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‘Order in the Virtual Law Classroom…
Order in the Virtual Law Classroom’:
A Closer Look at American Law Schools in Cyberspace: Constructing Multiple Instructional Strategies for Effective Internet-based Legal Education

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Abstract
The author presents a comprehensive look at specific online instructional strategies that can help American legal educators both approximate the residential (on-campus) experience and satisfy American Bar Association requirements for quality distance education. In Part One, the ABA’s key principles and guidelines of distance education are presented as a foundation for online experimentation. The author compares and contrasts relevant literature related to the delivery of quality online education in general with ABA criteria. Key concepts such as interactivity, relationship and community-building, assessment and learning styles are emphasized in the context of quality legal education. Then, in Part Two, the author builds on the foundation established in Part One by presenting seven basic instructional strategies for law professors delivering law courses online that incorporate a variety of asynchronous and synchronous models. Throughout, the author demonstrates how the key objectives of American legal education as a whole and the case study method specifically can be achieved online. In response to critics, the author also demonstrates how critical legal skills and professional values can effectively be transmitted in the online setting. Individual instructional strategies are critiqued in terms of assessment options and how well they help develop previously identified legal skills and values necessary for the practice of law. Before concluding, the author proposes several research designs in an attempt to gather much needed data related to legal education in cyberspace. Throughout, the author highlights several cutting-edge distance education programs and projects in the international legal setting that may serve as models for American legal educators.

Keywords: Distance Learning, Paperless Classroom, American Law Schools, United States, Improving the Quality of Distance Learning, Online discussions, Asynchronous, Synchronous, IT in Education, Electronic Delivery, Pedagogy, Andragogy, Collaborative Learning, Blackboard, Computerising Law Schools, Education Technology, Computer-based Learning (CBL), Computer Assisted Learning (CAL), Computer Mediated Communications (CMC), Legal Education, Legal IT, Summative Evaluation, Formative Evaluation, Case Study Research, E-Learning.

1. Introduction
Online (Internet-based) delivery of coursework is the fastest growing form of distance education in the United States (NCES, 2000). It has been predicted that as many as half of all post-secondary students will be taking at least some of their coursework online in the near future(Neeley et al, 1998). By 2025, some experts believe that traditional universities will be replaced by a network or consortia of course providers with online delivery systems that completely bypass the traditional classroom (Dunn, 2000).

But despite impressive growth rates in all higher education, law schools, under the supervision of the American Bar Association (ABA), remain reluctant to embrace fully the online educational experience (Thomas, 2001). There is currently no ABA accredited law school that offers a Juris Doctor (J.D) degree entirely through correspondence study,
which includes Internet-based delivery. The law school at Concord University in California offers the J.D. degree completely online but does so only with state accreditation. Why is the ABA hesitant to give its full ‘stamp of approval’ to legal education online?

According to a 1997 memo published by the Consultant on Legal Education to the ABA, the law school experience is of such ‘distinct variety’ that special caution must be exercised when considering distance (online) education. The reasons, notes David Thomas, professor of law, Brigham Young University, are ‘wide-ranging and idiosyncratic’ (Thomas D A, 2001). Some believe that law school’s time-honored pedagogy, that is, the Socratically-driven ‘case study method’, can not be sufficiently replicated or otherwise captured online (Johnson, 2001). Similarly, others argue that essential legal skills, values or professional ethics can not be taught in the absence of real-time encounters with law faculty (Johnson, 2001). Some question whether the social-communal interchange involving students and faculty, which is so necessary for legal training, can happen in the online setting. As Barry Courier, current Deputy Consultant on Legal Education for the ABA, explained, ‘substantively, law is after all a social/cultural enterprise’. Still others are worried about more practical issues such as class size and management, online assessment, preserving student identity, and academic honesty. Finally, there is real concern that students who receive their degrees through distance education may not be allowed to sit for the bar examination, since most states require one to hold a J.D. from a school that meets ‘acceptable established educational standards’ (ABA Memorandum, 1997). Taken together, these concerns lead many to conclude that internet-based legal education will never be more than a supplement to traditional (residential) law programs in one form or another.

Nonetheless, despite such hesitations, the ABA has agreed to permit delivery of legal courses via distance education in very limited circumstances. Its desire is to ‘gather information on distance learning for ultimate incorporation into the Standards,’ and toward this end has given permission to ABA-accredited law schools to conduct experiments in distance learning. The ABA has even offered key principles for distance education along with delivery guidelines (ABA, 1997). Several law schools have already accepted the ABA’s invitation to experiment in the delivery of legal education online. Cornell Law School and Harvard Law School have used a variety of synchronous and asynchronous models of delivery over the last several years, and Regent University School of Law began the first online LL.M. in International Taxation in 1998 using an asynchronous model. Regent will offer J.D courses starting Fall 2001 using the same model. These efforts have no doubt been inspired, or spurred on to some extent, by early international law programs, degrees and projects.

But while law faculty undertaking the challenge to teach online possess knowledge of the law, since the idea of legal education online is so new, few possess an ‘in-depth understanding of online andragogy or pedagogy and course administration,’ according to Tom Diggs, Director of Regent University Law School’s Online LL.M. As Olcott correctly observes, distance learning is a:

‘collaborative endeavor requiring faculty to work with other experts in designing
instruction,’ which is ‘antithetical to a [United States law school] culture that has historically placed the locus of control for instruction with faculty’ (Olcott, 1999).

Consequently, there is little consensus on ‘best practices’ for bringing ‘order’ to the virtual law classroom. Likewise, there is little systematic research related to delivering and assessing quality online legal education in ways that approximate the ‘distinct variety’ that is the traditional residential law school experience. Pedagogically-sound instructional strategies are needed, therefore, that can approximate or otherwise mimic the objectives of the Socratic method while teaching necessary legal skills and modelling professional ethics and values. Such strategies should further facilitate the gathering of empirical and other forms of data (in accordance with the ABA’s directive) and operate as a heuristic that moves law professors toward ‘best practices.’

In light of the foregoing, in Part One the author begins with a brief review of the ABA’s key principles and guidelines of distance education, since they form the framework in which any online experimentation should be conducted. In the process, literature related to the delivery of quality online education in general will be reviewed for its compatibility with ABA criteria and legal education as a whole. Key concepts such as interactivity, relationship and community-building, assessment and learning styles will be emphasized given the concerns related to such areas mentioned above. In Part Two, the author then builds on the foundation established in Part One by presenting seven basic instructional strategies for delivering law courses online that incorporate a variety of asynchronous and synchronous models. Throughout, in an attempt to more fully imagine how the virtual law school can ‘really work’, the author suggests ways in which the key objectives of the case study method - a law school’s primary pedagogical tool - can be achieved through a combination of instructional strategies. The author also explores, in response to the concerns of some legal educators, several ways in which legal skills and professional values can effectively be transmitted in the online setting. Individual strategies will be critiqued in terms of assessment options and how well they help develop previously identified legal skills and values necessary for the practice of law. Before concluding, several potential research designs are suggested.

2. PART I

2.1 Principles and Practices of Quality Online Legal Education

As previously noted, the ABA has outlined several key principles for delivering legal education at a distance. These principles apply to all forms of distance education and therefore function as a foundation upon which online efforts for legal educators should be built. They also reflect, in part, the ABA’s understanding of what constitutes quality online education for law schools. As will be demonstrated below, they are highly compatible with the delivery of education in the online setting.

The ABA’s first principle emphasizes that legal education must be more than the:

‘mere delivery of information or simply learning facts, history or even logic’ (ABA
Closely related to the first principle is the expectation that learning must be participatory and not passive (i.e., must be active), and must include skills training. Furthermore, the ABA expects legal education at a distance to involve interaction with faculty both in the classroom and outside the classroom. It also expects interaction between students, who are encouraged to learn from each other through ‘inquiry and challenge, review and study groups’. The Consultant on Legal Education reinforces this key principle of ‘interactivity’ in the guidelines that accompany the principles just stated (ABA Memorandum, 1997).

In brief, the key principles for delivering legal education at a distance may thus be said to include: active, participatory learning that emphasizes interactivity in the context of community between faculty and students, and individual as well as collaborative learning activities that develop the skills and values a student needs to function and think like a lawyer.

2.2 Facilitating Learning and Cultivating Relationships in Online Instruction

To begin, the literature supports the notion, consistent with the ABA’s first principle, that quality online learning is more than the mere dissemination or simple learning of facts. As Knupfer argued, effective use of the computer as a resource in education ‘necessitates changes in pedagogy’ (Knupfer, 1993), with the teacher taking the role of ‘facilitator of information’ (Knupfer, 1993), while guiding the student toward collaborative solutions. In order for instructors to be successful in facilitating computer-mediated learning, they must therefore to some degree ‘be willing to release the control of learning to the students and feel secure in a different role’, all the while keeping course objectives and specific subject matter in mind. Online learning could in this sense be ‘enabling technology’ that empowers students to learn through collective and collaborative peer learning of the kind described by Boud, Cohen and Sampson (1999). (See also Chalmers and Violet, 1997, and Slavin, 1995).

Such notions of online facilitation are entirely consistent with the student-centered, active approach embedded in the law school’s traditional case study method. At the heart of the case study method is the Socratic dialogue, where the instructor through rigorous question and answer actively encourages, prods, and manoeuvres students to analyze the facts, issues, rules of law, and reasoning behind the courts’ decisions. In the process, the law professor may ‘hide the ball’, as it were, as knowledge of Black letter law is constructed, deconstructed, and re-constructed again via faculty-to-student and student-to-student exchanges designed to analyze and compare existing case law before synthesizing it with the whole. The case study method thus operates significantly in a constructivist learning environment, which places emphasis on relationships, collaboration, inquiry and student invention.

Second, there is a clear indication that fostering interactions and cultivating interpersonal
relationships between students and instructors—and establishing a community atmosphere
for learning—is not only possible in the online setting but essential to facilitate quality
learning. For online education to be effective, instructors must not only play ‘intellectual’
and organizational roles as the disseminators of knowledge and official agenda-setters,
but social and relational roles as well. As Kearsley remarks:

‘a high degree of interactivity and participation’ are the ‘most important roles of
the instructor in online classes’ (Kearsley, 2000, p.78).

Clow (1999), Phillips and Peters (1999), Roblyer (1999), and Hacker and Wignall(1997),
all concluded that sufficient interaction with instructors and other students was important
based on their studies of the student perceptions of particular online college learning
experiences. Moreover, Wilkinson and Sherman (1991) demonstrated that lack of
personalization, or humanization, and infrequent interaction between students and
instructors were among the reasons given by students for not completing distance
education courses. A high degree of faculty-student interaction will help overcome
students’ feelings of ‘remoteness,’ which is one of the greatest obstacles to distance
learning (Everhart, 1999), and may reduce student attrition over the long run. Learning at
a distance can thus be both isolating and highly interactive at the same time (Eastmond,
1995).

As for building a legal learning community for law faculty and students, scholars and
educational practitioners have called for and begun to study the challenges and benefits of
building community within online courses. Wiesenberg and Hutton (1996) demonstrate
that building a learning community is necessary for a successful faculty/student
relationship. Dede concurs and further observes that:

‘to succeed, distributed learning must balance virtual and direct interaction in
sustaining communion among people’(Dede, 1996).

Some attempts have been made to enhance online community through brief on-campus
residency requirements, which could also be used by law faculty to teach skills and model
values. Palloff and Pratt (1999) offer instructors guidelines for developing these learning
communities that law professors can adapt to the online classroom. Kim describes nine
effective principles for facilitators who desire to build online communities in any setting,
a process described as ‘social scaffolding’ (Kim, 1998). Ebersole and Woods practically
extend Kim’s principles in the context of Martin Buber’s authentic exchange known as ‘I-
Thou’ (Ebersole and Woods, 2001). Online facilitators build a sense of ‘classroom
community’ through a variety of methods, including but not limited to: frequency
(Woods, 2002) and immediacy (Baker, 2001), audio emails (Woods and Keeler, 2001),
and personalized discussion folders (Kim, 2000).

In short, even though what scholars have learned about computer-mediated
communication and the formation of online communities has been limited and open to
debate, it does suggest that the nature and quality of interpersonal and group
communication are critical factors in the success of online distance courses and programs.
‘Interactivity’ implies, consistent with the ABA’s guideline No.5 (ABA, 1997), that
learning online must be considered, fundamentally, a ‘social’ experience. Interactivity through guided discussion not only helps build critical thinking (as part of the Socratic exchange), but also aids in the development of community. Interactivity further differentiates the online course from independent, self-directed study, as:

‘students become participants in a discourse by entering into the relevant process of textual analysis, interpretation and judgment, and by learning to think, speak and write like lawyers’ (Anderson, T, 1999).

2.3 Assessment
Traditional approaches to assessment remain unchanged for the most part in the online setting, although the implementation of such assessment may require some adjustment. It is essential that assessment of students engaged in online learning be appropriate to the medium (Collis, 1997). Accordingly, emphasis must be placed on creating active learning environments that reflect real-world contexts consistent with the needs of adult learners (see Carnevale, 2001a, 2001b, Knowles, 1970, Eastmond, 2000). This also means that interactive, collaborative group work in the context of problem-based learning that also allows for self-directed learning is essential. The way we deal with assessments online demands significant attention during the design phase since instructors lack the co-presence that affords awareness of non-verbal communication cues, which ultimately lets them assess student success in achieving course objectives and outcomes.

Assessment strategies can be both summative and formative. Law schools use both types (see fn 41 for reference to international law school use). The end-of-semester essay exam is the typical summative assessment and oral case briefing is the main formative assessment. In any case, the literature supports the notion that quality assessments, whether summative or formative, should not be limited to a single measurement, but consist of multiple measurements. A classical expression of assessment by Anderson and colleagues captures these ideas:

‘assessment, as opposed to simple one-dimensional measurement, is frequently described as multitrait-multimethod; that is, it focuses upon a number of variables judged to be important and utilizes a number of techniques to assay them…. Its techniques may also be multisource … and/or multijudge’ (Anderson et al, 1975, p.27).

Put another way, quality assessment does not limit itself solely to traditional approaches such as standard testing, but includes a variety of approaches, such as observing and critiquing student products along with other types of real-world simulations - a type of student-focused, outcomes-based education (Carnevale, 2001a, 2001b). The seven instructional strategies discussed below in Part II can be used by instructors to integrate quality assessments into the online law classroom in the manner just described.

In addition to being summative or formative, assessment can include traditional formats (e.g; selected-response formats found in multiple choice exams or quizzes) (Carnevale, 2001a, 2001b) or more performance-based learning activities. In the online setting we
move away from traditional forms of assessment to more performance-based learning activities based on, in part, the medium’s capability to foster and otherwise promote multiple levels of interactivity and self-directed learning. We also move toward performance-based assessments in an attempt to engage higher cognitive levels. In the process, more emphasis is placed on active learning, which includes such things as portfolios, essays, projects, and case studies. In performance assessments, instructors require students to formulate answers or create products that demonstrate their knowledge and skills (Herman et al., 1992). Oral case briefing acts as the main formative performance assessment in residential law programs, and mid and end-of-semester essay exams are the main summative performative assessments. Note that since performance assessments emphasize collaboration, relationships, inquiry, and invention via guided interactivity, they are in harmony with the ABA’s principles of quality distance education.

Whatever form of assessment law professors use in the online setting, it is imperative that law schools build in safeguards to protect against dishonesty and plagiarism. For ‘high-stakes’ summative assessment, i.e., such as mid-term or final essay examinations along the traditional law school model, students can be assessed at centralized (on-campus, residential) or decentralized proctored locations. Test security concerns in this case may be similar to the typical take-home exams used in some second and third year law courses. To identify plagiarism, instructors can use online services specifically designed for such detection. In Legal Research and Writing courses, which seem ideally suited to online delivery, or in other second and third year courses requiring research papers or briefs, instructors can conduct a key word or phrase search using Westlaw or Lexis/Nexis, or one of the more reliable Internet Search Engines. Most web-based course management platforms now come fully equipped with password-protected options to help insure student identity. Some high-tech options are even available, such as voice and retinal scans or fingerprints (Jain et al., 1999), but these are typically too expensive for most institutions to incorporate into the online classroom.

Less technical ways to encourage honesty may be incorporated into assessment strategies as well. For example, in assessing required online discussion (discussed in greater detail below in Part II), instructors can read each student’s posts/replies throughout the semester to get a good sense of his or her mastery level. Summative products that differ greatly in style or mastery from required discussion can then be ‘red-flagged’ for closer analysis using one of the more technical services identified above. Instructors could even perform reliability checks of students’ levels of mastery with follow-up phone conversations, online audio conferences, or online chats. At a minimum, a clear definition of plagiarism along with university policies regarding consequences should be included in the course syllabus and stated up-front in the Announcement section of the course. Specific examples of plagiarism may help cement this idea into the minds of students.

Timed-tests might be used to reduce plagiarism when proctored-options are not feasible. If selected-response assessments are desired - for example, multiple-choice exams along the lines of the multi-state bar exam, different exams can be prepared for each student from a larger pool of questions, or the same questions can be reordered for each student, which can then be electronically graded. Designing performance assessments that are active, student-centered and of special interest to the individual learner may foster
intellectual ownership and reduce the likelihood of plagiarism. A critical part of this process is creating several variations of the same assignment from which students can choose.

Finally, law professors can use ‘learning contracts’ to aid in the design of quality assessments for internet-based courses. Learning contracts provide a means for continuous feedback, help the facilitator and learner share responsibility for learning, increase accountability in the learning process, and can even be used as an instructional strategy to bring about many practical benefits to the online learner. Learning contracts are powerful tools for e-learners in the online environment since students are not afforded the luxury of meeting with the professor and class face-to-face to discuss learning goals, objectives, or expectations. The learning contract lets the instructor be very clear and concise about what is expected from the learner - more clear and concise, at times, than when meeting face-to-face. Besides, the very idea of a ‘contract’ carries special weight in the law classroom, and may thus facilitate skills training to some degree, if properly integrated.

2.4 Learning Styles

As Cross observes:

‘It takes no special knowledge of research to recognize that we all have characteristic styles for collecting and organizing information into useful knowledge’ (Cross, 1976, p.112).

However, as Manning points out:

‘it is comparatively easy for us to repress or avoid the existence of individual differences whenever it is convenient or economical or comfortable for us to do so’ (Manning, 1976, p.295).

In online legal education, this means avoiding the ‘one-approach-fits-all’ mentality when it comes to delivering course content (Friedland, 1996). While it is beyond the scope of this piece to fully address learning styles, some elementary observations are in order.

Some learning styles and personality needs can be particularly well addressed in an online (legal) learning environment (see, for example, Ellsworth, 1995, pp.29-36). For example, while the traditional Socratic (case study) method is beneficial to aural learners, threaded discussion forums can be beneficial to non-visual learners by giving them time to reflect and organize their thoughts. Instructors may also utilize PowerPoint presentations as downloaded or attached files to aid visual learners, and when combined with audio narration can aid aural learners simultaneously. CD-ROM or other computer-assisted learning activities and simulations, tutorials or workshops, used in conjunction with threaded discussion, can be used to assist active learners. Introverted personality types may communicate more frequently via computer-mediated communication than in face-to-face situations. Students in the traditional law classroom setting who participate only when called upon to brief a case may become significantly more involved in threaded
discussions online (Grantham, 1999, 2000). Their increased interchanges, in turn, may benefit students who are already active in discussions. Critical thinking, analysis, and writing skills essential to practising law are enhanced for all involved in the process.

Gender is another significant variable in the learning styles of online students. Women are more likely to seek supportive communication environments (cf. Burnham, 1998, Brunner, 1991, Ryan and Hicks, 1997), and thus have significantly different expectations when it comes to communication online. Messages from males engaged in threaded discussions tend to be more certain, confrontational, autonomous, and abstract than messages from females. Also, messages from women tend to be more empathetic, and co-operative, whereas messages from men tend to be more controlling by nature (Blum, 1999). Since the large-class Socratic method is authoritarian and competitive by nature, and does not favour co-operation or supportive communication environments, it tends to discourage participation from women and other minorities in most cases (Rhode, 2001, p.B-15). Ellsworth, however, observes that using:

‘CMC provides a less hierarchical approach, which better meets the learning needs of some learners than do the didactic teaching/learning methods of many conventional settings (Ellsworth, 1995, p.35).

Thus, unlike the Socratic method of instruction in the residential setting, Internet-based legal education can be more egalitarian if properly facilitated.

In sum, because two learners may participate in the same online class, but have different learning experiences (see, e.g; Tyler, 1949), legal educators must organize situations that address the various facets of learning in order to provide significant experiences for each class participant. The online setting affords law professors unique opportunities to accommodate a greater range of learning styles than is possible in the traditional law school classroom setting, while at the same time allowing them to satisfy the key components embedded in the Socratic exchange. In designing online learning courses for law schools, providing significant learning experiences for each class participant may be accomplished by utilizing multiple instructional strategies of the nature and type discussed in Part II below.

3. PART II

3.1 Multiple Instructional Strategies for Effective Delivery of Online Legal Education

When ‘properly structured and facilitated’ (Azarmsa, 1993, p.13), online educational activities can be powerful tools in our ‘instructional arsenal’ (Azarmsa, 1993, p.13). When properly designed and delivered, they can be equal or in some cases superior to the quality of work submitted by on-campus (traditional) students.

Unfortunately, since utilizing the Internet for education is relatively new, few theoretical frameworks have been developed primarily for application to the Internet, (Paliwala, 2001). Therefore, of the many instructional strategies available for use in the online learning environment, most have not been developed specifically for online instruction, but are currently employed in traditional classrooms and are successfully adapted for facilitating online learning. As such, the guiding criterion for educators must be learner outcomes. Educators must be able to choose a learning technique that is ‘most effective for accomplishing a particular educational objective’ (Knowles, 1999, p.3). Put another way, ‘technological issues [must be] subordinate to educational ones’ (Paliwala, 1998).

As applied to American law schools in the online setting, this means that in order to be a viable means of instruction, methods and strategies which are utilized in the traditional law classroom are essential to online legal education since they convey both the content of the law and are ‘considered the heart of the [legal] educational format’ (see, Friedland, 1996 and also, Houle, 1974 p.153). This also means that methods other than those traditionally used by law schools that satisfy the same learning goals and objectives identified with the law school experience - for example, improving students’ thinking ability, learning substantive legal doctrine, transitioning students from legal academia to real-world law practice, developing expertise in an area of law, teaching practical lawyering skills, fostering professional awareness and self-evaluation and self-reliance, to name only a few (Friedland, 1996, pp.20, 23-24, 25-27), must be considered when adapting learning experiences to the online setting.

3.2 Traditional American Law School Delivery Methods

The traditional classroom context in nearly all American law schools has been dominated by the case study method for nearly 150 years (Friedland, 1996, p.3). It remains as dominant as ever despite serious criticisms regarding its effectiveness (see, Sheppard, 1997, p.621, Floyd, 1997 and Thomas, R H, 1994) and strong calls for reform. Lecture is the second most frequently used method during all three years of law school (Friedland, 1996, pp.27-29). It is used quite regularly at the beginning of class to set the stage for the subject matter or at the end of the class as a means to summarize relevant rules of law or to clarify misstatements that occurred during the class session. Small groups and role-play are two additional strategies used with regularity by most law schools.

The case method is a:

> ‘dynamic rather than a static approach to law, emphasizing [as its objective] [higher order] reasoning skills-[for example, analysis, application, synthesis and evaluation] - as well as substantive [case] law’(Dutile, 1981, p.1).

which includes lower levels of thinking as well (for example, knowledge and understanding). Instead of merely outlining Black letter rules of law through lecture, instructors pose questions to students that encourage them to analyze the law of decided cases in a specific subject area and to then apply it to new factual situations (Sheppard, 1997, pp.586-87). This dynamic merger of case law and Socratic dialogue rather ‘pretentiously’ came to be known as the Socratic method (Stevens, 1983, p.55).
Relevant to online instructional strategies is the fact that discussion - a prominent instructional strategy discussed below under section titled ‘Seven Basic Instructional Strategies for Law Online’, plays a key role in the Socratic method (Vandervilt, 1981, p.22). The method has a built-in participatory element and provides an ‘actual experiment,’ whereby a student comes into contact with a real situation (i.e; court case) with known results, which further adds a real-world performance-based component to the mix. If properly facilitated, the student engages his ‘creative energies by the continual speculation as to the result’ (Dutile, 1981, p.2). In the hands of an able professor, the Socratic method can cultivate valuable professional skills such as ‘careful preparation, reasoned analysis, and fluent oral presentations’ (Rhode, 2001, p.B-15, see, Friedland 1996, pp20-23).

Further relevant is the fact that in the process students are required to ‘think on their feet’ (Warner et al, 1998) and articulate their views and demonstrate their understanding of the deeper reasoning behind the law in a coherent fashion in a public forum (Sheppard 1997, p.601). These skills are important learning objectives that will help prepare the student to practice law (Uphoff, et al 1997 p.381, Silecchia, 1996, pp.245, 247-248, Friedland, 1996 pp.20, 27, 28). Key features of the Socratic method may thus be said to include personal interactions and immediacy. Online instructional strategies that approximate the residential experience should reflect or otherwise foster, to the degree possible, a sense of co-presence and immediacy between faculty and students as part of the exchange.

A final aspect of the case method relevant to delivery in the online setting is that it has a certain amount of adaptability. It is worth noting here that the method’s founder did not originally include any detail on specific classroom techniques (Stevens, 1983, p.55), which opens the door for the presentation of other instructional methods so long as they can satisfy the appropriate learning objectives.

3.3 Seven Basic Instructional Strategies for Law Online

The following seven instructional strategies are currently used in the traditional classroom in higher education and will be discussed in terms of their compatibility with and adaptation to online legal education. All are used in varying degrees throughout a student’s three years of law school. They include:

1. lecture;
2. discussion format (which includes such methods as small group work and role-play) (Friedland, 1996, pp.27, 29-30);
3. case study/analysis;
4. project method;
5. symposium;

6HYHQ%DVLF,QVWUXFWLRQDO6WUDWHJLHVIRU/DZ2QOLQH
These strategies can be integrated into the curriculum using a variety of delivery models, whether primarily asynchronous, synchronous, or through a combination of asynchronous/synchronous approaches, referred to here as the ‘e-learning’ model.

### 3.3.1 Lecture

The lecture format is one of the most frequently used instructional methods in adult education (Farrah, 1990, pp.161-186). A 1994 survey revealed that 94% of law professor respondents said they lectured in their second and third year courses to some degree (Friedland, 1996, p.29). Most law faculty teaching first year courses used lectures to some degree as part of their classroom presentation as well (Ibid, pp.27,29).

Consistent with residential law school classroom dynamics, the lecture format assumes that the educator is the expert. Given the dominance of the Socratic method in law pedagogy, most lectures in the law school setting tend to follow the ‘ideal,’ that is, they are only used to:

> ‘lay foundations, show the way, ease the passage, as the student works through the subject’ (Cox, 1994, p.59).

Lectures are:

> ‘an efficient way of imparting information in a scheduled way without interruption, and with less planning than in most other teaching methods’ (Broadwell, 1980, p.3).

But an effective lecture does not occur in a relational vacuum. A good lecturer is one who gets to know personally his students and develops and adapts the material based on this personal knowledge of individual learners’ needs (see generally, Knowles, 1950). Notably, it appears that the lecture is most effective in accomplishing its specific purposes when used in combination with other instructional strategies of the kind listed herein. In the online setting, instructors can present lectures in a variety of formats in combination with other delivery strategies to meet the diverse needs and learning styles of students. Some lecture formats, consistent with quality online delivery, can even be designed to include interactivity and participation of some kind.

At the basic level, text-based lectures (in note or outline form) prepared by the instructor or guest lecturer can be sent to the students as attached emails or posted to a ‘lectures’ web page. This is a format frequently used by the law school at Concord University. Instructors using web-based course management platforms such as Blackboard, WebCT, E-college, WebBoard, University Online, and Top Class, to name a few, also have the capability to centralize lectures by posting to a ‘Course Materials’ section. Such centers could also be used to post ‘Weekly Bulletins’ along the lines provided by the Australian
Taxation Studies Program (Smith and Walpole, 1998). Lectures can be prepared (with limited technical skill or training) in video or audio form to aid the aural (non-visual) learner. Microsoft’s PowerPoint is a basic user-friendly platform to combine text-based lectures with multimedia components. Using this posting method, instructors can provide background for dense subject areas like constitutional law, state and federal courts, and contracts - as a precursor to more interactive learning activities, or to bring clarity to more technical subject matters as civil procedure, evidence, or real property future interests. In the case of future interests or federal courts, a Whiteboard function can be used along with the lecture to diagram complex relationships to the benefit of visual learners. Hyperlinked datasets, of the kind used in the United Kingdom (Paliwala, 1991, Widdison, 1995, Jones and Scully (1996), may be used as part of lectures to accomplish many of the same objectives just described. These datasets:

‘enable students to search for texts, to browse, to instantly compare, to explore new pathways through links’ (Paliwala, 2001).

For lectures posted over the Internet and downloaded at the student’s leisure in the manner prescribed above, limited bandwidth and slower download times require that such presentations be shorter and more direct than live lectures. A short lecture of 10-15 minutes should provide enough information to supplement the key rules of law in the cases covered during a single week’s reading and facilitate additional learning activities. The posting format has the advantage of allowing the student to revisit the lecture as many times as needed to master the material. Mastery can then be assessed during or at the end of the lecture by linking students to selected-response quizzes or exams with immediate results, short essay assessments, or planned discussion. Most institutions currently have in place the necessary web technical support staff needed to implement pre-recorded streaming audio and video. In any case, special attention should be given to avoiding ‘information overload’ when posting lectures to the web.

Technological developments now make it possible for instructors to produce, or ‘burn,’ lectures onto interactive CD-Roms that can be sent to students as part of a materials package. CDs can include larger amounts of textual information as well as multimedia data at a higher quality than streaming. Interactive lectures in this format could integrate web-based links that let students conduct supplementary reading in certain areas, or complete computer-scored quizzes on material covered up to a certain point (note: the IOLIS project described earlier, is an example of this type of computer-based learning). Links within CD-Rom-based lectures (as well as video and audio lectures) can also be directed to specific discussion rooms so students can take part in simultaneous class discussion related to the lecture. In an e-learning model, interactive computer-assisted tutorials covering a specific subject matter could be used as a primer to be followed up later by a live (synchronous) chat. Artificial intelligence-based computer assisted learning (AICAL) (Paliwala, 2001, see also, Lodder and Verheij, 1999), which incorporates artificial intelligence sources with casebooks, may become more cost efficient in the near future and create new options for combining more traditional asynchronous and synchronous learning formats. These types of e-learning models - that is, those which combine programmed asynchronous with synchronous formats, are consistent with Robin Widdison’s prediction (see also, Moodie 1997, Grantham, 1999) that we will see a move
toward convergence between more traditional computer-based learning (for example, IOLIS) and computer mediated communications in the future of computerized legal education (Widdison, 1999).

Lectures may be presented using a synchronous model as well. For example, law students scattered across the state or around the country can simultaneously view live multimedia lectures over the Internet using RealAudio (or more powerful videoconferencing software). Students can then ask questions of the speaker either during or at the end of the lecture through a live chat room, along the lines of CNN’s ‘Talk Back Live,’ or through follow-up asynchronous or synchronous discussions. Cornell University Law School’s Legal Information Institute used this synchronous approach in a course on Copyrights and Digital Works when it broadcast weekly lectures over the Internet via Web-based videoconferencing to students at several law schools across the country (see Martin, P W, 1998). Live lectures, as with posted or recorded lectures, have the advantage of allowing instructors to include other law professors, experts, or legal practitioners from around the country. However, despite advances in videoconferencing software, most programs still find video conferencing cost prohibitive and difficult to co-ordinate. Students are often required to move to a site specifically designed for video-conferencing (Smith and Walpole, 1998). Furthermore, such movement would seem to defeat the chief advantage of flexibility and adaptability that time-independent, place-independent learning environments provide.

Note that legal educators on the international front have already made good use of video and audio conferencing in the ways described above. For example, in 1999 the CTI Law Technology Center seminar on Conferencing Systems brought together learners in Arizona with learners in Leicester, Glasgow and Saarbrucken. The University of New South Wales and the College of Law used video conferencing as a follow-up to asynchronous text-based discussion boards with students in Australia and the United Kingdom (Paliwala, 2001, see also Widdison, 1996). The Australian Taxation Studies program (ATAX) used the audio conferencing to link groups of up to 36 students with a lecturer. Once connected students could then, under the direction of the facilitator, discuss concepts and issues developed in the study guide with other students and raise questions for the lecturer. ATAX program directors found this to be a flexible mode of delivery since lectures could be tape-recorded and re-played to accommodate the busy work schedules of participating students (Smith and Walpole, 1998).

3.3.2 Discussion
Discussion, through its many forms, is the adult educational method ‘par excellence’ (Brookfield, 1990 p.187).

As Brookfield observes, the discussion format:

‘is revered as the educational method which is the most participatory and the most respectful of learners’ (1990, p.187).

It encourages active, participatory learning, two cornerstones of effective online learning.
More importantly, perhaps, as mentioned above, discussion is the focal point of the Socratic method. Consistent with goals of the Socratic method, the discussion format encourages learners to analyze ‘alternative ways of thinking and acting’ (Ibid, p.192), and assists them in exploring their own experiences so that they can become better critical thinkers. To be effective, discussions should be as diverse as the learners involved (Ibid, p.187).

While several modes for facilitating online discussion exist, the proliferation and affordability of user-friendly ‘e-classrooms,’ that is, web-based educational software packages, sometimes referred to as web-based course management platforms, that facilitate asynchronous and synchronous exchanges in a clear, organized fashion, are the preferred mode. Not only are they affordable, but they make sense from an administrative perspective as well. Several laws schools on the international front have adopted these platforms (for e.g., Blackboard) into their pedagogy in place of more basic e-mail discussion groups that were less user-friendly in terms of collaborative learning (Fairhurst, 2000).

Judith Boettcher encourages the common practice of using small groups to facilitate online discussion and manage large class sizes (Boettcher, 1998). There is little research dealing with the optimal size of online courses. Most of the anecdotal data suggest that an average of about 20 is optimal, while several have reported in the 35 to 40 range and even as high as 60. Whatever the class size, discussion groups are the most effective way to manage discussion. A dominant practice is to randomly assign students to small groups of 5-7 members for the entire semester. Boettcher also observes the critical relationship between the use of small discussion groups and the creation of online community.

The kind of discussion that occurs in the small group setting provides law students with the opportunity to discuss content, share ideas related to the relevant issues and applicable rules of law in select cases, and problem solve by drawing conclusions about the cases with other students (see, e.g., Houle, 1974, Kemp et al, 1994). The exchange occurring within the small group is usually on ‘higher intellectual levels than is possible solely with the recall of the information’ (Kemp et al, 1994, p.150). Along the way, students can develop skills essential to practising law. Learners will build competence by presenting their own ideas as well as considering ideas put forth by others in a public arena that is open to comment and criticism. As Steven Friedland observes, small groups are regularly used by law professors for such reasons and are ideal for teaching critical legal skills (Friedland 1996, pp.29-30). Law professors also use small groups to ‘resolve doctrinal issues, work out problems, or synthesize rules of law’ (Ibid, p.29).

As presented below, discussion can occur in a variety of formats and may be assessed in either a summative or formative fashion. Discussion within each format may be asynchronous or synchronous and may be organized in the individual or group mode. Perhaps the most popular type is asynchronous, sometimes referred to as ‘threaded discussions.’ In individual response mode, each student in each group reflects on the instructors’ questions (usually based on assigned readings) and posts his individual response in the assigned discussion forum, which is then assessed by the instructor. The discussion folder for a particular set of assigned readings may remain open for one or two
weeks before moving on to the next set of questions. In a group response mode, the group as a whole brainstorms about the question or problem-presented and then presents a single group response. In each case, the instructor follows up with a series of questions to individual group participants in Socratic fashion that are designed to enhance critical thinking skills, expand students’ knowledge base, and link participants. There are four basic small group discussion formats that could be used in the virtual law classroom.

They are:

1. Case brief;
2. Co-counsel;
3. Opposing Parties; and
4. Legal Eagles.

**Case Brief.** The case brief is a form of asynchronous/synchronous discussion that incorporates the case method’s basic IRAC formula—Issue, Rule, Application, and Conclusion—in the context of a Socratic dialogue. In the independent response mode, it can approximate the oral briefing that occurs in the traditional classroom setting. For example, each student would be required to prepare the standard case briefs covered by a particular week’s set of readings. Students would then post these briefs on the first day of the week within a specific discussion folder, giving the instructor an opportunity to review the work submitted and consider possible assessments. Each student group would then be assigned a different live chat time in one of the remaining days of the week. During each group’s time, the instructor could select one or several students to engage in a live Socratic exchange, while other students observe and enter into the discussion when called upon or through previously agreed upon netiquette. The live chat offers a degree of immediacy and ‘thinking on one’s feet’ in a public forum that is such a critical part of the legal education experience found in residential programs. The exchange further helps build critical writing and organizational skills as students are required to respond articulately and concisely to detailed questioning from the instructor in rapid fire succession. A live teleconferencing version can easily be used within the course management platform to enhance the sense of co-presence and immediacy, and a more sophisticated video conferencing option is possible for those who desire an even greater approximation of the residential experience. Several follow-up questions could be posted by the instructor following the live exchange. A similar virtual case-briefing option is available in the group mode.

In using the case brief format, instructors should alternate the individual mode with the group mode, as well as synchronous and asynchronous versions, to provide a variety of learning experiences that are consistent with notions of quality assessment discussed earlier. An asynchronous version of the case brief format might simply direct students to post briefs and discuss the cases with other students under the professor’s facilitation in assigned discussion rooms. The professor would then follow-up in a Socratic manner in the way described above. This type of asynchronous exchange not only benefits non-aural learners and increases overall participation among students, but encourages the
development of critical thinking skills as students analyze other student posts and replies, compare and contrast answers, reflect on the deeper reasoning behind the law, and develop and organize their thoughts as part of their own replies. Student thought processes can then be examined in greater detail by instructors than possible in the traditional classroom (oral briefing) setting (Ahern and Repman, 1994). Instructors, in turn, can give greater feedback and correction to faulty reasoning. Alan Smith (Central Queensland University) and Michael Walpole (University of New South Wales) (1998) support this notion in their use of ‘critical, reflective and problem-solving questions’ in their Australian Taxation Studies Program study guides to engage students at deeper levels. In this sense, effective online discussion (and facilitation) can counter the idea expressed by some that only personal, face-to-face contact can promote ‘deep’ learning (Jones and Scully, 1996, 1998).

As an added bonus, instructors using the asynchronous mode can respond directly to the questions and address the special needs of particular groups without wasting the time of other groups not affected by the situation (McComb, 1994). More practically, asynchronous exchanges accommodate students in an online class who find it difficult to meet synchronously because of work or time zone conflicts. Such flexibility may allow law students to pursue internships or externships or work in clinics without conflicting with any regularly scheduled classes. Also, small groups of students who prefer working independently can do so while still having access to the instructor for comment and feedback (McComb, 1994, p.165).

Co-counsel. Co-counsel is a form of guided design. Guided design is particularly well suited to encouraging interaction in small groups. This strategy focuses on ‘developing the learners’ decision-making skills as well as on teaching specific concepts and principles (Kemp et al., ?, p.150). E-learners work to solve open-ended problems that require outside class work to gather information and do research on a particular area of law. This format will encourage law students to ‘think logically, communicate ideas, and apply steps in a decision-making process’ (Ibid, p.151), all of which are essential to effective legal practice (Friedland, 1996, p.27).

Learners in this group format are not only required to apply the information they have learned but must, in the process, exchange ideas and reflect on suggested solutions collaboratively. The instructor’s role is to act as a consultant to the group as called upon. Regular meetings much like a consulting/senior partner might have with his or her junior attorney can be scheduled asynchronously or synchronously and used in conjunction with ongoing group discussion. If the presenting problem is given in the first part of the semester and is turned in at the end, it can provide a myriad of formative and summative performance-based assessment opportunities.

Opposing Parties. Opposing Parties is a form of role playing involving dramatization by group participants of a ‘situation relating to a problem,’ whereby each participant ‘acts out a role as he or she feels it would be played in real life’ (Kemp et al, pp.150-151). Role plays are effective learning activities in the virtual classroom that support analytical reasoning and prolonged reflection (Anderson, T, 1999). The role-playing method dominates skills courses taught in law school (Friedland, 1996, p.27), and has more
frequently been adopted in a variety of instructional settings in first, second and third year courses (Sheppard, 1997, p.632). The role-play is further attractive to legal educators for its adaptability to a variety of class sizes and types and for its ability to help students ‘think like lawyers’.

In the individual mode, after reading assigned cases, students would take on a specific role as plaintiff, defendant, witness, or in some cases that of the judge, much like they would in the typical mock trial scenario (see, e.g; Sheppard, 1997, p.632). Faculty might then play the role of the judge or opposing attorney, asking questions or presenting arguments that each individual in the group must respond to. Faculty may also call on outside experts within the practising legal community to play the judge or opposing attorney. Faculty would then engage students in several levels of question and answer. If the group mode were preferred, for instance, in a class of 20 with four groups of five students each, two groups can play the role of plaintiff, two groups the role of defendant, and the instructor functions as the judge. If used throughout the semester in the asynchronous mode, during one week the plaintiff groups may be required to post their case briefs and each defendant group would be assigned to a particular plaintiff group to argue the defendant’s case. Synchronous components involving a plaintiff’s group and a defendant’s group in the form of a pre-trial conference or hearing under the faculty’s supervision could also be incorporated. Role-playing in this manner helps promote ‘an understanding of other persons’ positions and their attitudes as well as the procedures that might be used for diagnosing and solving problems’ (Kemp et al 1994, p.151). Role-playing as just described also has the advantage of helping law students simulate, under the instructor’s strict supervision, real-life work scenarios. Role-playing can therefore assist learners in getting a fuller and richer understanding of a real-life legal situation, for example, a pre-trial hearing (Friedland, 1996, p.27). This is the type of contextual interaction lauded by reflectionists, who emphasize a setting where students learn from the environment itself (via observation), through active interaction with those in the environment (via participation), and through reflection upon the aforementioned contextual interaction (Moon, 1999).

‘Legal Eagles’: Legal Eagles is a type of game format in which two or more groups actually compete in an attempt to meet a certain set of objectives (Kemp et al). Unlike the role-play described above where groups engage in in-depth debate over particular issues of a case or assume particular roles for the sake of understanding, in the games format the groups are actually competing for a stated outcome. Much like a real-life court experience, the game is organized under a clear and concise set of rules and procedures, and information is provided that requires decision making and usually follow-up actions. It is especially well-suited for the mock trial type of experience described under the role play. Each week of the semester could focus on a different aspect of the trial procedure, from the brief to the pre-trial hearing to opening statements and even cross-examination. Students could be graded on their work at the end of each phase or could receive a final grade at the end of the semester. At the end of the exercise, the facilitator, as judge, could render a ‘verdict,’ declaring one or more groups the ‘winner.’ Another scenario might involve a negotiation where students are given a set of facts, desired outcomes and time-frame in which to reach a decision. The team that gets the most out of the negotiation in the shortest period of time is declared winner. This is patterned after the client-
counselling and negotiation boards found in most residential law programs. At the University of Arizona, video conferencing has been used to link students from two sites who then engage in a live video negotiation as competing law firms (Boyd, 1998). In any case, whether in the asynchronous, synchronous, or e-learning format, the game should be a typical, real-life situation that an attorney might face in the day-to-day practice of law.

An example of the games format in the international legal setting is seen in the development of the Saarlandes based conferencing program (Herberger et al, 1998). Such programs allow role-plays and other real-world legal simulations to be carried out using multiple modes of asynchronous and synchronous delivery. Professor Abdul Paliwala, University of Warwick, describes the incorporation of conferencing with traditional teaching methods in a single course (see also, Bloxham, 1998).

The Common Law I course at Lancaster is particularly significant in that a large course of over 150 students is involved. Students are organised into teams of lawyer who negotiate contract cases on behalf of clients. There is a public space for instructions, advice and communication from course teachers. There are confidential spaces for negotiation within a team and between teams. The exercise is more than simple role-play. Students research the law using traditional and electronic methods and learn through group work.

Glasgow Caledonian and Strathclyde Universities experimented with a version of the ‘Delict Game’ that allowed for similar collaborative, interactive real-life legal scenarios to be played out by students and instructors (for example, see Blackie, 1998 and Blackie and Maharg, 1998). Robin Widdison predicts the ‘beginnings of a cottage industry in computer based simulation games for law teaching’ that is sure to change the available options just described (Widdison, 1999). More sophisticated, two-person dialogical (artificial intelligence) model games, for example, DiaLaw (computer-mediated legal argument), where both students make moves in response to legal scenarios, have also been developed by international legal educators (Lodder and Verheij 1999, see also, Bench-Capon and Stanford, 1998).

The discussion formats (1-4) just described should be used together to provide a variety of learning experiences for law students throughout the semester. Instructors can assess discussion formatively—as it is assessed in the residential law classroom through oral case briefing—or summatively in one of the ways described above. It is important that law professors become familiar with specific discursive styles or patterns of learners beforehand so they can avoid unfairly assessing students’ discussion. Some styles tend to be ‘dominant,’ condescending, or terse in tone, which tend to discourage others from participating (Herring, 1996, pp.115-145), and women tend to emphasize relationships and collegial interaction in an empathic environment whereas men prefer debate-styles of interaction that is more competitive. Instructors should avoid setting up discussion assessment criteria or using grading rubrics that favour one style over the other. Criteria should instead be related to course objectives and professional development. Cultural factors may similarly influence communication styles or patterns in online discussion.

Facilitators must not only watch the discursive style of students, but their own styles as well. Online learners desire both relational and personal interaction and a learning
environment that welcomes alternative or opposing views (Blum, 1999). Facilitators must observe their own tone, or 'voice,' in their responses to make sure that they don’t ‘shut down’ or ‘silence’ opportunities for debate by eliminating alternative ways of viewing the issues at hand. At the same time, instructors must avoid unchecked tolerance or control by those with more dominant discursive styles. Creating a positive, supportive online communication environment can benefit all learners while promoting gender and cultural equality in course discussions. Frequency of interaction also plays a role in contributing to supportive communication climates. The ‘attentiveness’ of the facilitator must be clearly demonstrated (Oakshott, 1989). Fairhurst correctly observes, however, that:

‘once students have familiarised themselves with using the discussion boards and chat rooms, the tutor’s presence could be less dominant … bearing in mind… it might be preferable, on pedagogical grounds, for the tutor to be involved in the dialogue at all times’ (Fairhurst, 2000).

Before turning to the next instructional strategy, it is important to briefly note that discussion, as presented in the four basic formats above, can also be used to teach professionalism, instil values, and train students to be ethical lawyers. Some critics argue that faculty models of professionalism, which are the best way to transmit values, can only occur in the intimacy of a face-to-face setting, where faculty can recount stories of good lawyering or provide examples of professionalism and values through their actions. In the classroom, hallway, or clinical setting, the stories are real and meaningful to students because the people are real and meaningful. Students connect to the message because they connect to the messenger. Unless the speaker is extremely charismatic and motivational, it is unlikely that students will identify with a depersonalized speaker on the web. If they don’t connect to the messenger, they won’t connect to the message (Johnson, 2001b).

As previously discussed, internet-based learners are connected learners whose learning must occur in an interactive, collaborative setting to be effective. Relationships in cyberspace are indeed real and meaningful, intimate and personal, as evidenced by the literature. Connection with faculty through intentional communal-building activities can provide the requisite social context for professional modelling. Faculty can model professional and ethical communication behaviour as they interact and respond to student questions and answer them in a respectful tone and in a timely manner. The recounting of stories and the discussion of ethical communication behaviour occurs easily in textual exchanges and may offer opportunities for greater reflection and response from students if threaded discussions are used. In some ways, it may be:

‘easier to discuss values and personal concerns in writing than orally, since inadvertent or ambiguous non-verbal signals are not so dominant’ (Fairhurst, 2000).

Moreover, as part of asynchronous or synchronous discussion, instructors can incorporate established models for cognitive moral development. For example, Kohlberg’s model is
especially appropriate in the legal education setting since it advocates an approach:

‘in which the teacher Socratically elicits conflicting student views on a moral issue or dilemma’ (Kohlberg, 1976, p.20).

In the process of exchange, the instructor first identifies the learner’s current level of moral development and then presents a moral or ethical dilemma that encourages students to discuss conflicting moral and ethical views. Kohlberg says that the goal is to help take the learner’s level of moral reasoning to a higher level. Professional Responsibility/Ethics courses could use Kohlberg’s model to develop the relevant canons and rules of professional conduct in the legal profession beyond mere recognition and comprehension.

3.3.3 Case Study/Analysis

As with the other methods described above, the case study can be carried out with learners working independently or in small groups. The case study is a method that meets the criteria of good adult education and good online education in that it draws on past experiences of the learners and is participatory (Marsick, 1990, p.225). The case study is similar to the ‘problem books’ and the ‘problem method’ of legal instruction that is currently used by many law professors in place of the Socratic method and casebooks. The problem method first appeared in law schools in the early 1930s and was based on the case study method used in graduate business schools (Sheppard, 1997, p.625-627).

The key to a successful case study is the selection of the ‘right problem situation’ that is relevant ‘both to the interests and experience level of learners and to the concepts being taught’ (Marsick, 1990, p.227). The case report given to students should include basic facts about the problem or situation, with relevant information related to the key characters and environmental context. To build in real-world elements, instructors could write the case along the lines of attorney notes taken during a client interview. Cases with a ‘dramatic effect’ should be constructed, and should include opinions and views of the people involved on top of the basic facts. In this way, students can then get practice at deciphering facts from opinions. Well-written cases can combine issues and rules of law from several cases and be excellent mid-semester or end-of-semester summative tools similar to the traditional essay exam format used in residential programs. Student could be required to prepare a report following the IRAC formula or memo format. A ‘model answer’ or analysis of the case could be provided to learners after they have reached their own conclusions.

If the group mode is preferred, individual groups should have a chance to ‘brainstorm their perceptions of the case before requiring planned discussion with the instructor’ (Marsick, 1990, p.228). Individual group discussion fora that promote group work and community can easily be set up in advance using one of the web-based course management educational platforms mentioned earlier. Marsick encourages instructors to probe and dig for underlying assumptions using the Socratic method instructor’ (Marsick, 1990, p.228), which further makes the case analysis/study a natural fit for online legal educators. A key advantage of using the Socratic method as part of this strategy is that it emphasizes the kind of practical thinking (Ibid, p.239) that lawyers must display when
practising law. Just like the real-life practice of law, learners are required to make decisions ‘under time pressure with an inadequate stock of information’ (Ibid). Since the case analysis follows the Socratic method it encourages applying principles identified in the cases to new situations in the same way students would be required to address application in hypothetical situations as part of the oral case briefing exchange.

Case studies can be posted to web pages or course sites and discussed through a combination of asynchronous or synchronous modes. Instructors teaching different sections of Torts, for example, can collaborate on the construction of cases and share results with other sections. Interactive links can be embedded within the cases that provide relevant background or technical information, diagrams, staged interviews, and the like. If prepared well in advance, case studies can be ‘burned’ onto CD-Roms and mailed to students during registration. Multi-media components can be incorporated with little technical training in the same way they are incorporated into lectures. A live version of the case could be presented using RealAudio, for example, that more closely resembles the actual face-to-face client interview that attorneys regularly conduct. Individual groups could then pose follow-up questions and engage the ‘client’ live. Meanwhile, students can receive feedback and be trained in the ‘how-to’s’ of conducting client interviews, client counselling and case planning—all valuable legal skills cultivated by law schools (Friedland, 1996, p.27). Note that many of IOLIS’ workbooks include exercises involving hypothetical cases where students are presented with legal problems that require interactive learning in an integrated fashion as described above.

3.3.4 Project Method

Many of the instructional strategies discussed thus far fall within the realm of the project method. Group projects can include role-playing, case study/analysis, simulations, problem solving exercises, debates, discussion, and brainstorming (see Brookfield, 1990, Gilley, 1990, pp.261-281, Marsick, 1990, Paulsen, 1995, and Rogers, 1969). Projects may also be designed for the individual student. Projects should grow out of the normal course of training being carried on in a course (Knowles, 1970, p.45). When properly conducted they can give students opportunities to pursue their special interests. Projects enable students to get practical experience in their chosen profession or field of study and gain a sense of competency.

Good projects contain two essential components. First, they require ‘a question or problem that organizes and drives activities,’ and second, they require activities that result in a ‘series of products that culminate in a final product that addresses the driving question’ (Good and Brophy, 1994, p.233). For example, the presenting problem in a criminal law course may be a client who is arrested on suspicion of selling cocaine. This problem could then drive a series of learning activities throughout the semester, which are treated either formatively or summatively. The first product might be a five page brief in memo form detailing the facts of the case, potential issues and probable defence, which is due at the end of week three. Students must receive a ‘pass’ from the instructor before proceeding to the next phase of the project. By week five, students may be required to respond to a motion to suppress evidence on 4th Amendment grounds, where they get the chance to demonstrate their mastery of relevant case law being discussed in readings. At
the end of week nine students may be required to prepare opening statements, questions for cross-examination, or closing arguments. In this way, students are dealing with substantive law as well as relevant rules of evidence and procedure. They also have the opportunity to build skills necessary for practising law, such as writing legal briefs, analyzing cases, drafting motions, responding to filing deadlines, preparing a case, and questioning witnesses. Using the project method in online learning can thus help to integrate learning into the larger legal community in a meaningful way. Hardy described another version of the project method where a group of 14 students was directed to draft an ‘ideal’ constitution for Dalmatia, a fictitious country. Students collaborated via email discussion only throughout the entire semester to complete their negotiations. Their final draft of the document was submitted electronically (Hardy, 1994).

Additionally, it is important that the project, whether in group or individual mode, be shared with others for feedback and critique at each phase prior to final critique by the facilitator at the end of the semester. This exchange injects diverse viewpoints and helps learners ‘reflect on and extend their emergent knowledge and to revise their products if necessary’ (Marsick, 1990, p.233). Evaluation and critique standards in the form of ‘grading rubrics’ can benefit learners by providing organized, specific feedback. The Internet can be used to provide students with an even broader range of feedback from legal experts or interested peers at other law schools who access the final product through a group project web page or by entering the virtual classroom as guests (see Foshay, 1999).

A variation of the project method that further exemplifies the constructivist paradigm at work in online education is the ‘legal expert system’ developed by Richard Wright at the Chicago Kent College of Law.

Expert system tools which permit (require) the students themselves to build models of specific areas of law fuse and integrate the specific and the general, the practical and the theoretical, efficiently using the most effective pedagogical technique: learning by doing. The modelling process not only facilitates understanding of the conceptual content and organization of the particular area of law, but also makes concrete and practical the usually abstract and sterile debates on the theme of law and legal reasoning (Wright, 1998).

For example, a student might develop an ‘expert system’ for copyright infringement litigation. This system would include the necessary forms for bringing such litigation based on the formal rules of copyright law. This exercise would not only help the student better understand the substantive law involved but it would also require awareness of the larger legal context - namely, how the computerized system was received by the client and other support staff, whether it was user-friendly, and so forth. Designing the program might require co-operation with a computer company and a firm specializing in copyright law. It might require (qualitative) field research (e.g; in-depth interviews or focus groups with lawyers, judges, law professors and practitioners) as well as (quantitative) survey research (e.g., a survey sent to local copyright lawyers). The student would thus be required to explore not only the rules of law but the nature of legal work in the designated area.
3.3.5 Panel, Symposium

Internet-based educational delivery provides an ideal environment for the types of information exchanged in the instructional strategy known as the forum. Asynchronous and synchronous modes easily accommodate the asking and answering of multiple questions. Speakers, experts and guest moderators can participate without having to travel or be available at a particular time. When properly administered, the forum conducted in the online setting can be more convenient, more thorough and at times more effective than when used in the traditional classroom environment. Several law schools have successfully experimented with the forum as part of their internet-based delivery (see, e.g. Johnson, 2001a and Martin 1998.

A forum is defined as an ‘open discussion carried on by one or more resource persons and an entire group’ (Sisco, 1990, p.285). The instructor usually functions as the moderator, although he may participate in the forum and assign an outside moderator. The moderator is responsible for guiding or facilitating discussion among forum participants while the class, as ‘audience,’ participates by asking questions of the resource persons. There are at least two basic variations of the forum: the panel and the symposium.

The panel is ‘a small group of three to six persons, who sit around a table in the presence of an audience and have a purposeful conversation on a topic in which they have specialized knowledge’ (Sisco, 1990, p.285). The panel is guided by a moderator but does not allow for any participation. In a constitutional law course, for example, constitutional law practitioners, or law professors at other law schools teaching constitutional law, could discuss the constitutionality of a flag-burning amendment. In the asynchronous mode, the instructor could create a discussion folder for dialogue among panellists and pose the key questions for debate. Students would be required to merely observe the dialogue between panel participants as the instructor moderates discussion. Then, following the panel discussion the student would be required to write a summary of the key issues discussed by the panellists, create a pool of potential follow-up questions, or participate in a threaded discussion within his own discussion group. A simulated video discussion provides a variation of the panel discussion just described. Migdal and Cartwright (1997, 1998) describe the use of a simulated video discussion between House of Lords judges in Donoghue v. Stevenson. Such simulations (consistent with the e-learning model proposed throughout) may even include interactive, small group discussion related to the video between faculty and students to strengthen the feedback loop.

The second type of forum is the symposium, which is a ‘series of presentations given by two to five persons of notable authority and competence on different aspects of the same theme or closely related themes’ (Migdal and Cartwright, 1997, 1998). It is very similar to the panel, but somewhat more formal in nature. Questions from the audience are encouraged following the presentations. The instructor may then provide a response to the presentations, much in the same way a respondent in the colloquia format might respond. An e-learning mode of this format might include a posted lecture by each presenter followed by a live chat, or a live video lecture followed by a week’s long threaded discussion (for instance, see Paliwala, 2001). At the end of the week the instructor might
provide a summary of key issues and invite presenters to post rebuttal or concluding remarks. The symposium (and the panel) have the advantage of giving learners exposure to a variety of experts’ viewpoints and offers an ‘opportunity for audience members to clarify points made by the speakers’ (Sisco, 1990, p.289). Variations of the symposium include the Delphi Technique, Brainstorming, and Synectics.

Coventry University’s IOLIS plus project provides a more sophisticated, pre-packaged pedagogical variation of the panel discussion format.

[In] Ken Oliphant’s workbook on the Reform of Tort Law, students are presented with three stereotypes - Dollar Bill Baily (a US ambulance chasing plaintiff trial lawyer), Fleur Powers (an New Zealand former public servant and law lecturer turned law reformer who is a firm believer in the accident compensation scheme), and Artemis Wellmeadow (An English University academic who may be described as a pragmatic realist or a blinkered and crusty reactionary (according to your point of view) and steeped in the textbook tradition of writers such as Percy Winfield and Sir John Salmond). There follows a round table discussion in which the three stereotypes are asked a series of questions on issues relating to the nature, purpose and reform of Tort law. The students are expected to develop their own perspective in relation to these questions and can refer to textual information illustrating theories such as the Deterrence theory, the Corrective Justice theory, Critical Legal Studies, Feminist theory, Atiyah’s critique of the Fault principle and Jane Stapleton’s Disease and Compensation debate. They then ‘interact’ with the pane by clicking to find out the response of each member of the panel. The result should be a reflecting comparison of the students’ own positions with that of the stereotypes (Paliwala, 2001).

It is possible for such exercises to then ‘converge’ with synchronous or asynchronous discussion formats, or live video conferencing for more immediate feedback and follow-up explanation.

### 3.3.6 Apprenticeship (Mentorships, Externships, Clinics)

Historically, practising attorneys have played a critical role in training young apprentices (Silecchia, 1996). Externships and clinical programs have been used alongside apprenticeships to provide valuable contextual learning experiences (see, Bloch, 1982, Baker, 1994). As mentors, attorneys operate as guides, rather than providers of knowledge, who introduce students to:

> ‘the new (legal) world, interpreting it for them, and helping them to learn what they need to know to flourish in it [as attorneys]’ (Parks Daloz, 1990 p.207).

Mentors empower students by ‘helping to draw out and give form to what their students already know’(Ibid, p.206). The aim of mentorship is to promote the ‘development of the learner’ (Ibid, p.206) through modelling and challenging students in a supportive environment.

A major benefit to mentorship in the online legal environment is the opportunity for on-
campus learners to engage in frequent, convenient communication with legal practitioners in the field. Weekly or daily communications, and in some cases journals, can be shared with mentors using the virtual classroom, regular email, or phone calls. Separate web pages can be set up for each mentor, who may be involved with more than one student at a time. This valuable dialogue creates numerous opportunities for timely feedback on student questions and projects. Students can listen in on conference calls with clients of the mentor, help conduct research or answer questions arising out of such interviews, prepare documents for trial, work on briefs, and so forth, at a distance. As such, online mentorships have the advantage of creating opportunities for real-world research and writing projects for students unable to leave campus for whatever reason. Key professional values can be fostered using Kohlberg’s cognitive/moral development model or through real-time conversations.

Using online delivery in law schools can further enhance opportunities for student externships or clinical programs. For example, students can take part in legal externships near campus or at some distance from the law school campus and do not have to wait until their summers off to gain working experience in a law office. Classes can be delivered online to externs that will free up time for travel. Students have the opportunity then to work side-by-side with practising attorneys who can teach both values and skills using a face-to-face model. Employers also appreciate having students available year-round (Hot Wiring Legal Ed, 2000, p.7). Upon graduation, students will have more actual working experience, which may help make the difference when it comes to competing for jobs. Northeastern School of Law has experimented with such co-ops at large firms, state and federal courts, government agencies, and non-profit organizations (Ibid).

As for clinics, students can take classes in the online setting that may otherwise conflict with their participation. In the past, clinical training opportunities have been limited by interference with regularly scheduled class hours (Rhode, 2001, p.B-15). Expanded opportunities for participation in clinics will increase chances for faculty-student and student-student collaboration, ethical analysis of real-world legal problems, advocacy, counselling, fact investigation, and case planning.

Additionally, on-campus clinics are expensive. Thus, even though online supplements or enhancements to traditional (on-campus) clinical programs as described above may be viable options, communications and information technology (C&IT) based clinical simulations may be more efficient in terms of pedagogy and more cost effective over the long haul. Harvard University’s Pericles project provides some early evidence of this impact on efficiency, as does the University of Warwick’s Legal Practice Office. Instructors of simulated clinical programs can develop the necessary reflective component of clinical learning by using ‘case conferences’ (Paliwala, 2001).

Used in the ways described above, apprenticeships and online course delivery can create more opportunities for skills training and better prepare students in areas where they have proven woefully unprepared in the past (Uphoff, et al, 1997, p.381). As Gerald Lopez, University of California law professor, observes:

‘law school is ‘still almost entirely about law and … only incidentally and

Careful planning and supervision in the online setting can help overcome many of the weaknesses traditionally associated with apprenticeships (Baker, 1994, pp.287, 293, see also, Bailey, 1998). More important, perhaps, such strategies as described herein, consistent with Laurillard’s admonition, enable academics to:

‘address both the direct experience of the world, and the reflection on that experience that will produce the intended way of representing it’ (Laurillard, 1993, p.28).

4. Conclusion: Bringing it all Together and Planning for the Future

Effective online course design for legal educators begins by asking and answering the same key questions one would ask in the traditional setting; namely, what are the critical learning goals and objectives for this course? In the law school setting this includes, in addition to building knowledge and understanding of substantive law, the development of critical and analytical reasoning, professional values and ethics, and other basic lawyering skills necessary for the practice of law. It also includes learning that takes place in the appropriate social/communal environs. Then and only then can one determine which instructional strategies and learning activities identified above should be used.

The power of Internet-based education resides in the medium’s capacity to support multiple modes of communication - asynchronous and synchronous, between ‘any combination of student-to-student, student-to-faculty, faculty-to-student, faculty-to-faculty, student-to-others, and others-to-students…” (Ellsworth, 1995, p.31).

Effective planning and design in the online learning environment will let law professors and law students exchange ideas and work together on learning activities around the clock from anywhere in the world (Hiltz, 1994). Such interactions are wholly consistent with the American Bar Association’s principles for delivering quality distance education, and further enable law faculty to accommodate a variety of learning styles and provide opportunities for both self-directed and collaborative learning.

The many successes and experiments in the international setting described herein should be carefully considered as American law schools more fully embrace the online legal education experience. The early adopters on the international scene support the idea that embracing technology in the law school setting does not necessarily mean a reduction in critical thinking, rigor, or communal association among students. If properly constructed, learning activities online can be rigorous and designed to achieve the same learning goals present in residential programs. Contrary to the opinions of some legal educators, online courses do not automatically breed isolation or reduce opportunities for group learning (see Warner, et al, 1998, pp.107,109,164). Since most law students, according to some critics, leave American law schools unprepared to practice law (Uphoff, et al, 1997, p.381), searching for additional instructional strategies or modes of delivery - whether online or in the residential setting, becomes a valuable educational endeavor.
Moreover, video and audio conferencing should not be viewed as the only online tools for the 21st century American law school. As discussed throughout, these tools often require more time and resources than most schools can spare. For many of the same reasons, neither should the development of self-contained, CD-Rom driven platforms, along the lines of IOLIS, be considered the only option for subject matter delivery. Waiting for the resources to develop such projects may mean that a school never ventures into the realm of online delivery of legal education.

Instead, convergence (what the author here has presented as ‘e-learning’), through a combination of traditional computer assisted learning tools and computer mediated communications - where educational technologies do not operate independently of one another but in concert - is the preferred direction of online legal education (see Widdison, 1999, Moodie, 1997). Skilful and creative facilitation of asynchronous and synchronous discussion formats (using one of the popular course management platforms) can be introduced into the curriculum with little expense or hassle. The video and audio components can be added to the pedagogical mix as the program developers and administrators evaluate and assess the effect of online implementation on the institution’s infrastructure. Online delivery training can help instructors model the Socratic dialogue in their discussion fora and build students’ reflective, critical thinking skills. In this light, with the proper amount of planning and commitment, computer assisted, web interactive learning may very well enable students to learn more ‘efficiently and proficiently than ever before’ (Thomas, D A, 2001) possible in the history of American legal education.

Law schools must not become silent partners with tradition and the ‘legal luddites’ in depriving students of approaches to learning the law that may be more effective than current methods. While internet-based delivery of legal education is not a panacea for the bevy of problems associated with current law school delivery methods (see, for example, Laurillard, 1993), when combined with summer residencies along the cohort model - which affords further opportunities for building values and teaching skills in the face-to-face setting -computer-mediated communication (CMC) extends the legal educator’s delivery arsenal in positive ways. If designed and delivered in accord with the strategies and modes listed herein, CMC and legal education seem like anything but ‘strange bedfellows’.

Some are concerned that the transition to an ‘electronic global legal culture’ - that is, a legal culture where students anywhere around the world can receive a quality education, may lead to what Paliwala refers to as the ‘wholesale McDonaldisation of legal education’ (Paliwala, 2001, see also Ritzer, 1993). The economic benefits of online legal education for law schools and law students are significant and can not be overshadowed by such inflammatory rhetoric. The cost of educating students will undoubtedly decrease as law schools tap into a consortium of law faculty offering specific courses using asynchronous, synchronous, or e-learning models. This greatly increases the number of students any one law school can reach (see e.g; Leskovic, 1998, pp.305-306, Warner et al, 1998, p.164). Students benefit as well. For instance, the cost of attending the law program at Concord University over four years is about the same as one year’s tuition at most private law schools. Internet-based legal education simply can not be ignored by law schools given its ability to provide low-cost, quality legal education to larger and more
diverse groups of learners than ever-before imagined possible in the traditional residential setting. As an extension to the notion of greater inclusion, students in cyber classrooms can communicate with students at other law schools from diverse socio-economic and cultural backgrounds, thus interjecting a greater degree of diversity into the overall legal education experience.

Future systematic research into the effectiveness of the instructional strategies listed herein is critical if faculty desire to progress toward ‘best practices’ that satisfy the objectives and rigors of traditional residential programs. While some research into online legal education exists, it has been limited in several respects. It has remained mainly anecdotal, has reflected individual university agendas, and has been limited to investigations into cost effectiveness and ‘user-friendliness’ of delivery programs.

Naturalistic case study research designs (Yin, 1993) that draw on both quantitative and qualitative methods (Tashakkori and Teddlie, 1998), seem especially appropriate given the current scene in internet-based legal education. Delivery of internet-based law courses is only a little over four years old, and only a handful of accredited law schools are engaged in ‘experimentation’. Furthermore, these schools use different models of delivery and offer very few courses each year. This means that comparison across units along a large number of variables both within and between institutional settings is unlikely at this stage.

Case studies and other forms of ‘action research’ (Carr and Kemmis, 1986) are well-suited for gaining insight and understanding into areas like online legal education where little systematic research has been conducted. The purpose of case research is to take an intensive, in-depth look at an individual group, institution or community (Isaac and Michael, 1995, p.52). Because case studies are so intensive and rely upon both empirical and ethnographic data they can illuminate important variables and processes involved in online legal education that are presently unknown and worthy of more extensive investigation. As such, they are useful for planning or designing larger investigations, for example, longitudinal studies - as programs develop and can further assist in building a body of literature consistent with the ABA’s desire to gather information on quality online legal education for ultimate incorporation into the Standards (ABA Memorandum, 1997).

The first step in case study research is to state the objectives, which in turn determine the types of data sought. Some key questions governing research at this stage might include: which online instructional strategy or combination of strategies currently available will most positively enhance student performance in law courses along a series of predetermined measurements? Are some online strategies more effective in building analytical reasoning, developing key professional values, or teaching professional skills? What is the level of student satisfaction in online courses as compared to residential courses? Are online strategies more effective than traditional on-campus methods when it comes to achieving similar learning objectives? Are online law students in first, second and third year courses performing as well or better than their colleagues in the same courses offered in the residential format? Are asynchronous or synchronous modes more effective in achieving stated outcomes? Lastly, is there a statistically significant difference between students who take law courses online and those who do not when it
comes to bar passage rates?

To help address such questions, in addition to using e-mail surveys and various qualitative data collection procedures, certain experimental designs should be considered. For example, a randomized groups, post-test only design (Isaac and Michael, 1995, p. 95) can be used to determine which instructional strategy is more effective in achieving specific learner outcomes, or which strategy best builds specific lawyer skills or professional values. Using a randomized pre-test/post-test design (Isaac and Michael, 1995, p. 95) adds a control group to the mix and enables educators to better assess the effectiveness of a particular instructional strategy. Similar designs may be used to compare individual students’ experiences in a residential course one semester and an online course the following semester.

Only when research of the kind suggested above is undertaken can legal educators determine the rate or pace at which online efforts should be integrated into current residential programs. Such research will also undoubtedly help determine which subjects during which year - 1L, 2L, 3L - are most suitable for adaptation and testing. Until such research is conducted, administrators and professors in American law schools may be operating upon preconceptions or assumptions about the efficacy of online learning in the legal setting that may or may not be supported in actual practice. Systematic research that addresses the questions presented in the paragraph above can help administrators and faculty at law schools determine whether the internet-based legal education can truly meet the key educational objectives embedded within the residential law school experience.

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