Advanced Online Continuing Legal Education: How to Leverage Technology-Mediated Education for Lawyers' Lifelong Learning

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Continuing legal education ("CLE") is theoretically important not only for lawyers but also for society. CLE aims to keep lawyers' knowledge of ever-changing law and technology up to date so that lawyers can continue advancing law on its long bend toward justice. CLE can socialize lawyers to the rapidly changing human phenomenon we call culture so that they remain keenly aware of what justice requires. And CLE could help attorneys fulfill their duty of technological competence by keeping attorneys' understanding of legal technology current. For these reasons, as well as others, most states mandate that lawyers take several hours of CLE courses each year.

Yet busy lawyers sometimes seek ways to meet mandatory CLE ("MCLE") required by state bar associations with minimum time and effort. It is especially easy to cut corners when taking an online CLE ("OCLE") course, because attorneys can nominally "watch" online videos while doing billable work. It is hard to imagine how OCLE performs the social purposes contemplated above when attorneys merely watch videos at eight times their recorded speed in marathon sessions simply to meet annual compliance requirements.

This article brings learning theory and cognitive science to bear on OCLE pedagogy. In short, learning science shows that engaging in passive learning, like watching videos, is less effective for learning than active learning, such as engaging with assessments. Moreover, this article identifies how MCLE encourages ineffective pedagogy by measuring MCLE compliance in terms of inputs (hours spent attending lessons) instead of outputs (ability to apply information learned). MCLE requirements based on time spent watching videos encourage CLE providers to create long videos, whereas learning science finds that short videos are more effective. MCLE compliance generally does not require completing any assessments, yet learning science shows that

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completing assessments is critical for learning. Thus, the problem is that MCLE requirements do not relate to effective learning.

The solution is not, however, to mandate in-person CLE attendance or to prohibit OCLE from counting toward MCLE. Instead of regressing technologically, it is time to advance OCLE by requiring or at least permitting OCLE providers to make OCLE more engaging and effective.

This article describes how OCLE courses will be more engaging and effective by applying "backward design" and "chunking" techniques. Backward design means, first, developing learning objectives; second, conceiving how instructors can assess learners' achievement of these learning objectives; and third, creating video content that prepares students to accomplish the assessment. Chunking means keeping videos short and interactive, interleaving passive learning through video with active learning and questions. This article provides a brief how-to guide for instructors who want to improve their effectiveness quickly yet drastically in teaching OCLE.

This article tabulates the costs and benefits of OCLE, and it finds OCLE's social value likely to be negative. Some would use this evidence in arguments to end our fifty-year experiment in MCLE requirements, or at least to prohibit OCLE from qualifying as MCLE. But this article comes to a different conclusion. OCLE could become far more beneficial if state bar associations encourage or require OCLE providers to use best practices in technology-mediated education ("TME"). This paper concludes with a call to action, inviting state bar associations to require distance education that fulfills its pedagogical potential. Distance education is here to stay—accreditors should make sure this powerful tool is used effectively.

Introduction

In 1935, law professor Karl Nickerson Llewellyn delivered a talk at Harvard Law School, "On What Is Wrong with So-Called Legal Education."[1] Lest readers interpret his screed as raving by an ousted member of the fringe, note that the peer-reviewed Journal of Legal Studies identified Professor Llewellyn as one of the most influential legal scholars of all time.[2] Llewellyn complained that elite law schools of that time did not train lawyers to perform the obligations of the legal profession.[3] Rather, law schools taught theory.[4] Moreover, law schools were insulated from the normal business necessity to invent and improve or go under.[5] While he did not use the modern language of law and economics, he explained that law school teaching is a function of path

1 Karl Llewellyn, *On What is Wrong with So-Called Legal Education*, 35 Colum. L. Rev. 651 (1935).

2 Fred R. Shapiro, *The Most-Cited Legal Scholars*, 29 J. Legal Stud. 409 (2000). According to this study, Llewellyn ranked as the eighteenth-most-cited legal scholar.

3 Lewellyn, *supra* note 1, at 652–53.

4 *Id.* at 656.

5 *Id.* at 667.

dependence,[6] and that law schools have little incentive to innovate, because they are captured by teachers who enjoy high theory.[7]

While the Harvard Law Review refused to publish Llewellyn's heretical talk, Columbia Law Review printed it. Llewellyn continued his campaign to reform law schools and is now recognized as foundational in bringing the movement known as legal realism to law school education.[8] Today, virtually all law schools employ some combination of the case law method developed at Harvard[9] and more modern applications skills training through clinics and experiential learning[10] in the juris doctor curriculum. There appears to be no law school today that relies solely on lectures for training lawyers.

Yet CLE, especially OCLE, does continue to rely almost solely on lecture modalities for teaching. If CLE is important enough to be mandatory,[11] and if OCLE is a valid means of meeting MCLE requirements,[12] then why do we permit this requirement to be met via ineffective teaching methods?

The answer to this question is partly the same as what Llewellyn expressed almost ninety years ago: Some combination of path dependence and capture results in inferior OCLE. Yet the fixes to the J.D. curriculum and the OCLE

6 *Id.* at 652–53.

7 *Id.* at 665–66.

8 *See* William Twining, Karl Llewellyn and the Realist Movement 27–28 (2d ed. 2012). Twining credits Llewellyn's mentor, Arthur Linton Corbin, along with Wesley Newcomb Hohfeld and Walter Wheeler Cook, with leading the first phase of the legal realist movement. Corbin, Newcomb, and Cook rebelled against the then-established "Yale system," which taught law entirely by lectures. Llewellyn, Corbin's protégé, joined the Yale faculty in 1903 and set about "to work out a method of teaching and of exposition of legal doctrine which overcame the inadequacies of the Yale system."

9 Christopher C. Langell introduced the case law method to American legal education in 1870. *See* Bruce A. Kimball, The Proliferation of the Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890–1915 (2007). Kimball describes the case law method as "regnant" and an "ultimate triumph" in law schools today while recognizing it was initially derided as an "abomination." *See also* Anthony Chase, *The Birth of the Modern Law School*, 23 Am. J. Legal Hist. 329 (1979) (pinpointing the start of the modern law school teaching method as occurring on the opening day of the fall term in 1870 at Harvard Law School in Dane Hall, where Professor Langdell taught a class based on a pamphlet that he would later call his "casebook" on contracts).

10 While recognizing that law school vastly increased skills training in the modern era, Erwin Chemerinsky, then Dean of Univeristy of California, Berkeley, School of Law, somewhat dismally concludes that law school has not changed much in the past forty years, and it will not change much in the next forty. Erwin Chemerinsky, *Reflections on the Future of Legal Education*, 13 FIU L. Rev. 215, 215 (2018) ("But overall, legal education today is much like what it was in 1975 when I was a 1L."). *Id.* at 227 ("My conclusion is that, forty years from now law schools probably will look much like the law schools of today.").

11 The fact that most (forty-nine out of fifty-six) U.S. jurisdictions have MCLE requirements suggests that most states think CLE is important enough to mandate.

12 All states that have MCLE requirements permit at least some, if not all, of these requirements to be met via OCLE courses.

curriculum are not necessarily the same. It may be impracticable and, in fact, undesirable to use the case law method in OCLE. The audience is different, and the asynchronous modality cannot fully mimic the classroom. But this does not result in the inevitable conclusion that online OCLE cannot be improved. Rather, we can apply assessment-based learning to OCLE to reinvigorate what has become a vestigial anachronism.

I. What's Wrong with So-Called Online Continuing Legal Education

The big problem with OCLE is that states do not require or even credit OCLE providers for using online teaching technologies that include some of the highlights of this modality, such as assessment, personalization, and gamification. States generally count MCLE in terms of hours of content watched or attended, but this is not a good measure of learning, especially online, where distractions are plentiful and course videos can be sped up. Since OCLE rules are basically MCLE rules, providers have no incentive and, arguably, little flexibility to motivate adult learning. So, instead of fixing problems with CLE, OCLE pixelates them, making its problems harder to resolve with lower resolution.

Since OCLE is predominately an online projection of in-person CLE, and since so much more is written about CLE generally than about OCLE in particular, we might consider whether OCLE meets goals designed for it by evaluating goals of CLE, and, more generally, what the objectives of adult continuing education are. What learning objectives should OCLE meet, and what does it accomplish?

Pedagogically, we now understand that humans are lifelong learners.[13] Malcolm Shepherd Knowles began advancing the idea of adult education around 1950, when he published his guide for administrators, leaders, and teachers.[14] By 1999, lifelong learning (LLL) became commonly used in educational conversations as the leading organizing principle of education.[15] Learning science clearly recognizes the increasingly important need to continue education and acquire new skills, especially regarding information technology.[16] Lawyers increasingly recognize how CLE could facilitate technical competence in particular.[17]

13 Roberta L. Duyff, *The Value of Lifelong Learning: Key Element in Professional Career Development*, 99 J. Am. Diet Assoc. 538–43 (1999).

14 Malcolm S. Knowles, Informal Adult Education: A Guide for Administrators, Leaders, and Teachers (1950).

15 Marjan Laal, et al., *Continuing education; lifelong learning*, 116 Soc. & Behav. Sci. 4052 (2013).

16 Michal Beller & Ehud Or, *The Crossroads between Lifelong Learning and Information Technology: A Challenge Facing Leading Universities*, 4 J. Computer-Mediated Comm. (2006), http://jcmc.indiana.edu/vol4/issue2/beller.html.

17 The contributions by John G. Browning and Danielle M. Hall in this issue of the Journal of Legal Education support this proposition.

On the assumption that continuing legal education provides current information that all attorneys need to know,[18] states began making CLE mandatory in the 1970s, seemingly in response to public opinion of attorney incompetence and corruption that was echoed by a 1973 speech by Chief Justice Warren Burger.[19] Within two years, two states, Iowa and Minnesota, adopted MCLE requirements.[20] Today, forty-nine out of fifty-six American jurisdictions require MCLE.[21] All these jurisdictions permit at least half of MCLE to be obtained through OCLE.

While attorney competence is surely a worthy goal, does OCLE produce attorney competence? If so, what are the tangible benefits of that competence, and what does it cost?

Despite vast interdisciplinary literature on LLL and professional competence, there is almost zero evidence that MCLE accomplishes its stated goal of increasing attorney competence.[22] The District of Columbia studied CLE for two years and published a nearly 200-page report that concluded there is no empirical data to demonstrate that CLE courses improve attorney competence.[23] Even states that require CLE acknowledge a lack of empirical evidence showing any correlation between CLE and attorney competence.[24] Meanwhile, courts have found that failing to meet CLE requirements does not establish incompetence.[25] There is likewise zero empirical evidence that OCLE makes attorneys more competent.

18 Lisa A. Grigg, *The Mandatory Continuing Legal Education (MCLE) Debate: Is it Improving Lawyer Competence or Just Busy Work?*, 12 BYU J. Pub. L. 417, 426 (1998).

19 *See generally* Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 Fordham L. Rev. 227 (1973) (expressing "anxieties . . . concerning the quality of advocacy in our courts").

20 Grigg, *supra* note 18, at 418.

21 *See* Attachment A ("CLE Requirements in U.S. Jurisdictions").

22 One empirical study reports a statistical correlation between increases in requiring CLE and decreases in docketed cases regarding attorney sanctions. Chris Ziegler & Justin Kuhn, *Is MCLE a Good Thing? An Inquiry into MCLE and Attorney Discipline*, Continuing Legal Educ. Reguls. Ass'n, https://www.clereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf. Notably, however, that scholarship was sponsored by the Continuing Legal Regulators Association, and its findings do not appear in any peer-reviewed publication. That paper did not perform multiple-regression analysis and so it could not conclude whether this correlation is spurious.

23 Evaluation and Recommendations on MCLE for The District Of Columbia Bar (1995).

24 California State Bar Commission's Final Report of the Commission to Study Mandatory Continuing Legal Education, at 7 (1988) (the report "acknowledge[s] the lack of any statistical evidence clearly demonstrating a direct, positive correlation between MCLE and attorney competence").

25 People v. Ngo, 14 Cal. 4th 30, 36 (1996) ("Although the right to counsel clearly entails a right to competent representation by a licensed attorney, and although MCLE requirements clearly do relate to professional competence, in the sense they are intended to enhance the competence of attorneys practicing law in this state, the inference is unwarranted that

Attorneys clearly need to learn new skills, especially technological competencies, during their decades-long careers. Yet CLE cannot prove it is up to this task. And OCLE is hamstrung by timebound requirements. OCLE is literally just online CLE, whereas technology enables online teaching to be much more than a hologram of a classroom. What change in rules could motivate advanced OCLE? Can we unlock the power of TME to foster LLL for lawyers?

II. Advanced OCLE

Advanced OCLE means OCLE courses that use teaching tools unique or specific to technology-mediated education. Quizzes, polls, collaborative whiteboards, asynchronous discussion boards, and games are examples of TME interactive learning tools well known since the 1990s.[26] Perhaps there exist missed opportunities to use TME and the most popular online teaching organization principle, backward design, in LLL for lawyers.

A. Backward Design

Online learning must be designed to account for the benefits and drawbacks of the online learning environment.[27] Online courses can be student-guided, where students can spend more time on concepts with which they need more help and less time on concepts they pick up quickly.[28] Online learning is more efficient for motivated self-regulated learners,[29] while students who lack independence and self-motivation have lower success rates in online courses than their peers.[30] Student engagement is a multidimensional concept, however, and teachers can increase student engagement through effective course design.[31]

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any and all noncompliance with those requirements necessarily establishes an attorney's professional incompetence or constitutionally deficient performance in representation following enrollment on inactive status.").

26 Christopher J. Dede, *The Evolution of Distance Learning: Technology-Mediated Interactive Learning*, 22 J. Res. Computing Educ. 247–64 (1990).

27 *See, e.g.*, Jared Keengwe & Terry T. Kidd, *Towards Best Practices in Online Learning and Teaching in Higher Education*, 6 MERLOT J. Online Learning & Teaching 533 (2010); Rob Abel, *Implementing Best Practices in Online Learning*, 28 Educause R. 1528 (2005); Mary Rose Grant & Heather R. Thornton, *Best Practices in Undergraduate Adult-Centered Online Learning: Mechanisms for Course Design and Delivery*, 3 MERLOT J. Online Learning & Teaching 246 (2007); Henry S. Merrill, *Best Practices for Online Facilitation*, 14 Adult Learning 13 (2006).

28 Lisa Kirtman, *Online Versus In-Class Courses: An Examination of Differences in Learning Outcomes*, 18 Issues in Teacher Educ. 103–16 (2009), http://search.proquest.com/docview/233320851?accountid=27700.

29 Ji Won You & Myunghee Kang, *The role of academic emotions in the relationship between perceived academic control and self-regulated learning in online learning*, 77 Computers & Educ. 125–33 (2014).

30 Wilhelmina C. Savenye, *Improving Online Courses: What is Interaction and Why Use It?*, 2 Distance Learning 22–28 (2005).

31 Fatima Afzal & Lynn Crawford, *Student's Perception of Engagement in Online Project Management*

Wiggins and McTighe provided teachers with what is now one of the most well-established online course design strategies and called it backward design.[32] Backward design (1) identifies desired results for students called "learning objectives," (2) determines acceptance evidence that students achieved these learning objectives through "assessments," and (3) plans learning experiences that help students achieve these assessments.

Backward design means, practically, that course builders start with learning objectives.[33] It means to know where you're going so that you better understand where you are now so that the steps you take are always in the right direction.[34] Therefore, backward design begins with mapping learning objectives to the topics and themes of the course.

With well-defined targets on a learning map, instructors can chart courses that get students there—but from where? Course maps must account for both where students begin and where instructors hope they end. Assessing student knowledge at the beginning of the course defines the starting point. Then, course builders connect the students' starting point to the learning end goal with knowledge of the learning terrain and wisdom from having guided many students through it.

Goals are motivating. When objectives are paired with assessments that provide feedback on learning, students can measure progress toward goals, quickly note shortcomings, and engage with personalized learning activities that help them achieve criteria; students become more motivated to participate in learning because they see how that learning benefits them. Alenezi explained how backward design fosters student motivation:[35]

Education and Its Impact on Performance: The Mediating Role of Self-Motivation, 3 Project Leadership & Society 1 (2022).

32 *See, e.g.*, Grant Wiggins & Jay McTighe, *What Is Backward Design?*, *in* Ryan S. Bowen, Understanding by Design (2005).

33 *See, e.g.*, Jan Emory, *Understanding Backward Design to Strengthen Curricular Models*, 39 Nurse Educator 122 (2014).

34 See Stephen R. Covey, et al., The Seven Habits of Highly Effective People (2020) ("Begin With the End in Mind means to start with a clear understanding of your destination. You need to know where you are going in order to better understand where you are now so that the steps you take are always in the right direction.").

35 Huda Alenezi, *Learning as the Prize: Enhancing Students' Intrinsic Motivation through Backward Design*, 23 Int'l J. Pedagogy & Curriculum 1 (2015).

Table 1. Alenezi's Model of the Role of Backward Design to Foster Students' Intrinsic Motivation to Learn.

Students who are intrinsically motivated . . .	**The role of backward design to foster students' motivation to learn . . .**
Learn based on their learning needs	Begins with the end to determine students' needs
Learn relevant and meaningful knowledge	Focuses on enduring understandings and what is worth teaching
Achieve true understanding	Teaches concepts in depth
Appreciate what they learn	Relates goals to students' lives
Apply what they learn	Promotes knowledge and skills that students will use
Have self-confidence and realize their own success and achievement	Allows students to experience errors to improve their learning
Determine their strengths, weaknesses, and misconceptions	Plans ongoing assessment using the six facets of understanding
Know where they are headed, work toward notable goals and engage in learning	Considers the WHERETO elements when planning learning activities

Note that the backward design process begins, not ends, with defining objectives. After defining objectives, instructors should plan assessments so students can determine whether they are meeting those learning objectives. Defining meaningful objectives, then giving students visibility into whether are accomplishing objectives, motivates students to continue learning. Backward design gives students visibility into the purpose of the instruction process and thus motivates students to engage with course materials.[36]

MCLE requirements, however, are at odds with this pedagogical strategy. Instead of requiring assessments, which would fit with backward design, MCLE encourages lectures. For an example of a typical MCLE requirement, consider California's standard for being an eligible MCLE activity provider for a single

36 Viorica Condrat, *Backward Design: When a Good Ending Makes a Good Beginning*, IV International Spring Symposium Proceedings 64-75 (2018); Junho Son, *The Effect of Backward Design Reflecting Process-Focused Assessment on Science Learning Achievement and Science Learning Motivation of Elementary School Student*s, J. of Korean Soc'y of Earth Science Educ. 90–106 (2018); Camille Chesley & Tarida Anantachai, *Level Up the One-Shot: Empowering Students with Backward Design and Game-Based Learning*, *in* Motivating Students on a Time Budget: Pedagogical Frames and Lesson Plans for In-Person and Online Information Literacy Instruction (Sarah Steiner & Miriam Rigby eds., 2019).

activity[37] or multiple activities.[38] In both cases, the provider must provide a syllabus, handouts, and/or a PowerPoint presentation.[39] Assessments as in-class activities are not contemplated by the rule.[40] While California MCLE requires providers to furnish a syllabus discussing the content of a course,[41] there is no requirement to define learning outcomes.

California is hardly unique in requiring CLE providers to furnish evidence of information covered, but learning theory shows that information covered is not necessarily information learned. In fact, learning theory suggests that online learning is effective only where the online course is structured to take advantage of the unique pedagogical benefits of TME. MCLE requirements like California's treat OCLE just like CLE, and CLE encourages traditional lecture-style courses.

OCLE should be regulated differently than in-person CLE because online courses work differently. Learning scientists David George Glance, Martin Forsey, and Myles Riley summarized the pedagogical foundation of online courses whose characteristics have well-established pedagogical benefits. These are the distinguishing features of good online courses and those features associated with benefits for learning.[42]

Table 2. Characteristics of MOOCs and Related Pedagogical Benefits. Credit Glance, Forsey, and Riley (2013).

Online Course Characteristic	**Pedagogical Benefits**
Online mode of delivery	Efficacy of online learning
Online quizzes and assessments	Retrieval learning
Short videos and quizzes	Mastery learning
Peer and self-assessment	Enhanced learning through this assessment
Short videos	Enhanced attention and focus
Online forums	Peer assistance, out-of-band learning

The common attribute of all these beneficial characteristics of online courses is an emphasis on engagement with the learner through online technologies.

37 *Becoming a California Single Activity Provider*, State Bar of California, https://www.calbar.ca.gov/Attorneys/MCLE-CLE/MCLE-Providers/Single-Activity-Providers.

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 David George Glance, et al., *The Pedagogical Foundations of Massive Open Online Courses*, 18 First Monday (2013).

The asynchronous environment becomes a feature, not a bug. Instead of merely displaying long videos, successful online courses regularly engage students with TME.

While most state bar associations permit OCLE courses to fulfill MCLE requirements, these same states treat OCLE the same as CLE through rules that encourage informative lectures. State bar rules that impose the same requirements on OCLE as in-person CLE prevent advanced OCLE innovations that are likely to make OCLE more effective, such as by applying backward design. To unlock the potential of better learning through technology, states should change OCLE rules to permit if not to require backward design with assessment-based learning in OCLE courses.

B. Advanced OCLE Rules

Current MCLE requirements, exemplified by California's rules discussed above, generally credit OCLE based on time spent in class. This article has explained why this method results in inefficient online learning. Given that spent spend watching online lectures in unrelated to how much students learn, how else could state bar associations credit OCLE if not by time? Perhaps state bar associations could take note of how law schools are adapting to online learning, also known as distance education.

The American Bar Association ("ABA") standard for distance education in the J.D. curriculum not only credit students for time spent on assessments, it also affirmatively requires engagement strategies in distance learning courses.

> *ABA Standard 306. Distance Education.*
>
> *(2) [E]ach Distance Education Course [must] include[] at least two of the following:*
>
> *(i) providing direct instruction;*
>
> *(ii) assessing or providing feedback on a student's coursework;*
>
> *(iii) providing information or responding to questions about the content of a course; or*
>
> *(iv) facilitating a group discussion regarding the content of a course.*

State bar associations could likewise require that OCLE courses feature some engaging TME. But simply adopting ABA Standard 306 is not enough to advance OCLE in most jurisdictions. Bar associations also need to credit students (and instructors) for time spent on assessments. Once again, the ABA provides a model rule:

> *ABA Standard 310. Determination of Credit Hours for Coursework.*

…

> *(b) A "credit hour" is an amount of work that reasonably approximates: (1) 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.*

ABA Standard 310 echoes the U.S. Department of Education definition of "credit hours."[43] Both use the pedagogical term of art "direct faculty instruction" ("DFI"). DFI refers to a wide variety of activities students expect in classrooms,[44] including:[45]

- Reading articles and writing summaries about them
- Writing blog posts and journal entries
- Analyzing case studies and discussing practice problems with instructors or classmates
- Attending conference calls and videoconferences
- Participating in verbal debates
- Posting and reading posts on discussion boards and other asynchronous forums
- Going on field trips and virtual field trips
- Preparing and presenting papers and presentations
- Collaborating in group projects
- Researching guided projects
- Taking online quizzes
- Reviewing automated and personalized feedback
- Assessing peer work
- Reflecting on learned concepts orally or in writing
- Playing learning games

State bar associations could adopt similar language for MCLE hours. State bar associations should expressly permit advanced OCLE by crediting time to TME activities.

43 34 CFR § 600.2.

44 *See Direct Instruction*, The Glossary of Education Reform (2013), https://www.edglossary.org/direct-instruction/#:~:text=In%20general%2C%20the%20term%20direct%20instruction%20refers,teachers%2C%20such%20as%20in%20a%20lecture%20or%20demonstration.

45 *See Credit Hour Policy*, Rosemont College, https://www.rosemont.edu/about/credit-hour-policy.pdf; *Direct Faculty Instruction in Online Courses*, UMass Lowell, https://faculty.gps.uml.edu/wp-content/uploads/2021/09/Direct-Instruction-in-Online-Courses.pdf.

C. Advanced OCLE Is Backward

Provided that states adopt rules permitting OCLE to credit outputs (evidence of learning) and not just inputs (time spent receiving information), OCLE providers could use backward design to advance OCLE by using TME to make learning more customized. Here is an example of how an OCLE course using backward design could be structured.

1. Learning Objectives

Backward design suggests that course builders start with learning objectives.[46] To use a popular expression, attributed to Zig Ziglar, "You can't hit a target you cannot see, and you cannot see a target you do not have." Likewise, Tony Robbins allegedly said, "You can't hit a target if you don't know what it is." These quotations are meant to emphasize the importance of establishing goals. If you do not have a goal for a course, then learning in it is basically random, and assessments seem (and perhaps are) irrelevant to learning. Planning a course without first establishing learning objectives is like going on a journey without a map or a destination. When you take your first step, have you gotten closer to or farther from your goal? Without a destination, this is impossible to define. Backward design principles, therefore, suggest establishing learning objectives first. Learning objectives thus function metaphorically, like the destination at which your students should arrive upon completing the course.

An ancillary benefit of establishing learning objectives for all online CLE courses is that CLE students can select courses based on what they want to learn. Some people want to learn about a topic because of general interest, while others want to develop skills that empower them to do certain things. CLE can meet a wide variety of learning objectives, but it is important to define these objectives so adult learners can select courses based on what they value learning.

Here are some examples of learning objectives that would be appropriate for online CLE courses:

- After this course, you will be able to identify whether a transaction is a "hybrid transaction" under the 2022 Amendments to the Uniform Commercial Code.
- After this course, you will remember the top three most common cybersecurity mistakes lawyers make when storing confidential client information, and you will be able to apply strategies to avoid these mistakes.
- After this course, you will be able to use the HotDocs automated document assembly software to generate a draft lease agreement for a client.

46 *See, e.g.*, Emory, *supra* note 33, at 122.

Note that all these objectives are specific (well defined), measurable (assessable), assignable (completable in a short course), realistic (connected to professional lawyering), and timebound (measured at a specific time, usually at the end of the course). This is called the SMART system for defining objectives,[47] and it is a notably effective way to communicate learning objectives to students.[48] The SMART method is commonly stated as the standard for developing effective, measurable goals and objectives.[49]

With established objectives, the instructor can then begin establishing waypoints. These waypoints are assessments. Assessments tell the instructor and the students where learners are and direct learners to where they must go to achieve goals.

2. Assessment

The ABA recognizes three ways of engaging law students in distance education in addition to providing video lectures. In fact, the ABA requires that all distance education courses that count toward a juris doctor degree have at least one of these three elements: assessment, response to questions, and group discussion. Of these elements, only one seems easily applicable to online CLE: assessment. This article recommends that OCLE providers include pre-tests and post-tests in OCLE courses. Moreover, this article recommends that state bar associations credit time spent on these tests so that a one-hour MCLE requirement could be met with a shorter video plus some assessments.

Group discussions and responses to questions both require time and instructor availability. These are hard to achieve in a one-hour online course, especially when that course is asynchronous and on-demand. If a student chooses to take a course at three in the morning on a Sunday, it may be infeasible for an instructor to be standing by to answer questions that hour, and it may be unlikely that other students are available for discussion at that point.

However, assessment can be programmed and automated, so an always-on computer responds to students with feedback at any time of the day or night. Since assessment is the only one of these engagement strategies feasible for online CLE, this article will focus on adopting and requiring assessment instead.

This is not a radical or even a new idea. In 1968, three leading educational psychologists wrote an influential book explaining that the most important

47 The SMART objectives paradigm is usually ascribed to management scholar George T. Doran, *There's a S.M.A.R.T. Way to Write Management's Goals and Objectives*, 70 Management R. 35 (1981).

48 Debnath Chatterjee & Janet Corral, *How to Write Well-Defined Learning Objectives*, 19 J. Educ. Perioperative Med. 610 (2017).

49 May Britt Bjerke & Ralph Renger, *Being Smart about Writing SMART Objectives*, 61 Eval. & Program Planning 125–27 (2017).

factor influencing learning is assessment.[50] Now, the notion that assessment is central to learning is so central to the field of learning science that entire books are written about the key role of assessment for durable learning.[51] It is virtually impossible to find current university resources on effective teaching that do not discuss assessment.[52]

What, then, is assessment, and why is it important for learning? The University of Massachusetts Amherst Office of Academic Planning & Assessment defines assessment as "the systematic collection and analysis of information to improve student learning."[53] This is more than just testing via final exams; the definition encompasses more than just evaluating students. The evaluative function of assessment, which is an assessment of learning, is called summative assessment. Summative assessment cans certify achievement and qualify someone to practice.[54] The bar exam is an example of a summative assessment—and anyone who took that grueling test is likely grateful never to take such a stressful examination again.

Assessment can also be used for learning, and this is called formative assessment. Formative assessments, such as diagnostics, pre-tests, and check-ins, play important roles in motivating learning.[55] A quiz given before a lesson learned not only tells the teacher what the students do not know (and therefore what they should learn), but it also tells the students what they can expect to learn.[56] If a course offers a pre-test before the lesson, then gives the lesson, then gives the post-test, students can use this testing to establish what they should learn, become more receptive to learning that information, and demonstrate to themselves and others that they learned it. Moreover, according to the testing

50 David Paul Ausubel, et al, Educational Psychology: A cognitive View (2d ed. 1978).

51 Peter C. Brown, et al., Make It Stick: The Science of Successful Learning (2014); Benedict Carey, How We Learn: The Surprising Truth about When, Where, and Why It Happens (2015); Pooja K. Agarwal & Patrice M. Bain, Powerful Teaching: Unleash the Science of Learning (2019); Yara Weinstein, et al. , Understanding How We Learn: A Visual Guide (2018).

52 *See, e.g.*, Michael R. Fisher Jr., *Student Assessment in Teaching and Learning*, Vanderbilit University Center for Teaching, https://cft.vanderbilt.edu/student-assessment-in-teaching-and-learning/#:~:text=Student%20assessment%20enables%20instructors%20to,ineffective%20ones%20in%20their%20pedagogy.

53 Martha L.A. Stassen, et al., Program-Based Review and Assessment: Tools and Techniques for Program Improvement (2011), at 5, https://www.umass.edu/oapa/sites/default/files/pdf/handbooks/program_assessment_handbook.pdf; *see also* Martha L.A. Stassen, et al., Course-Based Review and Assessment: Methods for Understanding Student Learning (2011), https://www.umass.edu/oapa/sites/default/files/pdf/handbooks/course_based_assessment_handbook.pdf.

54 Lancaster University Educational Development, Principles and Purposes of Assessment in Higher Education (2021), https://www.lancaster.ac.uk/curriculum-and-education-development-academy/resources/assessment-principles/.

55 *Id.*

56 *Id.*

principle, this use of assessment promotes long-term memory of lessons learned.[57]

And assessment can be used as learning, meaning the assessment can itself be the lesson. This is called sustainable assessment.[58] For example, students who are asked to judge the quality of their work perform two valuable learning functions.[59] First, if given proper tools for self-assessment, students are steered to focus on what is important to learn. Second, students learn and develop metacognitive abilities that "sustain" their learning by helping them accrue tools that help them learn more critically.[60]

It may not surprise most readers that empirical analysis of attitudes regarding assessment shows that teachers like assessments more than students do.[61] But this is at least partly because students often think of assessments as high-stakes, time-pressured, white-knuckled testing experiences that distinguish who merits some credential from who does not. This accurately describes summative assessments such as the bar exam. It would be unsurprising to learn that online CLE participants, who generally choose which courses they take, would choose not to go through this rigorous summative assessment process when they have less stressful options.

But high-stakes summative assessments are just one type of assessment of learning. Assesements of learning can be low-stakes, too. For example, an instructor can give learners multiple opportunities to take an assessment. Assessment software can display to learners which questions they got right and wrong, and why, so learners can review specific lessons before attempting the assessment again. Management studies show that low-stakes assessment increases student engagement and student retention.[62] For this reason, this article suggests that OCLE providers adopt gentler, lower-stakes assessments, especially when the online learning environment makes low-stakes assessments so easy to provide and perform.

For example, one effective way to add assessment to an OCLE course is to offer a pre-test and a post-test. A pre-test literally means giving students a test before they learn the material. This may seem counterintuitive, for how can teachers expect students to ace tests before they learn the lessons? But

57 *Make it Stick*, *supra* note 51.

58 Lancaster, *supra* note 54.

59 *Student Self-Assessment: Reframing Assessment as Learning*, Rice University Center for Teaching Excellence (2019), https://cte.rice.edu/blog/2019/student-self-assessment.

60 Lancaster, *supra* note 54.

61 Richard B. Fletcher, et al, *Faculty and Students Conceptions of Assessment in Higher Education*, 64 High. Educ. 119 (2011).

62 Nicky M. Meer & Amanda Chapman, *Assessment for Confidence: Exploring the Impact that Low-Stakes Assessment Design Has on Student Retention*, 12 Int'l J. Management Educ. 186, 191 (2014) ("This research has demonstrated that an early low-stakes assessment strategy addresses student concerns and anxieties around their abilities.").

learning science shows that pre-tests have two beneficial features. First, the pre-test establishes what students already know so teachers can begin at the appropriate learning level. Second, the pre-test primes students to learn new information.[63]

Another reason students dislike assessments is that they seem irrelevant to learning.[64] This is because some teachers use assessments poorly, not because assessment is inherently worthless. If you have ever taken a test that does not seem to resemble what you learned in class, you have experienced the assessment relevancy gap. This may occur because instructors feel obligated to give tests but fail to understand how assessment is part and parcel of learning. To bridge the assessment relevancy gap, the course must be designed with understanding in mind.[65] The "understanding by design" framework established by Jay McTighe and Grant Wiggins accords with a larger literature recommending that online courses be built using "backward design" strategies.

The third and final step in creating OCLE via backward design is developing learning activities relevant to the assessments and their objectives. When the elements of the course are connected in this way, students are more likely to perceive the relevance of the learning activities, which helps motivate them to focus on those activities. The pre-test method, in particular, primes students to pay attention to videos, because students then watch those videos not just for completion credit but to obtain information they will need later.

3. Activity "Chunks"

Instructors create effective learning activities by breaking information into chunks that are each associated with some assessment. There are many examples of learning activities that range from lectures to games.[66] Games-based learning is especially effective because pedagogical games can be quick bites of fun, motivating, personalized, and experiential learning activity.[67]

63 Pre-testing relies on the so-called testing effect, which is a strong and well-demonstrated phenomenon that learners' retention is more durable when they are tested on what they learn. There is some debate about whether pre-tests or post-tests are more effective for retention, but there seems to be consensus that both are helpful for retention and that pre- and post-tests work in tandem to improve learning and retention. This benefit is in addition to the benefits associated with teaching the students from the appropriate baseline and motivating students by showing them how they learned from the course. Alice Latimier, et al., *Does Pre-testing Promote Better Retention than Post-testing?*, 4 NPJ SCI. LEARN. 15 (2019), https://doi.org/10.1038/s41539-019-0053-1; *see also* John Gough, *What's the Big Deal about Pre-Tests?*, 27 PRIME NUMBER 3–7 (2012).

64 Fletcher et al., *supra* note 61.

65 Wiggins McTighe, *supra* note 32.

66 *Teaching and Learning: Examples of Learning Activities*, UNIVERSITY OF TASMANIA, https://www.teaching-learning.utas.edu.au/learning-activities-and-delivery-modes/planning-learning-activities/examples-of-learning-activities.

67 STEPHEN TANG, ET AL., INTRODUCTION TO GAMES-BASED LEARNING (2009).

This article submits that MCLE rule changes could permit MCLE providers to offer games instead of lectures; perhaps some industry providing adult learning games for lawyers would emerge to cater to the next generation of lawyers who grew up gaming. But while gamification is one effective strategy to improve OCLE learning, it is not the closest at hand.

Rather, this article tries to take a more realistic approach by suggesting how lecture videos—currently the dominant format of OCLE—could be made into more effective learning activities using backward design, as discussed above, and "chunking" principles.

For at least fifty years, cognitive scientists generally agreed that learning is organized by chunking.[68] Chunking theory is based on an understanding of how memory works. Adult learners have short-term memory, working memory, and long-term memory. Learning works best when students can process some set of information within working memory. (Retrieval practice later helps commit that knowledge to long-term memory.) Lessons thus need to be broken down into working-memory-sized chunks.

There is some academic debate on how big a chunk is,[69] but most learning theory suggests that one chunk of learning is smaller than most teachers imagine. Instead of getting into the entire learning theory of chunking, this article will apply what it expects will be the most common form of learning activity in OCLE: lecture videos.

How long a video is too long? A 2021 study concluded that the optimum length for an online lecture on engineering topics is six to ten minutes.[70] The Vanderbilt Center for Teaching likewise recommends online videos of less than six minutes each.[71]

One disadvantage of online lectures is that it is harder for learners to passively watch online lectures than in-person ones.[72] And even in person, adult learners struggle to focus on lectures exceeding eighteen minutes.[73]

68 Herman Buschke, *Learning Is Organized by Chunking*, 15 J. Verbal Learning & Verbal Behavior 313–24 (1976).

69 *See, e.g.*, Herbert A. Simon, *How Big Is a Chunk?*, 183 Science 482–88 (1974).

70 Amhad Manasrah, et al., *Short Videos, or Long Videos? A Study on the Ideal Video Length in Online Learning*, 2021 Int'l Conference on Info. Tech. 366–470 (2021).

71 Cynthia J. Brame, *Effective Educational Videos: Principles and Guidelines for Maximizing Student Learning from Video Content*, 15 CBE–Life Sciences Educ. 1–6 (2016).

72 Tom Cherrett, et al., *Making training more cognitively effective: Making videos interactive*, 40 British J. Educational Tech. 1124–34 (2009), http://dx.doi.org/10.1111/j.1467-8535.2009.00985.x; Itiel Dror, et al., *A cognitive perspective on technology enhanced learning in medical training: Great opportunities, pitfalls and challenges*, 33 Medical Teacher 291–96 (2011), http://dx.doi.org/10.3109/0142159X.2011.550970; Juho Kim, et al., *Understanding in-video dropouts and interaction peaks in online lecture videos*, at 31–40, http://dx.doi.org/10.1145/2556325.2566237.

73 Neil A. Bradbury, *Attention span during lectures: 8 seconds, 10 Minutes, or More?*, 40 Advances Physiology Educ. 509–13 (2016) (although this paper suggests that mixing up material can engage students during in-person class periods of longer than eighteen minutes, it admits

Yet most OCLE features hours-long content. There is no evidence or theory that suggests videos this long are pedagogically optimal. Instead, MCLE is generally required in hour-long denominations, which seems to be why OCLE videos are one hour long. Why, then, are OCLE courses essentially required to be three to ten times too long? Whatever the reason may be, it does not appear rooted in pedagogy.

Fortunately, students can attend longer lessons at which instructors employ periodic assessments to maintain engagement. Multiple peer-reviewed studies show that adding interactivity to videos substantially increases participation rates.[74] OCLE courses could pause every five to ten minutes to ask for a learner response, which could in turn result in a different instructional video played next.

Yet most online CLE courses entirely lack the engaging characteristics that make online learning effective. Instead, online CLE courses are generally little more than low-fidelity recordings of live lectures. It seems unsurprising that they are ineffective, as they are designed without these well-established pedagogical requirements of online learning in mind.

This section explained how advanced OCLE could take advantage of TME and thus become more engaging, more effective, and more fun. It also identified what MCLE rules state bars need to change to enable, facilitate, and require advanced OCLE. By essentially adopting ABA rules pertaining to distance education in the J.D. curriculum—such as crediting coursework based on more than the length of videos watched and requiring some online engagement such as knowledge check-in—state bar associations could inspire advanced OCLE that is pedagogically more effective than in-person CLE instead of requiring basic OCLE that must be a less effective projection of an in-person course.

III. Analysis: Is Advanced OCLE Worth It?

One well-established way to evaluate policies and regulations is through cost-benefit analysis.[75] As state bar associations and OCLE providers consider implementing the advanced OCLE regulations and best practices suggestions above, they might consider the costs and benefits of the status quo.

Currently, most states' MCLE requirements do not distinguish between CLE and OCLE. There appears to be no theory suggesting that status quo OCLE, which consists mainly of noninteractive long-form videos, which in turn are often just low-fidelity recordings of lectures, should produce effective

the consensus that most students' attention spans last about ten minutes).

74 Nitza Geri, et al., *Challenging the six-minute myth of online video lectures: Can interactivity expand the attention span of learners?*, 5 Online J. Applied Knowledge Mgmt. 101 (2017).

75 Jean Drèze & Nicholas Stern, *The Theory of Cost-Benefit Analysis*, *in* Handbook of Public Economics 909–89 (1987); Tevfik F. Nas, Cost-Benefit Analysis : Theory and Application (2d. ed. 2016); Jacques Lesourne, Jacques Cost-Benefit Analysis and Economic Theory (1975).

learning. While one might presume that attorneys generally learn something from watching OCLE videos passively, learning theory suggests that it is an inefficient way to learn that is unlikely to result in long-term retention of information. Empirically, as discussed in Part I, *supra*, there appears to be no evidence that OCLE causes attorneys to become more competent. Anecdotally, consider your own experience meeting MCLE requirements by watching OCLE videos at the eleventh hour. Most attorneys reading this article have some personal experience blipping through an online CLE video to meet some last-minute compliance requirement. When you think of the most meaningful learning experiences of your professional life, how many basic OCLE courses come to mind?

Theory, evidence, and anecdote all suggest that benefits from basic OCLE are low. What, then, are its costs? Mandating CLE produces direct costs (the costs of attending these sessions) and indirect costs (the costs of not doing something else for that time).

A 2022 ABA survey found there are about 1.3 million lawyers in the United States.[76] Our independent research estimated 1,302,091 licensed lawyers in 2023. Moreover, our research estimated the number of attorneys in each of fifty-six U.S. jurisdictions. We then determined the MCLE hours requirements in each of those jurisdictions and established that U.S. attorneys must spend about 13 million hours each year on MCLE.

The cost of 13 million hours of MCLE is hard to determine precisely, as CLE costs range widely. As a low estimate, we might assume that attorneys meet all their CLE requirements through a low-cost provider of unlimited CLE courses like Quimbee, which charges $179 per year per attorney,[77] resulting in just over $233 million annually spent on CLE courses. If we instead assume that most lawyers pay ABA rates for OCLE webinars, with those courses averaging $120 per hour, the total MCLE spending soars to over $1.5 billion annually. Reality is probably somewhere between, with some attorneys selecting the lowest-cost OCLE providers and others choosing premium in-person CLE providers. The direct cost is likely at least a quarter-billion dollars annually.

Then there is the indirect cost of attorneys' time. To calculate this, we researched the average billable hour rate in all U.S. jurisdictions that have MCLE requirements. We multiplied the number of attorneys in each jurisdiction by the hours of MCLE they must accrue annually and by the average hourly billable rate in that jurisdiction. This reveals an opportunity

76 *ABA survey finds 1.3M lawyers in the U.S.*, American Bar Association (June 20, 2022), https://www.americanbar.org/news/abanews/aba-news-archives/2022/06/aba-lawyers-survey/.

77 Online Continuing Legal Education (CLE) & MCLE Courses, Quimbee, https://www.googleadservices.com/pagead/aclk?sa=L&ai=DChcSEwi-otzCi_qEAxV1XkcBHRFwBAkYABABGgJxdQ&ae=2&gclid=EAIaIQobChMIvtLcwov6hAMVdV5HARoRcAQJEAAYAiAAEgJ6OvD_BwE&ohost=www.google.com&cid=CAASJeRoPHg_3SbJeL6LccvDD3foVHD7eodbPrXJzWolMDIAHdxU6bg&sig=AOD64_3MfchZrQCBdR8jvUAH9OsxB_xdRQ&q&adurl&ved=2ahUKEwiimtXCi_qEAxUEF1kFHUb9BogQoQx6BAgMEAE&nis=2&dct=1.

cost of over $3.6 billion in time spent on MCLE that could ostensibly be spent on billable hours.

These calculations do not even consider the instructor's time, which could be spent teaching more effectively otherwise, or the producer's time, which could at least theoretically be spent making more effective learning products. Thus, CLE should bear the burden of proving that it offers about $4 billion annually in educational value in exchange for its costs.

MCLE costs at least $4 billion annually. Yet we found no evidence that MCLE, in general, and the OCLE option to meet that requirement, in particular, serve society. There is zero evidence that OCLE is pedagogically effective. This cost-benefit analysis is not a close call. Rather, these back-of-the-envelope calculations suggest that OCLE is in dire need of substantial overhauls.

Some may argue that the way to fix this imbalanced cost-benefit equation is to remove the requirement for MCLE or limit how many OCLE hours count as MCLE credits. Some states have taken this approach and eliminated CLE requirements accordingly.

Yet another approach is to raise the benefits of online CLE by bringing it up to date with modern pedagogy. Instead of using a pure lecture format of education debunked and discarded one hundred years ago by law schools, online CLE could be made effective through the modern pedagogical strategy of assessment-based learning.

Conclusions

Some readers who see the tabulation of the costs and benefits of MCLE may conclude that MCLE does not offer benefits that merit its costs, so it should not be mandated. Eliminating MCLE is, admittedly, one solution to the problem that OCLE does not appear to provide benefits worth what it costs, at least from a cost-benefit standpoint.

But the cost-benefit analysis provided here is just a starting point that does not paint the whole picture. For one thing, it is unlikely that the costs and benefits of CLE are evenly distributed. Further research may show that large, wealthy law firms bear the highest costs of MCLE, while attorneys serving indigent populations gain the most benefits. If MCLE has some redistributive effect on society, there could be policy reasons to maintain the mandate.

Moreover, it is too early to give up on OCLE. Advanced OCLE could provide greater benefits at lower costs by using TME to make lifelong learning more accessible, fun, customized, and impactful. To get advanced OCLE, however, state bar associations must change rules by distinguishing in-person and distance learning based on how those different modalities have different benefits and drawbacks.

Basic OCLE magnifies the problems with conventional CLE lecture formats. While it may be hard to stay focused in a lecture hall for an hour, it is much harder to maintain that focus on videos online. Online learning

could offer huge benefits by providing attorneys access to high-quality education whenever and wherever they want, yet studies show that students simply have a hard time paying attention to videos.[78] Basic OCLE, consisting of taped lectures, is effectively nothing more than a poorer version of an in-person experience. Instead of OCLE being a mere hologram or projection of traditional CLE, a move to advanced OCLE could make distance continuing education uniquely valuable.

This article takes the position that remote learning can work well when done right. This article thus runs counter to reports in the popular press, such as *The Wall Street Journal* article titled "The Results Are In for Remote Learning: It Didn't Work."[79] Many people share the sentiment that distance education was a failed pandemic experiment, but the data simply does not support that conclusion, at least not regarding higher education. Studies of higher education showed that, even during the emergency circumstances of the COVID-19 pandemic, online education worked for adult learners.[80] In fact, a recent meta-study showed no evidence that *offline* education works better regarding medical education.[81]

In fact, the data shows that online learning *can* work, especially for adult learners. But online learning must be designed to account for the benefits and drawbacks of the online learning environment.[82] Moreover, the strategies for successful online learning are not especially new or disputed. Rather, best practices in online teaching and learning have been well established for at least two decades. They are not complicated, nor are they disputed. The essential

78 Rahul RK. Rahul, et al., *Real Time Attention Span Tracking in Online Education*, 11 Int'l J. Innovative Tech. & Exploring Engineering 11 (2022) (discussing how online learning students try to bypass lessons entirely just to receive the accreditation for completing the course).

79 Tawnell D. Hobbs & Lee Hawkins, *The Results Are In for Remote Learning: It Didn't Work*, Wall Street Journal (June 5, 2020), https://www.wsj.com/articles/schools-coronavirus-remote-learning-lockdown-tech-11591375078 ("This spring, America took an involuntary crash course in remote learning. With the school year now winding down, the grade from students, teachers, parents and administrators is already in: It was a failure.").

80 Meixun Zheng, et al., *Online Learning During COVID-19 Produced Equivalent or Better Student Course Performance as Compared with Pracademic: Empirical Evidence from a School-wide Comparative Study*, 21 BMC Medical Education 495 (2021) ("the online cohort during summer quarter 2020 was equally or more likely to get an A course grade than the analogous face-to-face cohort during summer quarter 2019.").

81 Leisi Pei & Hongbin Wu, *Does Online Learning Work Better than Offline Learning in Undergraduate Medical Education? A Systemic Review and Meta-Analysis*, 24 Med. Educ. Online (2019) ("Although not all of the included research studies reported that using online learning methods in medical education was more effective than offline learning, none of the included studies concluded that online learning was less effective than offline methods, regardless of the statistical method used. We need to recognize that online learning has its own advantages for enhancing students' learning and should be considered a potential teaching method in medical education.").

82 *See, e.g.*, Keengwe & Kidd, *supra* note 27; Abel, *supra* note 27; Grant & Thornton, *supra* note 27; Merrill, *supra* note 27.

point for present purposes is that online learning must include more than watching videos.

Why does OCLE fail to follow the obviously well-agreed-upon best practices in online learning? One reason OCLE courses may not conform with best practices in online education is that states do not require it. Perhaps, like the colleagues Llewellyn complained about in the 1930s, who grew comfortable teaching ineffectively, our CLE providers are likewise comfortable earning substantial profits without demonstrating their courses are related to learning.

It is high time to disrupt that path-dependent equilibrium by introducing new rules that enable and require advanced OCLE. State bar associations can take cues from the ABA, whose law school accreditation standards for J.D. programs establish standards that enable and require best practices for online J.D. courses. State bar associations, which accredit OCLE providers, should take a page from the ABA's accreditation book and require standards for OCLE that are like what the ABA requires for online J.D. courses. This could open possibilities for a new era of advanced OCLE that uses TME to make lifelong learning meaningful, efficient, effective, and fun.