"Hey, Did You Get My E-Mail?" Reflections of a Retro-Grouch in the Computer Age of Legal Education

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[T]he legal profession is characterized by the alienation of the attorney from the human client, from the community, and even from himself. . . . This disease is all too often contracted in law school.[1]

The problem summarized above should trouble every legal educator. The sentiment is shared not only by nostalgic elderly attorneys and judges, but also by young lawyers. There may be many causes, but legal educators would be blind if they blamed lawyers' problems entirely on forces outside the law school. After all, law schools are where lawyers are created—the place where ordinary persons are taught to "think like lawyers." What, then, is being taught in law schools, and *how?* Does the relatively recent introduction of computers to law schools affect the perceived or real decline in the profession?

Imagine this law class scenario in the not-too-distant future: From her home in a Boston suburb, a law professor begins class by logging into her remote computer terminal, then connecting to the law school's main computer by modem. By typing a few commands and speaking into an attached microphone, she asks one of her students to recite a case. The student, also connected to the law school's main computer but sitting in his home in Indianapolis, has been seeing the teacher's image on his computer screen. Now he cuts away from the teacher, produces the text of the case on the screen, and recites the facts and law into a microphone. The teacher sees the student on her screen, listens to his answer, and responds. Her other students,

1. Maria L. Ciampi, The *I and Thou:* A New Dialogue for the Law, 58 U. Cin. L. Rev. 881, 881–82 (1990) (footnotes omitted) (citing Sol M. Linowitz, Regaining Respect for the Legal Profession: Some Suggestions, N.Y. St. B.J., Nov. 1988, at 9); see also Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34, 38 (1992) (arguing that law schools have abandoned their proper roles by emphasizing abstract theory over practical scholarship, and as a result producing potentially unprofessional and unethical lawyers).

spread over the country (and perhaps the world), watch and listen to this dialogue. Or perhaps the students are not all present at the same time: located in different time zones, many connect to the law school's computer network at some other, more convenient time to review the class discussion and pose their own questions, to be answered by the teacher and other students at their own convenience. All the students can conduct legal research by connecting to the school's "virtual" law library, where they browse through the stacks electronically, without fear that a desired book may be unavailable. In this future, not only is the law a seamless web,[2] but thanks to a computer network and multimedia technology, so is the law school: students from all over the world no longer need go to the expense and trouble of leaving familiar environments to attend a distant law school.

Is this scenario farfetched, the idle musings of a futurist with too much time on his hands?[3] Perhaps, but the reality is that the computer has invaded classrooms,[4] and the law classroom is no exception. For example, students, teachers, and administrators may communicate by electronic mail. Law teachers use computers as instructional tools in the classroom,[5] and many law schools use computer-assisted legal instruction (CALI) exercises to introduce

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2. For citations to criticisms of the seamless-web analogy and why it may no longer be appropriate in a computer age, see Ethan Katsh, Law in a Digital World: Computer Networks and Cyberspace, 38 Vill. L. Rev. 403, 404 (1993). "Seamless web," however, is a fair description of the Internet, the worldwide network of computers, which is now beginning to be used by law students and lawyers as well as educators. See David M. Boyhan, Cruise the Internet and Tap into a Host of Newly Available Resources, N.Y. L.J., Sept. 21, 1993, at 5:

    > The Internet is not a formal service. It is not offered by a single provider, nor is it administered by a central body. Instead, it is an almost anarchical conglomeration of interconnections between governmental, educational, commercial and military computers. It also includes a number of entities that are harder to characterize, such as commercial electronic-mail services, organizations and foreign computer sites.

    See also James Milles, Internet Handbook for Law Libraries (Dobbs Ferry, N.Y., 1993); Jim Meyer, Surfing the 'Net, A.B.A. J., Feb. 1994, at 100.

3. See Phil Patton, The Virtual Office Becomes Reality, N.Y. Times, Oct. 28, 1993, at C1; according to French-born Michel Serres, now on the Stanford faculty, it is already clear that our society of communication is changing into a society of education:

    > We are heading more and more towards a society where education will be a continuous process right up to retirement age and will run alongside a person's career. Most people will be trained in the workplace and will not be able to attend educational distribution centres like universities. Knowledge will have to be brought to them, rather than the other way round. The whole teaching profession will no doubt have to be overhauled in the light of these demands. There may well be peripatetic teachers. We must make use of the technical systems we already have at our disposal which go from ordinary mail to electronic mail, from fax to cable television. And yet we use hardly any of them in education, which is really a strange contradiction.

    Jean Chichizola & Michel Audetat, Lack of Love in a World Taught by Television, The Irish Times, Aug. 31, 1993, at Supp. 9.

4. See Changing Education with Electronic Messaging, Electronic Messaging News, May 12, 1993 (describing George Mason University's Plan for Alternative General Education (PAGE), which uses bulletin boards and e-mail to share ideas and air grievances among the students and faculty).

5. Charles D. Kelso & J. Clark Kelso, How Computers Will Invade Law School Classrooms, 35 J. Legal Educ. 507 (1985).

students to a wide variety of legal problems.[6] Computerized databases such as LEXIS and WESTLAW are widely used to replace or supplement traditional book-based legal research.[7] Students prepare moot court briefs, law review notes, and class outlines with word-processing software.[8] Some thinkers have even attempted to computerize the legal reasoning process.[9] There is no reason to believe technology will not continue to advance and carry the law school along with it.[10]

In legal education, the computer and associated technology have been nearly universally accepted, if not in practice at least in theory. Legal educators have not resisted computer technology, but rather have allowed it into the law school without serious question or critical thinking, without asking whether the computer is anything more than "an instructional gimmick,"[11] or what the implications of technology may be for the profession.[12] One may wonder whether technological advancements are contributing to the dissatisfaction with the legal profession both within and without. Are computers a help or a hindrance in making the law classroom a more human place, and law practice a more human enterprise?

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6. Paul F. Teich, How Effective Is Computer-Assisted Instruction? An Evaluation for Legal Educators, 41 J. Legal Educ. 489, 497–501 (1991).

7. See Margret M. Hazen & Thomas Lee Hazen, Simulation of Legal Analysis and Instruction on the Computer, 59 Ind. L.J. 195 (1983).

8. Jamienne S. Studley, The Human Factor: Research for the '90s, Tex. Law., June 24, 1991, at 26, 26.

9. See Law, Computer Science, and Artificial Intelligence, eds. Ajit Narayanan & Mervyn Bennun (Norwood, N.J., 1991); Lawrence B. Solum, Legal Personhood for Artificial Intelligences, 70 N.C. L. Rev. 1231 (1992); Edwina L. Rissland, Artificial Intelligence and Law: Stepping Stones to a Model of Legal Reasoning, 99 Yale L.J. 1957 (1990); David T. Shannon & Forouzan Golshani, On the Automation of Legal Reasoning, 28 Jurimetrics J. 305 (1988); David R. Warner, Jr., Toward a Simple Law Machine, 29 Jurimetrics J. 451 (1989); John P. Finan & Albert H. Leyerle, The Perp Rule Program: Computerizing the Rule Against Perpetuities, 28 Jurimetrics J. 317 (1988).

10. Several recent examples of computers in the law classroom:
    - Chicago-Kent law professor Ronald Staudt demonstrated his electronic casebook used last fall in his computers-and-the-law course. In lieu of textbooks, students read course materials on laptop computers, which they used to highlight text, create a course outline and take notes during class.
    - Law professor William Andersen, who teaches at the University of Washington, has developed a computer program to accompany a casebook on administrative law. The program helps decipher three complex patterns of decision-making systems using graphics and text. By clicking the cursor on a photo image of Andersen, students can activate a vocal sound track and listen to him elaborate on a particular point appearing on the screen.
    - At UCLA Law School, Robert Garcia has created a computerized law firm out of his clinical course. In mock criminal trials, students take on the roles of prosecutor or defense attorney, keeping all documents in the law school's computer network.

    Laura Duncan, Computing the Future, Chi. Daily L. Bull., June 18, 1993, at 3, 3.

11. Bruce A. Ackerman, Foreword: Law in an Activist State, 92 Yale L.J. 1083, 1111 n.45 (1983).

12. Nonlegal educators have undertaken a critical examination of the effect of computers. See The Computer in Education: A Critical Perspective, ed. Douglas Sloan (New York, 1985). Legal educators should begin to do the same.

Despite the computer's potential for altering and improving the form and substance of legal education, I do not embrace its role in legal education with unabashed enthusiasm. I am something of a retro-grouch when it comes to computer technology in the law school. In the world of bicycling, a retro-grouch is a cyclist who, despite all the recent technological changes in equipment and training, adheres to time-tested (Italian) components, insists on wool clothing (no lycra), and eschews such newfangled accoutrements as aerodynamic wheels, clipless pedals, and heart-rate monitors. Retro-grouches are not fools, however, and will accept technology (even wholeheartedly endorse it) if, after careful study, the technology makes good sense and is practical.

That I am a retro-grouch about computers in legal education is not to say I resist the technology which is already with us or the changes which are undoubtedly just around the corner, or that I dispute the uses and effectiveness of all the results.[13] Of course I do not advocate throwing computers away. This article does not attempt to establish whether the computer is the downfall or the salvation of legal education. Rather, I focus on the computer as a communication device, and argue that legal education must look closely at the technology rather than adopting it without serious thought.

This article is organized into five parts. In Part I, I discuss the background and terminology of electronic mail. Part II proposes two beneficial uses for e-mail in the law school: as a supplement to the student-teacher conference, and as a cyber classroom alternative. Part III explains the first half of my title, and why the question is important to legal education. Part IV analyzes the potential dangers of uncritical use of e-mail, and Part V suggests specific methods of using e-mail for those who also consider themselves retro-grouches in the computer age.[14]

I. An Introduction to E-Mail

Electronic mail is a term used to describe various electronic communications systems which permit quick and accurate written communication without the need to print on paper (since the writing is only in digital form). E-mail was

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13. Yes, I did compose the first drafts of this article with the aid of a word-processing program. I do not advocate writing drafts in longhand, nor do I even remember how to Shepardize cases manually. I check my electronic mailbox daily. When first in private practice, I lived in California but was counsel to a law firm in Hawaii. Despite the distance, I maintained connection to the office through the use of a modem (high-speed to save on long-distance charges) and remote terminal software. I was able to access the firm's internal e-mail system (to keep in touch with other lawyers), down- and upload documents prepared on a word-processing program, and, by using the computer, facsimile, and telephone (and occasional trans-Pacific flights), operate as a lawyer in Honolulu while residing in California. Without technology, this retro-grouch would have had to make some difficult choices. I am not biting the hand that feeds me: I see no contradiction between taking advantage of technology and thinking critically about it.

14. This essay will not discuss substantive aspects of computer law, a subject which has been treated extensively elsewhere. See, e.g., Peter W. Hohenhaus, An Introductory Perspective on Computer Law: Is It, Should It Be, and How Do We Best Develop It As, A Separate Discipline? 1991 WL 330761; Katsh, *supra* note 2.

developed and first used in the 1960s and early 1970s[15] but did not gain widespread acceptance until the 1980s. Originally it was designed to avoid telephone tag and While You Were Out slips.[16] Only now is it in use at law schools as a means of communicating between students and faculty, and with faculty and students at other law schools.[17]

E-mail differs from true mail[18] since it sends text (and occasionally audio or graphic information) in digitized form from one person to another, and is capable of sending information simultaneously from one to many people.

With most of the current software, the sender types a message on a terminal and sends it to a recipient or several recipients. The message is stored in the recipient's electronic mailbox until the recipient picks up the mail by reading it on her computer screen and, perhaps, sends back a response.

E-mail systems generally allow users to create, edit, dispatch, read, forward, save, print, and delete electronic messages from terminals wired into the local computer network. Word-processed documents may also be electronically attached to an e-mail message and digitally transmitted. Most systems permit users to send, retrieve, and respond to messages from remote locations (e.g., from a home office or study) by means of a personal computer and modem connected to standard telephone lines.[19] If the system is connected to the Internet (the international computer network), messages can be sent to other systems worldwide.

Unlike regular mail (now derided as "snail mail"), e-mail arrives almost immediately after it is sent from the writer's terminal. Like mail, however, e-mail is read—or not read—at the recipient's convenience. Because it exists only in cyberspace,[20] e-mail permits communication among distant persons or groups. It allows people to complete otherwise time-consuming tasks in a matter of minutes, without the physical or social impediments present in other forms of communication.

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15. Peter Vervest, Electronic Mail and Message Handling 4, 9–10 (Westport, Conn., 1985).

16. See Thomas B. Cross & Marjorie B. Raizman, Networking: An Electronic Mail Handbook 6 (Glenview, Ill., 1986).

17. Donald T. Trautman, The Computer in American Legal Education, *in* Law, Decision-Making, and Microcomputers: Cross-National Perspectives, ed. Stuart S. Nagel, 209, 216 (New York, 1991). Trautman's article assumes that a law school has a comprehensive e-mail system to which everyone has access. This model has not been realized: while e-mail is widely used in business and legal environments, only a few law schools have schoolwide e-mail networks. Matthew Goldstein, Bulletin Boards, E-Mail Transform Law Schools, N.Y. L.J., Nov. 8, 1993, at 1, 2 (discussing e-mail systems at Cornell, Columbia, and IIT Chicago-Kent).

18. *Electronic mail* is perhaps a poor label, not truly descriptive, since e-mail differs markedly from mail. It has been likened to calling automobiles "horseless carriages."

19. Deborah L. Wilkerson, Comment, Electronic Commerce Under the U.C.C. Section 2-201 Statute of Frauds: Are Electronic Messages Enforceable? 41 Kan. L. Rev. 403, 404–05 (1992).

20. *Cyberspace* is a term used to describe the "virtual" world "within" the computer, which is not bound by conventional notions of time and space. See David R. Johnson & Kevin A. Marks, Mapping Electronic Data Communications onto Existing Legal Metaphors: Should We Let Our Conscience (and Our Contracts) Be Our Guide? 38 Vill. L. Rev. 487, 487 n.3 (1993); Michael P. Dierks, Computer Network Abuse, 6 Harv. J.L. & Tech. 307, 307 n.1 (1991).

II. Electronic Mail and the Cyber Law School

The most obvious use for e-mail as a pedagogical device is in facilitating communication between teacher and student. I advocate using e-mail to supplement, not replace, traditional student-teacher conferences and class-room discussions. First, e-mail can make individual contact much easier and more convenient. Instead of challenging the often imposing architecture of the faculty offices,[21] and the phalanx of secretaries and receptionists, all the student need do is type a message on the computer screen and hit the send key—surely an act requiring lesser courage. Second, e-mail can create a new classroom in cyberspace; it is an alternative forum for discussion without some of the physical and social restraints inherent in a real law classroom.

A. The Electronic Student-Teacher Conference

E-mail has the potential to bypass numerous obstacles to efficient student-teacher communication. Unlike an effort to corner a teacher after class or to ambush him during office hours, e-mail is convenient, and the student's ability to engage the teacher's ear (or eye) is assured. As different activities compete for increasingly scarce time, a law teacher may find it difficult to allot much, if any, time to direct communication with individual students. But such attention is important to answer questions, or follow up on areas touched upon in class, and to make personal contact with students to show the human face of the law.[22]

Law students have similar constraints. Full-time law study is demanding. Family responsibilities, employment, and other considerations may leave the student little time for direct and personal interaction with a teacher (much less, with more than one). Further, the faculty-student ratio at most law schools impedes direct contact,[23] except for the one or two times the student is called upon in class, or unless the student takes the initiative to make visits during office hours.[24]

But some of law students' most productive time has been in one-to-one conferences, and it would be unfortunate if scarce time meant the end of such experiences. Because e-mail allows the sender and the recipient to communicate at different times and from different locations, it has the ability to alter

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21. See, e.g., Thomas L. Shaffer, Moral Implications and Effects of Legal Education or: Brother Justinian Goes to Law School, 34 J. Legal Educ. 190, 193 (1984) ("I notice that your [law school] building has four stories. The faculty are on the top, which must be a symbol of rank, since it is obviously not based on stamina or physical endurance.").

22. See Kent D. Syverud, Taking Students Seriously: A Guide for New Law Teachers, 43 J. Legal Educ. 247, 253–54 (1993); Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 259 (Chicago, 1992) [hereinafter MacCrate Report].

23. Terrance Sandalow, The Moral Responsibility of Law Schools, 34 J. Legal Educ. 163, 169 (1984); see also Syverud, *supra* note 22, at 253 ("I thought giving advice to our students *was* our work, and indeed was among the most important work we do.").

24. For a discussion of the value of the law student-teacher relationship to professionalism, see generally Robert S. Redmount, Law Learning, Teacher-Student Relations, and the Legal Profession, 59 Wash. U. L.Q. 853 (1981).

time and space as we have been accustomed to it: neither physical nor temporal proximity is required for an electronic conversation. A teacher can address a message to a specific student or, if she wishes to communicate with the entire class, she may address the message—without extra effort—to an electronic mailing list of all the students in it. The message is received in every student's electronic mailbox simultaneously. Similarly, if the teacher receives a particularly relevant question or comment, she may circulate the question and her response electronically without taking up class time. Students can approach a teacher individually or in groups without the administrative or status-announcing psychological barriers normally associated with such a meeting: no desk between teacher and student, no wait in the hallway, no elaborate social protocol.[25]

B. *Digital Classroom, Digital Socrates*

1. Administrative Efficiency

The following is an example of a situation where e-mail could have been used to remove administrative barriers to student learning and satisfaction. It is taken from my own experience as a graduate law student in the fall 1993 semester at Columbia—a law school which has a universally available e-mail network.

Each of the sixteen students in a legal philosophy seminar was required to write a detailed research paper, due in the last month of the semester. Four students each week would present their papers to the seminar, and each member of the seminar was to write comments on every other student's work. The problem was time. Papers were due by ten o'clock Monday mornings. They would be photocopied and distributed to the students' (real) mailboxes by Tuesday. The students then had to read four papers (each of which might be 40 pages or more) and write constructive comments by Wednesday afternoon so that these could be photocopied and distributed by Thursday afternoon. Then the four papers and all the written responses would be discussed on Friday morning.

Although the students were satisfied with the substance of the seminar, they all felt that something was lost in the procedural problems of paper distribution. Discussion of papers on Friday mornings was sometimes limited, not because students were not interested, but because some simply had not been able to read and respond to nearly 100 pages of detailed material in one day.

That physical exchange of papers and comments was an administrative ordeal which could have been eased by e-mail. Papers could have been distributed electronically at ten o'clock Monday morning; each student would have had access to them immediately to begin work on reading and responding. When completed, all comments could have been distributed electronically, well in advance of the discussions on Friday morning.

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25. For the time being, e-mail addresses are either straightforward (often just the sender's first or last name for internal systems); cryptic ("tr63898@lawmail.law.columbia.edu," my Internet e-mail address) for mail sent outside a local network; or simply strange or descriptive ("handles" on public bulletin board systems such as America Online and Compuserve).

2. The Virtual Law Classroom

E-mail has been described as the new high-tech water cooler, where people exchange important messages or sometimes gossip in an all-day conversation. Because e-mail may encourage positive socialization, I suggest its use as a supplement to the traditional law classroom.

Traditional legal education emphasizes student-professor exchange, question and answer, the so-called Socratic dialogue. When executed well, the Socratic method is an effective way to teach "rational, logical, dispassionate analysis."[26] Practiced improperly, it may be an impediment to learning because it can make a student feel the fool in public. The Socratic method, even handled well, may be particularly ill suited for teaching students from traditionally marginalized groups.[27] E-mail may reach those students who otherwise are uncommunicative simply because of the oppressive physical or social climate of the law classroom, since "electronic communication is blind with respect to the vertical hierarchy in social relationships and organizations."[28] The absence of visual and aural cues—such as "appearance, dress, gaze and tone of voice—removes many of the signals that speakers usually rely on to identify the social status of their interlocutors."[29] E-mail users have no concern about body language or facial expressions. A student who is afraid of answering incorrectly may be more willing to contribute if he does not have to fear snickers.

By its nature e-mail is an egalitarian form of communication. Without a lectern and a hierarchical space, there is less of a distinction between teacher and student. Further, unlike real conversations, in which the sender is master of the process and of the substance of a message, cyberspace is a place where the recipient controls the process, and the sender only the substance. No single speaker, not even the professor, is able to dominate a classroom discussion without the cooperation of others. No one can be interrupted in mid-sentence, except at the recipient's wish. All ideas sent are available and may be regarded equally, judged on their content alone. Messages the recipient believes are not worth reading may be bypassed without silencing or insulting the speaker.

Because it breaks down social barriers, students may be more willing to cooperate with one another and share ideas in the electronic medium than in a conventional law classroom, which does not promote collaboration.[30] The

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26. June Cicero, Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education, 15 Wm. Mitchell L. Rev. 1011, 1012 (1989).

27. *Id.* at 1014–15 (citing Stephanie M. Wildman, The Question of Silence: Techniques to Ensure Full Class Participation, 38 J. Legal Educ. 147, 151 (1988)); Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (Cambridge, Mass., 1982)).

28. Sara Kiesler et al., Social Psychological Aspects of Computer-Mediated Communication, 39 Am. Psychologist 1123, 1125 (1984).

29. Diane E. Beals, Computer-Mediated Communication Among Beginning Teachers, Technological Horizons in Educ. J., Apr. 1991, at 74, 75.

30. Cicero, *supra* note 26, at 1017.

law school becomes a reflection of the practicing legal community—coopera-
tive yet competitive.[31] In such an environment even previously marginalized
students may actively participate.

E-mail also permits students with a wide range of learning styles to express
opinions and level criticisms more freely. Students who process information
aurally probably have the advantage in a traditional law classroom; an elec-
tronic classroom accommodates visual learners instead. Students who prefer
written to oral communication may also prefer e-mail discussion, with its
opportunity for reflection and careful choice of words. Inclusion of such
students only adds to the learning process of all. It has even been suggested
that e-mail environments create different social strata based on one's ability to
articulate thoughts in writing[32]—a valued skill which law schools should be
happy to promote.

Finally, most students now enter law school with many years of computer
experience. They have been taught *on* computers as well as *about* computers.
This training, however, may produce students unaccustomed to the thought-
ful, careful deliberation necessary to the study and practice of law.[33] But a
balance between humanistic legal education and the consequences of techno-
logical training may be found in e-mail. Its immediacy fulfills the need for
instant gratification and other symptoms of shorter attention spans and seem-
ingly decreasing time. And yet, since reading and responding to e-mail is a
time-consuming process, requiring something more than thinking in sound
bites, it aids traditional legal education by capturing the attention of students
accustomed to changing the channel whenever they are bored or distracted.

III. "Hey, Did You Get My E-Mail?"

Despite its benefits, e-mail is not a panacea for all the administrative and
social problems of a law school. Before I elaborate, let me explain the query of
my title. While I have conducted no empirical studies and rely only on
anecdotal evidence, I have noticed in at least three quite different environ-
ments (law office, law school, and public electronic bulletin boards) that one

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31. See, e.g., Shaffer, *supra* note 21, at 192.

32. Beals, *supra* note 29, at 75.

33. Technology itself may be the culprit. As society becomes more technologically advanced, we
may be losing our sense of wonder in the search for more and more knowledge and objective
truth. We want the answers, and increasingly, we want them *now*. If a forum does not provide
immediate enjoyment, change the channel! Perhaps technology in the form of television and
other information-delivering devices has altered our ability to concentrate for any length of
time; our attention span is shorter, and we are less willing to spend time devoted to any one
subject. See Myron Tuman, Word Perfect: Literacy in the Computer Age 69 (London, 1992)
(quoting Richard Kearney, The Wake of Imagination: Ideas of Creativity in Western Culture
1 (London, 1988) ("[S]ince the arrival of multi-channel press-button TV in the US, less than
50 per cent of American children under the age of 15 have ever watched a programme from
start to finish.")). If our students cannot watch TV without switching channels, what can we
do to make the law—a collaborative and deliberative process—challenging to them? When
law students who were weaned on MTV become lawyers and judges, will they have the
patience to give a fellow human's problems the careful thought they deserve? The answer,
thankfully, is beyond the scope of this article.

of the most frequent ways e-mailers begin a face-to-face conversation is The Question: "Hey, did you get my e-mail?"

In my law firm, an attorney would often send an urgent message—which interrupted any work in progress on others' screens with an irritating beep—and then feel compelled to confirm the message by appearing at an office door and asking The Question. At Columbia Law School, I heard The Question in hallways, bathrooms, and classrooms, despite nearly universal use of the e-mail system. Even while I was cycling through Central Park, a fellow cyclist with whom I keep in touch by e-mail rode up and posed The Question.

Why would human ("real") conversations begin this way? I do not think it reflects any unreliability of the transmission medium. I would understand the question if the postal service were involved ("Did you get my letter?"), contract law's apparent faith aside.[34] But e-mail delivery is very reliable, as long as the recipient's address is typed correctly and the computers are operating. Many e-mail software programs also have functions which allow the sender to confirm delivery and verify the time at which the recipient read the message. If a message cannot be delivered, many systems notify the sender. So The Question must be prompted by something more than a desire to confirm delivery.

I perceive it as a subconscious desire to form the bond which e-mail, however convenient, cannot provide—a sign of implicit dissatisfaction with the transmission medium itself, and an attempt to form the *human* connection essential to communication.

IV. The Retro-Grouch Perspective

I have discussed the possible advantages of using e-mail as a pedagogical tool in the law school, but as a retro-grouch I must now voice a little concern.

The benefits of e-mail may also pose its greatest threat to teaching law—removing any motivation for face-to-face contact between student and teacher. E-mail should be an *alternative* form of communication, but some *prefer* it to in-person contact.[35] Some have claimed it is a way of avoiding social situations, the "safe sex of communication."[36]

Although e-mail is an uncomplicated and effective form of communication, its danger lies in an almost insidious loss of the sense of community. For

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34. See Cross & Raizman, *supra* note 16, at 5 (describing experiment by journalist in which New York City executives sent each other first-class letters in 1983; of 363 letters sent, 42 arrived the next day, and incredibly 21 percent (or approximately 76 letters) "never arrived at all") (quoting William F. Buckley, Jr., A Practical Use for Computer, Boulder (Colo.) Daily Camera, Jan. 18, 1984, at 12).

35. In the days before an e-mail system was installed at the 25-attorney law firm at which I worked, I might drop by a colleague's office to chat about a legal problem, or about the weather or a recent movie. These short sessions were important not so much for the substance of the discussion (it was often frivolous—i.e., nonbillable—time), but for the sense of community they engendered. Then, once the computer network was installed, e-mail became the preferred mode of interoffice communication. It was much easier and more efficient to dash off an e-message than to convey the thought in person. But something seemed to get lost in the process.

36. Gary Andrew Poole, E-mail Is for Wimps, UnixWorld, Nov. 1993, at 152, 152.

the same reasons that legal educators do not assign *Gilbert's Law Summaries* as casebooks, neither should they adopt the computer as the sole or even preferred communication device.[37] Part of the process of becoming a lawyer is learning to interact with people in a way that is simply impossible with e-mail and computers. It is interesting that the words *communicate* and *community* share the same Latin root: both have to do with the held-in-common, the shared. We should not, in the attempt to foster communication, lose sight of e-mail's effect on the community.

The legal profession is a community, and law school is where students initially learn to be its members.[38] A computer network is a subcommunity within a law school with its own social structure and etiquette. Law teachers and students seem still to prefer in-person oral communication, both in class and conference.[39] In-person communication can make use of many senses; people communicate with subtle visual and auditory signals as well as words.[40] With e-mail, of course, the spoken word is replaced by text. Even calling an e-mail exchange a "conversation" is a misnomer. It more resembles a rapid exchange of letters.

A beginning user, new to the electronic community, may feel disoriented and isolated. Before creating any electronic discussion, law teachers should be aware of the potential hazards in communication that is not face to face. Without such conversational nuances as facial expression and tone of voice, misunderstandings can abound: irony and humor, for instance, are not easily conveyed electronically.[41] A further danger is that, in this depersonalized medium, expression may become uninhibited to the point of being uncivil and insulting. It happens so frequently that e-mail jargon includes a word for such behavior: *flaming*.[42] The technology of e-mail is "marching too fast

37. I suspect the reason why *Gilbert's* and other supplemental material are not used by law faculty is that the analytical skills supposedly learned by digesting a case are the true skills being taught, not the black letter law. *Gilbert's* and *Cliff's Notes* are probably very good sources for learning the black letter law, or the plot of *War and Peace*. Neither, however, is a good basis for *appreciating* the material. Cf. Sandalow, *supra* note 23, at 171:

> The abilities to read imaginatively and with attention to the subtleties of language, to frame and test suitable hypothesis for synthesis, and to detect premises of thought and errors of logic, all of which the case method is aimed at developing, are not capacities that we either have or do not have, in the way that one either does or does not possess a law school degree. Capacities such as these are the product of continuous struggle to wrest meaning from disorder.

38. "At times, we law faculty seem oblivious to the fact that what we do is related to the intellectual and moral character of the bar." David H. Vernon, Ethics in Academe—Afton Dekanal, 34 J. Legal Educ. 205, 211 (1984) (quoting Dekanal's handwritten manuscript regarding legal education, discovered after his death).

39. Though the telephone is universally available, it is not much used by students to communicate with teachers, or vice versa.

40. Beals, *supra* note 29, at 75.

41. In response to this limitation, e-mail users have created conventions to express emotional inflections of voice such as LARGE LETTERS TO EXPRESS INFLECTION, or textual statements to demonstrate expressions: "ha, ha" or "<grin>" or the use of typographic hieroglyphics to show a smile :-) (read sideways).

42. Beals, *supra* note 29, at 75.

for social rules to keep up."[43] A psychologist cautions: "Sometimes . . . users lose sight of the fact that they are really addressing other people, not the computer."[44]

The depersonalizing aspects of e-mail must not be allowed to (further) isolate law students from the idea that law is of and for people. Technology is not inherently value-neutral. The use of computers reflects a belief in the rational and objective: "The computer *embodies* a certain kind of rationality; that rationality is the *condition of the possibility* of computer technology, its fundamental presupposition. Apparatuses and techniques do not occupy some privileged sphere sanitized of affective, moral, or political qualities."[45] The danger of technology is that it breeds isolation, both physically and socially.[46] Specialization encouraged by technology has led to a fragmentation of the legal profession, and lawyers share less common ground with each other and the public than before.[47] Whatever disputes there may be about the purpose of law schools, their primary goal is to train students to be lawyers who can work with clients, adversaries, and each other in a spirit of "collaboration, understanding, and accommodation."[48]

In teaching their students to think like lawyers, professors are not simply sharpening the intellect: they are, whether intentionally or not, teaching morals, values, and character. Law professors are role models[49] as the first real lawyers with whom law students will have professional contact:

> [Law professors] are, therefore, in the singular position of being able to teach
> law students that lawyers can and must answer their call to humanity in the
> profession and to responsibility in the community. Law professors have the
> unique opportunity and the obligation to show students the direction to
> humanity and to responsibility.[50]

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43. Jeffrey Bair, Wanted: Emily Post Guide for Electronic Mail, L.A. Times, Apr. 12, 1992, at A28 (giving example of employee's use of e-mail to vent anger at all 300 other employees when he suspected one of tampering with his property).

44. Kiesler et al., *supra* note 28, at 1125-26.

45. John M. Broughton, The Surrender of Control: Computer Literacy as Political Socialization of the Child, *in* The Computer in Education, *supra* note 12, at 102, 103; see also Sara Kiesler et al., Second-Class Citizens? Psychology Today, Mar. 1983, at 40 (suggesting that computer use may favor male perspectives).

46. William T. Braithwaite, How Is Technology Affecting the Practice and Profession of Law? 22 Tex. Tech L. Rev. 1113, 1144 (1991). But see Tuman, *supra* note 33, at 85 (arguing that e-mail has reduced feelings of isolation of many writers). "This computerized community is a commune for the '90s—a place where people with little else in common regularly log on, plug in, drop out. These are the networks, high-tech behemoths with electronic tentacles that recognize no borders." Howard Rheingold, The Virtual Community: Homesteading on the Electronic Frontier (Reading, Mass., 1993), who asks whether in the age of information we will become obsessed with trivia when so much of it is available.

47. Braithwaite, *supra* note 46, at 1145.

48. See Shaffer, *supra* note 21, at 192.

49. Douglas K. Newell, Ten Survival Suggestions for Rookie Law Teachers, 33 J. Legal Educ. 693, 702 (1983).

50. Ciampi, *supra* note 1, at 883 (citing Curtis J. Berger, The Legal Profession's Need for a Human Commitment, 3 Colum. U. Gen. Educ. Seminar Rep. No. 2, at 13-15 (1975)).

If law teachers and students communicate exclusively by e-mail, we should not be surprised if students are unprepared for a practice which requires less efficient—but more human—forms of communication.[51] Even with the capability of e-mail to reach beyond local networks (via the Internet or commercial services, for example), it is most effective when used within organizations, peer groups, or units which have an established community of interest. It is not very effective in establishing new relationships, nor does it lend itself to communication between persons, such as client and lawyer, who must rely on more than the written word. Allowing e-mail to replace the student-teacher conference would be wrong: a predominantly electronic exchange does not serve as a suitable prototype for healthy professional relationships. Until society and the profession have evolved—or devolved—to a point where e-mail or other forms of electronic intercourse are commonly used to cross institutional lines or establish relationships, law teachers should resist any trend toward exclusive reliance on e-mail, and should understand its potential effects on the profession of lawyering.[52]

In the rush to accept technology, we must not lose sight of the dehumanizing effects of the computer and e-mail communication.[53] Being a lawyer, thinking like a lawyer, is an intensely human enterprise. Whether solo practitioner or partner in megafirm, a lawyer should not be an intellectual hired gun, but a professional concerned with the human problems of clients—individual and institutional—and of society as a whole.[54] Thinking like a lawyer means being able to think "rationally, logically, and dispassionately," but also intuitively, emotionally, and compassionately when the situation requires it.[55] Kingsfield notwithstanding, sometimes mushy thinking is just what the client may need.

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51. My thanks to Peter Strauss for providing the inspiration for the thoughts in this section.

52. The computer may also be partly responsible for another leader of the legal profession—the Supreme Court—appearing to lose its collegial nature. The profession mirrors the Court, and the way the justices appear to treat each other in print no doubt influences the way attorneys treat one another in court. Word processing has led to a more democratic press, as the tools for publishing go from the hands of the privileged few to the masses, but there is the danger, as in any democratic process, of too much noise and too little filtration.

53. For an extreme position, see Robert J. Sardello, The Technological Threat to Education, *in* The Computer in Education, *supra* note 12, at 93, 93:

> The computer, if it is allowed to infiltrate the very heart of education . . . , will destroy education: not because it is a mechanism, and as such threatens to transform human beings into likenesses of itself; the destructive power of the computer is to be found in the fact that it transforms education into psychology. Furthermore, the peculiar kind of psychology that characterizes the computer is a psychological symptom, and the symptom is that of the psychopath.

54. "Above all, it is the task of a lawyer to apply reason to the human relationships he confronts in his work." Robert S. Summers, Fuller on Legal Education, 34 J. Legal Educ. 8, 10 (1984); see also MacCrate Report at 213–15.

55. See Sandalow, *supra* note 23, at 170 ("Rightly understood, that ability [to think like a lawyer] is not merely a professional technique useful only in the office or courtroom, but a set of skills of pervasive importance in life.").

V. Some Specific Suggestions

What follows are specific suggestions for establishing an alternative e-mail classroom for a medium to large law class.

First, e-mail should be used only as a supplement to in-person classes, and only after the semester has progressed and the students are familiar with the teacher and with each other. Then their initial uneasiness with the e-mail environment can be surmounted by the existing student relationships.[56] Even then I counsel against using e-mail as an exclusive forum. With the current text-based technology, the social costs are too great. (Besides, in the event of a system failure, you would have to cancel class.)

Second, though more and more law students (and teachers) are fully at ease with computers, many still need help and a few are even computerphobic. E-mail is a relatively gentle introduction into the world of computers, and increasingly lawyers need acquaintance with that world. We are in the middle of a generational shift in the legal profession,[57] and attorneys of the near future will rely less and less on the secretarial staff for mechanical assistance.[58] Until voice recognition technology is improved, familiarity with a dictaphone will not be enough; today a lawyer who does not have the ability to interact with a computer directly is at a serious disadvantage. Law schools should be sure that their students gain basic computer competence, and they cannot rely on university-based computer lab personnel to do the training. The lab staff may speak a different language (computerese) and may not be used to dealing with law students and their particular needs. Even e-mail requires some prior training in the communications software: horror stories abound of inappropriate messages being sent to unintended recipients, with embarrassing results for all concerned.[59]

56. See Beals, *supra* note 29, at 76 (describing e-mail network for beginning teachers).

57. See Studley, *supra* note 8, at 26 ("Unfortunately, all too often, computerphobes are supervising computerphiles.").

58. As Mark Twain remarked:

> I am trying to get the hang of this new fangled writing machine, but I am not making a shining success of it. However this is the first attempt I have ever made & yet I perceive I shall soon & easily acquire a fine facility in its use. . . . The machine has several virtues. I believe it will print faster than I can write. One may lean back in his chair & work it. It piles an awful stack of words on one page. It don't muss things or scatter ink blots around. Of course it saves paper.

Quoted in Tuman, *supra* note 33, at 1. What Twain said about the typewriter could easily be imagined to be about a modern day computer. As Twain adapted to the new technology, so will we.

59. For a recent example, see Michael Shain, Inside NewYork, Newsday, Dec. 16, 1993, at 13, 13:

> "Hi! It's me," said an E-mail letter over at Comedy Central. "I love you and your breasts and you can tell [your boyfriend] Jeff that I saw them before he did." The woman who got this note now wishes she'd never heard of electronic mail. Seems a girlfriend of hers at MTV decided to give the office's new E-mail system a tryout and sent the Comedy Central exec a funny letter. . . Due to the women's inexperience in using the computer system, it went to absolutely everyone in the office—something like 120 people. Worse, it happened the afternoon before the office Christmas party. No one looked at her *face* all night.

Third, as in a traditional classroom the teacher should encourage voluntary student participation, and should require e-mail participation at least once or twice a semester from each student. This will increase the teacher's work but will surely benefit the students. Discussions should not focus on concise Socratic-style questioning because the medium is ill suited to the usual classroom mode; rather, broad questions or issues should be framed and the discussion should freely roam within the established boundary. If discussion strays too far afield, the teacher as moderator must have the authority to guide it back towards a relevant topic.

Fourth, the teacher should be prepared for some loss of control, both physical and intellectual, in the egalitarian community of cyberspace, but must not lose control altogether. Students composing on computers tend to write longer texts than they would compose in longhand,[60] and a teacher must insure that the class is not overwhelmed and alienated by the sheer volume of information in the cyber environment. Before starting an e-mail discussion, the teacher should have a class session to prepare the students socially for the environment they are entering, demonstrate some alternative methods of communicating expression, and establish ground rules for conduct, to prevent actual or perceived flaming. Once the e-mail system is in use, there should be a period of adjustment, as students assimilate the ways of conveying extra-textual information that visual and aural cues would transmit in face-to-face communication.

Fifth, students should communicate with one another, not simply to the teacher. In law schools, students learn as much from one another as from the faculty. Formulating written responses to others' messages will prepare students for the intellectual rough and tumble of the legal profession.

Sixth, it is time-consuming to craft and read e-mail messages, even though they lack the formality of a written letter. It is easy to underestimate the effort required to read and respond to just a few of them. A teacher should be prepared—and should prepare students—for the extra time commitment.

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Both teaching and the law are deeply human enterprises. Where they converge—in the law school—we must never lose sight of the human element and allow computers and e-mail, amazing tools that they are, to substitute for real interaction. Law is more than words, books, and soulless facts; nor are the stories of clients (or students) mere fact patterns or hypotheticals on a computer screen. Law is about relationships among people, and all the complexities associated with the experiment of living. Law is not a science: it is an art, a

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60. See Michael M. Williamson & Penny Pence, Word Processing and Student Writers, *in* Computer Writing Environments: Theory, Research, and Design, eds. Bruce K. Britton & Shawn M. Glynn, 93, 98 (Hillsdale, N.J., 1989). For analyses of the effect of computer word processing on composition, see Writing at Century's End: Essays on Computer-Assisted Composition, ed. Lisa Gerrard, (New York, 1987); Tuman, *supra* note 33, at 87–89.

craft, a profession. Holmes to the contrary,[61] artists and poets as well as pure thinkers make wonderful lawyers.[62]

The writer of my epigraph continues: "As the forces of dehumanization in the profession begin to pull upon young lawyers, they have neither the experience, the education, nor the constitution to resist, or to overcome, the disease."[63] Legal educators, who do have the experience, the education, and the constitution to resist, must not abdicate their professional responsibility by failing to examine the impact of technology on law and legal education. The Question—"Hey, did you get my e-mail?"—reminds us of the law's indispensable, human character.

61. "Of course, the law is not the place for the artist or the poet. The law is the calling of thinkers." Oliver Wendell Holmes, The Holmes Reader, ed. Julius J. Marke, 99 (New York, 1955), *quoted in* Stephen Gillers, Great Expectations: Conceptions of Lawyers at the Angle of Entry, 33 J. Legal Educ. 662, 663 (1983).

62. I am reminded about the introduction to a recent book by a mathematician:

> Nothing lives further from the intellectual experience of members of the educated public than the notion that mathematics can have aesthetic value. It is remote both to those who are familiar with mathematics and to those who are not.
>
> . . . .
>
> Once the secret is out and the art-appreciating public learns that the keys to mathematics are beauty and elegance and not dullness and technicality, perhaps there will be pressure for teaching reform in the direction of increasing the aesthetic component of mathematics education.
>
> . . . .
>
> . . . Mathematicians, like poets, see value in metaphor and analogy. Similar to Frost, they draw their metaphors in lines across blank pages. But the lines they draw are made, not only of words, but also of graceful symbols: summations and integrals, infinities turning on themselves like self-swallowing snakes, and fractals like snowflakes that, as you blink your eye, turn to lunar landscapes. Mathematicians write their poetry with *mathematics.*

Jerry P. King, The Art of Mathematics 1–12 (New York, 1992). My thanks to two mathematician-poets, David S. and Boyd McCollum, for bringing this theme to my attention.

63. Ciampi, *supra* note 1, at 883.