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## Elements of Effective Online Instruction in Law

David I. C. Thomson

*University of Denver, Sturm College of Law*, [dthomson@law.du.edu](mailto:dthomson@law.du.edu)

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## ELEMENTS OF EFFECTIVE ONLINE INSTRUCTION IN LAW

DAVID I. C. THOMSON\*

### ABSTRACT

*The Covid pandemic has had a significant impact on law school pedagogy, although how much that impact will remain and be a benefit post-pandemic remains to be seen. This article argues that we should leverage what we learned and use it to redesign our courses for a future world of hybrid teaching, so as not to lose what we gained by returning to in-person teaching as if nothing happened to us or our students. It offers suggestions about how to go about doing that—how to capture the benefits of what has been learned about online teaching in the 2020–21 Academic Year, and apply it to our teaching going forward. Among those suggestions is to redesign our courses from back to front, starting with articulating our learning outcomes and then developing modules designed to meet those outcomes, with formative assessment for each module as the semester progresses. It also suggests maximizing the precious in-person time we will regain post-pandemic by intentionally moving some of our content online, and deliberately choosing how to deliver that online content best. Doing these things deliberately will contribute to making us more effective teachers, and help our students become more effective learners—in law school, and in their future lives as practitioners.*

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\* Professor of the Practice of Law and John C. Dwan Professor of Online Learning, University of Denver. The author would like to thank Greg Brandes for commenting on a previous version of this article, and Michelle Penn and Mike Whitlow for their research assistance.

## INTRODUCTION

The debate about whether we should teach law online is over. Indeed, it has been over for some time, but the Covid crisis has made this even more clear.<sup>1</sup> Even before Covid, the tools, disciplines, and practices of online learning pervaded law school courses—whether nominally taught online or not—but Covid dramatically accelerated that development. In the Fall of 2020, approximately thirty-two law schools announced they were teaching exclusively online, including Harvard.<sup>2</sup> Even schools that were starting the semester for 1Ls in a hybrid format were also teaching upper-level courses mostly online.<sup>3</sup>

Using the full-featured learning management systems (“LMS”) available now, and fairly stable technology such as Zoom or Skype, law professors across the country are adapting to a world they were somewhat familiar with before, but finding themselves struggling to figure out how to do this well. The stay-at-home orders<sup>4</sup> which shut down in-person education in March of 2020 accelerated a migration over a matter of a few days, but unfortunately it did so without much time for forethought or a broad understanding of effective methods for online instruction in law. This period of rapid change in teaching methods became known as “Emergency Remote Teaching” (“ERT”), to distinguish it from true “online teaching” which is—as this article will argue—a more planned and developed affair than we were understandably able to

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1. *How Countries Are Using Edtech to Support Access to Remote Learning During the COVID-19 Pandemic*, WORLD BANK, <https://www.worldbank.org/en/topic/edutech/brief/how-countries-are-using-edtech-to-support-remote-learning-during-the-covid-19-pandemic> [https://perma.cc/QN4S-FQNJ]; Cathy Li & Farah Lalani, *The COVID-19 Pandemic has Changed Education Forever. This is How*, WORLD ECON. F. (Apr. 29, 2020), <https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning/> [https://perma.cc/8CYW-CGX7].

2. Karen Sloan, *Online or In Person? Law Schools Diverge in Fall Semester Plans*, LAW.COM (Jul. 1, 2020, 2:25 PM), <https://www.law.com/2020/07/01/online-or-in-person-law-schools-diverge-in-fall-semester-plans/> [https://perma.cc/6G92-TY8Z]; Karen Sloan, *Law Schools that Planned to Return to Campus in Fall are Reversing Course*, LAW.COM (Aug. 5, 2020, 2:21 PM), <https://www.law.com/2020/08/05/law-schools-that-planned-to-return-to-campus-in-fall-are-reversing-course/> [https://perma.cc/CAJ3-RNBB].

3. Gabriel Kuris, *The Impact of the Coronavirus on Legal Education*, U.S. NEWS & WORLD REP. (Aug. 24, 2020), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/the-impact-of-the-coronavirus-on-legal-education>.

4. Sarah Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html> [https://perma.cc/BDZ4-6C8R] (last updated Apr. 20, 2020); *See How All 50 States Are Reopening (and Closing Again)*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html> [https://perma.cc/M4HG-HZV7].

achieve in a few days. In March, some students were derisively referring to having been suddenly transferred to the “Zoom School of Law.”<sup>5</sup>

Most of our Universities, and many conferences, offered crash courses for law faculty in the basics of online teaching through the summer of 2020. There were at least five summer conferences—all conducted online, of course—to help law faculty learn about how to teach online effectively, and many of them were fabulously well attended.<sup>6</sup> The CALI<sup>7</sup> conference on the subject had to shut down registrations when it received an overwhelming number of registrations.<sup>8</sup> It seems likely that the 2020–21 academic year will be seen—in hindsight—as the year law school pedagogy changed and the brick-and-mortar walls of law schools became more permeable. But while a crash course in teaching online certainly will lead to improvements over what was offered in March, becoming an effective law professor in the online environment is a more complicated matter.

Further, the question of what comes next also needs urgent attention. It seems likely that one day we will be in a “post-Covid” world. Exactly what the parameters of that world will be is beyond the scope of this article, but it seems reasonable to suggest that we will have the option of returning to the primarily in-person teaching that prevailed in the “pre-Covid” law school world. But should we? This article suggests that this crisis has created an opportunity to rethink how we teach law, and design and deliver our courses. Given the financial pressures that many law schools were experiencing before the crisis, and now are experiencing even more acutely,<sup>9</sup> our success with this transition might become an existential one as well.

Today, the question of whether we should or should not teach online is no longer the interesting question (if it ever was). The interesting question, or questions, is which *courses* ought to be taught online and in what *ways* and to

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5. Joe Patrice, *You're All Attending Zoom School of Law Now—Show Your Pride*, ABOVE THE LAW (Mar. 18, 2020, 11:17 AM), <https://abovethelaw.com/2020/03/youre-all-attending-zoom-school-of-law-now-show-your-pride/> [<https://perma.cc/6JZ7-2YKT>].

6. These include: *William & Mary Conference for Excellence in Teaching Legal Research & Writing Online*, WM. & MARY L. SCH., [https://law.wm.edu/academics/intellectuallife/conferences/andlectures/excellence\\_online\\_teaching/index.php](https://law.wm.edu/academics/intellectuallife/conferences/andlectures/excellence_online_teaching/index.php) [<https://perma.cc/Z6CW-42Z8>]; *Preparing for the Future of Legal Education—Online Teaching Tips & Techniques*, CALI, <https://www.cali.org/preparefall2020> [<https://perma.cc/TRH2-WFM5>]; *Designing Your Online Law Course Bootcamp*, AALS, <https://www.eventbrite.com/e/bootcamp-designing-your-online-law-course-tickets-109669522494#> [<https://perma.cc/C3PN-PTAU>].

7. The Center for Computer-Aided Legal Instruction (“CALI”), a non-profit which counts most law schools as members, found itself quite busy over the Summer of 2020 working to meet the needs of its member law schools for training.

8. See CALI, *Preparing for the Future of Legal Education*, *supra* note 6.

9. Karen Sloan, *Law Schools Hit by Financial Fallout from COVID-19*, LAW.COM (Apr. 23, 2020), <https://www.law.com/2020/04/23/law-schools-hit-by-financial-fallout-from-covid-19/> [<https://perma.cc/9DWV-NTVZ>].

what *degree* should we deliver small or large parts of our courses and curricula online? What we are talking about now—finally—is adjusting our courses, from primarily in-person classes to something more hybrid, which might be more effective for today’s learners. If we are honest with ourselves, there are likely things we used to do with precious classroom time that could be delivered to our students more effectively online, even after the Covid crisis has passed.

This article describes some emerging best practices for providing legal education in a fully online—or hybrid—environment. It encourages a rethinking and redesign of our educational goals by course, program, and the curriculum as a whole, in a way that leverages the technology now available to effectively teach the students of the 21st Century.

### I. BACKWARD DESIGN

The first thing to say about effective online teaching is that it is not about the technology involved. It is tempting to think so, however. A law professor in 2020 might have said: “Just teach me how to do what I do online, and I’ll go do that.” This led to the “Zoom School of Law” problem in the Spring of 2020, and students tolerated it, but are less likely to do so as they themselves come to understand what an effective online learning environment is and is not. This is because good online course pedagogy requires rethinking and redesigning each course from back to front.

Yes, back first. Because it is time—overdue according to the ABA’s accreditation requirement passed six years ago<sup>10</sup>—to articulate the measurable learning outcomes for each course that we offer in our law schools. If we start with the end in mind, we will have a much better idea of how to redesign the course as a whole. It seems like a tedious exercise. A law professor in 2020 might say: “Why should I have to do this? I know what I am teaching!” But then a reasonable response might be: “What could *possibly* be wrong with making a list of what you want your students to know when you finish the course you are teaching them? You are an expert in this subject, so it should not take more than half an hour.”

The magic happens when you have that list.<sup>11</sup> Because then you can divide the individual outcomes by the amount of time you have, and apportion it to each outcome, and then think about how to measure whether your students have achieved that learning outcome while the course is progressing. And that leads

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10. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 314 (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-chapter3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf) [<https://perma.cc/HWZ3-57RX>].

11. See *Getting Started with Writing Learning Outcomes*, CORNELL UNIVERSITY CENTER FOR TEACHING INNOVATION, <https://teaching.cornell.edu/resource/getting-started-writing-learning-outcomes> [<https://perma.cc/G5G6-N8GQ>].

to multiple assessments, preferably ones that are “formative”<sup>12</sup> or encourage learning through the course, not just measure it at the end—such as the all-in-final exam that is still so common in law schools.

Also, when you have articulated your list of learning outcomes, you can share it with your students. This helps them to understand what you are teaching them, and what these formative assessments are for. They will have a better understanding of how they are doing during the course and have the opportunity to correct their trajectory before it is too late.

What this all leads to is a fundamentally different approach to course design. In this approach, you decide what the outcomes are, you divide the material into digestible components, and place them into an order that makes clear to students what they are learning and why. Each step or component of the newly designed syllabus has an optimal length of time assigned to it, and a companion assessment. When this “chunking” of the syllabus is complete, the transition to online instruction can take place.

Because then—and only then—the professor should look to select the learning activity that will best deliver the learning objective. Will it be an asynchronous lecture component on that topic, with an embedded quiz? Will it be a short live (synchronous) lecture on the topic, with some group work? The professor should select the assignment or activity to meet the learning goal, which means that the online modalities will vary throughout the semester. To suggest that you should make live (synchronous) teaching the “default”<sup>13</sup> with tape available to students who could not be “there” (whether in person or online at the particular time you offered it) is to lose the opportunity to leverage the best teaching technology to optimally meet the learning outcome you have identified. Put another way, if a course design uses all the same modality (for example: live lecture on Zoom or all asynchronous lectures, etc.) then you have a pretty good idea that it was not redesigned from the back to the front. And it is likely not using the optimal activity and technology to meet each of the myriad learning outcomes for the course. It is, unfortunately, trying to replicate the traditional classroom experience with one teaching modality, and squandering the opportunity that online learning affords us to teach in a more effective multi-modal manner.

## II. ASSESSMENT METHODS FOR ONLINE INSTRUCTION

When the topic of assessment comes up at conferences for law professors, there is often an audible groan in the room. It sounds like more work, and we

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12. *What is the Difference Between Formative and Summative Assessment?*, CARNEGIE MELLON UNIVERSITY EBERLY CENTER, <https://www.cmu.edu/teaching/assessment/basics/formative-summative.html> [<https://perma.cc/W6VM-K6DT>].

13. Nina A. Kohn, *Teaching Law Online: A Guide for Faculty*, J. LEGAL ED. (forthcoming 2020) (manuscript at 4–6), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3648536](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3648536).

already are stretched pretty thin. Many law professors have dozens of students, and committee service and publication requirements. One exam is about as much as they feel they can grade per semester per student.

But that view overlooks a silver lining in the expanded use of online learning technologies that we are currently experiencing. It is possible to automate much of this, and to have the upfront work reusable each year thereafter. Online quizzes are the most obvious form of this, but there are ways to embed assessment in video, and of course you can have a discussion board that Teaching Assistants can review. CALI has over 1,000 such quizzes that have been written by law professors and peer-reviewed,<sup>14</sup> and many law book publishers have developed similar assessments. Research has shown that students need not only just the one quiz near the time they learned the concept but follow up questions about the concepts so they retain what they learned over time. This is known as “Spaced Repetition,”<sup>15</sup> and these assessment formats are available for the major subjects, and customizable by the professor. There are short answer questions that might generate a paragraph of text, but these can be peer-reviewed by the students for each other with some upfront training and (reusable) effort.<sup>16</sup>

If each component of the course had a quiz or self- or peer-assessment at the end, students would benefit and plenty of research indicates their learning would improve.<sup>17</sup> It is certainly still acceptable to retain the final exam at the end of the course (the “summative assessment”) but it can carry less grade weight than it did previously so the formative assessments throughout the course have some incentive, and the students have an idea of how they are doing before they get to the final. Because these types of assessments are fairly easy to create and administer in the online environment, and reusable year after year, you will find that students will appreciate them, their final exams will be better, and—also an important benefit—the ABA will approve.<sup>18</sup>

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14. A complete listing of the several hundred currently available CALI Lessons can be found here: *Lessons*, CALI, <https://www.cali.org/lesson> [<https://perma.cc/XN99-DYL5>].

15. For information about Spaced Repetition as a learning methodology, and the SeRious™ software for law students that uses it, see SPACED REPETITION, <http://www.spacedrepetition.com> [<https://perma.cc/C5TU-KRJQ>].

16. See PEERCEPTIV, <https://peerceptiv.com/> [<https://perma.cc/5XSE-ARW5>]. For a video of Prof. Tracy Norton explaining how she uses Peerceptiv in her law teaching, see Tracy Norton, *Online Assessment in Action* at 1:40 pm (Sept. 27, 2019), Conference on the Online & Hybrid Learning Pedagogy: Toward Defining Best Practices in Legal Education, held by the University of Denver Sturm College of Law (Sept. 26–28, 2019), <https://www.law.du.edu/online-learning-conference/conference-schedule> [<https://perma.cc/LSG4-QYK7>].

17. Sean H. K. Kang, *Spaced Repetition Promotes Efficient and Effective Learning: Policy Implications for Instruction*, 3 POL’Y INSIGHTS FROM THE BEHAVIORAL AND BRAIN SCIENCES 12, 12 (2016).

18. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *supra* note 10.

## III. BENEFITS OF HYBRID COURSE DESIGN

During the initial phase of the Covid crisis in March, most law schools shifted their courses to a fully online teaching environment.<sup>19</sup> Some of them continued this practice in the Fall semester of 2020.<sup>20</sup> While fully online courses can work and be effective—with at least the work contemplated in Section II above being completed and improved year after year—some of what we do is more effective in an in-person environment. Zoom is terrific for many group discussions, but nuances of expression are hard to pick up on—both ways—in the “Brady Bunch” screen, and in larger classes you cannot even see everyone at the same time. Clinical teaching relies on a lot of in-person interaction, and it is hard to have the experience of a courtroom (in, say, a Trial Practice class) in your bedroom. Many experiential courses—at their best—rely on some in-person learning.

So, what is needed, in many cases, is a hybrid learning environment that includes a mix of online and in-person instruction. One that leverages learning technologies to advance learning goals that can be effectively achieved online, and that maximizes the precious in-person time by reserving for those classes instruction and group work that can be most effectively delivered in that context.

What we must come to understand and accept, indeed, is that the future is *hybrid*. It already is hybrid, actually, in so many ways. Look at your own day to day life for myriad examples of this truth. You still drive an analog car, but you probably do not use paper maps anymore. You read a digital book on a Kindle or App, but you still read some things on paper as well. And law instruction is already hybrid in format. Any professor who posts material online for students to interact with is already teaching in a hybrid way. Think of an audio mixing board: we are really just talking about moving the “slider bar” that changes the mix somewhat.

Further, as noted in the Introduction, the *interesting* question is: what is it about each teaching modality that made it a better choice for a digital solution, and what is still better in an analog form? Then apply that test to the hybrid learning environment for every course.

It seems more than possible that not every moment spent in lecture in the traditional in-person classroom pre-Covid was optimized for that precious resource (the in-person time). It is possible that we took in-person class time for granted—professors and students alike. But we also noticed over the last decade

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19. Karen Sloan, *Here Are the Law Schools Moving Classes Online Amid Coronavirus*, LAW.COM (Mar. 10, 2020, 2:05 PM), <https://www.law.com/2020/03/10/here-are-the-law-schools-moving-classes-online-amid-coronavirus/> [<https://perma.cc/KHL3-PT58>].

20. Karen Sloan, *Law Schools that Planned to Return to Campus in Fall are Reversing Course*, LAW.COM (Aug. 5, 2020, 2:21 PM), <https://www.law.com/nationallawjournal/2020/08/05/law-schools-that-planned-to-return-to-campus-in-fall-are-reversing-course/> [<https://perma.cc/CAJ3-RNBB>].

(or more) that our students were occasionally tuning us out, and surfing on their laptops. This dreaded discovery led to some professors banning laptops in their classrooms.<sup>21</sup> Another possible response might be for us to look for those places where students were tuning out and selecting a teaching method that would engage them instead. A hybrid teaching environment can help us do this.

So, in addition to redesigning your course from back to front, and including assessments, you might spend some time thinking about whether the particular topic you are coming to next (say, the Mailbox Rule in Contracts) would be more effectively taught using a short video lecture with diagrams and followed by a quiz. That sounds difficult, but another great development of the last decade is that our law schools have terrific, and sadly often underutilized, tech staff members who can do much of this with instruction by the professor on the learning goal. Then, the precious in-person class time can be used to revisit, rediscover, and emphasize particular points or hypotheticals using the Mailbox Rule.

A hybrid learning environment is optimally designed with the maximization of the in-person time, as well as the utilization of the best technology to teach and embed a particular concept of law in our students. As we make these decisions in our courses, we will learn how to use the correct teaching modality in service of the planned learning goal for the particular course that we teach. And we will share this learning as it develops in conferences and papers, as we always do.

#### IV. USING AN INTEGRATED LEARNING MANAGEMENT SYSTEM

It is probably increasingly clear that this vision of the multi-modality form of a law course can have a lot of moving parts. This is true, but it is a feature, not a bug. The well-designed multiple component approach will enhance learning, but the process can generate quite a few individual components. This reality does require a form of hyper organization so that it is clear at all times to the student what they are learning, and what is expected of them. The days of the three-page syllabus with dates and textbook page numbers are in the past. So, a few recommendations on this aspect are in order.

It is important to use the learning management system that your school or university uses. It might be Blackboard, or Canvas, or something else. Each of these systems are, today, effectively interchangeable. They are individually good at some things and not so good at other things. The things they are not so good at can be solved with workarounds (again, your tech folks can help you here). But it helps students if all professors at their school are using the same

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21. Martha Neil, *More Law Profs Ban Laptop Use in Class*, ABA J. (Jan. 12, 2010, 12:47 AM), [https://www.abajournal.com/news/article/more\\_law\\_profs\\_bring\\_down\\_hammer\\_banning\\_laptop\\_use\\_in\\_class](https://www.abajournal.com/news/article/more_law_profs_bring_down_hammer_banning_laptop_use_in_class) [<https://perma.cc/EN9U-7TJD>].

university-approved system. Being university-approved, many law professors will have assistance at that level as well.

Publish the course syllabus on the LMS showing all the moving parts to the course, and link to them internally. Organize the modules in a clear fashion, so it is obvious to the student that there are, say 5 components to Module 6, and that they should be reviewed and interacted with in that order. And they should be begun on a certain date and completed on a certain date after that. And make clear what must be completed before the next live or in-person class.

I suppose this seems very tedious and entailing a lot of work. But again, the technology saves professors time here. At the end of the year, the professor can copy the course into the next year's course container and make whatever (probably minor) adjustments are needed from there. (Student scores, answers, and discussions from a previous year are not copied, but you will want to confirm that).

#### V. THE IMPORTANCE OF CLEAR AND REGULAR COMMUNICATION

Among the advantages of the traditional law classroom was that, for the most part, the expectations did not change. Read 30 pages. Come to class and we will talk about those cases. If we do not get to all of it, we will pick up where we left off in the next class. There will be a review session at the end, and one final exam for the full grade. This might not have been the best overall learning environment, but it did have the benefit of clear expectations.

In the more hybrid and multi-modal learning environment contemplated here, this advantage is exchanged for another. At the cost of complexity, adaptability to the needs of the learners is improved. As noted, there are probably many "moving parts" to each component, and perhaps multiple modules for each part of the course. Students need to know where they have been, where they are, where they are going, and what is expected next. But in varying the modalities, the hybrid course design is more effective for a wider selection of students.

Fortunately, a lot of the complexity can be tamed by the LMS, but it is important to do more than just that. It is recommended that you start each class with a reminder of where the course sits that day, and what is coming up. And this is true whether the class is in-person or in the form of an online component. If, at the end of an in-person class in Week 7, for example, it is reiterated what is online, and what needs to be completed before the next in-person class, this is advisable. Then, consider starting the next part of the asynchronous module online reiterating what was just covered in the in-person class, and what is coming up for this one. Yes, it all seems repetitive and perhaps tedious, but the hybrid environment requires it. And many students who might not be the best time-managers will appreciate it.

Also, use email, of course. Perhaps an introductory email to all students at the beginning of the course, and a check-in email every two or three weeks. Each

LMS also has an announcement feature, which can be set up to generate an email to each enrolled student.

## VI. SELECT THE BEST TECHNOLOGY FOR EACH LEARNING ACTIVITY AND OUTCOME

Selecting the best way to achieve each Learning Outcome is something easy to say, but not necessarily easy to do. We are still in the early days of broad deployment of these myriad tools and modalities, and it will take time before we really have developed best practices for each course and type of material being taught.<sup>22</sup> But each professor should enter into this with a spirit of inquiry and consider collecting data and learning as they go. Law professors are actually generally quite gifted teachers, and while the hybrid learning environment is challenging at first, it can also be intellectually engaging. Law professors like intellectual engagement, and they want to be good teachers. While much has yet to be investigated, there is a developing consensus on a few elements of this transition that should be helpful.

### A. *Asynchronous vs. Synchronous Learning*

This article has used the term “in-person” learning to refer to the traditional classroom environment, whether for the full class or a sub-set of your assigned students. And it has made mention of Asynchronous course content provided in the LMS, where the professor might have taped a short lecture and added a quiz afterwards. Students are given a limited amount of time to complete that Asynchronous course content before the next in-person class. But another option is Synchronous online classes. This is where, during a set class time everyone is together but online and is analogous—but not the same—as an in-person class. In the Spring semester of 2020, many faculty members used Zoom for this, with mixed results.<sup>23</sup> Some critics referred to it as “Emergency Remote Teaching,” not online pedagogy.<sup>24</sup>

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22. Fortunately, this is already underway. In the Summer of 2020, many sub-disciplines of law teaching held their own online conferences about effective online pedagogy. *See, e.g.*, the William & Mary Conference for Excellence in Teaching Legal Research & Writing Online, WM. & MARY L. SCH. (June 18–19, 2020), [https://law.wm.edu/academics/intellectuallife/conferencesandlectures/excellence\\_online\\_teaching/index.php](https://law.wm.edu/academics/intellectuallife/conferencesandlectures/excellence_online_teaching/index.php) [<https://perma.cc/SC5V-85KA>].

23. Kelsey J. Griffin, *Harvard Law Student Files Class Action Lawsuit Demanding Tuition Reimbursement*, HARV. CRIMSON (Jun. 26, 2020), <https://www.thecrimson.com/article/2020/6/26/harvard-coronavirus-law-school-tuition-lawsuit/> [<https://perma.cc/2CUG-UWY4>]; Marlyse Vieira, *Classes Online: Student Perspectives and Privacy Concerns about Zoom*, VA. L. WKLY. (Mar. 25, 2020), <https://www.lawweekly.org/front-page/2020/3/25/classes-online-student-perspectives-and-privacy-concerns-about-zoom> [<https://perma.cc/PLU9-Z5MB>].

24. Charles Hodges et al., *The Difference Between Emergency Remote Teaching and Online Learning*, EDUCAUSEREVIEW (Mar. 27, 2020), <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning> [<https://perma.cc/RP5T-74DD>].

But a live class on Zoom (or similar technology) has a function. If you need everyone to hear the same thing at the same time it works perfectly well. If you then need your students to act on that information in groups, live—well, then it is still a good option. Proceed to teach the content you need to but try to limit straight lecture to 7–10 minutes at a time.<sup>25</sup> Then use Zoom’s breakout group feature, and then move from group to group, and help each group stay focused in their discussions. You just want to be sure that you have given your students everything they need to succeed in the groups in advance. Perhaps that is where a companion asynchronous module would be beneficial. This course design is often referred to as the “Flipped Classroom”—where much of the “content” is asynchronously provided, and the in-person time (whether in the classroom or on Zoom) is used to “process and apply” the content just learned.<sup>26</sup> The important thing is to think through what the optimal “scaffolding” of the material is for the majority of your students (it will never be perfect for all of them) and then design around those decisions.<sup>27</sup> Simply putting everything online in synchronous live Zoom classes abdicates this work, and the opportunity to be more effective and engaging with your students.

An additional format getting wide usage in the Fall of 2020 was the “Hyflex” teaching environment. This is where there is an in-person class, but some students in the class are not in the classroom, but rather participating remotely. This has become popular during the Covid crisis because some students may be immune-compromised, or live with someone who is, or be sick and recovering from the virus themselves. Or, law schools are choosing for health and safety reasons, to teach large courses in smaller cohorts, whereby one cohort is physically in the classroom one day, and the other cohort is in the classroom the other day of class, and both are participating live, online, on the day they are not in the classroom. It will be interesting to see if in a post-Covid world whether this format will continue to be popular. Professors are discovering that it is difficult to teach to students who are not in the room, and those who are, at the same time. A Teaching Assistant can help to bridge the gap and bring the online students into the discussion. But beyond this, much is still being learned about how to manage the “split” class effectively.

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25. Philip J. Guo et al., *How Video Production Affects Student Engagement: An Empirical Study of MOOC Videos*, *PROC. ACM CONF. ON LEARNING AT SCALE* (2014), <https://dl.acm.org/doi/10.1145/2556325.2566239> [<https://perma.cc/KQ22-23ES>].

26. See William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 *J. LEGAL EDUC.* 93, 95 (2014) (providing a description of the flipped learning model).

27. See Janneke van de Pol et al., *Scaffolding in Teacher-Student Interaction: A Decade of Research*, 22 *EDUC. PSYCH. REV.* 271 (2010) for the concept of scaffolding in learning.

### B. *Reasons to Avoid Lecture-Capture*

Worse than a live Zoom class every day of class would be just to tape your lectures to an empty room, and let students play them at their leisure. (This is known as “lecture capture.”) If you do this you have almost fully dispensed with the advantages of online learning, carefully implemented. You have also opened yourself up to the apocryphal question (if you are a Civil Procedure teacher, for example): “Why can’t we just watch the same lecture by Arthur Miller?” The hybrid learning environment, designed by *you*, including regular contact with *you*, is the best answer to that question. It is *your* example and guidance, of course, that will transform your students into professionals if the course is effectively delivered, regardless of whether it is online or in-person, or a combination of both.

### C. *Video vs. Voice*

When taping a lecture, it is tempting sometimes to just prepare a voice-over-PowerPoint. But students want to *see* you, so at least include video of you speaking to them at the beginning and end of the lecture component. A good use of this is to tape a “what this class is about” short video, just of you speaking to the students about what is coming up next in the course and why. Then, create your PowerPoint and tape your lecture with video and mix the two, going back and forth where appropriate. This makes for the nearest digital analogue to an engaging live lecture.

### D. *Production Values vs. Getting it Done*

It would be understandable at this point for a law professor to lament not having gone to film school before law school. Further, some of us do not like to see ourselves on screen. The software works pretty well, but it can be clumsy to turn the camera off in time or the volume off or on at the right time. The best thing is to focus on getting it done. Our students will forgive the occasional blip, so do not worry if it is not perfect. Just get it done and ask for their forgiveness. But this is not an excuse to be sloppy, either. Consider having your school purchase a podcasting microphone and an autofocus web camera. Consider your Zoom background (a messy bed is likely to be more distracting than a bookcase). Direct the camera at your forehead, level with your eye line, not up your nose.<sup>28</sup>

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28. See, e.g., JiaYing Grygiel, *How to Look Good on Zoom: Tips for Video Conferencing Like a Pro*, SEATTLE TIMES (Apr. 20, 2020, 11:12 PM), <https://www.seattletimes.com/life/how-to-look-good-on-zoom-basic-tips-that-will-help-you-appear-more-professional-while-video-conferencing/> [<https://perma.cc/J4G6-46KJ>].

### E. *Teaching Materials for Hybrid Learning*

The traditional casebook used for decades in legal instruction does not necessarily translate well to a modular, hybrid learning environment. It can still be used but doing so often misses the opportunity presented by the learning activities supported by the technology. Fortunately, legal textbook publishers have realized this, and there are a number of textbook series that are designed to be used in a more modular, problem-based, course design. Among them are the Context and Practice Series,<sup>29</sup> and the Skills & Values Series.<sup>30</sup>

### F. *General Tips and Methods*

A few remaining tips for your consideration: If you are not all able to be in-person for the first class, prepare a “Class Zero” at the beginning of your course. Post your syllabus well ahead of that class and make it a synchronous Zoom session. Spend some time getting to know your students, explain the syllabus and how the course will proceed. Send them into breakout groups so they can spend some time getting to know each other, using an “ice-breaker” you have designed. Meet your students’ pets. Laugh. Encourage your students to connect with each other offline.

What we have learned so far is that law students—who already sought contact with their professors—crave it even more when learning from a distance. Anything you can do to create community and enhance contact with your students is encouraged. Virtual office hours—fully online on Zoom (or similar tools) have been popular with students.

Via email before that Class Zero, ask about accommodations that a student might need to fully participate in the class. We still have a digital divide, so make sure your students have sufficient bandwidth and a camera and microphone. Arrange to get them tech help if they need it. Put them in touch with the Dean of Students for support and your accommodations office can also help. A little bit of outreach in this context can go a long way.

For live synchronous classes, use them more sparingly than usual, and take brief (5 minute) breaks every 20–30 minutes. Allow students to use the chat function but ask them to limit their use to only public chat and assign a TA to monitor it for and with you. You can do random calling on students, or they can raise their hand or post a question in the chat.

Try to give students something to engage with regularly—every week at minimum. This could include online quizzes, small writing projects, and peer review exercises. Simulation problems, involving a family member or fellow student acting as the client, can be effective. Virtual field trips—where a student

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29. *Context and Practice Series*, CAROLINA ACAD. PRESS, <https://cap-press.com/p/CAP> [<https://perma.cc/9HE5-EFKK>].

30. *Skills & Values Series Titles*, CAROLINA ACAD. PRESS, <https://cap-press.com/ms/257/Skills-&-Values-Series> [<https://perma.cc/T852-SRH3>].

might visit a court hearing and report back to the class about what they learned—will be engaging. Using a streamed online court hearing—which are becoming increasingly available as courts have moved online—makes it so that other students can view the same court hearing after learning about it from their fellow classmate.

Keep in mind that student well-being is critical to their success. This is always true, but it is particularly true in an online learning environment, where you will have fewer cues that a student is struggling. When you are teaching a live-online class, ask all of your students to keep their video window on, and cycle through them during synchronous sessions so you can see them. Call on groups of students instead of individuals, to ease the pressure of performance anxiety, which for some can be heightened by the online environment. Use the extensive, and revealing, data that your LMS automatically compiles about student engagement with the material you post online. Take the time each week to see if what you are posting is being used and downloaded by your students. If you see a student who is not using the online materials you have posted, reach out to that student.

#### CONCLUSION

The default teaching mode for the last four centuries was for professors to be the learned scholars behind the podium, what is sometimes called the “Sage on the Stage.” But this model of teaching does not work as well anymore. The modern student has so many different distractions, is digitally soaked and marinated, and often has trouble sitting still for the length of our typical classes. Online pedagogy actually helps with this, because it demands careful course design and “chunking” of content into smaller and more digestible components. By learning through formative assessment activities, students keep moving, see progress, and stay more engaged.

Instead of thinking of ourselves as the “Sage on the Stage” we should think of ourselves as the “Guide on the Side.”<sup>31</sup> Where instead of thinking of our students as vessels for *our* knowledge, we think of them as co-creators of *their* knowledge with our assistance and guidance. Online learning environments help us do this.

We are entering a new age for legal education, one that will feature deeper learning, develop stronger problem-solving skills, and put greater responsibility for learning on the student. This will help them become the life-long learners of the law we have always wanted them to be.

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31. See, e.g., David Thomson, *Sometimes You Have to be the Guide on the Side*, 20 SECOND DRAFT 23, 23 (2005); Alison King, *From Sage on the Stage to Guide on the Side*, 41 COLLEGE TEACHING 30, 30 (1993).