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**“Turn and Face The Strange Ch-Ch-Changes”:
How CLE Is Changing and
What It Means For Your Bar Organization**

OR

**If You Recognize The David Bowie Lyrics In The Title,
You Need To Read On; If You Don't Know Who David
Bowie Is, You Probably Already Know This Stuff**

By Mark T. Carroll

Director, Office of Electronic and Print Publications

ALI-ABA

“Turn And Face The Strange Ch-Ch-Changes”: How CLE Is Changing And What It Means For Your Bar Organization

By Mark T. Carroll¹

Introduction: “The Beards Have All Grown Longer Overnight”

I have been asked by NABE to discuss how and why CLE is changing, and what that means for your local and state bar associations. Why me? Well, I won't bore you by repeating what you can read about me in the bio on the cover page. Let me summarize by saying that for the past quarter century I've been involved in just about every facet of CLE, from the traditional talking head in a ballroom, to all forms of print, and now to online CLE. Despite that last experience, I am most definitely NOT a techie. I had to struggle to learn new technologies as they came to dominate my (and every other) service industry.

I've seen a lot of changes, and many more coming, and in this paper and in my presentation I hope to share with you some insights about those changes, and how we can benefit from them.

But Enough About Me...

I am assuming that most of you are either boomers, or close enough at either end, to share some common experiences—born into a world that still used typewriter ribbons and

¹ Mark T. Carroll is Director of Electronic and Print Publications for American Law Institute-American Bar Association Continuing Professional Education, a national CLE provider headquartered in Philadelphia. A graduate of Harvard Law School, he practiced law in the Philadelphia firm of Duane, Morris & Heckscher before joining ALI-ABA in 1982. In addition to publications, Mr. Carroll is responsible for ALI-ABA's online CLE course production. Mr. Carroll is a former president of the Association for Continuing Legal Education (ACLEA) and a member of the Board of Governors of the Church Farm School in Exton, Pennsylvania. He also prefers The Who to David Bowie, but “Won't Get Fooled Again” or “Teenage Wasteland” didn't work as paper titles. (But read on...)

carbon paper, and living today with iPods, BlackBerries, MySpace, etc. You've had to adapt to new information technologies because you work in an information industry (or, as some call it, "Knowledge Management"). You've adapted because your constituencies—your members, adapted. And most of them adapted, I suspect, because their clients made them adapt.

But what have we all adapted from? Again, you all are fairly familiar with traditional CLE, so I am not going to spend much time describing it. It was the imparting of chunks of knowledge, in a controlled setting, usually if not exclusively via a lecture format that is literally 1,000 years old. (And, if your CLE lecturers use the Socratic method, then change that to "2,500 years old.")

So What's Changed?

Well, everything...and nothing.

In his book *Options*, Forbes editor Daniel Lyons pretends to be Steve Jobs blogging about a year in his life. Overbearing and unbearable, Fake Steve Jobs (as Lyons calls him) is totally caught up in his own hype. But then, every once in a while, he has stunning moments of candor. In one such moment he admits that the iPod isn't some life altering piece of technology. It's just a different way to transmit music.

And in a sense, that's where CLE is with the Internet. It's just a different way to transmit the same stuff. We're still offering, by and large, the same 1,000-year-old lecture format. Sort of like when television first became commercially viable in the late '40s—the original networks, carryovers from radio, broadcast soap operas and dramas adapted directly from their radio shows. "Radio with pictures," it was called.

"Rock Is Dead" (?)

And yet, just like television became more sophisticated (do you remember the early episodes of *Twilight Zone*? Compare them to the plane-crash sequence in the first episode of *Lost*), and just as music is being adapted to iPods, CLE over the Internet *is* changing, and it is changing *because* of the new medium.

Take music and the iPod. Perhaps some of you have seen stories in the press about how traditionalists and some artists are complaining that music must now be mixed and styled to sound its best coming through tiny iPod ear buds, as opposed to the massive speakers we all remember from our basements and bedrooms of the '60s and '70s.

I think that in CLE, the medium of transmission is also affecting the formatting of the message. CLE providers have seen a steady change in how much content can be chunked out, and in what length of time, when it is delivered online. CLE is becoming—must become—faster, shorter, with less emphasis on scholarly materials. (On the Internet, PowerPoints work much better than 100-page footnoted papers.²)

Note I said “formatting” in the preceding paragraph. Could the Internet (fast, short, entertaining) also be affecting *content*? By demanding zippy, Music-Video-length presentations, is it dumbing down CLE? Will it dumb down the law itself? To answer these questions, we have to take a step back in time.

Time Tunnel

Most of you probably work for bar organizations that have pretty impressive pedigrees in terms of duration. Probably a majority of your organizations were founded some time in the 19th century. Why were they founded? Well, to help lawyers, of course; possibly to act as trade associations or lobbying entities. But one big reason for the founding of any professional society has been the propagation and dissemination of the knowledge of its most advanced members. Even as “mass media” began to grow after the Civil War, and as it took off with commercial radio in the 1920s, it was still relatively difficult for lawyers to get the kind of advice and news that their confreres at the bar could impart. By organizing conventions, social events, journals, and later formal CLE programs, bar associations became the best—and for a long time the only—way for lawyers to keep up with the state of the art of the practice.

In effect, bar associations became the mediators between those with the

² I mean no disrespect to either scholars or footnotes. My idea of a great time is to sit on the beach with a 1,000-page, heavily footnoted tome about the Russian Revolution, and actually READ the thing. I suspect few law students today would agree that that sounds like fun.

knowledge and the practitioners who sought it. Over time other entities successfully attained that mediator status—“independent” CLEs like Practising Law Institute and law schools are two examples that come to mind. But however many competitors of bar associations came along, the passing of knowledge remained a “mediated” event.

But now, as we are frequently told, we live in the age of “disintermediation.” The keepers of the flame like bar associations, or publishers, or even (gasp!) the mainstream media no longer retain a monopoly on information. Individuals who have something to say can reach others, *many others*, at virtually no cost through the Internet. What’s more, younger members of society—including younger lawyers—are getting much, if not most, of their news and information from these online sources. At present, they access a mix of mainstream outlets (CNN.com) and their favorite blogs. But in the future...?

Moreover, those of us who can remember reading the morning paper with a cup of (non-Starbucks) coffee, and who wouldn’t credit a story unless we saw it in The New York Times or The Wall Street Journal, cannot simply dismiss this phenomenon as “the blind leading the blind.” Yes, there is a lot of self-absorbed, ill-informed claptrap on the Internet. But there are also some very knowledgeable people out there, and they are finding each other and building virtual communities—virtual bar associations, if you will. They are using social-networking web tools like MySpace and adopting the “Wikipedia” model, in which all can contribute and all can learn. Understand: they won’t actually use “Wikipedia” to learn your state’s divorce laws, but they just might set up their own divorce law blog (or perhaps, social networking site?) to trade tips, learn about current practice, and seek advice from fellow lawyers. They are doing via the Internet what bar associations began doing in the 19th century.

A word about social networks. You may spend hours on a Myspace or similar account each week, or you may think such things are another sign of the coming of the apocalypse. Regardless of how we feel about them, they are real, they are growing, and they aren’t going to go away, anymore than television “went away” even though many of our “Greatest Generation”-era parents wished it would. What we can say about social networking with some certainty is that, just like television, it will evolve and will have a

greater and greater impact on our society.³

**“Kids practically raise themselves, what with the Internet and all.”
–Homer Simpson**

So, if the Internet is moving in on an area hitherto reserved for “the experts” from bar associations and CLE providers, how are such organizations responding?

- *Shorter is better.* Here bar associations have a distinct advantage. Most of you have developed one-day, half-day, and even shorter models of CLE delivery. The future of CLE is clearly in this model, for a variety of reasons, and not just decreasing attention spans and the Internet. You all are aware of how the economics of law practice is making the loss of billable hours for extended training too unpalatable for many firms.
- *Record everything.* Most CLE entities are recording every live event for playback on the web. It’s now so cheap to record, and virtually cost-free to store, hundreds and hundreds of hours of CLE, that there is no reason not to.
- *Produce for the web.* CLE providers are also getting into web production in a big way—meaning they are designing programs that originate almost exclusively as web-based presentations.

“Long Live Rock”

Sooo...are traditional disseminators of information—like bar associations and CLE providers—dead or dying? Perhaps not yet. Even the “dinosaurs” whose web-instigated extinction is routinely predicted—like newspapers and network TV—still have value. Witness Rupert Murdoch’s multi-year effort that culminated in the \$5-billion takeover of Dow Jones. He certainly wasn’t doing it so that FoxNews could get the DJIA ticker for free. He wanted one of the oldest players in the business—The Wall Street Journal. Why?

³ Again, an analogy from the past helps prove the point: In the ’60s and ’70s educators saw the need to use audiovisual materials to supplement traditional teaching models, because we boomers were being raised with television. In the next 20 years, educators will have to adapt their curricula to some extent at least to the social networking model

Because Murdoch sees the value of a brand on the Internet.

And that, in a nutshell, is our challenge. I hesitate to refer to your bar associations as “brands,” because you (and I) are not strictly speaking commercial enterprises. But we all have to make CLE pay for itself, or even generate a profit. And like some other real “brands” that come to mind (think Starbucks), we have to adapt the hard-won, valuable, trusted names we have to changing realities.

Here I think there are several things we can do to keep our CLE function vibrant in a digital world:

- *If you can't beat 'em...* We all need to work on creating the types of online communities that younger lawyers are used to interacting with.
- *Google ads.* If you're not doing Google ads, think about it. Ask your kids to find information on “[your state] divorce law” and watch what they do. Young lawyers do the same thing—they start at Google or some other major search engine and work down from there. You want to show up on the results pages they see.
- *New Business Models.* Many traditional media outlets that sold access to content have moved into new models on the web—giving away the content in return for advertising revenue. Admittedly, that (or something close to it) has always been the model for newspapers, and rarely the model for educational institutions. But we may be forced to adopt it.
- *Life is not a video game—and neither is the law.* At the same time, we have to recognize that some parts of being a lawyer cannot be chunked into entertaining bits. Law is complex—maybe not as complex as brain surgery, but certainly more analytical than those guys dancing on treadmills on YouTube. Understanding a difficult statutory regime like the Internal Revenue Code, for example, requires lengthy reading of difficult material, followed by more lengthy reading of more difficult material that explains the initial difficult material. I have to confess I'm struggling with this like the rest of you, and don't have any easy answers.

Futurama

And what can we expect in the future? Someone once said that most predictions about the future are either overstated (think flying cars) or understated (few foresaw the tremendous impact on our society of the ordinary car when it became available as a mass-market commodity). With that caveat in mind, I'll venture a few predictions regarding CLE:

- Yes, CLE will continue to get shorter and shorter.
- CLE will have to look more like what is on the web, and less like the 1,000-year-old lecture model.
- Mandatory CLE jurisdictions will liberalize their rules regarding online CLE to the point that there will be little or no difference between it and live CLE when it comes to granting credit. As the digital generation starts taking over, they will demand it. And don't forget those pesky laws of economics—online is cheaper than live, and the firms are always looking to cut costs and increase billable hours.
- BUT...don't forget about the horses.

Did he say horses?

One hundred years ago many Americans rode horses, or in horse-drawn conveyances, to get around. Today, almost no one uses horses to get around—but there are still plenty of farms and ranches and parks where people ride horses. There are fewer horses, and it costs a lot more (even in constant dollars) to ride them. But people still do it.

I think lawyers—some lawyers—will continue to want to interact with their fellow lawyers. There will be fewer “live,” in-person, extended CLE events. But you will be able to charge a premium for attending them *because* they are rare, and because they will offer something increasingly uncommon in our digital age—the chance to “press the flesh,” if you will.

Conclusion: “Dammit, Jim, I’m A Doctor, Not a _____.”

Every stand-up comic in the business can make a punchline out of that line from *Star*

Trek. I admit I was tempted, when asked to speak to you, to give my own version of Dr. McCoy's famous refusal: "I'm a book-reading publications guy, not some Internet Nostradamus." But whatever we wish would happen (or not change), we know that our future customers—the younger lawyers of today—expect us to do what Dr. McCoy always did—grumble, maybe, but then do what we have to do to save the day.