The Use of Video Conferencing Technology in Legal Education: A Practical Guide

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The Use of Video Conferencing Technology in Legal Education: A Practical Guide

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Introduction

Video conferencing is the use of advanced computer technology to offer distance learning programs. Virtual classrooms have been used for years in business and government settings, and more recently in medical and legal education. Many firms contract methods that incorporate computer-based technologies. The article also explores the relationship between the use of video conferencing technology and the pedagogy of teaching in a virtual classroom. The article concludes with a discussion of the use of video conferencing technology in the context of the Covid-19 pandemic. The article also discusses

[12]. *Id.*

[13]. *Id.*

[14]. BROWN & BROWN, *supra* note 5, at 5.

[15]. *See* PATRICK S. PORTWAY & CARLA LANE, GUIDE TO TELECONFERENCING AND LEARNING 2 (1994).

[16]. *Id.* AT&T actually debuted an analog video telephone at the 1964 Worlds' Fair, but the required communications lines were cost-prohibitive at one thousand dollars a minute. *Id.*

[17]. "Synchronous" communication is that which takes place in the same time frame. Chat rooms are synchronous, even though the parties communicate in print, but E-mail and discussion boards, where messages are posted, would be considered asynchronous.

[18]. *Distance Education in Higher Education Institutions*, NAT'L CENTER FOR EDUC. STAT. ch. 3 (Oct. 1997) *available at* http://nces.ed.gov/pubs98/distance/chap3.html#number.

[19]. *Id.*

[20]. OTTO PETERS, OTTO PETERS ON DISTANCE EDUCATION: THE INDUSTRIALIZATION OF TEACHING AND LEARNING 17 (Desmond Keegan ed., 1994).

[21]. Brown & Brown, *supra* note 5, at 7.

[22]. VERDUIN & CLARK, *supra* note 4, at 17.

[23]. Kevin I. Minor et al., *Distance Learning: Examining New Directions and Challenges for Criminal Justice Education*, 16 ACADEMY OF CRIMINAL JUSTICE SCIENCES TODAY 3 (1998).

[24]. *See generally* VERDUIN & CLARK, *supra* note 4, at 103.

[25]. Benedetto Vertecchi, *Structural Analysis of Distant Education*, *in* THEORETICAL PRINCIPLES OF DISTANCE EDUCATION 152, 155 (Desmond Keegan ed., 1993).

[26]. *Id.* Proponents of the distance education model insist that these unities are not even necessary to provide an effective education. *Id.* at 169.

[27]. *See generally* Cheryl Admundsen, *The Evolution of Theory in Distance Education*, *in* THEORETICAL PRINCIPLES OF DISTANCE EDUCATION 61, 61-73 (Desmond Keegan ed., 1993).

[28]. Vertecchi, *supra* note 25, at 157.

[29]. *See* Minor et al., *supra* note 23, at 4.

[30]. This technology is far from being available in a majority of distance learning programs, much less to the more than ten million students of all ages engaged in distance learning programs in nearly every country of the world. According to PC Magazine July 1997 issue, approximately 38% of homes in the United States contain a personal computer. Thus, not everyone can have access to programs such as the ones currently in use at the Law Center, unless a computer is provided. At the Law Center, all first year students are required to have laptop computers.

Nonetheless, there is no doubt that the debate between traditionalists and non-traditionalists on distance education will continue on other fronts, but the elimination of time and space limitations on distance education is the crucial factor in determining the value of distance education.

[31]. Louise Sauve, *What's Behind the Development of a Course on the Concept of Distance Education?*, *in* THEORETICAL PRINCIPLES OF DISTANCE EDUCATION 93, 106-07 (Desmond Keegan ed., 1993).

[32]. Andrea Johnson, *Distance Learning and Technology in Legal Education: a 21st Century Experiment*, 7 ALB. L.J. SCI. & TECH. 213, 226-27 (1997).

[33]. Currently, no other law school uses video teleconferencing in a clinical program. However, one law school operates the Law Center clinical video-conferencing model beginning in 1999. Only a handful of law schools use teleconferencing in classes in the regular curriculum. Most of these projects include law schools connecting to one another and jointly teaching a particular class. For example, the Law Center and another law school are currently planning a joint class on Tort Law.

[34]. Laura N. Gasaway, *Distance Learning Survey*, 34 ABA SYLLABUS 3, 16 (Summer 1998).

[35]. *Id.*

[36]. The Law Center began its video-conferencing program in January 1997 when the author of this article taught a weekly two-hour clinical class to students in Virginia, New Jersey, Georgia, and various parts of Florida. *See also* Johnson, *supra* note 32; Judy Meadows, *President's Briefing: Distance Education*, AMERICAN ASSOCIATION OF LAW LIBRARIES SPECTRUM, Dec. 1997, at 25.

[37]. ABA Memorandum D9697-59, Temporary Distance Education Guidelines (1997).

[38]. *Id. at Principals for Distance Education*.

[39]. *Id.*

[40]. *Id.*

[41]. *Id.*

[42]. *Id. at Guideline 1*.

[43]. *Id.*

[44]. *Id. at Guideline 3*.

[45]. *Id.*

[46]. *Id. at Guideline 1*.

[47]. *Id. at Guideline 2*.

[48]. *Id. at Principles for Distance Education*.

[49]. On the World Wide Web, there are at least seven web sites for California law schools utilizing correspondence study methodology. A majority used traditional independent study models. However, several utilized some form of technology. For example, the Abraham Lincoln University Law School webpage states that it provides audio-based lectures through on-line lectures. www.alulaw.com. The Oak Brook College of Law webpage states that it uses an intensive one-week session with all students and professors meeting in Oklahoma at the beginning of the semester and then relying on e-mail thereafter. www.obcl.edu. At Oak Brook, as well as many other "virtual" law schools, no physical campus exists. Professors at Oak Brook are located in different parts of the country. These law schools are not accredited by the ABA.

[50]. *See* ABA Memorandum D9697-59, Temporary Distance Education Guidelines, *supra* note 37.

[51]. *See id. at Guideline 6*, which states:

> ***Technology requirements*** – Technology of poor quality can be a hindrance to the delivery of a good educational program. All systems will be expected to operate in a manner which will enhance and not hinder education. To that end the law school will be expected, in its request for authorization to conduct an experiment, to describe the technology to be used, the type of facility from which the program will be delivered and the type of facility to which it will be delivered, the bandwidth and other technical information of any video delivery system, the nature of any computerized delivery system, and other related information.

[52]. *See generally*, OPEN EDUCATION: POLICIES AND PRACTICES FROM OPEN AND DISTANCE EDUCATION (Terry Evans & Daryl Nation, eds., Routledge1996). The practicing bar also has been using similar technologies. In *Harrell v. State*, a Florida appellate court upheld a conviction in a case where the victims, who were unable to return to Florida for the trial, testified from South America using a video satellite transmission.709 So. 2d 1364 (Fla. Dist. Ct. App. 1997). The court reasoned that the "face-to-face" component of the Confrontation Clause had been satisfied because the defendant and witnesses were able to interact, the defense attorney had an opportunity to cross-examine the witnesses, and all parties involved were able to observe the demeanor of the witnesses while they testified. Attorneys also have been using video-conferencing to depose and prepare witnesses, to conference with attorneys in branch offices and to negotiate with opposing counsel.

[53]. It is important to engage the services of an architect familiar with video-conferencing. Recently, an architect designed an engineering new video-conferencing rooms at the Law Center visited one of the author's classes. Prior to class, he asked her what improvements she would like to the room and to the system. After class, he diagnosed some of the problems she had encountered, found a few of his own, and then suggested alternatives for future rooms.

[54]. While having a particular room serve both as a regular classroom and a video-conferencing room might be a fiscal necessity, it is not ideal for the instructor, the students, or the technicians. Video-conferencing rooms need to be designed and have appropriate lighting, audio, and video capabilities. Thus, when the room serves a dual purpose, equipment and furniture must constantly be removed or shifted in order to accommodate other classes. Given the startup time that already is necessary for this type of class, the technicians have the added burden of repeating this process each and every time a video-conferenced class is held.

[55]. PORTWAY & LANE, *supra* note 15, at 60.

[56]. *Id.* at 61.

[57]. *Id.*

[58]. Bob Filipczak, *Putting the Learning into Distance Learning at* http://www.lucent.com/ged/training1.html (last visited Apr. 15, 1999).

[59]. Peter Weinstein, *Education Case Studies: Technology Update*, TECHNOLOGY AND LEARNING May/June 1997.

[60]. Rhett Hudson, *DT-5 Enabling Technologies Desktop Video Conferencing*, CURRICULUM 21 SUCCEED! 1, 2 (1996) *available at* http://www.sjsc.sd.edu/succeed/videoconf/ html (last modified May 8, 1997).

[61]. *Id.*

[62]. *Id.*

[63]. *Id.*

[64]. *Id.*

[65]. However, some institutions have been using packet-switching successfully. For example, frame-relay technology is being used at Sage College and Albany Medical College in Albany, New York. *See* Helen Leskovac, *Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L. J. SCI. & TECH. 305 (1998). However, these institutions are using expensive fiber optic lines. In addition, the frame-relay network is restricted to areas having the same local telephone area code, although it is apparently possible to bridge different area codes for video-conferencing purposes. *Id.* at 316, 319.

[66]. An ISDN line has 4-10 times the amount of bandwidth than a regular phone line attached to a computer modem. Royal Van Horn, *Power Tools*, 77 PHI DELTA KAPPAN 646, 647 (1996).

[67]. Some programs, however, need the large bandwidth that fiber optics provides. For example, medical students at the School of Medicine and Dentistry of New Jersey observe open heart surgeries live over a video-conferencing system. In that system, the larger bandwidth of a fiber optic based system is necessary. *See* Filipczak, *supra* note 58.

[68]. Some of the Law Center's International Clinic placement sites, such as in Madras, India, have no ISDN service. Given this occurs, the students participate by using audio-teleconferencing.

[69]. *DSL and xDSL (Digital Subscriber Line and its Variations) at* http://www.whatis.com/dsl.htm (last modified Mar 24, 1999). Telephone companies such as Bell Atlantic, Bell South, US West, GTE, NETinc, and Optimum Communications already are providing DSL-based services to some customers. *Id.* at 2. *See also* Tim Greene, *Cable Net Services Need Work* (1998) *at* http://www.nwfusion.com (visited Apr. 15, 1999). In addition, although not yet available to the consumer, cable companies have the technology to provide dual-directional digital data transfers over cable networks. *Id.*

[70]. *Id.*

[71]. PORTWAY & LANE, *supra* note 15, at 70.

[72]. *Id.* at 70.

[73]. *Id.* at 64.

[74]. *Id.*

[75]. *Id.* at 56.

[76]. In contrast, the entire system is voice activated from site to site. The system will automatically activate the camera at a particular site if there is any noise whatsoever from that site. As a result, the microphone normally should be muted if a site participant is not ready to speak. Once a participant at a site wishes to speak, it will take the system approximately four seconds to switch locations.

[77]. The main system currently in place at the Law Center is manufactured by PictureTel and costs approximately $18,000.00. Each off site system costs approximately $1,200.00 to $1,400.00. While monthly charges vary depending on how many students are off site and the amount of class time required, the average cost is approximately $300.00 per month. An additional one hour on-line set-up time is also required per class. There are several video-conferencing companies to choose from. Among them are ACT Teleconferencing, Compression Labs, Inc. (CLI), Intelect Visual Communications Corporation (IVC), PictureTel, Sony, and VTEL Corporation. *See* Weinstein, *supra* note 59. V.C.I. also manufactures video-conferencing equipment, such as the ERIS system.

[78]. Of course these vary from clinic to clinic. In the Criminal Justice Clinic, for example, the classes are Advanced Criminal Procedure, Advanced Trial Advocacy, and the Psychology of Jury Selection, respectively.

[79]. Plans for new video-conferencing rooms are currently underway.

[80]. Currently, the Law Center covers all ISDN costs and computer shipping costs.

[81]. Nick Eastmond, *Assessing Needs, Developing Instruction, and Evaluating Results in Distance Education*, *in* DISTANCE EDUCATION STRATEGIES AND TOOLS 87, 97 (Barry Willis ed., 1994). *See generally Distance Education at a Glance, Guide #2*, ENGINEERING OUTREACH (Oct. 1995) *available at* http://www.uidaho.edu/evo/dist2.html.

[82]. A useful "Teleleaming Checklist" can be found at http://www.kn.pacbell.com/wired/vidconf/I.sing.html ...Jodi Reed & Merry Woodruff, *Using Compressed Video for Distance Learning available at* http://www.kn.pacbell.com/wired/vidconf/I.sing.html (last modified Mar. 22, 1999). This article has been published in the Fall 1995 issue of THE DISTANCE EDUCATOR newsletter.

[83]. Eastmond, *supra* note 81, at 97.

[84]. *Id.* at 97-98.

[85]. *See* Chart 1.

[86]. The number of students at the distant sites varies greatly from clinic to clinic and from semester to semester. Some students choose their placements based on where they consider "home." Thus, it is entirely foreseeable, that in any given semester, that as many as half of the twenty-five students in the Criminal Justice Clinic could be at distant sites. To date, the Criminal Justice Clinic has had a maximum of seven out of twenty-five students at distant sites.

[87]. If this system is to be implemented then it should be utilized in an interactive way. Otherwise, it is the educational equivalent of a videotaped lecture.

[88]. E. Lynn Oliver, *Video Tools for Distance Education*, *in* DISTANCE EDUCATION STRATEGIES AND TOOLS 165, 184 (Barry Willis ed., 1994).

[89]. Reed, *supra* note 82.

[90]. *Id.*

[91]. The computerized document stand does not require the use of transparency film. Plain paper can be written on and the image will be displayed upon the television monitor.

[92]. Eastmond, *supra* note 81, at 97.

[93]. Oliver, *supra* note 88, at 177-78.

[94]. *Id.* at 178.

[95]. *Id.*

[96]. *Id.*

[97]. *Id.*

[98]. *Id.*

[99]. Because of the design of the classrooms, the perspective is unlikely in the classroom setting.

[100]. Oliver, *supra* note 88, at 178.

[101]. *Id.*

[102]. In true television production, a long shot contains an entire body, head to feet, and much of the subject's surroundings. A medium shot contains most of the body including the head and torso. *Id.*

[103]. *Id.*

[104]. Students report that they can "hear" better when they see the speaker up close. It is not surprising as the same thing occurs in live face-to-face instruction. In a sense, sighted individuals are lip readers to a certain degree. Thus, seeing the speaker is more important with this type of technology. In part, this may occur because there is inevitably other noise that the sensitive microphone can detect and send out to the distant sites.

[105]. An instructor utilizing video-conferencing should be as familiar as possible with the technology. Troubleshooting only becomes easier after having gone through a number of the technology mishaps. Moreover, problems can come and go. Without an institutional memory of past problems, even the most technologically competent novice technician cannot compete with experience.

[106]. This would include for the most part practice in controlling the direction of the cameras, the best distance for the zoom lens, and the mute buttons.

[107]. Before using the technology it is important to train the students with the equipment. It is worthwhile to connect to another site and let the students practice using the system while they are all on the same location. This would also be a good time to set and practice the protocols that will govern during real classes.

[108]. *See* Michael P. Lambert, *Keeping Fixed on the Objective: Reflection on Distance Education's Future*, 10 AM. J. DISTANCE EDUC. 59 (1996).

[109]. John E. Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329 (1996).

[110]. *Id.* at 329.

[111]. *Id.* at 330.

[112]. Carol Twigg, *Navigating the Transaction*, 29 EDUCOM REVIEW No. 6, 1, 18 (Nov./Dec. 1994) *available at* http://www.educause.edu/pub/er/review/reviewarticles/29620.html.

[113]. *See generally* PORTWAY & LANE, *supra* note 15 (stating that a number of psychological barriers to the use of educational technology generally exist in academia).

[114]. *Id.*

[115]. *Id.*

[116]. *See* Jeanne E. Gullahorn, *Technology-Based Distance Education: An Introduction*, 31 CGS COMMUNICATOR No. 5, 1 (May 1998).

[117]. *See id.*

[118]. *See* Carol Beere, et al., *The Impact of Technology on Graduate Education: Opportunities and Challenges for the 21st Century*, 31 CGS COMMUNICATOR No. 5, 7 (May 1998).

[119]. *Id.*

[120]. *See* Leslie M. Thompson & John F. Schmitt, *Redefining the Academy: Can Distance Learning Technology Help Graduate Education Promote Socratic Ideals?*, 31 CGS COMMUNICATOR No. 8, 10 (May 1998).

[121]. Technology should "enhance and not hinder education." ABA Temporary Distance Education Guidelines, *supra* note 37.

[122]. *Id.*