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Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills

Joseph A. Rosenberg*

I. INTRODUCTION

There is no longer a debate about the value of teaching lawyering skills in law school. The mainstream now includes teaching the value of integrating theory, doctrine, and practice in order to prepare students to be excellent lawyers. What continues is the debate over the value of online teaching and learning. Even as online learning and distance education proliferate,¹ legal academies have banned laptops and disabled Internet access out of fear that the cyberspace universe will permanently distract students. The debates over online learning can be reduced to clichés² that revolve around two opposing

* Associate Professor, City University of New York School of Law. My deepest gratitude to my dear colleague Ruthann Robson for her support, wisdom, and patience as my “scholarship mentor” for this article. Thank you to the following law students who contributed significant research assistance: Laura Steinberg, Lyandra Rettaco, and Natasha Thompson. This article would not have been possible without the CUNY online teaching course expertly taught by Professor Karen Greenberg of CUNY’s Hunter College, who was committed, knowledgeable, supportive, and an exemplary role model for how to teach online. I also want to thank the students in my lawyering seminars that accepted, and in many cases embraced, the online concept. Finally, I appreciate the support of the CUNY School of Law Professional Development Committee.

1. See, e.g., UMass Online, <http://www.umassonline.net/Home.html> (last visited Dec. 27, 2008) (whose motto is “UMassOnline is UMass”). Some universities exist only in cyberspace. See, e.g., Walden University, <http://www.waldenu.edu/c/home.htm> (last visited Dec. 27, 2008) (a fully accredited online university which has no physical campus); The Open University, <http://www.open.ac.uk/about/ou/> (last visited Dec. 27, 2008) (billing itself as “[t]he United Kingdom’s only university dedicated to distance learning” and serving 150,000 undergraduates and 30,000 postgraduate students); Concord Law School of Kaplan University, <http://www.concordlawschool.edu/index.asp> (last visited Dec. 27, 2008) (“The best law school may be the one that comes to you.”); Rebecca Luczycki, *More Distance Schools Offer Alternative*, THE NATIONAL JURIST 36 (Sept. 2004). Approximately 3.5 million students, representing 20% of higher education students, were enrolled in an online course in the fall of 2006. Elaine Allen & Jeff Seaman, *Online Nation: Five Years of Growth in Online Learning* 5 (Sloan Consortium 2007), available at http://www.sloan-c.org/publications/survey/pdf/online_nation.pdf [hereinafter *Online Nation*].
2. A cliché is defined as “a trite or overused expression or idea.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000). Common synonyms include the nouns bromide, commonplace, platitude, and truism. *Id.* Compare an aphorism, which is defined as a tersely phrased statement of a truth or opinion, an adage, a brief statement of a principle, which implies depth of content and stylistic distinction. *Id.* The cliché is quite similar to a “saw,”

groups. The first group, the “naysayers,”³ are skeptical of any technology that interferes with face-to-face human interaction, and they worry about the danger of online learning. The second group, the “enthusiasts,”⁴ are true believers in technology, and they are certain the future has arrived with online classes, programs, and universities that promise, and deliver, a cure for much of what ails the modern education enterprise.⁵ The naysayers point to a variety of problems associated with online learning, including the impersonal nature of computer-mediated communication, the excessive cost in human and financial resources relative to the questionable benefits, and the possible demise of the traditional paradigm of the classroom and the academy.⁶ The

which is a synonym of the aphorism and is defined as a “familiar phrase that has become trite through repetition.” *Id.* While the term cliché carries a negative connotation, it is similar to other terms which are defined more positively, such as an adage, which has “gained credit through long use” (e.g., “[g]ood things come in small packages”), an epigram, which is a “witty expression, often paradoxical or satirical and neatly or brilliantly phrased” (e.g., “[i]n his epigram Samuel Johnson called remarriage a ‘triumph of hope over experience’”), and a proverb, which refers to an old and popular saying that illustrates something such as a basic truth or a practical precept (e.g., “[s]low and steady wins the race”). Rather than parse through the fine distinctions among these terms, I will use the term cliché, while borrowing from its related categories. Perhaps, the use of the term cliché will contribute, in a small way, to its rehabilitation so that it can take its place among its more lauded relations as a phrase which has turned the corner from tired to illuminating, from overused to sparking a glimmer of recognition from the familiar, in other words, providing “food for thought.”

3. “As with any paradigm shift, there are the naysayers as well as the enthusiasts.” TISHA BENDER, *DISCUSSION BASED ONLINE TEACHING TO ENHANCE STUDENT LEARNING: THEORY, PRACTICE, AND ASSESSMENT* 157 (Stylist Publishing 2003).
4. *Id.*
5. “We have reached the tipping point where blended learning will transform higher education.” D. RANDY GARRISON & NORMAN D. VAUGHN, *BLENDED LEARNING IN HIGHER EDUCATION: FRAMEWORK, PRINCIPLES, AND GUIDELINES* 152 (Jossey-Bass 2007) [hereinafter GARRISON & VAUGHN]. See also Michael L. Perlin, “Ain’t No Goin’ Back”: *Teaching Mental Disability Law Courses Online*, 51 N.Y.L. SCH. L. REV. 991, 992 (2006-07); Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 3 (2002).
6. See Katherine S. Mangan, *Justice Ginsburg Raises Questions About Internet-Only Law School*, CHRON. HIGHER EDUC. 1-2 (Sept. 24, 1999) (quoting U.S. Supreme Court Justice Ruth Bader Ginsburg expressing concern about the isolating effect of technology and the loss of face-to-face contact for students enrolled in the online Concord Law School); Nick Dranias, *Past the Pall of Orthodoxy: Why the First Amendment Virtually Guarantees Online Law School Graduates Will Breach the ABA Accreditation Barrier*, 111 PENN ST. L. REV. 863, 863 (2007) (arguing that the ABA’s refusal to grant accreditation to In-

enthusiasts, on the other hand, see online learning as a means to overcome the constraints of space, time, and distance, broaden access to higher education, create opportunities for innovative teaching, and engage students in active learning. Some enthusiasts also see online learning as a means to generate profits. As is typical with opposing sides in a debate, these conflicting points present a false dichotomy. For example, most people involved in the educational process are dependent on computer technology, but even “techno-geeks” still seek meaningful human connection. In sum, most of us are hybrids, meaning that we exhibit certain characteristics from both schools of thought. It is not surprising, therefore, that a hybrid course, one that combines online and face-to-face classes, would seem so promising.⁷

For me it began with an email offering an online course to professors in the many colleges that make up the City University of New York system.⁸

ternet-only schools violates the First Amendment’s prohibition against media discrimination). *See also*, Paul L. Caron & Rafael Gely, *Taking Back The Law School Classroom: Using Technology To Foster Active Student Learning*, 54 J. LEGAL EDUC. 551, 551 (2004) (noting a “backlash” against the use of technology as a distraction that promotes passive learning); David M. Becker, *Some Concerns About the Future of Legal Education*, 51 J. LEGAL EDUC. 469, 477 (2001); Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 AM. U. L. REV. 85, 85 (1998); Robert H. Thomas, “Hey, Did You Get My E-Mail?” *Reflections of a Retro-Grouch in the Computer Age of Legal Education*, 44 J. LEGAL EDUC. 233, 235-36 (1994).

7. Two core elements define a hybrid course: the integration of “[o]nline with traditional face-to-face class activities in a planned, pedagogically valuable manner;” and the use of online activities to replace traditional face-to-face time. *See, e.g.*, Anthony G. Picciano & Charles D. Dziuban, *Introduction*, in *Blended Learning: Research Perspectives* 1, 8-10 (Anthony G. Picciano & Charles D. Dziuban eds., Sloan-C 2007) [hereinafter Picciano & Dziuban]. The term “asynchronous learning network” is used to describe “computer mediated” or “distance” learning that takes place outside a physical classroom, without a particular time schedule, and where students choose when and where they participate within certain parameters. ANTHONY G. PICCIANO, *DISTANCE LEARNING: MAKING CONNECTIONS ACROSS VIRTUAL SPACE AND TIME* 160-61 (Prentice-Hall, Inc. 2001). *See also* Charles D. Dziuban et al., *Reactive Behavior, Ambivalence and the Generations: Emerging Patterns of Student Evaluation of Blended Learning*, in *BLENDED LEARNING: RESEARCH PERSPECTIVES* 179-80 (Anthony G. Picciano & Charles D. Dziuban eds., Sloan-C 2007) [hereinafter Dziuban et al.] (recommending a more fluid definition of blended learning that is based on “idea transmission” rather than “blueprint copying” to account for the unique settings and circumstances that exist in colleges and universities).
8. *See* CUNY Homepage, <http://www.cuny.edu> (last visited Nov. 13, 2008). The City University of New York, with funding from the Alfred P. Sloan Foundation and together with the Sloan Consortium (<http://www.sloan-c.org/>), is a leader in all facets of distance education. CUNY now offers an online B.A. in Communication and Culture and an online B.S. in Business. *See* Complete

The course required an initial face-to-face meeting of the class, as well as a commitment to teach either a hybrid or totally asynchronous online course. I was intrigued, so I arranged to reduce my law school committee responsibilities for the semester and enrolled in the course. I arrived at the initial meeting with my professorial colleagues from across the university and sat through an interesting PowerPoint introduction to the course, which was presented by enthusiastic, informative, and confident members of the faculty team. Their focus on teaching and the manner in which they deployed the course website tool to help students learn and enrich their teaching methods sparked my interest. At the end of that initial class, we each had our picture taken for our future course website, which we would create as the work product for this class. I have used this picture ever since. Whenever I come back to it, usually as I prepare and update my website for a new semester, it always conjures up fond memories of that first day, when, after so many years of teaching, I became a student once again.

Perhaps it was the experience of being a student, the dynamism of the online course, or my desire for something new that made this experience so meaningful and inspiring. Whatever the reason, the course lived up to the promise of that first day and proved to be challenging and rewarding. The students in that online class – all professors in a large public university – discovered the world of distance learning. Most of us also seemed to rediscover the often exhilarating, and occasionally frustrating, experience of being a student, all while learning under the expert guidance of a committed teacher. I successfully completed the class by creating my own course website, which I later used to teach a hybrid online course at the City University of New York School of Law (“CUNY School of Law”).⁹

I have transformed the hybrid course over the years, but generally it is an experiential first-year lawyering seminar and semester-long simulation where first-year students learn a variety of lawyering skills: fact gathering, legal analysis, creating persuasive legal arguments, writing (and rewriting) a variety of legal documents culminating in a memorandum of law, and a mock oral argument.¹⁰ The seminar embodies a method of teaching and learning

Your Degree Online, <http://www1.cuny.edu/online/> (last visited Nov. 13, 2008). Another online presence and resource for distance education is the Virtual Center for Online Learning Research. See VCOLR Homepage, <http://www.ncolr.org> (last visited Nov. 13, 2008).

9. CUNY School of Law was founded in 1983 as a public interest law school dedicated to “Law in the Service of Human Needs.” See CUNY Law Homepage, www.law.cuny.edu/index.html (last visited Nov. 13, 2008). The law school has been at the forefront of clinical and experiential legal education and was featured as a model in the Carnegie Report on legal education. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 34 (Jossey-Bass 2007) [hereinafter CARNegie REPORT].
10. CUNY School of Law, *Required Courses First Year*, <http://www.law.cuny.edu/academics/curriculum/Required1stYear.html> (last visited Nov. 13, 2008)

that integrates theory, doctrine, and practice that is a signature approach of CUNY School of Law. It is the kind of experiential, participatory course that is now widely recognized as essential to prepare students for the legal profession.¹¹ The lawyering seminar integrates theories of lawyering with doctrinal law from first-year substantive courses, and it provides multiple opportunities for students to apply what they are learning in simulated exercises and activities.¹² The seminar proved to be an excellent vehicle for my initial foray into online teaching because it incorporated a wide array of learning activities and teaching methodologies.¹³

(describing the lawyering seminar as a required first year course “where students work on legal writing and other lawyering skills through simulations and other role-playing devices.”).

11. See, e.g., CARNEGIE REPORT, *supra* note 9, at 17; ROY T. STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 1, 5 (Clinical Legal Education Association 2007) [hereinafter BEST PRACTICES]; EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM 1, 5 (Robert MacCrate ed., 1992) [hereinafter MACCRATE REPORT].
12. There are usually no more than twenty students in the seminar, each of whom receives a substantial amount of individual feedback on his or her writing and other lawyering activities.
13. A variety of law school courses and programs have been created or transformed into online courses of varying kinds. See, e.g., Michael L. Perlin, *An Internet-Based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies*, 30 FORDHAM INT’L L.J. 435, 437-38 (2007) (connecting the online program with fundamental issues facing nascent economies); The Disability Law Program website, <http://www.nyls.edu/pages/166.asp> (last visited Dec. 27, 2008); Perlin, *supra* note 5, at 992, 1000 (describing the transformative success of the multi-faceted New York Law School Online Disability Law Program); Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 RUTGERS COMPUTER & TECH. L.J. 33, 39-40 (2003) (describing use of a course website and online discussions to teach public health law to law students and public health graduate students at CUNY); Robert E. Oliphant, *Using “Hi-Tech” Tools In A Traditional Classroom Environment – A Two Semester Experiment*, 9 RICH. J.L. & TECH. 5, ¶ 4 (2002) (describing use of technology in a variety of first year law courses); Laura R. Winer, *Computer-Enhanced Collaborative Drafting in Legal Education*, 52 J. LEGAL EDUC. 278, 280 (2002) (describing transformation of a “black letter law” Business Associations course into a more skills-focused course using technology, primarily online drafting exercises); Charlene L. Smith, *Distance Education: A Value-Added Model*, 12 ALB. L.J. SCI. & TECH. 177, 178 (2001) (describing how video technology enabled a torts class to be offered synchronously to students at Washburn University Law School in Kansas and Nova Law School in Florida); Catherine Arcabascio, *The Use of Video-Conferencing Technology in Legal Education: A Practical Guide*, 6 VA. J.L. & TECH. 5, ¶ 1 (2001) (describing technical features of video-conferencing and how this technology was used at Nova Southeastern University Law School in a distance learning externship program); Robert M.

The experience involved in creating and refining a web-based hybrid course challenged me as a teacher, changed my perspective on the learning that occurs both inside and outside the classroom, and illuminated much of what lay beneath the surface of my teaching strengths and weaknesses.¹⁴ The excitement of working in a new medium sparked my enthusiasm and interest in the mysterious art and skill of teaching and learning. I found myself on a journey – which sometimes felt like an obstacle course – where I grappled with the tension and issues that are at the heart of the debates about online learning. I obviously was not a skeptical naysayer; I took the risk, signed up for the course, and followed through on my commitment to teach online. But I also could not count myself as an unqualified enthusiast; I had too many doubts, questions, and concerns about creating and teaching an online course. My perspective and experience was a blend of these opposing perspectives, which seemed fitting for a teacher of a hybrid course.

While there are similarities between online and traditional pedagogy,¹⁵ the differences may or may not be significant,¹⁶ and the meaning and rele-

Lloyd, *Investigating a New Way to Teach Law: A Computer-Based Commercial Law Course*, 50 J. LEGAL EDUC. 587, 587 (2000) (describing fully online commercial law course); William R. Slomanson, *Electronic Lawyering and the Academy*, 48 J. LEGAL EDUC. 216, 220 (1998) (describing the role of course website in civil procedure course).

14. This is consistent with data gathered from online teachers. For example, in a qualitative study of faculty experience in developing hybrid courses, one of the “unintended good consequences” was the positive impact on teaching methodology. Kaleta et al., *Discovering, Designing and Delivering Hybrid Courses*, in *Blended Learning: Research Perspectives* 111, 139 (Anthony G. Picciano & Charles D. Dziuban eds., Sloan-C 2007).
15. See MALCOLM SHEPHERD KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION: FROM PEDAGOGY TO ANDRAGOGY* 37-38 (Association Press, 2d. ed. 1971) (specifying that pedagogy is the art and science of teaching children, while andragogy is the art and science of helping adults learn).
16. There has been much research of online course formats, including case studies of particular courses, as well as comparisons of various online course formats with traditional face-to-face courses. Thomas L. Russell, *The No Significant Difference Phenomenon*, <http://www.nosignificantdifference.org> (last visited Nov. 12, 2008); Saxon G. Reasons et al., *Questioning the Hybrid Model: Student Outcomes in Different Course Formats*, 9 J. ASYNCHRONOUS LEARNING NETWORKS 83, 89-91 (2005) (finding that participation in the Internet based section was not significantly different and noting that a significant number of students in each section did not actively participate. The course grades were higher in the Internet section and, also predictably, the frequency of contact with the course website in the Internet section was higher. While the grade difference might be significant, the contact with the course website appeared to reflect the online format of the course.).

vance of any differences is contested.¹⁷ An online component has the potential to multiply the levels of learning in a course and enrich each student's individual experience, as well as the collective work of the class.¹⁸ Online learning may also provide greater reflective opportunities for deeper learning and participation among students, namely for women, who have been disadvantaged in the traditional classroom.¹⁹ Online classes also help to "level the playing field" for students who have physical difficulty traveling to class, who are disadvantaged in the verbal and visual world of the physical classroom, and who have a need for at least some degree of flexibility in time and

17. See, e.g., Jeannette McDonald, *Is "As Good as" Face-to-Face As Good as It Gets*, 6 J. ASYNCHRONOUS LEARNING NETWORKS (Special Issue on Nursing) 10, 10-11 (2002) (arguing that cross-methodology comparisons are not relevant for educational purposes); Reasons et al., *supra* note 16, at 92. In order to evaluate online courses, I recommend a model that is based on educational value rather than a "better or worse" paradigm.
18. See Starenko et al., *Enhancing Student Interaction and Sustaining Faculty Instructional Innovations through Blended Learning*, in *Blended Learning: Research Perspectives* 161, 164 (Anthony G. Picciano & Charles D. Dziuban eds., Sloan-C 2007) (noting that when online and face-to-face instruction is "thoughtfully integrated, the educational possibilities are logically multiplied.").
19. See, e.g., David M. Anderson & Carol J. Haddad, *Gender, Voice, and Learning in Online Course Environments*, 9 J. ASYNCHRONOUS LEARNING NETWORKS 3, 3 (2005) (Survey of undergraduates indicated that women found "deeper perceived learning" in online classes, due primarily to greater expression of voice and more positive teacher support.). The authors note that the results of other studies have been inconclusive, although the reflective nature of online discussions is more consistent with the kind of contextual and interactive learning favored by women. See *id.* at 4. Research has indicated that the law school experience generally, and classroom dynamics in particular, tend to replicate male dominated patterns to the disadvantage of women. See, e.g., Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM 389, 391-92 (2006); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3 (1994). See also, Lynn Smith-Lovin & Charles Brody, *Interruptions in Group Discussions: The Effects of Gender and Group Composition*, 54 AM. SOC. REV. 424, 424-25 (1989) (noting that gender operates as a status characteristic in group settings and examining how status differences between men and women affect interactions in group conversation and discussion). See Cathy Gunn, et al., *Dominant or Different? Gender Issues in Computer Supported Learning*, 7 J. ASYNCHRONOUS LEARNING NETWORKS 14, 14, 21, 28 (2003) (A study of undergraduate students at the University of Edinburgh indicated that gender issues that arise in the traditional classroom tend to be replicated in online courses but may be ameliorated through the level of support from the teacher and the extent to which the course employs "constructive learning styles" rather than "didactic" methods.).

space.²⁰ While an interactive online component may have the potential to impede learning due to certain obstacles and frustrations, it also has the power to have a positive, and occasionally transformative, impact on teaching and learning. As with all teaching methods and models, it has to be used properly and be “the right tool for the right job.” In order to assess the value of the lawyering seminar’s online component, I examine the impact of online activities on complex analytical skills such as synthesis and reflection. I also explore more specifically how online activities facilitate the acquisition of the kind of professional knowledge and skills that law schools should be teaching (e.g., writing, research, legal analysis, and oral argument in an advocacy context).²¹ The ultimate question that I seek to answer is whether an online component enhances the learning experience of students.

This article is organized to reflect the unfolding of the lawyering seminar as an online course and the course website structure as a whole.²² Throughout the article I use clichés to highlight the basic question – the “elephant in the room” – of whether online teaching “cuts the mustard” compared to a “face-to-face” course.²³ The article begins with a description of the lawyering seminar and how I changed it into a hybrid online course. Next I examine the key elements of teaching a hybrid online model and use examples to compare it to a conventional face-to-face course. By describing how I planned and created the course website, online classes, and activities, the article will explore the essence of online learning. Finally, I use several of these online classes and activities to illustrate the potential benefits and problems with online learning and my approach to assessing online work.

A hybrid online course creates a “unique learning environment” that enhances learning.²⁴ My goals are to share my experiences with online learn-

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20. These circumstances include, but are certainly not limited to, impairments in sight and hearing and difficulty physically traveling to class, perhaps due to lack of public transportation, a disability, family obligations, the need to work, or other realities that create obstacles for students.
 21. See MACCRATE REPORT, *supra* note 11, at 121-23; CARNEGIE REPORT, *supra* note 9, at 13-14.
 22. The BlackBoard webcourse (a/k/a “course management system” or “CMS”) is used throughout the City University of New York system. In the law school world, LexisNexis (BlackBoard) and Westlaw (TWEN) offer user-friendly course websites. Another option, beyond a packaged course management system, is to create one’s own course website.
 23. See, e.g., KHALED HOSSEINI, THE KITE RUNNER 172 (2004) (“A creative writing teacher at San Jose State used to say about clichés: ‘Avoid them like the plague.’ Then he’d laugh at his own joke. The class laughed along with him, but I always thought clichés got a bum rap. Because, often, they’re dead-on. But the aptness of the clichéd saying is overshadowed by the nature of the saying as a cliché. For example, the ‘elephant in the room’ saying.”).
 24. Karen Vignare, *Blended Learning: Using ALN to Change the Classroom – Will it Work?*, in BLENDED LEARNING: RESEARCH PERSPECTIVES 37 (Anthony G.

ing, make observations about the use of online activities – particularly in a hybrid course – and suggest ways for teachers and students to incorporate and benefit from online teaching of lawyering skills.²⁵ My focus on course design, pedagogy, and utilizing a student-centered approach – factors that

Picciano & Charles D. Dziuban eds., Sloan-C 2007) (survey of research inconclusive, although positive, whether “blended learning” is greater than the sum of its face-to-face and online parts or merely a methodology that combines these two different ways of teaching).

25. Online education is in the process of redefining the modern university, including law schools. See, e.g., James Traub, *This Campus is Being Simulated*, N.Y. TIMES MAGAZINE, Nov. 19, 2000, available at <http://query.nytimes.com/gst/fullpage.html?res=9B0DE4D7173CF933A25751C1A9669C8B63> (last visited Nov. 11, 2008) (describing the way entrepreneurial online educational strategies are clashing with traditional notions of education and creating competition and a backlash for professors such as Arthur Miller, who was rebuked for his support of Concord Law School and willingness to provide taped lectures). See also Michael Heise, *Closing One Gap but Opening Another?: A Response to Dean Perritt and Comments on the Internet, Law Schools, and Legal Education*, 33 IND. L. REV. 275 (1999) (arguing that many of the changes to legal education have arrived and emphasizing the importance of assessing the relative benefits and problems associated with the pervasive presence of technology for law schools); Thomas D. Morgan, *Educating Lawyers for the Future Legal Profession*, 30 OKLA. CITY U.L. REV. 537 (2005) (describing asynchronous education as inevitable, but only in terms of providing lectures, interactive drills, and legal research and writing exercises); Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 WM. MITCHELL L. REV. 841 (2000) (describing the Concord Law School curriculum and noting that its innovations and cost threaten the traditional bastion of legal education); Henry H. Perritt, Jr., *The Internet Is Changing the Face of American Law Schools*, 33 IND. L. REV. 253 (1999) (surveying impact of technology on substantive curriculum by creating need for course offerings that address cyberspace legal issues and on instruction methodology based on experience of Chicago-Kent College of Law in offering distance learning courses and programs); Daniel C. Powell, *Five Recommendations to Law Schools Offering Legal Instruction Over the Internet*, 11 J. TECH. L. & POL’Y 285 (2006) (advocating a synchronous based approach, augmented by asynchronous methods, such as discussion boards, based on experience of the University of Alabama Law School online LLM program in Taxation); Robert J. Salzer, Comment, *Juris Doctor.com: Are Full-Time Internet Law Schools the Beginning of the End For Traditional Legal Education?*, 12 COMMLAW CONSPPECTUS 101 (2004) (advocating a more flexible approach by the American Bar Association to the “unstoppable force” of distance education, particularly accreditation of totally online law schools); Nicolas P. Terry, *Bricks Plus Bytes: How ‘Click-and-Brick’ Will Define Legal Education Space*, 46 VILL. L. REV. 95 (2001) (arguing that an essentially hybrid legal education is inevitable and providing a vision of how law schools need to adapt to maintain their viability as “brick and mortar” institutions by integrating technology).

determine the effectiveness of learning in any context – reflects the training I received in the CUNY online course and the method and mission of CUNY School of Law.²⁶ I used technology as a tool for learning by making it accessible to even the most technologically challenged of students.²⁷

II. TILTING AT WINDMILLS AND THE ROAD IS ALWAYS UNDER CONSTRUCTION: CREATING A HYBRID ONLINE CLASS

The subject of my experiment – a first-year lawyering seminar – presented a unique set of challenges and obstacles. The students had completed one semester of law school, were placed into my seminar as part of a required course rotation,²⁸ and were about to experience a plunge into legal

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26. See, e.g., Dziuban et al., *supra* note 7, at 199 (noting instructor role as key factor in student learning).
 27. In addition to course websites, professors are using a variety of electronic tools for educational purposes. Blogs provide a unique context to develop and share ideas. See, e.g., Professor John Maeda, Simplicity at the MIT Media Laboratory in Cambridge, Massachusetts, <http://weblogs.media.mit.edu/SIMPLICITY/> (last visited Dec. 27, 2008); Professor Jack Balkin, Balkinization, <http://balkin.blogspot.com/> (last visited Dec. 27, 2008) (Professor Balkin characterizes his blog as an “unanticipated consequence”); Princeton University Faculty Blogs, <http://www.princeton.edu/main/campuslife/media/blogs/> (last visited Dec. 27, 2008); The University of Chicago Law School Faculty Blogs, <http://uchicagolaw.typepad.com/> (last visited Dec. 27, 2008). A wiki is an excellent collaborative tool that has great potential in education. See, e.g., Brock Read, *Romantic Poetry Meets 21st Century Technology*, CHRONICLE HIGHER EDUCATION, July 15, 2005, at A35, available at <http://chronicle.com/free/v51/i45/45a03501.htm> (describing how the use of a wiki in English and creative writing courses improves the quality of writing, analysis, collaboration, and engagement). Even handheld transmitters are used to enhance traditional, face-to-face classes. See, e.g., Caron & Gely, *supra* note 6 (describing the use of handheld transmitters as a tool that facilitates active engagement by students and is an example of the “best of both worlds” use of technology). Some sort of technology is often used to augment or support a traditional face-to-face course. See, e.g., Ballard & Carroll, *Student’s Perceptions of Course Web Sites Used in Face-to-Face Instruction*, J. of Interactive Learning Res., Sep. 22, 2004, at 3197, available at 2004 WLNR 15588689 (noting overall student satisfaction with use of websites as adjunct to traditional course based on survey of undergraduates at East Carolina University, with findings consistent across gender and between traditional (i.e., age 17-25), and nontraditional (age 26 and older)).
 28. Students were not given any advance notice that this seminar would include a mandatory online component. Given the variety of lawyering seminar approaches at CUNY School of Law, my seminar was not so radically different as to require a special alert that might have only created anxiety and apprehension. The importance of prior notice may depend on whether one views a hybrid course as outside the realm of innovative teaching or one of many teaching strategies and approaches, in which case advance notice would be less important. Vignare, *supra* note 24, at 49.

writing and advocacy that involved a steep learning curve. Although the lawyering seminar combined elements of traditional and clinical legal education,²⁹ the emphasis was decidedly experiential. Students assumed the role of a lawyer for a party in a legal litigated dispute,³⁰ learned and practiced a variety of fundamental lawyering skills through activities, exercises, and simulations,³¹ submitted a memorandum of law after multiple drafts, and participated in a mock oral argument at the culmination of the semester. I distributed a brief overview of the course to the students.³²

In order to qualify the course as a hybrid course under the CUNY definition, thereby fulfilling my obligation as a “graduate” of the CUNY online course, as well as complying with the American Bar Association requirements and limitations for distance learning in law schools, one-third of the

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29. Traditional use of seminar time included explanation of discussion of substantive law. Clinical teaching involved experiential learning related to planning, doing, and reflecting on lawyering activities.
 30. The underlying facts in the simulation involved an elderly woman who was physical abused by a family member after the police failed to intervene. The legal issue was whether the municipality owed a special duty to protect her.
 31. These skills include professional responsibility, fact gathering and analysis, legal research and application, drafting, and oral advocacy. These are part of the cluster of lawyering skills and values identified as essential. MACCRATE REPORT, *supra* note 11, at iv. Students in my lawyering seminar were evaluated on their level of competence in the following areas: professional responsibility, clinical judgment, oral and written communication, theoretical perspective, legal analysis, and time management. Competency based assessment is recognized as beneficial and represents a best practices trend in education.
 32. The overview stated:

This lawyering seminar will be structured around a simulated case, *Clark v. City of New York*, in which a plaintiff claims that the city had a duty to protect her based on the special relationship exception to municipal immunity. Our seminar will be in role as attorneys representing Jessie Clark, who is the plaintiff in this case. The major focus of the semester will be on advocacy. During the course of the semester, you will have an opportunity to conduct an interview, draft (and re-draft) a brief, make an oral argument, as well as participate in a variety of other lawyering activities. This course is designed around experiential learning: for each major lawyering activity, I expect you to engage in planning, doing, and reflecting. These are the three pillars of a lawyer’s work and the foundation for your development as thoughtful and effective advocates who are also able to make connections between the issues raised by individual cases and the broader societal, political, and legal context.

classes – but no more than one-third – had to be online.³³ I introduced the online component as part of the overall course description.³⁴

The lawyering seminar had a number of classes devoted to small group work, individual and group feedback sessions, and structured preparation for lawyering activities. As a result, I was able to substitute a few of the online classes for these nontraditional classes, which made the change less dramatic. Scheduling the online classes was an interesting process in the attempt to

33. Distance education does not apply to hybrid courses “[i]n which two-thirds or more of the course instruction consists of regular classroom instruction . . . even though they also include substantial online interaction or other common components of ‘distance education’ courses. . . .” ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 306, Interpretation 306-3 (2006). The ABA rule limits the number of distance education credits in which a student can enroll to no more than four in one term for a maximum total of twelve during law school and only allows a student to take what it defines as distance education courses after earning at least 28 hours of law school credits, i.e., after the first year of law school. *Id.* at 306(d), 306(e).

34. The course description stated:

Another aspect of this lawyering seminar is that it is structured as a ‘hybrid’ online course. This means that about one-third of our classes will take place through the course website online, through guided discussions and activities instead of face to face in the classroom. The other two-thirds of our classes will take place as scheduled in our seminar room on Tuesdays and Thursdays from 10:45-12:45. The course website will include virtually all the course materials and you will need to log in regularly (daily if possible) to stay current with announcements and assignments.

For example, as part of our online work, you might participate in a Discussion Board (DB) forum within a few days after a class meeting to continue a discussion we began in class. As part of an online class, I may ask you to post your thoughts about a reading assignment or an analysis of issues, problems, or cases with which we are working. The online assignment could require you to respond to each other. These online discussions will take place in online groups of varying size. Depending on the particular assignment, you may have a couple or several days to complete that work.

A key goal (and challenge) is not to strictly equate online time to a face to face class session, but rather to use online work for in-depth thinking, analyzing, synthesizing, responding, and reflecting. The nature and quality of the online work lends itself to a different kind of interaction, which is often difficult to replicate in a single session class, which tend to move quickly and make it difficult to fully develop your perspective and responses. In addition, being able to communicate effectively with email, find information efficiently on the internet, and be comfortable using technology are becoming increasingly important for lawyers in their daily work. Hopefully, our in-class and online work will complement each other and enrich your learning experience.

develop a balance of classroom activities. As I would in a traditional class, I utilized a variety of teaching styles and class structures to meet particular goals for topic “modules” and individual classes. A typical mix might include a predominantly teacher centered lecture, a discussion requiring active participation from students where the teacher is more of a facilitator, and work based on small group activities within the class. The online classes added a new dimension to class planning: I not only had to identify goals and design learning activities in this new mode, but I also had integrate the online classes with the surrounding face-to-face classes.

III. COMPARING APPLES AND ORANGES OR TWO PEAS IN A POD? DIFFERENCES AND SIMILARITIES BETWEEN ONLINE AND FACE-TO-FACE CLASSES

An online course, whether completely asynchronous or a hybrid, has a different learning landscape than traditional courses. Online courses also are augmented by the additional dimension of the course website, which serves as a place to post course materials, a communications center, a link to extra resources, and the location of discussion forums. In order to provide paths of entry for each student, the “cultural” change necessary to succeed online needs a clear and thorough introduction. Unlike traditional courses, which are familiar to students after many years of schooling, online classrooms need more extensive introduction, explanation, and mapping of conventions and expectations. The website has to be integrated into the activities, requirements, and expectations of the course. Students need to learn how to navigate, participate, interact, and collaborate on the course website. The teacher has to facilitate this on the macro level of the course’s structure, expectations, and requirements, as well as on the micro level where online activities (e.g., group discussions) require precise organization, explicit guidance, and explanation of process and goals in order to succeed.³⁵ At the beginning of the semester I distributed a document entitled “Directions for Working Online” that included information about accessing the website, design of the website, communication and submitting documents online, using the discussion board, the Blackboard monitoring function, and how best to work collaboratively to resolve concerns, problems, and questions.

Integrating an online component into a course can be a mild form of culture shock, which is reduced through introduction, support, and guidance. Engaging in a course online may require more initiative to develop a comfort level with the new approach (i.e., get to a computer, turn it on, click to the website, click to the appropriate folder or discussion forum, think about what has been written, type in your contribution) than merely showing up for a class or meeting, a familiar routine in our lives as students and teachers. The

35. See, e.g., GARRISON & VAUGHN, *supra* note 5, at 38-48 (“Teaching Presence” is one of the cornerstones in the “Community of Inquiry” model of learning that is used as a framework for distance learning, including “blended learning.”).

actual and perceived benefits of online learning depend on a variety of factors, including the individual characteristics, life circumstances, and learning style of the student.³⁶ The relative (in)convenience of engaging online is an important factor in motivating students to enroll in online courses and in determining whether students perceive the online courses as valuable and beneficial.³⁷

I identified a few broad categories of students along what I named a “convenience/hassle” continuum,³⁸ each of whom may be affected by problems accessing the Internet:³⁹

“Receptive.” These students work well at home and welcome online activities outside the normal course schedule.

“Skeptical.” These students are unfamiliar with online learning, may have had a negative experience with it, or just do not like the idea, but are willing to give it a try, albeit grudgingly, perhaps if for no other reason than they have no choice but to engage in mandatory activities in a required course.

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36. See, e.g., Carol A. Twigg, *Increasing Success for Underserved Students, Redesigning Introductory Courses*, National Center For Academic Transformation (2005), <http://www.thencat.org/Monographs/IncSuccess.htm> (describing impact of major course redesign project on underserved students, defined as students of color, adults, and low-income students and finding that of thirty colleges and universities that participated, twenty-five showed significant improvements in learning and retention, as well as savings in cost).
 37. Professor Charles Dziuban of the University of Central Florida, as part of the school’s Research Initiative for Teaching Effectiveness, has conducted a multi-year study of “Web and Web Enhanced” courses since 1996. Convenience is the primary reason for enrolling in fully online courses for seventy-nine percent of the students. Eighty-five percent of students are satisfied with their fully online courses, with eighty-nine percent reporting they would be “positive” about taking another online course. See University of Central Florida: Distributed Learning Impact Evaluation, <http://rite.ucf.edu/impactevaluation.htm> (last visited Dec. 27, 2008).
 38. These categories are intended to be descriptive based on student comments and my observation of student reaction to the online portions of the course. They correspond roughly to the “positive,” “negative,” and “ambivalent,” used as part of a study of student satisfaction with an online course at the University of Central Florida. Dziuban et al., *supra* note 7, at 186-89.
 39. Students who are receptive may lack broadband Internet access at home and also may have difficulty finding time to access the Internet at school or elsewhere. Access issues can discourage even the most enthusiastic and open students and brighten or dampen the willingness of skeptical students to embrace online learning. The so-called “digital divide” within the United States and between the United States and other countries is generating a movement for universal broadband access.

“Resistant.” These students prefer traditional classes and view online work as a bother and annoyance, regardless of their access to the Internet.

An online course, whether hybrid or completely asynchronous, that has an integrated, active, and required course website creates a different experience than a traditional face-to-face course. However, the type of engagement required with online learning – marked by periods of intense activity, lulls, and intermittent participation spread over the course of a few days – is familiar to generations of students who are comfortable and proficient at surfing the web, communicating and socializing via email, instant message, chats, Skype, Facebook, MySpace, and numerous other interactive sites too abundant to mention. New generations of students are often more familiar and comfortable with technology and the virtual world than their professors, but usually in a personal rather than educational context and setting.⁴⁰ For example, group chats are ubiquitous, but these are more of an extension of familiar, friendly interactions among friends, rather than the kind of structured exercises, collaboration, and discussions found in classroom settings. Although much is made of the immediacy and personal nature of face-to-face interaction, even casual followers of modern culture know that cyberspace has become a place for the full range of social, economic, and cultural interaction.

Students need guidance and support to adapt and transfer the online skills they already possess to the tasks, activities, interactions, and discussions that are part of an online course.⁴¹ For example, in a traditional class, it is not unusual for a teacher to assign reading from a text (along with questions or problems to prepare for class) or to require students to observe an activity in the field (e.g., a court hearing), and then to discuss this homework in class. In traditional classes, students expect a range of in-class activities, including lecture, discussion, exercises, and various small group assignments. Online discussions and classes might include some of these familiar

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40. Paul Walsh, *Study: Having 6,141 Friends You Don't Know May Be Beneficial; Scrabulous Aside, There May Be an Educational Upside to Social Networking Websites like Facebook and MySpace*, Minneapolis Star Tribune, June 21, 2008, at 3B, available at http://www.startribune.com/lifestyle/family/20598114.html?location_refer=Local%20+%20Metro:highlightModules:5 (highlighting one study that shows that social networking cites such as Facebook and MySpace have a positive effect on educational skill development among low-income high school students, particularly, and that the gap between economic classes has been bridged to a great extent).
41. The challenge of transferring skills acquired in a previous professional or personal setting is an ongoing one for educators, particularly in post-secondary education settings where students have considerable professional or educational experience but are novices in their new field of study. The goal is to coach and supervise law students so that they advance toward competence and ultimately expertise. CARNEGIE REPORT, *supra* note 9, at 116-17.

activities, but these discussions take place in a different temporal and spatial setting, and require a different approach that is unfamiliar to most students.

A recurring challenge in a hybrid course is to identify the learning attributable to the online component and assess the benefits that individual online classes, and the online component as a whole, offer that cannot be attained in the physical classroom. The following is an attempt to summarize key similarities and differences I have discovered between online and face-to-face courses:

Communication: This aspect was similar in that both kinds of courses are informed by online communication via email. It was different in that there are multiple levels of discourse and information created by the use of a website for discussions and dissemination of resources and materials. Online activities multiply and broaden opportunities for interaction between and among the teacher and students.

Writing: There are more varied opportunities for writing in online discussions and assignments (in-class corollary would be the quick-write and other short writing exercises, but the “post and reply” and discussion utilized in online discussions is qualitatively different). Online courses better prepare students to use email, participate in listservs, and interact with websites in a professional, rather than personal, context.

Collaboration: Online learning provides additional and different opportunities for students to interact with each other in structured ways regarding the work of the course. Online activities add levels to and extend the in-class discourse and integrate online discussions with the numerous interactions students have with each other outside of class. In a hybrid course, the combination of face-to-face and online classes creates a synergy that enhances interaction.

Feedback: The online component provides additional opportunities for multi-directional feedback within and around each online class discussion and assignment. Interaction is the cornerstone of an online course. Even accounting for the use of email in a traditional class, if the teacher invites feedback and actively solicits it, an online course creates an atmosphere that encourages communication between and among students and the teacher.

Access to materials: The capacity to post, store, and retrieve course materials and online discussions is perhaps the most tangible and practical improvement over a traditional course, particularly one with paper handouts only.⁴² Students can always find the syllabus, assignments, and other course materials. A primary

42. Such a class may already be a relic of the past.

difference is the ability to review the discussions in prior online classes.

One of the strengths of the hybrid model is that it combines, integrates, and builds upon the strengths of both the online and face-to-face classroom. There are significant differences in the online experience that provide beneficial teaching and learning opportunities and challenges, which I discuss in more detail below.

A. You Reap What You Sow, and Many Hands Make Light Work: Participating, Interacting, and Collaborating in Cyberspace

Engaging and involving students is always challenging, whether in the physical classroom or in cyberspace. Patterns of participation in any medium are shaped by multiple factors including: whether participation is mandatory, the weight given to participation in the final grade, the class structure, the teacher's expectation, the class size, the level of student interest in the course, and the skill of the teacher. In any course, students make choices about preparing, engaging, and participating, yet there are differences between student behavior in the physical and virtual classrooms. A traditional class has more immediate interplay and accountability, but students may be able to minimize participation depending on the nature of the course. For better or worse in online courses, however, a student's contributions are mostly written words (with possibilities for audio and video posts); the student is engaged, but his or her silent, physical presence is invisible.⁴³ In a hybrid course, the website and the online component should not merely replicate a variant of the in-person class. Rather, in order to maximize its value, the structure of online activities needs to be integrated with traditional classes, should be a part of the major assignments on which students are evaluated, and needs to be able to provide opportunities for different forms of participation.⁴⁴ This helps minimize the possibility that the online work is

43. This may not be true if the professor frequently calls on students. Observing, listening (reading if the class is online), formulating, considering, and thinking while others are discussing are important parts of the participation process, whether online or in the physical classroom.

44. In order to reinforce and maximize the value of the "real time" opened up by an online class, I tried to schedule activities that allowed me to increase my productivity and availability. For the students, it gave them "different" time, which was particularly tangible when the lawyering seminar was scheduled as the first class of the day during one of the two times a week it was scheduled to meet. For example, I used the time normally reserved for the face-to-face class to have individual meetings with students. The extra time gave me insight into the perspective of each student, their individual goals and personality, and how each viewed this course in particular and law school in general. I had a desire to break out of a restricted way of looking at the online component and take advantage of what it offered, despite my ongoing concerns about parity with the physical classroom. Learning takes place in a lot of different ways, and

experienced as an “add-on” and reduces the frequency with which students “just don’t get to” the online assignment, forget to complete the online assignment, decide that they “don’t want to deal with it” (e.g., with a discussion board forum that includes the entire group, the number of posts and replies can be daunting to wade through and keep track of), or are stymied by Internet access obstacles.

Online work transposes the purposes and dynamics of conventional classroom activities onto a qualitatively different tableau: the course website. In any course, a teacher can require a minimum level of participation, beyond which students can choose to go based on their motivation, interest in the course, and desire for a high grade (if participation is weighed heavily). A course can be highly structured or provide more flexibility for students to choose their level of participation. Students are free, within the constraints of class requirements, to choose how to engage. When a professor creates online discussion boards for purposes of facilitating discussion, the structure depends on a variety of choices the teacher makes and involves different considerations than a physical classroom discussion. In my lawyering seminar, I decided to make at least a moderate amount of participation in virtually all online discussions and activities mandatory.⁴⁵

This approach to structuring and facilitating online discussions in my lawyering seminar departed from my usual practice in face-to-face courses, where I encouraged, rather than required, a certain level of participation in a consciously less rigid structure.⁴⁶ The more regimented approach used in the hybrid course was mostly a result of working with what initially was a new medium for me. I had a responsibility to make it accessible for each new group of students who needed structure and guidance to understand what I expected online. At the beginning of this experiment, I was uncertain and concerned about how effective the online component would actually be. In a

using seminar time to meet individually with students not only gives them “extra” time to collaborate, but extends the levels of learning, as class takes place asynchronously and allows for a different engagement with the work of the course and each other.

45. Participation is the key in online discussions, and most experts agree that requiring participation is desirable and often necessary. There is also research that indicates that initial posts, including a professor’s introductory description and framework of the discussion, influence the quality of subsequent posts and replies. See, e.g., Katrina A. Meyer, *The Ebb and Flow of Online Discussions: What Bloom Can Tell Us About Our Students’ Conversations*, 9 J. ASYNCHRONOUS LEARNING 53, 55, 61 (2005) (finding that initial posts may influence the quality of a discussion, although there is an “ebb and flow” pattern).
46. I am a clinician by trade and teach in CUNY’s Elder Law Clinic, a single semester course that typically has a maximum enrollment of sixteen students. The relatively small size of the clinic, its experiential approach and emphasis on lawyering skills, together with the responsibility of representing clients, make it an ideal setting for active participation.

traditional course where students meet in the physical classroom, a teacher can reasonably assume that students understand what constitutes active participation based on their prior experience as students. In a novel online course, nothing can be taken for granted. Most students, despite their comfort with technology, are not accustomed to using email, discussion groups, and an interactive website as part of a school course with more formal and structured rules and expectations.⁴⁷ I chose to be direct and make online discussions and activities mandatory and tightly structured.⁴⁸

B. In For a Penny, In For a Pound, and Taking it One Step at a Time: Using Online Activities to Enrich the Teaching and Learning Experience

An online component makes available a greater number of teaching tools and ways to interact, participate, and collaborate. Online activities and interactions enriched my experience as a teacher, deepened my relationship with students at an early stage, and helped students understand the nature of the course. Clear and precise directions are necessary to facilitate online participation and provide a model for students in communicating online. I began the online component of the course with an assignment that required students to email a “self-assessment” letter to me⁴⁹ and also post brief entries on each of two discussion board forums, one for any general questions they had about the lawyering seminar⁵⁰ and the other to share their experiences

47. Only thirteen of forty-four students in these lawyering seminars, or 29.5%, had prior experience with courses that had an online component, primarily in college.

48. This was a conscious choice; there is certainly room for optional, more loosely structured discussions. However, my anecdotal experience, which may not be universally shared, is that it is more difficult to attain widespread participation when there is not at least an inducement of additional points toward a grade or a mandatory requirement of a certain minimum level of participation.

49. The assignment stated:

Your first assignment is to send me an email ‘letter’ in which you assess your lawyering skills. In a few paragraphs, describe your strengths and the skills you’d like to improve in the following areas: legal analysis (e.g., identifying and explaining legal standards, applying law to facts), oral and written communication, working with clients, and time management. Describe your goals and thoughts about this semester’s lawyering seminar. Please send me this email by Saturday night at 9 p.m. through the Communication button on the web site.

50. The assignment further stated:

Your second assignment is to post a ‘response’ on each of the two forums in the Discussion Board (‘DB’) button. I have posted the first ‘thread.’ Your post should reflect thought and care, and you should edit as you would any document or writing which you are submitting ‘to the

with online learning, including their thoughts and concerns about participating in a hybrid course.⁵¹ The assignment had the following goals: introduce students to the website, provide the opportunity to begin writing online with brief posts and an email letter, enable me to assess the quality of their work, and establish a working relationship with each student through their posts, letters, and my responses.

The initial email letter gives me a “window” into each student, and my responses give the students information about me as their teacher. An exchange of letters can have a special quality, and although email may not quite achieve the experience of the written letter, it achieves a similar emotional impact. We have all experienced this emotional connection in one form or another – someone you have barely spoken to now feels like a person you know, and you have each revealed enough to create a feeling of familiarity on a certain level – to the extent that the email exchange often achieves a certain level of professional and personal rapport.

The online discussions extend classroom conversations, which can often be beneficial but at times can be “incessant.”⁵² The website provides outlets for private questions, inquiries to small and large groups, discussions about particular assignments, opportunities to review prior discussions, and ready access to course information and materials.⁵³ As I discovered, this can result in more work for everybody, perhaps especially for the professor.

world’ (in this class your classmates and me). In each forum (‘General Comments & Questions’ and ‘Participating in a Hybrid Course’) you should include specific information which responds to the questions I’ve posed.

51. Finally, the assignment stated:

Online courses can either be ‘asynchronous’ or ‘hybrid.’ This is a hybrid course, meaning that we will be meeting face-to-face during our regularly scheduled seminar times. However, a substantial amount of discussion that would ordinarily occur in seminar will take place online. This will enable us to really engage in lawyering activities during seminar, but you will have to adjust your approach to learning to take full advantage, and fulfill the requirements, of the online component. Have any of you ever participated in a ‘distance learning’ course? If so, can you share your experience? For everybody, how do you feel about participating in online discussions and work as part of your lawyering seminar? What concerns do you have? Click on the underlined words above to enter this forum. Then click ADD NEW THREAD to post your comments or questions. You can also click REPLY under a colleague’s comment or question to respond.

52. This was a student’s memorable characterization.

53. The website also allows me to expand the scope and depth of subject and skill “modules” through online discussion classes and activities. The online discussion groups help develop and reinforce core lawyering skills, including professional responsibility, role awareness, interviewing, writing, advocacy, and

The course website provides rich feedback and information on the performance and progress of the students. Through it the professor can discern what the students are learning, and the extent to which they are applying, integrating, and synthesizing the reading material. This enriched foundation allows me to progress to an “advanced” place more quickly with the students. I do not “need” physical class time to continue to move the interpersonal and group dynamics forward and deeper because the online communication enhances the quality of interaction, comfort level, and the willingness of students to engage with each other and me.⁵⁴

C. A Watched Pot Never Boils, and Avoiding the Pontification Blues: Thoughts on the Teacher’s Role

Watching an online class unfold is a unique experience: wary of signs of failure, looking for signs of life, and ultimately wondering whether it succeeded. There is an element of vulnerability and risk that accompanies incorporating online work in a course. In a traditional class, the teacher can exert a greater degree of immediate control over the group dynamics, the level of participation, and the pace of the class by pedagogical techniques such as calling on people, using small groups, and requiring participation with “quick write” exercises. Physical presence alone has an immediate impact. With an online class, the teacher “puts it out there,” and students choose how to engage within the parameters of a particular activity or assignment. The temptation to monitor the discussion prematurely creates a “watched pot never

reflection. For example, in different years I used online classes to prepare students for and debrief an interview simulation, as a developmental component of an ambitious brief writing assignment, and as a core component of preparing for and reflecting upon a simulated oral argument.

54. For example, the subsequent face-to-face class focused on interviewing, and our foundational online work enabled me to take risks in the classroom that otherwise might not have been possible. I structured the beginning of the class in an open-ended way, similar to how an interview should generally be approached. The students, used to me beginning class with a discussion of goals and the agenda for the day, appeared a bit surprised. The initial silence gave way to questions about the form of the interview planning memo and logistics of the simulated interview, followed by more substantive questions about interviewing. I attempted to rely to these questions using responsive listening techniques. These questions continued for awhile longer, then I asked the students to share their observations about what had occurred. We draw connections between the structure of the class and client interviews. We talk about the importance of being aware of the process of the unfolding events as they are happening. Students are not only exposed by the reading assignment to “reflection in action,” *see* DONALD A. SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1987), but experience it in class and discuss it explicitly as part of their reflection. I use Schon’s insights and the class discussion to segue into an analysis into the multiple and demanding levels of interviewing.

boils” sensation. However, the pace and evolution of an online discussion requires patience on the part of the professor. The distance aspect changes the demands, timing, and motivation of student participation. While some students respond better than others to online work, the online experience has the potential to motivate, create interest, increase collaboration, and fuel intellectual curiosity.

Most of the online discussions and activities I created were student-centered. Students had the primary responsibility for “carrying” the conversation and participating in the activities. My role was to facilitate, guide, and encourage. There were a variety of online activities designed to help students achieve the primary goals of the course: understand the advocate’s role, conduct legal research, apply facts to law, construct a persuasive memorandum of law, present an oral argument in a mock court setting, and develop the ability to reflect on and learn from their experiences in the class.

In most online classes and activities, student discussion is diffused and frequently focused on small groups or pairs. There is less of a likelihood that online classes will give students a case of the “Pontification Blues,” an unfortunate, albeit sometimes necessary, occupational hazard of the teaching profession. On the surface, some interactive face-to-face classes seem to utilize participatory techniques, but can nevertheless retain the character and feel of being teacher-focused and -driven. When the exercise fails to connect to the students, and the “give and take” involves more taking by the teacher than the students combined, the class may not be all that different from a traditional lecture. If the goal is to create a student-centered class, the ease with which an online class facilitates student interaction and collaboration can be an antidote to this dilemma.

As an online class unfolds, the level of participation stares you in the face, and it can reveal pivotal points in a course and the relationship between a teacher and his students. Poor participation, where students do not participate or participate half-heartedly only because it is required, begs the question of what to do when students do not “buy in” to the learning methodology. When online participation flourishes, all the uncertainty and struggle seems worthwhile, and the joy of learning energizes and sustains. Therefore, patience is a virtue in letting an online class unfold. What initially appears to be a faltering class can quickly transform itself into a rousing success as students participate and interact at high levels. For example, students will give each other feedback in the form of comments or questions, illuminating an area for a student to improve, identifying a problem in analysis, or recognizing a potential weakness in constructing an argument that could be exploited by opposing counsel.

IV. MIRROR, MIRROR ON THE WALL, IS CREATING A HYBRID COURSE WEBSITE THE FAIREST OF THEM ALL? TEACHING APPROACHES, ORGANIZING FRAMEWORKS, AND THE NATURE OF LEARNING AND COMMUNICATION

The process of creating the website and teaching the lawyering seminar as a hybrid course forced me to reexamine my entire approach to teaching. Reconstructing the course laid bare my teaching goals, assumptions, and methodologies. As with all experiences that illuminate a different way of looking at a particular part of our world, what I learned was valuable.

The online component of the course served as a catalyst for examining how I approach teaching, my methods for structuring classes, the nature and quality of my interaction with students, the clarity of my communication, and how I articulate the goals of the course. The process was much different than merely expanding the scope of a course, adding a textbook, or changing the structure of a class. Everything looks different when a professor integrates a website and online class activities as a required part of a course. In essence, I was creating a completely new course structure that demanded a different approach. In order to develop that approach, I had to examine the theory behind my course, its organization, and how I envisioned student interaction. Only by understanding what I was trying to accomplish was I able to create online learning activities that enhanced student learning. The course became a mirror that reflected my teaching philosophy, approach, effectiveness, and resourcefulness.

A. Rome Was Not Built in a Day: Constructing the Online Architecture of the Course

The course website provides a virtual physical structure for the course where everything is posted and visible. The organization from beginning to end, the relationship between classes, how discussions relate to assigned reading and writing, the goals of individual activities, expectations for students, and the role of the professor for particular classes and activities are all spelled out explicitly. In order to construct the web site, and the online activities within it, virtually everything has to be reduced to writing, as that is the primary medium for communication.⁵⁵ If a syllabus is a one-dimensional map of a class, an interactive website is a multi-dimensional structure that requires reading, clicking through hyperlinks, and responding to a variety of

55. Mostly due to the extensive personal contact I had with students as a group and individually within the hybrid structure, I did not communicate by video or audio to students. However, I did utilize an Internet audio recording of an oral argument and videotaped each student's oral argument, excerpts of which were used by students to support their reflection-analysis presentation in small groups after completing oral arguments.

stimuli that create a different experience for the user.⁵⁶ It was only after the initial construction of the course website that I fully appreciated its structure. Each year that I made the transition to a new lawyering seminar, I would update, replace, and renew the website from the prior year. I consciously follow the physical order of the folders on the “welcome” page of the site, scroll down visually, and reflect on the meaning of each “folder”:

Announcements: A ticker tape of the semester, like looking through some old postcards or pictures in a drawer.

Course Information: The online instructions remain fairly static, but reading through them, I imagine myself to be a student, in order to make sure that they are clear and user-friendly.

Staff Information: I read my little greeting and cringe a bit at my office hours: “24/7 online and drop in Monday and Tuesday afternoons or by appointment.” Although I adopted the “24/7” from my original online teacher, in retrospect it seems ridiculous and obviously impossible. After the first year, I replaced it with the more reasonable and realistic, “Online, I’ll respond to emails within 24 hours.” I look at the greeting which accompanies my picture and question whether it is too much, too little, too personal, not personal enough. I decide to keep it, and hope it strikes the right balance; I look at the picture and get a little nostalgic as I remember when it was taken at the first and only physical meeting of my online course.

Course Material: I review the syllabus and all the course material online, including the assigned pages in the texts; the ease with which I can move back and forth helps me identify where changes need to be made as I jot down ideas for the class.

Assignments: I read through the assignments in reverse chronological order, beginning with week 15 and working backwards; as I finish reading each, I make them “unavailable,” like turning out lights in the rooms of a house.

Communication: From here, students can navigate to a spectrum of interactions, including Discussion Boards, Group Pages, and Email.

Discussion Board: As I review the previous semester’s discussions, I am reminded how difficult it is to structure them properly to encourage thoughtful, thorough, and succinct posts and responsive and constructive replies, without making the discussion too burdensome for students. I am reminded of the elusive differences between activities for an online class and preparatory work for a class. I return to the struggle of comparing the relative

56. See Lasso, *supra* note 5, at 4-12 (2002) (providing comprehensive overview of major shifts in human thinking based on technology from the “oral” to “textual” to “hypertext”).

amount of participation and work of students in the two different contexts: over the course of a two hour class, how much time does each student actually spend participating, thinking, listening, and what is the equivalent in an online context?

Groups: I can see the different groups I created for various activities, and with a quick glance at their discussions I see how well each functioned. I wonder whether to shift portions of the online discussion into the face-to-face class and whether groups of two or four are best suited to deconstructing the nuances of a legal brief. Group assignments included, "Post-Interview Discussion," "Constructing an Argument," "Brief Meetings Online," and "Analyzing DeShaney Oral Argument."

External Links: A folder that contains hyperlinks to additional resources, such as the U.S. Supreme Court, the CUNY School of Law Writing Center, the National Center on Elder Abuse, and the New York State Department on Aging.

Tools: This aspect of the website is perhaps the most "technological," designed for a variety of purposes, where students utilize the "digital dropbox" to submit assignments. There are also links to other functions, such as a calendar, appointment scheduling, and tasks, although I did not utilize these.

The Control Panel gives me access to a variety of course statistics that track individual student use of the website functions, including announcements, groups, and discussions boards.

One of the most exciting aspects is that somehow the website allows me to "see" the course to some extent from the perspective of the students. Without the website, I am always in the classroom or my office, looking out from my own vantage point, and it takes a greater act of imagination to put myself in their shoes. In contrast, sitting in my chair, logging on, and reviewing last year's materials puts me in the same position as the students. I can experience the course from their vantage point, even if I cannot fully view it from their perspective. I am ready to rebuild Rome, and I know it will take time.

B. Give Space to Time, and Time Will Fill Space: How an Online Component Adds New Dimensions to Teaching and Learning

Creating, managing, and teaching an online course, even a hybrid, is more work for the teacher than a traditional course, particularly at the beginning. The increased access for the students requires a reciprocal level of attention from the teacher. The "connectivity" offered by the online activities between classes means that interaction with students continues after class.

Students are familiar with the expectations for traditional classes, but the distinctive nature and unfamiliarity of an online course requires adjustment, explicit assistance, support, and encouragement. The online experi-

ence begins with the first email or post and continues with the anticipation of a response, whether it is from another student, the professor, or both. It takes time and practice for students to incorporate the website into their daily and weekly routine. While students have a good sense of their strengths and weaknesses in the classroom, their participation in online activities may highlight new and different qualities. Students often have to discover their professional online voices, as distinct from their personal way of communicating online, and they may need guidance on how to transfer the skills they use in their personal lives to an educational and professional context.

The familiar boundaries of teaching and learning expand when online activities become part of a course. The four walls of the classroom open up to other possibilities when a website is used for disseminating information, posting course material, holding small group discussions, allowing for individual presentations, and facilitating interactions among students. More choices are available for using in-class time when the physical classroom is not the only forum for discussion and interaction. Rather than being the sole place for structured communication, the classroom can be used more selectively to accomplish specific goals. An active, integrated course website can create more time and space for class activities, so that learning does not occur only in the physical classroom, but in an environment that is available beyond the confines of the regularly scheduled class.

An asynchronous online class diffuses time, spreads it over a longer period, and requires periodic or intermittent participation. Both teacher and student need to understand and respond to the intertwined experience of communication, time, and space in the virtual world to realize the potential benefits of online work. The nature of a course's space and time requirements changes with required online classes and activities. Students may find it easier to attend class for two hours, participate in varying degrees, and be finished. In contrast to physically traveling to a classroom at a regularly scheduled time and sitting, listening, and interacting with students and teachers, online activities are mostly solitary, consist primarily of reading and writing on the computer, and are spread out over a longer period. This is a substantial shift in the mode of communication that may privilege certain skills and aptitudes at the expense of others. The reading and writing modalities most prevalent online encourage thought and reflection, rather than the relatively instantaneous responses and assimilation of material typical of face-to-face discussions. In the face-to-face environment, students thrive who can think quickly on their feet, present themselves verbally in an engaging or interesting way, and integrate information more rapidly.

Schedules are a key factor in how students perceive and experience the value and convenience of online activities. For students (including, and perhaps especially, first year law students) locked into a schedule of required courses, the extra time created by substituting an online class for a face-to-

face class may be a welcome respite.⁵⁷ However, for others, the online class may create an unwanted gap for students who want, or need, to complete their classroom responsibilities in a compressed, real-time period. The realities of student lives and course schedules – the convenience quotient – are critical factors in whether students experience the online aspects of a course as valuable and worthwhile.⁵⁸ In a hybrid course, online classes are located and framed before, during, and after face-to-face classes. They increase opportunities to fulfill classroom responsibilities by participating outside normal class hours, which may be positive for some students but problematic for others. In a hybrid course, the relative convenience and value of the online classes depends on the relationship between the traditional face-to-face and online classes and also how well the online classes fit into student schedules. Online activities have the capacity to join students together in ways that are difficult or impossible in a face-to-face class. For example, an asynchronous course would be available to students in different geographical areas, or who work during the day, or care for children or parents, or who otherwise could not physically attend the course. When a course is offered to students in the same school, college, or program within a university, those benefits shrink in relation to the extent to which the students in the class follow a common schedule. For students who are enrolled in primarily required courses at the same time, a course within that schedule that is a hybrid or asynchronous online course may actually be more inconvenient and time consuming than merely showing up in a classroom during the time period allotted for that class. However, even if students, such as the first year law students I taught, have an almost total “lockstep” schedule, online classes open up time for studying, may ease commuter stress, allow for spacing of work a bit differently, and accrue many of the same benefits that are more vividly felt when an online course brings together students whom otherwise would not be able to physically participate in a class.

Time quickly emerges as an issue in online courses. Time may present a problem if a student lacks adequate access to the course website at home, school, or in another location that is sufficiently convenient. A key part of access is the speed of the connection; without either broadband, DSL, or other fast mode of transmission, any benefits of online work are likely offset by the frustration of waiting for websites to open, email to get sent, and material to be downloaded. In addition, as students begin participating in online activities, questions about time weigh heavily: How often should stu-

57. The first year at CUNY School of Law consists entirely of required courses, so all students have to be physically present in the building through blocks of classes.

58. See Dziuban et al., *supra* note 7. The expense of travel has also become a significant factor in the popularity of online courses. See, e.g., Sam Dillon, *High Cost of Driving Ignites Online Classes Boom*, N.Y. Times, July 11, 2008, at A1, available at <http://www.nytimes.com/2008/07/11/education/11colleges.html?partner=rssnyt&emc=rss>.

dents check the website? How much time should students spend on the website? How quickly should students make responses to emails or posts in discussion boards? How long should students expect it will take for the professor to respond during a particular activity? Providing appropriate notice of activities is also an issue. For example, how will students know when something is posted?⁵⁹ Students need to get in the habit of checking the course website, and there must also be clear guidelines and expectations about the depth, length, and structure of posts and responses. In short, a new set of customs must be developed to help students understand and successfully interact with this new culture of learning. Many of the customs are similar to and derived from the more familiar language of the traditional classroom, but adapted and changed to this new environment.

The adjustment to online activities in the beginning of the semester was evident from student feedback that reflected some of the larger concerns and challenges of teaching online. Overall, only a very small number of students had significant problems doing the online work. I structured assignments so that they were accessible for everybody, regardless of outside school Internet access. I also decided it was unreasonable for students to expect to complete assignments during the weekdays without having to work somewhat in the evenings or on weekends, especially given the large amount of work law students have.

C. Think Before You Speak (Write) As Your Words Will Be Etched in Stone: Creating, Facilitating, and Participating in Online Discussions

The heart of my online classes were the Discussion Boards, which could be used by the entire class, small groups, or individually. Discussion in the classroom setting is generally defined as a structured activity in which members of a group engage with each other on a common topic, with the goal of developing knowledge through inquiry and examination.⁶⁰ Discussion helps students to listen and respect each other's diverse views, develop a deeper

59. Technology provides at least a partial solution to this problem in that both Blackboard and TWEN have notification functions that can alert students when something new is posted on the course website.

60. Educators are not uniform in how they define the term "discussion." Some adhere to a rigid definition that distinguishes discussion from conversation, debate, argument, and informal sessions. *See, e.g.*, JAMES T. DILLON, USING DISCUSSION IN CLASSROOMS 5-30 (1994) (defining discussion as a "back and forth" group discussion about an issue that involves examination to resolve questions and distinguishing it from other group interactions). Others use the term discussion more broadly to include all forms of "group talk," including discussion, dialogue, and conversation. *See, e.g.*, STEPHEN D. BROOKFIELD & STEPHEN PRESSKILL, DISCUSSION AS A WAY OF TEACHING: TOOLS AND TECHNIQUES FOR DEMOCRATIC CLASSROOMS 5-7 (Jossey-Bass 1999) (defining discussion as an effort to share views in a critical exchange in order to reach

conceptual knowledge of a topic by articulating and synthesizing information, collaborate with each other to create knowledge, and participate in a dynamic and inclusive mode of learning and teaching.⁶¹ Online discussions also enable higher levels of learning, with a degree of participation and analysis that is equivalent to, or better than, a traditional class.⁶² They encourage and facilitate thoughtful and reflective posts and responses in ways that may not be possible in the often quick, back and forth, interject, react, and respond nature of face-to-face discussions. They also provide timely and accurate feedback to the teacher about the depth of student understanding and ability to apply course material.⁶³ It is a qualitatively different experience to be part of a group connected in cyberspace – a medium that enables students to be more thoughtful about their participation and contributions to the group.

Online discussions are particularly well suited to the kind of evidence-based critical analysis that synthesizes information from a variety of sources, and makes connections between the specific and the general.⁶⁴ This is one of the key foundational pillars of “thinking like a lawyer” in everything from fact investigation to legal analysis. There are similarities between online and face-to-face discussions. For example, the success of each depends on active, thoughtful participation, grounded in thorough preparation and under-

greater understanding, enhance self-awareness, encourage respect for different views, and serve as a catalyst for action in the world).

61. See, e.g., BROOKFIELD & PRESSKILL, *supra* note 60, at 22-23 (listing “Fifteen Benefits of Discussion”).
62. See David Hofmeister & Matt Thomas, *Using Virtual Learning Modules to Enhance and Assess Students’ Critical Thinking and Writing Schools*, in *ASSESSING ONLINE LEARNING* 72 (Patricia Comeau ed., 2005).
63. For instance, one of the questions in the online assignment asked how confidentiality and the attorney-client privilege were discussed in each interview. Many students were not satisfied with either the way they handled the confidentiality and lawyer-client privilege issues as the interviewing lawyer or how their interviewing lawyer dealt with these issues when they acted as the client. While some students referred to information provided in the assigned reading, including a lawyering textbook and the New York Code of Professional Responsibility, most did not use the discussion as an opportunity to go back to either the text or Code. Many of their comments about the ethical dimension of the interviews were thoughtful and insightful but did not go beyond observations about the manner in which it was discussed or their lack of comfort and familiarity with the rules and their exceptions.
64. See, e.g., Marianna Sigala, *Developing and Implementing a Model for Assessing Collaborative E-Learning Processes and Products*, in *ASSESSING ONLINE LEARNING* 89 (Patricia Comeau ed., 2005) (asserting that the benefits of “e-learning” are consistent with constructivism’s emphasis on finding complexity and ambiguity in a developing inquiry that connects the specifics of a particular situation and speculation).

standing of course materials, in which the participants are respectful and responsive to each other, and the teacher plays a moderating and facilitative role. Both can be structured along a continuum from purely voluntary to fully mandatory. But there are also significant distinctions:

1. Online discussions involve written interactions that take place, perhaps paradoxically, in the context of discussion, a traditionally oral modality.
2. Online discussions challenge the professor to avoid making the required participation too burdensome, yet not superficial. The focus of the teacher in the physical classroom is usually on encouraging widespread participation, without concern that verbal participation will be excessively demanding.
3. Online discussions make silent, but engaged, presence invisible, in contrast to the physical classroom where a teacher can observe body language of a student who is not actively participating verbally, but may nevertheless be immersed in the conversation.
4. Online discussions occur in an asynchronous time dimension in which replies are usually delayed, in contrast to the immediate interactivity in the face to face classroom.

As in a regular class, there were different levels of participation, ranging from meticulously following instructions and engaging thoughtfully and in a timely fashion, to “competently solid” participation that did not go much beyond the minimum requirements, to weaker contributions by students who apparently did not bother to read the instructions for discussions or take the time to respond thoughtfully. These choices, and the substantive quality of a student’s participation, are illuminated more vividly through a course website where participation is “etched in stone,” in sharp contrast to the sometimes ethereal perception and reality of participation in the physical classroom. Regardless of how online discussions are structured, if they are an integral part of the course, students need to be clear about what is expected, when posts and replies should be made, and the goals and rationale underlying the class.⁶⁵

Small discussion groups illustrate some key differences between online and face-to-face discussions. The benefits of small group learning among students include a more personalized, interactive, and collaborative learning experience. A common practice in face-to-face classes is to divide students into small groups to work on a defined activity, or to discuss a particular topic, and then have a designated member from each group report back to the entire class. The teacher will typically circulate among the groups, observing, offering guidance, and assessing the work of the group. It is physically

65. See, e.g., Barb Edwards, *Discussion Message Protocols*, in *THE ONLINE LEARNING IDEA BOOK* 78-81 (Patti Shank, ed., 2007).

impossible to observe more than a few tidbits of each group, because the majority of the work occurs outside the eyes and ears of the teacher. In a two hour class with twenty students, the teacher can spend about fifteen minutes observing each group, missing the vast majority of each group discussion. Small group work online changes the equation entirely. The teacher can observe, with no time pressure, literally each word from each member of each group. It opens up opportunities for observing and assessing small groups that are not possible in the physical classroom. It also makes the teacher a constant, rather than intermittent, observer, which affects the dynamics of the group. The discussion board is the equivalent of reviewing a transcript of each small group discussion.

Online discussions allow for greater attention to both the “center” and “edges” of a discussion, which are there for the taking in a face-to-face context, but disappear as the conversation proceeds. Online conversations are less elusive, more visible, and available for review and additional exploration. They can be structured so that students move through phases and levels of complexity: initial posts and responses, application of course materials, synthesis, evaluation, and reflection. These conversations are preserved on the website and create an additional resource for review and learning, where students can go back and review their conversations as a valuable learning tool.

The online group discussions also provide a glimpse into how each student interacted with the assignment and their group, which helps the student and the teacher understand how the student learns, whether there is a need to adjust her perspective and relationship to the group, the extent to which the student is becoming aware of professional responsibility issues, and the ability of the student to reflect on and analyze her experience. Online discussion groups provide an additional layer of experience in working in-role – a key part of the educational process, particularly in professional training for lawyers, for whom role awareness is crucial.⁶⁶

The asynchronous nature of online discussion also enables small groups to meet with the teacher simultaneously. Rather than relying on individual emails, utilizing a small group format enables me to be present in all the groups, share any information and feedback to each member of a particular group or to all the groups if appropriate. My responses remain for future reference, as do those of the other members of the group. I can also post suggestions and feedback throughout the days the group “meets.”

For example, in designing an online class to assist students drafting a legal brief, I considered a few factors: the progress each student had made on the brief, the looming crush of midterm exams in other classes, how to best structure the class to provide what each student needed to advance their brief, and my desire for variety and creativity in the structure of the online class. I

66. One of the core “apprenticeships” identified as essential in the *CARNEGIE REPORT* is “Professional Identity and Purpose.” *CARNEGIE REPORT*, *supra* note 9, at 126-61.

created four small discussion groups (of five or six students each) that would focus on student questions and discussions with me primarily and with each other secondarily. I structured the groups to be “teacher-centric” to complement the substantial amount of peer-to-peer assignments and exercises they had experienced during physical and virtual classes. I also thought that it was crucial for them to get clear and accurate information as they worked to complete the interim draft of their brief.

I made the format and agenda of the groups flexible to allow for student choice in how to utilize them. I began by asking them to post a comment about any structural adjustments they were making in their briefs, as well as to identify any questions they had about their organizational choices.⁶⁷ Beyond this, I left it open. The students were organized into a particular group on the website, which included a caption describing the process for this online class.⁶⁸ The “Welcome to the Group” page then gave more detailed information about the online activity.⁶⁹ This format enabled me to give students individual attention, share my feedback and comments, and provide

67. A central goal is for students to master the fundamental structures of writing persuasive legal arguments in a legal memorandum or brief. Similar to any endeavor that operates within a particular structural framework, for example a Haiku poem, a legal brief must have certain components that are woven together in ways that integrate fact and law, and synthesize legal authority, usually in the form of legal rules and cases. First-year law students are challenged to apply their newly acquired legal knowledge and lawyering skills in a complex advocacy context that simulates an actual case.

68. The caption stated: “This online class consists of small group ‘meetings’ designed to enable us work together on your briefs from Thursday 3/4 through Monday evening 3/8 at 9 p.m. Please read my initial post in the group discussion forum, which will help get you started.”

69. The Welcome to the Group page stated:

This is the online equivalent of us meeting in a small group, but being able to interact over the course of several days at your convenience. The goal is to provide an opportunity for each of you to ask questions, raise issues, and discuss your work on your brief. I anticipate that most of the feedback and assistance I give will be appropriate and helpful in the group discussion. However, there may also be discussions that are more private, and we’ll be able to do that through the email function in the group, or through ‘regular’ email. I want to begin by following up on the structure discussion we had in class on Tuesday. I’m interested in knowing if you have any additional questions and whether you’ve made any adjustments in your structure based on the discussion and your ‘after the fact’ outline. Please respond to that and then we’ll open it up to any questions or issues with which you’re grappling. A note about posting: whether you are adding a new thread, or especially if you are replying to a post, try to make your ‘subject heading’ as specific as possible (‘thesis sentence question’). Don’t just ‘allow’ your subject to be the same as the post to which you’re replying.

clarifying information that would be in writing and stay available to the group. Although many online activities are decentralized in that students interact and collaborate intensively with each other, this class demonstrated how online discussion groups can be used by the teacher to assert control over the class with a mix of individual and group interactions. Although not actually etched in stone, this online class proved to be quite helpful because it slowed things down, allowing for unlimited questions and in-depth responsive feedback, while also memorializing my feedback for the benefit of the entire group.

V. THE PROOF IS IN THE PUDDING: A SAMPLING OF ONLINE CLASSES THAT ILLUSTRATE THE PROMISE AND PERIL OF DISTANCE LEARNING

The quality of any classroom discussion, whether online or face-to-face, depends on the professor's role in conceiving, structuring, and facilitating to achieve the goals of the activity and the nature and quality of student preparation and participation.⁷⁰ The nature and quality of verbal interactions in the physical classroom are different than discussions in cyberspace. The unique characteristics, benefits, and problems of online learning make it necessary to adapt frameworks to assess participation in the bricks and mortar classroom to the dimensions of online discussions. At least two leading discussion experts do not pretend to be able to evaluate discussions in any kind of systematic way, except for asking students to reflect on their experiences.⁷¹ Although assessing and evaluating discussions is more art than science, excellent discussions share fundamental qualities in any context. The unique nature of online discussions makes it challenging to adapt these core qualities to the online context.⁷²

For example, in a traditional two hour class, how much time does each student actually spend participating, thinking, and listening? What is the equivalent amount of time in an online context? If an online discussion is well-structured, students may spend the same two hours "in class" with at least as much variety in what they do: thinking, reflecting, and responding. Additionally, it is possible that online discussions are more in-depth, since it

70. These qualities are expressed in various models of teaching and learning. For example, in the Community of Inquiry model, the three primary components of Social Presence, Cognitive Presence, and Teaching Presence capture these elements. See e.g., GARRISON & VAUGHN, *supra* note 5, at 17-24. See also BROOKFIELD & PRESSKILL, *supra* note 60, at 42, 63; JOSEPH LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING 2* (2d ed. 1995); DILLON, *supra* note 60, at 24.

71. BROOKFIELD & PRESSKILL *supra* note 60, at 217.

72. See, e.g., Hofmeister & Thomas, *supra* note 62, at 79 (describing the difficulty of assessing discussion board responses, noting that they are "[u]nique hybrids" of "short contributions to group conversations and traditional written responses.").

takes significantly longer to compose a thoughtful post or response in an online discussion than the more instantaneous verbal participation in a face-to-face class. Hopefully, the result is that these online discussions are of equal or better quality.

Educators have adapted learning and discussion theory to frameworks for evaluating online discussions and activities.⁷³ A variety of models encompass quantitative numerical calculations,⁷⁴ criteria-based qualitative narratives,⁷⁵ progression through developmental phases,⁷⁶ and peer and self-evaluation.⁷⁷ For example, Garrison and Vaughn ask their undergraduate stu-

73. See, e.g., Meyer, *supra* note 45 (applying Bloom's taxonomy to assess quality of online discussions); Katrina A. Meyer, *Evaluating Online Discussions: Four Different Frames of Analysis*, J. OF ASYNCHRONOUS LEARNING, 2004 (analyzing discussions using different frameworks, finding that each assessed discrete aspects of student thinking, and concluding that "levels of thought" approaches, such as Bloom's taxonomy and Garrison's "cognitive processing" were better suited to assessing analytical discussions, particularly those that are more prevalent in a post-graduate context).
74. For example, Hofmeister & Thomas developed an analytic rubric that awards points for Thinking, Writing, and Participation subcategories, which is more precise, perhaps objective, but is cumbersome due to the large number of subcategories. Hofmeister & Thomas, *supra*, note 62, at 84. Rubrics that award a certain number of points can be effective in helping students prepare posts that are sufficient in frequency and responsiveness, respond to the assignment, enhance the conversation, apply the assigned material, and are constructive. Ko & Rossen, *TEACHING ONLINE: A PRACTICAL GUIDE* (2d ed. 2004) 129-31. A purely quantitative approach would count the number of posts and responses and determine whether the totals constitute a high, medium, or low amount of participation.
75. A qualitative or holistic approach applies a broad range of criteria to analyze the overall quality of the posts and responses. See, e.g., Hofmeister & Thomas's Cognitive Complexity Scale designed for College Level. Hofmeister & Thomas, *supra* note 62, at 80. The scale is divided between Reconstructive Responses that are either Simplistic Text Dependent or Text Dependent and Constructive Responses that are either Text Independent or Text Independent With Complexity. An advantage of this scale is that it is relatively simple and involves only four levels with easy to distinguish criteria.
76. This is also referred to as a Gestalt/Social Construction of Knowledge approach in which the progress of a discussion is assessed through the following phases: sharing information, identifying disagreements and inconsistencies, finding agreement, testing understanding, and applying the construction of knowledge. Sigala, *supra* note 65, at 88-92.
77. Although I did not use self-assessment, asking students to evaluate their participation during an online activity is an effective teaching tool. See, e.g., Garrison & Vaughn, *supra* note 5, at 130. Peer feedback might be a promising tool, although one study found that students did not derive extra motivation to participate as a result of weekly peer feedback in the form of "votes" for the best post in a discussion. Katrina A. Meyer, *Do Rewards Shape Online Discus-*

dents to describe the extent to which they: “posted messages to demonstrate critical analysis of course concepts; read and responded thoughtfully to the messages of others to support or challenge the content of the posts; asked critical questions or extended and elaborated their ideas; and learned from others and changed or enhanced understanding.”⁷⁸

To assess the quality of student participation online, I used a hybrid approach that blended aspects of the qualitative and construction of knowledge methods, tempered by a healthy dose of the “impossible to evaluate discussions” school of thought. My assessment criteria were framed in large part by the specific directions, goals, components, and activities that were later included in an introductory, descriptive, and framing memorandum that I posted online. I relied on the principles I learned in my CUNY online course that served as a model for the best practices in distance education. I rejected frameworks that were overly numerical or quantitative or too unwieldy or complex. The cognitive aspects of learning in Bloom’s taxonomy (knowledge, comprehension, application, analysis, synthesis, and evaluation) also served as a guide.⁷⁹ From my experience as a student in an online class, I also understood the importance of the emotional or affective component of participating in cyberspace discussions, so from the beginning I tried to engage, support, and encourage the students.⁸⁰

I used the following questions as a guide in assessing the online contributions of individual students:

How well did the student follow the directions for the assignment with respect to content and frequency of posts?

Did the student’s posts reflect an understanding of the assigned material and the ability to apply it to the particular assignment?

Did the student respond to other students (when this was part of the discussion requirements) in a thoughtful and constructive way that helped the other student improve the quality of her work?

What was the overall quality of the student’s contributions or work online, taking into account the above criteria and the goal of achieving a certain level of skill in analyzing, synthesizing, and expressing arguments involving fact and law?

To assess the substantive quality and depth of group participation, I settled on three broad categories – “Very Good-Excellent,” “Adequate-Good,”

sion?, J. OF INTERACTIVE ONLINE LEARNING, 2008, available at <http://www.ncolr.org/jiol>.

78. GARRISON & VAUGHN, *supra* note 5, at 130.

79. See BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS (1956).

80. “Social presence” is a foundational component in the community of inquiry model. See GARRISON & VAUGHN, *supra* note 5, at 33.

and “Minimal”. The students whose discussions were ranked Very Good-Excellent raised interesting issues and questions, included insightful commentary, and used role and perspective as part of their analysis. Adequate-Good discussions went beyond the minimal requirements of posting and replying but did not fully develop a textured discussion with depth and interplay. Minimal discussions did not go beyond complying with the requirements for posting and replying and, despite some thoughtful comments and analysis, lacked adequate depth and synergy, sometimes due to the timing or lack of participation.

In addition to the nature and quality of student participation, the success of an online discussion or class activity, depends on a variety of factors, including:

Concept of the discussion or activity and, in a hybrid class, how the concept relates to the goals of the particular component of the course and the course as a whole.

Structure of the discussion, activity, or assignment, specifically as it relates to requirements, expectations, content, and frequency of initial posts and replies.

Access to the Internet for each student, and particularly in a hybrid course, during periods of time when online presence is required.

Effectiveness of the teacher in multiple roles, including facilitator, participant, observer, provider of technical support and emotional commiseration on rare occasions of technological problems, giver of individual and group feedback to guide, encourage, and support so that online discussions will develop and be worthwhile.⁸¹

Guided by these assessment frameworks, approaches, and criteria, and mindful that “the proof is in the pudding,” the classes and activities I discuss in the next section track the progression of the lawyering seminar and illustrate the possibilities and difficulties of online learning. They include analysis of a simulated interview, construction of a written legal brief, preparation for a mock oral argument, and a reflection on the oral argument experience.

A. One Swallow Doesn’t Make a Summer: Using a Reflective Assignment to Expand the Scope and Depth of Learning

One of the initial online classes that I taught took place as part of an interview simulation, in which each student prepared and participated in a

81. The role of the online teacher is at least as multi-faceted and complex as the face-to-face teacher. See e.g., Curt Bonk, *Exploring the Four Dimensions of Online Instructor Roles: A Program Level Case Study*, J. OF ASYNCHRONOUS LEARNING NETWORKS, 2005, at 29 (categorizing online teacher within pedagogical, managerial, social, and technical roles).

simulated interview (alternating in role as the attorney and client) and reflected upon their experience. The online discussion class was part of a cluster devoted to interviewing within the context of our simulation. We prepared for an interview exercise before the online class, then continued to “debrief” the interviews after the online class was over. The group discussions online played a valuable role in helping the students develop an understanding of interviewing theory and practice and enabled us to begin the debriefing process at a more advanced place.⁸² Another value of the online class was that it essentially “doubled” the use of seminar time by enabling the class to meet around the seminar times during which most of the simulated interviews were scheduled. I also used the online discussion to accelerate the reflection phase of the exercise by posing questions to students in a structured discussion online.

The post-interview online class was intended to facilitate reflection on the interview, focus attention on professional responsibility issues that arose (particularly how students explained the attorney-client privilege and confidentiality), generate insights into the interview process from the client’s perspective, and share ideas about best interview practices in the form of “tips” for a hypothetical law student beginning a summer internship. I posted the directions for the discussion as a document in the “Assignments” folder on the course website.⁸³

82. In the year prior to this particular online class, I used the interview module of the online class to prepare for, rather than reflect upon, the professional responsibility issues that might arise during the interview.

83. The directions stated:

Your assignment for this online group discussion is as follows:

- Post your thoughts and answers to the three topics/questions below. Your initial post should be roughly one paragraph (i.e., a total of about 3-6 sentences) for each of the three topics/questions. You should try to post by Saturday 1/31 at 9 p.m. (and no later than Sunday at noon) in order to give the other members of your group time to respond.

- Respond with about two-three sentences to each post of the other members of your group (i.e., you should respond to the parts of each post that correspond to the numbered topics/questions). Your response should add to the thoughts expressed in the post, ask a question, or critique the substance of the post in a constructive way. Although you may include a compliment (e.g., “that’s an interesting point,” “sounds like you did a great job in your interview”), as part of your response, the purpose is to be substantive (e.g., “I agree that it’s hard to raise the issue of a retainer fee at the end of the interview; however, a client should know sooner rather than later what the lawyer’s fee is going to be and how the client is expected to pay”). Note: the questions that relate to your experience as a client are for purposes of this exercise only and will not be part of any feedback or evaluation of the person who interviewed you.

- **IMPORTANT:** These guidelines about the length of your posts and responses are just to make sure you have enough guidance. Feel free to go

This class demonstrates the characteristics, potential, and problems of online learning, particularly how an online class can deepen learning, complement one or more face-to-face classes, and promote reflection. The class also reveals the importance of structure and instructions in an online assignment and the need to emphasize the importance of responding to each other in order to develop the discussion fully.

Additionally, the assignment illustrated the difficulties of assessing the quality of a group discussion and the participation of an individual student, both within a particular online class and throughout the semester. My expectation was that each group would embrace the online class, or at the very least comply with the specific instructions I provided, but hopefully going beyond the minimum and putting their best foot forward. The discussions were interesting and appeared worthwhile, even those that did not exceed the one post/one reply requirement. All but one of the groups engaged with each other in ways that deepened their understanding of the lawyering role, the ethical issues that are an everyday part of a lawyer's practice, and the nuances and challenges of the interview process. Most of the initial posts were thoughtful and reflective, responsive to the assignment, and contained valuable insights. Virtually all the students responded to each other and were conscious of the substance, quality, and tone of their replies. However, most of their responses to each other were limited, both in frequency and depth. As a result, only some of the discussions were fully developed. If these group discussions had occurred in a face-to-face class, there might have been less critical analysis and candor, but more interplay back and forth among the

beyond the suggested limits if you need to (and if you have a gift for being concise your posts can be shorter, although I think that would be tough, but not impossible). Also, I encourage you to "respond to the responses" to take advantage of the "discussion" format. Finally, feel free to add other thoughts, ideas, analysis if you think they are relevant.

Topics/Questions

1. Professional responsibility/ethical dimension.

Describe the conversation you had about confidentiality and/or the attorney-client privilege (either as attorney or client, your choice).

At what point in the interview did the issue arise?

Were you satisfied with the conversation? Explain.

2. Learning from your role as client.

In your role as client, how did you experience the meeting with the attorney? Were there dynamics that facilitated or inhibited conversation?

Describe how your lawyer structured the opening of the interview. Was it effective? Why or why not?

3. Tips for conducting effective interviews.

Imagine you are applying for a summer job that will require you to interview clients. You describe the interview part of this simulation, and the attorney-interviewer (impressed with your experience) asks you to suggest three tips that would help law students who are summer interns conduct effective interviews. What are your tips?

students. Yet the online class captured –and preserved – the students engaging with each other in a new professional identity, online and in writing, in ways that informed the surrounding face-to-face classes.

For meaningful learning to occur, my minimum expectation was that each student comply with the assignment by discussing each of the three questions and responding to at least one other person in your group. All of the groups and almost every student met the minimum requirements of the class, resulting in a high rate of participation. The quality of the posts and replies varied, and the groups differed in the nature and amount of interaction among their members. For example, one group had a substantial amount of interplay, albeit with short posts and replies, while another group had the lengthiest posts and replies – and probably the deepest level of discussion – but not as much varied interaction among the group members.

One measure of group assessment is the frequency of participation, defined as the number or percentage of students who met the minimum participation requirements of the class.⁸⁴ More difficult is determining what level

84. In one particular lawyering seminar, twenty-two total students were divided into six groups of three and one group of four. Each student was required to at least post and reply once, so a total of forty-four “points” would indicate 100% participation. Of the seven discussion groups:

One had a student who did not participate at all (2/3 or sixty-six percent participation rate).

One had two students who posted and responded only after the discussion was supposed to end (leaving the other member of the group hanging after her initial post, kind of like going to a meeting and nobody else showing up) (1/3 or thirty-three percent, or 3/3 or 100%, rate of participation, depending on flexibility of assessment).

One had a student who posted, but didn’t respond to the others (2.5/3 or 83.5% rate of participation).

In four groups, each student posted and responded at least once (100% rate of participation for each group).

As a result, there were forty-one out of a possible forty-four posts and replies, for a 93% participation rate. Alternatively, not counting the students who posted and replied late would yield thirty-seven out of a possible forty-four posts and replies, for an eighty-four percent rate of participation. However, quantity alone is not a sufficient indicium of quality and value.

Four of the seven group discussions were Very Good-Excellent (fifty-seven percent), meaning there was depth of inquiry, critical analysis, and reflective perspective informed their analysis.

Two of the seven groups were Adequate-Good (28.5%) as they exceeded the minimum requirements for participation, but the quality of the discussion would have been enhanced with more depth and interaction.

One of the seven groups was Minimal (fourteen percent) in their participation, meeting but not going beyond the “one post, one reply” requirement, and although demonstrating grasp of the material and critical analysis, the discussion lacked interaction that advanced the discussion. One person in this group

of participation met the minimum requirements of the discussion thread. I considered the following as Minimal, as the students demonstrated evidence of preparation and learning, engaged in mutual and supportive inquiry, and the interplay resulted in a follow-up to and improvement of the initial post.

(Initial Post)

Hi,

I was not able to open the document describing this assignment. If anyone can send it to me via email I will greatly appreciate it I am not sure what this discussion should be about but I can say that the interview went well. While I interviewed our client I did notice that she mixed up some of the facts and could not remember others. I guess that will occur in real life when the client is nervous and confused. It was tough to cut off my client but I felt it was necessary in order to get the information that I needed. Gathering this information was crucial in order to try to help our client win her case. I am glad we did the simulation because it allowed me to see how hard obtaining vital information can be when there is limited time to do so.

(Reply)

I also found it particularly hard to cut off my client, so this is what I did. During interviewing, I had made a couple of lists going and one of them was a "points for review". After the client was done telling me the facts, I went through my list of unclarified points. Hope this helps

(Counter-reply)

Hi,

That's a good idea, keeping a list of unclarified points to revisit!

(Follow-up to initial post)

1) It was interesting that my client brought up the issue of confidentiality. She asked me if our conversation was going to be confidential. I was planning to discuss that with her but she beat me to it, next time I'll be sure to discuss it closer to the beginning of the interview.

2) Being the client was more difficult than being the attorney. The attorney introduced himself and said that our conversation would be confidential but he did not begin the interview with small talk. He didn't even offer me water or coffee. Had he done so I think that it would have made me feel more comfortable in terms of trusting him. The feeling that I got was that he just wanted to get down to business.

did not participate at all, which limited the interplay among members of the group.

He began the interview with a broad question like can you tell me what happened? I didn't know where to begin so I think that he should've asked a more precise question. When he did ask narrow questions it helped jog my memory. Basically, I think that the initial part of the interview should include questions with some direction not just a very broad one.

3) Tips for interviewing:

-Make the client feel welcomed and comfortable. Include small talk because it allows the client to know you see him/her as an individual.

-Have an interview plan or outline of important questions so that you don't forget to ask them. Chances are that through the course of the interview answers to those questions came up anyway.

-Make sure that you have enough time to get relevant facts that may help with the success of the case and ask for relevant documents.

The initial post reveals that the student did not read the assignment, apparently due to a problem opening the document describing it. The post begins with a generality of limited utility ("the assignment went well"), proceeds to a few observations about the client "mixing up" facts and that it was "necessary" to "cut off" the client, and then concludes that it was beneficial to experience the difficulty of obtaining information from a client. While the student did not initially analyze or contextualize these observations that implicate issues relating to narrative, perception, memory, and interview structure and dynamics, the student understood the importance of this particular learning experience. The reply to the initial post is supportive, empathetic, nonjudgmental about the difficulty of interrupting a client, and shares a practical strategy for obtaining thorough information without disrupting the client's recounting of the facts. The reply elicited a positive response to the student's suggestion, accentuated by an exclamation point, and was followed by an addendum to the initial post that completed the assignment for the initial poster (no doubt informed by reading the assignment). Although this addition to the initial post does not include sufficient analysis of the interview experience that draws on the assigned material and in-class discussions about interview theory and strategy (e.g., the initial observation about confidentiality is particularly superficial), the second post includes an interesting observation that the broad, open-ended questions, generally considered to be the most effective approach in eliciting client narrative, were not helpful. The addendum concludes with tips that are basic and somewhat generic, albeit helpful.

Several students' posts contained too many typographical errors, despite my instructions to approach posting more like edited writing than personal

emails.⁸⁵ Approximately half of the posts included observations, comments, and responses that could have delved more deeply into thoughtful analysis and reflection. About half of the posts were Very Good-Excellent, meaning that their form and content were clear, responsive to the assignment, and included thoughtful analysis. Each group discussion provides a snapshot of how the students see themselves in their new professional identity and contains valuable insights into the experience of a legal interview from the perspective of lawyer and client. The discussions also demonstrate the student's ability to communicate to each other conversationally in their new professional language and show a strong grasp of the substantive legal doctrine and lawyering strategies related to their role as advocate for a client. On balance, the online class added value to the course, but just as one swallow doesn't make a summer, a single online class does not make a semester.

B. Tilting at Windmills: Using the Discussion Board to Help Students Analyze and Synthesize

As the semester progresses, the stakes and complexity of the lawyering activities take a sharp turn upward. We turn our attention to drafting the brief in our simulated case. The primary goal of this advocacy writing module generally, and the online class I will describe in particular, is to help students understand and apply the fundamental theory, structure, and practice of writing a persuasive brief.⁸⁶ This class integrated complex legal analysis, synthesis, and collaboration. Students had to post results of their research, draft a portion of their brief, and provide constructive feedback to each other on the structure, organization, and content of their writing. The emphasis is on the overall structure of a brief and the particular components of a persuasive written legal argument: strong thesis sentences, fully developed rule explanations synthesized from relevant legal authority, and precise application and comparison of the law to our case. Constructing a brief using a well-defined organization is an essential foundational lawyering skill, and under-

85. These typographical errors likely reflected the difficulty of making the transition from a certain style of online writing – personal, informal, without excessive attention to proper grammar and punctuation – to the professional online context, which demands a more professional and polished approach to writing, which can nonetheless be informal and creative depending on the context. Given the proliferation of online communication, there is also a need for more conscious writing in these less formal and traditional contexts.

86. The brief follows a developmental path from the first semester and within the spring semester. The focus of the first semester lawyering program is on the fundamentals of legal analysis, lawyering role and professional responsibility, and drafting documents, such as planning for an interviewing and counseling session, internal analytical legal memorandum, and memos that reflect on lawyering activities. In contrast, advocacy is the focus of the spring semester, with the major writing being a memorandum of law in tandem with the oral argument.

standing structure enables students to be resourceful, creative, and persuasive in their legal writing.⁸⁷ Working within a clearly defined structure provides a cogent framework and facilitates greater clarity, precision, and creativity in fashioning persuasive legal argument.

This sequential and developmental approach features exercises and assignments that involve case research, analysis, and reading about the theory and practice of legal advocacy. Students integrate and synthesize fact and law and draft a persuasive legal argument within this particular, and sometimes difficult, framework. The structure of the legal argument portion of the brief is based on fundamental principles of sound drafting and advocacy. Students must write with a higher level of precision and incorporate complex facts and sophisticated legal analysis. In addition, students have to utilize the full range of analytical and persuasive skills they have learned so far in the first year of law school. However, they must use these skills within the framework of a document that demands close attention to structure, clarity of expression, and a coherent synthesis of the relevant legal authority. In the beginning of the online class, I posted a memo to reflect these goals.⁸⁸

87. The great jazz drummer Kenny Washington once noted that the key to improvisation was “structure, structure, structure.”

88. *Overview of the Online Class*

This online class will be structured as a series of three exercises (described below), which focus on organizing cases in preparation for drafting a brief, developing a theory of the case and particular elements, and framing your argument favorably around assertions which are drawn from a synthesis of the cases, supporting and illustrating those assertions with cases, and applying our facts to the cases. These exercises correlate to what we might have done in a “face to face” class. The primary difference, and potential benefit, is that you have more time and opportunity to participate thoughtfully (you don’t have to react in the moment or compete for space and time in the discussion), you can carefully consider what you want to say and how to respond to others, and you can (and should) draw on and integrate the assigned readings as you participate in the exercises.

In addition to the time you spend doing the reading assigned for this class, you should expect to spend about two hours doing the online class exercises, including drafting, responding, and discussing with each other (i.e., if you spend much less than two hours on the exercises, you’re probably not maximizing your participation or learning for this class). Time management is always a concern, but at this point your primary focus should be on pushing yourself so that you can make the necessary progress to achieve your goals for this semester.

The reading assignment for this online class can be found in the syllabus for Thursday 2/12. As always, it is critical that you read all the assigned material carefully in order to maximize the benefits of the online class exercises and create a sound foundation that will enable you to draft a high quality brief and make an effective oral argument.

Here’s what you need to do for this online class

1. Read the assigned materials, take notes, and think about how they apply to our case, your work on the case grids, and your brief (I've included some outline notes on the reading at the end of this memo which may be useful, although your own notes on the reading should be more detailed).

2. Carefully read the description of the online class exercises below.

3. Find your group through the "Group" or "Communication" folders, click on the "Constructing an Argument" group with your name, click on "Group Discussion Board," and then click "Online Class Exercises."

4. Draft your initial posts and responses "offline," edit and refine them, and then post them in your group discussion forum (you may want to check in with your group and your partner to whom you are supposed to respond, by email or with a post to your group discussion board, to make sure that you coordinate the timing of your initial posts and responses).

5. Note on timing and coordination. There are three exercises; I leave it up to each of you to work with your partner to decide if you want to do them one at a time, or each post all of them at once and then respond to all three, or something in between. My recommendation is that you do one at a time, but that may take a bit more coordination. I expect that you will be able to work it out with each other. If you need to switch partners in a group, or you have an intractable problem, just let me know promptly. This online class will be "open" from Tuesday 2/10 through Tuesday 2/17 at 9 p.m. I understand that some of you may not have Internet access on the weekends, those going to the job fair (and others) may need or want the time on the weekend, and others may have different time constraints and preferences. I've tried to structure the exercises so that you can complete them during the week and/or on the weekend, as you choose. My only requirement is that you work through the exercises in a way that allows you and your partner enough time to fully engage with them and each other. What you should avoid is waiting until after the weekend, posting at the last minute, and not giving yourself or your partner a chance to enter a discussion. One of the benefits of an online class is that it gives you a longer period of time to do the same amount of work as a traditional class, which encourages and potentially results in more thoughtful analysis and deeper learning.

6. Structure of the groups. You will each be part of a group and I will identify your partner for the exercises. You will be able to view the posts and responses of the other members of your group, and you should feel free to participate in their discussions also (with their consent). If you want to "switch partners" within your group due to scheduling or time issues only, that's fine with me, provided that each member of the group work together with someone else on each of the three exercises. I have also created a Discussion Board forum for this assignment (separate from the Groups) which all of you can use to ask and respond to general questions or make and respond to general comments which arise from this class. I will try to respond, but also encourage you to respond to each other. Finally, I will be "circulating" among the groups, and if I think I can be helpful, I'll participate and facilitate with a comment, question, or suggestion in the group forum, or perhaps in a private email.

In essence, the assignment was a microcosm of the structure for the entire brief.⁸⁹ The totality of these online discussion exercises required a significant amount of time and effort to complete. The class surfaced issues about student expectations, performance, and how to best construct online classes, discussions, and activities.⁹⁰ Although I felt as if I was “tilting at windmills,” it was ultimately gratifying to watch the class unfold.

One of my goals for this class related to my role as teacher. I wanted to provide feedback to each student promptly as I saw their postings. I also hoped to “circulate” amongst each pair of students to facilitate their discussion in such a way that is impossible in a regular class. This would be the equivalent of observing and interacting with each pair for the whole class, while at the same time giving private feedback. In a traditional face-to-face class, I would not be able to assess the feedback and interaction among students beyond snapshots from the few minutes I would be able to observe. In contrast, the “permanence” of discussions online adds a rich resource for learning and promotes critical thinking, constructive feedback to colleagues, and self-critique.

A short time after I posted the online class exercises, I returned to the website to “watch” the progress of my students. I clicked on group after group and saw a series of “No Messages Posted.” I was disappointed with the students’ resistance (as I saw it) to trying something new and their inability to see the benefits of the exercises and the online class. I also thought about the strong possibility (never far from the surface) that the whole online approach was more trouble than it was worth. Why not just teach a regular class all the time and save everybody the aggravation? Even if the students began posting, would they half-heartedly participate only because it is required and not out of any desire to learn or interact?

89. After reading the memorandum describing the online class, students read another memorandum I posted in each Group Folder describing what should be included in each of the online exercises. The legal research exercise required each pair of students to post analysis of two cases and reply with a question and suggestion; the theory of the case component involved posting a paragraph that described their theory of one of the legal elements of the cause of action, reply with a critique that included a comment on the effectiveness of their partner’s theory and a constructive critique, and a revised post based on the partner’s feedback; and the synthesis exercise consisted of at least two sentences that explained the legal standard of this element in a persuasive manner, supported by at least one case that the student applies to the facts of our case, followed by a less structured discussion that might include comments, questions, and feedback.

90. Not the least of which is time – that particular class, including reading, drafting of the exercises, and participation in the online discussions, seemed to require, as I expected, about six hours with some students probably spending up to about nine. This seemed like a lot to the students, but in fact it is about right based on the number of credits, ABA guidelines for hours per credit (three), and perhaps, most importantly, what it takes to learn, develop, and progress.

Despite these questions and doubts, the online class turned out to be a great success. However, the class did generate some controversy. The exercises accomplished their primary goals as articulated in my original memo for the assignment: there was a higher level of participation than the post-interview exercise online class;⁹¹ the posts were thoughtful, responsive to the instructions for the class, and reflected a strong grasp of the assigned reading; and the feedback and interaction among the students was of fairly high quality and frequency.

Students worked collaboratively with each other and tried to coordinate their efforts (e.g., posting the names of the cases they were planning to use in the exercise to avoid duplicate efforts). The quality of the postings was somewhere between a writing that a student would prepare for an in-class exercise and a more formal and thorough written assignment to be handed in and evaluated. On balance, the online postings were closer to a written assignment one would submit. The higher quality posts were thoughtful, thorough, expressed as a narrative, included the required components, and evidenced careful and attentive editing and revising.⁹²

I assessed the quality of the feedback given by students to each other based on the extent to which a comment or question constituted constructive feedback; more specifically, whether the student framed the comment or question in a supportive manner such that it helped illuminate an area to improve, a problem in the analysis, or a potential weakness that could be exploited by opposing counsel. Ideally, the interplay would lead to addi-

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91. The frequency of participation in each group, consisting of multiple pairs who worked collaboratively, was striking: Group 1, 3 messages (this group was the lone unsuccessful group); Group 2, 50 messages; Group 3, 47 messages; Group 4, 49 messages; Group 5, 48 messages.
 92. For example, the following is an initial post for the “theory of the element” part of the class that I considered to be excellent, as it expressed a compelling narrative that integrated the required legal elements:

Jessie Clark tried to be careful around her granddaughter. Lorraine seemed to lose her temper at the smallest incidents, especially if they were Jessie’s fault. Still, Jessie loved her. When Lorraine lost her job, Jessie helped her by letting her stay at her house, but after Lorraine pushed her down a flight of stairs, Jessie knew that Lorraine might need a kind of help Jessie couldn’t provide. Although she loved her granddaughter, Jessie grew to fear her. One afternoon, Jessie’s friend Mikaela arrived after school as scheduled to visit with Jessie, but Lorraine hurled a glass at them, frightening Mikaela away. Jessie had no one to turn to. After Lorraine left, Jessie was glad to hear from Mikaela that the police had been called. Without Mikaela, Jessie would have been cut off the world, housebound and unable to seek help for fear of Lorraine. Physically and emotionally trapped, Mikaela was the only way for Jessie to make direct contact with the outside world.

tional questions and insights, such whether the strength of the client narrative, or its personal tone, is acceptable for a court document.⁹³

The third part of the online class discussion required students to post a microcosm of their argument written with explicit attention to structure. The postings were generally of high quality in that they were responsive to the assignment, reflected careful preparation, demonstrated a strong understanding of the substantive law, applied the relevant law to the facts of our case, were written clearly, and were visually accessible.⁹⁴ A student who can com-

93. The following is a reply that included these qualities. In response, the other student posted two additional versions of his “theory of the element: based on the feedback from this reply.”

I think the use of the first person is good. It makes her more vulnerable and sympathetic. But I don't think I've seen it very often. Is it generally thought too casual for court documents? I really don't know[.] [I] think your last sentence about there being no other way for Jesse to contact the police is good. You might want to add something stronger about communicated assurances or shared interests. But that's based on the cases I read. I haven't closely read the cases you gridded (sic) yet.

94. The following is a representative sample of the overall high quality of these posts:

I. Direct Contact

Generally, in order for the direct contact element to be satisfied the injured party has to be the one who makes the contact with the municipality. The direct contact requirements serves as a basis for rationally limiting the class of citizens to whom the municipality's special duty extends. However, based on policy considerations, the direct contact requirement has not been applied in an overly rigid manner. There are exceptions to this rule that courts have articulated.

II. Exceptions to Direct Contact

Third party contact with a municipal agent can satisfy the direct contact element of the special relationship doctrine. A person who has a close relationship with the injured party can be the one to have direct contact with the municipal agent. A close relationship can be defined as someone who has a vested interest in protecting the aggrieved party because that party cannot act on his or her behalf due to certain circumstances. A person can have a vested interest because they have a close relationship and history together with the injured party who trusts and relies on this person to seek help when necessary. Furthermore, circumstances can be defined as, but is not limited to, incapacity due to their age, physical or mental status, or inability to make contact because of fear.

III. Applicable Cases

In Kircher, the court held that there was no direct contact because the parties contacting the police on behalf of the potential crime victim were merely two strangers and had no vested interest or relationship with the victim.

In Greene, the court held that there was no direct contact because the employer called the police to report death threats made to the employee. However, the direct contact element failed not because of the nature of their relationship,

plete this series of exercises at this level can structure a legal argument and develop this assignment as a core foundation of the full brief.

I also accomplished my main objective for my own role by sending “quick feedback” emails to almost every student in response to their posts. These private emails were typically a few words of encouragement and suggestions for what they might discuss with their partners or think about as they reviewed their work.

This immediate feedback was a crucial part of my role. Online collaboration requires the student to post online and then wait for a reply, which can create problems for students. Receiving prompt contact from the professor, however, can change the quality of a potentially lonely and anxious online experience because the student knows that the professor is monitoring each discussion and values the student’s effort. Receiving prompt professor feedback also reinforces that the collective nature of the enterprise extends to both students and the professor and that the professor is engaged in the class, even though the students are the primary participants.⁹⁵

This online class exposed my discomfort with evaluating the online class versus a face-to-face class. Although it is important to provide a way to measure online classes against the norm of face-face classes, part of my motivation was to “justify” the online class as equivalent to what students would do in a regular class. I imposed normative criteria that were somewhat artificial and not entirely suitable, as well as a certain notion of what “should be,” to measure and compare the efficacy of online discussions. These criteria, however, may have been too rigid and did not fully value or recognize the strengths and attributes of the online model. Perhaps the online class is better evaluated on its own terms, rather than using the face-to-face class framework as the norm.

One part of the online class was not utilized by students: the discussion board designed for questions and comments that would be the equivalent of students in pairs and small groups asking questions or making comments on the assignment that everybody would hear. Based on my observations, I

but rather it failed because the employer didn’t notify the employee that he made contact with the police.

IV. Applicability to our case

Our case is distinguishable from Kircher because Ms. Serafin was not merely a stranger reporting a potential crime. In fact, she had a close relationship with Ms. Clark and on the day that she went to the police, Ms. Clark had in fact been a victim of violence.

Our case is similar to Greene because just as an employer has a vested interest in protecting their employee, a close friend and companion has a vested interest in protecting their friends. Our case is only distinguishable on the fact that Ms. Serafin did notify Ms. Clark that she contacted the police. In Greene the employee failed to tell his employer that he contacted the police.

95. One student said in an email that my feedback to them individually “mean[t] a lot.” Others responded with thanks and seemed to appreciate the feedback.

posted a comment about case grids and theory of the case, and a couple of students posted, but otherwise students did not utilize it. In the class following the online class, described below, some students had fundamental questions about the assignment, which for some reason they did not raise with me privately, in their small group, or in the discussion board over the course of the week of this class.

1. If the Shoe Fits, Wear It: Feedback on the Assignment

In the face-to-face class that followed this online class, one of my goals was to get feedback from the students on their experience online. I decided to use the first twenty to thirty minutes to solicit their reactions to the class, comment on the online work, make some general observations, and most importantly, “name” the work they did during the online exercises in terms of lawyering skills that are transferable generally and specifically apply to their work on the brief. I described my overall plan for that day’s face-to-face class, which, in addition to the reflection about the online class, involved analysis of various approaches to creating a statement of facts in a legal brief. I then invited feedback about the online class, and the following are a few illustrative snapshots of those comments:

“It always seems like there’s something due in this class.”⁹⁶

“I don’t think this is an individual issue. I think most of the class feels like it’s too much work.”⁹⁷

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96. This comment was from a student whose work had been relatively poor. I responded that I did not think there was “always” something due but that I constructed the class carefully to provide the best learning experience. The seminar was supposed to be challenging and did involve a lot of work. I also made a general comment that the assignment memo stated that students should expect to spend about two hours on the online class, in addition to time spent reading and preparing their posts. The American Bar Association guideline is that students will spend three hours of time for every one hour of credit, so for this four credit course, the ABA guideline provides that students will spend twelve hours, which translates into eight hours of time outside of class each week. For an individual online class, the time would be a total of six hours.
97. I could feel the tension rising in the class and recognized a pivotal moment had arrived. I looked around and sensed a lot of apprehension, some of which I surmised or hoped was due to disagreement with the comments being made. I told the student that I was not ready to make assumptions about the group as a whole. I said that it was clear to me that some people were working beyond the maximum, some putting in the appropriate amount of time, and others not working as hard as they needed to. As a result, I did view it as an individual issue, and I repeated that I tried hard to construct the classes to approximate the amount of work the ABA guideline provides for, but that the reality is that lawyering often takes more time than we think. I said I thought it made sense for students to think about how much time they spent on the online class, or in the course generally, and if they were doing much more than twelve hours per week, to let me know, and we could talk about it.

“The online classes just don’t work for me at all. I don’t feel I’m able to fully participate in the way that I can in a regular class. I can’t get onto a computer at school, my online access at home is slow, and I spend all kinds of time waiting and waiting.”⁹⁸

After this class, two students approached me and said that they thought the online class helped them put everything together and was truly beneficial. Later in the afternoon, while meeting with a student about his work in the online class, he volunteered that he found it useful and that those who spoke out against the online class did not represent the sentiments of most students. Finally, at the end of this long but memorable day, another student, in a casual conversation at a law school function, volunteered that she “wasn’t that crazy” about the online work but that she felt that she could do as much as she needed or wanted to and then make the choice to leave it at that. I told her that I fully agreed. If the shoe fits. . .

2. Practice Makes Perfect: Viewing the Class Through a Lawyering Skills Prism

In addition to the success of this online class in terms of content and quality of the discussions, it helped the students advance in several core lawyering skills, including problem solving, legal analysis (including case theory and synthesis), written communication, and collaboration.⁹⁹ As the timing and difficulty of this class coincided – or perhaps more accurately, collided – with an increase in the workload of the semester and a rise in stress among students, it was particularly important to be extremely explicit about the lawyering skills that the students developed as part of the de-

98. This critique was from one of the best students with whom I had a strong relationship. Without being defensive, or at least too defensive, I said that access problems were really frustrating, and thanked her for letting me know. I asked her to please let me know in the future if she encountered problems, as some students already had. I also said that the assignment was constructed so that a lot of the work could be done off line, but that the slow dial up modems made it difficult. Access problems are a valid criticism, although I think the technical problems need to be separated from the pedagogical benefits of the online class because slow access can create problems and frustrate even the best students.

99. According to the MACCRATE REPORT, *supra* note 11, these are among the core lawyering skills that should be taught in law school. The importance of integrating lawyering skills into the law school curriculum is now widely accepted. *See, e.g.*, CARNEGIE REPORT, *supra* note 9; BEST PRACTICES, *supra* note 11. The MACCRATE REPORT identified ten “fundamental” lawyering skills: Problem Solving, Legal Analysis and Reasoning, Legal Research, Factual Investigation, Communication, Counseling, Negotiation, Litigation and Alternative Dispute-Resolution Procedures, Organization and Management of Legal Work, and Recognizing and Resolving Ethical Dilemmas. MACCRATE REPORT, *supra* note 11, at 127-98.

briefing of this online class. By identifying and naming the lawyering skills students practiced in the online class within the context of the sequential tasks leading up to the brief – outline of their complete argument, full draft of a statement of facts, draft of the first point of their legal argument, and an interim draft of the entire brief – I illustrated that the online exercises were not separate or in addition to the core curriculum of the semester, but in fact comprised the essential work necessary to complete the legal brief.

The foundational underpinning of the online class was the skill of problem solving.¹⁰⁰ Students had to make choices about how to approach each exercise (e.g., content of case grids, how to construct a theory of the element, the aspect of the legal standard to explain, support, and apply), develop strategies that they had to implement within a specific time frame, and in the ensuing discussion refine and develop their planning in the larger contexts of their briefs. They also had to exercise judgment in providing and responding to new information and ideas in the form of feedback from each other

The case grids, essentially an abbreviated summary of a large number of cases in an easily accessible format, involved the skills of legal analysis, reasoning, and writing.¹⁰¹ Students had to create a structure, using a few sample models as guidance, that captured the essence of the case, analyzed the case, and made choices about how to categorize the most relevant aspects of the case. In addition, as a key tool designed to help students draft their brief, the case grids illustrate the value and importance of going beyond briefing the case in focus and emphasis, indicated by notes that analyze and make explicit the connections to our simulated case, including the practical utility of the case and the role it will play in our argument.

The theory of the element exercise¹⁰² involves developing and refining a legal theory, after discussion and feedback, informed by students having to both provide and receive critique. It also required students to integrate fact and law together and construct a theory that reflected our client's perspective on the case. The synthesis exercise extended their analysis and provided the opportunity to construct a "kernel" of one of the elements of the legal cause of action built on the skills of the other exercises and also required attention to advocacy, language, and structure of the argument.

Each of the exercises and the discussions with partners involved different forms of written communication.¹⁰³ The case grids involved a more instrumental outline type of drafting, with notes, characterization, and summary analysis required. The challenges of the theory of the element were brevity and clarity, in that it was only a few sentences in length but had to express an essential truth about the case, at least from our perspective. Each

100. MACCRATE REPORT, *supra* note 11, at 129-38 ("Problem Solving"), 161-64 ("Communication").

101. *Id.* at 139-44.

102. *Id.*

103. *Id.* 161-64.

word counted, and attention to language was critical. The synthesis exercise was a nutshell of legal persuasion and argumentation, bringing together rule explanation, analysis of cases, and application of law to fact.

The online class also required collaboration¹⁰⁴ throughout the series of exercises. Students had to coordinate their posts with a partner and provide to and receive from one another structured and multi-faceted feedback as a significant part of the class, which in many cases contributed to improved work products. For example, after posting their initial exercises, many students re-posted in response to comments of their partners. Each student had to respond to a partner, and because the exercises were intertwined with the larger assignment of an interim draft of the brief, the online class was a central part of an ongoing and evolving planning process.

A greater focus on student to student interaction in this online class, in particular the hybrid course, over the arc of a semester encouraged students to assume a greater degree of responsibility for learning and changed the nature and quality of interactions among and between students and with me. The overall quality of the work in this online class was Very Good-Excellent in most cases, the level of engagement was high, students were helpful to each other with their feedback, and they demonstrated improvement as they re-posted or shared their evolving thoughts and analysis during the discussions.

The exercises were similar to “homework” for class. Their collaborative work in pairs encouraged thoughtful feedback that was not rushed in the moment (notwithstanding the few instances of late to arrive partners). The written nature of the exercises enabled the students to revise and view the work of their partner, and it also allowed me to provide feedback based on seeing the work of each pair, including their feedback and discussion with each other. The online format encourages, although does not always result in, greater depth in the discussions. Finally, the work of a particular class is memorialized in ways not possible in a traditional class (unless it is recorded and transcribed), which allows for ongoing analysis (e.g., students asking me to go back and take a look at what they did and give feedback). The combination of working both individually and collaboratively, actually being able to see the results of their work and compare it to their colleagues, and having the opportunity to refine and improve, only reinforced the old adage that “practice makes perfect.” Although practice makes perfect, still looming on the semester’s horizon for the students was the formidable challenge of oral argument and, for me, the question of whether the online activities I planned would be up to the task.

104. *Id.* 190-93 (“Organization and Management of Legal Work”).

C. Are Comparisons Odious? Leaving the Past for the Digital Present to Prepare for Oral Argument

Oral argument in a lawyering simulation is a challenge for first-year law students and serves as a sort of rite of passage into the profession. It is difficult, thrilling, and inspiring. It is the first exposure many students get to a courtroom experience and the pressure of handling questions from and engaging with a judge. At CUNY Law School, oral argument in first-year lawyering seminars is a major part of the spring semester due to the weight it is given for grading and the sheer difficulty and pressure of the activity. It is similar to a moot court experience in the first year, except part of the student's grade is based on oral argument performance. To prepare, I devote a "module" of classes and activities to the art and strategy of oral advocacy. In addition to reading about oral advocacy, watching and critiquing actual oral arguments helps students understand how theories of oral advocacy are applied in the real world. They can observe how lawyers make persuasive arguments and craft strategy based on who they represent, their interpretation of the law, and the relief they are requesting. Finally, watching and listening demystifies the role of judges and provides examples of how to handle questions and engage in a dialogue with the judge.

The oral argument feels like the culmination of the semester for individual lawyering seminars and also for the first-year class as a whole, as almost every first-year student participates. There is a collective sense of anticipation before and exhilaration, despair, and a palpable sigh of relief when finished. A variety of people serve as judges, including professors in the law school, practitioners, and occasionally judges, who are often alumni. The arduous preparation, the final moments of anticipation just prior to the argument, the intensity of the oral argument experience, the occasional arguments that take place in the calmer atmosphere of the early evening, and the gentle, supportive, and guiding feedback sessions that take place immediately afterward make this a meaningful, and often transformative, learning and lawyering experience.

Prior to my experiment with distance learning, I had the opportunity to teach one of the individual classes in the oral argument module with a colleague, with whom I planned and organized the seminar.¹⁰⁵ We brought together the students in each of our seminars, who were representing opposing parties in the simulated litigation and who would be arguing against each other within a few weeks. We watched, listened, critiqued, and discussed two oral arguments.¹⁰⁶ Although the factual and legal contexts of these cases

105. My colleague with whom I taught the joint class was Janet Calvo. Janet and I worked collaboratively on a lawyering seminar as part of a teaching team with other colleagues, including Paula Berg, Shirley Lung, and Andrea McCardle.

106. One oral argument was a video of the Florida Supreme Court argument in the *Gore v. Harris* litigation, which involved the process for counting votes in Florida in the 2000 Presidential election that ultimately was resolved by the

were different than our simulated case, the rhetorical and thematic approaches taken by each side resonate strongly.¹⁰⁷ The focus of our analysis was on the strategic decisions made by each side and the overall effectiveness of the attorneys.

In the prior collaborative face-to-face class, students in both seminars watched a video excerpt from the *Gore v. Harris* argument. After the video, we facilitated a discussion in the large group. We then scrambled the students into small groups, in which they listened to the audiotape of *DeShaney*, discussed several questions we provided, and then returned to the large group to report on their conversations. The class had important strengths: watching and listening to actual oral arguments helps prepare students for their own oral argument, we enjoy working together with our “opposing” seminar colleagues, and the students welcome the opportunity to vigorously engage with each other about their respective theories of the case and legal arguments.

It was a challenge to substitute essentially an online class for this successful, interactive, creative, and collaborative face-to-face class. In reality, it was not a matter of simply replacing one class with the other. Each class was part of a larger oral argument module that I modified when I restructured my seminar into a hybrid online course. In the hybrid course, I similarly began the module with videotapes of two actual oral arguments, which we discussed in a face-to-face class.¹⁰⁸ This class accomplished the goal of having students see strong models of oral argument after reading introductory material that placed oral argument within the context of persuasive advocacy. The next two classes were online, and I used the open seminar time to meet with each student to discuss the draft of their briefs, thereby taking advantage of the opportunities created by the online component for multiple activities and interactions.

For the two online classes, I adapted the *DeShaney* portion of the previously successful face-to-face class with students in small online groups of four or five. The assignment was to listen to, and at their option read the transcript of, the *DeShaney* argument,¹⁰⁹ post their responses to the assigned

U.S. Supreme Court. *Gore v. Harris*, 773 So. 2d 524 (Fla. 2000). The other oral argument was an audiotape of a U.S. Supreme Court case in which a severely abused child claimed that the failure of the local social services agency to prevent his abuse violated his due process rights under the 14th Amendment. *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189 (1989).

107. The *DeShaney* case involves a personal tragedy and competing theories of individual rights and municipal liability. The arguments of the lawyers are analogous to the issues in our simulation, involving a vulnerable elderly woman who was physically abused and whose pleas for help were ignored by the Police Department.

108. *Gore v. Harris* and *Simmons v. American Airlines*, 34 F. App’x 573 (9th Cir. 2002).

109. I distributed the edited transcript of the argument not only to augment the audio, but also to avoid any Internet access issues.

questions, and reply to at least one post of each of the other members of the group. Instead of using an audiotape, I linked the course website to the Northwestern University Oyez website.¹¹⁰ I intentionally structured this assignment so that it focused on the initial posts and left the discussion beyond the required minimum up to the students. I posted a memorandum that introduced and described the online class, and I also included a few thoughts about approaching the online work.¹¹¹

110. U.S. Supreme Court Media: Oyez, <http://www.oyez.org/oyez/resource/case/634/resources> (last visited Dec. 27, 2008).

111. For this online class, you will be working in small groups. Go to the Groups section on the web site and you'll find your group. Note that this class will take place from Thursday morning 3/25 through Tuesday evening 3/30.

To prepare for this class, you need to listen to the argument in *DeShaney v. Winnebago County Department of Social Services* and/or review the edited transcript of the argument (distributed in class on Tuesday 3/23). To get to the audio click on this web address:

<http://www.oyez.org/oyez/resource/case/634/resources> (you may have to press the "Ctrl" key on your computer).

Or go to the External Links folder on the web site, click on the U.S. Supreme Court link, then type in "DeShaney" in the upper right hand corner, and then you can access the audio by clicking on "audio" or "resources." Note: if you are prompted, you may need to download Real Player on your computer. You should be able to click on the website address and follow the instructions to download Real Player (www.realplayer.com). Make sure you download the FREE Real Player.

As you listen to the argument or read the edited transcript, take notes in order to discuss the questions below. (I recommend you listen to the argument and read the edited transcript; the entire recorded argument is about an hour and consists of three arguments, the first argument is from the attorney representing Joshua DeShaney, followed by the attorney representing the Department of Social Services, and finally a Deputy Solicitor General representing the United States government as *amicus curiae*).

As we enter the last part of the semester, you have gathered some experience working in this new online medium, which is something different than face to face conversation or written work. I have a few recommendations that I hope will be helpful. You should try to develop your initial posts in a thoughtful way, meaning that they should have some depth of analysis. You should try and avoid posts that appear to be "quick emails" (i.e., superficial, not edited or proofread) and endeavor to help create a meaningful discussion that helps you prepare for your oral argument. When you reply to others, you should attempt to continue the discussion, rather than merely agree or compliment your colleague on a good insight (although I certainly encourage that, but it needs to be part of a continued dialogue).

In your small group, discuss your responses to the following questions. At a minimum, each person in the group should post your thoughts about each of the questions, and respond to at least one post of each of the other members of the group.

Questions for Discussion

When I reviewed the discussions of each of the five groups, I was impressed by the thoughtfulness and depth of the posts, their analysis of the style and substance of the lawyers in *DeShaney*, and their insight into what they learned and how to apply it to our simulated case. All but one group had full participation with each student posting, and almost every student replied as required by the assignment (in one group, two of the five students did not participate at all). My focus on making their posts more in depth helped, as did the specificity of my guiding questions.¹¹² Three of the five groups had fairly in depth back and forth discussion, while the others mostly limited themselves to the single required response to the post of at least one other person in the group.

The variety of the posts is apparent from a sampling of the subject lines: "DeShaney Argument," "Framing Legal Standards," "Observation About Opening Statements," "Clarity," "General Observation," "Position and Presentation," "Concession," "My Post," "State was more convincing, but . . .," "Questions for Discussion," "NY Times Article," "Re: The Questions," "Theory of the Case," "Re: Lessons for Oral Argument."

I achieved my goal for the class of more depth and less superficiality but learned that if too much is required of initial posts, it may reduce the subsequent discussion. It is a delicate balance along a matrix of quantity and quality, with the relative emphasis between posts, replies, and discussion modulated according to the goals of the online class. I also learned that comparisons are odious, and the benefits of learning in cyberspace can be realized and assessed independently on their own merit and not only in relation to the traditional classroom.

What was the theory of the case for each side, i.e., what was the "story" that each side told about the facts of the case in the context of their legal theory?

What made the case theory for each side effective? Not effective?

How does each side frame the legal standard in a manner that supports their theory of the case?

What did you learn from listening to this argument about how to frame and express your theory of the case in your oral argument?

112. The posts in the small group discussions followed two predominant patterns that shaped the nature of the discussion. With multiple questions, some students posted each response individually, others all at once. With individual posts of responses to each question, it allows others to respond to the discrete issues more easily; it also requires more "clicking" to get in and out of each post. Some students attached their responses in a separate document: this allowed for more length, and a few impressive, in-depth responses, but it also felt too much like a "paper."

D. All's Well That Ends Well: The Oral Argument Crucible, Tips, and Reflections

The oral argument is the highlight of the semester. It is exhilarating for some, terrifying for others, and probably a bit of both for all involved – a typical hybrid experience! Students devote a significant amount of time preparing and anticipating their argument; the argument is probably the most challenging lawyering experience they will have during the first year and perhaps until they actually represent a client as a lawyer. As with all lawyering experiences, the oral argument occurs in three phases: planning, doing, and reflecting. The reflection phase had two components: the online activity involved a prompt posting on a Discussion Board designed to share the experience of oral argument and provide “tips” to colleagues; the face-to-face activity consisted of individual review of the oral argument videotape to be used as part of a critique and analysis of their performance in a small group, during which each student had to use two video clips from their argument, illustrating a strength and weakness.

The online assignment was designed to provide an opportunity to reflect, exalt, commiserate, and most importantly, share their insight and experience in ways that simply are not possible without a discussion board or forum. The assignment was simple:

Within 24 hours after you complete your oral argument, please post at least two full paragraphs (and feel free to post more) which include your preliminary reflections on the oral argument experience and some tips and advice for your colleagues who are preparing for oral argument (if you're scheduled for the last arguments on April 22, complete the “tips” portion of this assignment as if others are still preparing for their arguments).

The paragraph(s) which contain your reflections should not be judgmental (i.e., don't focus on what you think you did well or not so well). Rather, consider the experience as a whole and share your thoughts, feelings, and impressions (you don't need to view your argument on tape before doing this assignment). This is a chance to be a little creative, let your thoughts flow, and reflect on your experience. Don't feel constrained to write in a “formal” way, you can use stream of consciousness, or any form of narrative (but whatever you do, prepare with care and proofread).

The paragraph(s) that include your “tips” and advice for your colleagues should be aimed at helping others prepare for their argument. Try to pick out a few things that you think will be helpful to others. Approach it from a lawyering perspective; before you know it, when you are in practice, you'll be doing this on a daily basis with your colleagues.

All students are invited to respond to any of these posts with comments, questions, or other replies. These posts and any replies are the online classes you see on the syllabus from 4/13-4/22.

The posts were illuminating and, in many instances, terrific. Although I encouraged the students to err on the side of “stream of consciousness,” the public nature of their posts and their role in helping colleagues prepare for oral argument undoubtedly motivated students to be particularly thoughtful and insightful. This discussion forum consistently exceeded my expectations, provided a meaningful collaborative experience, and affirmed the power and benefits of online learning.

From a lawyering perspective, the postings provided interesting descriptions of the students’ oral argument experiences and valuable insights for those preparing for oral argument. The postings also embodied the kind of collaboration that is a critical lawyering skill. The assignment facilitated creative and heartfelt reflections that enabled students to articulate their feelings of relief, disappointment, and exaltation. As the end of a long and grueling second semester of law school approached, and after completing a pressure filled performance, the discussion board served as a welcome outlet. From an assessment perspective, these discussion forums had the urgency, vitality, and timeliness that make discussions in any context meaningful and memorable.

Virtually all the posts captured something essential about oral argument experience. The initial post in one semester might have frightened other students with the following subject line: “Reflection on facing the firing squad.” However, the second posting was particularly representative:

FORUM: Oral Argument Reflection & Tips for Colleagues

TIMES READ: 37

SUBJECT: The anticipation is way worse than the real thing. . .

I was completely freaked out about this (as many of you know, especially those of you who helped me practice—thank you!). When it came time to do it, I was amazed at how calm I was. It wasn’t because I felt I knew all I needed to know, but just because I was having fun with it. As I watched the defense argue, I was anxious to get up and answer the questions the judge was putting to him. That was kind of surprising.

I made mistakes, I stumbled, I said weird things in weird ways, I forgot case names (and even re-named them, e.g., “the plaintiff-didn’t-change-their-routine reliance cases”). But my judge (Shirley Lung) was very gracious about it so I was able to maintain my composure and just move on and it was okay. My biggest fear going in was that this kind of thing would happen and everything would fall apart and go downhill from there. But I was so involved with trying to get my point across that I just kept on pluggin’. In other words, try not to mess up, but if you do I promise it won’t feel as bad as you think, and it won’t have as bad an impact on your argument as you might expect.

Some advice: be and look genuinely interested in what the judge is saying or asking. It quelled (is that a word?) my anxiety to focus on Shirley’s questions and comments and really, really

think about them. It made me feel less anxious as long as I was deeply “involved,” because I was able to block out distractions (including my heart beat). But it also worked from the judge’s point of view. She noticed it and said she liked that I was clearly engaged in the conversation.

Regarding the cases, I suggest memorizing a few basic facts about each one that you know you’re going to use. We all “know” our cases, but it’s different to have to summarize them quickly in the course of struggling to make a point to the judge. I had my case grid, and I knew all about the cases I was using, but in the heat of the moment I didn’t use the cases as effectively as I could have if I had MEMORIZED and practiced a few words about each one in addition.

The hardest thing was to move back and forth between my prepared statements and the dialogue with the judge. My closing—which I had practiced over and over—got pretty mangled up because I had to move quickly into it and I wasn’t expecting it. I was sure I had only just started my argument when I got the signal to wrap up. So I suggest practicing some transitions from your opening statement into the argument, and back again. And be ready to use them when you least expect it.

And for those of you who, like me, are camera shy, I have good news—the camera is small and unobtrusive and set far back enough that you really don’t notice it at all.

Most of the other students were equally insightful, reflective, and helpful to their colleagues. Their advice and tips read like a primer on the best practices of oral argument:¹¹³

Do Not Read Your Notes

I went on Thursday and totally agree with your comment about the paper in front of you. I thought I had it very well organized, even by element, but had to close my outline folder in the beginning because I was just looking down at it too much, getting lost in the words, and not fully paying attention to the judge and what she or I was saying. I knew the stuff, but couldn’t help but look.

Oral Argument Is a Conversation with the Judge

This was the fastest 15 mins of my life. Keep your arguments concise. Get the standard out there right away for each element. Then get in some cases and facts. I found there isn’t really enough time to get into detailed facts of cases, if you can get by just dropping the name of a case, you’re better off. In my argument there were plenty of questions. If you exclude the opening and closing, I

113. I have added these titles for purposes of this article.

would say I spent eighty percent of my argument answering questions and the rest of the time following my argument outline.

Try to make use of segues. In answering the judge's question, I tried to leave off the answer in a way that got me where I wanted to go to next.

"Oral argument survival." I'm not in the camp who thinks oral argument is "fun." challenging, yes. worthwhile, yes. fun, no. the amount of stress & anxiety that goes along with oral argument did not give me a feeling of exuberance.

that said, i think all of the moot practice was really helpful. different judges have their own style so having multiple people "moot" me was a good idea. the questions the judge asked weren't too surprising, but i was thrown off a bit by the repeated demand to get the question answered. she wanted her question answered, i wanted to return to my safe place (of law) that i am comfortable with. It's difficult to avoid this natural reaction.

Tips:

answer the judge's question as best you can, avoid making a conclusion without supporting it and moving on. the judge will return you to the original question if you don't answer it.

"It's Done!" Oral argument is not a presentation, but a conversation with the judge to address her concerns and to convince her to see the case the way you see it. I think when you start to see it this way, your perception of the judge's questions and how you should answer them changes. Since we are expected to make an Opening, it begins out as a presentation, but as soon as the judge starts to ask questions, the conversation part of it begins. Trying to look straight at the judge and to pay close attention to judge's questions kept me focused and not too nervous.

Practice for Flexibility, Transitions, and Confidence

"Well, it is done!" It was a struggle for me- in fact petrifying, I was really nervous and kept second guessing myself. So if anybody has trouble talking in front of people perhaps this will help you.

In preparing, I had spent a lot of time memorizing case titles and facts and the statutes. However, I think if I had it to do over again I would spend more time crafting your argument and practicing your delivery. Here are two things to consider:

First, you have to be flexible. I was really focused on following my plan and going through the argument instead of being responsive to what the opposing counsel had said or what the judge was asking. So, I think more practice could alleviate that feeling that you have to say it all, you just can't in fifteen minutes, so you have to make a judgment call on what pieces you need to say before your time is up instead of trying to say it all. Direct contact and reliance were the elements that the judge really wanted to hear

about- so spending more time on them and less on assumption of duty and knowledge would probably be a good idea- although you should expect questions on every element.

Second, confidence is important. I was very confident about our case but I am not sure it showed through my nervousness. Once you start to speak, go with it and do not second guess yourself, even if it wasn't exactly how you had prepared to say it part of the argument is thinking on your feet and reading the judge and you may say something different than you rehearsed but that is alright- that is just how it goes!

Needless to say, I was completely overcome with nervousness and it got the best of me.

I forgot things that I knew like the back of my hand. I made up words that aren't even in the English language. And most of all, I froze up a lot and didn't have an emergency plan on hand.

The only thing that I can advise to others is to practice/moot with someone you don't know (if that is possible). And don't try to memorize anything, just be prepared to think and reason, and not regurgitate a speech.

Furthermore, if you know that you will be nervous during the argument, have an emergency plan ready as to how to will regroup and regain composure.

The questions the judge asks are fairly foreseeable, but once you're up there, it's a completely different dynamic from mooting with a colleague.

One of the final posts was from a student whose work was excellent but, as is obvious from the post, did not feel comfortable speaking in public. Her post is honest, poignant, and captures the strengths, challenges, and transformative potential of this lawyering seminar generally and the simulated oral argument in particular:

FORUM: Oral Argument Reflection & Tips for Colleagues

TIMES READ: 22

SUBJECT: Reflection and Tips

REFLECTION

Like most 1Ls I have dreaded doing the oral argument all semester long. I have also been aware for years now that my fear of public speaking has held me back in volunteer and advocacy work. It never made sense to go on delegations and then allow a lack of confidence to prevent me from public speaking when I returned. I have also at times avoided opportunities to give trainings for things such as for action team coordinators who work on behalf of detainees. This is very sad because even though I am also involved in the work in many other ways I should at least feel confident in training the people whose work I coordinate and manage. I mention all of this only to illustrate the extent of my fear of

public speaking and guilt I feel for not being able to adequately support people. I am hoping that I can learn to change this through experiences such as the oral argument.

I found it very difficult going last for the oral argument. I knew that everyone was very nervous but then I would see their tremendous relief when they finished. The last two weeks just seemed to go on and on as I observed this transformation in my classmates. After most people finished they would assure me that it wasn't that bad and was really like a conversation. I believed them but was still worried that I would not be able to speak articulately or answer all the questions. I spent a lot of time and energy worrying about it and as I could have guessed it was not as bad as I imagined it might be. The preparation almost seemed like writing a paper in a way because I kept changing everything and it never felt like it was complete. It also seemed that the more I mooted with different people the more confusing it became because each person had a different view. I think the preparation was very valuable. Two of the people were quite tough and it was very interesting to learn from their questions as well as from my own reaction. It is amazing how speaking in front of someone who seems annoyed with boredom can strip you of what little confidence you thought you had and immobilize you. All in all I thought the preparation in writing the script (outline) and practicing was a very valuable experience because I was able to do things that I could not have previously imagined myself doing. I guess I could say it is empowering in a sense but I do not feel I have completely overcome my lack of confidence in this area. I hope that my feeling will change with time and experience.

TIPS

After finishing my first oral argument I think I can try to offer a few tips to those who have not yet gone. Some of these tips were also given to me by 2Ls who mooted me. I decided to do my argument with an outline and space it out so that I could see each element distinctly. This also allowed a space to write counter arguments to my opponent's presentation. I was advised to use large font (14 or 16) and found that this was helpful however it made for a longer outline. I tried to highlight different sections in different ways so that each stood out. I tried to write case names and second department or court of appeals (when applicable) in all caps and bold. I also did this for words that I thought might effectively convey my point or words that I kept forgetting. I decided to put my outline in a three ring binder book with the holes punched on the right side for my first page and the left side for my second so that I could see two of my three pages in one viewing. I was also advised to write the contents of the top of the following page (in my case page 3) at the bottom at the previous page so that

there would be an overlap and I would not be interrupted when turning the page.

Due to my tremendous nervousness and lack of confidence I decided it was necessary to moot with as many people as possible. I found this to be a very enriching experience but that it sometimes made me less confident. I would suggest that the person practicing not worry if you feel less confident after a mooting session and just consider it to be part of a learning process which contributes towards progression. It is good to change the outline as many times as necessary but I would say that it may not be a good idea to do this within the last day and a half before the argument. I was changing mine up until the argument which made me feel out of control and contributed to more nervousness.

I was also given some tips on body language. I was told that I sway when I speak and that to prevent this I need to stand with feet at distance of my shoulders and knees locked. It was also suggested that I draw fingers on the bottom of my papers so that I could keep my hands there and not move them around unnecessarily. However, this stance seemed to make me appear tense. I think that standing still but not tense with gestures during important points would give a speaker more presence than I had. Someone also told me that I shifted forward when I spoke and that I should tape quarters to the balls of my feet because I would feel this when I shifted and would stop. I did not do this but if anyone has a serious problem with this you may want to try it and see if it helps.

The oral argument experience was enhanced by this online discussion. A core component of lawyering is the capacity to reflect upon and share experiences with colleagues. This discussion made the importance of these skills explicit. The discussion enabled what would otherwise have been "word of mouth" hearsay, speculation, and hype about what happened during oral argument to be reduced to a writing that was the result of reflection and analysis and subject to verification and confirmation by each student's experience. The discussion opened up to the entire group what would otherwise have been selective and private conversations. Rather than information being conveyed based on personal relationships or circumstance, the discussion board brought these personal insights and advice into the shared, professional realm. The building of a collaborative professional ethic might have been the most important and enduring benefit of this discussion. Perhaps these posts prove, once again, that whether face-to-face, or online, "education is acquired not by listening to words but by experience. . . ."¹¹⁴

114. MARIA MONTESSORI, *EDUCATION FOR A NEW WORLD*. Thank you to Professor Vanessa Merton of Pace Law School for including this inspiring quote in her email signature.

VI. THE END OF THE WORLD AS WE KNOW IT: CONCLUSION

The experience of teaching lawyering skills with an interactive website featuring discussion boards and online activities changed my perspective on teaching and learning, enhanced my teaching methods, and provided new dimensions of learning for students.¹¹⁵ The combination of face-to-face and online classes creates a particularly dynamic synergy. The role of a course website can be adjusted along a continuum, from a mere repository of course materials to an integrated, active course component to the primary means of communication in a completely asynchronous course. In order to realize the full potential of an online activity or component of a course, it is necessary to precisely plan how the course website will be used and its relationship to the goals of the course, as well as to maintain a consistent commitment throughout the semester. As the presence of technology becomes increasingly ubiquitous and user-friendly, and the lives of our students are inextricably linked with technology, we should embrace the potential of online learning to enhance the quality of our teaching, the learning experience of our students, and most importantly, how effectively we prepare students for the challenge of lawyering in the twenty-first century.

115. Students were very positive about the benefits of the online component in their end of semester written feedback.