverse educational backgrounds, many have degrees from the nation's most prestigious universities, including Harvard, Columbia, Princeton, MIT, the University of California Berkeley, Duke, and the University of Chicago. Although Concord is based in California, students hail from eight countries and 74% reside outside of California.

Concord students are ambitious individuals who want to obtain a legal education, but who have been unable to participate in the traditional system. For these students, Concord is achieving a crucial and often elusive goal—expanding access to education. Concord's diverse student body consists of educators, small business owners, physicians, bankers, pilots, nurses, police officers, retired and active military officers, city planners, compliance analysts, consultants, accountants, sales representatives, engineers, real estate developers, stay-at-home parents, and family caregivers. Students may live in places remote from law schools, such as Alaska, where no fixed facility law school exists. Approximately eighty percent of the American population lives more than 12 miles from a law school.

<sup>4</sup> See, e.g., RULES FOR ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW, N.Y. CT. R. § 520.7 (McKinney 2000) (stating passing bar examination is necessary for bar admission). But see Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1234 (1995) (advocating elimination of state bar examinations).

<sup>5</sup> See Concord University, *Admissions*, at <http://www.concord.kaplan.edu/admissions.html> (last visited Nov. 22, 2000) (listing minimum requirements for admission). Compare Columbia Law School, *Admissions: Admissions to the J.D. Program*, at <http://www.law.columbia.edu/admissions/adm2.html> (last visited Nov. 22, 2000) with New York University School of Law, *Office of Admissions*, at <http://www.law.nyu.edu/admissions/> (last visited Nov. 22, 2000).

We have built a program that is focused on accessibility and convenience. To give you a sense, Professor Elson hypothesized that there is a market for this kind of program, and from our short experience, this hypothesis seems to be true. Upon opening its virtual doors in October 1998, Concord received thousands of applications for enrollment from individuals worldwide. By June 1999, the student census was 113, which jumped to 247 in January 2000, and more than 500 in June 2000. Concord is now the nation's second-largest part-time law program as measured by the number of first-year students. Tuition is just \$4,800 per year for a four-year program, significantly less than the cost of a legal education at a fixed facility law school.<sup>6</sup>

Professor Elson also talked about the notion of learning outcomes.<sup>7</sup> Legal education has traditionally been measured by inputs. For example: how many books are in the library? How many hours must a student spend in class? How many classrooms exist? What is the faculty-student ratio? Concord's focus, by contrast, is on the output: what has the student learned? Its faculty and curriculum construction are focused on ensuring that students actually absorb what is being taught, and regular assessments ensure that the goal is being reached.<sup>8</sup>

Concord's curriculum corresponds to that of most leading ABA-accredited law schools, with students using the same casebooks and textbooks as those of their peers at law school campuses nationwide. Given the dramatic changes that have occurred in higher education

<sup>6</sup> See United States Air Force Judge Advocate General, *Tuition Costs of ABA Accredited Law Schools*, at <http://www.jagusaf.hq.af.mil/TUITION2.htm> (last visited Nov. 22, 2000) (providing table of unofficial law school tuitions). See generally LAW SCHOOL ADMISSION COUNCIL, *THE OFFICIAL GUIDE TO U.S. LAW SCHOOLS, 2000 EDITION: FROM THE PRODUCERS OF THE LSAT* (Crown Publ. 2000).

<sup>7</sup> See Richard K. Neumann, Jr. & Donald Schon, *The Reflective Practitioner and the Comparative Failures of Legal Education*, 6 *CLINICAL L. REV.* 401, 424 (2000) (stating majority of law school graduates lack adequate clinical experience compared to other professions' graduate programs).

<sup>8</sup> See Concord University, *Student Services: Law School Advisor*, at <http://www.concord.kaplan.edu/student-services.htm> (last visited Nov. 22, 2000) (reassuring potential applicants of existence of assigned law school advisors); see also Carole Levitt, *Attending Law School Online*, Feb. 2000 at Vol. 6.02 (stating interactivity between students and professors is insured by, (1) faculty members leading discussion groups for hour each week similar to a chat session, (2) students arranging to meet with professors during virtual office hours, and (3) by students forming study groups with other students via Internet and also stating Academic Dean will intervene via email to keep students on track); Tony Mauro, *All-Online Law School Challenges Precedents*, USA TODAY, Oct. 12, 1999, at 6A (noting existence of personal contact between professors and students).

in recent years, the focus is slowly shifting to learning outcomes.<sup>9</sup> Concord does not have a physical campus, or a library with volumes of actual books on physical shelves. In an age where practicing lawyers rely on web-based research,<sup>10</sup> Concord students quickly learn to access a virtual library of millions of periodicals and volumes, thereby honing the online research skills that are so critical in practice.

Concord equips its students to analyze legal doctrine by defining, contrasting and systematizing rules from appellate decisions. Students should be capable of constructing and delivering legal arguments, and most importantly, they should retain the substance of law. Concord focuses on ensuring that its law students are not simply sitting through a class, but are understanding the subject, absorbing and interpreting it, and determining how it will apply to the practice of law. The goals are consistently outcome-oriented.

Throughout our curriculum, we stress the ethical considerations that are so important within the legal profession.<sup>11</sup> We have a four-year course on ethics, whereas most law schools offer a two-year course on this subject. We have regular lectures and special programs in ethical considerations. Again, because of our regulatory environment, we do focus expressively and proudly on the ability to pass State-administered exams.

We started first with law school precisely because law school has an objective measure at the end that determines whether or not students have learned something, the Bar exam.<sup>12</sup> We can debate

<sup>9</sup> See generally Paul Greenberg, *Public Education Turning into Menace?*, HOUS. CHRON., Sept. 13, 1994, at 16 (stating education has shifted from standard requirements to being outcome oriented); Anne Haddad, *Candidates Discuss Outcomes-Based Education*, BALT. SUN, Sept. 2, 1994, at 4B (explaining outcome-based education involves setting specific goals for what students should be able to know at end of unit or course).

<sup>10</sup> See Kara Wipf, *In-House Lawyers Adopt New Technology, but Gradually*, CORP. LEGAL TIMES, Sept. 1999, at 24 (noting most corporate lawyers do not prefer using Internet for research, but use has increased to 86.7 percent of attorneys who responded to survey in 1998). But see Kelly Lucas, *Print Still Has a Place in High-Tech World: Although Electronic Research Is Becoming More Popular, Experts Doubt It Will Totally Replace Paper*, IND. LAW., Oct. 27, 1999, at 10 (stating although online legal research has increased, some still prefer doing research in books).

<sup>11</sup> See MODEL CODE OF PROF'L RESPONSIBILITY Preamble (1980) (noting lawyers have special responsibility to insure justice); see also N.Y. CODE OF PROF'L RESPONSIBILITY EC 1-1 (1999) (stating maintaining integrity and improving competence of bar is ethical responsibility of every lawyer).

<sup>12</sup> See N.Y. CT. R. § 520.7(b) (McKinney 2000) (stating requirement one must take and be qualified for bar exam to be admitted to New York bar). See generally Hansen, *supra* note 4, at 1191 (noting bar exam is final and absolute determination of whether law students may join legal profession).

whether the Bar exam is a perfect measure, but it is a generally accepted measure that does not exist in a lot of other fields.<sup>13</sup> We wanted to start with law school because we wanted to show that our students can thrive in an environment where they are being objectively measured in an area that most people view as very competitive and very tough.

In October 1999, Concord's first group of Juris Doctor candidates sat for the California state-mandated First Year Law Student Examination (FYSLE) or "baby bar."<sup>14</sup> Concord's overall pass rate was more than one third higher than the average of those other schools whose students are required to take the FYLSE under California's regulatory environment. Indeed, 100% of Concord's students with A and B averages passed, which suggests that the students who do well at Concord will achieve the desired outcomes.

I would like to take a moment to describe the tools from which we deliver our education. Concord's proprietary technological platform enables professors and students alike to communicate and collaborate in ways that are not possible in a traditional law school setting. While a student in a fixed facility law school may use the hallways to interact with students and faculty, Concord students use professor-led online dialogues, chat rooms, bulletin boards, and e-mail to interact with professors, students, law advisors, the law librarian, tech support and administrative staff. In a professor-led dialogue, for instance, the professor can ask questions and choose several student answers in order to illustrate a particular point. This method engages the entire class, not just one or two students at a time. The constant availability of discussion has resulted in a well-informed student body with regard to assignments and classes and fosters an overall sense of community.

At this point, I would like to illustrate this method in action. I am going to take you first to professor dialogs. As I told you, we have these chat sessions in which the students hear the audio

<sup>13</sup> See generally Tamara Henry, *Tougher Tests Within Three Years for Elementary Teachers*, USA TODAY, Oct. 20, 1999, at 1D (stating by 2002, U.S. elementary school teachers will begin facing tougher licensing exams); *Investment Planning: New Series 65 and 66 Exams Soon*, PRAC. ACCT., Aug. 1999 (noting state securities regulators will be requiring potential investment advisors to take new series 65 and series 66 exams).

<sup>14</sup> See Martha Neil, *Distance Learning: A Scary Trip to Some*, CHI. DAILY L. BULL., June 23, 2000, at 3 (stating California requires students of unaccredited law schools to pass "baby bar exam" at end of first year); see also Howard Mintz, *Online Law School Finds Acceptance More than a Click Away*, NEWS AND OBSERVER, Nov. 25, 1999, at AA; Martha Neil, *Another Path- Still Quite Rocky- To Law Degree*, CHI. DAILY L. BULL., Aug. 4, 2000, at 3.

presentation of the professor and the student will be posting questions up on a regular basis back to the professor. The student only sees his or her individual question on their screen. The professor, however, sees all the different questions, comments, and answers posted by the students. Those of you who are professors in the audience know that when you call on a student, you are often trying to direct the conversation in a particular way.<sup>15</sup> Sometimes you are looking for the right answer, but sometimes you are looking for the wrong answer. You are trying to trap a student in taking you down a path you want to explore. Our system allows the professor to choose those answers among the whole class, that he or she wants to use, to illustrate a particular point. You are engaging an entire class, not just one or two at a time. You are using those answers that best illustrate your point to bring it to the next place. Because these professor dialogs happen on a regular basis, I would argue that students are able to get more involved and more engaged than they are in traditional classes.

The methods we use for monitoring and feedback of student progress is another aspect that differs in our approach. Unlike fixed facility law students, Concord students take regular interactive exams on the Internet that tests their retention and understanding of material. They receive instantaneous computer-analyzed feedback on their performance, with directions to study material that will address their individual needs. Students also receive regular feedback on written assignments via e-mail.<sup>16</sup> Each student's progress is automatically tracked and reported to the Dean of Students, who will personally alert a student that is falling behind, and offer encouragement or advice by e-mail or phone. This interaction and the subsequent dialogue, results in a retention rate of approximately 70%, which is on par with many other law schools,

<sup>15</sup> See Wendy Davis, *School Without the Paper Chase: Internet-Based Schools May Change Not Only the Way Law is Studied, But Also Who Studies It*, N.J. L.J., Sept. 27, 1999, at 29 (stating since 1920s, American law schools have used Socratic method); see also James H. Johnston, *The Golden Age of Internet: The Socratic Method Holds up Online*, TEX. LAW., May 3, 1999, at 45 (noting Socratic method can be used when teaching online).

<sup>16</sup> See Jocelyn Downie, *A Computer-Assisted Legal Research and Writing Course*, 21 DALHOUSIE L.J. 429, 431 (1998) (describing "WebCT," computer program which facilitates creation of courses over internet); Stephen M. Johnson, *www.lawschool.com: Legal Education in the Digital Age*, 2000 WIS. L. REV. 85, 94, 96 (2000) (discussing trend of law school faculty using internet to create course web sites that include distribution of course material, quizzes, email, and discussion forums); Shelley Ross Saxer, *One Professor's Approach to Increasing Technology Use in Legal Education*, 6 RICH. J.L. & TECH. 21, 26 (1999/2000) (noting Westlaw and Lexis have augmented their services to include Web-based support for law school faculty).

and impressive by distance learning standards.

In January 2000, after a rigorous review of the faculty, curriculum, finances, facilities and technology, Concord received accreditation from the Accreditation Commission of the Distance Education Training Council (DETC).<sup>17</sup> DETC accreditation enables Concord students to qualify for tuition reimbursement from many U.S. companies and organizations. The DETC is an organization that was set up to contemplate the notion of distance education. By contrast, at present the rules of the State Bar of California or the American Bar Association do not contemplate the notion of an online law school, so regardless of the quality of its programs or any other metric, Concord is ineligible to apply.<sup>18</sup> For example, the ABA stipulates that a law school shall not grant credit for study by "correspondence," the term the ABA uses to categorize all non-fixed facility learning, including online learning.<sup>19</sup> In addition, the ABA requires that students satisfy 900 hours of study time at a physical campus, with a physical library.<sup>20</sup> Because of the limitations on its accreditation, many students at Concord are seeking their legal education to advance their existing careers, rather than to practice law in states outside of California. To be sure, that limitation stems from regulatory barriers, not from the quality of the student body or of the education they are receiving.

While the ABA's standards reasonably establish minimum periods of academic instruction as a condition for graduation, they close doors for the working professional, family caregiver, rural student, or student who cannot afford traditional law school. The standards were developed at a time when the word "Internet" was not yet coined, and the concept of students studying in a virtual environment seemed like science fiction. The roadblocks to accreditation impede the advancement of the Internet and the legal community as a whole. Now that online education is gaining acceptance and expanding access to a legal education, the challenge

<sup>17</sup> *The Distance Education and Training Council*, at <http://www.detc.org> (last modified Aug. 8, 2000). The DETC is a non-profit educational association which is located in Washington D.C., and sponsors the accrediting agency known as the Accrediting Commission of the Distance Education and Training Council. *Id.*

<sup>18</sup> See Johnson, *supra* note 16, at 94-96 (stating accreditation standards requiring physical facilities, including libraries, will prevent schools like Concord from receiving accreditation).

<sup>19</sup> ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 304 (g).

<sup>20</sup> ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 304 (b); see also Johnson, *supra* note 16, at 94-96 (discussing requirements for law library at law schools).

will be for legal educators to shift their focus from the inputs that historically were associated with a quality education to the desired outputs or achievements that a quality education should yield.<sup>21</sup>

<sup>21</sup> See Gregory Kent Laughlin, *Who Owns the Copyright to Faculty-Created Web Sites?: The Work-for Hire Doctrine's Applicability to Internet Resources Created for Distance Learning and Traditional Classroom Courses*, 41 B.C. L. REV. 549, 555 (2000) (stating federal government has been actively promoting distance education).