

LAW TEACHING STRATEGIES FOR A NEW ERA

Law Teaching Strategies for a New Era

BEYOND THE PHYSICAL CLASSROOM

Edited by

TESSA L. DYSART & TRACY L. M. NORTON



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To all the teachers and students who survived (and even tried to thrive) during pandemic teaching—this book is for you. To a brighter future!

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To the Future

Tessa L. Dysart*

I taught my first fully online asynchronous class in the spring of 2017. It was a masters-level law class on legislation and regulation. It ran eight weeks, and I had fifty students. As soon as the class started, I realized how unprepared I was to teach online. For example, my syllabus did not specify what time zone assignments were due in, which was an immediate problem since I had students all over the world in my class. I had also assigned a significant number of discussion board posts and essays, not realizing how much time those assignments would take for me to grade on top of an existing heavy in-person teaching load. Looking back now with even more perspective, I suspect that my videos were not that great and certainly were not appropriately short for the asynchronous model.

When I had finished teaching that course, I was convinced that online teaching should remain where it was at that time—a teaching style used mostly for legal masters-level courses. At the same time, I knew that there was a robust discussion in the law school community about online JD-level courses. In fact, when I interviewed for my current job, I remember talking about my online teaching experience—which was considered a plus.

Fast-forward three years to the spring of 2020. In addition to teaching a section of Constitutional Law I, I was creating a fully online asynchronous Constitutional Law II class that would run that summer. Despite my previous unpleasant experience with online teaching, I had answered a general call from our dean to consider offering doctrinal classes online. But, in my mind, this online class would be different. This time I had a professional studio in which to record my lectures and a team of expert online course designers available to back me up. I was ready.

And then COVID-19 hit.

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My school was just finishing spring break when our University president announced that classes were moving online. As I pondered how I would teach my Spring 2020 classes online, I did not stress too much about Constitutional Law. It seemed relatively easy to lecture over Zoom, even if I could not execute all of the formative assessments that I had planned. My moot court class that included an intramural competition presented a different challenge, which I have blogged about.¹

The planning of my asynchronous online class changed, too. Instead of recording in the studio, I recorded each video from my home office with a rotating set of virtual backgrounds, one for each case. Our studio team edited my videos, and our online course designers still built the course, but the video quality certainly did not match what could have been filmed in the studio.

As the summer progressed, the topic of remote learning and returning to the in-person classroom was one of the many COVID-related topics that dominated the news. News story after news story reported that students did not like online learning.² Many of these stories focused on the “pandemic teaching” that was happening in schools across the country, and some seemed to consider “pandemic teaching” and online teaching to be functionally equivalent. I even saw stories that appeared to conflate distance learning at the K-12 level with collegiate or graduate distance learning. Despite my earlier reticence about online teaching, each time I saw a story conflating the different types of online teaching, I loudly complained to my spouse that these news stories were comparing apples to oranges. I knew that the “pandemic teaching” that I had done in the spring was vastly different from the planned asynchronous Constitutional Law II class that I was teaching that summer.

Whether based on my experiences teaching during the pandemic or my realization that legal education was in for a profound change, I developed this need to defend online teaching—not pandemic-teaching, but real online teaching. And thus, the concept for this book was born. This book is the first comprehensive look at online law teaching. It starts with the premise that COVID-19 has forced lasting change on the practice of law. How we conduct trials and appellate arguments, depose witnesses, staff offices, and meet with clients has changed, and many of these changes will be

1. Tessa L. Dysart, *Moot Court in the Age of Coronavirus*, APP. ADVOCACY BLOG (Mar. 23, 2020), https://lawprofessors.typepad.com/appellate_advocacy/2020/03/oral-advocacy-in-the-age-of-coronavirus.html; Tessa L. Dysart, *My Final Thoughts on Moot Court in the Age of Coronavirus*, APP. ADVOCACY BLOG (Apr. 27, 2020), https://lawprofessors.typepad.com/appellate_advocacy/2020/04/index.html.

2. Joe Nocera, *College as We Know it Coming to an End? Don't Bet on it*, BLOOMBERG (May 22, 2020), <https://www.bloomberg.com/news/articles/2020-05-22/college-students-parents-professors-hate-online-classes>; Erin Richards, *This is hell: Parents and kids hate online classes. Going back to school likely will include more of it*, BAY ST. PARENT (June 29, 2020), <https://www.baystateparent.com/news/20200629/this-is-hell-parents-and-kids-hate-online-classes-going-back-to-school-likely-will-include-more-of-it>; Larry Ferlazzo, *Student: Online Learning Is 'Stressful and Irritating'*, EDUC. WK. TCHR. (May 7, 2020), https://blogs.edweek.org/teachers/classroom_qa_with_larry_ferlazzo/2020/05/student_online_learning_is_stressful_and_irritating.html.

permanent. Even the bar exam has gone digital! Therefore, how we teach students to become lawyers must also change.

Even before the pandemic, the ABA Standards and Rules of Procedure for Approval of Law Schools were starting to acknowledge that change. The 2018–2019 Standards changed the number of distance education credits that a student could earn toward graduation from fifteen credits to one-third of the total credits.³ But legal education changes slowly—look at how long the Langdellian case method has stuck around! While the ABA granted variances to law schools to teach online during the COVID-19 pandemic, at the time of this writing, it remains unclear if the ABA will be as flexible post-pandemic, or, at a minimum, continue to conflate synchronous and asynchronous classes under the heading of “distance education” despite the fundamental differences between the two approaches.

Our hope is that this book will help law teachers navigate this fundamental transition occurring in our profession. This book is designed to be a comprehensive look at developing the law school curriculum of the future. It is not a book on emergency remote teaching or pandemic teaching. Instead, it is a book that looks to the future of legal education and practice and recognizes that the future is, to a greater degree, digital.

The book contains thirty-four chapters written by law professors who have navigated the transition beyond the physical classroom. Some transitioned pre-COVID-19, while others made groundbreaking changes when the pandemic hit and are continuing to innovate.

The book starts with chapters on innovation and inclusion—how do we get started with this transformation to new modalities of learning and how do we make sure that classes of students are not left behind, including students with poor technology access and disabilities. Next, we look at designing courses and building community in these new “classrooms.” Finally, we look at specific course design, from traditional first-year courses to upper-year electives and skills courses.

While this book may up your pandemic teaching game (assuming that there is still pandemic teaching going on when this book is released), we hope that it does so much more than that. We hope that it radically transforms how you view the law school classroom. The future of legal education is now, and that future includes a digital component. Furthermore, as many of our authors point out, the future also includes increased formative assessment and education in the interpersonal and professional

3. Compare A.B.A. Sec. Leg. Educ. & Admis. to the Bar, *Standards and Rules of Procedure for Approval of Law Schools*, Standard 306(e), at 19 (2017–18), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf, with A.B.A. Sec. Leg. Educ. & Admis. to the Bar, *Standards and Rules of Procedure for Approval of Law Schools*, Standard 306(e), at 19 (2018–19) https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf.

skills that are so essential to lawyering. Breaking out of the physical classroom, as our authors point out, presents myriad opportunities to experiment with formative assessment and professional skills teaching.

Welcome to the future. It may not include flying DeLoreans or true hoverboards, but it will include video calling and conferencing, online course materials, online meetings, and frequent requests to unmute yourself.

Lessons Learned

Tracy L. M. Norton*

If you can't be a good example, then you'll just have to be a horrible warning.

— Catherine Aird

In December 2020, over the course of a week, I replaced all the light bulbs in my house with smart bulbs and programmed them all to respond to voice commands through Google Home. I explained to my husband and three daughters—ages 20, 17, and 6—how the lights worked, what each was named, and which Wi-Fi network the lights were on. It went off without a hitch if you ignore the one time my 6-year-old daughter, Lizzie, was found standing in front of Google Home saying, “Google, you’re not very good at this,” when Google failed to turn on the light she had asked for.

My point is this: my family is used to the way I—a benevolent technology dictator—conduct a forced march through new tech. To be honest, how I approach my family with new technology is just a variation on how *I* experience new technology. I hear about the next big thing and often read the description as an edict: “There’s a better way to do what you’ve been doing—get hoppin’!”

I bring this same energy to my law teaching, where it collides with the truth that legal education is slow to change. So I was delighted when the American Bar Association adopted standards requiring ongoing formative assessment of the program of education.¹ It seemed that overnight we no longer just *aspired* to be better teachers; circumstances *required* that we be better teachers. We learned new words and con-

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1. A.B.A. Sec. Leg. Educ. & Admis. to the Bar, *Standards and Rules of Procedure for Approval of Law Schools*, Standards 314–15, at 23–24 (2014–15), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf.

cepts: spaced repetition, research-validated assessment, evidence-based teaching, instructional design. I approached this the way I approached new tech: if there is a better way, we must do it! I read *Make It Stick*² and *A Mind for Numbers*³ and went to teaching workshops⁴ and joined the Team-Based Learning Collaborative.⁵ I flipped my classroom. I joined a group of law professors to learn how to use a research-validated peer review platform. I upended twenty years of teaching experience, re-examined everything, and implemented it right away. I turned everything around on a dime.

The thing about turning on a dime is that the Laws of Physics are not on your side. And while legal education was changing, it was not turning on a dime. I had a painful couple of years—during which I met resistance from students, colleagues, and administrators—but learned so much: about what had been missing in my teaching up to that point; about how hard it is to change the presumption that individual achievement—and not teamwork and leadership—are what students should be rewarded for; and about how much of a forced march through new territory I can orchestrate without an institutional commitment or, at least, a critical mass of faculty on the same page. Being an early and enthusiastic adopter, particularly as a female professor, can take a toll on course evaluations as students question whether you are doing things the “right” way.⁶ Fortunately, the pain of being an early adopter has eased somewhat as the A.B.A. standards have required changes that are becoming more commonplace in law schools.

Cut to March 2020. All legal education experienced what I had experienced over the past four years. Suddenly, legal education had to turn on a dime. Thousands of law professors—myself included—spent the summer in online workshops learning to teach online. Although I had taught courses in all three modes of online teaching, I had never taught my 1L courses online. Fortunately, armed with my hard-won experience of how not to approach new challenges in teaching, I went into this challenge with some lessons in mind that I want to share with you as you read these chapters.

This is exactly the book I wish I had when I started online teaching in 2013. It is probably best that I did not, though, because I would have tried to implement every single good idea in one semester. And with thirty-four chapters of great ideas, that could have been dangerous. As you read about new strategies that excite you and maybe overwhelm you a little bit, I offer these five hard-won suggestions. Take what you need; leave the rest.

2. PETER C. BROWN ET AL., *MAKE IT STICK* (2014).

3. BARBARA OAKLEY, *A MIND FOR NUMBERS: HOW TO EXCEL AT MATH AND SCIENCE (EVEN IF YOU FLUNKED ALGEBRA)* (2014).

4. Thanks to the Touro College Graduate School of Education for bringing in authors Peter C. Brown, Barbara Oakley, and Dylan Wiliam to conduct hands-on workshops.

5. TEAM-BASED LEARNING COLLABORATIVE, www.teambasedlearning.org (last visited Mar. 27, 2021).

6. See, e.g., Colleen Flaherty, *Even ‘Valid’ Student Evaluations are ‘Unfair’*, *INSIDE HIGHER ED*, Feb. 27, 2020, <https://www.insidehighered.com/news/2020/02/27/study-student-evaluations-teaching-are-deeply-flawed>.

I. Be Kind

To yourself. To your students. To your colleagues. To administrators. It will be a while yet before we know what the new era of law teaching looks like. Some things will seem obvious to you that are not obvious to others, and the reverse is true. Recently, I talked to a student who snickered while looking down throughout the class. Every class. All semester. I told him that it was distracting me and that it had to stop. He was shocked that it distracted me and at a loss as to how to prevent it from happening. I softened when I realized it had honestly never occurred to him to put the phone away in a Zoom session. He seemed genuinely grateful for the suggestion.

The thing about technology in education is that it provides some marvelous solutions but can also dehumanize us. The more time we spend online, the less we see each other as three-dimensional people. For me, technology can reduce people to one-dimensional characters in my head. For that reason, it helps to make sure that as many interactions as possible are face-to-face so I can connect with my students, my colleagues, and my administrators as real people who are not, in fact, out to make my life more difficult. Those face-to-face interactions help me be kinder to myself by avoiding frustration, and they help me be kinder to others, whose faces remind me of their humanity and the fullness of their lives beyond my experience with them.

II. Easy Does It

Learning to teach online and, at the same time, incorporate strategies like team-based learning or backward course design is like drinking from a fire hose. Prior to the dramatic move online in March 2020, I had already (mostly) learned my lesson. So I have limited how much information I have taken in over the last year. The temptation to learn more and implement more is strong sometimes, but I am not effective when I try to implement the “best” techniques all at once. I am instead a frantic, overwhelmed crank. My suggestion is to do what you can when you can. Try out one technique instead of three. Convert one course instead of all of them. Use a new assessment tool in one unit of your course instead of the whole thing.

III. Help Your Students Get on Board

Perhaps, like me, you have labored under the misapprehension that young people like the best new thing. Why would they not want to use cool, new technology for formative assessment? Why would they not want the best evidence-based teaching they can get? I have no idea why they do not, but my experience has been that they do not. Orienting students to new tech and to evidence-based teaching strategies that are unfamiliar can smooth the way for you and ease their concerns considerably.

You can orient students with written instructions, short videos, or in-class demonstrations. For example, for evidence-based teaching strategies, record a short video containing data showing the differences in long-term memory between traditional

study techniques and evidence-based techniques. For some tech, a simple one-page instruction sheet with screenshots is helpful. You might also record a short, simple demo video and explain how the tech makes their lives easier as compared to the non-tech option. For tech that is more complex or that will ultimately have a grade associated with its assessments, consider an in-class, hands-on demo.

IV. Don't Reinvent the Wheel

Because legal education is later to the digital education party than other areas of education, resources in other disciplines abound. Expand your network of resources and experts. In addition to the usual listservs and blogs that law professors might rely on for help, consider social media groups. Facebook has an array of teaching groups for different disciplines, all of which grapple with online teaching challenges.⁷ Remember to look beyond just teachers. Instructional designers have become an incredible resource for law schools.⁸ When you cannot figure out how to accomplish something online, or you want feedback for an idea you are considering, reach out on social media if your immediate network is not able to help.

Expand your network beyond higher education also. K-12 educators are well organized in sharing teaching ideas, and they share those resources in places law professors may not think to look. For example, I have been surprised at how useful Pinterest is for online teaching, particularly if you are looking for how to complete a class activity online.⁹ Another K-12 resource called Teachers Pay Teachers,¹⁰ has recently added a suite of digital tools.

V. Get a Buddy

In 2016, my colleague Jack Graves asked if I was interested in working with Jane Winn to explore using a research-validated peer review platform that Jane had been using for a few years with law students.¹¹ In my first conversation with Jane, she introduced me to the idea of a “community of practice.”¹² The community of practice that Jane and Jack put together consisted of about seven law professors who met weekly over the summer to learn how to use the peer-review platform in a law school setting.¹³ We took turns being the “professor” so we could explore the platform as both stu-

7. Two that have been very helpful for me in online teaching recently have been Pandemic Pedagogy and Pandemic Pedagogy: Law Teaching in a Time of COVID-19.

8. One Facebook group of instructional designers is Instructional Designers in Legal Education (IDLE).

9. PINTEREST, www.pinterest.com (search in search bar “online teaching”) (last visited Mar. 27, 2021).

10. TEACHERS PAY TEACHERS, www.teacherspayteachers.com (last visited Mar. 27, 2021).

11. PEERCEPTIV, www.peerceptiv.com (last visited Mar. 27, 2021).

12. CREATING A COMMUNITY OF PRACTICE, www.communityofpractice.ca (last visited Mar. 27, 2021).

13. While a number of undergraduate institutions use Peerceptiv, Jane Winn pioneered its use in law schools.

dents and instructors. While I learned a lot from Jane and the rest of the group about research-validated peer review, the idea that has stuck with me the most is using a community of practice to improve my teaching.

Since that summer, this has been my go-to strategy anytime I want to explore something professionally. I collect a handful of professors who are interested in exploring the same thing, organize us so we can work through problems and solutions, and then let the group continue organically until it comes to a natural end. I have made new friends, expanded my professional network, and learned more than I ever could on my own. Fun loves company, too.

A law professor friend tells a story about a visit she and her husband had with a financial planner. One of his first questions was, “At what age do you want to retire?” She was stumped: “I’m a law professor. I think about things that interest me, write about them, and see them published. I serve my institution and my community. I share my passion with young people and mentor them as they develop their own passions. That’s retirement.”

This is a great job, and we are fortunate that it has such longevity. No matter how you have come to online teaching—whether you had already embraced it or were forced to catch a curveball in March 2020—adapting your teaching for online delivery can breathe new life into both your online and in-person teaching. For me, it has been an opportunity to rethink everything—but not all at once!—as we head into this new era of law teaching beyond the physical classroom.

Distance Education Terms

Distance education was a quickly-changing landscape even before March 2020. Since March 2020, the landscape has evolved even more quickly as students and teachers from Kindergarten to graduate school have transferred education online and back, with stops in between. To prevent confusion in the following chapters, this book uses the following terms and definitions to refer to the marvelous array of opportunities before us since we have opened up the places, times, and modes of instruction.

Locations of instruction:

In-person. This refers to an experience in which students and the teacher occupy the same physical space while working together.

Online. This refers to an experience in which students and the teacher occupy different physical spaces while working online.

Concurrent. This refers to concurrently teaching two groups of students—one on-line and one in-person—by one teacher. This is also referred to as HyFlex teaching.

Times of instruction:

Asynchronous. This refers to an experience in which the students or the students and teacher interact with one another at different times.

Synchronous. This refers to an experience in which the students or the students and teacher interact with each other simultaneously.

Modes of instruction:

Blended. This refers to a course that is taught with a combination of in-person and online experiences that may include experiences that are synchronous, asynchronous, or a combination.

Flipped. This refers to the strategy of “flipping” traditional in-class content with traditional out-of-class content. Lecture is provided outside of class through videos, readings, or activities. Class time is then used for hands-on, collaborative activities that the teacher can observe and provide feedback on.

