TOWARDS A MODALITY-LESS MODEL FOR EXCELLENCE IN LAW SCHOOL TEACHING

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INTRODUCTION

Online legal education is really in its infancy. Even as undergraduate, graduate, and professional programs increasingly innovate and enjoy success with online teaching that rivals and even exceeds brick and mortar results,[1] legal education remains stuck in an outdated image of online teaching while continuing to champion a rose-colored image of what happens when students and their professors are in the same rooms.

Our image of online teaching is pretty grim. We tend to imagine online professors recording lengthy, mind-numbingly unstimulating lectures via video or voice over slides with instructional goals no more ambitious than the hope that the lectures magically pour knowledge into the brains of students. We imagine the students isolated in their homes, dressed in their pajamas, lacking connection or inspiration. And we assume that hordes of online students are hiring experts to take their exams for them.

Likewise, we continue to elevate in-person teaching as if the elegantly constructed, carefully sequenced, engaging, crystal clear Socratic questioning, characteristic of each of our best law professors (as we remember them), is the overwhelming majority rule. We envision each student deeply prepared for class, actively engaged during class, and, by the end of the class, joyfully inspired to study more so they can better understand. And we assume they come to the final exam feeling well prepared

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1. Jamie Littlefield, *What Does Research Say About Online Learning? Online Learning Studies and Statistics*, THOUGHTCO, https://www.thoughtco.com/what-research-says-about-online-learning-1098012 (reporting the results of meta-studies) (last visited Nov. 2, 2019).

for a great intellectual challenge.

Neither image reflects reality. In this essay, I take on these myths in an effort to contribute to a maturation of our thinking about online and in person teaching that I am hoping this symposium, as a whole, will further.

In Part I of this essay, I explore the myths of in-person law teaching and suggest the ways in which in-person teaching falls short. In Part II, I do the same for the myths about online teaching, suggesting concrete examples of how excellence is achieved in online law school classes. In Part III, I have a short discussion of why the inaccuracy of both sets of myths is problematic. Finally, in Part IV, based on learning theory and the four-year study of great law teaching reflected in *What the Best Law Teachers Do*,[2] I offer a modality-less model of law teaching excellence and suggest how it can be and is achieved both in person and online.

I. IN-PERSON TEACHING MYTHS DEBUNKED

The ideal, best championed in Karl Llewellyn's legendary lectures collected together in *The Bramble Bush*, involves the use of carefully constructed hypothetical questions to reveal the indeterminacy of legal doctrine and factual claims while also illuminating the analytical and argumentation tools of the legal trade.[3] The professor calls on a student, asks the student to recite and explain a case and then reveals factual and legal indeterminacies by asking the student hypothetical questions that push at the outside boundaries of the court's doctrinal assertions and holding.[4]

In the abstract, this image of legal education is an exciting one, and I have no doubt that, in many law school class sessions, the student who is called on and questioned has a rigorous, intensive learning experience. I share the view, expressed in *Best Practices for Legal Education*[5] and *Educating Lawyers*,[6] that such questioning is the signature andragogy of legal education; I am less confident about the efficacy of this model. As I previously have argued, law school Socratic-style questioning is ultimately a vicarious learning, self-teaching educational model.[7]

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2. MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SPARROW, WHAT THE BEST LAW TEACHERS DO 1–4 (2013).

3. *See* KARL N. LLEWELLYN, THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY 53 (1960) (demonstrating, through a collection of lectures, the intricacies of teaching and learning the law).

4. *See id*. at 62–63, 76–77.

5. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 19, 22, 24 (2007).

6. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW 50–51 (2007).

7. Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 247, 351–

The learning is vicarious because, aside from the student(s) whom the professor calls on, the rest of the students in the room only realize a benefit to the extent they answer the professor's questions in their heads. The other students must follow the professor and the called-on student into the bramble bush, craft their own answers to the professor's questions, and evaluate their answers by comparing them to the chosen student's answers as refined by their interpretation of the professor's reaction.

Of course, the students must understand they should be playing along and must choose to play along instead of reading ahead (just in case the professor calls on them next), checking their social media or email, reading the latest news, or confirming their latest e-commerce transaction. For years, when I have conducted teaching workshops at other law schools, I have surveyed the attendees to get a sense of the professors' sense of the percentage of the non-speaking students who answer their professors' questions in their heads. Most faculty believe that about half of their students play along; some professors estimate as few as one quarter.

The method involves self-teaching because, for the most part, law professors do not teach students how to perform the skills the students are supposed to be learning.[8] Few law professors transparently code their questions based on their learning goals. Moreover, even assuming the students are playing along, students will only learn something from attending to the dialogue if the students accurately decode the professor/called-on-student dialogue. The students must be able to sift through their peer's responses to the professor's questions, separating the gems from the colored glass. Some professors help by communicating an evaluation of the called-on student's response; others just ask more questions. Almost none offer explicit explanations of how even the best student responses demonstrate the required excellence.[9]

The interpretation process is harder than we might imagine. If the professor adds a new fact to a hypothetical after a student has analyzed it, is that a signal the student's analysis was insightful or is the professor trying to show that the student failed to consider a larger implication of the facts or doctrine? If the professor calls on another student, is that a sign that the student's analysis was impeccable or has the professor concluded that the student's analysis is so hopelessly flawed that the professor decided to give up on that student?

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53 (2001).
    8. *See id*. at 352.
    9. *See id*.

Of equal and maybe greater concern is the frequency with which classroom teaching by law professors falls far short of the ideal. Having visited many law school classrooms, I have seen both extraordinary, astoundingly great law teaching and teaching that falls far short of that standard. In preparing to write this paper, I asked law faculty friends and colleagues to identify and characterize their weakest law teachers. After sifting their responses and my own experiences as a teaching consultant, I have been able to identify seven archetypes of the bad in-person law teacher. While this discussion may seem to be (and is intended to be) a bit tongue-in-cheek, it also reflects classes I have observed.

A. Archetype 1: The Pretend Socratic Questioner

Most law teachers have gotten the message that questioning is our signature andragogy. The Pretend Socratic Questioner definitely asks questions, but no observer would argue that s/he is using our signature andragogy. This professor exclusively or almost exclusively asks closed-ended, informational and arguably even simplistic questions (e.g., What were the facts in . . . ? Who was the plaintiff? What was occurring histor-ically at the time this case was decided?). Once the professor receives a correct answer, s/he treats the response as a launching pad for a ten or even twenty-minute lecture. In this way, the professor seems to be using questions to teach, but s/he is actually a lecturer. Many such lecturers do ask hypothetical questions, but, too often, they answer their questions themselves after the first student struggles to analyze the hypothetical or if no student volunteers to answer the question.

There is nothing inherently wrong with lecture as *a* technique of teaching.[10] The problem here is that lecture is really *the* more or less sole teaching technique. The students are likely to vote with their engagement and class preparation. They quickly discover that they do not need to de-vote much effort to class preparation, and they come to count on the fact that, if they delay their response to a harder question, the professor will rescue them.

B. Archetype 2: The PowerPoint (or Lecture Notes) Murderer

Some law professors go even further than pretend Socratic and, for the most part, just lecture at their students. The most painful version of this approach to teaching combines the lectures with word-heavy Power-Point slides so that the professor is doing little more than reading the

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10. MICHAEL HUNTER SCHWARTZ, SOPHIE M. SPARROW & GERALD F. HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 108 (Carolina Academic Press, ed., 2nd ed. 2017).

slides to the students. Of course, as noted above, lecturing is a legitimate teaching tool, and visuals delivered via PowerPoint can enhance learning.[11]

The problematic choice, as also noted above, is making lecture the predominant teaching method. A professor who lectures all the time communicates a lack of respect for the students' ability to contribute to each other's learning and signals to the students that the educational experience involves simply the transmission of knowledge. I worry that, at least for some students, the final examination reveals, too late, that the professor wanted the students to learn both doctrinal knowledge and analytical skills.

C. Archetype 3: The Human Proof that the Goal of the Third Year of Law School Really Is to Bore Third-Year Law Students to Death

Even if we were to assume that every law professor were to use optimal Socratic questioning, we would still not want third-year classes to be taught the same way first-year classes are taught. At the very least, the questions should become progressively more challenging over the course of students' three years of law school. By the third year of law school, students are capable of much more than simply briefing the cases and reciting the facts, procedural histories, issues, rules, holdings, and the reasoning of cases, yet some law teachers ask their third year students the exact same types of questions they ask their first-year students.[12] It's no wonder that the students feel bored,[13] and that, for nearly fifty years, there have been calls for eliminating the third year of law school. [14]

There are many legitimate alternatives to Socratic Questioning that already are used at law schools all over the country. Problem-based teaching method skips case recitals altogether in favor of having students apply the doctrine and, even better, develop litigation strategy or draft documents against a backdrop of the doctrine they learned from reading the assigned cases and statutes.[15] For example, students taking an insurance law class would learn more from reading a policy and explaining it to a hypothetical client than from rushing through every last drop of insurance

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11. *See id*. at 113–14.

12. *See generally* Schwartz, *supra* note 7 (discussing the traditional model of teaching in law school and the impacts on student learning).

13. *See* Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 236, 240 (2001).

14. *See id.* at 235–36.

15. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 127–28.

law doctrine. Likewise, administrative law students learn more from creating an administrative code and labor law students learn more from creating and getting a union certified than they would learn from reading more administrative law or labor law cases.

D. Archetype 4: The Wing-It Wonder

While the most effective law teachers prepare for class extensively, re-reading the cases they teach and overhauling their teaching notes,[16] other law teachers choose to ad-lib a lot of their teaching, recognizing that, at the very least, they know more than their students. Others re-use timeworn teaching notes to such a degree that their students, who have received passed-down class notes from the students who preceded them, even know the jokes and stories their professors will tell.[17] Somehow, only the students feel embarrassed when Wing-It Wonders reveal their lack of preparation expressly by confessing that they were otherwise occupied by working on their latest scholarly projects or by revealing their surprise that a case has been replaced or a problem has been reworked in the latest edition of the casebook they are using.

E. Archetype 5: The Helium Hands Surrenderer

Under the guise of using the "gentle Socratic method," some law teachers make it a point to call only on students who raise their hands. As a result, the students who enjoy speaking in class receive twice as much, three times as much, or even infinitely more individualized feedback than their quieter peers, including those who choose not to volunteer because they have different cultural norms, lack confidence, or simply have less need for attention or professorial affirmation. If Socratic-style questioning really is legal education's signature andragogy, it is hard to justify this choice.

The goal of implementing a "gentle Socratic method" is a salutary one. There is reason to believe that, for at least some students, fear of humiliation impedes learning rather than supporting it. However, there are many ways to implement questioning teaching methods without adopting the abusive version of the technique that is ubiquitous in media depictions of legal education.[18] Many law professors have found that they

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16. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 151–52.

17. Perhaps because I write about teaching and learning, students have always shared such class notes with me and asked me to "fix" the problem with their professors.

18. *See, e.g.*, LEGALLY BLONDE (Type A Films, Marc Platt Productions & Metro-Goldwyn-Mayer 2001), THE PAPER CHASE (Rodrick Paul & Robert C. Thompson 1973), HOW TO GET AWAY WITH MURDER (American Broadcasting Company 2014), MOM (MAD Films & Third Eye Pictures 2017).

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can reduce the intensity of their questioning interactions by some combination of the following:

(1) disclosing, before class, all or at least some of the professors' most complex hypothetical questions,

(2) reframing the interactive process as one in which the goal is to get the called-on students to deliver significant insights and then celebrating the students' accomplishment when they do so,

(3) giving students a minute or two to think about the professors' most complex hypothetical questions before starting to call on students, and

(4) encouraging students to discuss (with their peers) the professors' most complex hypothetical questions for a minute or two before starting to call on students.

F. Archetype 6: The Supercilious Professor (aka I'm Smarter than You Are, & I Use Questioning to Prove It)

Law students are particularly frustrated by Socratic-questioning in which the usually implicit but sometimes explicit message seems to be that the professor regards her/his students as impossibly dimwitted.[19] Some professors directly insult their students' intelligence; others publicly make fun of their students in words or with exaggerated eye rolls and the like; a few choose to obscurely reference theorists with which the students are likely to be unfamiliar; and a final group of professors simply ignore students whose classroom comments miss the mark. Most disturbingly, when students have the temerity to disagree or to point out errors these professors have made, some of these professors respond by finding ways to embarrass the students.

This approach to teaching proves to be destructive for all but a small subset of the law student population. The research shows that all students respond more positively and learn better in a setting where the professor communicates respect for the students.[20] In fact, manifested respect for students was a common quality of all the teachers featured in *What the Best Law Teachers Do*.[21]

G. Archetype 7: The Exam Hazer

A significant number (perhaps the majority) of professors cling to

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19. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 27–28.

20. *See* Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 87 (2002).

21. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 81–86.

the final exam-only model of law school assessment. This approach favors students who have greater exposure to law school expectations, who happen to have a good day on the final exam, and who are more similar culturally to their professors. The approach also decreases the accuracy of grade conclusions because the professor has a smaller sample size of performance data. This choice also conflicts with the new American Bar Association (ABA) standard that communicates an expectation that law professors implement multiple formative and summative assessments.[22] More significantly, multiple assessments have been shown to improve law student learning,[23] and, most significantly, multiple assessments have helped Florida International University School of Law, ranked by *U.S. News* considerably lower than Florida State's and the University of Florida's law schools, to enjoy the state's highest bar pass rate on seven of the last eight Florida bar exams.[24]

H. Online Teaching Myths Debunked

The earliest distance courses were correspondence courses, and the earliest online classes were actually telecourses, in which a teacher delivered lectures each week via a videotaped recording.[25] Even today, in at least some online courses, students' most common instructional experience involves accessing voice over slides or videotaped lectures posted on a course management system. In these courses, there is little semblance of active learning. Instead, scalability trumps engagement. Assessments tend to be online, multiple-choice tests graded by software. Cheating is assumed to be rampant as students violate both prescriptions

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22.   AM. BAR. ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 23 (2019–2020).

23.   *See* Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 140–41 (2017); Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 379 (2012).

24.   *See* Louis N. Schulze Jr., *Using Science to Build Better Learners: One School's Successful Efforts to Raise Its Bar Passage Rates in an Era of Decline*, 68 J. LEGAL EDUC. (2017) (argues that frequent self-testing substantially improves students' knowledge and performance); *FIU Law Graduates Excel on February 2019 Bar Exam*, FLA. INT'L U. L., https://law.fiu.edu/fiu-law-graduates-earn-highest-florida-bar-passage-rate-for-fourth-time-in-a-row/ (last visited Sept. 21, 2019) ("FIU College of Law graduates once again exceeded the state average for bar passage in Florida. With a passage rate of 80% on the February 2019 Florida Bar Exam, FIU Law surpassed the statewide average passage rate of 57.3% by 22.7 percentage points and finished first in the state for the seventh time in the last eight examinations."), *Best Law Schools*, U.S. NEWS, https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings?location=florida, (last visited Oct. 4, 2019).

25.   Bill Anderson & Mary Simpson, *History and Heritage in Distance Education*, 16 J. OPEN FLEXIBLE & DISTANCE LEARNING 1, 3–4 (2012).

against using their books and class notes and, in some presumed in-
stances, find peers or even paid contractors to take the tests for them.
Students, who are accessing instruction from their homes, have almost no
accountability for preparing for class and no real connection to their peers
or their professors. The large class sizes maximize enrollees and, there-
fore, the reach of and (often) the profits to the institution. These stereo-
types tend to dominate our thinking about online law school classes, and
they explain legal education's glacial progress (in comparison to our
peers in higher education) in developing and offering high quality online
courses.

It is a myth, however, that even the majority of law school online
classes have any of the characteristics outlined above. In fact, it is no
more rational to assume that online classes inherently have the qualities
described above than it is to assume that in person classes achieve Karl
Llewellyn's ideal. Well-designed online classes, as I explain in depth be-
low, engage students in deep learning and promote substantial professor-
student and student-student interaction. Assessments include multiple-
choice tests, but also include exams, papers, and drafting projects and, in
many online courses, assessments occur more often than in brick-and-
mortar classes.

Given my interest in excellence in law teaching,[26] I have long
wanted to see for myself the adaptiveness of the online course medium to
the active learning and engagement for which I have advocated since I
started writing about improving law school teaching back in 2001.[27] Con-
sequently, in spring 2019, I decided to create and teach an online course
for McGeorge's Doctor of Juridical Science (JSD) students that focuses
on law teaching itself. To debunk legal education's perceptions of online
classes, the discussion in the remainder of this Section draws on both my
experiences in teaching my class on law teaching and, more generally,
my research on teaching and learning. I will focus on debunking four key

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26.   *See generally* SCHWARTZ, HESS & SPARROW, *supra* note 2 (conducting a rigorous
study of excellent law teaching); SCHWARTZ, SPARROW & HESS, *supra* note 10 (dedicating
chapter to effective learning and teaching); Schwartz*, supra* note 7; Gerald F. Hess, Michael
Hunter Schwartz & Nancy Levit, *Fifty Ways to Promote Teaching and Learning*, 67 J. LEGAL
EDUC. 696 (2018) (critiquing common law teaching techniques and suggests ways in which
legal education can be improved); Michael Hunter Schwartz, *50 More Years of CLEO Schol-
ars: The Past, the Present, and a Vision for the Future*, 48 VAL. U.L. REV. 621, 622 (2014)
(focusing on improving legal education for law students of color); Michael H. Schwartz, *Im-
proving Legal Education by Improving Casebooks: Fourteen Things Casebooks Can Do Dif-
ferently to Produce Better and More Learning*, 3 ELON L. REV. 27, 33 (2011) (discussing im-
proving legal education by improving casebooks); SOPHIE SPARROW, STEVE FRIEDLAND,
MICHAEL HUNTER SCHWARTZ & GERRY HESS, TECHNIQUES FOR TEACHING LAW II (2011).

27.   *See* SCHWARTZ, SPARROW & HESS, *supra* note 10.

myths:

(1) Online teaching prevents the use of legal education's signature teaching method, Socratic-Style Questioning.

(2) Even if a professor teaching an online class delivers only short voice-over-slides or videotaped mini-lectures, her online students receive an inferior and inherently passive learning experience.

(3) Assessments in online courses are inferior to assessments in brick-and-mortar classes.

(4) Online courses cheat students of the community and peer interactions characteristic of brick-and-mortar legal education.

I. Debunking Myth One: Online Teaching Requires Sacrifice of the Benefits of Socratic Questioning

Online classes can replicate most if not all the benefits of the Socratic questioning model. For example, online teaching tools allow professors to teach synchronous class sessions in which they call on students to answer questions, and students immediately respond with answers.[28] The professor can probe the students' answers just as she would in a brick-and-mortar class. The technology actually makes it easier to track and balance student participation. Students also can signal when they have questions and can be placed in pairs or small groups, each of which can be monitored by the professor.[29]

Even an asynchronous class can import many of the benefits of Socratic-style questioning. In an asynchronous class, the professor can assign each student one of the questions she would have asked in class and require the students to both respond to their assigned questions and to write a response to a peer's answer to a Socratic-style question.[30] In fact, the thinking time (between the moment when the professor asks her question and when the student must answer) is inherently much greater in an asynchronous online class. As a result, students' responses are more likely to be thoughtful and clearly expressed.

An asynchronous professor can ask follow-up questions, even alter her hypotheticals to make them progressively more complex, or can provide feedback—both to the students assigned to respond and to the students who commented on their peers' responses.

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28. *See* Janet R. Buelow, Thomas Barry & Leigh E. Rich, *Supporting Learning Engagement with Online Students*, 22 ONLINE LEARNING J. 313, 330 (2018).

29. *See id*. at 328.

30. *See* Martin A. Andresen, *Asynchronous Discussion Forums: Success Factors, Outcomes, Assessments, and Limitations*, 12 J. EDUC. TECH. & SOC'Y 249, 249–50 (2009).

In fact, there is reason to hypothesize that students in an asynchronous class experience have a *better* learning experience than their peers in brick-and-mortar classes. The extra thinking time increases the likelihood that what they contribute reflects deeper thought, and the modality means that students who have great insights but are not extroverts or who process less speedily than their peers can enjoy success. At the very least, online students can experience less vicarious learning than their peers in brick-and-mortar legal education. By requiring each student to: (1) answer two or three of the questions the law teacher would have asked in her/his in-person class, and (2) respond to at least one of their peers' answers to the professor's questions, most students can learn non-vicariously in each class session.[31]

In the law teaching class I taught in spring 2019, which I taught entirely asynchronously, I implemented this tactic. For most class sessions (but not all),[32] all my students answered at least one of my questions, on their own and without the benefit of peer input. As a result, all my planned questions were answered each week, all students participated actively in each class session, and each student both received peer feedback and provided peer feedback. And, in contrast to my in-person classes, no student in my online class had an entirely vicarious learning experience even during a single class session.

J. Debunking Myth 2: Even If a Professor Teaching an Online Class Delivers Only Short Voice-Over-Slides or Videotaped Mini-Lectures, Her Online Students Receive an Inferior & Inherently Passive Learning Experience

It is particularly tempting to assume that students in online classes experience what I would call bad telecourses. We imagine the students watching one or two hour videos (at best supplemented by PowerPoint slides) that are the epitome of passive education. Even assuming, as I do, that some professors who teach brick-and-mortar classes rely exclusively on lecture or are really "pretend Socratic teachers," such voice-over-slide

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31. *See* Buelow, Barry & Rich, *supra* note 28, at 322. It is easy to prevent students from simply reiterating their peers' answers to questions. Most course management systems can restrict students' access to their peers' answers until all the assigned students have posted their own answers. Alternatively, students can be directed to respond only to questions their peers have not answered and to respond to a peer to whom their peers have not yet responded.

32. For some class sessions, the students completed projects instead. For example, for one class session, the students posted a YouTube video of a teacher in action and critiqued the teaching in light of the teaching principles they had learned that week. Each student then provided feedback on a peer's critique based on those teaching principles and on a lesson I created in providing best practices feedback.

or video lectures would be even worse. I seriously doubt that a video lecture can replicate the dynamism and inspiration possible in an excellent in-person lecture. A video is inherently static, unable to adapt to students' reactions; a live human can do so.

It is important to note, as a foundational matter, that best practices counsel limiting voice-over-slides lectures to seven to ten minutes.[33] Visuals and animation also can help, and best practices also counsel authenticity,[34] which, of course, is an important facet of effective teaching in brick-and-mortar classes.[35]

In addition, there are tools online teachers can and do use to minimize the passivity of video and voice-over-slide lectures. This discussion will address four such tactics. First, it is very common for online teachers to pair online quizzes with their reading and voice-over-slide lectures. If the combination of reading assignments and lectures are well designed, students will not be able to correctly answer the questions unless they both have completed the reading and watched and listened to the voice-over-slide lectures.

Second, professors can require students to complete note-taking guides and partially-completed graphic organizers as they listen to the voice-over-slide lectures. A note-taking guide has headings that indicate sub-topics within a doctrinal area being addressed in a class session but includes blank space for students to write in the key points.[36] For example, a note-taking guide for a class session on express conditions might include sub-headings such as: effect of an express condition; creation of an express condition; interpretation of ambiguous language in alleged express conditions; and excuse of express conditions, and excuse might include sub-topics such as waiver; estoppel; extreme forfeiture; etc. A partially-completed graphic organizer for consideration might include space for students to write in the general definition of consideration and blank boxes in which students would write the names of all the more specific rules, including illusory promise, the pre-existing duty rule, moral consideration, etc., and the rules for each.

Finally, professors can imbed games into their voice-over-slide lectures. For example, in the online law teaching class I taught, one session

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33. *See* Simuelle Myers, *6 Tips for Creating Engaging Video Lectures That Students Will Actually Watch*, TEMPLE U., https://teaching.temple.edu/edvice-exchange/2016/03/6-tips-creating-engaging-video-lectures-students-will-actually-watch (last visited Aug. 11, 2019).

34. *See id.*

35. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 22 (quoting a student as saying "I want to learn from a human being, a fellow human being.").

36. *Guided   Notes*, TCHR.   TOOLKIT,   http://www.theteachertoolkit.com/index.php/tool/guided-notes (last visited Sept. 18, 2019).

consisted entirely of a Jeopardy-style game board. I had each student submit her answers (of course, in the form of questions) to each item in the game board after listening to the voice-over-slides. With hindsight, I should have structured things so that students would submit their answers before I shared the correct responses.

K. Debunking Myth Three: Assessments in Online Courses are Inferior to Assessments in Brick-and-Mortar Classes

The presumed inferiority of assessments in online courses, as noted above, takes two forms. First, a common assumption is that assessments in online courses are overly simplistic, multiple-choice assessments that focus on remembering knowledge rather than applying concepts.[37] Second, even assuming assessments in online courses could be made to focus on analytical tasks, it is common to assume that there are no mechanisms available to prevent cheating; the person submitting the exam answer may be the student or may be a peer or paid expert.[38]

There really is no basis for the assumption that assessments in online classes cannot be as robust, challenging and deeply analytical as assessments in brick-and-mortar-based classes. It certainly is common to administer online multiple-choice tests, and I not only did so in my online teaching class but also have done so in my brick-and-mortar-based contracts classes for years. In both contexts, I have chosen to make these tests low stakes. I assign only a small portion of the course grade to these quizzes, and I allow students to take the tests over and over until they score 100% on them. I use these tests to lock down student understanding of key concepts and to provide practice and feedback in dealing with bar exam-style multiple choice questions.

Arguably, assessments in online courses are superior to those in brick-and-mortar classes because the technology allows the professor to increase the frequency of the practice and feedback she provides without using up precious classroom time.

My primary and weightiest assessments, in both online and brick-and-mortar classes, look the same. My final exams in an online and a brick-and-mortar version of the same class would be identical, and, in both versions, I always include multiple assessments (typically, four to six) and a variety of types of assessments. For example, in my contracts classes, in addition to a final exam that has a mix of essay and multiple-

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37. *See* Kemi Jona, *Rethinking the Design of Online Courses*, *in* LEARNING TO CHOOSE: CHOOSING TO LEARN (R. Sims, M. O'Reilly & S. Sawkins eds., 2000).

38. *See, e.g.*, Heather E. Campbell, *Cheating, Public Administration Education, and Online Courses: An Essay and Call to Arms,* 12 J. PUB. AFF. EDUC. 33, 33 (2006).

choice questions, students draft contract clauses and emails to clients, and, separately, they author a paper in which they identify all the concepts we have learned in a specific contract they have chosen from the real world. In my teaching class, students drafted, among other things, a syllabus for a course they would like to teach, teaching notes for two class sessions, a final exam with both essay and multiple-choice questions and model answers, and a paper describing their vision for a study they would like to conduct about learning in their class.

For a midterm or the final exam in an online class, there are many tools professors can use to ensure that the person submitting the exam is the person enrolled in the class. Some online classes require students to come to a testing center where their identity can be verified by a testing site monitor.[39] Others use web cameras.[40] To take an online-proctored exam, students must use a computer with an external web camera.[41] Videoconferencing tools allow proctors to ensure that the right person is taking the test and is not using any prohibited materials.[42]

However, in both brick-and-mortar and online classes, there are not many ways to ensure that a non-exam student paper was actually authored by that student. In both contexts, the professor only sees the student's final work product and not the process by which the student created that final product. Cheating almost certainly occurs in both contexts, but there is no reason to believe it would occur more frequently in online classes. In my small online class, the students were writing multiple submissions every week, including notes in their note-taking guides, analyses of the concepts we were learning as applied to the classes in which they were enrolled, and responses to my questions. Because my class was small, I would have noticed if the students' later submissions used inconsistent diction and analytical skills.

Thus, while cheating is a concern, cheating prevention tools allow online classes to reduce the risk to a level comparable to brick-and-mortar classes.

L. Debunking Myth Four: Online Courses Lack the Sense of Community & Connection Characteristic of Brick-and-Mortar Classes

Creating a sense of connection and community in online classes is

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39. *See id.* at 43.

40. *See Cheating in Online Education: Myth vs. Reality,* ONLINE EDUC., https://www.onlineeducation.com/features/cheating-in-online-education (last visited Sept. 17, 2019).

41. *See id.*

42. *See id.*

harder than in brick-and-mortar classes. In brick-and-mortar classes, students walk into and out of class together, ideally exchanging ideas about what they read the night before and heard in class. They can be assigned to work together on in-class and after-class projects. At the very least, if students are struggling with a concept or hypothetical in a law school class, the professor teaching a brick-and-mortar class can have students discuss the concept or hypothetical with a peer before calling on students. This approach can enhance the quality of students' responses. Outside of the class, students can study together in the law library or their dorms. Students also can come to recognize each other as they travel throughout campus and attend events. These experiences cannot easily be replicated in online classes.

However, to some degree, the assumption that it is hard to build relationships reflects the age of the author; our students are much more comfortable than we are at building relationships using digital tools. A number of our students have friends all over the world whom they have never met in person, and they experience those connections as meaningful.

Nevertheless, professors teaching online classes need to develop and, in fact, have developed tools for connecting with their students and building community. For example, just as a brick-and-mortar professor might introduce herself to the class and tell a humanizing anecdote, an online professor might record a video self-introduction. In recording such a video for my online class on law teaching, I thought it best to include multiple facets of my experience and life, probably more than I would have included in a brick-and-mortar class. I also asked each student to introduce herself or himself to the class and to respond to a peer's self-introduction. In my brick-and-mortar classes, while I have had students fill out index cards to introduce themselves to me, I have never asked my brick-and-mortar students to introduce themselves to the class as a whole (and therefore never have asked them to respond to a peer's self-introduction). Thus, in this way, my students became more connected to each other.

Online classes also can replicate the in-class and after class small group projects; in fact, in synchronous classes, videoconferencing tools allow the professor to place students in small working groups and "visit" their group discussions in real time.[43] Required peer feedback on learning management system discussion boards and on draft projects can further promote peer-to-peer interactions.

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43. Jenna Gillett-Swan, *The Challenges of Online Learning Supporting and Engaging the Isolated Learner*, 10 J. LEARNING DESIGN 2, 23 (2017).

In short, professors teaching online classes have tools available to them to create community and connection.

II. WHY THE INACCURACY OF BOTH SETS OF MYTHS IS PERNICIOUS

Both sets of myths already have had pernicious effects. As evidenced by the need for this symposium in 2019, almost thirty-five years since Nova Southeastern established the first accredited online graduate program in 1985,[44] the myths about online teaching already have slowed the growth of online law school teaching, which almost certainly also has slowed the development of the kind of research into best practices[45] that would move the field forward.

Likewise, the myths about in-person teaching have likely chilled introspection and inhibited growth and innovation. As a result, too few students experience high quality in-person law teaching that reflects insights from modern brain science. Moreover, anecdotal reports suggest that teaching online classes can enhance in-person teaching.[46] For example, the greater emphasis on frequent assessment characteristic of online classes can inspire professors to alter their assessments for their in-person classes or, at least, have their in-person students take the assessments they created for their online students.

Finally, as I argued in 2001, the ideal model for in-person classes should probably be hybrid—have an in-person experience for those instructional activities for which an in-person teacher would be most effective and move online those aspects of instruction that can best be delivered online or, at least, for which online instruction would be equally effective.[47]

III. A MODALITY-LESS MODEL OF TEACHING EXCELLENCE: WHAT LEARNING THEORY, INSTRUCTIONAL DESIGN, & TEACHING RESEARCH CAN TEACH US ABOUT EFFECTIVE TEACHING IN ALL MODALITIES

In this section, I draw on learning theory, instruction design, and

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44. *See* David Ferrer, *History of Online Education,* QUAD, https://thebest-schools.org/magazine/online-education-history/ (last visited Aug. 18, 2019).

45. Needed studies arguably include: (1) comparisons of student learning in the two modalities, after controlling for entrance credentials; (2) assessments of the various online active learning teaching techniques, many of which are referenced in this article; (3) studies of how best to use the data generated by online platforms to serve law student learning; and (4) evaluations by students of their learning experience.

46. See Michael L. Rodgers & Mary Harriet Talbut, *Can Online Teaching Improve Face to Face Instruction*? TOMORROW'S PROFESSOR, https://tomprof.stanford.edu/posting/1321 (last visited Sept. 2, 2019).

47. *See* Schwartz, *supra* note 7, at 424–25.

teaching theory and research, especially the key lessons from *What the Best Law Teachers Do*, to articulate an all-modalities modal of excellence in law teaching. I will address five key facets of excellence in teaching: (1) designing courses and preparing for class sessions; (2) building connections with students; (3) developing and articulating high expectations; (4) engaging students; and (5) providing assessment and feedback. I also make an effort to explain how law professors can implement all five principles in both online and in-person classes. This discussion is not intended to be exhaustive but, rather, a beginning of an effort to articulate principles.

A. Designing Courses and Preparing for Class Sessions

1. Designing Courses

Courses are effectively designed if the teaching, assessments, reading and other assignments, and learning objectives are congruent with each other,[48] and if the delivery of instruction is efficient, effective, and appealing.[49] Students should complete assignments designed to help prepare them to learn what they are supposed to learn, professors should choose teaching methods most likely to help them learn it, and assessments should assess whether the students have, in fact, learned it. Congruence increases the likelihood that the instruction is effective. Given the limited time we have with students, the goal of efficiency increases the likelihood that we will actually achieve all our objectives; sometimes, we have to forego sharing a wonderful insight that we professors, who love the law, are enamored with and preference what the students need to be learning. Finally, the goal of making instruction appealing, while surprising to some professors, is a core teaching ethic of the professors we studied in *What the Best Law Teachers Do*; each of them thinks deeply and frequently about how to inspire their students to work hard, love their subjects, and learn.[50]

Designing courses of all types begins by focusing on what the professor has determined that students should know, believe, and be able to do by the end of the course. Some scholars have referred to this process as "backwards design,"[51] but instructional designers simply refer to the idea of starting with learning objectives as part of the regular and optimal

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48. *See id.* at 383–84.

49. *See id.* at 355.

50. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 71–75.

51. *See*, e.g., Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 559 (2012).

"instructional design" process.[52] Learning objectives allow both in person and online teachers to allocate their limited classroom/online time with their students and plan students' reading and other assignments, select teaching methods, design assessments, and evaluate both student work and the success of the course.[53] The learning objectives for a course should be the same regardless of whether the course happens to be delivered online or in person.[54]

Having decided what students will learn, it is important to determine what students know already. In Civil Procedure, for example, if students do not know how cases move through our legal system, it is hard for them to understand the cases and the Federal Rules of Civil Procedure. In Contracts, because many foundational cases involve construction contacts, students who do not understand the basics of how construction projects happen, i.e., the roles of owners, general contractors, and subcontractors, they will not understand those cases. Finally, in a small business clinic, if students have never drafted a single contract provision and, possibly, never seen a contract (even in their Contracts class), they will struggle to complete their drafting assignments. In other words, knowing what students know and do not know helps professors plan their courses.

The learning objectives also allow the professor to take on the next step: planning their assessments.[55] The fact that instructional designers recommend planning assessments even before a course starts is counter-intuitive (or at least counter-common practices) for most law professors; nearly all of my colleagues at the five different law schools where I have taught have planned, drafted, edited, and administered their exams in the last week or two before their final exams.

My colleagues have expressed concern that they might otherwise "teach to the test," and I respect their concerns even if I do not share them. Teaching to the test, if that term refers to revealing the sub-topics within a doctrinal subject that will be tested on the exam, would be a problem because it may prevent the professor from assessing students' ability to spot issues, a skill we try to teach and that is critical to success on the bar exam and in practice. However, assuming we are administering traditional law school exams for the sake of discussion, if teaching to the test refers to helping students learn to perform well on our exams, i.e., how to: (1) sift facts and identify issues; (2) learn the relevant law and policy

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52. *See* Schwartz, *supra* note 7, at 392; *see also* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 34.
53. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 34.
54. *See* AM. BAR ASS'N, *supra* note 22, at 19 (regarding Distance Education Courses).
55. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 39.

and how to articulate it; and (3) to analyze a legal problem from the perspectives of all parties and predict outcomes, we should all be teaching to the test.

Planning assessments before starting a course allows a professor to make sure that the time she interacts with students, either in person or online, is focused on learning experiences that achieve the course objectives. Instruction should increase the likelihood students will be prepared to achieve the learning objectives; by doing so, we avoid a common error made by in person professors that occurs much less frequently in online classes: having to rush-lecture the last week or so of class to "cover" the end-of-syllabus course material. To me, cramming two weeks of course material into one-three hours of lecture *is* teaching to the test—and in the worst way. This error occurs less frequently in online classes because the common (and best) practice in online classes is to plan, before the course even starts, the entire course and create all the class sessions.[56]

Identifying learning objectives and planning assessments increases the likelihood that the professor will select an appropriate text, which is the next step. [57] To be clear, at least when I was a new professor, I selected my texts before I did anything else, used the syllabus in the Teacher's Manual or from a colleague who had used the text, and never even considered the possibility that I might have learning objectives. I tended to choose texts for the wrong reason—because the texts intrigued me and not according to best practices for choosing a casebook, such as the congruence with my learning objectives, the selection of cases, the number and variety of problems, the quality of the teaching materials in the Teacher's Manual, etc.[58]

Having selected a text congruent with identified learning objectives, the next step, design of the course, is considerably easier.[59] Well-designed online and in person courses, in addition to having the qualities described below, have the following characteristics:

(1) They become progressively more challenging over the course of the semester.

(2) They engage all the students in the class and not just a select few.

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56. *See* Martin Pritikin, *Online Law School Course Development: 4 Takeaways for Success,* CONCORD L. SCH. (Apr. 4, 2019), https://www.concordlawschool.edu/blog/news/online-law-school-course-development-4-takeaways/.

57. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 41.

58. *See id.* at 41–42. *See also*, Michael H. Schwartz, *Improving Legal Education by Improving Casebooks: Fourteen Things Casebooks Can Do Differently to Move Legal Education Forward*, 3 ELON L. REV. 27, 36 (2011).

59. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 43.

(3) They empower students to self-regulate their learning.
(4) They prioritize the most important learning objectives.[60]

While most, if not all, the professors we studied for *What the Best Law Teachers Do* were not familiar with formal instructional design principles, all of them designed their courses as if they were experts in the field. Students lauded the fact that these professors carefully tailored their reading assignments,[61] focused laser-like on their core learning objectives,[62] and prepared the students as well as possible for their very challenging examinations,[63] yet found time to allow students to ask questions[64] and to share unique insights, such as the results of the professor's interviews of the lawyers who handled key cases,[65] and creative learning experiences, such as structuring a labor law class to allow the students to form a union and have it certified by the National Labor Relations Board.[66] While none of the professors we studied taught online courses, all of these practices would work equally well in an online course.

2. Preparing for Class Sessions

At its core, preparing for class according to best practices involves hard work, a quality characteristic of each of the faculty featured in *What the Best Law Teachers Do*. For example, even though he wrote the casebook he used in his teaching, Andy Taslitz used to rewrite his teaching notes every year from scratch,[67] and Ingrid Hillinger, on the days when she teaches at 1:00 p.m., arrives at the law school to begin preparing for class at 4:00 a.m. [68] Ruthann Robson and Roberta Corrada re-read every case they assign three times, once as a student, once as a professor, and once as a practicing attorney,[69] and, for his Constitutional Law class, Phillip J. Prygoski used to read not only the cases he assigned but also all the cases that cited the cases he assigned.[70] Finally, Nancy Levit memorizes the names and faces of all the students in her eighty student Torts class *before the first day of class*, and she writes a personalized email to each

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60. *See id*. at 43–47.
61. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 143.
62. *See id.* at 159–60.
63. *See id.* at 276–77.
64. *See id.* at 190–91.
65. *See id.* at 172.
66. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 214.
67. *See id.* at 154.
68. *See id.* at 152.
69. *See id.* at 153–54.
70. *See id.* at 154.

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student in her classes in which she responds to the students' disclosures of why they are taking her class and what they want her to know about them.[71]

Unquestionably, these practices would be extraordinary in either an in-person class or an online class. However, at least based on my experience teaching an online class in spring 2019, I believe an online class, especially one that is asynchronous, requires even more hard work than an in-person class. If the professor will not be holding any synchronous class sessions, she will need to meet the requirements of ABA Standard 310(b), which requires "not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time."[72] Thus, for a three-credit-hour asynchronous online course, the professor needs to create learning experiences (including reading assignments, videos, voice-over-slides, postings to the course webpage, projects, and quizzes) totaling at least 127 hours, i.e., roughly nine hours per week.[73] The planning required to ensure these learning experiences are engaging and are likely to result in students meeting the learning objectives is considerable.

B. Connecting with Students

While subject matter expertise is essential to student learning[74] and characteristic of the people we featured in *What the Best Law Teachers Do*,[75] creating an atmosphere where students feel respected, cared about, and supported may be even more important.[76] The students of the people we studied for *What the Best Law Teachers Do* repeatedly told us that their professors' manifestations of respect and caring were a distinct and critical factor in their learning.[77] When students feel like their professors see them as colleagues, as fellow and equal humans, as by and large trying to do their best in and out of class, they thrive.[78]

What does this factor look like in face-to-face and online classes? In the face-to-face classes we observed for *What the Best Law Teachers Do*, we noted a variety of actions that manifest this quality. For example,

71. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 76–77.

72. AM. BAR ASS'N, *supra* note 22, at 21.

73. *See id.*

74. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 11.

75. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 66–67.

76. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 12.

77. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 84–86.

78. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 22.

Heather Gerken is known for responding to insightful student points by suggesting that she and the student write a paper together to develop that idea.[79] Several of the other professors we studied for the book made it a point to reference good student insights throughout every class session, e.g., "As Ms. Johnson explained, . . ." A former student of Meredith Duncan told me a wonderful story of bumping into Professor Duncan in the hallway during his third year of law school. (He had been a student in her first-year torts class.). The student was struck by the fact that Professor Duncan not only recognized him and remembered his name but also remembered that he liked to hunt and asked him if he had been hunting recently; this episode was all the more stunning to the student because he knew Professor Duncan was not a fan of guns. Most simply, students want us to know their names.[80]

While a synchronous online class allows for similar interactions, an asynchronous class poses some challenges to building supportive relationships with students. By and large, the professor's comments in response to student postings can be as laudatory as anything she might say in a face-to-face class so it is easy to replicate some of the interpersonal aspects of a face-to-face class. In an effort to humanize themselves, some professors teaching online classes (including me) film welcome videos in which they introduce themselves, express enthusiasm for the course, and share something about themselves;[81] I did so and shared my great skill in doing girls' hairstyles, a skill I developed because I was the parent who was responsible for getting my daughters ready for school every day. While an online teacher is able to see students' names on her screen whenever she is interacting with her students, she can make an effort to learn personal facts about her students and remember and use those facts. It is common for online professors to ask students to use their phones to film self-introductions or ask students to post written self-introductions to the professors' course webpages.

C. Developing and Articulating High Expectations

High expectations are highly correlated with student learning.[82] Ideally, professors should set challenging but realistic expectations and communicate that the students can live up to those expectations.[83] The people

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79. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 190–91.

80. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 22, 24.

81. *See* Sharon O'Malley, *Professors Share Ideas for Building Community in Online Courses*, INSIDE HIGHER ED, (July 26, 2017) https://www.insidehighered.com/digital-learning/article/2017/07/26/ideas-building-online-community.

82. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 13.

83. *See id.* at 13–14.

we studied for *What the Best Law Teachers Do* overwhelming had rigorous expectations for student class preparation,[84] demanded excellent student responses to the challenging questions they asked in their classes and deep class discussions,[85] and were known for the difficulty of their assessments.[86] In fact, students of the people we studied reported that they received their worst grades in law school from the people we studied and that the Best Law Teachers' exams were "the hardest exams in the (law) school."[87]

The people we studied are also known for communicating, to each student, that the student is capable of excellence in the class.[88] They are known for being tough on students[89] yet knowing what each student needs,[90] and their students develop confidence in themselves that they attribute to their professors' belief in them.[91]

These principles apply regardless of the instructional modality. There is no reason that questions in the online modality should be any less challenging or that expectations for depth of reading and analysis should be lower. In fact, the ABA Standards require that, for online classes, law schools must ensure:

(1) there is opportunity for regular and substantive interaction between faculty member and student and among students;

(2) there is regular monitoring of student effort by the faculty member and opportunity for communication about that effort; and

(3) the learning outcomes for the course are consistent with Standard 302.[92]

In addition, while the standards do not require identical experiences for students in different programs (day vs. night, online vs. in-person), the standards do provide

A law school providing more than one enrollment or scheduling option shall ensure that all students have reasonably comparable opportunities for access to the law school's program of legal education, courses taught by full-time faculty, student services, co-curricular programs, and other

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84. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 142–43.

85. *See id.* at 144.

86. *See id.* at 276–77.

87. *See id.*

88. *See id.* at 131.

89. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 132.

90. *See id.*

91. *See id.* at 134.

92. AM. BAR ASS'N, *supra* note 22, at 19.

educational benefits. Identical opportunities are not required.[93]

Presumably, a law school that had lower expectations for its online students or online classes would be in violation of these standards.

D. Engaging Students

While many factors are critical to engaging students, this discussion will focus on three. As noted above, law school Socratic-style questioning is certainly engaging for the student whom the professor calls on, and, if the students are playing along in their heads, it can be engaging for many students. However, because half or more of the students do not answer their professors' questions in their heads, Socratic-style questioning is not included in this discussion.

First, teacher passion for the subject and for student learning and achievement inspires students to work harder, pay greater attention, and engage themselves.[94] This excitement is manifested by express love for the area of law and communicating joy in student learning.[95] The people we studied for *What the Best Law Teachers Do* express great joy in teaching, using words and phrases like "lucky," "love," "best job in the world,"[96] and their students notice and appreciate that enthusiasm and are inspired by it.[97]

Second, it is important to see student engagement as an end in itself. In *Teaching Law by Design II*, my co-authors and I recommend that professors teach with two questions in mind: (1) "Who in the room is acting like a lawyer," and (2) Who is doing most of the [talking or writing] in class?"[98] We express this concept as trying to be less of a "sage on the stage" and more of a "learning coach."[99] Another term often used to communicate a key to student engagement is "active learning."[100] Active learning experiences require students to be engaged because they are, among other things, writing, speaking, listening, reflecting and demonstrating.[101] These learning experiences include small group discussions, think-pair share, writing answers to short hypotheticals before discussing

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93. *Id.* at 22–23.

94. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 81.

95. *See id.*

96. SCHWARTZ, HESS & SPARROW, *supra* note 2, at 48–49.

97.   *Id.* at 49–52. Reading what the students have to say about their professors in the pages cited in this footnote is, itself, uplifting and inspiring.

98. SCHWARTZ, SPARROW & HESS, *supra* note 10, at 99, 106.

99. *Id.* at 100.

100. *Id.* at 82, 105–06.

101. *See id.* at 106.

them in class, and point-counterpoint discussions.[102] The people we studied for *What the Best Law Teachers Do* embrace active learning teaching methods. Their students work problems, complete writing exercises, engage in peer grading, write on the whiteboard, and ask lots of questions.[103]

Third, authentic learning experiences, i.e., placing students in role-plays as attorneys, is a particularly effective way to engage students. Having students participate in mock oral arguments, draft contract provisions, prepare pleadings, even in first-year courses, motivates students to do their best work.[104] Many of the people we studied for *What the Best Law Teachers Do* use role-plays as a key teaching technique.[105] Roberto Corrada takes the authentic learning goal further than most; he creates whole-class simulations. In his labor law class, students organize into a union to negotiate the terms of the class.[106]

The first factor, passion for the subject and for student learning, is easier to achieve in brick-and-mortar classes, moderately harder in synchronous classes and hardest in asynchronous classes. Passion is harder to read on a face in a video or a voice over the Internet, even in the synchronous online setting, and many of my colleagues who teach online have told me that they miss the energy of a live classroom. However, in well-designed asynchronous online classes, the professor provides more individualized feedback, making it more likely that more students will have their best work celebrated by the professor.

While the second and third factors, student engagement and authentic learning experiences, may look a bit different in online classes, both are easily visible when students collaborate in online small groups on projects, answer a hypothetical, provide peer feedback on a peer's answer to a hypothetical, draft legal documents, record and post an oral argument to a course webpage, and create their own hypotheticals to test their own understandings.

E. Providing Assessment and Feedback

Finally, administering multiple assessments, ideally in a variety of forms, and providing high-quality feedback are critical to student learning.[107] Multiple assessments allow teachers to assess a wider variety of skills and knowledge, allow students to develop their skills and

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102. *See id.* at 105.
103. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 211–15.
104. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 6, 83.
105. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 212–15.
106. *See id.* at 172.
107. *See* SCHWARTZ, SPARROW & HESS, *supra* note 10, at 157.

knowledge over time, and increase the likelihood that the professor's conclusions about student learning are accurate.[108] Professors, optimally, provide grading criteria in advance of each assessment and use rubrics to grade written work products to ensure consistency and accuracy.[109] Feedback should be specific, positive, corrective, and prompt;[110] students should understand what they did well and what they did poorly and should receive guidance on how to improve.[111] The people we studied for *What the Best Law Teachers Do* see the assessment as "another learning opportunity,"[112] and the professors see their students' performance on their assessments as a reflection on their effectiveness as teachers.[113] They believe in frequent assessment,[114] and they provide detailed feedback.[115]

Other than the tendency of professors in online classes to provide more and more individualized feedback and to administer more assessments, these practices should be and are indistinguishable in the brick-and-mortar and online modalities. Online classes have the benefit of online multiple-choice quizzes, but brick-and-mortar professors also have access to this quizzing software.[116]

CONCLUSION

Our myths about in person and online teaching have distorted our thinking. Unquestionably, many in person law school classes meet and even exceed our preconceptions about optimal in person classes. Many fall short, and a significant number fall far short of the ideal. Likewise, online classes can be excellent, mediocre, and poor. The modality, however, plays an insignificant role. Rather, factors including professors' course and class session design, class preparation, connection with their students, communication of high expectations, engagement of students, and assessment and feedback practices are much more significant to student learning.

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108. *See id.* at 177.

109. *See id.* at 177–78.

110. *See id.* at 162, 183.

111. *See id.* at 165.

112. *See* SCHWARTZ, HESS & SPARROW, *supra* note 2, at 260.

113. *See id.* at 261.

114. *See id.* at 261, 263–65.

115. *See id.* at 267, 269, 271–72.

116. *See* Charles B. Sheppard, *The Grading Process: Taking a Multidimensional, "Non-Curved" Approach to the Measurement of a First-Year Law Student's Level of Proficiency*, 30 W. ST. U. L. REV. 177, 196 (2003) (discussing the use of online quizzes in traditional law school classes).

The ideal would be to teach in person those subjects best taught in a brick-and-mortar setting and teach online those subjects for which a live teacher is not essential.