Teaching Law Online: A Guide for Faculty

Nina A. Kohn

I. Introduction

In March 2020, law schools were in crisis mode. With little experience in online education, they moved with commendable speed and agility to sustain classes despite the unprecedented challenge of COVID-19. To do so, law schools typically provided faculty with technological support and training so that they could navigate learning management systems and videoconferencing software and thus avoid canceling classes.

But as higher education's spring 2020 experience suggests,[1] faculty need more than technology-focused training to teach effectively online. Although research demonstrates that both skills and concepts can effectively be taught online,[2] faculty cannot be expected to instinctively know how to adapt their teaching styles to the virtual classroom, or how to select among online instructional methods based on desired learning outcomes.

Accordingly, faculty need—and their students deserve—support and training not simply to teach online, but to teach *well* online. This article is designed to help satisfy some of the need for professional development by providing a concrete guide for faculty members who anticipate teaching law school courses online. It draws upon what I have learned from building and teaching in my

Nina A. Kohn, Visiting Professor, Yale Law School; David M. Levy Professor of Law, Syracuse University College of Law; J.D., Harvard Law School; A.B., Princeton University. The author thanks Julia Gorski for her research assistance.

1. During spring 2020, faculty were typically confused about how to teach online and students were frequently dissatisfied. *See, e.g.*, Barbara Means & Julie Neisler, with Langer Research Associates, Suddenly Online: A National Survey of Undergraduates During the COVID-19 Pandemic 6 (2020), https://www.everylearnereverywhere.org/resources/suddenly-online-national-undergraduate-survey/ (finding in a survey of undergraduate students about their spring 2020 experience that students reported "dramatically lower" satisfaction with their courses after they moved online, although the majority were still somewhat satisfied with their courses); SimpsonScarborough, Higher Ed and COVID-19: National Student Survey 23, https://cdn2.hubspot.net/hubfs/4254080/SimpsonScarborough%20National%20Student%20Survey%20.pdf (finding in a survey of college students that nearly two-thirds reported that teaching quality suffered when classes moved online in spring 2020).

2. *See, e.g.*, Nina A. Kohn, *Online Education and the Future of Legal Education*, 70 Syracuse L. Rev. 1 (2020) (discussing the literature on effectiveness of online education).

own law school's first-of-its-kind hybrid juris doctorate (J.D.) program,[3] as well as from supporting other faculty members at my home institution and other law schools translate their teaching into the virtual classroom.

The article proceeds in four sections. The first section walks faculty through the single biggest decision they will face in teaching online—whether to teach live online classes, build asynchronous classes, or combine the two modalities. Consistent with my recommendation that faculty transitioning to online teaching primarily teach live, the second and third sections guide faculty through setting up their virtual teaching space and using effective teaching techniques in the live online classroom. Finally, the article concludes with some thoughts about the long-term impacts of the massive transition to online law teaching.

The article is a marked departure from my typical scholarship—you will find the footnotes sparse and the theory kept to minimum. Instead, recognizing that law students and the legal profession will benefit if faculty work together to share best practices so that all can succeed, this article is designed to provide straight-forward guidance to support colleagues who are—or will be—teaching classes online.

II. Choosing Course Formats

Historically, "online education" was equated with asynchronous education.[4] In asynchronous classes, instruction is typically self-paced with professors and students either not engaging with one another or doing so sequentially. Increasingly, however, online education is also partially or fully synchronous. Synchronous online education uses videoconferencing software (such as Zoom) to conduct class in real time.

The single most important decision for a faculty member to make is whether to teach synchronously or asynchronously, or combine the two. This section provides guidance on making that critical choice.

A. Make Synchronous Teaching the Default

My recommendation is simple: Faculty members should make teaching synchronously their default option. Conversely, faculty should incorporate a substantial amount of asynchronous content into their classes only if they are willing and able to invest the time to carefully and deliberately design and build

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3. Most classes in the program, JDinteractive (JDi), are fully online. Each online class currently offered is fifty percent live and fifty percent self-paced (or asynchronous). Thus, each week JDi students spend half their class time in online courses working through the interactive self-paced material and attend a live class with their professor for the other half. Syracuse Univ., *JDinteractive*, https://jdinteractive.syr.edu/ (last visited Jan. 26, 2022). For more information about the program and its underlying goals see Nina A. Kohn, *JDinteractive: An Online Law Degree Program Designed to Expand Access to Justice*, 90 N.Y. State Bar Assoc. J. 30 (Sept. 2018) (describing the program and its aims).

4. Consistent with this, when Mitchell Hamline launched the first hybrid J.D. program from an ABA-accredited law school, it adopted the asynchronous modality for its online course work. Eric S. Janus, *The "Worst Idea Ever!"—Lessons from One Law School's Pioneering Embrace of Online Learning Methods*, 70 Syracuse L. Rev. 14 (2020) (providing the history of the program).

engaging asynchronous content, and are prepared to incorporate and review applied learning activities (e.g., exercises, questions) into that content.

One reason for this recommendation is that transitioning from in-person teaching to synchronous online teaching does not require professors to significantly change their teaching styles.[5] The transition does present an opportunity to rethink teaching techniques. As shown in Section IV, however, with proper training and the right technology, faculty can employ the same teaching techniques traditionally employed in a residential classroom in a live, virtual classroom. This is especially true if the professor and students can see and hear everyone in the virtual classroom, which is generally possible when law schools use appropriate technology and maintain reasonable class sizes.[6] By contrast, transitioning to teaching in an asynchronous format typically requires a more fundamental shift in teaching techniques to be successful.[7]

More importantly, professors will generally find it easier to teach law well synchronously than to teach law well asynchronously. Live teaching, in which students are required to follow and contribute to a conversation in real time, is well suited to teaching students the analytical and interpersonal skills lawyers need. It also gives students the ability to practice those skills. In part, this is because live teaching lends itself to teaching by dialogue,[8] which—although it has many critics—can play a critical role in developing such capabilities.[9] As Donald Marshall wrote in his eloquent defense of dialogue-based teaching:

5. In part because online education is often assumed to involve asynchronous teaching, it is often assumed that faculty transitioning to online teaching will need to substantially alter their teaching styles. For example, in a webinar offered in June 2020 by the Association of American Law Schools (AALS) Section on Associate Deans, professors were told in the introduction that when you teach online you are "not just transferring the same thing from in-person delivery to online delivery; you are building something new." *See AALS Associate Dean Webinar*, Vimeo (June 24, 2020), https://vimeo.com/432612980/.

6. In fact, I find that my teaching style in my synchronous online torts classes mirrors the one I used for more than a decade in my residential classroom, as do interpersonal dynamics (both among students and with me).

7. No substantial change is required if the professor's teaching style in the residential classroom was to lecture to students, without any meaningful student participation as part of the class. Fortunately, however, this teaching style does not appear to be the norm in the legal academy, where more engage and active learning is typically prioritized.

8. Indeed, it may be superior in so far as a more balanced and authentic dialogue by placing the professor on a more equal basis with students. As Jeannie Suk Gersen has written: "The geography of a large classroom, with the professor at the front, automatically communicates the hierarchy that separates teacher and students. That distance is visually erased in a Zoom class, where there's no podium, or front or back of the room." Jeannie Suk Gersen, *Finding Real Life in Teaching Law Online*, New Yorker (April 23, 2020).

9. Typically, defenses of dialogue-based legal education focus on its value in teaching lawyering skills. *See, e.g.*, Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. Legal Educ. 562 (2015) (discussing the value of using the Socratic method to teach students to "lawyer" on behalf of clients). But its value is not so limited. For example, as Jeannie Suk Gersen has written, it can also have value in developing broader citizenry skills: "A classroom can model how citizens speak to each other and discover their rational and meaningful disagreements. How can we be together through difference and dialogue? Continued questioning, critique, and

> [W]hen the teacher asks a question, each student has to utilize the six cognitive capacities used by the practicing lawyer daily in the performance of most law jobs. She has to listen, hear, understand, evaluate, formulate a response, and stand ready to articulate and defend it. Moreover, each student has to utilize the same six cognitive capacities with respect to every comment made by a fellow student because she will have to formulate a tentative conclusion about the comment in order to follow the teacher's response or, if called on, to make one herself. In addition, the student hones the mental attributes of attention and alertness because it is only those attributes that allow the use of the other cognitive capacities.[10]

By contrast, asynchronous legal education is not as well suited to dialogue-based learning. Interactive questions can be embedded in an asynchronous course to mimic the similar patterns of thinking and analysis (i.e., an asynchronous lesson can include a series of questions that call on students to dissect an argument or walk through a decision tree). However, the pacing of the class is very different from that in a live classroom. As a result, students do not practice thinking "on their feet" by following a dialogue or argument as it dynamically evolves, or build the skill of being able to promptly analyze and respond to arguments and questions raised by classmates and their professor.

More fundamentally, it is intellectually difficult and very time-consuming to create excellent asynchronous course lessons. This is because to be truly excellent, asynchronous education needs to include ample opportunities for applied learning and—as discussed in the next subsection—doing so requires a significant investment of thought and time. This is not to say that there is only one right way to build asynchronous lessons—after all, there is ample debate within the legal academy about what teaching techniques are best. However, there is widespread agreement that teaching is most effective if it involves active learning and not merely passive receipt of knowledge.[11] Consistent with this consensus, it is reasonable to conclude that asynchronous classes—even if highly entertaining and visually attractive—are unlikely to result in lasting knowledge transfer or to develop students' analytical and argumentation skills if they do not also include applied learning opportunities.[12] Thus, faculty working on

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participation are far more important than arriving at a particular answer." Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 Harv. L. Rev. 2320, 2341 (2017) (citations omitted).

10. Donald G. Marshall, *Socratic Method and the Irreducible Core of Legal Education*, 90 Minn. L. Rev. 1, 9–10 (2005).

11. *Cf.* Michael Hunter Schwartz et al., What the Best Law Teachers Do 123–50, 179 (2013) (describing in a study of outstanding law faculty the myriad ways that faculty encouraged active learning and observing that "these teachers…check regularly for understanding and improvise new ways of explaining concepts if their initial efforts do not succeed.").

12. This conclusion is supported by research on online education in general. *See, e.g.*, Charles Hodges et al., *The Difference Between Emergency Remote Teaching and Online Learning*, Educause Rev. (Mar. 27, 2020), https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning (observing that the literature on online education shows that interaction that is "meaningfully integrated" into online courses improves learning outcomes).

an emergency or short-term basis are unlikely to be able to develop excellent asynchronous classes.

In short, synchronous online teaching should be the default for law faculty, especially those seeking to rapidly transition to teaching online. Conversely, faculty should incorporate a substantial amount of asynchronous content into their classes only if they are willing and able to invest the time in carefully and deliberately designing and building engaging asynchronous content, and have the resources and time to incorporate and review applied learning activities.[13]

B. Use Asynchronous Instruction Strategically

Although, for the reasons stated in the previous subsection, I strongly recommend that synchronous education be the default modality, professors teaching online should give serious consideration to including asynchronous components in their classes. This subsection explores the rationale for incorporating asynchronous education into law classes, and key considerations for faculty designing asynchronous lessons.

1. Reasons to Incorporate Asynchronous Methods

There are good reasons to teach at least part of a law school course asynchronously. One is that asynchronous lessons allow students who did not understand an issue the first time to review the lesson, or a portion of the lesson, again.[14] This can be useful for students who are struggling to understand the substance of a course. Similarly, asynchronous education provides students greater flexibility to pace their learning based on their individual needs and abilities and affords them greater flexibility with scheduling. Such flexibility can be particularly beneficial to students who are balancing their studies with other responsibilities, including nontraditional and part-time students and those who are caregivers for children or adults with special needs.[15]

13.   Resources may be a significant barrier at even well-funded institutions. Even institutions with experience in supporting asynchronous learning may not have experience supporting faculty and students with asynchronous learning that includes embedded questions and exercises, let alone embedded questions and exercises designed to allow faculty to readily review student work.

14.   Some review is also possible if students watch recordings of live class sessions. However, reviewing an asynchronous lesson is more likely to be an efficient study practice. Such lessons are likely to be more succinct and organized, and students watching a recorded live class miss one of the key benefits to live education: the ability to participate and learn from anticipating participation.

15.   By contrast, some have also suggested that asynchronous education may be necessary because students are in different time zones. However, the fact that law schools pre-COVID routinely held courses from morning through early evening, suggests that full-time students can readily—with adequate notice—generally arrange to attend classes at a variety of times. Even part-time students with existing careers may be in a position to attend live classes if those classes are scheduled with such students in mind. For example, in part because many of the students in the program are working professionals, the Syracuse University College of Law's JDinteractive program typically holds class on Sundays and evenings.

The asynchronous modality also has certain andragogic advantages. For one, it is well suited to providing students with formative assessment. In fact, the opportunity to incorporate formative assessment is one reason professors who teach asynchronously are often enthusiastic about its potential.[16]

Exercises or questions incorporated into the asynchronous class can provide students with the opportunity to test their own understanding by answering questions tied to course content, and to receive feedback or have the opportunity to compare their answer to a sample answer. This can assist them both with learning the material in the first instance and can encourage long-term retention of information.[17] Therefore, especially in large classes in which providing timely individual feedback may be difficult, faculty should consider including questions that can be automatically graded (i.e., multiple-choice questions, or true/false questions) or otherwise immediately determined to have been answered right or wrong. Such questions are especially useful if faculty provide explanations of why certain answers are correct or incorrect. Students may learn as much from these explanations as from the underlying lesson even when they have responded correctly the first time.

Faculty should also consider including open-ended questions and exercises that allow students to assess their understanding of more complex issues and develop their analytical skills. For example, in the asynchronous portion of my online torts class, I frequently pose short-answer questions to students. After they complete those questions, they can proceed to a video where I explain what answer I was looking for so that the students can assess whether their answer matched the expected answer. Thus, students do not need to wait for feedback from me to assess their own performance, even in the case of open-ended questions.

Faculty should also plan to set aside ample time for reviewing student responses. While doing so is time consuming, especially when open-ended questions are included, this review can enable faculty to identify students who are struggling and would benefit from extra help and redirection. This enables faculty to strategically intervene to support these students' learning during the course of the semester.

16. *See, e.g.,* Yvonne M. Dutton & Seema Mohapatra, *COVID-19 and Law Teaching: Guidance on Developing an Asynchronous Online Course for Law Students*, 65 ST. LOUIS U. L.J. 471 (2021); Michael Hunter Schwartz, *Towards a Modality-Less Model for Excellence in Law School Teaching*, 70 SYRACUSE L. REV. 115, 128 (2020) ("Arguably, assessments in online courses are superior to those in brick-and-mortar classes because the technology allows the professor to increase the frequency of the practice and feedback she provides without using up precious classroom time."); Debora L. Threedy & Aaron Dewald, *Re-conceptualizing Doctrinal Teaching: Blending Online Videos with In-Class Problem-Solving*, 64 J. LEGAL EDUC. 605, 615 (2015) (citing the ability to provide formative assessment as a key benefit of blended learning that combines online, asynchronous education with live, residential education).

17. *Accord* James McGrath & Andrew P. Moriss, *Online Legal Education & Access to Legal Education & the Legal System*, 70 SYRACUSE L. REV. 49 (2020) (arguing that a benefit of offering online law classes is that "[a]n online class can be peppered with multiple low or no stakes testing to guide students in regular retrieval practice, another of the highly effective methods of learning for long term retention of material").

Another andragogic advantage comes from combining asynchronous and synchronous education. Research suggests that "blended" classes that combine live and asynchronous lessons may be more effective than either purely live or purely asynchronous classes.[18] One reason is that adding asynchronous elements allows professors to make more effective use of live class time. For example, Debora L. Threedy and Aaron Dewald have suggested that by integrating short (e.g., ten-minute) recorded lectures into their residential teaching, faculty can make more efficient use of live class time because it can "open up the time for in-class active learning exercises."[19] Another reason is that a blended approach allows students to learn in multiple ways. Perhaps most important, where both formats include applied learning experiences, students have the opportunity to reflect before responding to questions as part of the asynchronous interactivity[20] and to learn how to think in real time as part of synchronous learning. Thus, including some asynchronous education in an otherwise synchronous class can potentially create a richer and more robust learning experience than using synchronous education alone.

2. Considerations When Building Asynchronous Lessons

Creating asynchronous course content is not hard: it is relatively easy for faculty to record a lecture.[21] However, creating asynchronous content that engages students, fosters higher-order thinking, and promotes deep learning is challenging. Strategic thinking and planning are key to creating asynchronous lessons that are both engaging and rigorous.[22]

18. A 2010 meta-analysis from the Department of Education found that student outcomes were better for classes that blended online elements and face-to-face instruction than for classes that were solely online or solely face to face. Barbara Means et al., Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies, U.S. Dep't Educ. (Sept. 2010), https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf. Although the live instruction was residential, it seems likely that similar results would be found for live teaching that occurs online if that teaching mirrors residential live-teaching.

19. Threedy & Dewald, *supra* note 16, at 619 (noting that active learning could take several forms, including problem-based learning, dialogue-based learning, or skills training). Others have reached similar conclusions. *See, e.g.*, William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. Legal Educ. 93, 95–96 (2014) (discussing the value of blended learning from the prospective of a professor who began using the approach after more than three decades of law school teaching).

20. *See* Schwartz, *supra* note 16, at 125–26 (observing that a benefit of asynchronous learning is that it each student must respond rather than relying on "vicarious" learning and that "[t]he extra thinking time increases the likelihood that what they contribute reflects deeper thought, and the modality means that students who have great insights but are not extroverts or who process less speedily than their peers can enjoy success.").

21. *Cf.* Dutton & Mohapatra, *supra* note 16, at 18–20 (discussing specific tools that can be used to record law classes, including ones with rich visual content).

22. Part of this work should involve careful scripting to make good use of class time. For more on the value of scripting, *see* Threedy & Dewald, *supra* note 16, at 615–18 (discussing how professors can make short videos and emphasizing the role of scripting, including its value

For those teaching a portion of their class asynchronously, the foundational question to tackle is how to divide content between live and asynchronous course components. When dividing content between live and asynchronous components, faculty typically find it works well to place well-established legal doctrines or frameworks (i.e., "black-letter law") in the asynchronous component, and leave more complex and "grayer" issues for discussion in the live session. This division allows for live class time to be used more efficiently and to engage students in more complex thinking and analysis.[23]

Once the faculty member knows what content will be delivered asynchronously, the question becomes how to design the asynchronous lesson to successfully achieve knowledge transfer and, typically, to build analytical and other skills. A relatively straightforward way to build content is to record a lecture (perhaps with corresponding visuals) on a key doctrine, and accompany that lecture with an applied learning experience.

Ideally, applied learning experiences (questions, exercises, etc.) are embedded into the recorded lecture. This helps keep student attention and provides formative assessment opportunities that students would otherwise have in a live session.[24] Yet embedding questions into content—especially if faculty wish to employ a variety of question types and to be able to review student answers afterward—takes a substantial investment of time and resources. Faculty must either work with a professional who specializes in building online courses[25] or learn to use course-building technology themselves and then "roll up their sleeves" and use it. Faculty who do not anticipate online teaching beyond a single academic year are unlikely to find the time investment to be worthwhile.

Faculty who do build asynchronous lessons, moreover, must plan not only for how they will build applied learning exercises and questions, but also how they will review the resulting work. The value of such experiences is substantially decreased—and student frustration likely to be substantially increased—if faculty

in helping "optimize" information for novice learners).

23. *Id.* at 613-14 (making a case for professors posting short doctrinal lectures online so that residential class time could be used more efficiently).

24. For example, a professor who makes good use of dialogue-based teaching will typically prompt all students to think about how they would answer a question even if only one is called upon; those who are not called upon can self-assess by comparing what they thought was the answer to responses offered during the dialogue.

25. Often, these professionals are categorized by schools as "instructional designers." Although working with a skilled instructional designer can be tremendously advantageous, faculty should be careful not to overly rely on instructional designers. Many professionals working in instructional design have no significant teaching-related training or experience, and no experience studying or teaching law. Moreover, a common underlying premise of the instructional design field—that professors are subject matter experts and the instructional designers are content delivery experts—rests on the dubious assumption that one can determine the best way to teach a concept or skill without understanding the concept or the skill. Especially given the complexity of the concepts involved in good legal education, it is imperative that faculty take full ownership of both the content and methods employed in their asynchronous classes even if working with a highly skilled instructional designer.

are not able and willing to review student responses and provide a reasonable degree of timely feedback. Thus, successfully designing and implementing interactivity in asynchronous courses requires a substantial investment of time not only to build that interactivity, but to review the resulting student work.

For those who do not have the time and resources to build high-quality, highly interactive asynchronous classes, I recommend limiting asynchronous class components to short recorded segments of no more than ten to fifteen minutes[26] followed by a set of questions or an exercise. Such exercises can take a variety of forms. Students might be asked to submit a response, reflection, or analysis to the professor, or to post on a discussion board. Alternatively, they might be asked to prepare a short answer for live class, with the professor then calling on one or more students (without notice) to share that prepared answer. Students also might be asked to contribute to a group document or project, such as a Wiki.

Regardless of the other asynchronous design decisions they make, faculty members building asynchronous course components must be mindful that how they build those components will have a significant impact on whether, and to what extent, the course is accessible to students with disabilities. For example, materials built without high-quality captioning will fail to meet the needs of students who are deaf, and materials built without descriptions of visual content or in a way that does not work with screen readers will not work for students who are blind. One accessibility pitfall is the tempting array of quizzing programs and other applications available on the internet for free or for a low fee. While there are many programs that can offer appealing ways of presenting information or assessing students, not all are fully accessible to students with disabilities. Best practice is therefore to avoid utilizing technology that has not been fully vetted for accessibility concerns.

III. Preparing Physical and Virtual Spaces for Teaching and Learning

How you set up the physical office from which you are teaching, and the virtual classroom in which you teach, can have a major impact on your students' learning experience. Similarly, students' success in the virtual classroom is affected by whether they have a physical setup and technology that works to their advantage. Accordingly, this section discusses how you can set up your physical and virtual teaching spaces and prepare your students to achieve a more vibrant and engaging online learning environment.

A. Stage the Physical Space

Preparing to teach an online course is much like preparing to perform a cabaret act: It should involve creating a simple, well-lit set, ensuring reasonable acoustics, and assembling the necessary props.

26.   Fifteen minutes before interactivity is an upper-end limit, not a recommendation. Better practice would be five to ten minutes with embedded questions. *Cf.* Schwartz, *supra* note 16, at 127 ("best practices counsel limiting voice-over-slides lectures to seven to ten minutes").

The ideal "set" is simply a physical location that is professional and has minimal distractions for both the professor and the students. This may be a professional office, a home office, or almost any other place staged to look professional. For example, I have staged my own home office by placing a set of matching bookcases filled with my professional books directly behind my office chair.

Faculty unable to stage a small area to look professional may use a virtual backdrop. Virtual backgrounds are not ideal because they can be distracting if the faculty member moves while teaching, including by speaking with their hands. Should you nevertheless use one, you should be sure it is professional (consider using a photo of your office or school), in colors that contrast with your face so that students can clearly see you, and static (as opposed to a video clip, which is possible but tends to be visually distracting).

You will want your set to be well lit so that students can see you and feel connected to you. This means that you should be lit from the front. You can do this by purchasing a light designed for this purpose, or simply by placing a lamp or desk light on either side of your computer monitor. You should not be backlit. For example, if, like me, you have a window or skylight behind you, use light blocking curtains or shades.

The "props" you need are basic, but acquiring them can be the difference between a well-run class and a frustrating experience for all. In addition to a strong internet signal and a reliable computer, there are three simple "props" in which all faculty teaching live online should invest.[27]

The first important prop is a second screen (or "monitor") connected to the computer. This will allow you to view anything you are sharing with students (e.g., a video, a PowerPoint) on one screen and still see your students on the other. A large second monitor is especially helpful.

The second is an external webcam. While an internal webcam will work, an external one is preferable. It is not only likely to deliver a better-quality image to your students, but it can be positioned so that you look right into it, thus giving your students the experience of eye contact. You can also use the webcam's integrated microphone to pick up your voice, avoiding the inadvertent sounds that can result from a microphone placed too close to your mouth.

Third, I recommend headphones connected to your computer. Headphones allow you to hear your students and will prevent your own microphone from picking up what you are hearing, thus avoiding feedback and a common "echo" effect.

For a visual depiction of how I put these elements together in my own home office see the figure at the end of this article.

27.   Law schools might be well advised to provide a least some of these, including by permitting faculty who are teaching from home to remove this equipment from their on-campus office should they have it there.

B. Personalize the Virtual Classroom

Law faculty typically do not think about how to set up their classrooms, as their brick-and-mortar classrooms are shared spaces. For many faculty members, therefore, the virtual classroom will present a new opportunity to design a classroom space. Much as an elementary school teacher is likely to design classroom space for students to create a welcoming atmosphere, faculty teaching in the virtual classroom should consider how they want their virtual room to appear to students.

To ensure that your virtual classroom is set up to your liking, you should familiarize yourself with the settings in the videoconferencing platform you use. A few types of settings deserve particular attention.

First, there are those settings that allow you to personalize the virtual classroom experience to make it appear professional and welcoming. For example, faculty members using Zoom can personalize their virtual profile by adding a photo that will display when their camera is not on, and personalize the link to their virtual office so that it has their name, and not just a number.[28] For a class I teach on aging and the law at Yale Law School, for example, I use one of my favorite aging-related pieces of art (an Italian Renaissance portrait of an older man with his grandson) as my waiting room image.

Second, there are settings that affect how faculty and students can see and engage with one another. The most important of these allow you to see as many students as possible on a single screen. For example, Zoom allows you to decide whether to see only twenty-three webcams simultaneously or whether to see the maximum number (currently forty-nine).[29] Other key settings include those that automatically mute participants when they enter the room (a simple way to avoid unintended background noise), and those that govern who can share their screen, "chat," and save shared material.

Third, you will want to pay attention to settings that control access to the virtual classroom. For example, it is generally best practice for professors using Zoom to either require a password to enter the virtual classroom or have a virtual waiting room. These safeguards prevent so-called "Zoom-bombing" (i.e., unwelcome visitors arriving in class without notice). In addition, using a virtual waiting room prevents students from entering the virtual classroom before the professor is ready. However, the disadvantage of using a waiting room is that if a student loses connectivity or otherwise leaves the virtual room, the student will need to be manually readmitted or will be effectively shut out of class. Therefore, faculty may wish to invite students to notify them if another student is trying to enter the virtual room, or grant a teaching assistant or a

28. Specifically, faculty may personalize their links by going to their profile settings, clicking on "customize," and editing the URL extension to include their professional name.

29. To set this preference, faculty may go to "settings" (the icon looks like a round gear), select the "video" tab, and select "display up to 49 participants . . . ." If it is not possible to select this option, it likely means that the device being used does not have sufficient capacity to enable it.

particular student the authority to admit a waiting student (e.g., by making them a co-host).

C. Prepare Students

A vibrant classroom environment requires students to be engaged. Student engagement will tend to be better when students are fully prepared to participate. Faculty can prepare students—and thus help level the playing field for students of different backgrounds and with different levels of technical expertise—by providing all students with detailed expectations for technology, participation, and "netiquette" well in advance of classes. This can be done readily in the class syllabus, in a "welcome" e-mail, or—ideally—in both.

Setting clear expectations for students is a way not only to ensure that students know what is expected of them, but also a way to discourage behaviors that may be distracting to others.

In particular, I recommend that faculty generally communicate the following three baseline expectations.

First, *students should use good "netiquette."* Students should be encouraged to attend live online classes from a quiet location, appear with a nondistracting background, and otherwise refrain from engaging in behavior that would be inappropriate in a residential classroom. To help students comply with these expectations, professors should invite students to make use of a virtual background if their locations are distracting. In establishing expectations for netiquette, faculty should distinguish between disrespectful distractions (e.g., eating dinner, lounging in bed, using a treadmill), and disturbances that may result from the unavoidable presence of others in the students' home or workspace.[30]

Second, *students should be looking at, and listening to, the videoconference for the entire length of class.* This means that students should use a second screen if they are using an e-book or if they plan to take notes on a computer.[31]

Third, and perhaps most important, *students should attend class via webcam whenever possible*. Students should not have webcams off if it is avoidable.

This approach is not without controversy: some faculty are reluctant to require or even to encourage webcams. This is often well-meaning, reflecting concerns about student privacy or poor internet connections that may disproportionately affect less privileged students and students of color.[32] However,

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30.   *Accord* Sarah J. Schendel, *The Pandemic Syllabus*, Denver L. Rev. Forum (Nov. 30, 2020), https://www.denverlawreview.org/dlr-online-article/pandemicsyllabus ("If you do request or require cameras on, let students know that your primary interest is in their presence and engagement, not on their surroundings. This may include the appearance of family members, pets, roommates, or other 'distractions.'").

31.   It is perhaps ironic that the nation's casebook publishers encouraged e-books as a response to the COVID-19 crisis. During this time, hardcopies are more useful than before as e-books can make attending class online more difficult by taking valuable screen space.

32.   *Cf.* Sarah J. Schendel, *supra* note 30 (arguing that, in determining whether to require cameras to be on, faculty should "consider the challenges facing low-income students, many of whom

having all students on webcam substantially facilitates teaching and supports student learning. It allows faculty to "read the room" to get real-time feedback on how students are responding to lessons, and helps students pay attention. [33] By contrast, when faculty do not encourage students to be on webcam—or worse yet, indicate that students who do not have ideal living situations may wish not be on camera—the classroom experience suffers. Instead of creating an inclusive and tolerant space for learning, faculty risk inadvertently sending the message that not all students are essential members of the classroom community, that some living situations are embarrassing or shameful, and that students should not be seen if they or their surroundings are not "up to snuff". The result is that those attending from privileged backgrounds will tend to get disproportionate visibility and attention, whereas those with poorer internet connections or less pristine physical environments will tend to be sidelined.

Fortunately, simple technical solutions such as blurred or fake backgrounds, now standard on Zoom, largely alleviate concerns about student privacy. And when students have adequate notice of the expectation that they appear via webcam, most will be able to arrange to do so, and this can enhance the experience for the entire class. Thus, faculty should not hesitate to require students who can be on webcam to do so, or to strongly encourage all students to have their cameras on.

So that students can comply with these expectations, it is helpful to provide clear guidance about what equipment will help them and why that equipment will be helpful. Accordingly, I recommend to my students that they use headphones (especially if they are in a location with any potential for background noise) to improve sound quality for all. I also recommend that they have an external webcam for the same reasons I do, and have a second screen attached to their computer so they can see their class and take notes. I also recommend that students (unless they have a specific need or reason to use an e-reader) purchase hard copies of class textbooks instead of e-copies so that they do not get confused or frustrated toggling between multiple applications.

In short, faculty who want students to actively participate in live class discussions should let students know as soon as possible that they expect them to come to class via webcam and be fully participatory, and also provide students with information that they can use to do so. Otherwise, faculty risk some students not being prepared, causing their participation and learning—and potentially also the overall classroom dynamic—to suffer.

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may be self-conscious about their living situation, especially if they are sharing space with any number of family members or roommates.").

33. As one of my research assistants commented when discussing her experience with online learning in spring 2020: "I actually liked when professors required you to have your webcam on for class. I realized that I paid more attention because I knew others could easily see what I was doing, and it also gave me a reason to put myself together each day even though I wasn't leaving the house."

IV. Teaching Effectively in the Live Virtual Classroom

Faculty can teach in a live, virtual classroom much as they might in a residential classroom. When all students are on webcam, faculty can read body language and organically call on students (whether that be by cold call or through volunteers) much as you would in a residential classroom. Indeed, with proper training, the right setup, and reasonable class sizes, faculty can employ almost all teaching techniques that they might consider in a residential classroom in a live online classroom.

This section explores how faculty teaching in a live virtual classroom can successfully use common teaching techniques, including dialogue and discussion, group work, presentations, and exercises such as debates, negotiations, or real-time drafting and critique. It also highlights how faculty can create a sense of place and community in the virtual classroom, and key considerations for ensuring that the virtual classroom is accessible to students with disabilities.

A. Engage in Dialogue and Discussion

Dialogue-based teaching,[34] a mainstay in law school classrooms nationwide, translates well into the virtual classroom when faculty can see and hear all of their students. Being able to see and hear all students simultaneously helps faculty structure an effective discussion by allowing them to adapt their approach based on student interest and understanding indicated by visual clues such as body language (i.e., to "read the room").

Whether faculty can see and hear all students simultaneously depends on four primary factors: class size, hardware, software, and physical setup. One reason for Zoom's current popularity in academia is that it allows faculty to see and hear up to forty-eight students simultaneously, assuming they have a computer with a sufficient central processing unit. If schools choose to use other platforms, by contrast, faculty may be able to see a much smaller number of students at a time.[35] Accordingly, schools that wish to ensure that faculty can see all students in the live class should choose videoconferencing platforms wisely, and invest in small class sizes. Where small class sizes are infeasible, faculty and students alike will need to toggle between screens to see all participants, which is suboptimal and can be a barrier to student participation and a sense of classroom community.

Faculty members' physical setup and hardware also play significant roles in whether faculty can run an effective discussion and "read the room." When faculty rely on a single screen, they will have difficulty seeing their students if they also wish to share a PowerPoint presentation, use an electronic whiteboard, or make other use of documents or media in their class. The setup described

34.   Often dialogue-based teaching is referred to as Socratic teaching, although, strictly speaking, much of it is not. *Cf.* Marshall, *supra* note 10 (describing different forms of dialogue-based teaching).

35.   For example, Blackboard Collaborate, a competing platform used by some schools, only allowed twenty-five webcams to be seen simultaneously at the time of publication.

in Section III(A), which takes advantage of multiple screens, helps ensure that faculty members can effectively conduct dialogues and discussions in a virtual classroom.

Whether the discussions and dialogues that occur in the virtual classroom mirror those in residential classrooms also depends on how faculty structure and encourage student participation. Some techniques for soliciting participation do not fully translate in the virtual classroom. For example, a common practice among law faculty is to call on students in their residential classrooms by row or by location. However, the order in which faculty see students in the virtual classroom will not necessarily be the same order in which students see one another. Therefore, faculty should not expect students to understand what they are doing when they call on students "by row" or by location on the screen.

Other techniques translate well. For example, asking students who wish to speak to raise their hand works very well in classes in which the faculty member can see all students. Of course, in a virtual classroom, students can raise their hands electronically as well as physically. But encouraging students to raise their physical hands, and not merely push a "hand-raising" button, helps make the class feel more authentic, gives students a chance to move their bodies (which helps with attention span), and reduces the likelihood that students will forget to lower their hand when they no longer wish to speak. Physical handraising also avoids another potentially problematic consequence of virtual handraising: in some platforms, including Zoom, when a participant raises their hand it shifts images around the computer screen because that participant is automatically placed on the top of the screen. This reshuffling can be distracting for both faculty and students, and reduce the sense of "place".

Similarly, calling on students who have not volunteered ("cold-calling") works well in the live synchronous classroom.[36] Cold-calling helps ensure that students understand that the virtual classroom is a participatory environment and that it is imperative that they follow the train of conversation. Indeed, I recommend that even faculty who do not normally engage in cold-calling consider doing so during the first week or two of live synchronous class so that all students have the experience of participating in the virtual classroom. Doing so will allow students to both understand that participation is expected and practice participating so that they will be less apprehensive of doing so in future classes.

36. Notably, others have argued against cold-calling in virtual classrooms. For example, in a webinar linked to by the Association of American Law Schools, Josh Blackman has recommended that faculty not call on students unexpectedly because students might be delayed in responding because of being unprepared with their technology, being with a pet, being in the bathroom, or being otherwise indisposed. Josh Blackman, *Tutorial on using Zoom for Class Instruction* (Mar. 18, 2020), https://www.youtube.com/watch?v=jMMK9KKgOWY&feature=youtu.be; Josh Blackman, *Thoughts and Tips on Teaching with Zoom: My Reactions from, and Recommendations for, Distance Learning*, Reason, https://reason.com/2020/03/12/thoughts-and-tips-on-teaching-with-zoom. In my view, one reason faculty should cold-call is to discourage such behaviors during class time, as they impede student learning.

B. Make Use of Media and Presentations

Incorporating media into the online class can make for a more varied student experience. Media can include PowerPoint presentations, video clips, or anything else that can appear on your own computer screen. With the right platform, faculty can share anything on their screen with students so students can see it in real time.[37] Faculty should therefore prepare their workstation before class to facilitate screen sharing. This means opening the applications or documents that they intend to share and closing other applications or windows such as e-mail. If faculty leave extraneous programs or documents open, they risk both slowing down their computer and sharing something they do not wish students to see (e.g., personal e-mail, client information, or confidential grades).

Media can be used to facilitate participation and real-time note taking. Just as faculty might use a whiteboard or blackboard in a residential classroom, they can use an electronic whiteboard while videoconferencing. Such tools are typically built into videoconferencing platforms, but, even if not, faculty can share a document (be it a PowerPoint slide or a word processing document) and type into it. As most faculty find it hard to handwrite with a computer mouse, those who anticipate wanting to handwrite on a whiteboard should consider using a touch-screen computer or connecting to their regular computer a device (such as an iPad) that has a touch screen and stylus so that they can use it during class.

C. Have Students Present and Lead Discussions

Faculty teaching live online frequently share presentations that they have created, but having students share can also be a valuable educational experience. Just as in residential classrooms, a professor can assign a student to do a presentation or lead a discussion for peers. Depending on how often the faculty member wishes students to share, and the size of the class, the faculty member might choose different default settings in their videoconferencing program. Faculty working in Zoom, for example, can select their setting to make students always able to share their screens or to allow themselves to authorize such sharing.

However, sharing need not be limited to formal presentations. For example, student presentations can also be a way to bridge asynchronous and live course components. Thus, the professor might have students prepare an answer as part of the activity associated with an asynchronous lesson. In the live session, the professor might call upon a student to share their screen and answer, and perhaps another student to critique that answer (either orally, by indicating changes on the screen, or both).

Notably, the ability for students to share their screens and content with the class is remarkably well suited to teaching certain skills. For example, legal writing professors can help teach editing skills by having students annotate or

37.   For example, in Zoom, the faculty member simply opens the item they wish to share (ideally before class begins), click the "Share Screen" icon in the meeting controls, and select the item to be shared. If the item has sound that the students should hear, the professor should click the box marked "Share computer sound" when selecting the item.

edit documents in real time. Similarly, professors can teach listening skills by having students act as scribes.

D. Break into Small Groups

One of the best ways to maintain an engaging classroom environment is by using a variety of teaching methods.[38] In traditional brick-and-mortar classrooms, law professors frequently do this by breaking students into groups to discuss problems or work on group exercises. The same is possible in the online classroom when faculty use videoconferencing platforms with breakout room capabilities.

In addition to the benefits that discussion groups have in general, the use of small discussion groups may have special advantages in a virtual classroom because they can help foster much-needed interpersonal connections. With students distanced, the ability to work informally with peers may provide a degree of emotional and academic support that might otherwise be lacking.

Using breakout rooms in an electronic platform requires slightly different teaching techniques than using small-group work in a live classroom. First, the professor is generally unable to see or hear more than one group at a time. As a result, the professor will generally not be aware that a group is struggling or off task unless the professor is participating in that particular group. Accordingly, professors who wish to provide active oversight of group work may decide to break students into fewer, larger groups so that the professor can electronically visit more of them. Second, it can be more cumbersome to assign specific students to specific groups. In a residential classroom, it is easy to tell students to break into groups with a particular partner (e.g., "Let's now all break into groups with your assigned negotiation partner!"). In the electronic classroom, professors who wish to make particular groupings usually will either need to take up valuable class time assigning students to groups, or set up these groups in advance of class.

E. Create a Sense of Place

In a brick-and-mortar classroom there is a natural sense of place that can help students enter a learning mindset. Faculty members can employ a variety of methods to help imbue the virtual classroom with a similar gravitas.

Having a consistent way of opening and closing the course can create a sense of place and time. For example, I begin every week with a recap from the past week, and a road map for the day's discussion; I end each class by thanking the

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38. A study of college students' perceptions of online learning in spring 2020 underscores the value of employing multiple approaches. The study asked students about eight instructional practices (such as frequent assessments, live sessions, breakout groups, and direct communication from faculty) "identified through past research as contributing to more effective online teaching and learning." Means & Neisler, *supra* note 1, at 14. The study found: "Net satisfaction for courses employing 0-2 of the recommended online instructional practices was 43 percent compared to 61 percent for courses using 3-5 of the practices, and 74 percent for courses using 6-8 of the practices." *Id.*

students for their work and giving a preview of the next week's substance. This type of ritual helps create a sense of place and separates class time from other parts of the students' daily life. It also has an additional benefit: An organized and structured approach to class time has long been associated with excellent law teaching, and helping students make connections between concepts.[39]

Another way to create a sense of space is by allowing students to use the virtual classroom as they would a residential classroom. By consistently making the virtual classroom available ten or fifteen minutes before the official start of class time, faculty can give their students a place to congregate and engage in informal discussions as they would in a brick-and-mortar classroom. Faculty who do not wish to participate in that discussion can turn off their sound and video and still allow students to congregate. Similarly, by keeping the virtual classroom open after the end of class, faculty can provide space for students to ask questions and reflect on class material. Again, if faculty do not wish to participate in that conversation, they can still create space for it by keeping the virtual meeting open and turning off their video and sound.

To ensure that student privacy is protected as appropriate, faculty will want to be sure that these informal conversations before and after class are not recorded. If, perhaps because of default settings required by the faculty member's school, faculty cannot control this, they can instead (1) simply notify students of the recording so that students may self-censor; or (2) open a new, unrecorded virtual room after class for informal discussions.

Faculty may also wish to take advantage of some of the additional tools offered by a virtual classroom to create a sense of community. For example, faculty could invite students to use virtual backgrounds as an icebreaker (i.e., by encouraging them to share their favorite place as a background) or as commentary (i.e., by showing a background that depicts their reaction or perspective on a particular doctrine or issue).

F. Facilitate Accessibility

Just as in a residential classroom, it is critical that faculty be alert to and able to accommodate the diverse capabilities of students. For example, faculty should be sure to describe visuals presented so that students who are not able to see them can still equally benefit from their content. Notably, such descriptions will also benefit students who may have internet connectivity issues that force them to join class by phone, or who are trying to view the class on suboptimal-size screens. Similarly, as when teaching in a residential format, faculty members should work closely with the professionals within their institution responsible for arranging required accommodations to ensure that the technology tools and teaching techniques they are using will accommodate all of their students.

The good news is that the virtual classroom may be better equipped than many residential classrooms to accommodate certain student needs. For

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39.   *Cf.* Schwartz et al., *supra* note 11, at 180 ("Outstanding teachers have a clear structure for their classes.").

example, videoconferencing platforms such as Zoom have built-in captioning and automatic transcript features that can benefit students who are deaf or hard of hearing, or who have other disabilities.[40]

On the other hand, some of the features in a virtual classroom pose new barriers to engagement for students with disabilities. For example, conversations that occur in "chat" can pose particular access barriers for students. Students using screen readers to listen to chat may find this interferes with their ability to follow the classroom discussion. Simultaneous oral discussion and chat discussions may also disadvantage students who have difficulty attending to multiple streams of information. Similarly, links or resources shared through a chat may be difficult to activate for students using assistive technology.

Faculty should encourage students who need accommodations or who have special challenges to test their ability to use the videoconferencing platform well in advance of class. This will help students identify barriers to full participation in advance of class, and figure out if they need to change computer or videoconferencing platform settings (which may simply require a few clicks of a mouse) to fully participate. For example, students (and faculty) using sign language translation will need to set up their screen to ensure that their translator is always visible.[41] Likewise, students and faculty making use of captioning may need an additional screen devoted to that purpose.

G. Conduct Online Office Hours

Office hours should be a regular part of the work week of faculty, whether teaching online or teaching residentially.[42] When office hours are conducted via videoconferencing, the professor can generally use the same techniques that the professor might use in a physical setting.[43]

That said, online office hours can go beyond merely replicating residential ones. Some of the tools typically available in the virtual classroom may enhance the office hour experience. For example, screen sharing functions common in these platforms can facilitate the sharing and critiquing of documents in real time. Thus, for example, during online office hours I will often ask students in my online torts class to share a written analysis or a portion of their outline electronically with me. When I am meeting with a group of students, the screen sharing function means that we can all easily see the shared document without

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40. The quality of these automatic features may not always be sufficient to meet student needs. Accordingly, it may not be a substitute to, for example, arranging for Communication Access Real-time Transcription (CART) for a student who is deaf.

41. In Zoom, this can be done by pinning the video of the translator to their screen.

42. Indeed, office hours help ensure compliance with ABA accreditation standards that require faculty be available for student consultation about classes. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF L. SCHS., *Standard 404(a)(1)* (2021-2022).

43. For a discussion of some of those techniques, see DeShun Harris, *Office Hours are Not Obsolete: Fostering Learning Through One-on-One Student Meetings*, 57 DUQUESNE L. REV. 43 (2019) (discussing strategies for using office hours to enhance student learning).

having to crowd around a screen or print out copies as we might if meeting in my on-campus office.

Regardless of how you conduct your online office hours, students are likely to benefit from clear communication about the purpose of online office hours and how they will be conducted. One reason for this is that the way you conduct your virtual office hours may differ significantly from that for office hours students have previously experienced in residential settings. For example, for residential online office hours, students typically wait outside the professor's office until it is their turn to meet. In online office hours, this experience can be approximated by having students wait in a virtual waiting room until it is their "turn." However, students waiting in a virtual waiting room typically do not know why they are waiting (is the professor busy or just ignoring me?) or how many other students are doing likewise. Thus, when students appear in your virtual waiting room, you may wish to send them a message to let them know you are aware that they have joined and to give them a sense of when they can expect to meet with you. Alternatively, you may want to set the expectation at the outset of the semester that office hours are a group event, with all students welcome to join simultaneously. If you take this approach, you can invite students to schedule individual meetings to ask questions or raise concerns they are not comfortable sharing in a group setting.

V. Conclusion and Implications for the Future

Although the move to online education creates an opportunity to transform law teaching, it does not require law faculty to substantially change their teaching techniques. As this article has shown, almost all teaching techniques that faculty use in residential classes can also be used in synchronous online classes; some can even be used in asynchronous online classes. Thus, the primary barrier to continuity of teaching is not the online modality but rather faculty not fully understanding the capability of their technological tools and how to choose the right tools to achieve their goals for students.

Nevertheless, the educational crisis precipitated by the COVID-19 pandemic has presented an opportunity for academics to rethink how they teach and to experiment with new teaching techniques that may be better suited to achieving desired learning outcomes. In a recent webinar hosted by the Association of American Law Schools, for example, Harvard Law School Dean John Manning reported that during the crisis many faculty at his institution tried new teaching techniques, and observed that these new techniques may result in improved quality of teaching even once courses return to residential classrooms.

One way law schools can use this moment to improve student learning is to invest in training focused on helping faculty translate what they already do well into the online space. Successful training will allow faculty not simply to use technology to teach, but to use that technology to teach effectively. Such training helped keep rigorous legal education alive amid the COVID-19 pandemic, and could have a long-term positive impact on teaching quality. Professors who

learn to engage and educate students in the virtual classroom are likely to be better teachers when they return to brick-and-mortar classrooms.

The risk is that law schools will not take advantage of this opportunity to improve legal education, but will instead expect less of faculty and students.[44] This would not only do a tremendous disservice to law students and the legal profession, but could further undermine the public's perception of the value provided by the legal academy.

I hope that this guide, and other efforts to share experiences and best practices, will help law schools and law faculty to more fully realize the potential of online learning, and encourage them to reject inferior legal education simply because the modality of instruction has changed.

Author's Simple Live Teaching Setup
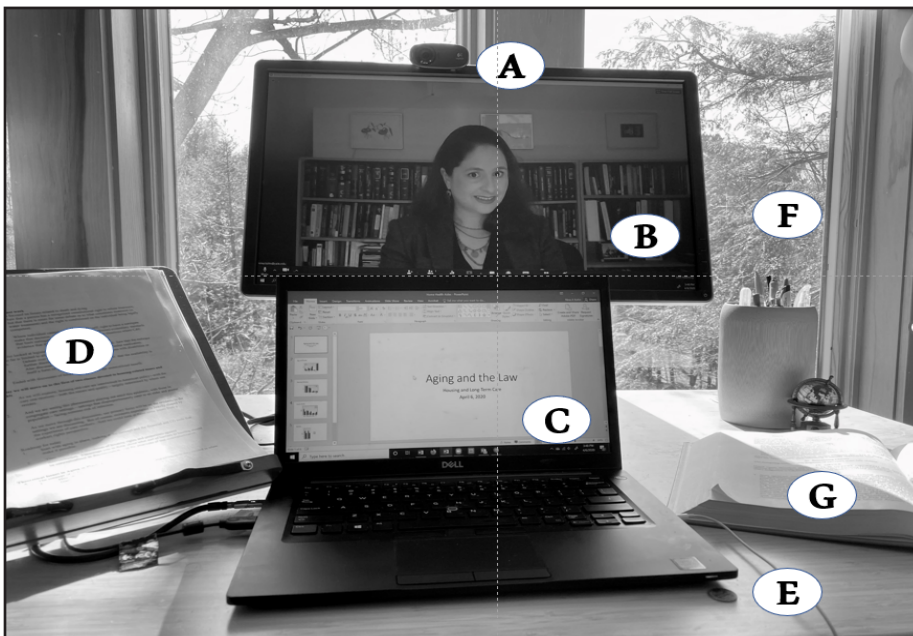
A. External webcam connected to laptop; transmits author's sound and video feed

B. Extra monitor on an adjustable height stand; where the author views the live class

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44.   Alas, reduced expectations are common. For example, in an op-ed in The New York Times arguing that "higher education will crumble" without a return to on-campus instruction in the fall, Brown University's president simply assumed "the personal interactions among students with different perspectives and life experiences" are unique to the on-campus format. Christina Paxson, *College Campuses Must Reopen in the Fall. Here's How We Do It*, N.Y. Times (Apr. 26, 2020).

C. Laptop; used to run class; laptop screen shows PowerPoint to be shared with students
D. Printed teaching notes
E. Headphones plugged into laptop
F. Lighting from the front (lamps are also placed, off camera, on either side of the workstation for this purpose)
G. Casebook used during class