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ARTICLES AND SURVEYS

ESSAYS

FORGING CROSS-BORDER CONNECTIONS THROUGH SCHOLARLY WRITING

RAMONA BIHOLAR[*] AND SHA-SHANA CRICHTON[*]

I. INTRODUCTION

Spring 2020 brought a new "normal" for students and faculty worldwide.[1] The global coronavirus pandemic caused many educational institutions to abruptly shut their doors; consequently, they were forced to critically think about how to continue delivering quality instructions to their students.[2] The uncertainty of when the coronavirus pandemic would end loomed like a dark cloud.[3] Some schools took an extended break to

1. *See* Trevor Mutton, *Teacher Education and Covid-19: Responses and Opportunities for New Pedagogical Initiatives*, 46 J. EDUC. FOR TEACHING 439, 439 (2020).

2. *See* Emma Dill et al., *As Coronavirus Spreads, the Decision to Move Classes Online Is the First Step. What Comes Next?*, THE CHRON. OF HIGHER EDUC.: NEWS, http://www.chronicle.com/article/as-coronavirus-spreads-the-decision-to-move-classes-online-is-the-first-step-what-comes-next/ (May 7, 2020, 8:11 AM).

3. *See id.*

strategize how to best deliver instruction, while others immediately moved to online teaching using various online platforms.[4]

In April 2017, three years prior to the start of the pandemic, Howard University and The University of the West Indies signed a Memorandum of Understanding ("MOU"), memorializing the framework for collaboration between both institutions.[5] Howard University ("Howard"), a historically black college and university ("HBCU"), is located in Washington, D.C. and The University of the West Indies ("The UWI") is a regional, Caribbean-based university which serves seventeen countries and territories within the English-speaking Caribbean region.[6] The UWI has five physical campuses: the Mona Campus located in Jamaica, the Cave Hill Campus located in Barbados, the St. Augustine Campus located in Trinidad and Tobago, the Five Islands Campus located in Antigua and Barbuda, and a virtual campus—the Open Campus.[7] The primary goal of the MOU between Howard and The UWI is to "develop the academic research links/collaboration and cultural interchange" between the institutions.[8] As such, each institution agrees to assist the other with "teaching, research, exchange of faculty and students, cultural exchange and staff development, as deemed beneficial by the two institutions."[9]

It is no surprise that both institutions chose to collaborate.* Howard is the premier HBCU in the United States, it ranks in the top 100 national institutions[10] and has educated several Caribbean luminaries and leaders, some of whom are also UWI graduates.* The UWI is the premier university

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4.   *See id.*

5.   Memorandum of Understanding between Howard Univ. and Univ. W. Indies (Apr. 2017) (on file with author). The MOU was signed by President Wayne A.I. Frederick, President of Howard University and Sir Hilary Beckles, Vice Chancellor of the University of the West Indies.

6.   The Caribbean countries and territories served by The UWI are: Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Grenada, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and Turks and Caicos Islands. *See Territories: Anguilla*, UNIV. OF THE W. INDIES, http://www.uwi.edu/anguilla.asp (last visited May 12, 2021).

7.   *About the UWI*, THE UNIV. OF THE W. INDIES: HISTORY & MISSION, http://www.uwi.edu/history.asp (last visited May 12, 2021).

8.   Memorandum of Understanding, *supra* note 5.

9.   *Id.*

10.   Howard University ranks 80th among national universities. *See Howard University Rankings*, BEST COLLEGES, U.S. NEWS AND WORLD REPORT., http://www.usnews.com/best-colleges/howard-university-1448/overall-rankings (last visited May 12, 2021).

in the Caribbean.[11] It ranks in the top 100 Golden Age Universities Rankings (2020), eighteenth in Latin American Rankings (2020),[12] and first in the Caribbean.[13]   The UWI is "[o]ne of only two regional universities in the world."[14] With nine global centers across North America, Latin America, Europe, Africa, and Asia, The UWI is also "one of the world's most globalized universities."[15]

The various schools and colleges within these two institutions worked on ways to collaborate.[16]   Howard University School of Law ("Howard Law") and The UWI Faculty of Law at Mona Campus (Jamaica), also referred to as "MonaLaw", formed teams to establish and execute a collaboration plan.[17]   As a matter of priority, Howard Law and MonaLaw would focus on: (a) faculty exchange programs to include research activities and/or guest lecturing; (b) joint online course development and teaching at both undergraduate and graduate levels; (c) joint supervision of research students; (d) student exchange programs or study abroad activities; (e) collaboration in distance education; and (f) organization of joint seminars, conferences, workshops, training initiatives, and academic meetings.[18] The faculty exchange started in earnest when Dean Danielle Holley-Walker and

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11.   TIMES HIGHER EDUCATION (THE) WORLD UNIV. RANKINGS, *The University of the West Indies*, http://www.timeshighereducation.com/world-university-rankings/university-west-indies (last visited May 12, 2021).

12.   *Id.*

13.   *See id.*; *Latin America Rankings 2020*, TIMES HIGHER EDUCATION (THE) WORLD UNIV. RANKINGS, http://www.timeshighereducation.com/world-university-rankings/2020/latin-america-university-rankings#!/page/0/length/25/sort_by/rank/sort_order/asc/cols/undefined (last visited May 12, 2021).

14.   *The University of the West Indies*, THE WORLD UNIV. RANKINGS, http://www.timeshighereducation.com/world-university-rankings/university-west-indies   (last visited May 12, 2021).

15.   *The University of the West Indies*, *supra* note 14. At present, The UWI has nine global centers, namely in Nigeria, South Africa, China, Colombia, Cuba, Canada, USA, and two centers in the UK, making it one of the most globalized universities in the world.   *Id.*; *see also Best 'Golden Age' Universities*, THE STUDENT (June 24, 2020), http://www.timeshighereducation.com/student/best-universities/best-golden-age-universities.

16.   *See* Memorandum of Understanding, *supra* note 5.

17.   In the late spring of 2018, a team from The UWI, former Dean of MonaLaw, Dr. Leighton Jackson and Ms. Marjorie Henry visited Howard Law. The team from Howard Law included Dean Danielle Holley-Walker, Associate Dean Reginald McGahee, and Director of Legal Writing Program, Sha-Shana Crichton. During this visit, the teams explored possibilities of collaboration between the two institutions in the context of the Howard-UWI MOU.

18.   Letter of Intent between Howard Univ. Sch. L. and Univ. W. Indies Faculty of L. at Mona Campus (on file with author).

her team from Howard Law visited MonaLaw in February 2019.[19] A series of events were organized by MonaLaw to introduce the Howard Law team to the MonaLaw faculty members and students.[20]   Dean Holley-Walker delivered a public lecture entitled "The Barriers and the Promise of Women Ascending to Leadership in the Legal Profession" which reached not only students and faculty members of MonaLaw and the Mona Campus, but also members of the Jamaican legal profession and the general public.[21] Associate Dean Reginald McGahee spoke to the students about cross-border studies and Sha-Shana Crichton did two presentations: one to the MonaLaw students on Scholarly Writing and another to the faculty on Incorporating Cultural Competence in Instruction.* She was scheduled to do a series of Scholarly Writing Workshops at MonaLaw in the context of the third-year course Supervised Independent Research Paper coordinated by Dr. Ramona Biholar when those plans were derailed because of the pandemic.*

Both universities' commitment to continuing instruction with minimal disruption to students fostered a quick transition to online instruction and learning.* As a result, we were able to reschedule and deliver the Workshop online within the semester.* Encouraged by the success of the online Workshop and honoring the charge under the MOU for cross-institution collaboration, we met online several times over the summer to discuss collaborating on joint seminars, conferences, workshops, and research projects.[22] We each teach scholarly writing and supervise student scholarly writing projects, and in 2019 we had discussed creating a Scholarly Works-in-Progress Workshop where the students could present their works-in-progress and get feedback.* One of the most critical hurdles anticipated while planning the Workshop was funding to cover the travel and accommodation costs for students and faculty.*   We agreed that until funding was available, the Scholarly Works-in-Progress Workshop would remain on our wish list.*

Based on the student-feedback regarding the Scholarly Writing Workshop, another was scheduled for the early fall of 2020.* Again, it was all conducted online.*   Clearly impressed by the students' level of preparation, interesting topics, and thoughtful questions, we discussed

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19.   The team from Howard Law included Dean Danielle Holley-Walker, Associate Dean Reginald McGahee, and Director of Legal Writing Program, Sha-Shana Crichton.

20.   The MonaLaw team included Dean, Dr. Shazeeda Ali, Associate Dean, Dr. Ramona Biholar and her Outreach and Continuing Legal Education Team.

21.   *MonaLaw Public Lecture — The Barriers and Promise of Women Ascending to Leadership in the Legal Profession*, THE UNIV. OF THE W. INDIES AT MONA, JAM., http://www.mona.uwi.edu/marcom/ecalendar/events/7308 (last visited May 12, 2021).

22.   We used various modes to connect including, Zoom, WhatsApp, and email.   *See* Memorandum of Understanding, *supra* note 5; Letter of Intent, *supra* note 18.

avenues to get the students published during one of our debriefing meetings.* To note, the students had expressed great interest in getting their work published during the Scholarly Writing Workshops.* Thinking of how to create an environment where the students can practice showcasing their work, we decided to organize a virtual Scholarly Works-in-Progress Workshop.* After all, we had a few months of practice teaching online, so we were confident that we could make this work, and our students being digital natives, were adept at using the online learning platforms.* Most notably, now we would not be hampered by the lack of funding for travel and accommodation.* During one of the most unlikely times, a global pandemic, we launched the first Howard Law-Mona Law Scholarly Works-in-Progress Workshop with the help and enthusiasm of our students.[23]

In Part II of this Article, we explore the reasons educational institutions participate in student and faculty exchanges and, in particular international exchanges.[24] Part III examines the pedagogical value of teaching scholarly writing.[25] Part IV details how we prepared for and executed the Howard Law Scholarly Works-in-Progress Workshop during the global pandemic and addresses the benefits and challenges we encountered.[26] Finally, Part V concludes by encouraging law schools to think about creating similar exchanges because of the immense learning opportunities.[27]

II.   INTERNATIONAL STUDENT AND FACULTY EXCHANGES

The benefits of international student and faculty collaborations and exchanges are widely acknowledged.[28] In fact, universities began "as truly international institutions."[29] The original universities founded in the thirteenth century trained local and international students and recruited faculty internationally.[30] This international focus from the onset became increasingly more valuable as the world moved toward a global marketplace and community.[31] An increase in international communication, business and

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23.   *See* Letter of Intent, *supra* note 18; Memorandum of Understanding, *supra* note 5. Student Aysha Thompson created the flyers announcing the Scholarly Works-in-Progress Workshop.

24.   *See* discussion *infra* Part II.

25.   *See* discussion *infra* Part III.

26.   *See* discussion *infra* Part IV.

27.   *See* discussion *infra* Part V.

28.   *See* Philip G. Altbach & Ulrich Teichler, *Internationalization and Exchanges in a Globalized University*, 5 J. STUD. INT'L EDUC. 6, 15 (2001).

29.   *Id.* at 6.

30.   *Id.*

31.   *See id.*

travel, migration, and the advent of the Internet made it clear that internationalization was inevitable.[32] Institutions of higher learning were shepherded toward internationalizing their curriculum to meet the inevitable demand for skilled personnel who understand diversity and could transact business and otherwise operate in a global marketplace.[33]

Law schools are expected to train their students to become competent lawyers.[34] In the assured new normal of globalization, competence required that law students learn an awareness of different legal cultures and ethical standards,[35] understand how different legal systems operate,[36] and importantly, develop cross-cultural competence.[37]

For the most part, American law schools, had yet to embrace globalization lagging behind law firms and other business institutions.[38] As a result, in the 1990s, American law schools were encouraged "to internationalize the curriculum and to create global American law schools."[39] Since then, law schools within the United States have sought to create and expand on international experiences for their students and faculty.[40] This pursuit includes incorporating international law and cross-cultural competency in the curriculum; intentionally seeking to enroll foreign students;[41] creating or increasing opportunities for student and faculty exchanges and cross-border collaboration including international

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32.   *Id.* at 5.
33.   Altbach & Teichler, *supra* note 28, at 6.
34.   *See* Jon Mills & Timothy McLendon, *Law Schools as Agents of Change and Justice Reform in the Americas*, 20 Fla. J. Int'l L. (Special Edition) 5, 16 (2008) (commenting that "[l]aw schools have a direct and explicit responsibility to prepare students and legal professionals to be part of the legal community. Inherent to that duty is the need to enrich the cultural and professional knowledge and experience of those who study there. This means not only addressing the specific educational and professional needs in an area of expertise, but helping to develop professionals with a solid understanding of the different transnational and comparative law interactions."); Am. Bar Ass'n, ABA Standards and Rules of Procedure for Approval of Law Schools 2019–2020 15 (2019) (requiring American law schools to train law students to become competent lawyers).
35.   Rosa Kim, *Globalizing the Law Curriculum for Twenty-First-Century Lawyering*, 67 J. Legal Educ. 905, 910 (2018).
36.   *See* Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 Clinical L. Rev. 465, 504 (2008).
37.   *See* Bonny L. Tavares, *Changing the Construct: Promoting Cross-Cultural Conversations in the Law School Classroom*, 67 J. Legal Educ. 211, 211 (2017); Abdullah Atalar, *Student Exchange: The First Step Toward International Collaboration*, *in* Successful Global Collaborations in Higher Education Institutions, 63, 63 (Abdularahman Al-Youbi et al. eds., 2020).
38.   Kim, *supra* note 35, at 918.
39.   *Id.*
40.   *See id.* at 921.
41.   *See* Mills & McLendon, *supra* note 34, at 22.

conferences, joint programs, joint research projects and scholarship and so on; and creating or expanding international study abroad programs.[42]

In contrast, legal education and training in the Caribbean, particularly in the English-speaking Caribbean, have always had a global influence.[43] This interrelationship was initially out of necessity because many of the countries were island colonies of Britain.[44] As a result, lawyers from English-speaking Caribbean nations were trained in the United Kingdom or taught based on a British-influenced curriculum.[45] Starting in the 1970s, soon after some of the islands were decolonized, legal education moved to the English-speaking region and centered primarily in the region's university and law schools.[46] Importantly, both the Bachelor of Laws ("LL.B") level and Legal Education Certificate ("LEC") level[47] have a regional focus as they were designed to provide training for persons wishing to practice law in the English-speaking Caribbean region.[48] Put simply, legal education in the English-speaking Caribbean embraced a cross-national focus from the onset, as training, and movement of students, transcended national borders.[49] This regional approach facilitated the development of cross-cultural experiences and competence in the law students, many of whom are of different nationalities.[50]

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42.   Kim, *supra* note 35, at 919, 928.

43.   *See* Jane E. Cross, *Caribbean Law*, *in* 1 OXFORD INT'L ENCYC. LEGAL HIST. 368, 368–69 (Stanley N. Katz ed., 2009) (providing an overview of the history of Caribbean Law). *See also* the regional character of The UWI explained at *supra* note 6 and *supra* note 15.

44.   *Id.*

45.   *See id.*

46.   *See Council of Legal Education*, CARICOM, http://caricom.org/institutions/council-of-legal-education-cle/ (last visited May 12, 2021); *About the UWI*, *supra* note 7; Jane E. Cross, *Hassle-Free Travel:* Myrie v. Barbados *and Freedom of Movement in Caricom*, 8 PENN. ST. J.L. & INT'L AFF. 536, 538–39 (2020) (providing a history of Caribbean regional integration).

47.   *See Council of Legal Education*, *supra* note 46. In the Caribbean, the Bachelor of Laws ("LL.B") degree, a prerequisite to professional legal training for lawyers in the English-speaking Caribbean, is offered by law faculties, while the Legal Education Certificate ("LEC") that qualifies for practice in the abovementioned region is offered by law schools. *Id.*

48.   *Id.*

49.   *See Welcome to Mona Law*, THE UNIV. OF THE W. INDIES, AT MONA, http://www.mona.uwi.edu/law/node/53 (last visited May 12, 2021); *Council of Legal Education*, *supra* note 46.

50.   *See Welcome to Mona Law*, *supra* note 49; *Council of Legal Education*, *supra* note 46. The Faculty of Law at the UWI has been the premier legal education institution in the English-speaking Caribbean since 1970. *Council of Legal Education*, *supra* note 46. Other institutions joined in offering legal education, namely University of The Bahamas, which started offering a Bachelor of Laws in conjunction with the UWI since 2000.

Scholars posited that it is almost impossible for any twenty-first-century lawyer to successfully practice law during his or her career without addressing an international legal issue or drawing on his or her knowledge of cross-cultural competence.[51] This notion holds true in private domestic and international practice, and also when a lawyer or law student does public interest work or works with the government or the judiciary.[52] Assistant Dean for International Affairs at the University of Michigan Law School, Dean Theresa Kaiser-Jarvis, noted that "[s]tudents focused on public interest work . . . [should] be prepared for global legal practice" in part because the world's humanitarian issues are projected to increase—therefore, requiring cooperation and collaboration among "international, governmental, and non-governmental organizations" world-wide.[53] Furthermore, students and lawyers doing public interest work are more likely to work with persons from a culturally, racially, or ethnically diverse background which begets the need for cross-cultural competence.[54] Similarly, students who are intending to clerk or work for the judiciary also need to address global legal issues.[55] Not surprisingly, because of globalization, judges increasingly hear cases that involve international issues or have an international impact.[56]

Additionally, a key benefit of student exchanges is the enhanced opportunities for students to build relationships and expand their personal and professional networks.[57] By participating in a student exchange, students have an opportunity to forge relationships with their peers, faculty and staff

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From College to University of the Bahamas: A Noble Legacy, Univ. of the Bah., http://www.ub.edu.bs/about-us/history/ (last visited May 12, 2021). University of Technology, Jamaica ("Utech") which launched its LLB program in 2008. *Welcome*, Univ. of Tech., Jam., http://www.utech.edu.jm/academics/colleges-faculties/fol (last visited May 12, 2021). The University of the Commonwealth Caribbean ("UCC"), a privately held institution formed in 2004, which, as an affiliate of the University of London, offers an LL.B program in Jamaica. *Department of Law: Welcome Message*, Univ. of the Commonwealth Caribbean (UCC), http://www.ucc.edu.jm/school-of-humanities-law/department-of-law (last visited May 12, 2021); *Our History*, Univ. of the Commonwealth Caribbean (UCC), http://www.ucc.edu.jm/about-us/our-history (last visited May 12, 2021).

     51.   Jorge A. Ramirez, *International Law Impacts Texas and the Texas Tech School of Law Responds*, 35 Tex. Tech. L. Rev. 265, 265 (2004).

     52.   Theresa Kaiser-Jarvis, *Preparing Students for Global Practice: Developing Competencies and Providing Guidance*, 67 J. Legal Educ. 949, 952, 954 (2018).

     53.   *Id.* at 954.

     54.   *See id.*

     55.   *Id.*

     56.   *Id.* (explaining that "U.S. Supreme Court Justice Stephen G. Breyer estimates that fifteen to twenty percent of cases require judges to consult facts, laws, or decisions from abroad").

     57.   Kaiser-Jarvis, *supra* note 52, at 958.

members, and other persons in the host country.[58] Relationships, especially positive ones, enhance learning.[59] Positive relationships engender trust which is the cornerstone of an environment conducive to effective learning.[60] Also, forging a relationship with persons from another learning environment exposes students to other learning styles, which typically enhance their learning.[61] Another important benefit to students in building cross-border relationships and networks is the ability to share information and collaborate.[62] In the short term, this is typically helpful to the students while in law school, especially if they are working on projects or topics that involve research or information from the other's country or region.[63] Equally important, the relationships and networks can also bring several long-term benefits including good friendships and business opportunities.[64] Most law students graduate and enter the workforce.[65] The cross-border relationships and networks that they form during a student exchange will likely become invaluable to their success in a global marketplace.[66] For example, these relationships and networks can provide opportunities for them to win new business;[67] collaborate on cases or projects; or simply provide a trusted local contact.[68]

In addition to the students, faculty, and institutions also benefit immensely from student and faculty international collaboration and exchange programs.[69] First, faculty members often increase their cross-cultural competence by interacting with international students, faculty and persons in the international community.[70] Second, faculty members teaching courses

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58.   Alexander H.E. Morawa & Xiaolu Zhang, *Transnationalization of Legal Education: A Swiss (and Comparative) Perspective*, 26 PENN ST. INT'L L. REV. 811, 829 (2008).

59.   *See* Judy Willis, *The Current Impact of Neuroscience on Teaching and Learning*, *in* MIND, BRAIN, & EDUCATION: NEUROSCIENCE IMPLICATIONS FOR THE CLASSROOM 45, 54 (David A. Sousa ed., 2010) (noting that positive peer interactions and well-planned collaborative groups increase dopamine levels which in turn enhances learning).

60.   *See* Tavares, *supra* note 37, at 220, 221.

61.   *See* Willis, *supra* note 59, at 63.

62.   *See id.*

63.   *See* Tavares, *supra* note 37, at 213; Richard Goldman, *Networking: How Successful Lawyers Do It and Why You Should, too*, A.B.A. J. (Jan. 10, 2019, 6:30 AM), http://www.abajournal.com/voice/article/networking_how_successful_lawyers_do_it_and_why_you_should_too.

64.   *See* Goldman, *supra* note 63; Kaiser-Jarvis, *supra* note 52, at 958.

65.   *See* Goldman, *supra* note 63; Tavares, *supra* note 37, at 214.

66.   *See* Goldman, *supra* note 63; Kaiser-Jarvis, *supra* note 52, at 958.

67.   Goldman, *supra* note 63 (noting that "[r]elationships are the bedrock of winning and keeping business").

68.   *See* Kaiser-Jarvis, *supra* note 52, at 958.

69.   Kim, *supra* note 35, at 943–44.

70.   *Id.* at 944.

based on international legal issues must study those issues, which then enhances their global perspective and makes them better teachers in the international and domestic settings.[71]   As with students, faculty can also create and increase personal and professional networks by participating in student and faculty international collaboration and exchange programs.[72] One of the many benefits of this increased networking is the opportunity to work on joint research collaborations.[73]   This opportunity not only facilitates the faculty member's professional growth, but it also "bring[s] the two partner universities even closer."[74]

Professor Rosa Kim proposes that law schools encourage and support student and faculty exchange programs and collaboration because of the direct and indirect benefits to law schools.[75]   To start, one of the most visible benefits is the opportunity for law schools to market their brand internationally.[76]   Through student and faculty exchanges, law schools can increase their visibility and influence in the host institution, community, and country and showcase their academic and other programs.[77]   To a large extent, international recognition of the programs law schools offer "is necessary to demonstrate standing as a world-class institution," increases the law school's ability to attract international students, and demonstrates the law school's reputation for preparing "globally competent graduates."[78]

Law schools typically argue that a lack of funding poses the greatest restriction to pursuing student and faculty international exchange programs and collaborations.[79]   International travel, accommodation, and meals can be costly and outside of the schools' budget.[80]   There are also administrative limits including visa restrictions.[81]   However, the Internet and the advancements in technology have enhanced the ability to "deliver education across borders"[82] while keeping costs to a minimum.[83]

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71.   *Id.* at 943–44 n.174.
72.   *Id.*
73.   *See* Atalar, *supra* note 37, at 69.
74.   *Id.*
75.   *See* Kim, *supra* note 35, at 944.
76.   *Id.*
77.   Sara Kurtz Allaei, *Building and Maintaining a Global Brand: Higher Education and International Enrollments*, THE EVOLLLUTION (June 24, 2016), http://evolllution.com/revenue-streams/global_learning/building-and-maintaining-a-global-brand-higher-education-and-international-enrollments/.
78.   *Id.*
79.   *See* Mills & McLendon, *supra* note 34, at 11–12.
80.   *See id.*; Atalar, *supra* note 37, at 64.
81.   *See* Atalar, *supra* note 37, at 65.
82.   Altbach & Teichler, *supra* note 28, at 19.
83.   *See* Margaret Y. K. Woo, *Reflections on International Legal Education and Exchanges*, 51 J. LEGAL EDUC. 449, 455 (2001) (explaining that online learning "may be

III.   THE VALUE OF SCHOLARLY LEGAL WRITING

The ability to conduct rigorous legal analysis, build persuasive arguments, and produce critical writing cannot be contested.[84]   It goes without saying that scholarly legal writing is indispensable to students' meaningful study of the law.[85]   Not only does it build skills that law students need to be successful in their law studies and future practice, such as reasoning, research and oral communication, but it also offers them a wholesome learning experience of the law, thus improving learner outcomes.[86]

Typical scholarly legal writing curricula provide students substantial instruction in legal research and analysis, argument building and structure, problem solving, written expression and using authorities, as well as writing with integrity and avoiding plagiarism.[87]   Importantly, facilitating students' engagement in their own research through deeper reflection and active engagement with the material ensures meaningful understanding of the subject matter and the retention of the material.[88]   The personal immersion in research, self-criticism, self-editing, and teachers' critique make scholarly writing an experiential learning exercise which goes beyond examination writing, to which law students are commonly exposed and which only operates well if certain factors are in place: good memory and working well under extreme pressure with little time for self-critique.[89]   After all, students taking scholarly legal writing classes are expected to write extensive research papers over a period of time in which they are expected to: identify a legal

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the least costly and most creative way of continuing legal exchanges"); *but see* Raymond J. Friel, *Special Methods for Educating the Transnational Lawyer*, 55 J. LEGAL EDUC. 507, 509 (2005) (noting that "technology cannot replace real-time faculty exchanges").

  84.   *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS 143 (1979), http://thepractice.law.harvard.edu/assets/Lawyer-Competency-The-Role-of-the-Law-Schools.pdf; Jessica Wherry Clark & Kristen E. Murray, *The Theoretical and Practical Underpinnings of Teaching Scholarly Legal Writing*, 1 TEX. A&M L. REV. 523, 527–28 (2014).

  85.   Clark & Murray, *supra* note 84, at 526-28; *see also* Stanley B. Baker et al., *Of What Value Is a Scholarly Writing Course for Doctoral Students?*, VISTAS ONLINE 1, 2,   8   (2014),   http://www.counseling.org/docs/default-source/vistas/article_25.pdf?sfvrsn=50a07c2c_10.

  86.   *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 84, at 1, 34; Clark & Murray, *supra* note 84, at 535; Baker et al., *supra* note 85, at 2.

  87.   *See* Baker et al., *supra* note 85, at 2.

  88.   *See* Clark & Murray, *supra* note 84, at 527, 537; AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 84, at 14.

  89.   Clark & Murray, *supra* note 84, at 528; AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *supra* note 84, at 11.

research topic relevant for further exploration; explain and analyze the technical problems entailed by the research topic; construct solid arguments structured in a logical fashion; identify, employ and explain clearly the methodology (legal or interdisciplinary) that is feasible for their research topic; demonstrate accurate knowledge of the field of law in which the research problem is situated; and ensure clarity of language and expression as well as adequate referencing and quality of research.[90] Needless to say, students are required to engage in a rigorous process of research, analysis and writing.*

As law studies are generally perceived as practice-oriented studies, training "students to be professionals rather than scholars," questioning the value of teaching scholarly writing to law students may arise.[91] Its requirements may seem disconnected from the hands-on writing that is necessary in practice.[92] However, scholarly writing "is not without practical value."[93] Clark and Murray argued that the dichotomy between "practical, client-based writing" and "non-practical, scholarly writing" such as research papers is false.[94] In fact, the writing demands students must meet for successfully completing a legal research paper, such as systematic research reflected in an in-depth understanding of the research topic, accurately presented content, and structured argument, facilitate the developing and refining of skills necessary for any writing responsibility.[95] Like oratory, writing is an intrinsic part of the legal profession.[96]

Given that scholarly writing creates an environment of learning by doing, it offers students "active learning experiences: experiences that allow students to solve problems, complete projects, and discover knowledge and

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90.   Univ. of the W. Indies, Faculty of Law Undergraduate Student Handbook   Academic   Year   2020–2021   71   (2020), http://www.mona.uwi.edu/law/sites/default/files/law/uploads/FOL%20Faculty%20Handbook_ Version8Sept2020.pdf [hereinafter Handbook].

91.   Ruthann Robson, *Law Students as Legal Scholars: An Essay/Review of Scholarly Writing for Law Students and Academic Legal Writing*, 7 N.Y. City L. Rev. 195, 195–96 (2004).

92.   *Id.* at 210 n.94.

93.   Clark & Murray, *supra* note 84, at 535.

94.   *Id.* at 535–36.

95.   *Id.* at 536.

96.   *Id.* at 528, 536–37; *see also* Louis J. Sirico Jr., *Advanced Legal Writing Courses: Comparing Approaches*, 5 Persps.: Teaching Legal Rsch. & Writing 63, 63 (1997); Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. Legal Educ. 119, 119 (2004); Am. Bar Ass'n Section of Legal Educ. and Admissions to the Bar, Legal Education and Professional Development — An Educational Continuum 139 (1992).

conclusions for themselves."[97]   In other words, students are intimately connected with the learning process, making scholarly legal writing experiential in its nature (experiential learning).[98]   Furthermore, scholarly writing is an exercise in student-centered learning: "it supports student autonomy," facilitates closer interaction between students and teachers, and requires clear directions and prompt, targeted feedback.[99]   "In this way, a research paper has the potential to bridge the gap between experiential learning and doctrinal learning."[100]

By its nature of requiring students to research complex authorities and source materials, unearth information that is critically analyzed and reflected in structured and balanced research papers—scholarly writing plunges students into a form of critical legal thinking "that is unlike the types of analysis required for other forms of legal writing."[101]   For that reason, developing *competent lawyering skills* requires law teaching curricula to include training students in legal analysis and reasoning, research, and writing—scholarly legal writing.[102]   Also because, as Gopen puts it bluntly, "[b]ad writing actually costs money."[103]

"[S]cholarly writing offers students the opportunity to develop a . . . [superior command] of an area of law," which sharpens their awareness of those issues that require further research in that area, strengthens their methods of approaching those issues, and refines their legal analysis, all of which contribute to the strengthening of fundamental cognitive processes and "students' overall learning and transition to practice."[104]

Considering the rather rigid nature of doctrinal studies, writing scholarly legal papers offers the opportunity for law students to push the limits of their study of the law.[105]   Altogether, they learn to inquire, challenge, and ultimately think outside of the proverbial box as regards to the

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97.   Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 136 (2009); *see also* LINDA B. NILSON, TEACHING AT ITS BEST: A RESEARCH-BASED RESOURCE FOR COLLEGE INSTRUCTORS 167 (3d ed. 2003); WILBERT J. MCKEACHIE ET AL., TEACHING TIPS: STRATEGIES, RESEARCH AND THEORY FOR COLLEGE AND UNIVERSITY TEACHERS, 120–21 (9th ed. 1994).

98.   Thyfault & Fehrman, *supra* note 97, at 136.

99.   Clark & Murray, *supra* note 84, at 536–37; *see also* Baker et al., *supra* note 85, at 8–9.

100.   Clark & Murray, *supra* note 84, at 537.

101.   *Id.* at 531.

102.   *Id.* at 528; *see also* AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *supra* note 96, at 139–44.

103.   George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 362 (1987).

104.   Clark & Murray, *supra* note 84, at 537.

105.   *Id.*

law, even if this exercise may be difficult for students to imagine at the beginning of the writing journey.[106] Since scholarly legal writing offers in-depth learning of a specific area of law, most of the time of their own choice, students have the opportunity to reflect on their own research interests, search for and determine research topics in various areas of law or interdisciplinary areas that are not necessarily addressed in the curriculum, engage with theories and express their own point of view in ways *unparalleled* in the law curriculum;[107] thus, delving into deeper learning processes.[108]

Finally, but maybe most important, students engage in a journey of personal awareness and growth through scholarly writing.[109] Although writing may be generally perceived by many students as an intimidating, lonely, tedious, and overwhelming exercise,[110] scholarly writing facilitates introspection and a true discovery of personal talents, skills, and interests, often beyond what is already known to the student.* It can be a reimagining of self and personal capacities for the students—a process "unlike any other in law school, where the student is free to develop her/[his] own ideas, untethered by client expectations or limitations in the law."[111]

IV.   TEACHING SCHOLARLY WRITING ONLINE

"It's a new dawn, it's a new day, it's a new life . . . ."[112]

There has been some reluctance to online education within the academy,[113] but COVID-19 made this mode of teaching a necessity.[114] In fact, the pandemic made online teaching and learning a "hot topic."[115] March 2020 marked a memorable standstill of the traditional, face-to-face, mode of operation of universities and schools across the world.[116] Riddled with challenges, the daunting "new normal" imposed by the pandemic also

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106.   *See id.* at 524–27, 531.
107.   Robson, *supra* note 91, at 196.
108.   *Id.*; Clark & Murray, *supra* note 84, at 535.
109.   *See* Baker et al., *supra* note 85, at 8.
110.   Robson, *supra* note 91, at 196.
111.   Clark & Murray, *supra* note 84, at 557.
112.   NINA SIMONE, *Feeling Good*, Album I PUT A SPELL ON YOU (Philips Records 1965).
113.   *See* David I.C. Thomson, *Effective Methods for Teaching Legal Writing Online* 1 (Univ. Denver Sturm Coll. of L., Working Paper No. 08-17, 2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1159467.
114.   *See id.* at 3; Mutton, *supra* note 1, at 439.
115.   *See* Thomson, *supra* note 113, at 1, 5.
116.   Mutton, *supra* note 1, at 439.

gave way to a re-thinking of pedagogy, the re-creation of the academic space and sense of community, and opportunities to develop academic connections that otherwise would be difficult outside the online environment.[117] Life and work as we knew them were interrupted, leading to a time for reflection for all.[118] Educators around the world reflected on their established ways of teaching and reimagined strategies for moving forward.[119]

Taking a retrospective look at the development of education, the benefits provided by the advancement of technology are significant.[120] Internet tools such as Zoom, Skype, and so on, have become empowering instruments that have, more than ever before, brought our various localities closer and have made our world more interwoven and interconnected.[121] Paradoxically, in a time of "social distancing," geographic distance is erased by the online environment.*

Online education is not new.[122] An older lexicon is "distance education" or "correspondence [education]."[123] As Thomson explains, correspondence education was established more than a century ago,

> in an effort to provide learning opportunities to those who had no access to the traditional classroom. As an example, during the Second World War, British prisoners of war were allowed to receive textbooks and educational material sent from England. The University of London, through the Red Cross, delivered exams to 17,600 POWs, and between 1940 and 1945, 11,000 exams were taken at [eighty-eight] different camps.[124]

The situation is different today.* Not free of challenges, the internet technology facilitates "distance" education that has increased the adaptability, accessibility, and availability of education in this time of deep disruption.* The Howard Law-MonaLaw student scholarly exchange project, MonaLaw Scholarly Works-in-Progress Workshop, which is the focus of this Article, seized this connectivity potential of online education and it represents an adaptability strategy to make accessible an opportunity that

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117.   *Id.* at 440.
118.   *See id.* at 439–40.
119.   *Id.* at 439–41.
120.   *See* Thomson, *supra* note 113, at 4–5, 9.
121.   *See id.*
122.   Thomson, *supra* note 113, at 3; *see also* Nour Mheidly et al., *Coping with Stress and Burnout Associated with Telecommunication and Online Learning*, FRONTIERS PUB.   HEALTH   2   (Nov.   11,   2020), http://www.frontiersin.org/articles/10.3389/fpubh.2020.574969/full; Dill et al., *supra* note 2; Thomson, *supra* note 113, at 3.
123.   Thomson, *supra* note 113, at 3–4.
124.   *Id.*

otherwise would have been difficult to execute.* Bringing faculty and students from tertiary institutions located in different countries together may happen on an exceptional basis, namely in the format of conferences, symposia, or seminars.[125] These require time and financial resources that may not be readily available, such as:

1. Scheduling a trip abroad for both faculty members and students: this means faculty taking time off from other course teaching duties as well as from their own scholarly and administrative tasks, and students taking time off from other courses as well as their other activities.[126]

2. Ensuring the necessary funds for such a trip, namely airfare for faculty and students, accommodations, meals, and potential travel documents costs.[127]

All in all, it is a costly affair.[128] The travel restrictions imposed by the pandemic required us to reimagine ways to create academic connections and rebuild the academic space, which led to the development of an online scholarly exchange for students.[129] The opportunity of the online exchange erased all above-mentioned concerns.[130]

In one day, for two hours, the Workshop brought together students from different campuses situated in different countries: Howard University Law School in the U.S. and the University of the West Indies, Faculty of Law in Jamaica, equalizing in this was the possibility of participating in scholarly exchange and neutralizing material factors that may have limited students' and faculty's potential to participate in the exchange.*

However, the glass is only half full.* Whether in Jamaica or the U.S., internet connectivity is not a given and should not be taken for granted.* Safeguards against a new challenge to teaching and learning— including "Zoom-bombing"[131]—must be considered carefully from the onset.[132] Furthermore, weather conditions, geographic and physical location, as well as socioeconomic status, impact accessibility to and availability of the online teaching platform.[133] Any online class scheduled during the fall

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125.   *See id.*; Kim, *supra* note 35, at 919; Atalar, *supra* note 37, at 69.
126.   *See* Clark & Murray, *supra* note 84, at 549.
127.   *See* Atalar, *supra* note 37, at 70.
128.   *See id.*
129.   *See* Dill et al., *supra* note 2.
130.   *See* Thomson, *supra* note 113, at 5; Atalar, *supra* note 37, at 69.
131.   Kate O'Flaherty, *Beware Zoom Users: Here's How People Can 'Zoom-Bomb' Your Chat*, FORBES (Mar. 27, 2020, 11:19 AM), http://www.forbes.com/sites/kateoflahertyuk/2020/03/27/beware-zoom-users-heres-how-people-can-zoom-bomb-your-chat/?sh=5eb10fd7618e.
132.   *Id.*
133.   Benjamin Herold, *The Disparities in Remote Learning Under Coronavirus (in Charts)*, EDUCATIONWEEK (Apr. 10, 2020), http://www.edweek.org/technology/the-

semester is susceptible to interruptions caused by the hurricane season affecting Jamaica and some parts of the U.S.[134] Power outages due to severe weather conditions indiscriminately affect access to classes across the board.[135]

Of immense concern are the socioeconomic inequalities that are exacerbated by the pandemic, and this is also reproduced by the dependence on internet tools for accessing education.[136] Unreliable internet connectivity and unavailability of technological devices hinder access to online classes, especially for those from lower socioeconomic backgrounds.[137] Given that accessible education is broadened now to include requisites such as securing home internet connection,[138] as well as owning or accessing an electronic device, which is not yet in the immediacy of everyone, reflects and creates asymmetric access to and experiences of teaching and learning due to socioeconomic disparities.[139]

In the U.S., as in the Caribbean, a number of law students are working students, whether it is in a paid job, or an unpaid externship or internship.[140] In a face-to-face teaching environment, most working students would make arrangements with their employers to ensure their attendance in class.[141] There is typically a clear separation of tasks.[142] They focus on work

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disparities-in-remote-learning-under-coronavirus-in-charts/2020/04; Heather L. Schwartz et al., *Opportunities and Challenges in Using Online Learning to Maintain Continuity of Instruction in K-12 Schools in Emergencies*, 4, 10 (RAND Educ. & Lab., Working Paper No. WR-A235-1,   2020), http://www.rand.org/content/dam/rand/pubs/working_papers/WRA200/WRA235-1/RAND_WRA235-1.pdf.

134.   Schwartz et al., *supra* note 133, at 9–10.
135.   *See id.* at 15.
136.   *See* Herold, *supra* note 133.
137.   *Only One-Third of Jamaica's Students Accessing Online Classes Based on Sample*,   CARIBBEANNATIONALWEEKLY.COM   (Oct.   13,   2020) https://www.caribbeannationalweekly.com/caribbean-breaking-news-featured/only-one-third-of-jamaicas-students-accessing-online-classes-based-on-sample/; Herold, *supra* note 133.
138.   Herold, *supra* note 133; *see also Only One-Third of Jamaica's Students Accessing Online Classes Based on Sample*, *supra* note 137. For example, some students, lacking reliable internet at home, may need to visit relatives, friends or neighbors to access the online tools to join classes, conduct research, access examinations or upload and submit their assignments and exams.
139.   *See* Herold, *supra* note 133; Courtenay Harris et al., *A Socioeconomic Related 'Digital Divide' Exists in How, not if, Young People Use Computers*, PLOS ONE 1–2 (Mar.   31,   2017), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC5376329/pdf/pone.0175011.pdf.
140.   AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *supra* note 96, at 268.
141.   *See id.*
142.   *See id.* at 319; *c.f.* Mheidly et al., *supra* note 122, at 2–3.

at work and schoolwork at school.[143] This sometimes does not hold true in an online learning space.[144] The online learning model creates difficulties for some students to shift the focus from work and focus only on learning, especially when they remain in their work environment.[145] Students' educational experience is thus amalgamated into a work-learning process that impoverishes their learning process.[146]

Having been forced to re-think traditional pedagogical modes and reach out to meet the learning needs of students through virtual education, questions about the necessity of "physical proximity" in the teaching and learning process, as well as about the mental health of students, are pertinent.[147] Online teaching, while beneficial, cannot replace the dynamics of a university campus.[148] "Learner isolation" and "frustration, anxiety, and confusion" become the challenges of this mode of education, especially when it is applied across the board.[149] Much has been written about the significant burden that the pandemic, coupled with the shift to online learning, has imposed on the students' physical and psychological well-being.[150] For one, the increased on-screen time can cause damage to the eyes[151] and posture.[152] Equally important and an increasing area of concern for educators are the reports of increased levels of anxiety, stress, and burnout[153]—in part attributed to exhaustion from focusing on a screen for

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143.   *See* AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *supra* note 96, at 268.

144.   *See* Mheidly et al., *supra* note 122, at 1–2.

145.   *See id.* at 2.

146.   *See* RONALD A. COHEN, THE NEUROPSYCHOLOGY OF ATTENTION 212 (2d ed. 2014) (noting that "[b]oth attention and associative formation are fundamental components of learning."); Ray Schroeder, *Wellness and Mental Health in 2020 Online Learning*, INSIDE HIGHER ED (Oct. 1, 2020, 3:00 AM), http://www.insidehighered.com/digital-learning/blogs/online-trending-now/wellness-and-mental-health-2020-online-learning.

147.   Thomson, *supra* note 113, at 8.

148.   *Id.* at 11–12.

149.   *Id.* at 8 (quoting Noriko Hara & Rob Kling, *Student Distress in a Web-Based Distance Education Course*, 3 INFO., COMMC'N & SOC'Y 557, 559 (2000)); *see also* Kevin M. Brown, *The Role of Internal and External Factors in the Discontinuation of Off-Campus Students*, 17 DISTANCE EDUC. 44 (1996); *but see* John J. Ketterer & George E. Marsh II, *Re-Conceptualizing Intimacy and Distance in Instructional Models*, 9 ONLINE J. DISTANCE LEARNING ADMIN. 1, 3 (2006), http://www.westga.edu/~distance/ojdla/spring91/ketterer91.pdf.

150.   *See, e.g.*, Mheidly et al., *supra* note 122, at 1–2.

151.   Schroeder, *supra* note 146.

152.   Mheidly et al., *supra* note 122, at 3.

153.   *Id.* at 1, 3; *see also* Schroeder, *supra* note 146 (addressing burnout in faculty members).

long periods—and isolation resulting from quarantines.[154] Anxiety, stress, and burnout diminish focus and undermine effective learning.[155]

The pandemic confirmed what literature has already pointed out, that students need the physical space of the classroom, the interaction with their peers, "and some feel a loss of connection with the teacher in an online class as well."[156] This is not surprising especially for scholarly writing classes since they facilitate students' interaction with faculty, which generally increases their experience of studying the law.[157]

Equally relevant and disruptive to successful learning are the constant reports and visuals of violence against persons of color in the United States, particularly those sparked by the violent deaths of George Floyd and many others, as well as the overwhelming divisive rhetoric.[158] While we were first tempted to say that the disruption to learning would be most relevant to the students in the United States, and in particular students of color, ample studies by psychologists lead us to conclude that these incidents can also cause severe distress to students in the Caribbean and worldwide.[159] These studies suggest that merely witnessing or hearing about a person's suffering can evoke feelings of personal distress.[160]

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154. Mheidly et al., *supra* note 122, at 2–3.

155. Dorainne J. Levy et al., *Psychological and Biological Responses to Race-Based Social Stress as Pathways to Disparities in Educational Outcomes*, 71 AM. PSYCH. 455, 457 (2016) (noting that stress negatively impacts "cognitive processes such as attention, memory, and executive functioning"); *see also* Sha-Shana Crichton, *Incorporating Social Justice into the 1L Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 MICH. J. RACE & L. 251, 275, 279, 281–82 (2019) (discussing the impact of anxiety and stress on law students' ability to learn successfully, and particularly, law students of color).

156. Thomson, *supra* note 113, at 8–9.

157. Clark & Murray, *supra* note 84, at 537–38.

158. *See* Levy et al., *supra* note 155, at 455; *What Students are Saying About the George Floyd Protests*, N.Y. TIMES (June 4, 2020), http://www.nytimes.com/2020/06/04/learning/what-students-are-saying-about-the-george-floyd-protests.html.

159. *See* Josephine Ross, *Warning: Stop-and-Frisk May Be Hazardous to Your Health*, 25 WM. & MARY BILL RTS. J. 689, 729 (2016) (referencing Daphne Blunt Bugental et al., *Influences of Witnessed Affect on Information Processing in Children*, 63 CHILD DEV. 774, 774 (1992)) (noting that "[p]sychologists have found that adults and children can become alarmed and disturbed simply by seeing another person in distress"); C. Daniel Batson et al., *Distress and Empathy: Two Qualitatively Distinct Vicarious Emotions with Different Motivational Consequences*, 55 J. PERSONALITY 19, 19 (1987); Levy et al., *supra* note 155, at 455.

160. Batson et al., *supra* note 159, at 20, 21; Joshua D. Wondra & Phoebe C. Ellsworth, *An Appraisal Theory of Empathy and Other Vicarious Emotional Experiences*, 122 PSYCH. REV. 411, 421–22 (2015); Ruud Hortensius et al., *Personal Distress and the Influence of Bystanders on Responding to an Emergency*, 16 COGNITIVE, AFFECTIVE & BEHAV. NEUROSCIENCE 672, 673 (2016).

Paradoxically, the very tools that students need for online learning, such as computers and smartphones, are the ones that also deliver these disturbing occurrences worldwide.[161]   Fortunately however, studies also show that positivity and positive interactions can minimize the disruption to learning caused by stress, including chronic stress and distress.[162]   For these reasons also, students need positivity and more positive interactions with their teachers and peers.[163]   This is particularly true for students engaging in scholarly writing, which requires intense focus.[164]

V.   PREPARING FOR AND EXECUTING THE SCHOLARLY EXCHANGE WORKSHOP

        After deciding to hold the Howard Law-MonaLaw Scholarly Works-in-Progress Workshop, we then turned our focus to the execution.[165]   The UWI MonaLaw students who participated in the Howard Law-MonaLaw Scholarly Works-in-Progress Workshop were students pursuing the advanced writing course, Supervised Independent Research Paper, in which they undertake extensive independent study in the area of law of the student's own interest.[166]   Under the supervision of one or more faculty members, students' completed work usually leads to a substantial research paper of 8,000 to 10,000 words.[167]

        The course instructions are two-fold: on the one hand, students are closely supervised on an individual basis by a faculty member with expertise in the area of the student's research interest; on the other hand, students pursue a number of research and writing workshops conducted by the course coordinator.[168]   These workshops introduce students to strategies that are useful for crafting a feasible research question, structuring the paper and building a solid argument as well as methodologies that can be used in conducting research in the field of law, and the mechanics of research writing.[169]   Furthermore, the workshops equip students with the essential

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        161.   *See* Sha-Shana Crichton, *Teaching in the Time of Disruption: A Case for Empathy and Honoring Diversity*, 25 J. LEGAL WRITING INST. (forthcoming 2021).
        162.   *See* Willis, *supra* note 59, at 54, 57–58.
        163.   *See id.*
        164.   *See* Clark & Murray, *supra* note 84, at 537.
        165.   *See* Letter of Intent, *supra* note 18.
        166.   UNIV. OF THE W. INDIES, FACULTY OF LAW UNDERGRADUATE STUDENT HANDBOOK   ACADEMIC   YEAR   2020–2021   71   (2020), http://www.mona.uwi.edu/law/sites/default/files/law/uploads/FOL%20Faculty%20Handbook_Version8Sept2020.pdf [hereinafter HANDBOOK].
        167.   *See id.*
        168.   *Id.*
        169.   *Id.*

knowledge about legal research, resources for conducting research—
including library catalogs, databases, electronic journals, and print
resources—and place particular emphasis on discussing referencing
protocols and plagiarism.[170] Outside of the taught classes and the individual
supervision meetings with their respective supervisors, students are in direct
contact with the course coordinator for research technical advice.[171]

The students at Howard Law who participated in the Howard Law-
MonaLaw Scholarly Works-in-Progress Workshop were members and staff
editors[172] of the Howard Human and Civil Rights Law Review ("HCR").[173]
HCR "is a student-managed, faculty-supervised law review published by the
Howard University School of Law."[174] It is one of the two student-managed,
faculty-supervised legal publications at Howard Law.[175] The HCR publishes
articles concerning human and civil rights and international law.[176] The
students take a weekly class[177] in which they address topics such as how to
do a substantive edit, grammar, and footnoting.[178] They edit and perform
citation checks on incoming articles.[179] Ultimately, they are expected to
write a Note of publishable quality to receive credit for the class.[180] For
purposes of the HCR, a Note of publishable quality is 25 or more pages and
properly footnoted.[181] The students work closely with their Note's
supervisor, who typically is a faculty member with expertise in the area of
the student's Note and research interest.[182] This particular cohort of student-
participants have the same supervisor for their Note and participate in a
biweekly uncredited Notes and Comments Group.[183]

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170.   *Id.*
171.   HANDBOOK, *supra* note 166, at 71.
172.   Including one senior staff editor, Aysha Thompson. *Howard Human &
Civil Rights Law Review*, HOW. UNIV. SCH. OF L., http://law.howard.edu/content/howard-
human-civil-rights-law-review (last visited May 12, 2021).
173.   *See id.*
174.   *Id.*
175.   *See id.* The other is the Howard University Law Journal.
176.   *Howard Human & Civil Rights Law Review*, *supra* note 172.
177.   *See id.*; HOW. UNIV. SCH. OF L., STUDENT HANDBOOK 16 (2017),
http://www2.law.howard.edu/sites/default/files/STUDENT%20HANDBOOK%20as%20of%2
08.18.17_0.pdf [hereinafter STUDENT HANDBOOK]. Led primarily by the Editor-In-Chief and
Managing Editor of the Law Review. *Howard Human & Civil Rights Law Review*, *supra* note
18.
178.   STUDENT HANDBOOK, *supra* note 177, at 16.
179.   *See id.*
180.   *See id.*
181.   *See id.*
182.   *See id.*
183.   *See* STUDENT HANDBOOK, *supra* note 177, at 16. This Notes and
Comments Group, supervised by Sha-Shana Crichton, has five student participants. They
meet weekly/biweekly to share writing tips, ideas, writing strategy, and check-in on the Note.

The students from both universities were invited to participate in the Howard Law-MonaLaw Scholarly Works-in-Progress Workshop based on their participation in the Supervised Independent Research Paper course, and the Notes and Comments Group.[184] They were free to accept or reject the invitation; a total of five students from both institutions accepted the invitation to participate.[185] We then selected a date convenient to all of the students.[186] After we confirmed the date, one of the students volunteered to create the flyer, which we circulated to faculty and staff at our respective institutions.[187]

We also asked the students to submit abstracts of their papers, which we compiled in a document and shared with the entire group.* After consulting with the students, we created an agenda for a two-hour workshop that outlined the times they would present their work-in-progress and receive feedback.* To avoid any violations of both institutions' Honor Codes, students were not required to, and did not submit their written papers.[188] Although we read the draft papers of the students we respectively supervised, no student read another's written work.*

We chose Zoom as the platform for the Howard Law-MonaLaw Scholarly Works-in-Progress Workshop because it was the most commonly used platform among us.* Next—approximately one week in advance of the Workshop—we sent out the Zoom credentials to all participants.* On the day of the Workshop, the students were prepared and excited to meet each other and present their work.* They used various modes to present their talking points, including PowerPoint presentations.* We had discussed that immediate feedback might be more useful to the students and in creating the schedule allotted time after two students presented to give feedback.* We both gave initial feedback and invited the other students to join in the feedback.* They gave comments, asked questions, and suggested relevant literature—leading to an engaging and collaborative experience.* Strikingly,

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184.   *See* Memorandum of Understanding, *supra* note 5; HANDBOOK, *supra* note 166, at 71. Three of the five students in the group participated in the Workshop/Session.

185.   Memorandum of Understanding, *supra* note 5. Those students include Alison Samuda, Aysha Thompson, Elorm Sallah, Malik Thompson, and Maya Lowe.

186.   Some students either had to work or had other classes.

187.   Our most sincere gratitude goes to Aysha Thompson who did a stellar job creating the flyer.

188.   *See Policies and Procedures*, HOWARD UNIV. SCH. OF L. (Nov. 7, 2002), http://law.howard.edu/content/policies-and-procedures-0; THE UNIV. OF THE W. INDIES, STATEMENT OF ETHICAL PRINCIPLES AND CODE OF CONDUCT 9, 15 (2018–2019), http://www.mona.uwi.edu/sites/default/files/uwi/Statement%20of%20Ethical%20Principles%20and%20Code%20of%20Conduct.pdf [hereinafter STATEMENT OF ETHICAL PRINCIPLES AND CODE OF CONDUCT]. Honor Codes typically prevent students from reading or taking the possession of another student's written work. *Id.* at 9, 15.

the students displayed a keen interest in each other's work.* The students at Howard Law expressed deep interest in learning about the issues and laws discussed by their MonaLaw colleagues, and the same was true of the MonaLaw students for the issues and laws addressed by their Howard Law peers.*

In our view, the Workshop facilitated vertical and horizontal learning.* The students received feedback and learned not only from us teachers but also from their peers.* The students paid attention to and learned about and from the differences in their topics, techniques, and approaches to research, and they also learned about the similarities of their experiences in the writing process.* There was a vibrancy in the interactions between students that showed genuine comradery and an empowering sense of community that the scholarly exchange workshop enabled.* To illustrate, during a dynamic presentation, one of the MonaLaw students mentioned difficulty locating a particular source.* One of the students at Howard Law had access to the source and promised to share it.*

We collected all the email addresses of the students and created a document to share to further enable networking, collaboration, and building community not only in, but also out of the classroom.[189] As Kouzes and Posner explained, "[c]ollaboration is *the* critical competency for achieving and sustaining high performance—especially in the internet age. It won't be the ability to fiercely compete, but the ability to lovingly cooperate that will determine success."[190]

The Scholarly Works-in-Progress Workshop offered learning experiences, not only for students but also for us as teachers.* Overall, the feedback process showed students' appreciation for the opportunity to have a platform to present their work in progress and hear from other similarly situated students as well.* Students' questions were targeted and engaging, which required more feedback time than the ten minutes we initially allocated.* Learning from this experience, in a future workshop, we would dedicate more time for feedback.*

Overall, we were encouraged by the students' preparation for and participation in the Workshop and its outcome.* And, we were warmed by their expressed appreciation for the interaction.* One student commented:

> I really enjoyed yesterday's session. I enjoyed hearing about everyone's research areas and would love to know how they turn

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189.   *See* Thyfault & Fehrman, *supra* note 97, at 148.
190.   *Id.* at 164 (quoting JAMES M. KOUZES & BARRY Z. POSNER, THE LEADERSHIP CHALLENGE 242 (3d ed. 2002)) (alteration in original).

out.   It was a very informative session, and I appreciate the feedback and assistance I got on my research.[191]

Similarly, another student underscored the invaluable benefit of receiving feedback during the Workshop, noting that:

> [h]aving outside observers, particularly my contemporaries, examine my work allowed me to learn new tactics they use for their work and recommendations of improving my writing and presentation tactics.   I valued the substantive feedback from the professors, and I was pleased after the session.   The session's takeaways direct my work now.[192]

In addition to their expressed gratitude for the feedback, the students also mentioned the beneficial impact hearing different perspectives had on their work.*   One student noted,

> [t]he writing workshop that was hosted by Professor Crichton and Dr. Biholar was extremely productive and beneficial to the development of my Note for Law Review.   During the session, I was able to get a fresh perspective on the direction my research should take, how I should focus my paper, and general feedback on what I had already completed.   Further, hearing my peers discuss their work and how they planned to structure their paper provided additional guidance . . . .   The workshop re-energized me and helped me make progress on my Note.[193]

Additionally, the students noted that hearing about current and legal issues in another country influenced their scholarly writing strategies.*   For example, one student commented that,

> [b]eing able to present my Note outside of my peers on Law Review was very helpful and exciting for me.   Not only was I able to receive feedback from people with a different perspective on the law, but I was also able to practice my presentation skills.   Additionally, being able to hear about current issues that need to be addressed or changed in the law of countries outside of America was something I never got to experience before.   I highly

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191.   Interview with Anonymous Student, Attendee, Howard Law-MonaLaw Scholarly Works-in-Progress Workshop (2020).

192.   *Id.*

193.   *Id.*

recommend this scholarly writing exchange to everyone researching a novel issue.[194]

The Workshop met its goal of offering students the opportunity to engage in a cross-cultural exercise and start collaborating and building community with students from different backgrounds, as such experiences help in the development of "critical thinking, reasoning, and problem solving" as well as "listening [and] expression," and prepares students for a diverse working place.[195]   The Workshop was a clear illustration that scholarly writing is not only an academic exercise, but it has wide-world utility.[196]

VI.   CONCLUSION

We were happy we seized the moment to make the Howard Law-MonaLaw Scholarly Works-in-Progress Workshop a reality.* It was a cost-effective way of creating student exchange where we engaged in positive interactions, talked about scholarship, and learned from each other.* We were encouraged by the students' reaction to this initiative, which sparked a collaboration we had not envisioned—this Article.*

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194.   *Id.*
195.   *See* GERALD F. HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW 132 (1999); Thyfault & Fehrman, *supra* note 97 at 148.
196.   *See* HESS & FRIEDLAND, *supra* note 195, at 132; Thyfault & Fehrman, *supra* note 97, at 148–49.

LET THEM TALK: COGNITIVE & SOCIAL BENEFITS OF ELABORATION

JENNIFER M. COOPER[*]

I.   INTRODUCTION

Prohibiting law students from talking about graded writing assignments outside of class deprives them of positive learning benefits while fueling negative learning behaviors.[1] Talking about writing assignments with other law students engages cognitive benefits of elaboration, social benefits of collaboration, and supports student autonomy.[2]

This Article focuses on the *cognitive and social* benefits of letting students talk about all legal writing assignments outside of the classroom.[3] Allowing students to talk about all writing assignments, *including* graded written assignments, outside of the classroom leverages cognitive benefits of elaboration, the discovery of additional layers of meaning, and deeper structural understanding of material.[4] In addition, allowing students to talk about all writing assignments outside of the classroom provides students with necessary social connection, collaboration, and autonomy support, especially

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1.   *See* Kellen McClendon, *The Convergence of Thinking, Talking, and Writing: A Theory for Improving Writing*, 38 DUQ. L. REV. 21, 21 (1999); Debra S. Austin, *Positive Legal Education: Flourishing Law Students and Thriving Law Schools*, 77 MD. L. REV. 649, 681, 705 (2018); Carol L. Wallinger, *Moving from First to Final Draft: Offering Autonomy-Supportive Choices to Motivate Students to Internalize the Writing Process*, 54 LOY. L. REV. 820, 841 (2008).

2.   *See* McClendon, *supra* note 1, at 21; Austin, *supra* note 1, at 681, 705; Clifford S. Zimmerman, *"Thinking Beyond My Own Interpretation:" Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 959 (1999).

3.   *See* discussion *infra* Part II.

4.   Wallinger, *supra* note 1, at 841; *see also* discussion *infra* Part III.

during remote and hybrid learning necessitated by the COVID-19 pandemic.[5] Talking about writing mimics the practice of law and ushers students into the discourse of the legal community.[6]

Many proponents of talking about writing in and out of the legal writing classroom refer to the benefits of collaborative learning principles.[7] This Article builds on collaborative learning theory with learning benefits from cognitive science as student conversations about writing not only benefit from collaborative learning, but help with cognition—thinking, information processing, comprehension, learning, and ultimately writing.[8]

We often need to get information and ideas out of our own heads to better understand and clarify them.[9] Our colleagues, family members, even beloved family pets, are frequent "sounding boards" for information and ideas.[10] "Let me run something by you."[11] "Does this make sense to you?"[12] "What do you think about this?"[13] While talking to one's self can be useful, it is not always enough to clarify our muddy thoughts.[14] Talking to another "allows one human brain to communicate with another human brain."[15] Talking out our writing helps to clarify our thinking and identify errors more than thinking or silently reading what we have written.[16] We often need to *talk to others* to fully understand, clarify, and refine *our own* information and ideas.[17]

Talking to others about writing is related to, yet substantially different from, the scholarship on peer review, the process of reading

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5.   *See* McClendon, *supra* note 1, at 21; Marie Fazio, *The First Semester of College Has Never Been Stranger*, N.Y. TIMES, http://www.nytimes.com/2020/10/08/us/college-freshmen-coronavirus.html (Oct. 26, 2020); Susan DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489, 489 (2002).

6.   DeJarnatt, *supra* note 5, at 489; *see also* Wallinger, *supra* note 1, at 839.

7.   *See* Zimmerman, *supra* note 2, at 959.

8.   *See* discussion *infra* Parts II & III; Zimmerman, *supra* note 2, at 959; McClendon, *supra* note 1, at 21.

9.   *See* McClendon, *supra* note 1, at 21.

10.   *See id.* at 42.

11.   *See id.*

12.   *See id.*

13.   *See id.*

14.   *See* Kenneth A. Bruffee, *Collaborative Learning and the "Conversation of Mankind"*, 46 COLL. ENG. 635, 642 (1984); McClendon, *supra* note 1, at 23.

15.   McClendon, *supra* note 1, at 42 (quoting LLOYD M. HULIT & MERLE R. HOWARD, BORN TO TALK: AN INTRODUCTION TO SPEECH AND LANGUAGE DEVELOPMENT 2 (2d ed., Allyn & Bacon 1997)).

16.   *Id.* at 47.

17.   *See id*; Bruffee, *supra* note 14, at 636–37.

someone's writing and giving written or oral feedback on the writing itself.[18] This Article speaks to the low-key, low-stakes learning opportunities in study rooms, before and after class, in hallways, near lockers, over coffee or lunch, waiting outside the Professor's office hours, and more specifically to remote learning—anywhere you, dear faculty—are not.[19]

This Article discusses the positive learning benefits students experience when they talk *to other students* about what they are learning and what they are writing.[20]   The cognitive benefits of elaborative learning strategies, including elaboration and rehearsal, help learners generate relationships among concepts and connect prior knowledge and distinguish what they do and do not know.[21]   Students who engage in elaborative learning strategies enjoy more self-directed learning[22] and autonomy support.[23] Finally, students who talk with other students to learn enjoy more social connectedness and collaboration with fellow students.[24]

"Talking is a catalyst of writing."[25] This Article argues that students need to talk *to other students* to learn and to write, both in structured classroom activities and outside of class time.[26] Prohibiting students from talking to other students about writing assignments deprives students of positive elaborative learning benefits, increases anxiety and psychological

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18.   *See* Marilyn R. Walter, *"Writing as Conversation": Using Peer Review to Teach Legal Writing*, 16 J. LEGAL WRITING INST. 411, 413–14 (2010). The objective of peer review is to edit and comment on another student's work to become a better editor of one's own work and to work collaboratively. *Id.*

19.   *See* E. Michael Nussbaum, *Collaborative Discourse, Argumentation, and Learning: Preface and Literature Review*, 33 CONTEMP. EDUC. PSYCH. 345, 352 (2008).

20.   *Id.*

21.   *Id.*; Anthony S. Niedwicki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 45 (2006). Students who can distinguish between what they have learned and what is poorly understood are "more strategic and effective learners." Niedwicki, *supra*, at 45; Nussbaum, *supra* note 19, at 352.

22.   Niedwicki, *supra* note 21, at 48; *see also* Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning Through Learner-Centered Assessment*, 94 L. LIBR. J. 59, 61 (2002). Adult learners, including law students, have a deep need to be self-directing. Niedwicki, *supra* note 21, at 48. "[T]he role of the professor should be more of a facilitator or coach, not as the primary educator." *Id.*

23.   Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 216 (2009).

24.   Austin, *supra* note 1, at 681, 694. "Social connectedness results when students can form and maintain healthy relationships, feel supported by and connected to their friends, and are satisfied with these associations." *Id.* at 681. "Social connectedness is enhanced when law students establish and maintain healthy relationships, and feel satisfied with, supported by, and connected to their peers, faculty, and mentors." *Id.* at 694.

25.   McClendon, *supra* note 1, at 47.

26.   *See* discussion *infra* Parts I–IV.

insecurity,[27] suppresses autonomy,[28] reduces learner control over one's own learning,[29] and increases social isolation.[30] Part I discusses the importance of talking about writing to introduce students to the discourse community of law.[31] Part II discusses the cognitive elaborative learning benefits of students talking about writing.[32] Part III discusses the collaborative and inclusive social autonomy support benefits of students talking about writing.[33] Part IV provides concrete recommendations for LRW faculty willing to let go and let them talk about graded writing assignments outside of the classroom.[34]

II.   TALKING ABOUT WRITING INTRODUCES LAW STUDENTS TO THE
DISCOURSE OF LAW

"Write the way you think.
Write the way you talk.
Talk the way you think.
Talk the way you write.
Think the way you write.
Think the way you talk."[35]

Talking about writing is as critical to law student learning and professional development as writing itself.[36] Talking about writing

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27.   *See* Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y L. & ETHICS 357, 376 (2009). Law school pedagogy engenders "psychological insecurity" and inhibits curiosity and genuine intellectual interest. *Id.*; *see also* Stephen C. Halpern, *On the Politics and Pathology of Legal Education (Or, Whatever Happened to that Blindfolded Lady with the Scales?)*, 32 J. LEGAL EDUC. 383, 389 (1982).

28.   Peter H. Huang & Corie Rosen Felder, *The Zombie Lawyer Apocalypse*, 42 PEPP. L. REV. 727, 745 (2015). Law students who had greater autonomy support from faculty felt more respected and understood instead of controlled, more satisfied in needs for autonomy, competence, relatedness, and self-esteem. *Id.*

29.   Rodriguez, *supra* note 23, at 216.

30.   Peterson & Peterson, *supra* note 27, at 360. "[S]tudies have shown that . . . students' intrinsic motivation decreases, as does their contact with social support networks." *Id.*; *see also* Ann L. Ijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 526–27 (1998).

31.   *See* discussion *infra* Part I.

32.   *See* discussion *infra* Part II.

33.   *See* discussion *infra* Part III.

34.   *See* discussion *infra* Part IV.

35.   McClendon, *supra* note 1, at 22. McClendon's paper explores "the relationship among thinking, talking, and writing as the basis for suggesting that by 'talking-out' what we write, we can improve our writing." *Id.* at 23.

36.   *See id.*

introduces law students to the discourse of law.[37] In *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, Susan DeJarnatt argues that legal educators generally, and legal writing faculty specifically, usher students into the discourse community of law, which relies on "*conversation[s] about writing*," by enabling students to "*talk with each other about their writing*."[38]

Law students struggle with the transition to the discourse community of law for several reasons.[39] Law school teaches through speech—lectures, discussions, and the Socratic method—but primarily evaluates academic progress through written analysis, especially in the first year.[40] Law students lack experience as readers or audience members of written law and legal discourse.[41] Further, law students struggle to understand what need *not* be said or explained to the intended audience.[42] Legal educators generally, but legal writing faculty specifically, can encourage students to use oral skills they already possess to help them "work together to experience their writing as situated in a discourse community, the community of law."[43]

Law is a writing and talking profession,[44] while law school itself is a "pseudo-oral" environment.[45] Law schools teach oral communication skills by providing "an eclectic hodgepodge of opportunities to talk" through the Socratic method in class, trial advocacy, appellate advocacy, clinics, and other courses on negotiation and mediation.[46]

Law students need to talk to learn to write.[47] Conversations with other students about analysis and writing help students develop their own

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      37.   DeJarnatt, *supra* note 5, at 489; *see also* Sarah O. Schrup & Susan E. Provenzano, *The Conscious Curriculum: From Novice Towards Mastery in Written Legal Analysis and Advocacy*, 108 Nw. U. L. Rev. Online 80, 82–83 (2013).

      38.   DeJarnatt, *supra* note 5, at 489.

> Much of the fundamental task of LRW is to enable students to learn that new discourse and to become members of both the academic and practice legal communities. LRW, more explicitly than many other law school classes, specifically aims to have students become members of the broader community of law, outside the law school.

Id. at 492.

      39.   *See id.* at 490, 493, 508.

      40.   *Id.* at 490.

      41.   *Id.* at 493.

      42.   DeJarnatt, *supra* note 5, at 493, 508.

      43.   *Id.* at 493. "Law students lack experience as readers of the law; their ability to invoke the audience for their legal writing is limited by their lack of experience as members of that audience." *Id.*

      44.   *See id.* at 506; Jane Korn, *Teaching Talking: Oral Communication Skills in a Law Course*, 54 J. Legal Educ. 588, 588 (2004).

      45.   DeJarnatt, *supra* note 5, at 506.

      46.   Korn, *supra* note 44, at 588.

      47.   *See id.*

internal conversations about analysis and writing, as well as ushering them into the complex and unfamiliar discourse community of law.[48] To facilitate these conversations, faculty must engage students in conversation among themselves at as many points in the research, analysis, writing, and revising process as possible.[49]

> To enter the discourse of law, students need to experience being the legal writing audience. Furthermore, they need to model the discourse community within their law school experience, and collaborate to talk about their writing, its intent, how it met that intent and how it failed. In short, we need to expand the classroom structure to include opportunities for students to respond to the work of others, as lawyers would, and to communicate directly with their readers.[50]

Many law classes effectively aid students in entering the discourse of law with collaborative learning activities[51] and peer review exercises,[52] which require conversations about legal analysis and writing itself.[53] Many legal writing classrooms model reader-writer conferences on memo assignments, like a meeting with the assigning supervisor, a pre-trial conference, or a client meeting.[54] Some LRW faculty have students participate in simulated senior attorney research meetings where law students orally present their research findings to the faculty who assumes the role of senior attorney questioning the students' results as well as process.[55] Other LRW faculty, myself included, require students to present their research and analysis to an actual attorney outside of class time as part of an ungraded simulation assignment.[56] This is a true simulation experience intended to

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48.   *See* DeJarnatt, *supra* note 5, at 508; Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk About Law*, 54 J. LEGAL EDUC. 570, 572 (2004). "[T]alking about law is an important way to think through a legal concept or problem." *Id.*

49.   DeJarnatt, *supra* note 5, at 509.

50.   *Id.* at 512.

51.   Zimmerman, *supra* note 2, at 961.

52.   *See, e.g.*, Walter, *supra* note 18, at 413–14; Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEGAL WRITING INST. 1, 1–2 (2003); Patricia Grande Montana, *Peer Review Across the Curriculum*, 91 OR. L. REV. 783, 785 (2013).

53.   Walter, *supra* note 18, at 413.

54.   DeJarnatt, *supra* note 5, at 518.

55.   Sarah J. Morath, *From Awkward Law Student to Articulate Attorney: Teaching the Oral Research Report*, SECOND DRAFT, Fall 2013, at 6, 6–7.

56.   *Id.* at 7. The Oral Report to Volunteer Attorney assignment is ungraded and is purely for experiential learning. *See id.* Students present to professional mentors, who question the students about their research and analysis, but do not review the students' writing. *See id.*

provide students an opportunity to practice talking about the law in a very realistic legal discourse setting.[57]

In practice, lawyers spend much of their time writing and "conversing about their writing or another lawyer's writing."[58] Lawyers arguably get paid to do only two things: writing and talking.[59] Lawyers rarely write without discussing their writing with someone else.[60] "Most lawyers do not simply create a final work product on their own."[61] Lawyers work collaboratively with other lawyers in brainstorming, editing, and being edited.[62]

Most law students write individually, not collaboratively, and have few opportunities to discuss their writing with anyone other than their legal writing professor.[63] Students experience the most learning benefits when talking about their writing *while still in the process* of working on their written analysis, not after the final product has been submitted.[64] Students need to engage in conversations with each other at many points in their reading and writing process as these conversations about research, analysis, and writing are critical to students' development of fundamental writing skills.[65]

Kellen McClendon writes about the convergence of thinking, talking, and writing in the legal writing classroom to better understand communication and writing.[66] McClendon describes thinking as a cognitive behavior, a cognitive process, and problem-solving.[67] Thinking is described as internal speech or internalized conversation.[68] We essentially have conversations with ourselves while thinking.[69] Talking is ancient and

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57.   *Id.* at 6–7.
58.   DeJarnatt, *supra* note 5, at 507. "A lawyer's life consists of talking about written analysis, in conferences with supervisors, in meetings with clients, in settlement and mediation conferences, in oral argument. Law school rarely models this reality." *Id.*; *see also* Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others*, 93 NEB. L. REV. 547, 557–58 (2015).
59.   Ricks, *supra* note 48, at 572.
60.   DeJarnatt, *supra* note 5, at 510; Meyerson, *supra* note 58, at 557–58.
61.   Meyerson, *supra* note 58, at 557.
62.   *Id.* at 557–58.
63.   DeJarnatt, *supra* note 5, at 507.
64.   *Id.* at 518. "One of the concepts shared by . . . modern composition theorists and by progressive LRW pedagogy is the importance of focusing on the process of writing and not exclusively on the end product." *Id.*
65.   *Id.* at 509.
66.   McClendon, *supra* note 1, at 42.
67.   *Id.* at 27–28.
68.   DeJarnatt, *supra* note 5, at 495.
69.   *See* McClendon, *supra* note 1, at 30–31.

predates literacy by thousands of years.[70] "Until a hundred years ago, the vast majority of people were illiterate, and for them language was something which came in through their ears and out through their mouths."[71] Language is "man's most precious possession," facilitating thinking and communication.[72] And, language bridges thinking, speech, and writing.[73]

Most law faculty would likely agree that class discussion is one of the most effective ways of teaching.[74] "The place of conversation in learning, especially in the humanities, is the largest context in which we must see collaborative learning."[75] "Furthermore, most of us believe that 'class discussion' is one of the most effective ways of teaching."[76] "The truth, however, is that despite this belief the person who does most of the discussing in most of our discussion classes is the teacher."[77] The objective is to get our students talking more, in and out of class, and ideally to one another about what they are thinking and writing.[78]

III.   TALKING ABOUT WRITING ENCOURAGES ELABORATION AND SELF-EXPLANATION

Talking about writing has many cognitive learning benefits, in addition to inducting students into the discourse community of law.[79] Encouraging students to talk about graded written assignments leverages elaboration to develop a deeper understanding and analysis of complex concepts.[80] "Elaboration is the [cognitive] process of giving new material meaning by expressing it in your own words and connecting it with what you already know."[81]

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70.   *Id.* at 32.
71.   *Id.* at 34 (quoting DICK GILLING & ROBIN BRIGHTWELL, THE HUMAN BRAIN 55 (1982)).
72.   *Id.* at 37.
73.   *Id.* at 37, 47.
74.   Bruffee, *supra* note 14, at 645.
75.   *Id.*
76.   *Id.*
77.   *Id.*
78.   *Id.* at 642.
79.   *See* DeJarnatt, *supra* note 5, at 489; Schrup & Provenzano, *supra* note 37, at 83–84.
80.   *See* DeJarnatt, *supra* note 5, at 509–10; PETER C. BROWN ET AL., MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING 5 (2014); SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 251–52 (2010).
81.   BROWN ET AL., *supra* note 80, at 5; *see also* Alison King, *Facilitating Elaborative Learning Through Guided Student-Generated Questioning*, 27 EDUC. PSYCH. 111, 111–12 (1992).

In the most basic sense, students elaborate by explaining information in their own words to someone else, relating information to what they already know, or explaining how information relates to prior knowledge or other contexts outside of class.[82]   Elaboration also occurs when students "add[] details to . . . information, clarify[] ideas, explain[] the relationship between . . . concepts, make[] inferences," analogize, or associate newly learned material with prior knowledge.[83] Elaborative activities add layers of meaning, promote the learning of difficult concepts, increase structural concept development, and reveal interrelationships between concepts, often exposing critical areas of confusion.[84]

Elaborative strategies support problem-solving and higher-order thinking, such as synthesis,[85] because elaboration promotes active engagement with material and deep, rather than superficial, processing by encouraging learners to explain, reorganize, and clarify material, identifying gaps in understanding, acquiring new strategies and knowledge, and developing new perspectives and new connections to material.[86] Further, engaging in critical, elaborative discourse supports student learning gains over longer periods of time.[87]

Critical, elaborative discourse enhances conceptual learning.[88] In critical elaborative discourse, learners advocate different views, arguments, counterarguments, and rebuttals, while generating connections between ideas and prior knowledge.[89] Some critics of letting students talk about writing assignments express concern that students will get it *wrong*, or unintentionally go down the wrong analytical path.[90] Educational psychologists recognize that learners will likely make mistakes during critical elaborative discourse, but the collaborative and critical nature allows learners to reconcile misunderstandings or at the very least identify knowledge gaps for further inquiry and clarification.[91]

Modeling elaborative strategies for students helps students later ask themselves (and their peers) the same questions when discussing an

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82.   BROWN ET AL., *supra* note 80, at 207.

83.   King, *supra* note 81, at 111–12.

84.   *See* BROWN ET AL., *supra* note 80, at 207; Nussbaum, *supra* note 19, at 352.

85.   *See* Nussbaum, *supra* note 19, at 346–47.

86.   *See id.*; Noreen M. Webb et al., *The Role of Teacher Instructional Practices in Student Collaboration*, 33 CONTEMP. EDUC. PSYCH. 360, 361 (2008).

87.   Nussbaum, *supra* note 19, at 354.

88.   *Id.* at 349, 354.

89.   *Id.*

90.   *Id.* at 350.

91.   *Id.* at 349, 352.

unknown problem, or one they are trying to solve themselves.[92]   This is especially critical with the informal, inductive logic of legal reasoning that results in probabilistic reasoning, rather than absolute certainty found in formal logic.[93]

As experts in our field, law faculty have already created and unconsciously maintain a complex network connecting facts, concepts, processes, knowledge, and skills relevant to our legal discourse community and knowledge domain.[94]   Yet, our students have not developed such robust knowledge organizations, resulting in sparse and superficial knowledge structures.[95]   Providing instructional scaffolding for learning activities, like modeling conversations about the law that students can use to structure their own elaborative discourse both in and out of class, promotes learning by helping students practice skills at their current level.[96]

There is a caveat: You will learn more if *you do the explaining* to someone else.[97]   Listening to *someone else* elaborate or explain material results in minimal learning gains at best for the listener.[98]   Students learn more by elaborating themselves, not by listening to someone else's elaborations.[99]   Giving, rather than receiving, explanations leads to deeper learning because it forces the student giving the explanation to analyze the problem as well as their problem-solving approaches.[100]   Verbalizing one's own thinking process is critical for learning and strongly correlated with achievement.[101]

These elaborative strategies may sound similar to readers familiar with critical reading strategies like paraphrasing, or elaborating reading or text in one's own words, discussed by legal writing scholars Ruth Ann McKinney, Anne Enquist, and Laurel Oates, among others.[102]   Questioning

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92.   Nussbaum, *supra* note 19, at 349, 352.

93.   *See id.* at 350.

94.   *See* AMBROSE ET AL., *supra* note 80, at 43.

95.   *Id.* at 43–45.

96.   *Id.* at 132.

97.   Webb et al., *supra* note 86, at 361.

98.   *Id.*

99.   *Id.*

100.   *Id.*

101.   *Id.* at 367.

102.   *See* RUTH ANN MCKINNEY, READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT 101 (2d ed. 2014); Anne M. Enquist, *Unlocking the Secrets of Highly Successful Legal Writing Students*, 82 ST. JOHN'S L. REV. 609, 669 (2008); Laurel Currie Oates, *Beating the Odds: Reading Strategies of Law Students Admitted Through Alternate Admissions Programs*, 83 IOWA L. REV. 139, 142–43 (1997). Paraphrasing and talking back to text are elaborative strategies used in critical reading. Oates, *supra*; Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163, 163–64 (1993).

text, relating information to prior knowledge, paraphrasing, and rephrasing in your own words are all elaborative learning strategies that students can use when talking about reading, analysis, research, and their writing.[103]

Faculty should model student elaborative learning strategies in collaborative groups by "push[ing] students to clearly describe their thinking," clarify their analysis, and make steps of processing explicit to support students during their own paired and small group collaborative discussions.[104]

Legal writing faculty can incorporate and facilitate elaborative learning strategies in and outside of class.[105] A very simplified approach to elaborative strategies is asking *why* and *how* questions.[106] The following questions and suggestions are general but could be easily tailored for specific assignments.[107]

*Questions for Students:**

- Why do you think that?
- How did you get there?
- Can you explain your thought process?
- How would you put that into your own words?
- How does this material contribute to your argument?
- What patterns do you see developing?
- What do you feel like you understand well?
- What seems confusing to you?

*Techniques for Faculty:**

- Instruct students to explain problem-solving strategies, instead of just stating conclusions.
- Prompt students to engage in specific summarizing and listening activities.
- Prompt students to explain why they believe their predictions are correct (or incorrect).

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103. *See* MᶜKɪɴɴᴇʏ, *supra* note 102, at 29, 101.
104. Webb et al., *supra* note 86, at 377.
105. *See id.* at 362.
106. *Id.* at 362, 372–73.
107. *See id.* at 362.

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IV.   Talking About Writing Fosters Social Connectedness and Autonomy Support

"[L]earning is a social process."[108] Talking about writing with another student develops social connectedness, autonomy support, and the writing itself.[109] Faculty should consider student learning holistically, from the cognitive processes of learning to the learning environments and course climates that influence student learning, foster social connectedness, and support student autonomy.[110] Course climate refers to the intellectual, social, and physical environments where students learn, as well as how faculty communicate with students, "hospitableness that students perceive," and "inclusion and comfort that students experience."[111]

Course climate begins with the course syllabus and can establish an encouraging or punitive course environment.[112] Researchers studied how students perceive course climate by subtly manipulating course syllabus language.[113] Researchers created two versions of the same syllabus for an introduction to American politics course, with identical policies worded differently: one encouraging and one punitive.[114] Both syllabi had identical requirements, but the language varied subtly, especially in describing possible negative grading consequences.[115]

In the study, students were divided into two groups—one receiving the "encouraging" syllabus, the other receiving the "punishing" syllabus.[116] Researchers gauged student perceptions of the instructors based on the syllabus language, asking if students would be comfortable talking to the

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108.   DeJarnatt, *supra* note 5, at 520; *see also* Bruffee, *supra* note 14, at 647, 652.

109.   *See* DeJarnatt, *supra* note 5, at 509.

110.   *See* Ambrose et al., *supra* note 80, at 158.

111.   *Id.* at 158, 176.

112.   *Id.* at 176–77.

113.   *Id.*; John T. Ishiyama & Stephen Hartlaub, *Does the Wording of Syllabi Affect Student Course Assessment in Introductory Political Science Classes?*, 35 PS: Pol. Sci. & Pol. 567, 567 (2002).

114.   Ambrose et al., *supra* note 80, at 176–77; Ishiyama & Hartlaub, *supra* note 113, at 568.

115.   Ishiyama & Hartlaub, *supra* note 113, at 568. The encouraging (or rewarding) syllabus language reads: "If for some substantial reason you cannot turn in your papers or take an exam at a scheduled time you should contact me prior to the due date, or test date, or you will only be eligible for 80% of the total points," whereas the punishing syllabus reads: "If for some substantial reason you cannot turn in your papers or take an exam at the scheduled time you must contact me prior to the due date, or test date, or you will be graded down 20%." *Id.*

116.   *Id.*

professor outside of class.[117] Students were more likely to seek faculty help when the syllabus used encouraging language and much less likely to seek faculty help when the syllabus used punitive language.[118] Students new to the college environment were more likely to be intimidated by punishing language.[119] Applying this finding to legal education, faculty teaching first-year law students should minimize punitive language in syllabi that may cause law students to be similarly intimidated and not seek faculty help.[120]

With remote instruction and courses organized through online Learning Management Systems ("LMS"), students are often exposed to both faculty and course syllabi online prior to any class meetings.[121] With remote learning, students may form initial and possibly lasting impressions of both faculty and course climate through encouraging or punishing syllabus language or practices that impact their overall course experience.[122]

Law school is notorious for its "'culture of competition and conformity,'" encouraging individualism and isolation while discouraging collaboration and student-to-student interaction.[123] The individualistic, anti-collaborative culture is at odds with the collaborative, team-oriented approach more common to the practice of law.[124] The isolation and emphasis on individualized learning have only been exacerbated by the COVID-19 pandemic and transition to online, hybrid, and remote teaching and learning methodologies.[125]

Encouraging, modeling, and fostering social connectedness and student collaboration with other students helps to ameliorate the individualistic, isolating culture and usher students into the collaborative discourse and practice of law.[126] When students form and maintain healthy relationships, they experience social connectedness through support from and

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117.   *Id.*
118.   AMBROSE ET AL., *supra* note 80, at 176–77. "Scolders [worded punitive] policies in boldface block letters and promise[d] harsh punishments rather than offering a pedagogical rationale for the policy." *Id.*; *see also* Ishiyama & Hartlaub, *supra* note 113, at 569.
119.   Ishiyama & Hartlaub, *supra* note 113, at 569; *see also* AMBROSE ET AL., *supra* note 80, at 176–77.
120.   *See* Ishiyama & Hartlaub, *supra* note 113, at 569; AMBROSE ET AL., *supra* note 80, at 176–77.
121.   Richard J. Harnish & K. Robert Bridges, *Effect of Syllabus Tone: Students' Perceptions of Instructor and Course*, 14 SOC. PSYCH. EDUC. 319, 328 (2011).
122.   *Id.*
123.   Meyerson, *supra* note 58, at 555 (quoting Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 519 (2007)).
124.   Meyerson, *supra* note 58, at 556–57.
125.   *See* Fazio, *supra* note 5.
126.   Meyerson, *supra* note 58, at 578.

connection to peers.[127] These healthy relationships where law students feel supported by and connected to both peers and faculty enhance social connectedness.[128]

Despite their learning and socio-cognitive benefits, collaborative and cooperative work have not been well-received in legal education.[129] In many law schools, legal work products are viewed as the result of "primarily individual effort and . . . solely personal achievement."[130] Individual performance and the individualist culture are stressed implicitly and explicitly by law faculty, the Socratic method, and competitive grading policies.[131]

Collaborative argumentation is a social process where individuals work together to construct and critique arguments.[132] Social learning theories teach us how people learn from each other in social contexts and inform how faculty can construct active learning communities.[133] Lev Vygotsky, a Russian teacher and psychologist, examined how social environments influence learning, finding that we learn through interactions and communications with peers as well as teachers.[134] Faculty can create learning environments that maximize the learner's ability to interact with each other through discussion, collaboration, and feedback.[135]

Faculty can create structured conversations about writing.[136] First-year law students can present their analysis to a professor, another first-year student, teaching assistant, upper-level student, or even a volunteer attorney who does not know the issue—i.e., the professor or teaching assistant from another class, or even volunteer attorneys from the community.[137] Faculty should not fear that students are not yet ready for this experience, as students need to model the discourse of the community in order to learn it.[138]

Traditional legal pedagogy teaches through speech but expects written outcomes and evaluates through written analysis.[139] We are constantly reading and talking about what we read, coaching first-year law students to look deeper into complex primary sources (statutes and cases

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127.   Austin, *supra* note 1, at 694.
128.   *Id.*
129.   Meyerson, *supra* note 58, at 554; Zimmerman, *supra* note 2, at 963.
130.   Meyerson, *supra* note 58, at 554.
131.   *Id.* at 554–56.
132.   Nussbaum, *supra* note 19, at 348; Webb et al., *supra* note 86, at 361.
133.   Webb et al., *supra* note 86, at 362.
134.   *Id.* at 361.
135.   Austin, *supra* note 1, at 694; Nussbaum, *supra* note 19, at 348.
136.   DeJarnatt, *supra* note 5, at 522.
137.   *Id.* at 520; *see also* Morath, *supra* note 55, at 7.
138.   DeJarnatt, *supra* note 5, at 520, 522.
139.   *Id.* at 490.

primarily), to remember, develop meaning, context, and deeper meaning in order to connect ideas, synthesize rules, and produce organized, coherent written work in a new format.[140]

Letting students talk about graded writing assignments outside of class also supports learner autonomy.[141] Autonomy support is a learner-centered concept based in self-determination theory, a "rigorously empirical theory of human motivation . . . ."[142] According to self-determination theory, positive learner motivation is shaped by the characteristics of the learner's social environment and course climate.[143] All humans need to experience "autonomy, competence, and relatedness to thrive and maximize their positive motivation."[144] We need to feel that we are good at what we do or can become good at it, that we have choice and can enjoy our activities, and can relate meaningfully to others in the process.[145] Autonomy support includes faculty communication and teaching methods that help students internalize learning goals and is "most salient in an unequal power situation" as in Professor-Law Student.[146]

Autonomy support has three critical features: (1) choice, where faculty provides learners with as much choice as the task or objective allows; (2) rationale, where there is no choice, faculty provides a meaningful rationale for the lack of choice; and (3) student perspective, where faculty demonstrates awareness and consideration of the student's point of view.[147] In sum, law faculty demonstrate law student autonomy support by offering choices in how students learn, meaningful rationales when choice is not available, and acknowledging the student perspective.[148]

In a three-year longitudinal study on self-determination theory in legal education, Sheldon & Krieger found that law students who received greater autonomy support from law faculty experienced greater autonomy, competence, and relatedness as well as higher subjective well-being, better academic performance, and more self-determined motivation in pursuing

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140.   *Id.* at 510–11.
141.   *See* Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCH. BULL. 883, 894 (2007); Wallinger, *supra* note 1, at 841.
142.   Sheldon & Krieger, *supra* note 141, at 884.
143.   *See id.*
144.   *Id.* at 885.
145.   *Id.*
146.   Rodriguez, *supra* note 23, at 216 (quoting KENNON M. SHELDON ET AL., SELF-DETERMINATION THEORY IN THE CLINIC: MOTIVATING PHYSICAL AND MENTAL HEALTH 29 (2003)).
147.   Sheldon & Krieger, *supra* note 141, at 884.
148.   *See id.* at 893.

post-graduation careers.[149]   However, law students who rated faculty more controlling experienced less autonomy support, declining psychological need satisfaction, reduced well-being, poorer academic performance, and less self-determined motivation in pursuing post-graduation legal careers.[150]   The most important causal factor was autonomy support.[151]   Sheldon & Krieger argue that "[t]hese results suggest that, to maximize the learning and emotional adjustment of its graduates, law schools need to focus on enhancing their students' feelings of autonomy."[152]

Autonomy support involves teaching methods that nurture students' intrinsic motivation.[153]   It is most critical in professor-student relationships, where professors are in a position of authority over students.[154]   Faculty support student autonomy by providing as much choice as possible over how to learn and implement course material, meaningful rationales when no choice is available, and acknowledge or consider the student perspective, particularly during difficult or uninteresting, but necessary, material.[155]   Autonomy supportive methods encourage students to discover meaning themselves, without emphasizing the professor's superior knowledge or as the sole source of meaning and information.[156]

In her article, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, Sheila Rodriguez engaged law students in an informal feedback session.[157]   Law students reported never feeling like they had control over their legal writing.[158]   Rodriguez argues that "law students are more likely to develop legal writing expertise when teachers use a feedback method that: (1) reinforces feelings of autonomy and competence; and (2) minimizes students' perception of the power imbalance between student and teacher."[159]   Rodriguez also found that controlling statements convey the message that students are not in control of their learning.[160]

Controlling and autonomy-suppressing faculty behaviors lead to negative learning experiences, feeling controlled, and alienation.[161] "Professors who use controlling behaviors pressure students to behave in a

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149.   *Id.*
150.   *Id.*
151.   *Id.*
152.   Sheldon & Krieger, *supra* note 141, at 894.
153.   Wallinger, *supra* note 1, at 833.
154.   *Id.*
155.   *Id.* at 833–34.
156.   *Id.* at 834.
157.   *See* Rodriguez, *supra* note 23, at 208–09.
158.   *Id.* at 209.
159.   *Id.* at 211.
160.   *See id.* at 208–09.
161.   Wallinger, *supra* note 1, at 829.

certain manner while ignoring the student's perspective on the experience, and providing few, if any, choices."[162]

Most saliently for this Article and legal writing faculty specifically, controlling behaviors include "strict prohibitions on cooperation and collaboration . . . [on] graded writing assignments," and prohibiting "students [from] talking to each other . . . about graded writing assignments."[163] Faculty rationales for prohibiting students to collaborate with or talk to one another about graded writing assignments often do so to ensure students cannot cheat.[164] While faculty concerns about academic dishonesty are valid, such controlling behaviors cut off engagement, prevent students from relating to and connecting with each other, and prohibit students from *learning from one another*.[165]

Law faculty are role models for law students and can both foster and model collaboration, social connectedness, and autonomy support in the classroom.[166] There are many ways to adapt these elements of autonomy support—choice, rationale, and student perspective—to legal writing.[167]

Faculty can provide "autonomy support *with structure* . . . '[by providing] clear expectations, [identifying] optimal challenges, and [providing] timely and informative feedback as . . . [students] attempt to . . . [meet the] expectations and challenges.'"[168] Autonomy support and structure are complementary and mutually supportive classroom elements.[169] "Autonomy support in legal education can, and likely best should, be combined with a structure of defined expectations, challenges that 'stretch' the student, and feedback on performance."[170]

Another method of supporting student autonomy is through cognitive apprenticeships that support learner development.[171] The Carnegie Foundation's report, *Educating Lawyers: Preparing for the Profession of*

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162.   *Id.* at 841.
163.   *Id.*
164.   *Id.*
165.   *Id.* at 842.
166.   *See* Meyerson, *supra* note 58, at 555 ("[L]aw students learn more than just law from their professors. They also learn what it means to be a lawyer. . . . . [T]he greatest role models for students are faculty members themselves.).
167.   Sheldon & Krieger, *supra* note 141, at 884.
168.   Leah Wortham et al., *Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals*, 18 INT'L J. CLINICAL LEGAL EDUC., 105, 115 (2012) (quoting Johnmarshall Reeve, *Self-Determination Theory Applied to Educational Settings*, *in* HANDBOOK OF SELF-DETERMINATION RESEARCH 193 (Edward L. Deci & Richard M. Ryan eds., 2002)).
169.   *Id.*
170.   *Id.*
171.   *See id.* at 111.

Law,[172] identifies four effective methods for "cognitive apprenticeships" applicable to legal education: modeling, coaching, scaffolding, and fading.[173] While the Carnegie report applied these cognitive apprenticeship models to case analysis in doctrinal courses, they apply equally to clinical, experiential, and skills courses such as legal research, and writing.[174]

The four methods for cognitive apprenticeship identified in the Carnegie report as applied to legal writing are:

1. Modeling—making the cognitive analysis of legal analysis visible;
2. Coaching—providing guidance and feedback on legal analysis and writing;
3. Scaffolding—providing support for those not yet at mastery and struggling with analysis;
4. Fading—encouraging students ready to proceed independently and stepping back to let students perform analysis on their own.[175]

In *Autonomy-Mastery-Purpose: Structuring Clinical Courses to Enhance These Critical Educational Goals*, the authors specifically discuss applying autonomy support to clinical legal education, but the principles apply broadly to all legal education settings.[176] *Autonomy-Mastery-Purpose* synthesizes decades of empirical research on autonomy support spanning self-determination theory and educational psychology and concludes that faculty behaviors in the classroom greatly influence students' autonomy and learning outcomes.[177] The research shows:

> that students with autonomy-supportive teachers, compared with students with controlling teachers, experience not only greater perceived autonomy but also more positive functioning in terms of their classroom engagement, emotionality, creativity, intrinsic motivation, psychological well-being, conceptual understanding, academic achievement, and persistence in school.[178]

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172.   WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 61 (2007); Wortham et al., *supra* note 168, at 111.

173.   Wortham et al., *supra* note 168, at 117.

174.   *Id.*

175.   *Id.* (citing THE CARNEGIE REPORT at 63); *see also* SULLIVAN ET AL., *supra* note 172, at 61; Schrup & Provenzano, *supra* note 37, at 80, 83.

176.   Wortham et al., *supra* note 168, at 117, 123.

177.   *Id.*

178.   *Id.* at 123.

The authors provide helpful summaries of autonomy-supportive instructional behaviors and controlling instructional behaviors.[179] Autonomy supportive instruction behaviors include: listening to students, allowing students to work in their own way, providing rationales, offering encouragement, providing informational feedback, and "being responsive to student-generated questions."[180] Controlling instructional behaviors include: uttering directives or commands, monopolizing learning materials, deadline statements, making should or ought to statements, and criticizing students.[181]

Controlling student collaboration also disproportionately silences students of color, reinforcing hierarchy and inequality in the law classroom.[182] A study at the University of Florida College of Law revealed significant racial differences in classroom treatment and participation, finding white students participated more frequently and received more classroom attention than students of color.[183]

Law faculty have a unique responsibility and opportunity to model and inculcate equitable, inclusive, and culturally proficient communication skills.[184] "The first step in teaching law students how to be culturally proficient lawyers is by interacting with them in a culturally proficient way."[185] Inclusive engagement is a learned, intentional behavior.[186] Engaging with racially and culturally diverse peers positively correlates with both social and academic benefits.[187] Such inclusive learning opportunities are not organic—they must be facilitated.[188] Teacher pedagogy and cooperative learning strategies shape and encourage positive student engagement behaviors between and among racially diverse peers.[189]

Old law professors can learn new tricks.[190] Syllabi can be revised.[191] Controlling language can become more autonomy supportive.[192] Inclusive

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179.   *Id.* at 124 fig.3.
180.   *Id.*
181.   Wortham et al., *supra* note 168, at 124 fig.3.
182.   *See* Anastasia M. Boles, *Seeking Inclusion from the Inside Out: Towards a Paradigm of Culturally Proficient Legal Education*, 11 CHARLESTON L. REV. 209, 252 (2017).
183.   *Id.*
184.   *Id.*
185.   *Id.* at 268.
186.   Wendell D. Hall, Alberto F. Cabrera, and Jeffrey F. Milem, *A Tale of Two Groups: Differences Between Minority Students and Non-Minority Students in their Predispositions to and Engagement with Diverse Peers at a Predominantly White Institution*, 52 RSCH. HIGHER EDUC. 136, 150 (2011).
187.   *Id.* at 136.
188.   *Id.* at 138.
189.   *Id.* at 147.
190.   Wortham et al., *supra* note 168, at 109.

engagement can be facilitated.[193] The bottom line is that you set the ground rules for elaboration, collaboration, social connectedness, and autonomy support, and inclusion in your classroom.[194]

<div align="center">

V.   CONCLUSION

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When we tell our students not to talk about what they are learning or writing outside of our classroom, we convey that we are in control of their thinking, learning, and writing—not them.[195] We also convey that we do not trust them and that we need to control their learning, so they do it *right*.[196] But learning does not only happen in the classroom or in our presence.[197] And, learning often occurs through making mistakes.[198]

Course climate, including autonomy-supportive teaching methods, begins with the syllabus and online course material, not just the physical classroom space.[199]   Law faculty can design course syllabi to include autonomy-supportive language, model collaborative and elaborative learning strategies, share the cognitive, social, and autonomy-supportive benefits with students, and foster collaboration and social connectedness in and out of the classroom.[200] Law faculty must communicate expectations, limitations, and parameters of student elaboration, collaboration, and learning activities.[201]

My interest was sparked by a robust exchange of opinions and policies on this issue on the Legal Writing Institute ("LWI") listserv in 2019.[202]   A listserv member posed a question about other *law schools' policies on student assignments and discussions outside of the classroom—* specifically asking if other LRW faculty *allow students to talk about major*

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191.   *See* Ishiyama & Hartlaub, *supra* note 113, at 567; AMBROSE ET AL., *supra* note 80, at 223.
192.   Wortham et al., *supra* note 168, at 124.
193.   Hall et.al., *supra* note 186, at 138.
194.   Wortham et al., *supra* note 168, at 124; *see also* AMBROSE ET AL., *supra* note 80, at 223.
195.   *See* Sheldon & Krieger, *supra* note 141, at 884; AMBROSE ET AL., *supra* note 80, at 78; Wortham et al., *supra* note 168, at 114.
196.   *See* Wortham et al., *supra* note 168, at 117.
197.   *See* Ricks, *supra* note 48, at 586; Iijima, *supra* note 30, at 537.
198.   *See* Wortham et al., *supra* note 168, at 127, 133; BROWN ET AL., *supra* note 80, at 7.
199.   AMBROSE ET AL., *supra* note 80, at 170, 184.
200.   *See* Ishiyama & Hartlaub, *supra* note 113, at 567; AMBROSE ET AL., *supra* note 80, at 84–85, 223.
201.   *See* Wortham et al., *supra* note 168, at 115, 125.
202.   *See*   *LWI's   Listserv   (LWIC)*,   LEGAL   WRITING   INST. http://www.lwionline.org/lwis-listserv-lwic (last visited May 12, 2021).

graded writing assignments outside of the classroom.[203]   Supporters cited the benefits of collaborative learning skills, encouraging learning communities, and simulating the collaboration of *real law practice*, while critics cited concerns of plagiarism or difficulties in evaluating a student's individual work product.[204]   Critics of allowing student discussion about graded assignments expressed concerns about lack of control over student learning, cheating, and difficulty in assessing an individual's work.[205]

My own teaching philosophy seemed to be confirmed; to allow students to talk about writing assignments outside of class at any stage of the process, but to prohibit students from sharing written work with other students, exceptions being my teaching assistants, the Writing Center, and myself.[206]   This view was shared by several LRW faculty who responded to the LWI listserv.[207]   An appendix illustrates syllabus language clarifying expectations for when collaboration is permitted and when collaboration is not.[208]

Collaborative learning occurs over both a continuum of classroom activities and by degrees of collaboration.[209]   Many law faculty already incorporate aspects of collaborative learning in their classrooms.[210]   Law faculty are encouraged to incorporate collaborative learning activities in the legal writing classroom, ranging from a smaller to larger degree, for example:[211]

   1. Small group discussions and brainstorming[212]
   2. Group research[213]
   3. Case charting or outlining[214]
   4. Peer review[215]

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203.   *See id.*
204.   *See id.*
205.   *See id.*
206.   *See id.*
207.   *LWI's Listserv (LWIC)*, *supra* note 202.
208.   E-mail from David Thomson, Professor of Practice, Univ. of Denv. Sturm College of L., to Jennifer Cooper, Assistant Professor of Practice, Univ. of Denv. Sturm College of L. (Feb. 26, 2021, 4:25 MST) (on file with author).
209.   Roberta K. Thyfault & Kathryn Fehrman, *Interactive Group Learning in the Legal Writing Classroom: An International Primer on Student Collaboration and Cooperation in Large Classrooms*, 3 J. MARSHALL L.J. 135, 154 (2009) (suggesting collaborative and cooperative learning activities for the legal writing classroom); *see* Zimmerman, *supra* note 2, at 1009.
210.   *See* Zimmerman, *supra* note 2, at 1003.
211.   *See id.* at 1009.
212.   *See id.* at 1003.
213.   *See id.* at 1004–05.
214.   *See id.* at 1004–05, 1012.

5. Collaborative writing[216]

Letting students talk about writing supports the growing collaborative learning movement within the legal research and writing discipline.[217] Legal writing faculty can encourage collaborative *learning* while drawing the line at students *reading* other student work or collaborative *writing* by selecting the degree of collaboration and clarifying expectations.[218]

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215.   *See* Zimmerman, *supra* note 2, at 1003, 1004-05.
216.   *See id.* at 1003, 1004–05.
217.   Meyerson, *supra* note 58, at 585 ("Collaboration has also become a major component of many law schools' legal reasoning and writing programs."). *See also* John S. Elson, *The Case Against Collaborative Learning in the First-Year Legal Research, Writing, and Analysis Course*, 13 PERSPS.: TEACHING LEGAL RSCH & WRITING 136 (2005).
218.   *See* Zimmerman, *supra* note 2, at 1003–04.

APPENDIX

The following is an excerpt from a first-year legal research and writing course syllabus that encourages collaborative discussions and includes some collaborative writing.[219]

Collaboration with Other Students Encouraged

You are encouraged to discuss your assignments freely with your classmates, but you may not turn in anyone else's work as your own. Articulating the law in your own words is a crucial part of the learning process. You are encouraged to discuss and debate the importance of individual cases to the assignment with fellow students. You are also encouraged to discuss legal issues and ideas with your classmates. However, **you *may not* share your writing with other students, unless specifically instructed to do so by your Professor.**

Because of the importance of collaboration to learning and preparing for practice, you will be assigned to work with other students collaboratively on some assignments. However, you must read the assignment instructions carefully to understand when collaboration is permitted and when it is not. Since 60% of your grade is determined by your individual work on the Final Memo, the grade you will receive in the course remains within your control. You, alone, are responsible for incorporating the lessons of earlier assignments to the Final Memo.

The practice you are preparing to enter is highly collaborative—even when working with opposing counsel. And there are many benefits of simply having another person to share ideas with, and learn from, particularly in the first year of law school.

Review of Written Work Prohibited

You may not show your written work with anyone except your Lawyering Process Professor, the Writing Clinic, and the Teaching Assistants. Unless I give you specific instructions for an assignment to be researched, written, or peer reviewed in a collaborative group, you **may not share your written work with another student before the assignment is due.** You may not ask for, or obtain, another person's work on similar law

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219.   E-mail from David Thomson, *supra* note 208. Collaboration excerpt based on material from David Thomson's Lawyering Process I Fall Syllabus. *Id.*

school assignments.

Unless permitted by these rules, by instructions in the assignments, or by me in some other manner, you may not give your written work to any other person for review until the course is completed. Until I have finished my review of all the papers on that assignment for all the students in the section and the class has moved on to another assignment, no one else may look at your paper. You may thereafter use your papers as writing samples for job applications, or to show to persons who are not in law school, in a manner consistent with these rules.

BUILDING A COMMUNITY OF INQUIRY THROUGH INTERACTIVE MATERIALS: THE INTERACTIVE SYLLABUS

JOSHUA AARON JONES[*]

I.   INTRODUCTION

Obviously, during the Covid-19 pandemic, we have had little, if any, choice about online learning.[1]   The Community of Inquiry ("COI") framework, particularly the focus on social presence, can help educators build strong, online classroom communities.[2]   Educators should help students become socially present and part of a whole.[3]   Such efforts can build an online community, which "has positive effects on the quality of student learning, increases student engagement, and encourages motivation of students in online courses."[4]   In fact, among online courses, students taking online courses that used the COI rated those courses as "high quality."[5]

This paper reminds, or perhaps introduces, law professors to widely recognized education concepts, from learning theory to pedagogical approaches.[6]   Professors may benefit from metacognitive self-assessment to fully understand their educational philosophies and in-class pedagogy.[7]   Especially in distance-learning courses, pandemic or not, professors should consider the COI philosophy and develop highly interactive learning materials.[8]   In this paper, the interactive syllabus ("IS") offers an example of such materials.[9]   The IS can help students better connect with the professor and their classmates, fulfilling COI's social presence component.[10]   Meanwhile, adding interactive elements to class materials furthers Universal Design for Learning ("UDL") goals.[11]

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1.   *See* Peggy Semingson, *Bridging Distance: Fostering Digital Community and Student Voice in Real-Time Synchronous Learning*, J. FAC. DEV., Sept. 2020 at 122.

2.   *See* Holly S. Fiock, *Designing a Community of Inquiry in Online Courses*, INT'L REV. RSCH. OPEN & DISTRIBUTED LEARNING, Jan. 2020, at 134, 137, 138.

3.   *See id.* at 135, 137.

4.   *Id.* at 134.

5.   Barbara Louise Taylor, The Struggle is Real: Student Perceptions of Quality in Online Courses Using the Community of Inquiry (CoI) Framework, (2016) (Ph.D. Dissertation, UC San Diego), http://escholarship.org/uc/item/3qz4c14n; *see also* Semingson, *supra* note 1, at 121–22.

6.   *See* Terry Heick, *A Visual Summary: 32 Learning Theories Every Teacher Should Know*, TEACHTHOUGHT, http://www.teachthought.com/learning/a-visual-summary-the-most-important-learning-theories/ (last visited May 12, 2021); Etiennette Vellas, *A History of Pedagogy*, LE PÔLE, http://lepole.education/en/pedagogical-culture/27-history-of-pedagogy.html (last visited May 12, 2021); discussion *infra* part II.

7.   *See* Vellas, *supra* note 6.

8.   *See* Fiock, *supra* note 2, at 148.

9.   *See About*, </SYLLABUS>, http://www.interactivesyllabus.com/about.html (last visited May 12, 2021); discussion *infra* part IV.

10.   *See About*, *supra* note 9; discussion *infra* part IV.

11.   *See* Jason S. Palmer, *"The Millennials Are Coming!": Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. ST. L. REV. 675, 679, 700 (2015).

Pros and cons of online learning aside, the pandemic has brought us to an online reality.[12] We must make the best of it, and in some instances, our best today may still be the best when our health crisis subsides.[13] The interactive syllabus is a tool that should continue into healthier days.*

II.   PEDAGOGY FOUNDATIONS

To understand the current state of distance education and the necessity of interactive materials, such as the interactive syllabus, readers will benefit from a review of western education's development and its principles.[14]

A.   *Education History*

In a simple, biologic construct of education, learning begins at birth—a person observes their own sensations and surroundings for the sake of survival; learning is a response to physical and emotional stimuli.[15] In a social sense, education or pedagogy as an unorganized concept dates to first persons' gatherings into societies.[16] Parents and elders shared essential knowledge and skills for mutual survival and to preserve the tribe; cave paintings and cuneiform writing preserved accumulated knowledge.[17] Highly organized western education or pedagogy, as we recognize it today, began as an art, first in Ancient Greece.[18] Many scholars consider Socrates as the father of education.[19] Then, only boys of wealthy families attended school.[20]

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12.   *A New Pedagogy is Emerging…and Online Learning is a Key Contributing Factor*, CONTACT N. NORD 2 (Aug. 4, 2020), http://teachonline.ca/sites/default/files/tools-trends/downloads/a_new_pedagogy_is_emerging.pdf.

13.   *See id.*; Yvonne M. Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, 96 DENV. L. REV. 493, 495 (2019).

14.   *See A New Pedagogy is Emerging…and Online Learning is a Key Contributing Factor*, supra note 12, at 2; Ciprian Baciu, *The Evolution of Educational Means. A Historical Perspective*, 180 PROCEDIA - SOC. & BEHAV. SCIS. 280, 281 (2015).

15.   *See* L.R. ALLEN & B.B. KELLY, TRANSFORMING THE WORKFORCE FOR CHILDREN BIRTH THROUGH AGE 8: A UNIFYING FOUNDATION 57–84 (2015) (explaining that learning begins prenatally).

16.   Baciu, *supra* note 14, at 282–83 (arguing that the earliest means of education were among Paleolithic cave dwellers, approximately 40–50,000 years ago).

17.   *See id.*

18.   Vellas, *supra* note 6.

19.   *Socrates*, HIST. (Aug. 23, 2019), http://www.history.com/topics/ancient-history/socrates. More aptly, Socrates is the father of Western philosophy. *Id.* Nevertheless, the Socratic method is a cornerstone to Langdellian legal education. *Id.*; *see also* Bruce A.

During the nineteenth and twentieth centuries, the art of education evolved into educational pedagogy and applied science.[21] Though we have yet to realize current shifts in education, hindsight being a necessity to understanding our past,[22] the twenty-first century seems to be merging science and art into a new pedagogy.[23]

The Covid-19 Pandemic has forced teachers to consider form, substance, and innovation in reimagining classes meant for in-person, real-time learning.[24] Yet, even without the Covid-19 pandemic, leading educators were already adapting new pedagogy based around online learning.[25] Researchers found that the demands of a knowledge-based society, student expectations, technological innovation, and rapidly changing workplaces drive changes in educational practices.[26] They identified seven key elements that make-up the new pedagogy:

1. Blended learning;
2. Collaborative approaches to the construction of knowledge and building communities of inquiry and practice;
3. Multi-media and open educational resources;
4. Increased student control, choice, and independence;
5. Anywhere, anytime, any size learning options;
6. New forms of assessment; and
7. Self-directed, informal, online learning.[27]

Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890-1915*, 46 HIST. EDUC. Q. 192, 192–94 (2006).

20.   Raquel López, *Did Sons and Daughters Get the Same Education in Ancient Greece?*, NAT'L GEOGRAPHIC (Aug. 28, 2019), http://www.nationalgeographic.com/history/magazine/2019/07-08/education-in-ancient-greece/.

21.   *See* Vellas, *supra* note 6; DALE SCHUNK, LEARNING THEORIES: AN EDUCATIONAL PERSPECTIVE 7, 21–22 (6th ed. 2012).

22.   *See Historical Significance*, HIST. THINKING PROJECT, http://www.historicalthinking.ca/historical-significance (last visited May 12, 2021) (explaining a basic premise in the study of history—that determining the significance of an event as having historical value requires a reference to the past that considers the current state of affairs and what may seem insignificant in the present could have great significance in the future).

23.   *See* JEFF HALSTEAD, NAVIGATING THE NEW PEDAGOGY: SIX PRINCIPLES THAT TRANSFORM TEACHING xi–xii (2011); RUDOLF STEINER ET AL., EDUCATION AS AN ART, (Paul M. Allen ed. 1988). Rudolf Steiner created the Waldorf education method, based on his philosophy anthroposophy. STEINER ET AL., *supra*.

24.   *A New Pedagogy is Emerging…and Online Learning is a Key Contributing Factor*, *supra* note 12, at 2, 5.

25.   *Id.* at 2.

26.   *Id.*

27.   *Id.* at 5–9.

This evolution will lead to more accessible and flexible learning environments, shared power between student and teacher, and increased technology use.[28]

B.   *Mind, Brain, and Education Science*

In the law school context, scholars have written very little about effective law school pedagogy or learning issues among law students; however, as suggested by Professor Nancy Millar, law professors can draw from other disciplines, such as "mind, brain, and education science" ("MBE") to inform our teaching.[29]   MBE is a multidisciplinary field that combines neuroscience, psychology, and education to study how pedagogy can help people learn more efficiently.[30] As Professor Millar explains:

> [MBE] offers . . . law professors and others the tools to recognize and address students' learning difficulties through techniques based on empirical evidence.   By integrating research from neuroscience, psychology, and education, MBE science is able to "create more powerful teaching tools" superior to any tool coming from just one discipline.[31]

According to MBE Scientists, there are five "well-established" principles about the human brain:

1. Human brains are as unique as faces;
2. All brains are not equal because context and ability influence learning;
3. Experience changes the brain;
4. The brain is highly plastic; and
5. The brain connects new information to old information.[32]

These characteristics should influence a pedagogical method.[33] Students bring individual levels of intelligence, experiences, skills, and biases,

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28.   *Id.* at 9.
29.   Nancy E. Millar, *The Science of Successful Teaching: Incorporating Mind, Brain, and Education Research into the Legal Writing Course*, 63 St. Louis U. L.J. 373, 373 (2019).
30.   *Id.* at 390.
31.   *Id.*
32.   *Id.* at 391.
33.   *See id.*

suggesting that learning experiences should be personalized through differentiated instruction.[34]

When most educators think of differentiated instruction, they probably recall Fleming's and Mills' ("VARK") Modalities: Visual, Auditory, Reading/Writing, and Kinesthetic.[35] While these are valid learning modalities, unfortunately, many teachers and students make too much of the VARK theory and came to view the "learning styles" as absolute, one or the other for learners.[36] In fact, Fleming and Mills clearly stated in their seminal paper that it was a survey of "*preferences*."[37]   Professors should not perpetuate the myth that students learn in one way or another, as learning encompasses all modalities regardless of our preferences.[38] Nevertheless, the VARK modalities can be helpful guides for developing lesson plans that strive towards differentiated instruction and universal design for learning.[39]

Teachers who use differentiated instruction or learning seek to involve all students in a range of methods so that they may acquire knowledge, the skills to process that knowledge, and the ability to employ processes to make sense of ideas and problems.[40]   Depending on many factors, such as race and socioeconomic status, the materials a teacher uses in differentiated instruction must vary.[41] While a pure differentiated classroom environment might go so far as to set different expectations for students based on their individual needs, such an approach is not possible in the current law school model.[42]   However, with UDL principles, it is still possible to differentiate learning through varied content, processes, work-product, and the classroom setting.[43] The interactive syllabus is one tool that considers MBE science, crosses all VARK modalities, and designs materials with UDL principles.[44]

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34.   *See* Carol Ann Tomlinson et al., *Differentiating Instruction in Response to Student Readiness, Interest, and Learning Profile in Academically Diverse Classrooms: A Review of Literature*, 27 J. FOR EDUC. GIFTED 119, 125–26, 129 (2003); Heather Garretson et al., *The Value of Variety in Teaching: A Professor's Guide*, 64 J. LEGAL EDUC. 65, 65–66 (2014); Millar, *supra* note 29, at 393.

35.   Neil D. Fleming & Colleen Mills, *Not Another Inventory, Rather a Catalyst for Reflection*, 11 TO IMPROVE ACAD. 137, 139–40 (1992).

36.   *Id.* at 137–39.

37.   *Id.* at 139 (emphasis added).

38.   *See* Heick, *supra* note 6.

39.   Fleming & Mills, *supra* note 35, at 138–40.

40.   Tomlinson et al., *supra* note 34, at 119.

41.   *See id.* at 123.
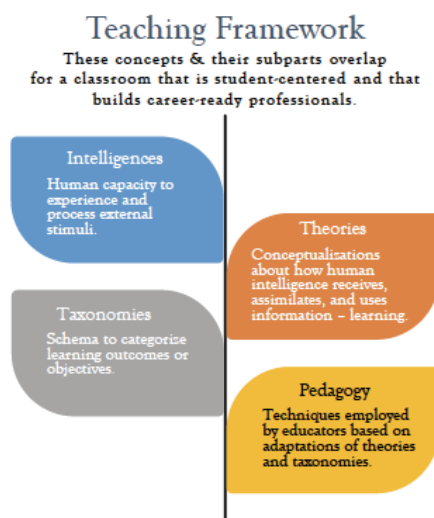
42.   *See* Garretson et al., *supra* note 34, at 65–66.

43.   Millar, *supra* note 29, at 393.

44.   *See About*, *supra* note 9.

C.   *Learning Theories*

Many people think that learning theory ends with Gardner's *Theory of Multiple Intelligences* or Bloom's Taxonomy.[45] Educators and students glom onto the idea that pupils are certain "types" of learners.[46] However, Bloom's work categorized learning outcomes, not brain processing, and even Gardner cautioned against use of any one learning style as controlling a student's education.[47] The seven intelligences exist within theories about how humans learn, and those theories are complemented by systems to manage educational objectives and the actual pedagogical means of teaching.[48] There are at least thirty-two learning theories of which only three are widely accepted.[49] That is, how humans acquire information: behaviorism, cognitivism, and constructivism.[50]

Teaching Framework
These concepts & their subparts overlap
for a classroom that is student-centered and that
builds career-ready professionals.

Intelligences
Human capacity to experience and process external stimuli.

Theories
Conceptualizations about how human intelligence receives, assimilates, and uses information – learning.

Taxonomies
Schema to categorize learning outcomes or objectives.

Pedagogy
Techniques employed by educators based on adaptations of theories and taxonomies.

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45.   *See* HOWARD GARDNER, FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES 7 (2011); Patricia Armstrong, *Bloom's Taxonomy*, VAND. UNIV. CTR. FOR TEACHING (2010), http://cft.vanderbilt.edu/guides-sub-pages/blooms-taxonomy/. The leading theory posits that humans have general intelligence, made up of the many labels that Gardner offers. *See* John Geake, *Neuromythologies in Education*, 50 EDUC. RSCH. 123, 123 (2008).

46.   Geake, *supra* note 45, at 123–24; *see also* Deborah L. Borman & Catherine Haras, *Something Borrowed: Interdisciplinary Strategies for Legal Education*, 68 J. LEGAL EDUC. 357, 367 n.59 (2019).

47.   GARDNER, *supra* note 45, at xv, xl, 126; Borman & Haras, *supra* note 46, at 358–59; Armstrong, *supra* note 45.

48.   Heick, *supra* note 6.

49.   *See id.* (citing Richard Milwood's visual aid example of learning theories); GARDNER, *supra* note 45, at xxxviii, 7; Armstrong, *supra* note 45.

50.   SCHUNK, *supra* note 21, at 21–22, 124, 229.

Behaviorism focuses on helping students perform objectively observable behaviors.[51]   Unobservable mental activities are discounted.[52] Teachers model desired outcomes and reinforce behaviors that help students move towards achieving objectives.[53]   Instruction is programmed in small steps or sequences, building many tasks into one larger objective.[54]   The Suzuki violin method is an example of behaviorism.[55]

On the opposite spectrum, cognitivism involves acquisition or reorganization of cognitive structures through which humans process and store information.[56]   Students must be self-aware and perform metacognitive tasks to fully embrace change (i.e., learning).[57]   While modeling appropriate outcomes, teachers "chunk" information and engage students in active and motivational learning.[58]   Following the music education example, traditional high school music programs follow a cognitivism construct, building from basics in beginner band through advanced theory by the end of high school.[59]

Law professors probably find the constructivism theory most comfortable and compatible with professional school.[60]   Under the constructivist theory, students adjust existing mental models to accommodate new experiences.[61]   Professors guide students to understand the world we live in and to apply new understandings to current and future problems.[62]

No one theory controls education, and this author argues—all of these theories should co-exist in modern legal curriculum.[63]   For example, behaviorism has a place in Socratic method, moot court, mock trial, clinics, and simulation courses; law students must change their cognitive patterns to "think like a lawyer"; they must be willing to adjust their positions and to be

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51.   *See id.* at 103.
52.   *Id.* at 9, 21–22.
53.   *Id.* at 98.
54.   *Id.* at 19, 103.
55.   *About the Suzuki Method*, Suzuki Ass'n of the Americas, http://suzukiassociation.org/about/suzuki-method (last visited May 12, 2021).
56.   Schunk, *supra* note 21, at 124.
57.   *Id.* at 245–46.
58.   *See id.* at 183.
59.   David Mastran, *Four Cognitive Skill Supercharged by Music Education*, Nat'l Ass'n for Music Educ., (May 14, 2018), http://nafme.org/four-cognitive-skills-supercharged-by-music-education/.
60.   *See* Heick, *supra* note 6; Borman & Haras, *supra* note 46, at 382.
61.   *See* Heick, *supra* note 6.
62.   *See id.*; Borman & Haras, *supra* note 46, at 376, 383.
63.   Schunk, *supra* note 21, at 3.

flexible with new information as it arises.[64] The learning taxonomies provide law professors with a way to categorize learning outcomes.[65]

D.   *Learning Taxonomies*

No matter to which learning theory a professor leans, actual teaching (the pedagogy) is best guided when professors consider the learning taxonomies.[66] The taxonomies organize the broad theories into learning outcomes or objectives.[67] Like the learning theories, there are many taxonomies, but only a few are widely discussed:

1.   Bloom's Taxonomy/Anderson Revision 2001;
2.   TeachThought's Learning Taxonomy;
3.   Six Facets of Understanding;
4.   Marzano/Kendall Taxonomy;
5.   Danielson's Depth of Knowledge Framework;
6.   Fink's Taxonomy of Significant Learning; and
7.   The SOLO Taxonomy.[68]

Most professors are familiar with Bloom's Taxonomy.[69] Under the Bloom schema, students reach mastery when they are able to remember, understand, apply, analyze, evaluate, and create.[70] The alternative taxonomies encapsulate these same concepts—milestones in achieving mastery—but with different language and visual depictions.[71] For example, the Six Facets of Understanding helps students explain, interpret, and apply while also developing perspective, empathy, and self-knowledge.[72] Marzano and Kendall use a four-level concept, each with specific pedagogical techniques: retrieval, comprehension, analysis, and knowledge utilization.[73]

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64.   Borman & Haras, *supra* note 46, at 380.

65.   *See* Nina A. Kohn, *Online Learning and the Future of Legal Education: Symposium Introduction*, 70 SYRACUSE L. REV. 1, 4 (2020).

66.   *See* ROBERT J. MARZANO & JOHN S. KENDALL, THE NEW TAXONOMY OF EDUCATIONAL OBJECTIVES 8 (2d ed. 2007); Armstrong, *supra* note 45; *6 Alternatives to Bloom's Taxonomy for Teachers*, TEACHTHOUGHT, http://www.teachthought.com/critical-thinking/5-alternatives-to-blooms-taxonomy (last visited May 12, 2021).

67.   *See* Heick, *supra* note 6; Armstrong, *supra* note 45.

68.   *See 6 Alternatives to Bloom's Taxonomy for Teachers*, *supra* note 66; Armstrong, *supra* note 45; Heick, *supra* note 6.

69.   *See* Armstrong, *supra* note 45.

70.   *See id.*

71.   *See 6 Alternatives to Bloom's Taxonomy for Teachers*, *supra* note 66.

72.   *Id.*

73.   MARZANO & KENDALL, *supra* note 66, at 13; *see also 6 Alternatives to Bloom's Taxonomy for Teachers*, *supra* note 66.

Like the learning theories, the learning objectives taxonomies overlap, and law professors may benefit from considering each of them.[74]

E.   *The "New" Pedagogy*

The Community of Inquiry[75] and Universal Design for Learning offer educators a pedagogical framework that builds a whole student.[76] Such is important, even in graduate and professional schools.[77] Students correlate successful online learning with the level of social interaction during the online experience.[78]

1.   Community of Inquiry

The Community of Inquiry pedagogical framework arose from social-constructivist theories posited by nineteenth and early twentieth-century philosophers, such as John Dewey and C.S. Peirce.[79] In the COI process, students learn through three elements or presences: social, cognitive, and teaching.[80] The model is meant to be adaptable, and in fact, many scholars have added to the COI triumvirate.[81] Especially applicable to online learning,[82] some researchers include a fourth presence—learning presence.[83]

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74.   *See* MARZANO & KENDALL, *supra* note 66, at 151.

75.   *About   the   Framework*,   THE   CMTY.   OF   INQUIRY, http://www.thecommunityofinquiry.org/coi (last visited May 12, 2021).

76.   *See   id.*; *About   Universal   Design   for   Learning*,   CAST, http://www.cast.org/impact/universal-design-for-learning-udl (last visited May 12, 2021).

77.   *See* Anya Evmenova, *Preparing Teachers to Use Universal Design for Learning to Support Diverse Learners*, 4 J. ONLINE LEARNING RES. 147, 150–51 (2018).

78.   *See* Peter Shea & Temi Bidjerano, *Understanding Distinctions in Learning in Hybrid, and Online Environments: An Empirical Investigation of the Community of Inquiry Framework*, 21 INTERACTIVE LEARNING ENV'TS 355, 356–57 (2013) (finding that students' perceptions of social interaction in online courses was positively correlated with indicators of student learning).

79.   Kai Hakkarainen & Sami Paavola, *Community of Inquiry and Inquiry-Based Learning*, *in* ENCYCLOPEDIA OF EDUCATIONAL PHILOSOPHY AND THEORY 5 (Michael A. Peters ed., 2018).

80.   *CoI Framework*, THE CMTY. OF INQUIRY, http://coi.athabascau.ca/coi-model/ (last visited May 12, 2021).

81.   D. Randy Garrison et al., *The First Decade of the Community of Inquiry Framework: A Retrospective*, 13 INTERNET & HIGHER EDUC. 5, 5, 8 (2010).

82.   Noelle Wall Sweany, *From Theory to Practice: Evidence-Based Strategies for Designing and Developing Engaging Online Courses*, 70 SYRACUSE L. REV. 167, 172 (2020); *see also* D. Randy Garrison et al., *Critical Inquiry in a Text-Based Environment: Computer Conferencing in Higher Education*, 2 INTERNET & HIGHER EDUC. 87, 88 (1999).

Social Presence: "[T]he ability of [participants] to identify with the community" (e.g., course of study), communicate purposefully in a trusting environment, "and develop interpersonal relationships by [way of] projecting" their individual personalities.[84]

Teaching Presence: The "design, facilitation, and direction of cognitive and social processes" for the purpose of realizing personally meaningful and educationally worthwhile learning outcomes.[85]

Cognitive Presence: 'The extent to which learners [are able to] construct" and confirm meaning through sustained reflection and discourse.[86]

Learning Presence: Focus on "learner self-efficacy as well as self- and co-regulation, focusing on the active roles of students in terms of metacognitive, motivational, and behavioral traits."[87]

The COI philosophy calls educators to be aware of, and to engage with, students.[88] Differentiated instruction, fully accessible, satisfies Universal Design for Learning aspirations.[89]

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83.   *See, e.g.*, Elvira Popescu & Gabriel Badea, *Exploring a Community of Inquiry Supported by a Social Media-Based Learning Environment*, EDUC. TECH. & SOC'Y, Apr. 2020, at 61, 61.

84.   *Id.*; *see also* D. Randy Garrison, *Designing a Community of Inquiry*, THE CMTY. OF INQUIRY (Jan. 2, 2018), http://www.thecommunityofinquiry.org/editorial9 [hereinafter *Designing a Community of Inquiry*]; D. Randy Garrison, *Understanding CoI Presences*, THE CMTY. OF INQUIRY (Oct. 30, 2019), http://www.thecommunityofinquiry.org/editorial23 [hereinafter *Understanding CoI Presences*]; D. Randy Garrison, *Social and Cognitive Presence Relationships*, THE CMTY. OF INQUIRY (June 17, 2019), http://www.thecommunityofinquiry.org/editorial22 [hereinafter *Social and Cognitive Presence Relationships*].

85.   Popescu & Badea, *supra* note 83, at 61.

86.   *Id.*

87.   *Id.*

88.   *Id.* at 62.

89.   Palmer, *supra* note 11, at 700–01.

2.   Universal Design for Learning

> Universal design for learning is . . . "a framework for designing
> curricula that enables all individuals to gain knowledge, skills, and
> enthusiasm for learning. Universal design in learning provides rich
> supports for learning and reduces barriers to the curriculum while
> maintaining high achievement standards for all."[90]

Teachers should design courses and course materials so that all learners can
have meaningful access.[91] An impactful UDL designer must differentiate
instruction.[92] CAST, an education think tank that seeks to make learning
accessible to all, created UDL Guidelines.[93] According to CAST, UDL
creates students who are purposeful, motivated, "resourceful . . .
knowledgeable, strategic, and goal-directed."[94]

UDL employs three principles that provide multiple means of:

> **Engagement:** The why of learning; "For purposeful,
> motivated learners, stimulate interest and motivation for
> learning."[95]

> **Representation:** The what of learning; "For resourceful,
> knowledgeable learners, present information and content in
> different ways."[96]

> **Action & Expression:** The how of learning; "For strategic,
> goal-directed learners, differentiate the ways that students
> can express what they know."[97]

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90.   *Id.* at 679 (quoting SHERYL BURGSTAHLER, UNIVERSAL DESIGN OF
INSTRUCTION (UDI): DEFINITION, PRINCIPLES, GUIDELINES, AND EXAMPLES 2 (2020),
http://www.washington.edu/doit/sites/default/files/atoms/files/UD_Instruction_06_15_20.pdf)
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91.   Palmer, *supra* note 11, at 700–01.

92.   *Id.* at 701. ("When you teach to accommodate diverse learning styles, all
learners are included in the learning process, not just those whose learning is similar [to the
professors].") (quoting M.H. Sam Jacobson, *Learning Styles and Lawyering: Using Learning
Theory to Organize Thinking and Writing*, 2 J. ASS'N LEGAL WRITING DIRS. 27, 29 (2004)).

93.   *The UDL Guidelines*, CAST, http://udlguidelines.cast.org/ (last visited
May 12, 2021); *About CAST*, CAST, http://www.cast.org/about/about-cast (last visited May
12, 2021).

94.   *The UDL Guidelines*, *supra* note 93.

95.   *About Universal Design for Learning*, *supra* note 76.

96.   *Id.*

97.   *Id.*

UDL principles help students with disabilities, but UDL will also benefit students who do not have disabilities.[98]   Consider, for example, closed-captioned television: It benefits persons with hearing impairments, but it is also helpful to people at the gym or people learning a new language.[99]   When teachers offer students multiple learning mediums, such as an interactive syllabus as opposed to only a paper, they develop connections within and between concepts, as well as between each other and classmates.[100]

As part of the Higher Education Act, Congress has defined "Universal Design for Learning":

> (24) Universal design for learning
>
> The term "universal design for learning" means a scientifically valid framework for guiding educational practice that—
>
> (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and
>
> (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.[101]

And higher education adopts the same statutory definition for "universal design" found in the Labor Code:

> (19) Universal design
>
> The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible

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98.   CAST, *UDL at a Glance*, YOUTUBE (Jan. 6, 2010), http://youtu.be/bDvKnY0g6e4; National Center on Universal Design for Learning, *UDL: Principles and Practice*, YOUTUBE (Mar. 17, 2010), http://youtu.be/pGLTJw0GSxk; *About Universal Design for Learning*, *supra* note 76.

99.   *UDL at a Glance*, *supra* note 98; *see also* Palmer, *supra* note 11, at 703.

100.   *See* Cynthia J. Brame, *Flipping the Classroom*, VAND. UNIV. CTR. FOR TEACHING   (2013),   http://cft.vanderbilt.edu/guides-sub-pages/flipping-the-classroom/; Garretson et al., *supra* note 34, at 77; Amy Roehl et al., *The Flipped Classroom: An Opportunity to Engage Millennial Students Through Active Learning Strategies*, 105 J. FAM. & CONSUMER SERVS. 44, 44–45 (2013).

101.   Alcohol and Drug Abuse Education Amendments, 20 U.S.C. § 1003(24).

(without requiring assistive technologies) and products and services that are interoperable with assistive technologies.[102]

For colleges that receive federal funds, including student financial aid, teacher preparation programs are required to educate students about UDL, and most higher education grant programs require UDL considerations.[103] UDL may also impact a school's compliance with the Americans with Disabilities Act[104] or Section 504 of the Rehabilitation Act of 1973.[105]

Educators should draft documents and presentations with universal design for learning in mind.[106] Cognitive neuroscience shows that the way people learn is as unique as fingerprints.[107] Yet, most teachers prepare as if every student will learn the same way—preparing for the average learner.[108] That is not the best practice, especially in a classroom meant to train lawyers to pass the bar exam and to represent a variety of clients.[109]

III.   STATE OF DISTANCE EDUCATION

Distance learning obviously is not a new concept.[110] Postal-based curriculums first appeared in the United States at least as early as 1728, when Caleb Philips offered a correspondence course in short-hand.[111] The University of London first offered distance education in 1858.[112] Correspondence eventually evolved to radio, television broadcast, recorded videos, and of course, synchronous and asynchronous online learning.[113] Early offerings focused on vocational training, such as clerical skills and mining.[114] Even two decades ago, educators recognized online learning as an emerging trend,[115] if only as blended learning (traditional classrooms with an

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102.   *Id.* at § 1003(23); Assistive Technology Act, 29 U.S.C. § 3002(19).
103.   20 U.S.C. § 1003(24); *UDL in Public Policy*, CAST, http://www.cast.org/impact/udl-public-policy (last visited May 12, 2021).
104.   *See* Americans with Disabilities Act, 42 U.S.C. § 12101.
105.   Employment Opportunities for Individuals with Disabilities Act, 29 U.S.C. § 701.
106.   Evmenova, *supra* note 77, at 161–62.
107.   *See id.* at 148; Sweany, *supra* note 82, at 170.
108.   *See* Tomlinson et al., *supra* note 34, at 119, 132.
109.   Jacobson, *supra* note 92, at 27–28.
110.   Roy D. Sleator, *The Evolution of eLearning:* Backgrounds, Blends and Blackboards . . ., 93 SCI. PROGRESS 319, 319 (2010).
111.   *Id.* at 320.
112.   *History of the University of London*, UNIV. OF LONDON, http://london.ac.uk/about-us/history-university-london (last visited May 12, 2021).
113.   Sleator, *supra* note 110, at 320–22.
114.   *Id.* at 319, 323.
115.   *Id.* at 322–23.

online component).[116]   By 2010, 77% "of US educational organizations" employed blended learning, and scholars predicted that the issue would evolve from a question of *whether* schools offer blended learning to *how* they offer blended learning.[117]   Entirely online law schools emerged, and dozens of law schools offered both synchronous and asynchronous online courses; the American Bar Association ("ABA") expanded the number of hours that law students may take of online courses,[118] and since the pandemic, the ABA has been forced to offer waivers so that schools and students may exceed the number of allowed online course hours.[119] Distance learning is not new.[120]   It is here to stay, adapted to each new medium invented.[121]   As our adaptation to the pandemic has proven, many aspects of life were needlessly complicated, such as anxieties about online teaching.[122] Were prior ABA online education restrictions ever necessary?[123] Apparently not.[124] What then, are the best pedagogical practices?[125]

A.   *The Study of Law and Distance Learning Are Forever Entwined*

     Given the long history of distance learning throughout the world and the internet's common use for several decades, it is baffling that any professor was unprepared or challenged with the technology to convert classes for online learning.[126]   In fairness, the pandemic created an *unexpected* shift from in-person classrooms to online classrooms.[127]   Yet, with thirty-eight states mandating that lawyers have technological

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116.   *Id.* at 325.
117.   *Id.* at 328.
118.   Dutton et al., *supra* note 13, at 499–500; *see also* Robert J. Salzer, *Juris Doctor.com: Are Full-Time Internet Law Schools the Beginning of the End for Traditional Legal Education?*, 12 J. COMMLAW CONSPECTUS 101, 102, 112 (2004) (explaining that in 2002, Concord School of Law graduated its first class of internet law students).
119.   Kohn, *supra* note 65, at 3–4.
120.   Sleator, *supra* note 110, at 319.
121.   *Id.* at 321–22.
122.   *See* Sweany, *supra* note 82, at 168–69.
123.   Kohn, *supra* note 65, at 4 n.15; *see also* Salzer, *supra* note 118, at 104, 109, 110–11.
124.   Kohn, *supra* note 65, at 5.
125.   *Id.* at 9.
126.   *See* Kelsey J. Griffin, *'A Decidedly Suboptimal Set of Circumstance': Harvard Law Professors Evaluate Online Instruction*, HARV. CRIMSON (Apr. 1, 2020), http://www.thecrimson.com/article/2020/4/1/harvard-coronavirus-law-school-zoom/; Sleator, *supra* note 110, at 319, 321–22.
127.   Gabriel Kuris, *The Impact of the Coronavirus on Legal Education*, U.S. NEWS: EDUC. (Aug. 24, 2020, 9:24 AM), http://www.usnews.com/education/blogs/law-admissions-lowdown/articles/the-impact-of-the-coronavirus-on-legal-education.

competence, why was the shift such a dramatic chore among the academy?[128] Online learning for legal education has been discussed for decades, after all.[129] Professors must keep up with technology and share those skills with students.[130]

Recent studies have made positive findings that favor at least some form of online learning.[131] In 2010, the United States Department of Education found that students in blended courses performed better and had stronger learning outcomes than those in only face-to-face classes.[132] A recent study by Indiana University Robert H. McKinney School of Law, showed "that students not only want more online offerings, but also that online classes can deliver the same quality learning experience as live classes."[133]

The study found that:

1. [S]tudents appreciate an online course that is organized in the way it presents material and assignments;

2. [S]tudents equate a quality course with one that engages students with course content—for example, through short, focused, and interesting lectures, or through YouTube videos and other media that relate to course content;

3. [S]tudents associate quality courses with those that involve regular assessment (especially practice-ready assignments) and professor feedback.[134]

In his recent paper, Professor David I.C. Thomson argues that online learning can ease three crises in legal education: "unmet legal needs, the high cost of legal education, and legal communities that do not reflect the

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128.   *See* Robert Ambrogi, *Tech Competence*, LawSites, http://www.lawsitesblog.com/tech-competence (last visited May 12, 2021); Jordan Rothman, *Law Professors Should Have More Practical Experience*, Above Law (Aug. 26, 2020, 11:21 AM), http://abovethelaw.com/2020/08/law-professors-should-have-more-practical-experience/; Griffin, *supra* note 126.

129.   *See* Dutton et al., *supra* note 13, at 499.

130.   *Id.* at 498.

131.   William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. Legal Educ. 93, 94–95 (2014).

132.   *Id.* (citing U.S. Dep't of Educ., Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies 18 (2010)).

133.   Dutton et al., *supra* note 13, at 497.

134.   *Id.*

diverse society that surrounds them."[135]   Much of Professor Thomson's proposal has come to pass, such as online or hybrid first-year law school courses.[136]   Though a consequence of necessity in 2020 and 2021, the success of online learning during the pandemic proves its viability.[137]

B.   *Teachers Must Engage Students*

In the broadest classifications, learning is either active or passive.[138] Is one better than the other?[139] Studies lack consistency because of design variances.[140] However, a 2009 study showed that passive learners and active learners in a business school curriculum showed similar content mastery; but active learners scored higher.[141]

Passive learning does not engage interaction between professor and student; rather, the teacher transfers knowledge to the class, usually by lecture.[142]   Examples of passive learning include reading, watching, or listening.[143]   A traditional syllabus, even if reiterated during a class's introductory session, without more, invites questions that are easily answered with the professor's response, "It's in the syllabus."[144]

There is not a widely accepted definition for active learning.[145] Perhaps this is why active learning methods are less obvious.[146] No matter how well-versed in human intelligence, learning theory, taxonomies for

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135.   David I.C. Thomson, *How Online Learning Can Help Address Three Persistent Problems in Legal Education*, 70 SYRACUSE L. REV. 181, 185–89 (2020) [hereinafter *How Online Learning Can Help*] (suggesting that most of the first-year curriculum should be online); *see also* David I.C. Thomson, *Law School 2.0:   Legal Education for a Digital Age* 11–12 (Univ. Denv. Sturm Coll. L., Working Paper No. 08-27, 2008) [hereinafter *Law School 2.0*].

136.   *How Online Learning Can Help*, *supra* note 135, at 190; *see also* Dutton et al., *supra* note 13, at 494.

137.   *See* Slomanson, *supra* note 131, at 94–95.

138.   Norbert Michel et al., *Active Versus Passive Teaching Styles: An Empirical Study of Student Learning Outcomes*, 20 HUMAN RES. DEV. Q. 397, 397–98 (2009).

139.   *See id.* at 398.

140.   *See id.*

141.   *Id.* at 416.

142.   *See id.* at 400; Kyoungwon Seo et al., *Active Learning with Online Video: The Impact of Learning Context on Engagement*, COMPUTS. & EDUC., May 2021, at 3; Mario Tani et al., *Drivers of Student Engagement in Higher Education: A Behavioral Reasoning Theory   Perspective*,   HIGHER   EDUC.   (Jan.   11,   2021) http://link.springer.com/content/pdf/10.1007/s10734-020-00647-7.pdf.

143.   *See* Michel et al., *supra* note 138, at 399.

144.   *See* Marby McKinney, *Creating an Interactive Syllabus*, SMORE, http://www.smore.com/eg00e-creating-an-interactive-syllabus (last visited May 12, 2021).

145.   *See* Shea & Bidjerano, *supra* note 78, at 356–57.

146.   *See* Michel et al., *supra* note 138, at 398.

learning objectives, or specific pedagogical philosophy, active learning engages the educator as an artist.[147] Active learning requires that the professor think outside the lectern box.[148] Learners are held responsible for their own learning.[149] The flipped classroom provides an example of active learning.[150] Comparing entirely online classes with blended classes, a 2001 study found that students engaged more with video than in blended classes.[151] According to another study:

> There is considerable evidence that well-designed multimedia resources can enhance learning outcomes, yet there is little information on the role of multimedia in influencing essential motivational variables, such as student engagement. . . . A comparison of student engagement between courses that feature increasing numbers of instructor-personalized multimedia components reveals conflicting evidence. While qualitative student feedback indicates enhanced engagement as a function of instructor-generated multimedia supplements, quantitative data reports no significant differences in engagement or learning between the various levels of multimedia inclusion. Findings highlight the complexity surrounding the appropriate use of multimedia within an online course. University policy-makers and instructors are cautioned to examine carefully the cost-benefit ratio of multimedia inclusion for online learning environments.[152]

The pandemic has gifted the academy a unique situation.[153] Now, scholars can undertake empirical research, specific to legal education, with a number of control variables such as different approaches among schools simultaneously occurring after an initial, identical triggering event.[154]

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147.   *See id.*
148.   *See id* at 397–98.
149.   *See id* at 397.
150.   *See* Brame, *supra* note 100 (addressing "flipping the classroom"); Roehl et al., *supra* note 100, at 45 (arguing that Millennial students benefit from a "flipped classroom" teaching model).
151.   *See* Brame, *supra* note 100; B. Jean Mandernach, *Effect of Instructor-Personalized Multimedia in the Online Classroom*, 10 INT'L REV. RSCH. OPEN & DISTANCE LEARNING 1, 2 (2009).
152.   Mandernach, *supra* note 151, at 1.
153.   *See* Semingson, *supra* note 1, at 122.
154.   *See id.*

IV. INTERACTIVE SYLLABUS

To be clear, this author did not invent the "interactive syllabus."[155] Rather, this paper offers the interactive syllabus as an example of aspirational universal design for learning, aimed at supporting a community of inquiry.[156] The syllabus is a key course document that serves many purposes, from the schedule, topics, and objectives to academic policies, such as plagiarism.[157] It is a sort of contract between teacher and student.[158] Thus, it is imperative that every student have meaningful access to the document.[159] As explained by Dr. Guy McHendry:

> As is often pointed out when these [complaints] air, the syllabus is a Byzantine document that eschews any sense of design, audience, or engagement for the sake of delivering the bureaucratic minutia of a class and university. Syllabi are boring to write, boring to read, and recede into the periphery of a course once content exploration begins in earnest.[160]

If a professor designs only one document within a COI framework using UDL principles, let it be the class's most important document—the syllabus.*

For this example, I designed the interactive syllabus in Microsoft PowerPoint, but as discussed further below, numerous platforms or apps could serve the same function—provide the students multiple means of engagement, representation, and expression for this important document.[161]

A. *Skill Set and Preparation*

As of spring semester 2021, every law school professor surely has the following, minimum skill set to design an interactive syllabus:

1. **Software competence**: Word, Google Docs, Pages, PowerPoint, Keynote, Google Slides, Adobe Acrobat,

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155. *See, e.g.*, *About*, *supra* note 9 (offering an interactive syllabus template by Dr. McHendry, upon request).

156. *See* discussion *infra* Part IV, Section D.

157. *See* McKinney, *supra* note 144; *"It's in the Syllabus!"*, INTERACTIVE SYLLABUS, http://www.interactivesyllabus.com (last visited May 12, 2021).

158. *See About*, *supra* note 9.

159. *See id.*

160. *"It's in the Syllabus!"*, *supra* note 157.

161. *See* discussion *infra* Part IV, Sections B & D; *"It's in the Syllabus!"*, *supra* note 157; Mansoor Iqbal, *App Download and Usage Statistics (2020)*, BUS. OF APPS, http://www.businessofapps.com/data/app-statistics/ (last updated Oct. 30, 2020).

and/or Adobe Photoshop. Photoshop may be a stretch for some, but it is extremely helpful for manipulating photos and other graphics.[162]

2. **Video Recording**: Kaltura, within a learning management system ("LMS") (e.g., Canvas or BlackBoard, Zoom/WebEx/Google Meet/; for extra heft, iMovie (Mac only), Adobe Premiere Pro, Adobe Spark, and animation platforms offer many templates and advanced video and sound editing controls).[163]

3. **Hyperlinks**: The interactive syllabus should have hyperlinks throughout, including links into the LMS course page and other integrations; hyperlinks can be added to retrieve items within the same document/presentation or outside the document, as well as to communicate with others (i.e., email, phone call).[164]

4. **HTML:** Though professors need not be fluent in any programming language, some familiarity is helpful.[165]

5. **Images:** How to import images that are free under a creative commons license and how to add hyperlinks, alternative text, and other metadata to those images. This includes photos, icons, 3D elements, charts, and objects.[166]

6. **LMS/Google/Microsoft Cloud:** Cloud storage saves space on your local computer and can be accessed from any device; the interactive syllabus should integrate with, and complement, your class's LMS.[167]

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162.   *See* Evmenova, *supra* note 77, at 152–53.
163.   *See id.* at 154; *Insert and Play a Video File from Your Computer*, MICROSOFT: SUPPORT, http://bit.ly/3tHmxET (last visited May 12, 2021).
164.   *See* McKinney, *supra* note 144; *Create or Edit a Hyperlink*, MICROSOFT: SUPPORT, http://bit.ly/3aSSotJ (last visited May 12, 2021).
165.   *See* Ambrogi, *supra* note 128.
166.   *See* Mandernach, *supra* note 151, at 2.
167.   *Add Files from Cloud Storage*, BLACKBOARD: HELP, http://help.blackboard.com/Learn/Instructor/Course_Content/Create_Content/Create_Course_ Materials/Add_Files_Images_Audio_and_Video/Cloud_Storage (last visited May 12, 2021).

7.   **Accessibility:** Inspect the interactive syllabus for accessibility issues and correct any problems that appear.[168]

8.   **Dissemination:** A shared cloud link, whether in cloud storage or as part of the LMS class page, is the best way to provide the interactive syllabus to students. Depending on the professor's creativity, the interactive syllabus file size may exceed limits imposed by email servers. Users can set security parameters when they share cloud document links.[169]

If these skills seem like a lot, rest assured that tutorials abound on the internet, whether directly from the app or platform or a YouTube video.[170] These are essential office skills in 2021, and professors who lack these skills disserve their students.* The footnotes throughout this section take readers to related tutorials.[171] If all fails and tutorials are lacking, just click around the app.[172] You cannot break it![173] Software developers would never give a consumer access to a part of an app that would allow the consumer to break the app.[174]

Keep in mind that a teacher should still offer a traditional syllabus.* The point of the interactive syllabus is to differentiate instruction by offering multiple means to access the information.[175] The interactive syllabus supplements, but does not supplant the traditional syllabus.[176] Accordingly, professors may find it more efficient to create the traditional syllabus first and use it as a guide for crafting the interactive syllabus.[177] In fact, the paper

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168.   *See* Shawn Lawton Henry et al., *Web Accessibility Tutorials: Headings*, WORLD WIDE WEB CONSORTIUM, http://www.w3.org/WAI/tutorials/page-structure/headings/ (July 27, 2019); *Why Consistency is Important to Accessible Design*, BUREAU OF INTERNET ACCESSIBILITY (May 12, 2020), http://www.boia.org/blog/why-consistency-is-important-to-accessible-design.

169.   *See Add Files from Cloud Storage*, *supra* note 167.

170.   *See id.*; *Insert and Play a Video File from Your Computer*, *supra* note 163; *Create or Edit a Hyperlink*, *supra* note 164.

171.   *See Add Files from Cloud Storage*, *supra* note 167; *Insert and Play a Video File from Your Computer*, *supra* note 163; *Create or Edit a Hyperlink*, *supra* note 164.

172.   *See* Iqbal, *supra* note 161.

173.   *See id.*

174.   *See id.*

175.   McKinney, *supra* note 144.

176.   Adam Baldry & Adam Davi, *Tired of Syllabi Questions? Get Interactive*, UNIV. ARIZ.: DIGIT. LEARNING (June 30, 2020), http://digitallearning.arizona.edu/news/tired-syllabi-questions-get-interactive; *see also About*, *supra* note 9.

177.   Baldry & Davi, *supra* note 176.

syllabus can also be a simplified interactive syllabus; for example, by including hyperlinks to email addresses or the Zoom meeting.[178] It's also helpful to already have LMS course pages added (even if content is sparse), as well as other important links, before creating the syllabus.[179] Images and other media items may be organized *mise en place* or inserted as the need arises.[180]

B.   *Platforms and Apps*

Apps! Apps! Apps! The rate of app development is so incredible that this section will be obsolete before publication.[181] Which app(s) to use for designing an interactive syllabus is limited only by the teacher's imagination.* However, at a minimum, one needs Microsoft Word and, preferably, Microsoft PowerPoint (simply for its versatility in handling both graphics and writing).* Mac users may find Pages and Keynote a better fit.* Google offers Docs and Slides.[182] For all purposes, when this paper suggests a Microsoft Office product, the same tasks may be accomplished in apps from the other platforms.*

See appendix A for a list of recent platforms and apps that could serve as, or help professors develop, an interactive syllabus.[183]

C.   *Design Elements*

There are many considerations that produce an interactive, accessible syllabus made of universal design principles that contribute to differentiated instruction in a community of inquiry.[184] However, just as with the traditional syllabus, for most professors, once is enough to establish a template for next term.[185]

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178.   *See* McKinney, *supra* note 144; *Create or Edit a Hyperlink*, *supra* note 164.

179.   *See* Sweany, *supra* note 82, at 173–74.

180.   *See* Evmenova, *supra* note 77, at 160; McKinney, *supra* note 144.

181.   *See* Iqbal, *supra* note 161.

182.   Edward Mendelson, *Google Docs, Sheets, and Slides Review*, PCMAG, http://www.pcmag.com/reviews/google-docs-sheets-and-slides (last updated May 9, 2018); *see also infra* app. A.

183.   *See infra* app. A.

184.   *Cf.* James D. Dimitri, *WordWise: Best Practices in Document Design*, RES GESTAE, May 2014, at 24, 24.

185.   *See "It's in the Syllabus!"*, *supra* note 157.

1. **High Contrast**—Text and images should contrast with the background (i.e., dark text on a light background or vice versa);[186]

2. **Fonts**—Use a proportionally spaced, serif font, at least 12pt;[187]

3. **Navigation**—Word and PowerPoint (and their Mac and Google counterparts) include icons such as play, stop, forward, backwards, and home. Use such icons consistently and in the same place. In Word, writers should use style-headings to aid navigation, including a synced table of contents. In PowerPoint, designers should manually check reading order in the Accessibility tool.[188]

4. **Minimize Verbiage/Maximize Images**—Content should be well organized and well-written, in plain English, with simple sentences. Use hyperlinks and other navigation strategies to avoid excess information within the interactive syllabus. For example, link to campus-wide policies that are likely stored on the internet, rather than including them in the syllabus.[189]

5. **Multimedia Elements**—Ensure that images and objects have alternative text that describe those items; charts or tables should be inserted from within the app, not copied and pasted from other apps; videos should include closed captions. For large media items, insert the item "from the web" or

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186. *See* John Whiting, *Assistive Technology Experiment: High Contrast*, WEBAIM (Feb. 24, 2012), http://webaim.org/blog/high-contrast/ (providing an example of high contrast and low contrast).

187. *See* Dimitri, *supra* note 184, at 26.

188. *Why Consistency is Important to Accessible Design*, *supra* note 168; Henry et al., *supra* note 168; *Make Your PowerPoint Presentations Accessible to People with Disabilities*, MICROSOFT: SUPPORT, http://support.microsoft.com/en-us/topic/make-your-powerpoint-presentations-accessible-to-people-with-disabilities-6f7772b2-2f33-4bd2-8ca7-dae3b2b3ef25?ui=en-us&rs=en-us&ad=us (last visited May 12, 2021).

189. *See Create or Edit a Hyperlink*, *supra* note 164.

by URL, rather than embedding media directly into
Word or PowerPoint.[190]

6.   **Hyperlinking**—When a writer spells-out a URL, a
      screen reader reads every single character; rather
      than copying and pasting entire URLs, use a URL
      shortening service or set plain English display text.
      For example, rather than typing:[191]

      Visit my website: www.jajonesjurist.com.

      Instead, type the following, and hyperlink the name
      of the website:

      Visit JAJONES Jurist.[192]

This approach allows the screen reader to provide the screen tip
when the mouse or cursor encounters the hyperlinked language, and it reads
the words that are hyperlinked, rather than each URL character.[193] Be sure to
include a screen tip, such as, "Click here to visit JA Jones Jurist."[194] For a
tutorial on hyperlinks, visit this Microsoft tutorial.[195]

7.   **Integration**—with class platforms (LMS, Poll
      Everywhere, Zoom, etc.); go beyond basic apps and
      use apps that engage the student with quizzes, in-
      class polls, and other interactive tools.[196]

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190.   *See Insert and Play a Video File from Your Computer*, *supra* note 163.
191.   *See Create or Edit a Hyperlink*, *supra* note 164 (providing a tutorial about
inserting hyperlinks).
192.   *See   id.*;   *Joshua   Aaron   Jones*,   JA   JONES   JURIST,
http://www.jajonesjurist.com (last visited May 12, 2021).
193.   *Id.*
194.   *See id.*
195.   *See Create or Edit a Hyperlink*, *supra* note 164. Some might argue that
the URL should also be typed out in full, to further UDL principles, despite how annoying it is
to hear a screen-reading app spell every URL character. *See id.*
196.   Emma O'Neill, *4 Benefits of Integrating Zoom with your LMS*,
LEARNUPON: BLOG (May 12, 2020), http://www.learnupon.com/blog/lms-zoom-integration-
benefits/; Rob Boone, *5 Reasons Poll Everywhere's PowerPoint, Keynote, and Google Slides
Apps are Such a Big Deal*, POLL EVERYWHERE: BUS., http://blog.polleverywhere.com/native-
integration/ (last visited May 12, 2021); Carl Hooker, *25 Strategies to Engage Students on
Your   Next   Zoom   Meeting*,   HOOKED   ON   INNOVATION   (May   13,   2020),
http://hookedoninnovation.com/2020/05/13/25-strategies-to-engage-zoom/.

8.   **Redundancy**—Consistent with UDL principles, the interactive syllabus is one piece of many means by which students may engage with class materials; the same navigation and information should appear in multiple locations throughout the course design.[197]

D.   *My Example*

For my Spring 2021 Legal Communication and Analysis course, I created an interactive syllabus in PowerPoint that was based on my updated traditional syllabus.[198] Please visit my website to download the example.[199] See Appendix B for selected slides.[200] The example aspires to UDL and full accessibility, and it was designed with each of the foregoing elements in mind.[201]

The example includes a title page, followed by an instructional page that explains the point of the interactive syllabus and the navigation.[202] The navigation icons recur in the same location on each page.[203] Next, the interactive syllabus provides a table of contents, with hyperlinks to pertinent pages within the syllabus.[204] That *slide* or page includes the four learning modules and the lists of assignments for each module.[205] Those assignment titles link to slides that further explain the assignment, and those assignment explanations are cross-linked with the assignments set-up in Canvas (my school's LMS).[206] Each assignment page of the interactive syllabus includes reading related to the assignment, objectives, expectations, points available, whether collaboration is allowed, and the due date.[207] The example includes the usual syllabus information, such as a schedule and reading list, all with hyperlinks, including to the Connected Casebook.[208] The same information is within Canvas, but redundancy ensures that a larger number of students will receive the content.[209] The syllabus has an appropriate font, high

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197.   *See* Evmenova, *supra* note 77, at 148.
198.   *See infra* Appendix B.
199.   *Joshua Aaron Jones*, *supra* note 192.
200.   *See infra* Appendix B.
201.   *See Joshua Aaron Jones*, *supra* note 192.
202.   *Id.*
203.   *Id.*
204.   *Id.*
205.   *Id.*
206.   *Joshua Aaron Jones*, *supra* note 192.
207.   *Id.*
208.   *Id.*; *see also* CASEBOOKCONNECT, http://www.casebookconnect.com (last visited May 12, 2021).
209.   *Joshua Aaron Jones*, *supra* note 192; *see also* Mandernach, *supra* note 151, at 3–4.

contrast, and attractive images that are properly described in alternative text.[210]   Videos on topics such as goal-setting and attendance appear at appropriate spots.[211]

V.   CONCLUSION

Like it or not, online learning—both blended and entirely online courses—is here to stay.[212]   All professors should become familiar with basic education principles.*   These include education history, learning theories, taxonomies to classify learning objectives, and pedagogical frameworks and their methods.[213]   The current student body does not thrive from passive learning.[214]   A professor's scholarship or research reputation cannot stand alone.*   The Community of Inquiry pedagogical framework, recognizing the diversity of learning modalities and striving towards differentiated instruction through universal design techniques, is a sound model for the current state of distance education and future education.[215]

The traditional paper syllabus, despite its significance to class function and student performance, is often overlooked.[216]   Students will more accurately recall the important information from an interactive syllabus—full of links, images, videos, and other elements that engage.[217]   They may even find the motivation to revisit the interactive syllabus.[218]   Most professors already have the basic technology skills to create an interactive syllabus as a complement to the traditional syllabus, and with a little creativity, the flat, paper syllabus can become a dynamic and memorable class artifact.[219]   A teacher need not go "all out" with extreme design, such as 3D elements and animation, though such options are available even in Microsoft Word and PowerPoint.[220]   With some trial and error—and courage to explore app menus—any professor can create a fully accessible, interactive syllabi that offers multiple means of representation, engagement, and expression that provides social, cognitive, teaching, and learning presence.[221]

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210.   *Joshua Aaron Jones*, *supra* note 192.
211.   *Id.*
212.   U.S. DEP'T OF EDUC., *supra* note 132, at xi, 1.
213.   *See* Roehl et al., *supra* note 100, at 45.
214.   *See id.* at 44, 45.
215.   Fiock, *supra* note 2, at 139–40; Tomlinson et al., *supra* note 34, at 121.
216.   *See* Baldry & Davi, *supra* note 176.
217.   *See id.*; McKinney, *supra* note 144.
218.   *See* Baldry & Davi, *supra* note 176; McKinney, *supra* note 144.
219.   *See* McKinney, *supra* note 144.
220.   *See id.*
221.   *See id.*

APPENDIX A: LIST OF APPS TO DEVELOP AN ONLINE SYLLABUS

	Microsoft[222]	Mac[223]	Google[224]	Adobe[225]
Word Processing	Word	Pages	Docs	InCopy
Presentation	PowerPoint	Keynote	Slides	InDesign
Spreadsheets	Excel	Numbers	Sheets	
Image Processing	Microsoft Photo Editor	Photos	Google Photos	Photoshop, Photoshop Express, Photoshop Camera, Lightroom, Illustrator, Adobe Stock Photos, Animate, Spark Acrobat
Audio	Windows Voice Recorder	Garage Band		Audition
Video	Microsoft Stream	iMovie, QuickTime, FaceTime	YouTube, Google Meet	Premiere Pro After Effects, Animate

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222. *See Office 365 Education*, MICROSOFT: EDUC., http://www.microsoft.com/en-us/education/products/office/default.aspx (last visited May 12, 2021).

223. *See iWork*, APPLE, http://www.apple.com/iwork/ (last visited May 12, 2021); *Microsoft Office*, APPLE, http://apps.apple.com/us/app/microsoft-office/id541164041 (last visited May 12, 2021).

224. *See* GOOGLE WORKSPACE, http://workspace.google.com/ (last visited May 12, 2021).

225. *See* ADOBE CREATIVE CLOUD, http://adobe.ly/3rAnlJS (last visited May 12, 2021).

The platforms and applications listed above are available either as downloads from their respective platforms or are already installed with Windows 10 or MacOS.[226] Most apps are also available for Android or iOS (Mac's mobile operating system).[227]

Independent or less common apps that could be helpful include: Prezi, Pixton, Piktochart, Polleverywhere, Thinglink, Toonly, TopHat.[228]

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226.   *See Office 365 Education*, *supra* note 222; *Microsoft Office*, *supra* note 223; GOOGLE WORKSPACE, *supra* note 224; ADOBE CREATIVE CLOUD, *supra* note 225.

227.   *See Office 365 Education*, *supra* note 222; *Microsoft Office*, *supra* note 223; GOOGLE WORKSPACE, *supra* note 224; ADOBE CREATIVE CLOUD, *supra* note 225.

228.   PREZI, http://prezi.com/ (last visited May 12, 2021); PIXTON, http://www.pixton.com/ (last visited May 12, 2021); PIKTOCHART, http://piktochart.com/ (last visited May 12, 2021); POLLEVERYWHERE, http://www.polleverywhere.com/ (last visited May 12, 2021); THINGLINK, http://www.thinglink.com/ (last visited May 12, 2021); TOONLY, http://www.toonly.com/ (last visited May 12, 2021); TOP HAT, http://tophat.com/ (last visited May 12, 2021).

APPENDIX B – SELECTED SLIDES

Appellate Brief

Reading: LWH chpts. 22, 24-34

Building on the persuasive-writing skills that you learned in the Trial Brief assignment, the Appellate Brief assignment will teach you how to write a brief to an appellate court.

You will be assigned to represent a client in a hypothetical appeal, so that you will learn the process of appealing a trial court's decision.

You will also learn how written arguments to an appellate court may differ in type and scope from written arguments to a trial court.

DUE:	**April 11, 11:59 PM, via Canvas**
Objectives:	• Improve persuasive writing skills; • Learn to work at the appellate level, including understanding standards of review and process; • Learn to build credibility with the tribunal and opposing counsel; • Efficiently use Microsoft Office and Adobe Acrobat
Expectations:	See rubric in Canvas. Including each section and proper formatting are extremely important.
Teamwork:	This is an independent project. Do not collaborate with others.
Points:	500

Visit: People > Groups > Appellate Briefs to find on which side of the case Canvas randomly assigned for you.

Bend It Like Beckham? Using Cognitive Science To Inform Online Legal Research and Writing Pedagogy During The Pandemic

James B. Levy[*]

I.   Introduction

When the pandemic hit law schools last spring, legal writing professors, like educators everywhere, had to quickly pivot from teaching in classrooms the way we always had done to delivering those same lessons from behind a computer screen sitting at our desks.[1] Fortunately, by the time in-person classes were suspended in the spring, there were only a few weeks left in the semester.[2] Thus, we could muddle through those last few classes using Zoom or some other videoconferencing platform without committing

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1.   *See* Ira Steven Nathenson, *Teaching Law Online: Yesterday and Today, But Tomorrow Never Knows*, 65 St. Louis Univ. L.J. (forthcoming 2021) (manuscript at 3–4), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3731103. Some are indeed referring to this as the "pandemic pivot." *See id.* (manuscript at 3).

2.   *See id.* (manuscript at 21).

too much educational malpractice owing to our lack of experience teaching in that way.[3] By that point in the school year, we knew our students well, they knew us, and they understood our expectations.* If the last few weeks of class were not always a model of good online pedagogy, we were still able to get our students across the finish line adequately enough under the circumstances.[4]

But as spring turned to summer, it became abundantly clear that the pandemic was not going away anytime soon.[5] We faced the prospect of teaching a full year entirely online, but this time, with brand new, completely unseasoned first-year law students.[6] For many legal writing professors, myself included, the prospect of that felt daunting because of the hands-on nature of many of the skills we teach.* To take a small example, under normal circumstances, I still take my students into the law library in the fall to show them the digests and regional reporters so that when we learn about online research, they have a deeper understanding of how the electronic databases are organized and work.* But as the fall semester approached, I was uncertain about how I would adapt several of the lessons I felt confident teaching in a classroom to a videoconferencing platform.*

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3.   *See id.* (manuscript at 20, 21); Colleen Flaherty, *Not 'Glorified Skype'*, INSIDE   HIGHER   ED   (Aug.   27,   2020), http://www.insidehighered.com/news/2020/08/27/teaching-fall-not-glorified-skype   (finding "emergency remote teaching" is perceived as "inferior to face-to-face" teaching by some); George Orlov et al., *Learning During the Covid-19 Pandemic: It is not Who You Teach But How You Teach* 2 (NAT'L BUREAU OF ECON. RSCH., Working Paper No. 28022, 2020), http://www.nber.org/papers/w28022 (finding that students performed worse during the Spring 2020 semester in emergency online remote courses compared to similar pre-pandemic courses).

4.   *See* Yvonne M. Dutton & Margaret Ryznar, *Law School Pedagogy Post Pandemic: Harnessing the Benefits of Online Teaching*, J. LEGAL EDUC. (forthcoming 2021) (manuscript   at   4)   (on   file   with   authors), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3717987 (noting that "emergency remote teaching" in Spring 2020 was perceived as substandard by some).

5.   Nathenson, *supra* note 1 (manuscript at 24).

6.   *Id.* (manuscript at 26). In response to the pandemic, some classes at NSU have been held under what the school calls its "BlendFlex" model which permits students to attend classes in person or at home synchronously via Zoom. *Blendflex Courses*, NSU FLA., http://www.nova.edu/lec/blendflex.html (last visited May 12, 2021). Due to administrative concerns over whether there would be enough classroom space to hold every BlendFlex class in conformity with social distancing guidelines, some courses have been offered exclusively online including NSU's legal research and writing program. *See id.*; E-mail from Debra Moss Vollweiler, Assoc. Dean for Acad. Aff., Nova S.E. Univ. Shepard Broad Coll. of L., to Students of Nova S.E. Univ. Shepard Broad Coll. L. (June 26, 2020) (on file with the Nova Southeastern University Shepard Broad College of Law). Those classes are held as live, synchronous Zoom sessions. E-mail from Debra Moss Vollweiler to Students, *supra*.

Despite having spent the last few weeks of the previous semester teaching with Zoom and my prior experience teaching in our law school's online Masters of Law program, I felt neither proficient with Zoom nor confident enough about online pedagogy in general to teach a year-long legal skills course that way.[7] Consequently, over the summer, I found myself asking the questions I presume many other colleagues were also asking themselves: How can I be an effective Legal Research and Writing ("LRW") teacher on Zoom?[8] Does Zoom, and similar videoconferencing platforms, require a new type of pedagogy, teaching style, or method compared to how I am used to teaching in a classroom?[9] Do I need to change the way I teach to fit this new platform?[10] If so, what changes should I make?* Essentially, many of us were asking: Do I bend the way I teach to

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        7.   *See Overcoming My Existential Dread of Teaching Online: Developing Virtual Class Culture*, ELLEN ENSHER, http://ellenensher.com/overcoming-my-existential-dread-of-teaching-online-developing-virtual-class-culture/ (last visited May 12, 2021). Though I spent two years teaching in NSU's online Masters of Law program, that experience was a lot different than teaching law students in a J.D. program. *See id.* Among the reasons, the lecture method works well for students in the non-J.D. program but not for law students. *Id.*
        8.   *See William & Mary Conference for Excellence in Teaching Legal Research & Writing Online*, WM. & MARY L. SCH., http://law.wm.edu/academics/intellectuallife/conferencesandlectures/excellence_online_teaching/index.php (last visited May 12, 2021).
        9.   *See* Flaherty, *supra* note 3 (during spring 2020 professors express fear about "transitioning to a radically different way of teaching."); *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, COLUM. L. SCH., (Apr. 27, 2020), http://www.law.columbia.edu/news/archive/socratic-zooming-faculty-weigh-teaching-remotely#:~:text=Online%20instruction%20means%20working%20harder,finding%20ways%20to%20do%20so.&text=We%20asked%20faculty%20members%20to,the%20experience%20of%20teaching%20remotely (law professor explaining you must learn to teach differently using an online platform like Zoom); Doug Lederman, *The Shift to Remote Learning: The Human Element*, INSIDE HIGHER ED (Mar. 25, 2020), http://www.insidehighered.com/digital-learning/article/2020/03/25/how-shift-remote-learning-might-affect-students-instructors-and (several professors discussing whether the switch to online teaching due to the pandemic requires different teaching methods or instead merely adapting traditional methods to a new modality); Beckie Sapiano, *Why You Shouldn't Try to Replicate Your Classroom Teaching Online*, THE CHRON. OF HIGHER EDUC. (Apr. 30, 2020), http://www.chronicle.com/newsletter/teaching/2020-04-30 (discussing tension between *reproducing* in-person teaching methods to an online platform versus *adapting* them to the platform); *Pedagogical Considerations for Teaching with Zoom*, CARNEGIE MELLON UNIV., http://www.cmu.edu/canvas/teachingonline/zoom/zoompedagogy.html (last visited May 12, 2021) (discussing how Zoom allows you to implement many of the same teaching strategies you use in a face-to-face classroom).
        10.   *See* DAN LEVY, TEACHING EFFECTIVELY WITH ZOOM 22 (2d ed. 2021) (stating that principles of good teaching should drive the use of classroom technology not the other way around).

fit the way Zoom works, or instead do I bend Zoom to fit the way I would ordinarily teach if I were still in a classroom?*

By now, we have a vaccine and know the pandemic will eventually end.[11] Yet, the questions raised in this article will continue to be relevant in the years ahead.[12] First of all, as a practical matter, distribution of the vaccine has encountered many unanticipated problems, and it is taking longer than expected to inoculate everyone.[13] Though it is a rapidly evolving situation, public health officials warn that we may not be out of the woods for another year or longer.[14] That means many of us could still be teaching remotely via Zoom next fall too.[15]

Apart from that, there are other, more substantive reasons why Zoom is almost certainly here to stay even after the pandemic ends.[16] Despite nearly everyone complaining about it and saying how much they cannot wait to get back into a real classroom again, most have nonetheless found at least something about Zoom they like.[17] Students certainly like the convenience of taking courses online from the comfort of their homes.[18] As a result, there will be pressure on law schools to retain it just for that reason alone.[19] Similarly, most professors have also found at least something about Zoom they like as well, and will undoubtedly be incorporating it into their classes moving forward.[20] As for myself, I have found Zoom to be a very effective

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11.   Matthew Conlen et al., *Why Vaccines Alone Will Not End the Pandemic*, N.Y. TIMES (Jan. 24, 2021), http://www.nytimes.com/interactive/2021/01/24/us/covid-vaccine-rollout.html?campaign_id=2&emc=edit_th_20210126&instance_id=26407&nl=todaysheadlines&regi_id=39947980&segment_id=50254&user_id=d884a7719cd581ed1f57c7322482fee.

12.   *See id.*; discussion *supra* Part I.

13.   Conlen et al., *supra* note 11.

14.   *Id.* Though recent reports about new strains and mutations of the virus bring disturbing predictions that new outbreaks may be with us for a long while. *Id.*

15.   *See id.*

16.   James B. Levy, *Some Observations About Conducting Student Conferences via Zoom During a Pandemic*, LEGAL SKILLS PROF BLOG (Nov. 12, 2020), http://lawprofessors.typepad.com/legal_skills/2020/11/some-observations-about-student-conferences-via-zoom-during-a-pandemic.html.

17.   Sara Rimer, *BU Students: Zoom vs In-Person Classes? It's Complicated*, BU TODAY (Nov. 9, 2020), http://www.bu.edu/articles/2020/students-learn-from-anywhere.

18.   *See id.* (stating that students say they learn better in a physical classroom but like the convenience of taking classes online).

19.   *See id.*

20.   *See Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9 (discussing aspects of teaching by Zoom that several Columbia law professors really like compared to their classroom counterparts); Viet Thanh Nguyen, *I Actually Like Teaching On Zoom*, N.Y. TIMES: OP. (Feb. 15, 2021), http://www.nytimes.com/2021/02/15/opinion/zoom-video-school-teaching.html (discussing

way to hold individual student writing conferences.[21]   While I am among those who cannot wait to get back into a real classroom again, at the very least, I will likely continue to use Zoom to offer virtual writing conferences once the pandemic ends.[22]

I would therefore expect that many LRW professors may adopt a hybrid approach to their courses moving forward by combining the best aspects of in-person instruction with other portions of the course being delivered online. [23] This means that the questions raised in these pages about how to best teach LRW using Zoom and similar videoconferencing platforms will continue to be relevant.[24]

This article begins by discussing a topic that is key to good videoconferencing pedagogy but seems to have received scant attention: How choosing the right tech gear can both enhance the production qualities of our Zoom classes while also easing the burden on professors to juggle the myriad technical and logistical tasks it takes to teach each class.[25] Next, this article discusses how we can use cognitive science to inform our decisions about how best to teach LRW using Zoom.[26] Given that many of us had to quickly pivot from teaching the course in a familiar way, from inside a classroom, to teaching it in a completely unfamiliar way, using a videoconferencing platform, cognitive science is an especially helpful source of guidance under the circumstances because it provides an objective, research-based approach for identifying the best methods and techniques to

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several advantages of teaching by Zoom over the classroom); Nathenson, *supra* note 1 (manuscript at 23).

    21.   *See* discussion *infra* Part III; Levy, *supra* note 16. Though I was not expecting to feel that way, I found that meeting with my LRW students for one-on-one, individual writing conferences via Zoom was a very effective use of the platform. Levy, *supra* note 16. Perhaps it is because we face each other on Zoom to go over papers, rather than sitting side-by-side as we would meeting in my office, or because by bringing the student's paper up on the screen we could both review and edit comments together, the interaction felt even more direct, immediate, and effective than the ones that take place in-person in my office under normal circumstances. *See id.*

    22.   *Id.*

    23.   *See id.*; Olympia Duhart et al., *Tips, Tricks, and Gimmicks: Short Ideas from Attendees of the William & Mary Conference for Excellence in Teaching Legal Research & Writing Online*, WM & MARY L. SCH. SCHOLARSHIP REPOSITORY (Jan. 1, 2020, 12:00 AM), http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1031&context=excellence_online_teaching.

    24.   *See* discussion *infra* Parts II–IV; James B. Levy, *Caveman Teaching in the Time of Covid*, LEGAL SKILLS PROF BLOG (Sept. 7, 2020), http://lawprofessors.typepad.com/legal_skills/2020/09/caveman-skills-teaching-in-the-time-of-covid.html.

    25.   *See* discussion *infra* Part II.

    26.   *See* discussion *infra* Part III.

employ when teaching with Zoom.[27]   In short, it suggests an approach that leverages some of the unique features of Zoom that are compatible with good pedagogy together with the time-tested teaching methods that have traditionally worked well for us in the classroom.[28]

II.   "LIGHTS, CAMERA, ACTION!" CHOOSING THE RIGHT EQUIPMENT TO ENHANCE THE QUALITY AND MANAGEABILITY OF OUR ZOOM CLASSES

The relationship between good classroom design and learning outcomes is self-evident.[29]   Small considerations like the room temperature, air flow, wall color and even the artwork on the walls, never mind the more significant ones like comfortable seating, the floorplan, acoustics, and classroom technology, can all contribute to creating a positive learning environment for students.[30] Though a well-designed classroom, by itself, can never ensure that students will learn, a poorly designed one will almost certainly increase the prospect that they will not.[31]   It stands to reason that the same should hold true for the online learning environment we establish through Zoom.[32]   In fact, because streaming video lessons over the internet arguably results in a far more circumscribed learning environment, compared to being in a physical classroom with other students, it suggests we should

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27.   *See id.*; James B. Levy, *Teaching the Digital Caveman: Rethinking the Use of Classroom Technology in Law School*, 19 CHAP. L. REV. 241, 255–56 (2016).

28.   *See* discussion *infra* Part III; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

29.   *See How Does Classroom Design Affect Student Learning?*, ENVOPLAN, http://envoplan.co.uk/education-news/how-does-classroom-design-affect-student-learning (last visited May 12, 2021).

30.   *Id.*; *see also* Bradley Emerling, *Lessons Learned from a Chalkboard: Slow and Steady Technology Integration*, LARRY CUBAN ON SCH. REFORM & CLASSROOM PRAC. (Apr. 26, 2015, 1:00 AM), http://larrycuban.wordpress.com/2015/04/26/lessons-learned-from-a-chalkboard-slow-and-steady-technology-integration-bradley-emerling/ (stating that studies show green colored chalkboards help students concentrate better than whiteboards); Sapna Cheryan et al., *Designing Classrooms to Maximize Student Achievement*, 1 POL'Y INSIGHTS FROM BEHAV. & BRAIN SCIS. 4, 8, 9 (2014) (changing portraits hanging in a classroom affected student in-class learning behaviors).

31.   *See* Cheryan et al., *supra* note 30, at 4, 6.

32.   *See id.* Some studies have found greater student engagement based on in-class video quality or streaming webcam resolution.   *See* Bernadette Gold & Julian Windscheid, *Observing 360-Degree Classroom Videos — Effects of Video Type on Presence, Emotions, Workload, Classroom Observations, and Ratings of Teaching Quality*, COMPUT. & EDUC., Oct. 2020, at 1–3; Anna B. Newcomb et al., *Building Rapport and Earning the Surgical Patient's Trust in the Era of Social Distancing: Teaching Patient-Centered Communication During Video Conference Encounters to Medical Students*, 78 J. SURGICAL EDUC. 336, 337 (2021).

think more, not less, about how the characteristics of that space may affect the learning experience for students.[33]

        And though many professors are content relying on their university-issued laptops for class, there are a few easy and inexpensive hardware upgrades that could make our Zoom classes a bit more engaging and effective for students.[34] More importantly, these upgrades can reduce the amount of multitasking professors must now do to juggle the myriad technical and logistical tasks it takes to teach each Zoom class.[35] If professors are able to reduce the amount of cognitive capital they must spend on these tasks, they will have much more left over to actually teach the class and engage with students.[36] Even if these suggestions only make a small contribution to reducing the cognitive load required to manage the technical aspects of producing each Zoom session, it is a worthwhile investment given the low cost and ease of implementation.[37]

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        33.   *See* Nathenson, *supra* note 1 (manuscript at 7) (noting how PowerPoint is a flat, "two-dimensional" learning experience for students); discussion *infra* Part II (acknowledging how camera resolution and quality of videos affect Zoom classes); Gold & Windscheid, *supra* note 32, at 7, 10; Robby Nadler, *Understanding 'Zoom Fatigue': Theorizing Spatial Dynamics as Third Skin in Computer-Mediated Communications*, COMPUTS. & COMPOSITION, Oct. 2020, at 1, 14 (noting that Zoom is exhausting because it "flatten[s]" human interaction and thus requires more energy to communicate and relate to others).
        34.   Duhart et al., *supra* note 23.
        35.   *See id.*; Levy, *supra* note 16; Nathenson, *supra* note 1 (manuscript at 7) (noting how PowerPoint is a flat, "two-dimensional" learning experience for students); Gold & Windscheid, *supra* note 32, at 7, 10; Nadler, *supra* note 33, at 1, 14 (noting that Zoom is exhausting because it "flatten[s]" human interaction and thus requires more energy to communicate and relate to others).
        36.   *See* Cheryan et al., *supra* note 30, at 6.
        37.   *See id.*; Kathryn Whitenton, *Minimize Cognitive Load to Maximize Usability*, NIELSON NORMAN GRP. (Dec. 22, 2013), http://www.nngroup.com/articles/minimize-cognitive-load/; Susan D. Blum, *Why We're Exhausted by Zoom*, INSIDE HIGHER ED (Apr. 22, 2020), http://www.insidehighered.com/advice/2020/04/22/professor-explores-why-zoom-classes-deplete-her-energy-opinion (discussing that faculty report the increased cognitive load due to the amount of multitasking required to manage each class is one of the most exhausting aspects of teaching with Zoom); Manyu Jiang, *The Reason Zoom Calls Drain Your Energy*, BBC: REMOTE CONTROL (Apr. 22, 2020), http://www.bbc.com/worklife/article/20200421-why-zoom-video-chats-are-so-exhausting; Ray Schroeder, *Zoom Fatigue: What We Have Learned*, INSIDE HIGHER ED (Jan. 20, 2021), http://www.insidehighered.com/digital-learning/blogs/online-trending-now/zoom-fatigue-what-we-have-learned ("Zoom fatigue is a recognized condition.").

Teachers at every level, from grade to graduate school, have reported feeling mentally exhausted by the end of each Zoom session.[38] Part of that may be due to the extra planning involved to develop new lesson plans that are compatible with a videoconferencing platform.[39] But it is also in large part due to the additional cognitive bandwidth consumed by each class managing the multitude of technical and logistical tasks necessary to teach a synchronous Zoom session.[40] That may be even more true in an LRW class because of the further challenges associated with trying to teach hands-on legal skills through a computer screen.[41]

Among the many course management tasks professors must now routinely handle as part of each Zoom session include the organizing and displaying of all files, PowerPoints, screen-shares and other electronic visual aids, checking the chat-box for student questions, responding to those questions, and troubleshooting the myriad technical glitches that seem to arise in every class.[42] All of that is in addition to actually teaching the class while also trying to interact and engage with students.[43] And none of it seems to get any easier with time or experience.[44] Rather, each Zoom class plan seems to take far more time and energy to "produce" and execute than the comparable tasks would take in a regular classroom.[45]

Another factor contributing to the feeling of exhaustion many are experiencing is that we are working much harder to read the body language and other nonverbal cues from students that tell us whether they are following the material or instead are lost and confused.[46] Some faculty have

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38.   *See* Blum, *supra* note 37; Natasha Singer, *U.S. Faces a New Crisis: 'An Extreme Level of Teacher Burnout'*, N.Y. TIMES, Dec. 1, 2020, at A9 (describing experience of several grade-school teachers who feel overwhelmed by the challenges of teaching with Zoom); Schroeder, *supra* note 37.

39.   *See* Blum, *supra* note 37 (reporting teaching via Zoom in general as exhausting compared to its classroom counterpart); Flaherty, *supra* note 3 (describing "work[ing] countless . . . hours" to prepare to teach with Zoom in the fall); Singer, *supra* note 38, at A9 (interviewing grade school teachers describing exhaustion and burn-out due to the extra demands of teaching with Zoom).

40.   *See* Blum, *supra* note 37; Lederman, *supra* note 9.

41.   *William & Mary Conference for Excellence in Teaching Legal Research & Writing Online*, *supra* note 8; Levy, *supra* note 16.

42.   Levy, *supra* note 24; *see also* Blum, *supra* note 37.

43.   *See* Blum, *supra* note 37; Schroeder, *supra* note 37; Levy, *supra* note 24.

44.   Levy, *supra* note 24.

45.   *Id.*

46.   *See* Blum, *supra* note 37; Schroeder, *supra* note 37; Daniel Willingham, *Op-Ed: Why Remote Learning is Hard — And How to Make it Easier*, L.A. TIMES: OP. (Sept. 18, 2020, 3:00 AM), http://www.latimes.com/opinion/story/2020-09-18/remote-learning-hard-make-easier (stating Zoom is exhausting because everyone is working harder to read the nonverbal social cues that are an essential part of all conversations).

written about how exhausting they find teaching on Zoom just because of the difficulty in reading these subtle cues, which are an inherent and essential part of all human communication.[47] Insofar as we are feeling mentally depleted, it means we have less cognitive capital left to spend teaching the class.[48] If a few simple and inexpensive hardware upgrades can even partially address this, it is well worth considering.[49]

The best place to start may be by adding a second monitor to your Zoom set-up.[50] Doing so lets you use one monitor to manage all the files, PowerPoints, screen-shares, and other electronic visual aids needed for class, while the other can be used to hold the video gallery of your students.[51] I have found that adding a second monitor has made it exponentially easier to teach the class while simultaneously scanning the faces of my students to assess their engagement and understanding.[52] For two semesters now, I have taught both a synchronous LRW course via Zoom from my office using a dual-monitor configuration while also teaching a non-LRW synchronous "BlendFlex" class via Zoom from a classroom using a single monitor configuration.[53] The difference between the two with respect to my ability to manage the technical aspects of class while simultaneously teaching and interacting with students is like night and day.[54]

For me, a two-monitor configuration also makes a Zoom class feel a bit closer to the experience of being in a physical classroom with my students as it more closely approximates the natural rhythm and flow of presenting

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47.   *See* Singer*, supra* note 38, at A9; Blum, *supra* note 37; Schroeder, *supra* note 37 ("Zoom is exhausting and lonely because you have to be so much more attentive and so much more aware of what's going on . . . .").

48.   *See* Blum, *supra* note 37.

49.   *See* Duhart et al., *supra* note 23; R. Dallon Adams, *9 Tech Tools Designed to Make Online Learning Better for Students and Teachers*, TECH REPUBLIC (July 21, 2020, 10:11 AM), http://www.techrepublic.com/article/9-tech-tools-designed-to-make-online-learning-better-for-students-and-teachers/.

50.   *See* Duhart et al., *supra* note 23.

51.   *See Remote Teaching Setup for Faculty's Home and Office*, DARTMOUTH: SERVS. PORTAL (Aug. 31, 2020, 4:26 PM), http://services.dartmouth.edu/TDClient/1806/Portal/KB/ArticleDet?ID=112986; Levy, *supra* note 24.

52.   *See* Duhart et al., *supra* note 23. This is especially helpful in a small enrollment class like LRW where one of the monitors can hold the entire student video gallery on a single screen page. *See id.*; Levy, *supra* note 16.

53.   *See Blendflex Courses*, *supra* note 6. NSU's BlendFlex model is a synchronous class held live in a classroom in accordance with social distancing policies where students have the option of either attending in-person or remotely. *See id.* By comparison, all of NSU's LRW classes this year are being taught synchronously entirely online with no option for students to attend in person. *See* Levy, *supra* note 24; *cf. Blendflex Courses*, *supra* note 6.

54.   *See* Levy, *supra* note 24; Levy, *supra* note 16.

material while interacting with students.[55]   And because using a second
monitor has made it easier to manage all the technical tasks required to
produce each class, I feel like I've been able to reduce the dead-spots and
long pauses that have interrupted the flow of my BlendFlex classes as I
search for files, change screen-shares, troubleshoot technical glitches, and
handle chat questions from students.[56]   In fact, I feel so strongly about the
difference in quality between my two courses that adding a second monitor
has made, that when my university asked for faculty feedback about ways it
could improve its Blendflex model, I said that adding a second monitor in
every classroom with a smart-podium is the single biggest improvement they
could make.[57]

       A related recommendation is to use a desktop computer to conduct
your Zoom classes rather than a laptop.[58]   If you still want to use a laptop,
consider getting a docking station.[59]   Doing so will free-up valuable desk
space that you can use to add some additional videoconferencing hardware
that can make Zoom classes easier to manage.[60]   For instance, adding a
standalone microphone and webcam means you no longer have to remain
physically tethered to your computer for the duration of a long class.[61]   It
gives you a little more freedom to move about when you teach, incorporate a
whiteboard (I use a real one, not Zoom's digital version) and other physical

       55.   *See* Duhart et al., *supra* note 23; Levy, *supra* note 24; Levy, *supra* note
16.
       56.   *See In-Depth Guide: Use Zoom to Teach Online*, HARV. UNIV. INFO.
TECH.,   http://harvard.service-
now.com/ithelp?id=kb_article&sys_id=4c3290f6db5b845430ed1dca4896197f   (last   updated
Dec. 15, 2020); Levy, *supra* note 24; *Blendflex Courses*, *supra* note 6; Duhart et al., *supra*
note 23; Levy, *supra* note 16.
       57.   *See* Levy, *supra* note 16; *Blendflex Courses*, *supra* note 6.
       58.   *See* Adil Vellani, *6 Best Computers for Online Teaching in 2021*, ESL JOB
EXCH., http://www.esljobexchange.com/best-computers-for-online-teaching/ (last visited May
12, 2021).   By putting the computer box, or laptop and docking station, off to the side or
underneath the desk, it frees up valuable desk space for a couple of monitors, a keyboard and
mouse, standalone microphone, and any other supplemental gear you want to add while still
leaving space for a writing pad, lesson plan notes, and a hot cup of joe (black).   *See id.*;
Patrick Otundo, *Uses and Benefits of a Laptop Docking Station*, TECHPRODUCTEACHER (Nov.
29, 2020), http://techproducteacher.com/benefits-of-a-laptop-docking-station/.
       59.   *See* Otundo, *supra* note 58.
       60.   *See   id.*;   *Work-from-Anywhere   Hardware*,   ZOOM,
http://support.zoom.us/hc/en-us/articles/360045396231-Work-from-anywhere-hardware   (last
visited May 12, 2021).
       61.   *See Work-from-Anywhere Hardware*, *supra* note 60; Dave Johnson, *8
Ways to Improve Your Audio Quality on Zoom, From Calibrating Your Microphone to
Optimizing   Your   Connection*,   BUS.   INSIDER   (Oct.   13,   2020,   12:01   PM),
http://www.businessinsider.com/how-to-imrpove-zoom-audio-quality.

teaching aids or props you'd like to work into class.[62] Even if being untethered from your computer makes you feel only slightly more relaxed and comfortable in class, the students will feel that too, and it can translate into a better class experience for everyone.[63]

Once freed from your laptop by a docking station, you can add a larger, more ergonomic keyboard and mouse.[64] That may make it easier, if only in a small way, to multitask during class compared to having to use the fiddly ones built-in to most laptops.[65] Admittedly, this a small refinement, but anything that helps reduce the cognitive load needed to juggle all the technical aspects of managing each Zoom session means the professor has more available to actually teach.[66]

Zoom is essentially a two-channel communication medium using an audio and video feed.[67] Therefore, the quality of those feeds is not an insignificant consideration when it comes to the overall quality of each Zoom session.[68] As the cost is slight, why not also upgrade from the generally poor quality, built-in microphone that comes with most computers to a better, more versatile desktop model.[69] A common complaint about videoconferencing is the poor sound quality and dropouts that affect the

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62.   Levy, *supra* note 24.

63.   *See* James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 50, 64 (2006). It is a version of the old classroom adage that if you want your students to be interested in the material, be more interested yourself. *See id.* at 51–52. Social scientists refer to this phenomenon as "emotional contagion," which reflects the empirically supported phenomenon that a teacher and students tend to coordinate and synchronize their emotional state of mind. *Id.* at 64. Thus, if you are excited about the material, your students will be too. *Id.* at 52. If you're relaxed, they will tend to be as well. *Id.*; *see also* discussion *infra* Section III.C and n.193; Sarah Rose Cavanagh, *How To Play in the College Classroom in a Pandemic, and Why You Should*, THE CHRON. OF HIGHER EDUC. (Feb. 9, 2021), http://www.chronicle.com/article/how-to-play-in-the-college-classroom-in-a-pandemic-and-why-you-should [hereinafter *How To Play in the College Classroom in a Pandemic, and Why You Should*] (discussing how the emotional climate of the classroom energizes and motivates students); Sarah Rose Cavanagh, *How to Make Your Teaching More Engaging*, THE CHRON. OF HIGHER EDUC. (Mar. 11, 2019), http://www.chronicle.com/article/how-to-make-your-teaching-more-engaging/   [hereinafter *How to Make Teaching More Engaging*] (describing classroom phenomenon of emotional contagion).

64.   *See* Otundo, *supra* note 58.

65.   *See id.*

66.   *See id.*; Whitenton, *supra* note 37; Levy, *supra* note 24.

67.   Jenae Cohn & Beth Seltzer, *Teaching Effectively During Times of Disruption, for SIS and PWR*, (Mar. 17, 2020), bit.ly/stanfordteachingdisruption.

68.   *See* Johnson, *supra* note 61.

69.   *See id.*; Paul Caron, *Law Teaching in the Age of Coronavirus*, TAXPROF BLOG (Mar. 15, 2020), http://taxprof.typepad.com/taxprof_Blog_2020/03/law-teaching-in-the-age-of-coronoavirus.html.

students' ability to hear the teacher.[70] Buying a decent quality standalone mic can help address that.[71] It is not necessary to spend a lot for an audiophile quality model since students are still listening on the cheap, built-in speakers of their laptops.[72] But if spending $25 to $50 can improve the quality of sound for your class while also liberating you from having to remain in physical proximity to your computer during a long Zoom session, it makes sense to upgrade.[73] Get a microphone with a USB connection rather than a Bluetooth device since the latter can sometimes cause a slight audio delay and can occasionally lose connectivity.[74] I also bought a headset with a built-in mic just in case the external mic fails or students have trouble hearing me with it for any reason.* The headset is kept next to my desk so I can grab it at any time and I'm ready to go.*

Another advantage of using a standalone mic is that you can place it anywhere on your workspace to better optimize the audio characteristics of the class.[75] They also typically have a separate volume control knob which makes it easier and more intuitive to adjust while busily multitasking during class compared to using a mouse to find the digital slide control for your computer's built-in mic.[76] Again, it is a small detail but they all add up in helping to reduce the amount of attentional bandwidth consumed during each class managing all of these tasks.[77]

For similar reasons, also consider adding a small pair of inexpensive desktop speakers.[78] You will get better sound quality, hear your students more easily, and it is easier to adjust the sound level during a busy class,

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70.   *See* Melanie Pinola & Kevin Purdy, *The Best USB Microphone*, WIRECUTTER: ELEC., http://www.nytimes.com/wirecutter/reviews/the-best-usb-microphone/ (last updated Dec. 9, 2019).

71.   *See id.*; Johnson, *supra* note 61.

72.   *See* Pinola & Purdy, *supra* note 70.

73.   *See* Johnson, *supra* note 61. With an external microphone, you're still going to hit the "join with computer audio" toggle when you open the Zoom meeting. *Id.* There are also apps available like *Krisp* which can enhance the acoustics of an external microphone by eliminating echo and background noise. *See id.*; Walter Yeates, *Remote Conference Benefit One by One*, KRISP: BLOG, http://krisp.ai/blog/remote-conference-benefits/ (last visited May 12, 2020).

74.   *See* Pinola & Purdy, *supra* note 70.

75.   *See* Johnson, *supra* note 61.

76.   *See* Pinola & Purdy, *supra* note 70.

77.   John Loeffler, *The Best USB Microphones 2021: The Best Standalone Mics You Can Buy Today*, TECHRADAR (Feb. 4, 2021), http://www.techradar.com/best/the-best-usb-microphones-2020-the-best-standalone-mics-you-can-buy-today. I also bought a headset just in case the mic quits or students were having trouble hearing me. For about $25, it was a very small investment that I may never use but I have it just in case.

78.   *See* Adams, *supra* note 49.

which I find myself doing often.[79] Because students are attending class with a variety of devices that all have different microphone settings and characteristics, I frequently have to adjust my speakers to better hear some students while lowering the volume for others.[80] Reaching out to adjust the speaker's control knob is much easier than finding the digital slide adjustment on my computer using a mouse.[81]

Next to adding a second monitor, perhaps the most helpful upgrade is a standalone webcam mounted on a small footprint tripod that can be placed anywhere on your workspace.[82] Just like a standalone mic, it gives you much more flexibility in terms of placement, which can improve the production qualities of your video feed.[83] The built-in webcams that come with most laptops are generally low resolution and set at a fixed angle that may not always be optimal for framing the video feed for each class.[84] Adding a standalone webcam with a small footprint tripod means you can adjust camera placement, height, and angle to create the best overall visual presentation for each class, as well as readjust any of those settings during class as needed.[85] Some studies have suggested that better video quality and higher resolution webcams may positively affect student engagement.[86] There are also aftermarket webcams that feature a zoom lens that can give the professor even more options and flexibility than the fixed lens, built-in webcams found in most computers.[87]

As discussed in Part III, adding a freestanding webcam has let me incorporate whiteboards (real ones, not Zoom's digital version) into my class which has added an important element of physicality to my teaching, while

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79.   *See id.*
80.   *See id.*
81.   *See id.*; Nathenson, *supra* note 1 (manuscript at 28). Again, it is a small detail, but the devil is in the details when it comes to reducing the amount of multitasking required to teach each Zoom class.
82.   Jefferson Graham, *Ready for Zoom: What Is the Best Camera for Video Meetings*, USA TODAY: TECH (Sept. 22, 2020, 1:52 PM), http://www.usatoday.com/story/tech/2020/09/22/zoom-tips-how-look-great-best-camera-webcam-iphone/3476930001/.
83.   *See id.*; Gold & Windscheid, *supra* note 32, at 2.
84.   *See* Gold & Windscheid, *supra* note 32, at 2.
85.   *See id.*; Graham, *supra* note 82.
86.   *See* Gold & Windscheid, *supra* note 32, at 3, 7, 9 (concluding that enhanced quality videos found to have "significant" impact on student presence); Newcomb et al., *supra* note 32, at 340 (stating that higher resolution webcam used in medical school patient consultation simulations resulted in better reading of patient facial affect).
87.   *See* Jessica Kennedy, *4 Ways to Experience Distance Learning Through the Lens*, MY TECH DECISIONS (July 21, 2014), http://mytechdecisions.com/mobility/distance-learning-through-the-lens/; Graham, *supra* note 82.

also making me less dependent on electronic visual aids for class.[88] I bought a few medium-sized whiteboards that I either prepare beforehand or write on during class, which can be switched in and out using an easel next to my desk.* A standalone webcam allows me to adjust the camera angle and position to better showcase the whiteboards or any other physical props I may want to use during class.[89]

The feedback from students has been good.* They appreciate that I use a mix of teaching styles and methods during class and am not so dependent on electronic files and screen-shares.* By using a variety of approaches and teaching methods, it makes each class feel more dynamic, visually interesting, and engaging.[90] Upgrading to a standalone webcam was a minor expense that has given me a lot more flexibility in my approach to each Zoom session.[91] An additional benefit of using a standalone webcam and mic that I had not recognized until after I bought them is that I can prevent, with 100% assurance, any hacks or embarrassing "hot mic" moments by simply unplugging them after class.[92]

A final consideration in designing a well-equipped Zoom classroom is to purchase some supplemental webcam lighting.[93] An inexpensive ring light or two is a popular choice that can help improve the production values of each class while also making you more photogenic.[94] Most of these devices come with a small desktop tripod, or it can be purchased separately, which allows for unobtrusive placement on your desk or workspace.[95] Aside from making you look better, a ring light will also help illuminate any physical props or other teaching aids you may want to use in class, like the whiteboards previously mentioned.[96] You may not need the extra lighting

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88.   *See* discussion *infra* Part III; Kennedy, *supra* note 87; Graham, *supra* note 82.

89.   *See* Kennedy, *supra* note 87; Graham, *supra* note 82.

90.   *See* Kennedy, *supra* note 87; Gold & Windscheid, *supra* note 32, at 3.

91.   *See* Kennedy, *supra* note 87; Graham, *supra* note 82.

92.   *See* David Cook, *Hackers Can Access Your Mobile and Laptop Cameras and Record You — Cover Them Up Now*, THE CONVERSATION (Apr. 16, 2020, 2:14 AM), http://theconversation.com/hackers-can-access-your-mobile-and-laptop-cameras-and-record-you-cover-them-up-now-135933.

93.   Jefferson Graham, *Six Tips for Looking Great in a Zoom Meeting*, USA TODAY: TECH   (Apr.   12,   2020,   8:22   PM), http://www.usatoday.com/story/tech/2020/04/11/zoom-meetings-go-better-these-6-tips-look-your-best/5125980002/.

94.   *See id.*; John Scott Lewinski & Taylor Galla, *The Best Ring Light for Perfect Lighting in Zoom Meetings, Social Videos & Selfies*, SPY (Feb. 1, 2021), http://spy.com/articles/gadgets/video-media/best-ring-lights-278323/.

95.   *See* Lewinski & Galla, *supra* note 94.

96.   *See id.*

very often—I have not—but if students ever tell you they are having trouble seeing any of your teaching aids or props during class, it will be easy enough to shine a light on them.[97]

Depending on your university's policies, most of these purchases may qualify under your faculty development funds guidelines.* If not, or like me, you also bought duplicate videoconferencing equipment to create a home Zoom studio in the event of a school building closure, the total cost is extremely reasonable.[98] Just a few hundred dollars for everything mentioned here.[99] Insofar as it improves the production qualities of your Zoom sessions, helps reduce the amount of multitasking required to manage each class, helps makes students feel more engaged, or makes your class more dynamic and interesting to watch, it is money well spent.[100]

III. USING COGNITIVE SCIENCE TO INFORM OUR TEACHING IN THE ONLINE LEGAL RESEARCH AND WRITING CLASSROOM DURING A PANDEMIC

After upgrading your videoconferencing equipment, the next step is to consider what instructional methods may work best for teaching an online LRW course using Zoom.[101] When the pandemic first hit, many of us had to quickly shift from teaching in a familiar way from inside a classroom to teaching in a completely unfamiliar way sitting behind our computer screens using a videoconferencing platform.[102] We had little time to reflect or consider the best ways to adapt our classroom methods to Zoom so we took to listservs, blogs, and convened informal training sessions with colleagues to better understand the technology and how we might use it.[103]

Cognitive science can be an especially helpful resource under these circumstances because it offers an objective, research-based approach for making decisions about how best to use Zoom to help our students learn in

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97.   *See id.*

98.   *See* Thomas Smith, *How to Create a Professional Home Zoom Studio for Under $200*, MEDIUM: DEBUGGER (Nov. 10, 2020), http://debugger.medium.com/how-to-create-a-professional-home-zoom-studio-for-under-200-e60e7a224687.

99.   *See id.*

100.   *See id.*; Levy, *supra* note 27 at 260.

101.   *See Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

102.   *See Transforming Legal Education While Navigating the Pandemic*, YALE L. SCH. (Dec. 2, 2020), http://law.yale.edu/yls-today/news/transforming-legal-education-while-navigating-pandemic.

103.   *See id.* Thus the phrase "emergency remote teaching" was coined during Spring 2020 to describe the phenomenon of teachers at every level having to make the "pandemic pivot" to online teaching with little or no advanced preparation or training. *Id.*

the legal writing classroom.[104] It reminds us that the fundamentals of good teaching and pedagogy have not changed much over time, even if the technology used to deliver those lessons has.[105] What was true about good teaching before the pandemic is still true now.[106] We just need to find ways to implement the strategies and methods that have always worked well for us in the classroom using a videoconferencing platform.[107]

Whether in a traditional classroom setting or teaching with Zoom, cognitive science tells us that we need to actively engage our students, employ multimodal teaching techniques, and establish a positive and supportive classroom social culture to help ensure our students' success.[108] Fulfilling some of these objectives using Zoom is challenging to be sure but it is also a platform that can empower our teaching in new and innovative ways that were not necessarily available to us in a traditional classroom setting.[109] What follows are suggestions for integrating the principles of good law school pedagogy, derived from cognitive science, with some of Zoom's unique features and functionality to help us teach LRW more effectively in an online classroom.[110]

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104.   *See* Emma García & Elaine Weiss, *COVID-19 and Student Performance, Equity, and U.S. Education Policy: Lessons from Pre-Pandemic Research to Inform Relief, Recovery, and Rebuilding*, ECON. POL'Y INST. (Sept. 10, 2020), http://www.epi.org/publication/the-consequences-of-the-covid-19-pandemic-for-education-performance-and-equity-in-the-united-states-what-can-we-learn-from-pre-pandemic-research-to-inform-relief-recovery-and-rebuilding/.

105.   *See Transforming Legal Education While Navigating the Pandemic*, *supra* note 102.

106.   *See id.*

107.   *See* Kelsey J. Griffin, *'A Decidedly Suboptimal Set of Circumstances': Harvard Law Professors Evaluate Online Instruction*, HARV. CRIMSON (Apr. 1, 2020), http://www.thecrimson.com/article/2020/4/1/harvard-coronavirus-law-school-zoom/.

108.   García & Weiss, *supra* note 104. Though cognitive science provides important guidance on many aspects of good teaching, in the interests of concision and to comply with the shorter, more informal publishing guidelines for this symposium volume, I have focused on these three aspects of pedagogy which seem most relevant to transitioning from the classroom to a videoconferencing platform. *Cf.* Stephen L. Chew & William J. Cerbin, *The Cognitive Challenges of Effective Teaching*, 52 J. ECON. EDUC. 17, 17–18 (2020) (discussing nine challenges of effective teaching derived from cognitive science that educators should address).

109.   *See Transforming Legal Education While Navigating the Pandemic*, *supra* note 102.

110.   *See id.*; Karen E. Brinkley-Etzkorn, *Learning to Teach Online: Measuring the Influence of Faculty Development Training on Teaching Effectiveness Through a TPACK Lens*, INTERNET AND HIGHER EDUC., July 2018, at 28, 28 (noting that the goal of effective teacher training is to achieve integration of classroom technology with pedagogy).

A.   *Finding New Ways with Zoom to Actively Engage Our Students in Class*

Good law school pedagogy has always been about actively engaging our students in the material.[111] Though a well-established principle of good teaching, cognitive science helps us better understand why it is so important.[112] To a cognitive scientist, the brain is essentially an information processing machine that thinks and solves problems by comparing the one before it to the ones it has seen in the past.[113] In simplest terms, the brain does this based on techniques of pattern recognition.[114] These pattern recognition tools, also known as schemas, are comprised of neurons in the brain that fire and wire together over time as the result of practice to form the relevant neural pathways.[115] Helping students develop these neural pathways is not unlike the work it takes going to the gym to build muscles.[116]

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111.   *See* Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, AM. ASS'N HIGHER EDUC. BULL., Mar. 1987, at 3, 4 (discussing active learning is a key principle of effective pedagogy); *How to Make Teaching More Engaging*, *supra* note 63 (discussing the vital importance of engaging students in the material). A recent study suggested that employing active learning strategies is even more important when it comes to teaching on Zoom. *See* Colleen Flaherty, *The Power of Peer Interaction*, INSIDE HIGHER ED (Nov. 3, 2020), http://www.insidehighered.com/digital-learning/article/2020/11/03/power-active-learning-during-remote-instruction (discussing how the use of active learning techniques is necessary to mitigate weaker learning outcomes due to migration to online learning during the pandemic); Orlov et al., *supra* note 3 (acknowledging study of seven undergraduate economic courses taught online during the Spring 2020 pandemic found learning outcomes "substantially worse" compared to pre-pandemic course offerings though instructor use of active teaching methods was significantly associated with mitigating those effects).

112.   *See* JOHN MEDINA, BRAIN RULES 4, 32 (Tracy Cutchlow ed., 1st ed. 2008); STEVEN PINKER, HOW THE MIND WORKS 182, 210 (2009).

113.   *See* MEDINA, *supra* note 112, at 32; PINKER, *supra* note 112, at 182, 210; Levy, *supra* note 27, at 255–60. The brain has been described as the most complex structure in the known universe. Levy, *supra* note 27, at 256 n.75. Thus, while the explanation above is a great oversimplification of how the brain solves problems, it's appropriate here given the shorter, more informal format of this symposium volume. *See id.* at 255–60.

114.   DUANE F. SHELL ET AL., THE UNIFIED LEARNING MODEL: HOW MOTIVATIONAL, COGNITIVE, AND NEUROBIOLOGICAL SCIENCES INFORM BEST TEACHING PRACTICES 12, 22, 25–26 (2010); Levy, *supra* note 27, at 255–60.

115.   Levy, *supra* note 27, at 255–60. For a more detailed explanation about how the brain transforms experience into the neural pathways that serve as the cognitive machinery of thinking, learning, and problem solving, s*ee id.,* at 255–60.

116.   *See* BENEDICT CAREY, HOW WE LEARN: THE SURPRISING TRUTH ABOUT WHEN, WHERE, AND WHY IT HAPPENS 94 (2014). Learning requires practice and effort. *See id.* The more difficult the practice, the greater the benefits. *See id.*

Professors must leverage techniques that actively and repeatedly engage students in order to build the neural wiring needed to "think like a lawyer."[117]

The Socratic method has become the signature law school pedagogical technique because it is an effective way to help students develop the schemas needed to read, analyze, and understand cases like a lawyer.[118] It also happens to be a teaching method that translates very well to Zoom since the Socratic colloquy between professor and student is a good fit with a videoconferencing platform.[119] In fact, some law professors have found that the Socratic method in certain respects may work even better on Zoom than in a traditional classroom because of the directness and intimacy of the dialog between teacher and student.[120]

Nonetheless, a longstanding criticism of the Socratic method is that it only engages one or two students at a time.[121] For everyone else in the classroom, learning is a vicarious experience that depends on each student's willingness to put themselves in the shoes of the one being questioned.[122] A criticism of Zoom is that it is much easier for students sitting at home in front of their computers to check-out and disengage from class altogether compared to being in a live classroom with their peers.[123] It is also harder for

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117.   See id.
118.   Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation's Educating Lawyers*, 31 W. NEW ENG. L. REV. 97, 99 (2009); *Understanding the Socratic Method of Teaching*, ABRAHAM LINCOLN UNIV. (Feb. 10, 2020), http://www.alu.edu/alublog/understanding-the-socratic-method-of-teaching/.
119.   Kim Wright, *How the Socratic Method Translates Online*, HARV. GAZETTE (Mar. 24, 2020), http://news.harvard.edu/gazette/story/2020/03/harvard-law-school-professor-was-prepared-for-zoom-debut/; *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9.
120.   *See* Jeannie Suk Gersen, *Finding Real Life in Teaching Law Online*, THE NEW YORKER (Apr. 23, 2020), http://www.newyorker.com/culture/personal-history/finding-real-life-in-teaching-law-online (law professor says that in some respects the Socratic method works better on Zoom); *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9 (noting that the Socratic method may work better on Zoom in some respects compared to in-person teaching); Nguyen, *supra* note 20 (arguing some aspects of instruction work better on Zoom than in the classroom).
121.   *Understanding the Socratic Method of Teaching*, *supra* note 118.
122.   *See id.*
123.   *See* Audrey Williams June, *How the Pandemic Put More Strain on Students Last Fall*, CHRON. OF HIGHER EDUC. (Jan. 26, 2021), http://www.chronicle.com/article/how-the-pandemic-put-more-strain-on-students-last-fall?bc_nonce=chj334b0s4713m2n13zvm&cid=reg_wall_signup (polling of college students found that their ability to stay motivated in remote online classes during the pandemic decreased significantly in Fall 2020 and remains a major challenge for them); Orlov et al., *supra* note 3 (finding undergraduate economics students performed "substantially worse" during emergency remote learning in Spring 2020 compared to pre-pandemic classes); *Part I:*

the professor to hold each student accountable using Zoom because of the difficulty reading body language and other nonverbal cues that indicates their engagement.[124]

On the other hand, Zoom has several built-in features designed to help professors actively engage every student in the class, not just a few.[125] Indeed, these interactive tools may help explain why Zoom has become the most popular videoconferencing platform with educators.[126] Among the Zoom features we can leverage in the LRW classroom to more actively engage our students throughout each class session include the chat function, nonverbal feedback (i.e., icons for "yes," "no," "speed-up," and "slow-down"), meeting reactions (i.e., icons for "clap," "thumbs-up," "heart," and "laugh"), polling, breakout rooms, and the ability to delegate to students hosting and screen-sharing responsibilities.[127] By incorporating some, or several, of these features into each Zoom session, we can engage every student at multiple intervals during each class perhaps better than we were able to accomplish in a physical classroom before the pandemic.[128]

For example, in a small enrollment class like LRW, the chat feature is a great way to expand the effectiveness of Socratic questioning beyond one or two students at a time and instead involve everyone in the class.[129] One technique is to continue to pose questions to a handful of students as before, but now ask everyone else to post their responses in the chat-box.[130] It actively engages everyone and by picking out a few representative responses, the professor can also get valuable feedback in real-time about

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What Do You Think of Zoom University?, STAN. DAILY: OPS. (May 19, 2020), https://www.stanforddaily.com/2020/05/19/part-i-what-do-you-think-of-zoom-university/ (students report "I have never been less engaged . . . learning material than I have over Zoom").

124.   Griffin, *supra* note 107; *see also* Blum, *supra* note 37; *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9; Willingham, *supra* note 46.

125.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *Engaging Students Through Zoom*, YALE UNIV., http://academiccontinuity.yale.edu/faculty/how-guides/zoom/engaging-students-through-zoom (last visited May 12, 2021).

126.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *The Best (Free) Video Conferencing Software for Education and Teachers*, STEM AUDIO (Aug. 26, 2020), http://www.stemaudio.com/the-best-free-video-conferencing-softwares-for-education/.

127.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

128.   *See id.*

129.   *See id.*; Wright, *supra* note 119.

130.   *See Pedagogical Considerations for Teaching with Zoom*, *supra* note 9; LEVY, *supra* note 10, at 73–78.

how well students are following class discussion.[131]   If that is too burdensome, the professor can also ask a teaching assistant, or assign someone in the class on a rotating basis, to check the chat-box and identify any questions that reflect student confusion about class discussion or areas that may need further clarification.[132]

You can even use the chat feature to give spontaneous quizzes, mini-assessments, or ask students for feedback about the class in real-time.[133] Because the chat transcript can be downloaded at the end of each class, the professor can also review it later for more detailed feedback about the success of the class or use it as an assessment tool.[134] No doubt others have found even better, more creative ways to use Zoom's chat feature.[135] However, the point is to recognize that it is a great tool to actively engage students in class while also providing real-time feedback to the professor.[136] When combined with the other interactive features of Zoom, they create opportunities to actively engage students at multiple points in each class session in ways that were not always possible in a traditional classroom.[137]

Zoom's "nonverbal feedback" and "meeting reaction" function is another feature that professors can use to actively engage all students at multiple intervals throughout each class session.[138] It consists of the "thumbs up," "raised hand," "clap," and similar icons that students can use to ask, or

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131.   *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9; *Teaching with Zoom*, UNIV. OF NEV., RENO, http://www.unr.edu/tlt/instructional-design/instructional-technology-resources/web-conferencing/zoom/best-practices (last visited May 12, 2021).

132.   *Teaching with Zoom*, *supra* note 131; *see also* LEVY, supra note 10, at 73–78.

133.   *Teaching with Zoom*, *supra* note 131; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

134.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

135.   *See* Elizabeth Allen-Pennebaker, *Zoom Chat — What You Can Do With It And How*, CHAMPLAIN COLL. (Sep. 21, 2020), http://clt.champlain.edu/2020/09/21/zoom-chat-what-you-can-do-with-it-and-how/; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

136.   *See* Allen-Pennebaker, *supra* note 135; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56 (discussing lots of creative ways to use Zoom's chat feature to actively engage students).

137.   *See Pedagogical Considerations for Teaching with Zoom*, *supra* note 9. Some of my students have confirmed this by telling me they are more comfortable using Zoom's non-verbal feedback feature to respond to questions than they would be raising their hands in a physical classroom in front of their peers.

138.   *See   Non-verbal   Feedback   and   Reactions*,   ZOOM, http://support.zoom.us/hc/en-us/articles/115001286183-Non-verbal-feedback-and-reactions-(last visited May 12, 2021).

respond, to questions from the professor.[139] It is the online equivalent of scanning the classroom for body language indicating that students are following the discussion or instead are lost or confused.[140] An advantage of the non-verbal feedback function is that it may do a better job engaging quiet, shy, or reticent students who may be more likely to participate this way than raising their hands in a live classroom in front of their peers.[141] It is also a more accurate way to determine if students are following along than relying on body language and other nonverbal cues, which can be ambiguous and easy to misinterpret.[142] By utilizing both the chat and non-verbal feedback functions at appropriate intervals during class, the professor can gauge student comprehension at key points throughout a Zoom session, perhaps better than we could do in a physical classroom before the pandemic.[143]

Zoom's "polling" feature is yet another tool designed to actively engage students during class, perhaps more effectively than we could do in a traditional classroom.[144] While many popular course-hosting platforms like *Westlaw*, *Blackboard*, or *Canvas* also have a polling or quiz feature, Zoom's version is arguably better because students are already logged in by virtue of their participation in class.[145] Using those other platforms under normal conditions means students would have to first find the website, then log in, while there would be some who undoubtedly encounter technical problems that prevented their participation.* Zoom's polling feature also displays the results immediately on everyone's screen, which provides instant feedback for both students and the professor.[146] Another suggestion is to use the polling feature to solicit feedback from students in real-time about the helpfulness of class so the professor can make appropriate adjustments.[147]

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139.   *Id.*; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

140.   *See Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

141.   *See Teaching with Zoom*, *supra* note 131.

142.   *See id.*; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

143.   *See Pedagogical Considerations for Teaching with Zoom*, *supra* note 9; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

144.   *See* LEVY, *supra* note 10, at 73–78 (discussing several great ideas for creating in-class quizzes using Zoom's polling feature); *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

145.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

146.   *See Pedagogical Considerations for Teaching with Zoom*, *supra* note 9; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

147.   *See* LEVY, s*upra* note 10, at 205–206; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

Zoom's "breakout room" is a great tool to facilitate in-class student collaboration, perhaps better than we could do before the pandemic.[148] Though LRW professors have long used the technique of putting students into small working groups during class and then assigning them a task to complete, like a peer edit or solving a legal research problem, Zoom's version streamlines the logistics, which leaves more time for students to actually work on the assignment.[149] For one thing, it saves time creating collaborative groups and then finding the physical space in the building so they can all work without stepping on each other's toes.[150] Once in their Zoom breakout rooms, it is easier for the professor to check their progress, pose and answer questions, and make sure each group stays on task compared to literally having to run between groups in the building.[151]

Because of the importance some experts place on incorporating collaborative group work during the pandemic, here are some additional tips, courtesy of the internet, for making more effective use of Zoom's breakout rooms:[152]

∞ Use the chat box to give students written instructions for the task you want them to complete before sending them to the breakout rooms.[153]

∞ Incorporate several, short breakout sessions per class where students confer, return to the class to report, and then go back to their breakout room for further discussion.[154]

∞ Use Google Documents to give each group a list of questions to answer or tasks to complete.[155]

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148.   *See Facilitate Group Work*, UNIV. OF COLO. BOULDER, http://www.colorado.edu/center/teaching-learning/teaching-resources/teaching-well-technology/zoom/facilitate-group-work (last visited May 12, 2021); *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

149.   *See Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

150.   Duhart et al., *supra* note 23.

151.   *See id.*; *Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

152.   *See Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

153.   *Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148.

154.   *See id.*; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

155.   *Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148; *Pedagogical Considerations for Teaching with Zoom*, *supra* note 9.

∞ Assign each breakout group a role or task to complete so they have a clear understanding of how to use their time in the breakout room.[156]   Consider assigning a member of each breakout group the role of reporting to the class the task the group accomplished during the breakout session.[157]

∞ Designate a student to use the screen-share function to have the group collaborate on the drafting of a legal writing document during the breakout session and then report on the group's work to the class.[158]

Zoom has several features designed to help teachers actively engage students in multiple ways during class, including facilitating important collaborative group work.[159]   Whether used alone or in combination, it means Zoom gives us several options to assess student understanding, provide feedback, and answer questions at multiple intervals during each class session in ways that were not always possible before the pandemic in a traditional classroom.[160]

B.   *The Importance of Employing Multimodal Teaching Methods While Avoiding the Fallacies of Learning Style Theory*

Another key principle of good pedagogy derived from cognitive science is the importance of employing multimodal teaching methods.[161] This refers to the desirability of using instructional methods that engage multiple sensory systems associated with learning like auditory, verbal, visual, spatial, and kinesthetic.[162]   One reason for the belief that a multimodal

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156.   *Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148.

157.   *Id.*

158.   *Id.*

159.   *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *see also Engaging Students Through Zoom*, *supra* note 125.

160.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

161.   *See* Kathy Kuhl, *The Myth of Learning Styles*, LEARN DIFFERENTLY, http://www.learndifferently.com/2013/01/09/the-big-what-now-book-of-learning-styles-by-carol-barnier/ (last visited May 12, 2021) (noting learning styles don't exist, but multimodal teaching strategies are effective at reaching the most students); Harold Pashler et al., *Learning Styles: Concepts and Evidence*, 9 PSYCH. SCI. PUB. INT. 105, 117 (2008) (noting evidence does not support learning style theory, but multimodal teaching methods are effective); Megan Sumeracki, *Dual Coding and Learning Styles*, THE LEARNING SCIENTISTS (June 6, 2019), http://www.learningscientists.org/blog/2019/6/6-1 (noting the difference between "learning style" theory, which lacks empirical support and multimodal instruction, and "dual coding," which is a better evidence-based approach to teaching).

162.   Kuhl, *supra* note 161.

teaching style is effective is because it "lights up" more areas of the brain associated with that experience, which may encode it in ways that enhance learning.[163]   In more practical terms, multimodal teaching is an effective classroom strategy because it often takes a variety of teaching methods, techniques, and styles for the professor to reach every student in the classroom.[164]   Some students may understand the material better in response to a verbal explanation while others may understand it better if the professor uses a visual or kinesthetic teaching method.[165]   Thus, a multimodal teaching style is believed to improve learning outcomes because the professor is leveraging a diversity of styles and methods to connect with every student in the class.[166]

The effectiveness of a multimodal teaching strategy should not be confused with so-called "learning style" theory which posits that every student has a unique learning preference based on the major senses associated with learning like visual, auditory, verbal, or kinesthetic.[167]   This popular theory says that, for example, students who are visual learners will learn best when the professor employs visual teaching methods.[168]   Related to this is the common assumption that students raised on digital technologies, like smartphones, are primarily visual learners who learn best in response to visual teaching methods.[169]   While cognitive science supports the validity of multimodal teaching theory, studies have shown there is no evidence to support learning style theory, nor is there support for the claim that today's students are primarily visual learners who always learn best when professors employ a visual teaching style.[170]

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163.   *Id.*   By using teaching techniques that "light up" areas of the brain associated with different senses, it may encode those experiences in ways that enhance both memory and the ability to recall it. *See* MEDINA, *supra* note 112, at 208–10; SHELL ET AL., *supra* note 114, at 26, 77, 183–84.

164.   *See* Kuhl, *supra* note 161; Pashler et al., *supra* note 161, at 117; Sumeracki, *supra* note 161.

165.   *See* Kuhl, *supra* note 161; Pashler et al., *supra* note 161, at 106; Sumeracki, *supra* note 161.

166.   *See* Pashler et al., *supra* note 161, at 108, 117; Kuhl, *supra* note 161; Sumeracki, *supra* note 161.

167.   Pashler et al., *supra* note 161, at 106, 108; Kuhl, *supra* note 161.

168.   Pashler et al., *supra* note 161, at 106.

169.   Levy, *supra* note 27, at 252, 274–76, 285. Little to no evidence exists supporting the common assumption that so-called digital natives are tech savvy or more "visual" than anyone else. *Id.* at 252; *see also* Henry H. Wilmer et al., *Smartphones and Cognition: A Review of Research Exploring the Links between Mobile Technology Habits and Cognitive Functioning*, FRONTIERS PSYCH., Apr. 2017, at 1, 1.

170.   Pashler et al., *supra* note 161, at 112, 117 (showing meta-analysis of numerous learning style studies has found no evidence to support learning style theory);

To illustrate the fallacy of learning style theory, consider the following: Even if a student identifies as an auditory learner, for example, she will not learn geography very well by listening to her professor describe the shapes of the countries.[171] Instead, she will learn it best when the professor uses a visual teaching method like showing her a map of the relevant countries.[172] Similarly, a student who identifies as a visual learner will not learn a foreign language best by memorizing the spelling of those words.[173] Instead, he will learn it best when the professor demonstrates how to pronounce the words and then gives the student a chance to practice.[174] Thus, cognitive science tells us that teachers are most effective when they use methods or techniques that are most compatible with the learning objective at issue.[175] That may not always involve a visual teaching technique or style, even if that is the student's preferred way to consume information.[176] Cognitive science warns that the risk of relying on learning style theory, or the assumption that today's students are primarily visual learners, is that professors will overlook other techniques or methods that are more compatible with the learning objectives at issue which can actually undermine learning.[177]

Daniel Willingham, *Classroom Practice — Listen Closely, Learning Styles Are a Lost Cause*, TES (Nov. 21, 2014, 12:00 AM), http://www.tes.com/news/classroom-practice-listen-closely-learning-styles-are-lost-cause [hereinafter Willingham, *Classroom Practice*] (stating science has proven that learning styles do not exist); *see also* DANIEL T. WILLINGHAM, WHY DON'T STUDENTS LIKE SCHOOL? A COGNITIVE SCIENTIST ANSWERS QUESTIONS ABOUT HOW THE MIND WORKS AND WHAT IT MEANS FOR THE CLASSROOM 113, 119–20 (1st ed. 2009); Daniel T. Willingham, *Are You a Visual or Auditory Learner? It Doesn't Matter*, N.Y. TIMES (Oct. 4, 2018), http://www.nytimes.com/2018/10/04/opinion/sunday/visual-learner-auditory-school-education.html [hereinafter Willingham, *Are You a Visual or Auditory Learner?*] ("[T]here is no good scientific evidence that learning styles . . . exist."); Levy, *supra* note 27, at 274–76, 285.

171.   WILLINGHAM, *supra* note 170, at 119–20
172.   *Id.*; Levy, *supra* note 27, at 274.
173.   Levy, *supra* note 27, at 274.
174.   *Id.* at 258, 274.
175.   *Id.* at 274; Willingham, *Are You a Visual or Auditory Learner?*, *supra* note 170 (stating that adhering to learning style theory can actually hurt learning outcomes when educators overlook methods or techniques that are better suited to the particular objective at hand).
176.   Levy, *supra* note 27, at 274; Willingham, *Are You a Visual or Auditory Learner?*, *supra* note 170.
177.   *See* Levy, *supra* note 27, at 274; Willingham, *Are You a Visual or Auditory Learner?*, *supra* note 170.

To be sure, this presents a challenge for LRW professors using Zoom because it is such a heavily visual platform.[178] The solution, however, is that we need to be more deliberate about incorporating a range of methods and styles into our online teaching repertoire rather than over-rely on slides and screen-sharing.[179] By comparison, this is second nature to us in a physical classroom where we often toggle between teaching styles and methods without giving it a thought.[180] For example, if we show a PowerPoint in class that is met with blank stares, we intuitively switch to another way to make the point, like a verbal explanation or perhaps diagramming it on the board.[181] Interestingly, research suggests that even when we are lecturing at the front of the classroom, students may in fact experience that as multimodal teaching because it lights up the parts of their brain associated with physical movement as well as auditory and visual circuits.[182] It is interesting to consider whether any of the physical aspects of teaching and learning present in a brick and mortar classroom that are helpful to students are missing from the online experience such that we should try to address that.[183]

Though it is admittedly more difficult to implement a multimodal teaching strategy with Zoom, cognitive science says it is important that we try.[184] For that reason, cognitive science suggests we should resist the temptation to rely too heavily on visual tools like slides, PowerPoints, and screen-shares to the exclusion of other techniques.[185] A challenge to be sure with Zoom, but we can address it by making a more deliberate effort to switch-up our teaching methods to include lectures, putting ourselves on camera, using Zoom's many interactive features, and anything else we can do to inject some pedagogical variety and diversity into each class session.[186]

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178.   *See* Willingham, *Are You a Visual or Auditory Learner?*, *supra* note 170; Levy, *supra* note 24.

179.   Levy, *supra* note 27, at 305.

180.   *See id.* at 290–91.

181.   *See id.* at 290.

182.   *See How To Make Teaching More Engaging*, *supra* note 63 (discussing the importance of movement and physicality in teaching to helping students learn); Levy, *supra* note 24; Trond E. Toft, *Better Learning Through Handwriting*, SCIENCEDAILY (Jan. 24, 2011), http://www.sciencedaily.com/releases/2011/01/110119095458.htm (stating that merely watching physical activity lights up areas of the brain associated with physical movement which means the experience is processed by the brain both visually and physically).

183.   *See* MEDINA, *supra* note 112, at 208–10; SHELL ET AL., *supra* note 114, at 26, 77, 183–84.

184.   *See* WILLINGHAM, *supra* note 170, at 116.

185.   *See* Levy, *supra* note 16; Levy, *supra* note 27, at 290–91.

186.   *See Teaching with Zoom*, *supra* note 131; *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; James B. Levy, *How I Learned to Stop Worrying and Love*

I do this myself by often switching between lectures, putting myself on camera, using screen-sharing, making use of the physical whiteboards mentioned earlier, incorporating other physical props, and encouraging students to use the chat and nonverbal feedback functions during class.* In particular, I make extensive use of the whiteboards I keep next to my desk by writing and diagramming on them frequently as I would in a traditional classroom.* The students tell me that they find this effective in part because it gives them a respite from watching so many visuals in their other classes.*

It is also worth noting that my students and I both agree we prefer the physical whiteboards to Zoom's digital version.* Students seem to be better engaged watching a professor write on a real whiteboard than seeing typed characters appear on their screens with Zoom's digital whiteboard.* They also seem to appreciate that I'm making an effort to switch things up which makes the class more visually dynamic and therefore more interesting to watch.* The response I have gotten from students is consistent with multimodal teaching theory as well as published reports from a variety of students who have rated their Zoom sessions more effective when the professor tries to engage them in a variety of ways.[187]

C.   *Making Our Zoom Classes More Social During a Time of Social Distancing*

Another key principle of good pedagogy based in cognitive science is the vital importance of the classroom social atmosphere and rapport between professor and students.[188] Cognitive science tells us that the brain is

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Zoom — My Embrace of Online Teaching (with pics!) — Part 1, LEGAL SKILLS PROF BLOG (Nov. 18, 2020), http://lawprofessors.typepad.com/legal_skills/2020/11/how-i-learned-to-stop-worrying-and-love-zoom-my-sort-of-embrace-of-online-teaching-with-pics.html.

187.   *See* Tae Eun Shim & Song Yi Lee, *College Students' Experience of Emergency Remote Teaching Due to Covid-19*, CHILD. & YOUTH SERVS. REV., Oct. 2020, at 1, 5; Cindy Chen et al., *Learners' Experience and Needs in Online Environments: Adopting Agility in Teaching*, 14 J. RSCH. INNOVATIVE TEACHING & LEARNING 18, 21–22, 28 (2021) (detailing survey of undergraduate students who felt they learned best during emergency remote teaching in Spring 2020 when instructors employed a variety of methods and techniques); Doug Lederman, *What Worked This Spring? Well-Designed and Well-Delivered Courses*, INSIDE HIGHER ED (July 8, 2020) http://www.insidehighered.com/digital-learning/article/2020/07/08/what-kept-students-studying-remotely-satisfied-spring-well (noting a survey of more than 1,000 college students found they were most satisfied with emergency remote teaching during Spring 2020 when instructors employed a variety of techniques and methods).

188.   KEN BAIN, WHAT THE BEST COLLEGE TEACHERS DO 78, 189 (2004) (reporting study of sixty-three outstanding teachers over fifteen years concluded that the secret of excellent teaching is not particular practices but the *attitude* those teachers had toward their

designed to serve the deeply social needs of the creatures we evolved to be.[189] Indeed, the survival of our ancestors depended upon the emotional intelligence necessary to read the feelings, intentions, and state of mind of others.[190] As a result, we are designed to communicate and understand a tremendous amount of information by way of nonverbal cues like body language and subtle facial expressions.[191] It means our brain is acutely attuned to the thoughts, moods, and emotions of others, which has always had very important implications for the classroom.[192]

For instance, the "Pygmalion Effect" refers to the phenomenon that we tend to succeed or fail based on the expectations placed on us by others.[193] The theory of emotional contagion recognizes that people tend to coordinate and synchronize their emotions with others, which means that laughter really is contagious, and if you want your students to be interested in what you are teaching, you need to be interested in it yourself.[194] The theory of embodied cognition recognizes there is a profound mind-body connection involved in all cognition and thus classroom learning is both a social and physical activity.[195] All of these phenomena are the reason many

students); David J. Walsh & Mary Jo Maffei, *Never in a Class By Themselves: An Examination of Behaviors Affecting the Student-Professor Relationship*, ESSAYS ON TEACHING EXCELLENCE, http://podnetwork.org/content/uploads/V7-N2-Walsh-Maffei.pdf (last visited May 12, 2021) (stating there is a substantial link between the professor-student relationship and educational outcomes); Levy, *supra* note 63, at 56, 59 ("[T]eacher characteristics like warmth, support, and expectations can play a larger role in student achievement than almost any other consideration, including I.Q."); *How to Play in the College Classroom in a Pandemic, and Why You Should supra* note 63 (discussing vital importance of emotionally engaging students during class); *see also* DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE 34–36 (10th Anniversary ed. 2006).

189. *See How to Make Your Teaching More Engaging*, *supra* note 63; Levy, *supra* note 27, at 268–69 n.168–69, 171.

190. *See* Levy, *supra* note 27, at 269.

191. *See id.*

192. *See id.*; *How to Make Your Teaching More Engaging*, *supra* note 63.

193. BAIN, *supra* note 188, at 72 (noting research shows that the best teachers have faith in their students' ability to achieve and students, in turn, are buoyed by those positive expectations); ROBERT ROSENTHAL & LENORE JACOBSON, PYGMALION IN THE CLASSROOM: TEACHER EXPECTATION AND PUPILS' INTELLECTUAL DEVELOPMENT vii (1968); *see also* Levy, *supra* note 63, at 59.

194. *See* ELAINE HATFIELD ET AL., EMOTIONAL CONTAGION 16–18, 79 (1994) (stating that humans synchronize their emotions with those around them such that panic literally does sweep through a crowd and laughter is indeed contagious); Levy, *supra* note 63, at 51, 59, 83–84.

195. *See* HATFIELD ET AL., *supra* note 194, at 79; Levy, *supra* note 63, at 51–52. The theory of embodied cognition states that because the brain and body evolved together, with each informing the design of the other, a profound connection still exists between the two, meaning that we think and learn with both our mind *and* our body. *See*

experts argue that the social aspects of being in an actual classroom with others are a tremendously important part of teaching and learning.[196]

In a Zoom class, however, the teacher and students are all physically isolated from each other, with everyone sitting alone behind their computer screens.[197] Zoom uncouples the purely instructional component of class from the social and physical aspects of attending a class with others.[198] In a brick and mortar classroom, students feel the professor's warmth, enthusiasm, and encouragement which directly impacts their interest, motivation, and engagement, among other positive effects.[199] Student learning is also impacted by their classroom relationships with peers, as well as interactions outside the classroom in study groups, and as a result of the friendships that naturally arise just from being in the building.[200] These relationships can help reduce the stress of law school and provide important emotional support to handle its challenges.[201]

ROBERT SYLWESTER, A CELEBRATION OF NEURONS: AN EDUCATOR'S GUIDE TO THE HUMAN BRAIN 57 (1995) (recognizing our skin is where the brain meets the outside world); FRANK R. WILSON, THE HAND: HOW ITS USE SHAPES THE BRAIN, LANGUAGE, AND HUMAN CULTURE 286, 289 (1998) (noting the clear message from biology to educators is that the most effective teaching techniques aim at uniting, not divorcing, the mind and body); *How to Make Your Teaching More Engaging*, *supra* note 63; Brandon Keim, *The Science of Handwriting*, SCI. AM., Sept.–Oct. 2013 at 54, 56 (acknowledging that the mind-body connection is paramount; "[w]e use our hands to access our thoughts"); Levy, *supra* note 27, at 276.

196.   *See* Levy, *supra* note 63, at 51–52, 59.

197.   *See* Tim Walker, *Social-Emotional Learning Should be Priority During COVID-19 Crisis*, NAT'L EDUC. ASS'N (April 15, 2020), http://www.nea.org/advocating-for-change/new-from-nea/social-emotional-learning-should-be-priority-during-covid-19; Levy, *supra* note 27, at 273; Levy, *supra* note 24.

198.   *See* Walker, *supra* note 197.

199.   *See How To Make Your Teaching More Engaging*, *supra* note 63; Blum, *supra* note 37; June, *supra* note 123 (noting student motivation to learn fell during pandemic related remote learning in Fall 2020); Eun Shim & Yi Lee, *supra* note 187, at 1–2 (college students say having personal interaction with professors in online classes is key to their motivation to learn); *Part I: What Do You Think of Zoom University*, *supra* note 123 (students say that watching teachers' talking heads does not motivate them to learn); Rimer, *supra* note 17 (students say they miss being in the classroom because the personal interaction motivates them to learn).

200.   *See* Gary Polakovic, *To Manage COVID-19 Stress, Develop Healthy New Habits and Consume News in Moderation*, USC NEWS (March 31, 2020), http://news.usc.edu/167512/covid-19-stress-coping-healthy-habits-usc-social-science-experts/#; James B. Levy, *Helping 1L Law Students Find Study Groups During a Time of Online Teaching*, LEGAL SKILLS PROF BLOG (Sept. 11, 2020), http://lawprofessors.typepad.com/legal_skills/2020/09/helping-1l-law-students-find-study-groups-during-a-time-of-online-teaching.html.

201.   Levy, *supra* note 200.

Due to the pandemic's requirement that we socially distance, students have been deprived almost entirely of this critical part of the law school experience.[202] For that reason, many feel that attending classes by Zoom is not a good substitute for being in a live classroom with others.[203] On the other hand, Zoom creates new opportunities for students to interact with the professor and each other in ways that can be intimate, direct, and less hierarchical than what occurs in a traditional classroom.[204]

As a starting point, professors should try to compensate for the shortcomings of Zoom by being more intentional in showing students compassion and empathy during these stressful circumstances.[205] The first year of law school is already difficult enough even under the best circumstances, but the pandemic has obviously made things worse.[206] Not surprisingly, students are reporting elevated levels of stress due to not just their studies but also worries about the health of family members, finances, and other pandemic-related concerns.[207] Because nonverbal communication is more difficult via Zoom, professors should be more explicit in showing students that we care and support them during these extraordinary times.[208] One way to do that is to spend a few moments at the start of each class to check-in with students and ask how they are doing.[209] Acknowledge the stress of the pandemic and that law school is especially difficult under these circumstances.[210]   While it is prudent to not overshare personal

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202.   Dutton & Ryznar, *supra* note 4 (manuscript at 19).

203.   *See id.* (manuscript at 4); June, *supra* note 123; Rimer, *supra* note 17; *Part I: What Do You Think of Zoom University?*, *supra* note 123.

204.   Peter Paccone, *Building Rapport In the Online Environment*, MEDIUM: PETER PACCONE (Nov. 5, 2020), http://ppaccone.medium.com/building-rapport-in-the-era-of-online-teaching-f3d480f87905.

205.   *See* Levy, *supra* note 63, at 71; Colleen Flaherty, *Grading for a Pandemic: How Lenient, or Not, Should Professors be With Students Right Now?*, INSIDE HIGHER ED (Apr. 23, 2020), http://www.insidehighered.com/news/2020/04/23/how-lenient-or-not-should-professors-be-students-right-now; Peter H. Huang & Debra S. Austin, *Unsafe at Any Campus: Don't Let Colleges Become the Next Cruise Ships, Nursing Homes, and Food Processing Plants*, 96 IND. L.J. SUPP. 25, 61 (2020); Julia Schmalz, *'Do No Harm': The Coronavirus Calls for Compassion, Say Faculty Members Sharing Advice*, THE CHRON. OF HIGHER EDUC. (Mar. 27, 2020), http://www.chronicle.com/article/do-no-harm-the-coronavirus-crisis-calls-for-compassion-say-faculty-members-sharing-advice/.

206.   Levy, *supra* note 63, at 54, 61; *see also* García & Weiss, *supra* note 104.

207.   *See* Betsy Barre, *The Workload Dilemma*, WAKE FOREST UNIV.: CTR. FOR THE ADVANCEMENT OF TEACHING (Jan. 22, 2021), http://cat.wfu.edu/2021/01/the-workload-dilemma/# (reporting elevated levels of stress by college students because of the extra workload associated with taking classes online during the pandemic).

208.   *Id.*

209.   *See id.*; Paccone, *supra* note 204.

210.   *See* Barre, *supra* note 207.

information—students are in school to learn not to be a sounding board for their teachers' problems—letting students know that the pandemic has been difficult for you too helps to humanize the teacher and shows empathy.[211]

Another way I have tried to show support for my students during the pandemic is to relax the collaboration rules on some assignments by encouraging more group work and the social support that it provides.*   I have also offered to help students form study groups if they are interested in working with others but have found it difficult to connect with others since nearly everyone is staying away from the building.[212]   Another way to facilitate more group work and collaborative opportunities that provide important social support is to make more frequent use of Zoom's breakout rooms in class than you might otherwise do.[213]   Also, consider holding group virtual office hours to compensate for the lack of normal social interaction in class because of the pandemic.[214]

During class, Zoom's "gallery view" creates a great opportunity to build a supportive and collaborative classroom culture.[215]   In a physical classroom, everyone is facing the professor.[216]   But on Zoom, everyone faces each other, which can mitigate the normal hierarchy of the classroom that exists in face-to-face teaching and make students feel more like equal participants in class.[217]   Rather than the "sage on the stage," Zoom's gallery view arguably puts the professor on equal footing with everyone else in class.[218]   It is a definite advantage of Zoom in terms of creating a more egalitarian classroom culture, but on the other hand, it may also necessitate the adoption of grounds rules for class discussion and other netiquette

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211.   *See* Paccone, *supra* note 204.   Empathy is one of the most important characteristics of leadership in all contexts as it provides emotional support and increases resiliency among other psychological benefits.

212.   *See* Levy, *supra* note 200; Orlov et al., *supra* note 3.   Students have told me they "socialize" at a time of social distancing by forming online study groups using the text messaging platform WhatsApp.

213.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148.

214.   *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; Levy, *supra* note 16.

215.   *In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9.

216.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; Blum, *supra* note 37.

217.   *See* Nathenson, *supra* note 1 (manuscript at 19, 34); Zac Wolfitt, *A Year in the Life of Video Teaching: 2020, a Year to Remember*, BLOGSPOT (Dec. 17, 2020), http://zacwoolfitt.blogspot.com/; Blum, *supra* note 37.

218.   *See* Nathenson, *supra* note 1 (manuscript at 19, 34); Wolfitt, *supra* note 217.

protocols to address the tendency of Zoom participants to talk over each other.[219] Such a classroom policy might also address rules about whether webcams should remain on, when to turn them off, muting microphones, handling bathroom breaks, and similar issues we are all trying to figure out as we go.[220]

With respect to individual student writing conferences, I have found Zoom to be an especially effective way to interact with students for the reasons noted above.[221] In comparison to in-person writing conferences held in my office where the student and I sit side-by-side, on Zoom we face each other while reviewing drafts.* That seems to add a directness and intimacy that makes the conferences more effective.* And because students can participate from the comfort of their homes, they seemed more relaxed than coming to the professor's office which may intimidate some.* I also like the ability to put student drafts up on one monitor that we can view together via the screen-sharing function while also being able to speak face-to-face using the second monitor.* It means I can read the student's nonverbal cues more easily than sitting side-by-side in my office which helps me discern if they're confused.* Overall, I have had a very favorable experience holding one-on-one student writing conferences via Zoom and as a result plan to continue to offer that as an option even after the pandemic ends.*

Obviously, social distancing requirements make it challenging to address the important social and physical aspects of being in a classroom with others.[222] Yet, Zoom also creates new and unique opportunities to interact with students in a more personal and direct way than is sometimes possible in a brick and mortar classroom.[223] Like most aspects of teaching with Zoom that we have discovered over the past year, for every obstacle it creates, it also reveals a new opportunity to help our students learn.[224]

IV. CONCLUSION

Making the sudden shift to remote online teaching in the Spring of 2020 as the result of the Covid crisis was a tremendous challenge for all

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219.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; Paccone, *supra* note 204.

220.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56.

221.   *Id.*; *see also* Levy, *supra* note 16.

222.   *See Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9; Levy, *supra* note 16.

223.   *See In-Depth Guide: Use Zoom to Teach Online*, *supra* note 56; *Facilitate Group Work: Zoom Breakout Rooms*, *supra* note 148.

224.   *See* Levy, *supra* note 16.

educators.[225] But it may have presented particularly difficult challenges for Legal Research and Writing professors who had to quickly figure out how to teach a range of hands-on legal practice skills while sitting behind a desk using a videoconferencing platform.[226] It meant spending the spring and summer learning about new technology platforms like Zoom, while also trying to figure out how to best adapt the lessons we had created for the classroom to an online environment.[227] Adding to the uncertainty about how best to proceed was conflicting advice many of us read about whether remote online teaching demanded an entirely new type of pedagogy that fit the contours of technologies like Zoom, or instead, whether it would be teaching as usual except this time we would be doing it in front of a webcam rather than a classroom filled with students.[228]

Whenever I have struggled with teaching issues in the past, either because a class did not go as expected or I momentarily lost confidence in my own effectiveness as a teacher, I would always remind myself to return to the basics.* For me, that has meant looking to cognitive science for guidance that consists of objective, research-based strategies reflecting how students actually learn.* During the pandemic, it suggested an approach that combined the unique features of videoconferencing platforms like Zoom to actively engage students together with traditional classroom strategies that have always worked well for us in the past.* As with every challenge we face in life, the pandemic has taught us that whatever obstacles may be placed in front of us, they can also lead to new opportunities to grow and develop.* At the same time, the pandemic reminded us that teaching is a deeply social endeavor which technology can never fully supplant.* Accordingly, as we emerge from this crisis over the coming months, we look forward to returning to the classroom informed by the lessons learned while teaching during a pandemic and equipped with new tools that can help make us better, more versatile teachers moving forward.* Until then, stay safe and Godspeed.*

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225.   *See id.*; *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9.

226.   *Socratic Zooming: Faculty Weigh in on Teaching Remotely*, *supra* note 9; Duhart et al., *supra* note 23.

227.   Levy, *supra* note 16.

228.   *See id.*; Levy, *supra* note 24.

THE UNIFIED LEGAL SKILLS PROGRAM: HOW ONE LAW SCHOOL ADAPTED TO MEET THE NEEDS OF STUDENTS ONLINE, AND HOW THOSE ADAPTATIONS MAY INFORM POST-PANDEMIC TEACHING

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I.   CALIFORNIA WESTERN SCHOOL OF LAW (CWSL) ADAPTS ITS
        LEGAL SKILLS PROGRAM TO FACE THE PANDEMIC

A.   *CWSL's Legal Skills Program Prior to the Pandemic*

Prior to the pandemic, CWSL's Legal Skills Program covered two trimesters in the first-year curriculum, Legal Skills I and II. Legal Skills I focused on legal research and objective/predictive memo writing. Legal Skills II focused on continuing to develop the students' research skills, while learning persuasive writing, how to draft an appellate brief, and appellate oral advocacy.

The courses, each worth three credits, usually met twice weekly with a professor typically having around twenty to twenty-three students per section. Although our program has a director, professors were free to use their own textbooks and assignments in Legal Skills I. In Legal Skills II, all professors used the same appellate record for both the appellate briefs and school-wide oral advocacy competition.

B.   *CWSL Faces the Pandemic in March 2020*

When CWSL was forced to switch to online learning in March 2020, we had just completed our oral advocacy competition in person. We finished the last few Legal Skills II classes, and our writing conferences, on Zoom. Our summer trimester, where we teach Legal Skills II to a smaller portion of our student body, was taught in the traditional format, albeit on Zoom. We also held our first oral advocacy competition on Zoom for Legal Skills II in the summer of 2020. Those of us who taught Legal Skills II during the summer worked hard to follow best practices for online learning by attending online conferences and voraciously reading everything we could find to make the learning experience the best we could for our students. As one example, we attended the William & Mary Conference for Excellence in Teaching Legal Research and Writing in June 2020 to learn from our colleagues in the academy about best practices for online teaching.[1] CWSL's Legal Skills program earned high praise in student evaluations for adapting so quickly given the difficult circumstances.

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1.   *See William & Mary Conference for Excellence in Teaching Legal Research & Writing Online*, WILLIAM & MARY L. SCH.: ACADS., http://law.wm.edu/academics/intellectuallife/conferencesandlectures/excellence_online_teaching/index.php (last visited May 12, 2021).

C.   *CWSL Adapts its Legal Skills Program for Academic Year 2020–2021: The "Why" Behind the Unified Program*

During the summer of 2020, we met as a Legal Skills team to discuss how to approach the regular school term. Specifically, we faced a larger-than-anticipated first-year class and contemplated how to remedy the sense of disconnection we expected would be felt by both students and us as teachers with online teaching and the ongoing pandemic. We asked ourselves, "what if one of our colleagues become sick? How would we cover that professor's classes? How can we create a sense of connection in a remote world?"

We also saw the challenges we faced as an opportunity to learn from one another and also mentor our new faculty members. We saw an opportunity to be efficient and pool our resources where one colleague could teach the entire first-year class on a subject of particular interest to that professor, such as rule synthesis, introductory legal research, or mastering *The Bluebook*.[2] This would also enable the students to learn from one professor on certain subjects, which would give them a sense of consistency and unification between Legal Skills sections.

D.   *CWSL Creates the Unified Legal Skills Program: The "How" Behind the Program*

To address these challenges and make the most of these opportunities, we decided to adopt what we came to call our Unified Program for Legal Skills. Under this approach, our class sections would meet on the same day and times. Every Friday, the first group of sections would meet from 8 to 11 a.m. and the second group of sections would meet from 1 to 4 p.m. Some classes throughout the trimester would be unified where all students would meet using a "unified class" Zoom ID, and one or two of us would teach for all or part of class time. If only part of class time was taught in a unified fashion, then after a break, we would resume class with each of us meeting with our individual sections using individual Zoom section IDs. Some weeks, we would meet with our students only in individual sections. Before the start of the trimester last fall, we met many times as a team to plan our unified syllabus and to map out in advance what topics would be taught by one or two of us to the unified class, or whether a particular week's subject would be taught by each of us individually. The

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2.   THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION 1 (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020).

unified sections insured important content would be delivered in the same way to all our students. Smaller section meetings allowed for more group work using breakout rooms.

We also decided to use asynchronous content for only a small portion of the course, on subjects such as citations and online legal research. For example, in the first trimester, we used Lexis Learn Modules for a basic introduction to legal research before addressing research in a synchronous class. One of us also created an asynchronous lecture on how to craft citations using *The Bluebook*.[3] The students were required to watch this lecture in advance of the synchronous class, where the students put their skills to work with in-class citation exercises.

To achieve uniformity, our main textbook has been the same for all students, and all assignments and grading rubrics have been the same. Our syllabi have also been the same for all critical aspects of the course, such as due dates, readings, assignments, and class policies. We have shared the same Canvas® learning management system for all students, where the students could find all readings and assignments.[4] Each of us also has an individual "Page" on Canvas®, where additional materials can be posted for different sections, such as supplemental readings. Some of us have also had our students use the Canvas® calendar to sign up for office hour meetings with us and our teaching assistants, who are called "Honors Instructors" at CWSL.

We have also held Legal Skills Workshops each week for one hour; these have generally been staffed by at least one of us and one of our Honors Instructors. In the first trimester, we held these Workshops twice each week; in the second trimester, we have shifted to holding them only once each week. These Workshops have been optional opportunities for students to ask questions in an informal setting, write in break-out rooms, or work on citations. Some Workshops have been open forum, while other Workshops have focused on specific topics related to the assignments the students were working on during the given week. Over time, we came to find students appreciated when we shared an agenda before each Workshop so that students could know what to expect and decide whether to attend.

Finally, we have held weekly team meetings on Zoom on Monday afternoons to plan for the weeks ahead. We have rotated which of us would set the agenda for E-weekly-meeting's and lead the discussion. We have

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3.   *Id.*
4.   Over the summer of 2020, our school, after considering various options, adopted Canvas® as the learning management system for all courses at CWSL.

also been in constant communication through email throughout the week as we have prepared for Friday's classes.

II. THE BENEFITS OF OUR UNIFIED APPROACH

We have been pleased to find our Unified Program has brought a number of benefits, both for us as teachers and for our students. Here, we look at several of those benefits.

A. *Benefits of a Unified Approach for Us as Teachers*

The chief benefit to us so far as teachers has been the many ways in which our weekly team meetings, the need for uniformity in our teaching, and the opportunities to teach together, have allowed us to learn from and encourage each other during an especially challenging academic year.[5] In order for our unified approach to work, we have had to work very closely together, both in the virtual classroom and outside it. This has fostered a spirit of camaraderie and unity that would be welcome under even normal circumstances, but especially so during such a difficult year.[6] Throughout this strange and challenging time, it has been a real blessing to have had the virtual shoulders of our colleagues to lean on. The opportunity to learn from and mentor each other has been especially helpful to the newest member of our team because, among other things, he can discuss with the rest of the team the ways we have traditionally taught certain subjects, why we make certain pedagogical choices, and what difficulties we have seen students have with certain concepts or subjects.[7] He has also had the opportunity to watch each of us teach our students in ways that might not have been as possible or comfortable in a traditional classroom setting or less unified program.[8] An

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[5]. *See* Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others?*, 93 NEB. L. REV. 547, 583–84 (2015); Jennifer Sheppard, *Transitioning to a Collaborative Legal Writing Program: Management Principles to Apply When "Take Me to Your Leader" Is No Longer Applicable*, 24 LEGAL WRITING 159, 177 (2020); Gerald F. Hess, *Improving Teaching and Learning in Law School: Faculty Development Research, Principles, and Programs*, 12 WIDENER L. REV. 443, 443 (2006).

[6]. *See* Meyerson, *supra* note 5, at 575 ("[The] benefit from collaboration is social and psychological.").

[7]. *See id.* at 577.

[8]. In some ways, teaching together in our unified classes has served as a blend of what Professor Hess refers to as "[r]eciprocal peer classroom observations" and "team teaching." Hess, *supra* note 5, at 458. We have experienced the "significant benefits" in "intellectual stimulation, a closer connection to the college community, and development of teaching skills" that Professor Hess attributes to team teaching. *Id.* at 460.

added benefit of the close bonds we have formed as a team this year is that students have had frequent opportunities to see us model for them the importance of effective teamwork and collaboration in the law.[9] A number of our students have commented on how much they enjoy our banter as we teach together, whether in our unified classes or our weekly Workshops.[10]

Another benefit of the Unified Program for us as teachers has been the efficiencies we could find through teamwork.[11] As noted above, when we originally conceived the Unified Program, we had hoped to achieve significant savings in time and energy for all of us by identifying topics that one of us could teach—whether synchronously or asynchronously—and relieving the others of that burden. We had also planned to shift more of our teaching to asynchronous lectures and other content so that we could more effectively flip our classes when we were with our students in the virtual classroom.[12] We have not ultimately done this as much as we had first planned because, as discussed below, our students generally seem to prefer synchronous over asynchronous teaching and we found in our experience that preparing asynchronous content could be prohibitively time-consuming. Despite these adjustments in our approach, we have been able to find ways of using our Unified Program to save ourselves time and energy through collaboration and delegation. For instance, as noted above, rather than having each of us introduce our students to rules for citations, we decided to have one of us do so in a unified, asynchronous lecture. We then worked individually with our respective students or together in the Workshops on

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9.   *See* Meyerson, *supra* note 5, at 555 ("[L]aw students learn more than just law from their professors. They also learn what it means to be a lawyer. In terms of their psychological and intellectual development, '[p]robably the greatest role models for students are faculty members themselves.'") (quoting Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Lawyering*, 87 NEB. L. REV. 1, 58 (2009)) (alteration in original) (footnote omitted); Jennifer Rosa, *Flipped Learning: Promoting Collaboration, Cooperation, and Civility*, 96 MICH. B.J., at 56, 56 (Oct. 2017); Hess, *supra* note 5, at 446 ("Interpersonal relationships between teacher and students are critical to learning and teaching. Learning is enhanced if students sense that their teachers care about them. Many effective faculty members work closely with students in and out of the classroom and serve as mentors for students.") (footnote omitted).

10.   *See* Sheppard, *supra* note 5, at 208 (noting the benefits that "[h]umor, fun, and play" can bring to work) (alteration in original) (internal quotation marks omitted).

11.   *See* Meyerson, *supra* note 5, at 556–61, 575 (discussing the benefits of collaboration in legal practice and other fields); Sheppard, *supra* note 5, at 186, 190–91, 195 (discussing the benefits of teamwork).

12.   In this we were guided, at least in part, by experiments at CWSL by our colleague, Laura M. Padilla, even before the pandemic with using asynchronous content to flip classes. *See* Laura M. Padilla, *Whoosh — Declining Law School Applications and Entering Credentials: Responding with Pivot Pedagogy*, 39 U. LA VERNE L. REV. 1, 20 (2017); Rosa, *supra* note 9, at 56–57.

proper citations throughout the trimester. We have also been able to save ourselves time and trouble by delegating or collaborating on more mundane but vital tasks, such as preparing different sections of our syllabi, creating assignments, and designing our shared course on our learning management system.

In conceiving our Unified Program, we had also been very much aware that the pandemic might make it necessary for us to fill in for each other should something happen to us or our loved ones. Our hope was that having our Unified Program would allow us to help each other and our students more seamlessly because the students would already be familiar with each of us, would have classes at the same times, and would be working on the same assignments and with the same deadlines. We have been fortunate that we have not yet had to really put this to the test. It has been an enormous relief to all of us, however, to know that meaningful coverage and support would be there if they should be needed. Knowing we could cover for each other relatively seamlessly made a challenging and uncertain trimester last fall that much less challenging for all of us and is making the Spring Trimester that much easier.

As just one example of the advantages of our collaborative approach in practice, we have found the best way to teach our unified classes together on Zoom is to have one of us at a time be responsible as lead teacher and have the rest of us assist in other ways. For instance, while one of us leads a discussion or lecture, the rest of us can monitor the virtual classroom and respond to questions asked by students in the chat window on Zoom. We can also let the lead teacher know if there are any questions from students that would be helpful for the lead teacher to address for the benefit of the whole class.[13] As anyone who has tried it will likely agree, it can be very hard to teach a large class on Zoom—especially if using slides—while also reading the virtual room and keeping an eye out for and responding to questions students might ask in the chat window.

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13.   We have found some students especially prefer to use the chat window to participate during our classes on Zoom. This participation comes in a variety of forms and for a variety of reasons. Some students seem to have preferred to use the chat window to participate because they were attending class from surroundings that did not allow them to speak as freely as others. Others seem to prefer it because it was quicker for them or would allow us to answer questions without interrupting the flow of a lecture or discussion. Others seem to prefer participating in this way because speaking—even or especially in the virtual classroom—can be a nerve-wracking experience. Students sometimes send us private messages while others may pose questions to the entire class. While allowing students to use the chat window could be challenging—especially with larger classes—we found it was a helpful way to allow students to engage and participate.

A fourth benefit of the Unified Program has been that each of us has had opportunities to teach the entire first-year class. With the traditional approach, each of us would teach only a small portion of the first-year students and would get to know the other first-year students only to the extent we might meet them haphazardly. Because getting to know students is one of the chief joys of teaching, the opportunity to get to know so many of them has been a real boon to us as teachers. It has also helped us all to feel we are more a part of the campus community, which has helped alleviate the feelings of isolation that come with teaching online during a pandemic. It has also helped students get to know each of us and seek us as mentors based on shared interests and affinities.[14] Had they not met us through our Unified Program, we suspect students might not have felt as comfortable seeking us as mentors, whether because they were not aware of our shared interests or the reluctance students understandably would have approaching unfamiliar teachers.[15] This has benefitted the students (who would have lost us as mentors), as well as us (who would have lost the rewards that mentoring students brings).[16]

As explored more below, the need for us to have a dedicated day of teaching each week has not been without downsides for us and our students. One advantage, however, has been that it forces us to be thoughtful in deciding how to use that time most effectively. Because teaching two three-hour classes every Friday, week after week, would be grueling, we have looked for ways to make things easier for all of us (including our students). Weaving in asynchronous content where we can—with a proportionate reduction in synchronous teaching that week—has been one way we have done so effectively. Although we have used asynchronous content sparingly, we have found it effective for certain content. Even then, we have tried to

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14.   *See* Leslie P. Culver, *White Doors, Black Footsteps: Leveraging "White Privilege" to Benefit Law Students of Color*, 21 J. GENDER, RACE & JUST. 37, 44 (2017) (discussing the benefits of mentoring and ways to foster mentoring relationships with students); Katerina P. Lewinbuk, *Kindling the Fire: The Call for Incorporating Mandatory Mentoring Programs for Junior Lawyers and Law Students Nationwide*, 63 ST. LOUIS U. L.J. 211, 218–21; Amy R. Stein, *The Need for Peer Mentoring Programs Linked to the Legal Writing Class: An Analysis and Proposed Model*, 27 PERSPS.: TEACHING LEGAL RSCH. & WRITING 32, 33 (2019).

15.   *See* Culver, *supra* note 14, at 43–44 (discussing reluctance of some students to seek mentors).

16.   *See* Lewinbuk, *supra* note 14, at 219. One further advantage is that students who switched professors from Fall Trimester to Spring Trimester for any reason generally would already have met their new professor and would already have some familiarity with his or her expectations. Those students would also be working from the same foundations as the other students in their new class, because all students had had the same assignments in the earlier trimester.

keep the asynchronous content relatively short and engaging. Another—and surprisingly popular—method has been using break-out rooms and group work in our synchronous classes.[17] This has made sure our classes do not turn into three-hour lectures, keeps the students engaged, and allows the students to get to know each other and practice working in teams. We could—and would—have done each of these things even if our classes had been split into shorter and more frequent sessions each week, but the Unified Program has given us even more reason to do so as often and as effectively as possible.

B.   *Benefits of a Unified Approach for Our Students*

We naturally cannot speak as confidently about the benefits of the Unified Approach for our students, but the feedback from our students so far suggests those benefits have been considerable.

Beyond the benefits touched on above, we have been pleased to learn how much the students have enjoyed the weekly Workshops and the opportunities they give students to learn from and collaborate with their classmates across sections. (Although our unified class sessions in theory have provided similar opportunities, our students do not seem to have appreciated them quite as much. It is not clear why this may be, but it seems likely that the more informal tone of the Workshops may help.) Our students also seem to have appreciated the sense of community and camaraderie as a first-year class that fostered across sections.[18] As noted above, our Unified Program also has given our students opportunities to meet and learn from all of us, as well as from more of our second and third-year teaching assistants, which has further increased their opportunities to find mentors in the faculty and student body. The value of these things for students learning online during a pandemic cannot be overstated.[19]

We also believe our students have benefitted from our collaboration in our efforts to find the best ways to teach in the virtual classroom. Our need to reconcile our, at times, different approaches for the sake of unity has forced us to think more carefully about why we teach certain things the ways we do and whether those approaches would make sense in a virtual

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17.   *See* Rosa, *supra* note 9, at 56–57 (discussing use of in-class exercises to teach students in legal writing course).

18.   *See* Meyerson, *supra* note 5, at 578 (discussing benefits to law students of collaborative learning).

19.   *See id.* at 579.

classroom.[20]   Even when we have decided that different approaches to teaching something makes the most sense, we believe our efforts to explain these inconsistencies—whether real or apparent—to our students should serve them well when they try to reconcile similar inconsistencies in other classes or in their practice as attorneys.[21]

We also have reason to believe that at least some of our students have appreciated having our classes with them in one long session at the end of each week. At least some of our students have shared with some of us that having a day dedicated each week to our course allowed them to organize their studies more effectively for each week because they could concentrate more on their other four classes at certain times in the week. These students also seem to have looked forward to having their classes with us at the end of each week. After all, who doesn't look forward to a three-hour class on legal writing, research, and analysis at the end of a long and challenging week of law school?

III.   PROBLEMS, DISADVANTAGES, AND PITFALLS

While the Unified Program we adopted this year has been of tremendous benefit to us as educators and to our students as learners, our approach has not been without its challenges.   Here, we explore those challenges, both from our perspective as educators as well as from the perspective of our students as learners.

A.   *From a Teaching Perspective*

The first challenge we encountered as we embarked on our experiment in unity was that, while the impetus behind unifying our course was the need to save time to better engage with our students, the approach we adopted was, in fact, very time-consuming. The approach required that we meet weekly and that we coordinate closely in developing class materials, lesson plans, shared assignments, grade rubrics, and plans for Legal Skills Workshops.   Our weekly meetings often extend beyond 60–90 minutes, though we have worked hard through agenda-setting and mutual respect to rein that in. The time we spend every week emailing each other, and reading the emails written by our colleagues, easily consumes several more hours per week. Is it worth it? Yes. Does it take time? Yes.

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20.   *See* Sheppard, *supra* note 5, at 200–01, 232–33 (discussing the possible benefits of consensus decision-making).

21.   *Id.* at 199, 200.

Furthermore, the mere fact that we redesigned a course was itself very time-consuming. We knew we would need to do this no matter how we handled this year's course; because we were all transitioning to online teaching for the first time (two of us taught the second trimester of the course in Summer 2020, but it was everyone's first time through Legal Skills I online), there was no way to avoid some degree of course redesign. We were all committed to the idea that our online course would not simply be the same course we had always taught. Nevertheless, despite the inevitability of some degree of time-consuming redesign, the broader redesign required to align our assignments and lesson plans was itself a very time and labor-intensive process.

Our approach has also demanded a high degree of trust, respect, and good faith. Teamwork is not always a major part of the day-to-day work of many law school professors,[22] so unifying our program tested skills that not all of us had much opportunity to use in the years since we had left law practice. To some extent, we all had to relearn the skills of professional collaboration—respect for each other's time, creating space for the quieter or newer members of the group, creating agendas, sticking to a plan—even as we were explicitly teaching those skills to our own students.[23]

The need for trust, respect, and good faith extends, of course, into the classroom. We have been required to trust that our colleagues will convey expectations to our students in a manner that we can support and reinforce. It requires absolute consistency; we all know the pitfalls of presenting inconsistent information to our students, and this risk is only magnified when those students encounter multiple instructors.

We had initially planned to sidestep some of these problems by focusing our unified class sessions on those skills that can only be taught in one universal way, like Bluebooking. We had also planned to use Legal Skills Workshops to address questions that were general in nature and otherwise to create more a study hall environment. What we quickly learned was that it is impossible to avoid engaging in substantive discussions with students from other sections in these environments. For all we might intend to avoid that substantive discussion, a class or a Workshop becomes worthless when the professor refuses to answer basic questions to which he or she very obviously knows the answer. For these sessions to be meaningful for our students, it became necessary that we address substantive issues. This discussion of substance requires that we all be aware of what

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22.   *See* Meyerson, *supra* note 5, at 575.
23.   *See* Sheppard, *supra* note 5, at 211 (exploring the potential pitfalls of sharing responsibility and leadership in director-less legal writing programs).

everyone else is doing, that we support the approach each other instructor is taking, and that we reinforce what the other teaches.[24]

This requirement, in turn, drives a need to sacrifice individual approaches. By way of example: the first major assignment we gave our students in Fall 2020 was a memo problem concerning arson of an inhabited structure. Of the four professors teaching the course, three of us thought the elements under the applicable statute were (expressed very simply): (1) willful and malicious, (2) burning, (3) inhabited, and (4) structure. The fourth member of our team saw the breakdown as a three-element test: (1) willful and malicious, (2) burning of a structure, and (3) inhabited. If we had all been teaching our own students separately, this disagreement would not have been significant. But because we were working jointly, it was important that, even if we did not all agree on the same framework, we at least be aware that our colleague's teaching other sections might be guiding their students toward a different framework. This discussion consumed many hours both over email and during team meetings, as we attempted to persuade one another that one approach or the other was better supported by the case law, or that one approach was pedagogically superior, as we taught our students a new skill.

Our approach has forced us to face challenges in fostering an inclusive classroom as we teach to a diverse group of students.[25] When a professor teaches her own small sections alone, she has both control over, and responsibility for, the pedagogical choices she makes. When a professor delegates responsibility to a co-teacher, she cedes control to someone whose pedagogical approaches might be different—but she retains responsibility for the consequences of the co-teacher's choices. We faced this issue recently in teaching a unified class, as we worked to reconcile different opinions on the use of judicial opinions that contain language that is hurtful, offensive, and potentially alienating to students in our class.[26]

We also learned that our approach leaves us with challenges in classroom management. When we hold unified classes that bring together half the first-year class in a single Zoom session, we increase the odds that someone in that session will behave in a manner that is disruptive. However,

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24.   *See* Hess, *supra* note 5, at 443 (explaining the benefits of collaborative teaching and the improvements to pedagogy that flow from being observed by co-teachers).

25.   *See* Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Students: Lessons in Pedagogy from Transformative Law Professors*, 33 CHICANA/O-LATINA/O L. REV. 1, 70 (2015).

26.   This class involved a discussion of the Civil Rights-era cases of *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969) and *Walker v. City of Birmingham*, 388 U.S. 307 (1967).

the professor teaching the session might not be the disruptive student's small section professor and consequently might lack the rapport necessary to manage the classroom as effectively as she otherwise might. Our ability to manage the classroom was similarly impacted by the fact that we have different expectations for classroom behavior: different approaches to the use of the chat function on Zoom, different levels of familiarity with our students, and different types of rapport with our classes. Bringing four or five sections together for a single Zoom class raises challenges in that what one student considers disruptive, another might consider an appropriate expression of positive rapport with his or her small section professor.

Our program required an uncommonly high degree of trust and collaboration. We would not recommend that any group of colleagues undertake this effort unless that group is confident that all members of the group are capable of dealing with one another with trust, good faith, good humor, and collegiality.

B.	*From a Learning Perspective*

In trying something wholly new, we lacked the years of wisdom and experience that typically inform our courses. To correct this, we have worked hard to survey our students about their experiences. We reviewed their course evaluations and shared common themes and complaints. We asked our students to complete reflections on the first trimester and to submit reflections on their performance on the final memo. We opened our first classes of the new trimester up to a discussion of the program.

We gleaned two important takeaways: first, the Unified Program at times left students concerned about perceived inconsistencies in messages and expectations, and second, some students felt that our attempts to provide generous amounts of extra support ended up amounting to more obligation and more demands on their time.

The need to present clear and consistent messaging was something about which we were always conscious. We continue to work to do better and to exercise sensitivity with respect to this common student perception.

We also learned that while students expressed resounding approval of, and appreciation for, the Legal Skills Workshop and our collective availability, many also came to believe that they were essentially required to attend all these sessions for fear of missing something that would be useful and important, especially given that we grade on a curve. We struggled with this throughout the trimester: Do we make the session so general as to not be worth students' time just to assuage the fears of students who cannot attend and worry about what they will miss? How do we find the balance between making something useful enough to be worth students' time without making

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it so useful that we are essentially holding another class session? Ultimately, we did our best to use Workshop time to reinforce things that were already taught in class. Nevertheless, we could never totally escape the idea that there was real teaching happening in all these sessions, and that the students who succeeded in the course were those who regularly attended.

        To mitigate this, we decided to drop the Legal Skills Workshop from two weekly sessions down to one, and to record that one session for students who are not available to attend. We also redoubled our commitment to using the time not to teach new skills, but instead to reinforce those already taught in class.

        Another downside to our approach, from the student perspective, is that asynchronous learning is not always ideal.[27] Consequently, we were not able to shift much of the course to asynchronous modes of delivery. We did not intend to make the course asynchronous or to shift much to asynchronous delivery, but we ultimately found that most of what we did present as asynchronous content needed to be repeated and retaught in class anyway, obviating the time savings this mode of delivery was designed to achieve.

        Finally: a three-hour class is a very long class. Our approach essentially required a move to a single, three-hour weekly class because unifying our classes meant that we needed to hold those classes on the one day when all our students would be available to have class at the same time. This was only possible on Fridays. To do this, however, we could not hold classes as we normally would—in two 90-minute blocks—and instead we had to schedule our classes as long, three-hour weekly meetings. Meeting for three hours at a time requires a high degree of stamina on the part of the teacher. More importantly, however, this requires a high degree of stamina on the part of the student. We find that it can be a challenge for all our students to remain engaged and focused for a three-hour block of class every week.[28]

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       27.   *See* Victoria Sutton, *Asynchronous, E-Learning in Legal Education: A Comparative Study with the Traditional Classroom*, 70 SYRACUSE L. REV. 143, 145 (2020) (noting that the correct inquiry is not whether asynchronous law courses are superior or inferior to traditional law courses, but instead how such courses compare to traditional law courses).

       28.   *See* L. Fosslien & M.W. Duffy, *How to Combat Zoom Fatigue*, HARVARD BUS. REV. (Apr. 29, 2020) (exploring the ways in which videoconferencing technology drains participants' energy because it requires participants to "focus more intently" in order to participate in conversations).

IV.   LESSONS TO CARRY WITH US

Collectively, on both sides of the classroom, we eagerly awaited the end of the Covid-19 crisis and looked forward to 2021 and the promise of a return to *normalcy*. Within the first few weeks of the new year, however, it became apparent that *normalcy* would not be returning soon.[29] Instead of celebrating the end of the pandemic, we focused on celebrating our resilience and the positive lessons learned while teaching in a time of crisis. This section is informed by the feedback we received from students regarding those aspects of the program that they found most useful. It highlights some of our most treasured takeaways and aspects of the program that we believe will continue to serve us and our students well, beyond the pandemic and into that brighter future that beckons.

A.   *An Emphasis on Emotional Intelligence and Empathy.*

It is infinitely harder to learn when survival itself is at stake and when the shadow of death looms large.[30] We began the academic year by asking our students to submit an essay in which they outlined their fears and concerns as they embarked on their path as lawyers-in-training. This year's class articulated many of the same concerns that are reflected in Peter F. Lake's article *When Fear Knocks: Myths and Realities of Law School*,[31] the required reading for the assignment. Common anxieties related to the *imposter syndrome*, cut-throat classmates, and the difficulties associated with shedding poor study habits all made an appearance in our students' essays. But new fears emerged and took pride of place in many of the responses generated by the assignment. Students articulated concerns regarding their ability to connect with each other and with us in the virtual classroom; the

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29.   *See* Manny Fernandez et al., *'Our New York Moment': Southern California Reels as Virus Surges*, N.Y. TIMES, Jan. 10, 2021, at A1 (anticipating that 1 in 10 residents of Los Angeles County had tested positive for the virus and observing that "[b]y nearly every major metric, the spread of the virus is profoundly more dire in Southern California").

30.   *See* Brittany Steane, Comment, *Removing Traumatic Barriers to Learning: The Need for Effective Trauma-Informed Approach to Learning Legislation in Pennsylvania*, 92 TEMP. L. REV. 299, 303 (2019) (noting the multiplicity of ways in which trauma can impact classroom learning); COALITION TO SUPPORT GRIEVING STUDENTS, http://www.grievingstudents.org (last visited May 12, 2021) (website offering multiple resources, including Covid-19 specific ones, to assist students who are coping with illness and loss).

31.   Peter F. Lake, *When Fear Knocks: The Myths and Realities of Law School*, 29 STET. L. REV. 1015, 1016 (2000).

impact that economic imbalances might have on their education; the uncertainty they experienced when contemplating the possibility that they or their loved ones might fall ill. Although these fears were not reflected in the reading that inspired the writing assignment, we had anticipated them. The resulting essays reminded us, however, that law students enter the academy already burdened with many emotional weights: in a span of less than twelve months, most of our students will have battled the LSAT, undergone the draining experience of applying to many law schools, and awaited responses that feel like heavy judgments on their own self-worth.[32] They will have struggled with offers from competing schools and the weight of making a decision that might well impact their entire professional and personal future. At the same time, they will also have been preparing mentally to leave home, family, and friends to start their lives all over in a new setting.

One lesson learned is that we must be more mindful to ask students to reflect not only on the fears and concerns they have as they embark on their legal education, but also the fears and concerns they have with respect to the emotional ordeals they have already endured to get to this point in their lives. The insights our students can offer regarding their personal development up to this point can provide us with the opportunity to help guide them into their future.[33] Asking students to draft a personal reflection along these lines does more than provide them with an opportunity to reconnect with writing, it forces them to self-reflect and cultivate their own emotional intelligence while also providing us with new opportunities to engage emotionally with our students' point of view and to expand our ability to empathize with them.

Again and again, students reminded us of the high value they place on our willingness to share with them our own challenges. A shared struggle helps to create solidarity, which in turn promotes accountability and group

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32. *See* Katelyn Albrecht et al., *Wellness as Practice, Not Product: A Collaborative Approach to Fostering a Healthier, Happier Law School Community*, 59 Santa Clara L. Rev. 369, 371 (2019) (surveying pre-pandemic statistical evidence indicating that approximately ten percent of law students experience depression prior to matriculation, "twenty-seven percent after one semester, thirty-four percent after two semesters, and forty percent after three years"). It is therefore even more remarkable to consider the decline in mental well-being that many students experience after they enroll. *See id.*

33. *See* Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U. San Francisco L. Rev. 941, 941 (1997) (describing "two branches of higher education literature that illustrate the importance of teachers listening to their students'").

cooperation.[34] For this reason, we intend to explore and create additional opportunities that will provide students with opportunities to share their struggles while framing their education as a broader struggle that we share with them. This will allow us to cultivate their emotional intelligence and to model for them the kind of empathy that will serve them well as they progress in the legal profession.[35] Examples include carving out time in the classroom for personal sharing (e.g., eliciting responses at the beginning of class regarding a positive event or a particular challenge that marked the week in progress) and structuring weekly office hours in a way that empowers students and professors to connect on a personal level. Some examples include creating a fixed slot of time for informal "coffee breaks" in which professors both facilitate and participate in conversations on personal topics, share music playlists with and among students, and highlight connections between legal issues, judicial opinions, and "hot topics" in the legal profession with personal experiences or anecdotes from our past as practitioners and our present as members of a community whose borders extend beyond the classroom and the school-house gate.

     In fact, although 2020 threw plenty of lemons our way, one of the most refreshing pitchers of lemonade that it provided was the realization that virtual office hours were viewed as a vital ingredient in our students' ability to succeed during these trying times. So much so that, as a department, we are unanimously committed to providing students with at least some space in which we can continue to meet virtually, even post-pandemic. Some of the advantages that we identified are: the ability to accommodate far more people than could be physically present if we met with students in our physical offices; the ability to share documents on the screen without requiring that students expend limited financial resources to print hard-copies; the more intimate connection that comes from being able to review a document together with none of the awkwardness that can sometimes arise when teacher and student are in close physical proximity. In addition, virtual office hours expand the potential for fostering empathy that comes when students are invited into what is actually one's home.[36] Finally, a virtual

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        34.   *See* Garrick B. Pursley, *Thinking Diversity, Rethinking Race: Toward a Transformative Concept of Diversity in Higher Education*, 82 TEX. L. REV. 153, 187 (2003) (quoting Deborah Waire Post for the proposition that, "[t]he existence of a shared struggle generates a normative construct, an imperative that makes rejection of membership in the group unethical and immoral.").

        35.   *See* Gerdy, *supra* note 9, at 2 (quoting former ABA President Karen J. Mathis as saying "caring is as much a part of the legal profession as intelligence") (brackets omitted).

        36.   *See* MICHAEL HUNTER SCHWARTZ ET AL., WHAT THE BEST LAW TEACHERS DO 52 (2013). On the importance of modeling and fostering empathy in legal education. *Id.*

office allows a professor to make herself available to students without needing to involve security so that a student can access a physical office when the office building has been closed for the evening or the weekend. This allows students and faculty to manage their time more efficiently by not requiring them to commute to school simply to attend office hours. As one student explained: "I neither had to fight traffic nor stalk parking spaces to receive feedback."

B.   *Visibility and Vulnerability*

Students repeatedly remarked on what they perceived as a silver-lining of the pandemic: the fact that our live lectures are recorded and made available to students for home-viewing. This policy was adopted in recognition of the fact that not all students have equal access to strong internet connections and often face stiff competition for bandwidth from other members of a household who are working or learning from home (or both).[37] In fact, a common fear expressed in our students' initial essays (and one that certainly was not reflected in Peter Lake's article) was related to the impact that dropped connections might have on their learning and their ability to comply with mandatory attendance policies. In other words, the policy was adopted to provide students with a contingency plan.

Many students, however, viewed the recorded lectures as a rich resource that complemented their on-line learning. As one student put it:

> [R]ecordings . . . proved invaluable for my progression as a first-year law student. I initially worried that I would miss, or mis-hear, a detail in [a] lecture because the online format can be distracting. Even in Zoom's "Speaker View" mode, a row of small tiles showing students preoccupied with their dogs or phones caused my eyes to drift more than once. There were also often unavoidable internet connection, microphone, or camera issues with Zoom. Fortunately, most of my professors opted to record and post their class sessions on Panopto. The ability to listen to all or a portion of a lecture, and even tutoring sessions, on my own time gave me a better grasp of the content. My former professional colleagues frequently reminded me they did not

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37.   *See* Editorial, *Locked Out of the Virtual Classroom*, N.Y. TIMES, Mar. 28, 2020, A22 ("[C]losing the digital divide — and bringing all Americans into the information age — will require a momentous effort on the scale of the federal project that brought electricity to darkened regions of the country during the New Deal. And it will be similarly worth the effort.").

benefit from the same luxury during their in-person legal education.

Another student noted another positive, but unintended, consequence of making recordings of the live lectures available: she could observe herself and her in-class contributions. As she put it:

> I . . . used the recordings to self-assess my presentation while "on call." This allowed me to correct my physical quirks and voice projection; who knew I low-blinked only one eye while thinking through a response?! Watching recordings of my performance also helped me gauge how succinctly and accurately I answered the professor's questions.

It should be noted that this student subsequently placed well in the first trial competition open to our 1Ls. Clearly, the time spent self-assessing paid off in terms of her ability to also project confidence and professionalism!

In pre-pandemic times, many of us would have felt extremely uncomfortable being recorded,[38] and, in fact, several of us included language in our syllabi that prohibited any recording whatsoever. We also shared concerns that recording the live classroom experience would create an incentive for students to disengage. Our students have, however, persuaded us that there are many advantages to allowing lessons to be recorded. Knowing we are being recorded can create an incentive for us to remain at the top of our game and it is, to some degree, flattering that students would even want to review our lessons repeatedly. Any remaining concerns that we have can, to a great degree, be eliminated to the extent that we have developed a positive relationship with our colleagues in the Educational Technology department. Throughout the trimester, we have sometimes forgotten to hit the pause button on the recording; this has resulted sometimes in our inadvertently recording informal or confidential exchanges with students and colleagues. However, the lectures are not live-streamed; they can and have been edited whenever necessary. To the extent that we retain the ability to shape the final cut, we have little to lose in providing students with a resource that many have characterized as invaluable.

In closing, one of the biggest take-aways from this experience of teaching in a time of crisis and one that we all want to carry forward is the commitment to listen closely to our students. It serves little purpose to teach

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38.   *See* Alexis Anderson, *Classroom Taping Under Legal Scrutiny — A Road Map for a Law School Policy*, 66 J. LEGAL EDUC. 372, 389 (2017) (listing various concerns that professors have raised with respect to the recording of classes).

persuasive writing and advocacy if we forget that, in great part, our success depends on the ability to understand our audience and tailor our strategy correspondingly. So, for this reason, we want to leave the last word to a representative student. One who during this difficult year, and like too many others, lost loved ones to the pandemic.[39] She continues to rise to the challenge that every day poses, but inspired us with her unbounded optimism when she wrote, "I will not become the best writer or attorney I can be if I am not challenged. However, I am grateful for the challenges. If things are not challenging, you are not going to learn to be better." May we all, like our students, keep learning.

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39.   Sarah Mervosh et al., *Record U.S. Deaths Create a Wave of Devastation*, N.Y. TIMES, Dec. 11, 2020, at A1 (marking a new daily death record and noting that in one day more Americans had died of Covid-19 "than were killed in the Sept. 11 terror attacks or the attack on Pearl Harbor"); *see also* Shawn Hubler & Anemona Hartocollis, *How Colleges Became the New Covid Hot Spots*, N.Y. TIMES, Sep. 12, 2020, at A1 ("Colleges and universities have, as a category, become hot spots for virus transmission, much as hospitals, nursing homes and meatpacking plants were earlier in the year.").