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Linda Jellum

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Did the Pandemic Change Legal Education for Better or Worse?

Linda D. Jellum

Associate Dean for Faculty Research & Development

Ellison Capers Palmer Sr. Professor of Tax Law

Mercer University School of Law

I. Introduction

Crises test our strength and challenge us to improve. COVID-19 has been one of the biggest crises legal education has faced in recent decades. In this essay, I examine the legal academy's response to that crisis to see whether it will triumph or fail.

First, I discuss the overnight transition to online legal education, although there were changes other than moving classes online, such as teaching and learning while masked; spacing students six feet apart; designating doors, hallways, and stairways as unidirectional; and taking one's temperature before entering buildings. Most of these latter changes will disappear when COVID-19 disappears; however, online legal education in some form is here to stay.

Next, I describe synchronous (real time) and asynchronous (recorded) online education. Focusing on synchronous learning because I used that system, I highlight what worked and what did not work for me. Then, I briefly describe the legal academy's resistance to online education and conclude with a prediction that online legal education in some form is here to stay.

II. Pandemic teaching

Twenty years ago, Professor Michael Fromkin of the University of Miami School of Law predicted that, with the advent of the internet, legal education would become virtual and law schools would disappear.¹ He was wrong.

Fast forward to 2020, and his prediction might finally be coming true. In the spring of that year, education turned virtual overnight.

¹ Michael A. Fromkin, *The Virtual Law School, 2.0* (August 20, 2020) (unpublished legal studies research paper, University of Miami), <https://ssrn.com/abstract=3728114>.

Educators who had never used Zoom² or similar online platforms were expected to turn classes into an online learning experience redolent of the introduction to the Brady Bunch. Classes designed for an in-person experience were onlinified,³ a reconfiguring that was often less than ideal. While I was one of the lucky few who had used Zoom before Armageddon, I had never used the program to educate sixty-something 20-year-olds using the Socratic method. Let me say simply, Zoom was not designed for that, and I have never felt less capable as a law professor. Perhaps the students were lucky that most law professors around the country graded on a pass/fail basis that spring. Perhaps the faculty were the lucky ones.

Fast forward again, but just a semester, and I have come to embrace online teaching as an aid to in-person teaching. Online platforms do some things better than in-person and some things worse. If we harness the good and chuck the bad, legal education will triumph over COVID-19. But what was good and what was bad?

III. How COVID-19 changed legal education

A. What is online education?

Before talking about what did and did not work, I first explain the two forms of online education: synchronous, or live education, and asynchronous, or recorded, education. Zoom is a form of synchronous education (although it can be recorded for a poor asynchronous experience). A professor opens a Zoom room online for students to enter. Using gallery view, the professor can see, hear, and call on each of his or her students. Students can raise their virtual (or real) hands, chat in the chat feature, and nudge the professor to speed up (which never occurs) or slow down (which does). The professor can test the students' mastery of the material by running polls and then showing the results to the class. The professor can also ask simple yes/no questions, and the students can see each other's answers in real time,

² In this article, I use Zoom to refer to videoconferencing platforms generally.

³ Kyngmee Lee, *Coronavirus: Universities Are Shifting Classes Online—But It's Not as Easy as It Sounds*, AL-FANAR MEDIA (May 19, 2020), <https://www.al-fanarmedia.org/2020/03/coronavirus-universities-are-shifting-classes-online-but-its-not-as-easy-as-it-sounds/> (coining the term "onlinification").

which is both good and bad, much like raising hands in class can be. Finally, a favorite feature of most professors and students is the ability to break students into small groups to work together on a project or discussion question. The professor then hops from room to room to ensure students are staying on task.

In contrast, Echo360,⁴ YouTube, and other platforms are forms of asynchronous education (although I understand Echo360 can be used to also provide a poor synchronous experience). I am significantly less familiar with these products and asynchronous learning generally, so I will merely describe them. At Mercer, a few professors used Echo360 to prerecord lectures for students. They then offered to answer student questions either in a separate class or outside of class. Before COVID-19, some professors started “flipping the classroom.”⁵ Echo360 made that process a bit easier. But for many of us, learning more than one system was impossible during the overnight transformation to online learning. We stuck with synchronous, which better mirrored in-person learning.

In the spring, there was much I hated about Zoom, but there were a few things I preferred to in-class education. In contrast, by fall, I had become an online Zooming Jedi, able to travel to far off places and still hold virtual class. Able to present at an online conference for a thousand lawyers in the morning and teach Civil Procedure on Zoom in the afternoon. No need to cancel class to travel anymore. And this, folks, is one reason why I think online education will endure in some form after we see the last of COVID-19. But more about that in a moment. First, I will explain the best and worst of online synchronous education.

1. The good

Online synchronous education has much that is good. Zoom works well for lectures, presentations, office hours, paper reviews, and smaller classes (under 20). Professors can see every student’s face (assuming video is left on), call on students, hear their responses (after pointing out “you’re on mute!”), and occasionally read their

⁴ Echo360 bills itself as “the first video platform designed to foster active, engaged, and personalized video-based learning.” ECHO360, <https://echo360.com/> (last visited Jan. 15, 2021).

⁵ Flipping the classroom involves recording a short lecture outside of class, asking the students to watch the lecture, then using class for interactive activities, involving application, problem-solving, and discussion.

chats (a teaching assistant significantly helps professors multi-task here). While I avoided calling on students in the spring, I reverted to it this fall, and class improved. Zoom classes can be “Socratic.” Whether I can be is a separate question.

In the fall of 2020, my law school choose to teach using a hybrid model. Some professors taught entirely remotely, but most of us taught both online and in the classroom. When we taught in the classroom, we also Zoomed so that students who needed to quarantine did not feel obligated to attend class and put their colleagues (and me) at risk.

I found these hybrid classes the most challenging. Because of acoustic issues, students on Zoom could not hear students in the classroom (heck, even I often could not hear the students behind their masks). I had to repeat student answers, which meant I was often both professor and student (sometimes offering better answers, always offering shorter ones). Calling only on those students online might work better than calling on those in class, but if a student is home because she is sick, that option proves more difficult.

There are some options not available for in-person classes. For example, for group work, professors can assign students to breakout rooms and give the students a task, such as drafting the jurisdictional section of a complaint or a research exercise. The professor and teaching assistants can bounce from room to room to ensure students stay on task and help with questions. Anecdotal evidence indicates that students generally like breakout rooms and exercises, which speed up the class time and offer relief from dry lectures.

The share screen feature works particularly well online to show PowerPoints and other documents. Students are also adept at using this feature and will share their own screens during group work. Some professors also use the white board feature, although I have not used it myself. And sharing videos works well, so long as you remember to optimize audio for video first.

Students also like the online polls (although I personally found this feature difficult to master). Polling is a great way to confirm that students understand the material. And students cannot “cheat” by waiting to see their colleagues’ responses, as they can with the yes/no and hand raising features. Finally, the professor can share the polling responses: “great you are all doing well” or “well perhaps we should reexamine that topic.”

Finally, virtual office hours and paper reviews are terrific ways to use Zoom. Students rarely show up for scheduled office hours these days. Being able to schedule a time that works for the student and the professor using Zoom is handy. Moreover, I can easily pull up class notes and PowerPoints for a topic the student finds challenging. Using the share screen feature, I can easily edit student written work, whether it be a case note or seminar paper, in real time, eliminating my need to review papers in advance.

But Zoom has its limitations.

2. The bad

First, and in no particular order, Zoom fatigue.⁶ Apparently, it is a thing. One Zoom meeting or class a day is almost enjoyable—who would not want to interact with someone other than their household members each day? But a day full of Zoom is exhausting.

Second, the overwhelming silence and lack of feedback. There is no longer a buzz in class before it begins; everyone is on mute. And reading the room becomes almost impossible. Also, students sometimes trip over each other as they try to speak. Zoom is a platform “made for a single speaker at a time.”⁷ Additionally, professors see a one-dimensional image of their students rather than a complete three-dimensional presence.⁸ Zooming can feel lonely.

Third, the cumbersome breakout rooms. When students have established groups, a professor must manually put students in groups, which takes time. Assigning students randomly to groups takes time. Moving from breakout room to breakout room takes time. Also, it is difficult to share information with the entire class when students are in breakout rooms. Moreover, sometimes students may be placed in a breakout room with a person who has harassed them or is otherwise uncomfortable to be around. Prepopulating the breakout rooms before class, asking students if there is anyone they prefer not to work with, and maintaining consistent groups remedy some of these issues.

Fourth, the emotional issues. During the pandemic, student mental health needs increased exponentially (faculty too). Faculty are not

⁶ Susan D. Blum, *Why We're Exhausted by Zoom*, INSIDE HIGHER ED (Apr. 22, 2020), <https://www.insidehighered.com/advice/2020/04/22/professor-explores-why-zoom-classes-deplete-her-energy-opinion>.

⁷ *Id.*

⁸ *Id.*

trained to support students' mental health remotely or provide emergency counseling.⁹

Fifth, loss of research time. Transforming our courses took more time than any one of us would have guessed. Consequently, time for research and writing, especially for those with children at home, largely disappeared. This issue disproportionately affected women, who are typically the primary care givers.¹⁰ Whether the delay will hurt these academics as they seek tenure and promotion remains to be seen.

Sixth, community involvement. In short, we lost campus community and social interactions. A big part of legal education is social. We lost the ability to see students in the hallways, in our offices, in the library, and in the cafeteria. Zoom happy hours just do not serve the same role.

Seventh, the technological glitches. Students lack internet bandwidth, computer capability, quiet places to work, childcare, and even pet care (cats have a particular affinity for wanting to share their owner's screen space). Zoom lags. Attendees trip over each other trying both to speak and not interrupt, participants freeze for seemingly no reason or get kicked off the platform, and participants are either unmuted when they should be muted or muted when they should be unmuted. "You're on mute" will surely replace "Can you hear me now" as the most ubiquitous phrase in our vocabulary.

In sum, Zoom is not perfect, but it is better than academics anticipated. Until 2020, legal academics largely shunned online education.

B. The birth of online legal education

Distance education is not new; William Sprague launched the first correspondence legal education course in 1889.¹¹ Concord Law School,

⁹ Colleen Flaherty, *Faculty Pandemic Stress is Now Chronic*, INSIDE HIGHER ED (Nov. 19, 2020), <https://www.insidehighered.com/news/2020/11/19/faculty-pandemic-stress-now-chronic>.

¹⁰ Juliet Isselbacher, *Women Researchers are Publishing Less Since the Pandemic Hit. What Can Their Employers Do to Help?*, STAT (July 9, 2020), <https://www.statnews.com/2020/07/09/women-research-covid19-pandemic/>.

¹¹ Bernard Hibbitts, *Missionary Man: William Sprague and the Correspondence Law School*, LEGAL HISTORY BLOG (Feb. 26, 2014), <https://legalhistoryblog.blogspot.com/2014/02/missionary-man-william-sprague-and.html>.

founded in 1998, was the first U.S. law school to offer students a traditional law school education online.¹² Law schools soon recognized that they could pool resources and share courses online. For example, the former dean of Cornell Law School, my alma mater, taught “a distance learning course to students enrolled at four participating schools” in the late 1990s.¹³ Moving to a virtual online education system seemed inevitable. Technology continued improving, and the American Bar Association’s (ABA) hostility and bigotry¹⁴ to alternate forms of legal education began dissipating.¹⁵ Froomkin argued that legal education was on its way to becoming a smorgasbord of opportunities, in which students chose online courses from different law schools around the country based on the course’s reputation rather than the institution’s reputation, a “pick-and-mix” education if you will.¹⁶

If legal education went entirely virtual, there would be no need for buildings, campuses, administrations, or faculty. Bar examiners could simply confirm the successful completion of approved courses and credits. The cost of law school would plummet. Law schools would

¹² Robert E. Oliphant, *Will Internet Driven Concord University Law School Revolutionize Traditional Law School Teaching?*, 27 Wm. Mitchell L. Rev. 841, 843–44 (2000).

¹³ Peter W. Martin, *Distance Learning—The LII’s Experience and Future Plans*, CORNELL L. SCH. (Dec. 1999), <https://www.law.cornell.edu/background/distance/liidistance.htm>.

¹⁴ Marina Lao, *Discrediting Accreditation?: Antitrust and Legal Education*, 79 Wash. U.L.Q. 1035, 1088–89 (2001) (claiming that “the ABA’s efforts to control accreditation and its insistence on continually raising standards were, indeed, rooted in its desire to exclude ‘Jew boys,’ immigrants, children of immigrants, and the lower class. The record relating to discussions of law school standards and accreditation during that period is replete with unabashed comments from bar leaders about their desire to keep the legal profession a bastion of privileged ‘old-American’ families”).

¹⁵ *Compare* ABA Standards for Approval of Law Schools § 304(g) (2002) (prohibiting “credit for study by correspondence”), *with* ABA Standards for Approval of Law Schools 2019–2020 § 306(e) (2019) (allowing up to one-third of credits to be taught online). The ABA relaxed this standard further during the pandemic. *Council Moves to Expand Flexibility for Fall Academic Year*, ABA (June 31, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/06/council-moves-to-expand-flexibility/>.

¹⁶ Froomkin, *supra* note 1, at 7.

shutter their doors or become continuing legal education facilities. The job of a law professor as we know it would disappear.

Despite Froomkin's dire speculation, legal education remained impervious to significant change, until, that is, a pandemic struck. The question now is whether it will remain.

IV. Keeping the good, jettisoning the bad

As a result of this two-semester experiment, I have no hesitancy in saying that in-person legal education is better, particularly for larger classes and likely for first year courses. Legal education is about more than classes. It includes clinics, mock competitions, student leadership opportunities, law review, networking, laughter, and sometimes, tears. Friendships, reputations, and contacts made during law school survive graduation, aiding legal careers.

But being forced to teach online showed me that online legal education is not all bad. For smaller classes, maybe for 12 students or less, online classes work as well as, if not better than, in-person classes.

There is also a flexibility both for professors and students in being able to teach or participate remotely. Professors who are sick or unable to attend class in person can teach remotely. Those who are asked to participate in conferences and other out-of-town events can move their classes online when needed. Indeed, canceling classes could soon be a thing of the past. Guest speakers can zoom in whether they are in an office across town or in another country. Finally, office hours and exam and paper reviews are at least as good online, if not better.

Students who have childcare issues, illnesses, long commutes, and other issues that prevent them from attending classes in person, whether once or regularly, can benefit from the online alternative. Perhaps we might rethink the third-year experience so that students can travel to jobs and externships while still attending classes. We have long asked what to do about the third year of law school. Moving it online might make law school more affordable as students would not need to live on or near campus.

Finally, online education forces students to take more responsibility for their learning. They can no longer simply show up for class and expect knowledge to effortlessly flow into their minds; paying attention during zoom lectures requires focus, concentration, and work. Students may not like this aspect, but professors will.

In sum, when we finally emerge from this pandemic, legal education will likely be changed; my hope is that it will be changed for the better.

About the Author

Linda Jellum is the Ellison C. Palmer Sr. Professor of Tax Law at Mercer University School of Law, where she teaches administrative law, federal income tax, civil procedure, and statutory interpretation. Professor Jellum is a prolific scholar and speaker. Her articles have appeared in top law journals, such as the Southern Methodist Law Review, the Miami Law Review, the UCLA Law Review, and the Ohio State Law Journal. She has also authored multiple books and book chapters. She currently serves as the Associate Dean for Faculty Research & Development. Professor Jellum received her Juris Doctor from Cornell Law School and her undergraduate degree from Cornell University. She has the unique honor of having sat for and passed five states' bar exams.