Five Truths Learned After a Dozen Years of Asynchronous Online Teaching

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FIVE TRUTHS LEARNED AFTER A DOZEN YEARS OF ASYNCHRONOUS ONLINE TEACHING

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ABSTRACT

In this article the author reflects on his more than twelve years of teaching asynchronous online law school courses and shares some of his beliefs about the value and limits of asynchronous teaching. The article addresses some surprising strengths of asynchronous online courses, including how black letter case law may be more effectively taught in the online format. Additionally, the article discusses how the asynchronous online format provides opportunities to excel for students with different abilities and personalities.

The article also addresses some potential limitations in the asynchronous online format, including the challenges inherent in student group work and collaboration. Additionally, the article addresses key structural decisions that a professor can make to strengthen the course and the student experience, including both philosophical and practical guidance.

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"[T]here are many truths of which the full meaning *cannot* be realized until personal experience has brought it home."[1]

INTRODUCTION

I first discovered the concept of online legal education about twenty years ago while teaching Legal Writing. Even though I had only been teaching a few years, I already felt that some of the items we covered on book research could be presented more efficiently, since how to access restatements and ALRs and all of the other print legal research tools did not change from year to year.[2] I proposed to my colleagues that we create electronic materials from which the students could access and learn the skills at their own pace; they rightfully rejected my idea because I had neither the technology or expertise to pull it off.

A couple of years later I began teaching Employment Law and my second time teaching the course I created an asynchronous distance-learning unit to take the place of two weeks of classes. The unit was successful[3] and well received by students.

Then, a group of students in our weekend program approached me about teaching my Employment Law course in a truncated fashion because they wanted to accumulate credits without having to attend classes all summer. To help facilitate the compressed schedule, I increased the amount of distance-learning to one-third of the course, then one-half the next summer, and then finally the following summer I made it into a fully online course.

That first fully online course was over a dozen years ago. A few years later I added an asynchronous online drafting course. I still regularly update and teach both of those courses and along the way I have developed two asynchronous online courses for a Master of Law program, and I am currently developing an asynchronous online course on the Multistate Performance Test. In all, I have taught in excess of twenty-five fully asynchronous online courses.

Over the dozen years I have been teaching asynchronous online courses I have reached some personal truths about asynchronous teaching. While much of this article will focus on my doctrinal Employment Law experience, the truths are also applicable to skills courses.

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1. JOHN STUART MILLS, ON LIBERTY 78 (London, John W. Parker and Son, 2d ed., 1859).

2. At the time, our program utilized third-year students to teach the bulk of basic book research skills. We met with our Teaching Assistants on a weekly basis to cover the material they would then cover with the students, a process which I found a bit repetitive year after year.

3. The final examination in the course consisted primarily of multiple-choice questions. I reused the questions pertaining to the distance-learning unit subject matter from the previous exam and the distance-learning students scored on average slightly higher on those questions than the students in the previous brick-and-mortar course.

I. TRUTH ONE: ASYNCHRONOUS ONLINE IS MORE EFFECTIVE FOR TEACHING BLACK LETTER LAW THAN A LIVE CLASSROOM

A commonly referenced conceptualization of the learning process can be found in the pyramid structure of Bloom's Taxonomy. Under this conceptualization, comprehension and understanding increase as a learner moves up each level.[4] One legal commentator deftly broke down the levels as applied to legal education:

1. Knowledge (*knowing and remembering* "ideas, material, or phenomena");

2. Comprehension (*paraphrasing* that information into one's own words; *interpreting* it by making inferences, generalizations, or summaries; and *extrapolating* or predicting trends or tendencies by applying the information to a concrete situation);

3. Application (*using* the information in a new situation, without being told the information is relevant, and without being shown how to use it);

4. Analysis (*breaking down* information into parts, realizing how those parts relate to each other, and recognizing which parts are significant in a given situation);

5. Synthesis (*putting together* elements and parts "in such a way as to constitute a pattern or structure not clearly there before," usually by combining the information with new material); and

6. Evaluation (*making judgments* "about the value, for some purpose, of ideas, works, solutions, methods, material, etc.").[5]

The basic goals of the case method in legal education are for the student to: (A) learn basic black letter legal principles,[6] pulled from the case law; (B) develop the ability to apply and critique the legal principles; and (C) understand how the legal principles fit within the larger context of a body of law and the societal impact of the legal principles. There is no doubt that the latter two items, which push the student up Bloom's Taxonomy, are more challenging for student

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4. BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS: HANDBOOK I: COGNITIVE DOMAIN 18 (Benjamin S. Bloom ed., 1956). The levels in the pyramid shaped taxonomy are, in ascending order:

    1. Knowledge,
    2. Comprehension,
    3. Application,
    4. Analysis,
    5. Synthesis, and
    6. Evaluation.

5. Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 7–8 (2012).

6. The author uses the term black letter law in this article to mean the rules of law a court relied upon to reach a decision in a particular case and the facts and reasoning which the court used to reach its decision.

and professor and, ultimately, more important. The attorney who can not only apply the law to the facts but also connect and argue appropriate context and policy will be a more effective advocate.[7]

There is also no doubt that the latter two items are not possible unless the student has a solid comprehension the black letter legal principles (which really encompasses the first two levels of Bloom's Taxonomy). A student cannot begin to apply the legal principles, or understand the context of the legal principles, unless that student has a firm understanding of the underlying black letter legal principles. Every professor has had the experience of trying to question a student who clearly has not intently read or understood a case and knows that the higher-order thinking and analysis which a student must achieve is unattainable without that basic understanding. Further, a student's lack of understanding not only impacts the particular student's learning, but also may impact other students if the student is unable to participate in Socratic questioning or in small group discussions and problem-solving exercises.

A rigorous asynchronous course demands students learn the black letter legal principles that are required for a student to apply the law to hypothetical facts or evaluate how the law should change or develop. And an asynchronous course has built-in advantages over the traditional pre-class reading.

My Employment Law course is a traditional casebook course and uses Blackboard for the learning management system. Through the semester students answer hundreds of questions designed to bring them to an understanding of the black letter law. For each assigned case, students are asked many of the traditional questions used in the case law method including procedural history, legal standards the court relied upon, and key facts which led the court to its decision.[8]

To effectively and efficiently lead students to an understanding of the black letter law, the course uses questions which have a concrete correct answer. Many of the questions are multiple-choice, but there are also a variety of other types of questions. Fill-in-the-blank questions can be a simple, effective method to ensure that a student has identified specific key legal principles.[9] One particularly effective type of question available on Blackboard is multiple answer, where a student must choose multiple correct statements. For example, a question might ask a student to identify all of the key facts which led the court

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7. *See* Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 52 (2010) ("'Transfer of learning' is at the very essence of what lawyers do every day. The most classic example comes from formal legal analysis, where attorneys take both concrete rules and analogies from precedent and apply them to new legal problems.").

8. For further details on the types of questions utilized in the course, *see* Kenneth R. Swift, *The Seven Principles of Good Practice in [Asynchronous Online] Legal Education*, 44 MITCHELL HAMLINE L. REV. 105, 123–27 (2018).

9. Blackboard has a feature which allows for multiple fill-in-the-blanks for one question.

to a particular decision and then provide eight choices, with three of those being the ones the court relied upon. This requires the student to understand and identify all of the different factors that went into a court's decision; the same type of question works effectively for identifying and synthesizing several rules of law.[10]

For each question set the student is required to answer all of the questions correctly in order to receive credit.[11] Not only does this promote precise reading, since the student would have to answer all the questions again, but it also leads to one of the real advantages of the asynchronous format: all students reach at least the same basic understanding of the black letter law. Thus, when students are asked to work together on an application exercise or a discussion question there is a better chance of meaningful input from each student.

This base level understanding of black letter law that is required for every student by an asynchronous course is particularly important because the level of student preparation for class drops in the second and third years of law school. Over 70% of second-year students, and over 80% of third-year students, reported attending class at least sometimes without having completed the required readings.[12] Further, 15% of second and 20% of third-year students reported attending class often or very often without having prepared.[13] This is not possible in my asynchronous course.

One hidden advantage of the asynchronous method of teaching the black letter law is that the student receives the formative assessment of knowing if the student's understanding of the case is accurate *before* the student moves on to the next case.[14] In a brick-and-mortar class, a student will read all of the cases before attending class and may even read a week or more ahead. Since most courses (and textbooks) are built around subsections and arcs of cases which include several cases designed to bring out the nuances of a particular area of the law (often beginning with a case or two of the more established legal

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10. *See generally* Paul Figley, *Teaching Rule Synthesis with Real Cases*, 61 J. LEGAL EDUC. 245, 245 (2011).

11. This simple rule helps the course meet two fundamental best practices in education: (1) time on task, *see* R. Lawrence Dessem, *Principle 5: Good Practice Emphasizes Time on Task*, 49 J. LEGAL EDUC. 430, 430 (1999), and (2) communicating high expectations, *see* Okianer Christian Dark, *Principle 6: Good Practice Communicates High Expectations*, 49 J. LEGAL EDUC. 441, 441–42 (1999).

12. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, https://lssse.indiana.edu/advanis/ https://perma.cc/M4JP-XWYQ (last visited Jun. 8, 2020) (the quoted statistics were obtained by utilizing the survey search function on the website and crossing a question which asked students how often they "[c]ome to class WITHOUT completing readings or assignments" and a sorting function of responses by law school year. Each year included more than 50,000 student responses).

13. *Id.*

14. In my course I group together questions pertaining to two or three cases in the same question set, but the student still sees how incorrect analysis in one case affected the student's understanding of the application in another.

principles), if the student has an incomplete or incorrect understanding of the legal principles in the more introductory cases, the student might not fully understand the development of law. This is not a problem for the student in an asynchronous course.

II. TRUTH TWO: NOT GRADING EVERY STUDENT RESPONSE HELPS DEVELOP A SELF-REGULATED LEARNER

After a student comprehends the basic black letter law the next step is for the student to move up Bloom's Taxonomy into applying, synthesizing, and critiquing the law. In my course students develop the skills through a series of written formative assessment exercises after each of the above-described question sets. The question posed here: what should the professor do with these responses? In a live classroom, everyone listens to a single student respond to a professor's questions; online, every student provides a response.

Imagine this interaction between a law professor and student in a brick-and-mortar classroom:

> *Law Professor*: Ms. Smith, assume the same facts as in *Newman*, except that the subcontractor knew that the contractor normally used copper pipes. Does that change the outcome of the case?
>
> *Law Student*: Yes, I believe it would change the outcome because the subcontractor . . .
>
> *Law Professor*: That is a fairly good answer, but you failed to note that . . . *You receive a score of 4 out of 5 for that answer.* Our next case is . . .

Of course, the above interaction would never occur, but many professors feel the need to formally grade any document that the student submits in writing. I know I did as I first began teaching online, in part because online I lacked the control that I had in a live classroom.

It is, of course, important for the professor to read every item submitted by a student to make sure that the student is meeting minimum effort standards and appears to be comprehending the material at an acceptable level. Doing so ensures proper monitoring, consistent with the underlying principles of former ABA rule 306 (d)(2).[15]

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15. 2019–2020 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 306(d)(2) (AM. BAR ASS'N 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2019-2020/2019-2020-aba-standards-chapter3.pdf [https://perma.cc/45PA-8ST7]. In August 2020, Standard 306 was removed entirely from the 2020–21 ABA Standards. *See* 2020–2021 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS at 21 (AM. BAR ASS'N 2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-for-approval-of-law-schools.pdf [https://perma.cc/WWX8-ZWEM].

Formally grading every item submitted, on the other hand, is unnecessary and can be counterproductive. To begin with, if a professor needs to provide a score and detailed feedback on every written submission, the result is going to be for fewer written assignments within the course.

Ungraded assignments also allow the professor to provide immediate feedback in the form of sample answers and documents. For example, for questions which ask the student to apply the black letter law to a hypothetical, I will often base the hypothetical facts on one or more existing cases. Then, when a student submits his or her response, immediate feedback can be provided as to how a court applied the law under similar facts. Or, if a student is asked to draft a document which incorporates understanding of the black letter law, a sample contract or legislation or outline can be provided.

Another distinct advantage of an asynchronous course is that it helps students develop self-regulated learning skills. Educational psychology defines self-regulated learning as "an active, constructive process whereby learners set goals for their learning and then attempt to monitor, regulate, and control their cognition."[16] A critical component in the process of becoming a self-regulated learner is developing the ability to receive feedback, learn from it, and improve the understanding of the material and ability to self-assess performance.[17]

The immediate feedback for written responses, described above, promotes self-regulated learning because the students understand that they are responsible for determining where a particular response may have been an inaccurate or incomplete. Again, it is important that each student understands that I read every word submitted. Further, I do comment on many, if not most, of the written exercises. The key to this process, however, is that the students understands that they must primarily rely upon their own analysis and review of the feedback and seek out additional guidance when necessary. Through this process each student becomes better equipped to analyze personal performance, which is a necessary core skill for a successful practitioner.[18]

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16. Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N. U. L. REV. 227, 230 (2015) (quoting Ian Clark, *Formative Assessment: Assessment is for Self-Regulated Learning*, 24 EDUC. PSYCHOL. REV. 205, 216 (2012)); *see also* Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. STATE DCL L. REV. 447, 472 (2003).

17. Patience A. Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413, 439–40 (2015); *see also* Deborah L. Borman, *De-Grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 SEATTLE U. L. REV. 713, 735 (2018) ("The primary goal is to help students learn to think about their own thinking so they can use the standards of the discipline or profession to recognize shortcomings and correct their reasoning as they go.").

18. Additionally, the question sets described above also help develop self-regulated learning skills. Each time a student has to redo a particular question set because the student did not answer all the questions correctly the student should gain insight into the information missed or incorrectly comprehended in the reading process.

III. TRUTH THREE: SUCCESSFUL GROUP WORK REQUIRES PLANNING

The ABA rules regulating distance education require that any course allow for not only interaction between the student and faculty, but also between students.[19] In an asynchronous course, this means creating group activities. It can be challenging to create group activities which produce wide participation and meaningful activity, but below are a few tips based on what I have learned over the years.

A. Use Small Groups

I have seen courses where a professor will open a discussion board to class of twenty or thirty or more students. It seems unlikely that there are many questions anywhere, but specifically in a law school curriculum, where there could be that many different ideas and concepts to respond to a particular prompt. Even if a course utilizes technology that does not allow a student to see other posts until that student makes an initial post, there is still bound to be significant repetition.

Instead, create small groups of three to four students.[20] Using groups of four students on discussion questions, such as those critiquing the law or analyzing potential changes, allows for varied opinions but are still small enough to create accountability. Limit the group size to three for exercises where students are asked to complete a specific project such as drafting proposed legislation or a contract provision.

B. Create Precise Prompts and Exercises

The discussions or exercises which make up the group activities will be more successful if students are provided with a precise prompt to focus and guide the group. For example, instead of opening a discussion board by asking students to generally "*comment on that week's readings*" prompt the group to "*compare the outcome in Jones with the decision in Smith and analyze if the cases can be reconciled factually or are the result of different underlying interpretation of the rule*." Another specific prompt might ask students to draft legislation to ameliorate a specific problem raised by the case law or assign each student a role as an attorney or judge and asked them to provide written arguments on a hypothetical set of facts.

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19. 2019–2020 ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 306(d)(1).

20. Blackboard has a feature which randomly creates groups of any size and creates a group space that only the group members can access. The program also allows the professor to customize features such as availability of email, file exchange, and blogs.

C.   *Bonus Truth: Teach a Course Live One or More Times Before Developing an Asynchronous Course*

There are numerous benefits to teaching a course live before developing an asynchronous version, starting with the above point on prompt. If you teach a class live you will know which exercises were more effective in creating lively discussion and activity. Additionally, it will be much easier to determine how much content to cover in your asynchronous course, which is not only important for the course in general, but also to meet ABA Standard 310 equivalency. Finally, your lecture notes and other materials, including PowerPoints, from your live course will ease the transition into creating videos for your asynchronous course.

D.   *Encourage Timely Participation*

One significant challenge to group work in an asynchronous course is getting students to participate in a timely fashion. A primary draw for students to an asynchronous course is the control over when coursework is completed. Some students, through procrastination or other time constraints, may choose to do more of the work closer to a due date. For group work, however, you want students working and commenting on the discussion or assignment over a period of several days, so that there is a productive back-and-forth.

I find it a good practice to set out certain rules, such as a requirement to make initial contact with group members within a certain amount of days. Additionally, I will check in on a group's progress and contact students who are not participating.

E.   *Require Work to Take Place Online as Much as Possible*

It is a good practice to require students to complete as much of the group work online as possible. Requiring students to utilize a blog or chat room, rather than private email or social media, allows the professor to check in on group progress and also evaluate each member's contribution to the discussion or finished final project.

IV. TRUTH FOUR: AN ASYNCHRONOUS ONLINE COURSE PROVIDES DIFFERENT AND EQUAL OPPORTUNITIES FOR STUDENTS TO EXCEL

I regularly have students who were in my 1L Legal Writing course enroll in my Employment Law course and quite frequently I will see students blossom in the asynchronous online environment who did not necessarily stand out in a live classroom, which I attribute to at least a couple of factors. First, some students are simply uncomfortable speaking in front of their peers and are more comfortable in front of a keyboard. The same student who would give a brief, albeit accurate, response to an inquiry in a live class when called upon, may feel much more comfortable giving a lengthier, in-depth, and nuanced response to a

short answer or essay question. Additionally, those students sometimes feel less comfortable even in live small groups and, again, will tend to be much more involved in an online discussion or exercise.

Second, some students simply are not as quick with generating their thoughts and ideas as others. Given time to contemplate a response, many students are able to provide much more lucid and detailed response to a question or exercise then they are when put on the spot in a live classroom.

Additionally, an asynchronous online course, if properly constructed, provides a level platform for all students, regardless of physical ability.[21] By way of example, a few years ago I had a deaf student enrolled in my live IL Legal Writing course. I was informed just a few days before class began and, while I attempted to present the course as effectively as possible, I know my efforts were not as effective as either the student or I would have liked. My classroom teaching style within the course included numerous small group or partner exercises and discussions in virtually every class session, which were difficult for the student and classmates given the need to work through an interpreter.

A couple of years later the student enrolled in my asynchronous online Employment Law course and I believe the course was a much more level playing field for the student. All the videos were captioned, which meant that student could see the text and images at the same time, which differed from the live lectures (where the student had to glance back-and-forth between the interpreter and anything shown on a screen or whiteboard). Further, since all exercises were completed in written form, even group work, it meant that the student was working with the same tools as other students.

V. TRUTH FIVE: ORGANIZATION IS KEY

My courses have been well received by students and my belief is that no factor has been more important than good organization. Without the built-in structure of class time and meeting place, students in an asynchronous course rely upon a consistent structure of due dates and course organization. If provided, students will feel comfortable within the course.

To begin with, all assignments should be due on the same day and same time every week. Since many students will work on assignments during the weekend, Sunday can be seen as a natural day for the due date, but I have had better success with Monday and Tuesday evening due dates. As students work through the

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21. *See generally* Susan David deMaine, *From Disability to Usability in Online Instruction*, 106 L. LIBR. J. 531, 551 (2014); Debra D. Burke et al., *Accessible Online Instruction for Students with Disabilities: Federal Imperatives and the Challenge of Compliance*, 45 J. L. & EDUC. 135, 161–66 (2016); Alexandra Abend, *Achieving the Promise of Assistive Technology: Why Assistive Technology Evaluations Are Essential for Compliance with the Individuals with Disabilities Education Act*, 38 CARDOZO L. REV. 1171, 1173 (2017).

materials there will be questions which pop up over the weekend; an early week due date allows me the opportunity to respond to questions, without having to be wholly on-call over the weekend.

Finally, in my experience the single most important component of a successful asynchronous course is the weekly checklist. Each week students begin with a document which lists out, in order, everything that needs to be accomplished during that week. A common structure will be a subsection which includes a reading assignment, video lecture, question set, and essay questions. There will be multiple subsections each class unit and the checklist will also include a group discussion or exercise assignment. Just like the brick-and-mortar course student, who knows what to read and where to be each week, the asynchronous online student knows exactly what needs to be completed.

CONCLUSION

Developing an asynchronous course takes a tremendous amount of work, but you may (as I do) find you enjoy a certain level of creativity as you put together the course materials, particularly the videos. You will discover that your students enjoy the asynchronous format and, through the consistent formative assessment, understand that they are comprehending the course materials. The *truth* is that the course will be rewarding both for you and your students.