

ValpoScholar

Valparaiso University Law Review

Volume 40

Number 2 *Symposium: Celebrating Twenty Years of Continuing Legal Education: The Art and Science of Educating Attorneys*

pp.509-520

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Barbara A. Bichelmeyer

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Recommended Citation

Barbara A. Bichelmeyer, *Best Practice in Adult Education and E-Learning: Leverage Points for Quality and Impact of CLE*, 40 Val. U. L. Rev. 509 (2006).

Available at: <https://scholar.valpo.edu/vulr/vol40/iss2/11>

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BEST PRACTICES IN ADULT EDUCATION AND E-LEARNING: LEVERAGE POINTS FOR QUALITY AND IMPACT OF CLE

Barbara A. Bichelmeyer*

I. INTRODUCTION

The mission of the Indiana Supreme Court Commission for Continuing Legal Education is “to enhance the quality of legal services and professionalism in Indiana through administering, developing, and regulating continuing legal education requirements, mediation training standards and attorney specialization programs.”¹

In Indiana’s neighboring state of Kentucky, continuing legal education (“CLE”) is defined as “any legal activity or program which is designed to maintain or improve the professional competency of the practicing attorneys and is accredited by the Commission.”² The “primary objective” of CLE is “to increase the participant’s professional competence as an attorney.”³

The Ohio Commission for CLE points out that CLE is important because:

The public properly expects that lawyers, in the practice of law, will *maintain certain standards of professional competence and ethical behavior*. The requirement for continuing legal education was established to ensure that, throughout their careers, lawyers . . . remain current regarding the law and maintain the *requisite knowledge and skill necessary to fulfill their professional responsibilities*.⁴

* Associate Professor of Instructional Systems Technology at Indiana University. This Article is based on a presentation given by the author at the January, 2005 ORACLE mid-year meeting in Catalina Island, California.

¹ Indiana Supreme Court Commission for Continuing Legal Education, About the Commission, <http://www.in.gov/judiciary/cle/about.html> (last visited Dec. 2, 2005) (emphasis added).

² KY. SUP. CT. R. 3.600 (emphasis added).

³ KY. SUP. CT. R. 3.662 (emphasis added).

⁴ Ohio Commission for Continuing Legal Education, Just the FAQs—Continuing Legal Education for Attorneys, <http://www.sconet.state.oh.us/CCE/faq-atty/> (last visited Dec. 2, 2005) (emphasis added).

Because CLE plays such a large role in ensuring the ongoing professional competence of practicing attorneys, forty-one states have made CLE mandatory, and such states established commissions that are responsible for regulation of CLE credits. Regulatory duties of these commissions in most states “include *program accreditation and attorney record keeping* duties for CLE program attendance.”⁵

Italics have been used in the previous paragraphs to highlight key ideas about CLE. Most importantly, these quotations suggest that the goal of CLE is to increase the professional competence of attorneys. Additionally, it appears that the responsibility of CLE regulators is to ensure that the CLE experiences available to attorneys will actually lead to increased professional competence.

What is it about CLE that leads to increased professional competence? How do CLE regulators recognize the difference between a program that leads to increased professional competence and one that does not? These are questions of considerable import given the number of states that have mandatory CLE, the number of attorneys in each of those forty-one states who must attend CLE courses, and the amount of money spent to procure CLE credits. Though the exact impact of CLE on legal practice in the United States cannot be known, it would be difficult to overestimate.

The questions of how CLE leads to increased competence and how CLE courses are accredited are questions of instructional quality and educational practice. The purpose of this Article is to provide an overview of quality practices for instruction and principles of adult education in order to challenge thinking about the nature of CLE, as well as to consider how new technologies are utilized in order to provide quality CLE experiences for attorneys. However, before considering what CLE can and should be, it seems appropriate to explore the current experiences that attorneys have with CLE.

II. WHAT DO ATTORNEYS SAY ABOUT CLE?

In order to gain a sense of what attorneys experience during CLE courses and programs and to give voice to attorneys’ perceptions about their experiences, I conducted a series of informal interviews with thirteen attorneys in nine states, starting with Indiana and including Illinois, Kansas, Massachusetts, Maryland, Missouri, New Mexico,

⁵ ORACLE—Organization of Regulatory Administrators of CLE, <http://www.cleusa.com> (last visited Nov. 28, 2005) (emphasis added).

Pennsylvania, and Wisconsin. Of these nine states, Illinois, Massachusetts, and Maryland did not have mandatory CLE requirements at the time, but Illinois has since become a mandatory CLE state.

The descriptions of CLE provided by attorneys who were interviewed indicate that a typical CLE experience involves the following activities. Prior to the course, attorneys look for a topic that fits with their professional needs and expertise. They then sign up for the course and often pay a substantial course fee. At the appropriate time, attorneys travel to the assigned location and, upon registration, usually receive a rather large notebook full of course materials and current legal briefs. Once attorneys enter the classroom or conference room, the main event of the course is typically a presentation by a speaker who reviews the contents of the notebook while the attending attorneys highlight the notebook or otherwise take notes. The attorneys who were interviewed noted that "sometimes speakers will ask questions" and "maybe, if there is time at the end, we will discuss a case."

Attorneys noted several positive aspects of their CLE experiences, most frequently noting that overall, the course topics offered are appropriate for their work and that there are a good variety of topics from which to select. Additionally, attorneys perceived that the course notebooks are helpful resources and the presenters are generally highly knowledgeable about the topics. Beyond this, the positives cited by the attorneys had more to do with vacation than education. Attorneys noted that CLE courses are "excellent networking opportunities," which are generally held in "good locations," and that they are a nice reason to "get away from work."

Attorneys who participated in this informal survey also noted several problems with their CLE experiences and identified issues about courses and programs that they wished could be addressed and improved. Attorneys' comments centered on three main areas: presentations, interactivity, and cost. In terms of topical presentations, most attorneys noted a "huge variation in quality of information" presented during courses and that the "quality of the experience depends on the presenter." As a result, participants can never be sure of the quality of a course before they actually arrive at the event. Regarding interactivity, all participants in this survey commented in one way or another about the lack of interaction between presenters and students in courses. Attorneys' comments on this subject included

statements such as “After I get the notebook I just sit in the class and read the Wall Street Journal”; “I want speakers to ask questions”; and “I want an opportunity to talk about cases.” Most attorneys recognized the need for more interactivity by suggesting that CLE courses include more case-study review, application activities, and problem solving. Participants lamented that the emphasis on speaker presentation and the lack of interaction “puts a lot of responsibility on participants” to figure out how to apply the information presented in class at some later point in time. Finally, several attorneys commented that most programs are very expensive, and they wondered why there could not be smaller class sizes, more interaction, or better quality courses for the amount paid.

Regulators who attended an ORACLE Conference in San Diego, California during January of 2005 were not surprised by the results of this informal survey. However, they did indicate that they were less than satisfied with the findings. Apparently, the experiences reported by attorneys who participated in the survey were reflective of the more general CLE experience, but this experience is not of the quality that most CLE regulators would hope to achieve.

III. WHAT MAKES CLE “EDUCATION”?

What is it about the CLE experience that is not satisfactory to attorneys and regulators? The CLE experience described above is one in which the main event is the presentation, and the main focus is on the speaker who makes the presentation, *not* on the attorneys who attend the course or on their interactivity and engagement in ways that lead to increased professional competency. This is an important distinction—one that is at the root of any question about the purpose of CLE.

There is a difference between information and education. “Information” may be properly viewed as the reduction of uncertainty,⁶ whereas “education” is generally considered to be the increase of an individual’s competency.⁷ The question that must be addressed is whether CLE courses are most properly perceived as informational or educational experiences. Though we use the term “continuing legal education” and we describe the goal of CLE as to “maintain or improve professional competency,”⁸ attorneys’ descriptions indicate that CLE

⁶ COMMUNICATION AND SOCIAL INFLUENCE PROCESSES 12 (Charles R. Berger & Michael Burgoon eds., Michigan State Univ. Press 1998).

⁷ ROBERT HEINICH ET AL., INSTRUCTIONAL MEDIA AND TECHNOLOGIES FOR LEARNING (5th ed., Merrill 1996).

⁸ Indiana Supreme Court Commission for Continuing Legal Education, *supra* note 1.

experiences are more informational than educational. This discrepancy is likely the root cause of whatever dissatisfaction attorneys and regulators express about the quality of CLE programs. The underlying problem with CLE is that its purpose and goals do not match the actual experiences that attorneys have in their courses. The remedy to alleviate any attorney and regulator dissatisfaction with CLE experiences is most likely to make these experiences more educational.

What, then, makes an experience educational rather than informational? The answer to this question may provide guidance to regulators as they work to accredit courses. This answer may also help attorneys become more informed consumers about the courses in which they invest and attend. Instructional effectiveness consultant M. David Merrill reviewed numerous instructional theories in an effort to identify the basic common elements in various instructional approaches. He found five basic and common elements that he considers to be the “first principles of instruction.”⁹ It is possible to view these principles as the elements that make an experience “educational” and differentiate educational experiences from informational ones. Merrill has found that learning is promoted when: (1) learners are *engaged* in solving real-world problems; (2) existing knowledge is *activated* as a foundation for new knowledge; (3) new knowledge is *demonstrated* to the learner; (4) learners are required to *apply* their new knowledge or skill to solve problems; and (5) learners are encouraged to *integrate* (transfer) new knowledge or skill into their everyday lives.¹⁰

In sum, Merrill argues that instruction must be engaging to learners and that engagement occurs primarily through demonstration, application, and integration. Merrill’s first principles are a validation of numerous other seminal and classic theories of instruction, such as Gagne, Briggs, and Wager’s events of instruction;¹¹ Dick and Carey’s systematic design of instruction;¹² and Smith and Ragan’s strategies for instruction.¹³ These theories all assume that the instructional elements of demonstration, application, and feedback are necessary aspects of the

⁹ See generally M. David Merrill, *First Principles of Instruction*, 50 EDUC. TECH. RES. & DEV. 43 (2002), available at <http://www.indiana.edu/~tedfrick/aect2002/firstprinciplesbymerriill.pdf>.

¹⁰ *Id.* at 44–45.

¹¹ See generally ROBERT M. GAGNE ET AL., *THE PRINCIPLES OF INSTRUCTIONAL DESIGN* (4th ed., Harper Collins 1992).

¹² See generally WALTER DICK & LOU CAREY, *THE SYSTEMATIC DESIGN OF INSTRUCTION* (4th ed., Harper Collins 1996).

¹³ See generally PATRICIA SMITH & TILLMAN J. RAGAN, *INSTRUCTIONAL DESIGN* (2d ed., Wiley 1999).

educational experience in order to foster the development of competence in learners.

In closing this section, it is important to recognize that attorneys did note several valuable aspects of CLE, such as the materials provided, the networking opportunities, and the presentations that are sometimes interesting in their own right. However, a good notebook can be mailed, a good presentation can be videotaped, and a good networking opportunity can be made better if it takes the form of a party. Attorneys want CLE to be more educational; they want more interactivity in the form of more discussion, more practice, more problem solving, and more application of the materials that are presented in CLE courses. In brief, attorneys want these courses to be more educational than informational—and that should not be too much to ask.

IV. WHAT MAKES EDUCATION ENGAGING TO ADULTS?

In the previous section, we explored the assumption that an experience must be engaging to the learner in order for it to be educational for the learner. What makes an experience engaging to a learner has much to do with the demographics of the learner, particularly the learner's stage of development.

Because our formal, compulsory educational experiences during grades K-12 are where most of us develop our ideas about what education is and how it works, we assume all education should occur in the same ways as our elementary and secondary education occurred. However, research and experience both lead to the conclusion that adults learn differently than children. "Androgogy," the term that represents the process of how adults learn, was popularized by Malcolm Knowles in the latter half of the twentieth century to distinguish the idea of adult learning from "pedagogy," which has traditionally been used to represent children's learning processes.¹⁴

Knowles recognized that adult learners have greater intentionality, more life experience, different motivations to learn, and more available resources than younger learners.¹⁵ For these reasons, Knowles assumed that adult learning experiences should be more self-directed than those of younger learners, and that they should take advantage of the resources that are available to adults and draw upon learners' intrinsic

¹⁴ MALCOLM S. KNOWLES, *THE ADULT LEARNER: A NEGLECTED SPECIES* 54-65 (4th ed., Gulf Pub. Co. 1990).

¹⁵ *Id.* at 57-63.

motivations for learning.¹⁶ Adults want to learn in order to solve the problems they face in life and work. Therefore, as the following table demonstrates, adult education is more effective when it engages learners in task or problem-centered instruction.¹⁷

ASSUMPTIONS ABOUT LEARNERS ¹⁸		
<i>About</i>	<i>Pedagogical</i>	<i>Andragogical</i>
Concept of learner	Dependent personality	Increasingly self-directed
Learner's experience	To be built on more than used as a resource	Rich resource for learning by self and
Readiness to learn	Uniform by age-level and curriculum	Develops from life tasks and problems
Orientation to learning	Subject-centered	Task- or problem-centered
Motivation	By external rewards and punishment	By internal incentives, curiosity

What features should we expect to see in high-quality instruction for adults? Arthur Chickering and Zelda Gamson have extended our understandings of good practice in post-secondary education through the identification of seven principles of good practice for instruction.¹⁹ These principles provide detailed guidance regarding the types of instructional activities that facilitate adult learning and increased competence. First, good practice in instruction encourages student-instructor interaction so that students may become cognitively engaged with the learning environment.²⁰ Second, because adult learners have a wealth of life and professional experience, good practice involves cooperation among students in order to take advantage of the different skills and expertise of the various learners.²¹ Third, good practice

¹⁶ *Id.* at 27-65.

¹⁷ *Id.* at 61.

¹⁸ Adapted from KNOWLES, *supra* note 14, at 56-63, 119.

¹⁹ Zelda F. Gamson, *A Brief History of the Seven Principles of Good Practice in Undergraduate Education*, in *APPLYING THE SEVEN PRINCIPLES FOR GOOD PRACTICE IN UNDERGRADUATE EDUCATION* 5 (Arthur W. Chickering & Zelda F. Gamson eds., Jossey-Bass 1991).

²⁰ Mary Dean Sorcinelli, *Research Findings on the Seven Principles*, in *APPLYING THE SEVEN PRINCIPLES FOR GOOD PRACTICE IN UNDERGRADUATE EDUCATION* 13, 14-15 (Arthur W. Chickering & Zelda F. Gamson eds., Jossey-Bass 1991).

²¹ *Id.* at 16-17.

encourages active learning so that adult learners are engaged in solving problems and addressing issues that apply to their daily lives.²² Fourth, good practice emphasizes time on task so that the majority of the adult learner's time is spent engaged in learning activities rather than listening to information presented by others.²³ Fifth, good practice communicates high expectations to learners in order to challenge their performance.²⁴ Sixth, good practice provides prompt feedback to adult learners about their performance related to learning activities.²⁵ Finally, good practice involves respecting the diverse talents of adult learners and the various ways in which they learn so that no artificial boundaries are created on the assumption that there is only one right way to learn or demonstrate competence.²⁶

Attorneys who take CLE courses are obviously adults and likely want to be treated as such. Therefore, CLE providers should take into account the nature of adult learners as they develop courses, and they should incorporate principles of good practice in order to provide experiences that match with the ways in which adults learn. At the same time, CLE regulators may find it helpful to consider the nature of adult learners and principles of adult learning as they assess and accredit courses in order to assure the quality of the CLE experience.

V. HOW CAN NEW TECHNOLOGIES SUPPORT CLE?

The development of electronic learning ("e-learning") technologies has perhaps done more than any other innovation in the recent past to provide new possibilities for the delivery of CLE courses and to present new challenges for assuring the quality of CLE. For this reason, it is important to explore issues behind the growing popularity of e-learning in order to consider what impact this phenomenon may have on the future of CLE, in addition to our consideration of the nature of learning and adult learning environments.

The integration of several key features of digital technology has been the driving force that has facilitated the exponential growth of e-learning over the past five years.²⁷ The most important development has been the

²² *Id.* at 17-18.

²³ *Id.* at 19-20.

²⁴ *Id.* at 20-21.

²⁵ *Id.* at 18-19.

²⁶ *Id.* at 21-22.

²⁷ See generally Alan R. Dennis et al., *The Cisco Networking Academy: A Model for the Study of Student Success in a Blended Learning Environment*, in HANDBOOK OF BLENDED LEARNING

greatly increased speed of transmission for video and audio files over the Internet, which supports the delivery of high quality instructional content, a basic element of any educational program. In terms of hardware, the creation of massive-storage and servers that have the capacity to warehouse large databases has allowed for central administration of learner records and provided the ability to easily track learners' progress to standards through testing and other accountability measures. At the same time, professionals in all fields have been involved in the integration of digital technology into the day-to-day activities of work and are no longer intimidated by the technologies that are necessary to participate in e-learning. The asynchronous nature of Internet communication has allowed for the professional development of adults who were previously restricted in learning opportunities by time and geographical constraints. Together, these innovations are blurring traditional lines of distinction between education, training, and professional development, and they will forever change the nature of CLE and other learning environments in the United States and around the world. It will not be possible for CLE regulators to "ride out the wave" of e-learning. E-learning is here to stay and must be addressed.

The e-learning environment is a very different educational experience than the face-to-face learning environments in which we grew up. One unique feature of e-learning mentioned above is asynchronicity. Asynchronicity means that e-learning is not bound by a common clock. Instructors and students do not need to engage in educational activities at the same time. Also, they need not be in the same room because e-learning is not bound by space. This is a boundary-breaking feature of major proportions—no longer do students need to travel to a particular location or engage in an educational experience at a particular time. Learners can work in their own space, on their own time, and at their own speed. Education could not be much more convenient than that.

Given the customization of time, space, and speed, it might seem counter-intuitive to think that e-learning allows for greater consistency of content delivery than is possible with face-to-face instruction. As an illustration of this point, consider the comments of attorneys who noted that the quality of CLE presentations is dependent on the speaker and the quality of speakers varies with each course. With e-learning, one high quality video of the best presenter can be recorded, archived, and

ENVIRONMENTS: GLOBAL PERSPECTIVES, LOCAL DESIGNS (Curtis J. Bonk & Charles R. Graham eds., forthcoming 2006).

made available on demand to learners throughout the State of Indiana, so that no matter when or where learners access the video, they each see the exact same presentation. The combination of standardized content and customized delivery is nothing less than revolutionary for educators at all levels, in all professions, and across disciplines.

E-learning that addresses the needs of adult learners through interaction, engagement, and activities requires a range of highly sophisticated software programs. In addition to the use of web pages for the dissemination of text content, media players are necessary for audio and video transmission. E-mail systems are required for one-to-one communication between an instructor and students, while forums are generally used to facilitate both synchronous and asynchronous interactions between groups. A number of course management systems, such as Blackboard, WebCT, Angel, and Sakai, have been developed by for-profit and not-for-profit organizations to bring all these elements together into one integrated program. Such systems provide features for scheduling, document management, group work, and grading. CLE providers who offer courses in e-learning formats and CLE regulators who accredit e-learning courses must consider how accessible and user-friendly their e-learning programs are for the attorneys who take CLE courses.

To this point, e-learning has been presented as though it involves only one type of educational experience. In reality, the e-learning experience can take one of at least four forms. First, e-learning can be totally independent for each learner, which is very similar in nature to the traditional correspondence or distance learning course. Second, e-learning can be discussion-based, in which learners interact with other students to discuss readings, presentations, or other course materials. Third, e-learning can be collaborative, in which students work together in teams to complete course activities and engage in problem solving experiences. Finally, e-learning can also be a “blended” experience, in which learners engage in both Internet-based activities and face-to-face activities as they complete the requirements of a course.

Russell Osguthorpe and Charles Graham have posited that blended learning is the future of learning because blended learning makes it possible to combine the unique features and best-practices of each environment in ways that provide benefits that neither face-to-face

instruction nor e-learning could offer alone.²⁸ Such benefits include a wide access to knowledge through the Internet coupled with the pedagogical richness of an instructor who can assess and identify learners' needs. Blended learning can also incorporate adults' sense of personal agency and independence with their need for social interaction and membership in a learning community. Blended learning also offers a cost-effective approach to instruction and allows for frequent updates and revisions of instructional materials. CLE regulators who grapple with the issue of how to accredit e-learning courses may be overwhelmed by the added complexity of considering how to accredit courses in blended formats, but blended learning approaches offer too much instructional potential to be ignored.

So how should attorneys, CLE providers, and CLE regulators respond to this brave new world of e-learning? As a start, attorneys should become informed consumers of CLE offerings and be aware that some course formats may provide better educational experiences and greater possibilities for increased professional competency than others. CLE providers who are ready to venture into e-learning need to determine what features they require from their learning management systems, what resources need to be provided online, what activities can be incorporated into the course to facilitate learning, what feedback and evaluation systems are needed, and how online registration and payment will occur.

When it comes to incorporating e-learning experiences into CLE, regulators likely have the most difficult job of all. They need to create policies regarding certification of e-learning courses for attorneys' continuing education. The regulators need to be aware of new courses and resources as they become available for attorneys' professional development, and they must determine whether new courses meet certification requirements. Regulators also need to consider the driving and restraining factors that impact the use of e-learning for CLE as well as policies regarding the determination of appropriate pricing for e-learning courses. There are surely many other issues regulators will need to address that have not been mentioned here.

²⁸ Russell T. Osguthorpe & Charles R. Graham, *Blended Learning Environments: Definitions and Directions*, 4 Q. REV. OF DISTANCE EDUC. 227, 227-33 (2003).

VI. SUMMARY

New digital technologies are changing the landscape of CLE and introducing new opportunities and challenges that will impact the nature of the CLE experiences available to attorneys. As CLE providers and CLE regulators explore the potentials and pitfalls of these possibilities, it may also be worthwhile to consider the mandate of CLE and any common expectations regarding the purpose and format of CLE. Is the purpose of CLE simply to provide attorneys with up-to-date information, or is it also to facilitate the increased competency of attorneys in their professional activities? We should consider whether the typical format of CLE courses helps to achieve the goals of CLE and whether new technologies can help to achieve these goals in more effective or efficient ways. There are surely no easy answers, but these are interesting and important questions that deserve thoughtful consideration.