

## Whoosh - Declining Law School Applications and Entering Credentials: Responding with Pivot Pedagogy

**Laura M. Padilla<sup>1</sup>**

### I. Introduction and Overview

Whoosh – that is the sound when the number of law school applications and entering law students *and* the credentials of entering students, decline all at once. Starting in 2011, many law schools reported that the number of their applicants declined.<sup>2</sup> Not surprisingly, the raw number of law school applications and applicants nationwide declined as well.<sup>3</sup> Concurrent with the decline in applications and applicants, entering credentials for law students dropped.<sup>4</sup> “Enrollment at ABA-accredited law schools is the lowest it has been since 1973, even though there are 53 more law schools open now, according to Moody’s Investors Service. The students still trying to get to law school also have lower test scores than in the recent past.”<sup>5</sup> This trend has continued for many years, and “while what goes up must come down,”<sup>6</sup> I am not entirely sure that what drops down must bounce back up. However, given the cyclical nature of law school applications,<sup>7</sup> it is reasonable to expect that eventually applications will increase and credentials will improve. However, those changes will not happen overnight. While the issues surrounding declining applicants, applications and credentials are related and invite many questions and reactions, some of which have been addressed elsewhere,<sup>8</sup> this article focuses on my pedagogical response to these phenomena. As a law professor, I could respond in a range of ways from panic, to paralysis, to pivot. I chose to pivot.

The first part of this article provides a brief discussion of the decline in law school applicants and applications, including the confluence of perfect storm factors that resulted in more of the crash landing we experienced than a gradual drop.

<sup>1</sup> Professor of Law, California Western School of Law. I want to thank California Western School of Law for a research grant to work on flipped classes; faculty from California Western School of Law who attended two presentations on flipping the class in September 2015 and February 2016 and provided feedback on the same; my research assistant Laura Goolsby, J.D., California Western School of Law 2016; and Vice Dean Barbara Cox and Professor Jamie Cooper for their helpful comments on a draft of this article.

<sup>2</sup> American Bar Association, *Statistics*, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (*last visited Sept. 25, 2016*), available at: [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html); see also Natalie Kitroeff, *Law School Applications Set to Hit 15-Year Low*, BLOOMBERG NEWS (Mar. 19, 2015), available at: <http://www.bloomberg.com/news/articles/2015-03-19/law-school-applications-will-hit-their-lowest-point-in-15-years>; Natalie Kitroeff, *Getting into Law School is Easier than it Used to be, and That's Not Good*, BLOOMBERG NEWS (Jan. 6, 2015), available at: <http://www.bloomberg.com/news/articles/2015-01-06/getting-into-law-school-is-easier-than-it-used-to-be-and-thats-not-good>.

<sup>3</sup> American Bar Association, *Comparison of 2015 and 2014 IL Matriculants*, in SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (*last visited Sept. 25, 2016*), available at:

[http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html).

<sup>4</sup> *Id.*; see also Erica Moeser, *President's Page*, 83 BAR EXAMINER 4, 5 (2014).

<sup>5</sup> Ry Rivard, *Lowering the Bar: More Law Schools are Admitting Less Qualified Students. Are They Prepared for What Happens Next?*, INSIDE HIGHER ED. (Jan. 16, 2015), available at: <https://www.insidehighered.com/news/2015/01/16/law-schools-compete-students-many-may-not-have-admitted-past>.

<sup>6</sup> See generally, T. Padmanabhan, *From Gravitations to Gravity: Myths and Reality*, 17 INT. J. MOD. PHYS. D. 367 (2008) (explaining the theory of gravity); see also Blood, Sweat & Tears, Spinning Wheel (Columbia Records 1969) (“What goes up, must come down, spinning wheel, got to go round. Talkin' 'bout your troubles, it's a cryin' sin, ride a painted pony, let the spinning wheel spin.”).

<sup>7</sup> See, e.g. *Three-Year Applicant Volume Graphs*, LAW SCHOOL ADMISSION COUNCIL, (*last visited Nov. 20, 2016*); available at: <http://www.lsac.org/lsacresources/data/three-year-volume>.

<sup>8</sup> See, e.g. Mark Hansen, *Count Off: Law School Enrollment Continues to Drop and Experts Disagree on Whether the Bottom is in Sight*, 101 A.B.A. J. 64 (2015); Elizabeth A. Usman, *Nurturing the Law Student's Soul*, 99 MARQ. L. REV. 1021 (2016).

It also details the corresponding drop in entering credentials which accompanied the decline in applicants and applications. While these events are related and have a much broader impact on legal education and the legal market, many have reported on those issues,<sup>9</sup> so this article instead focuses on what law professors can do in response to these declines to better equip students for success in law school, the bar examination and practice.

The second part of this article describes a range of responses to the storm: panic, paralysis, or pivot. Although there may have been a little panic early on, followed by some paralysis while figuring out next steps, I settled on pivoting. While recognizing there is no single solution and certainly no perfect solution, among available options, pivoting seemed the only viable option and certainly the most effective. This second part elaborates on what I call pivot pedagogy which is essentially a package of ideas to respond to declining applications, applicants, and entering statistics with the goal of improving student performance across the board. In particular, I hope pivot pedagogy will boost learning opportunities for students with lower entering credentials.<sup>10</sup> I hope others will feel free to adopt any or all of these practices and share other ideas for improving learning and making law school a more positive experience for all law students. The article closes with a plea to pivot even without guarantees of success.

## II. Law School Trends: A Drop in the Number of Law School Applicants, Applications and Entering Credentials - What and Why?

I served as Associate Dean for Administration at California Western School of Law from 2007 to 2013, and in that role oversaw the Admissions Department along with five other departments.<sup>11</sup> At the beginning of my term as Associate Dean in 2007, the law school still had “bulge” classes,<sup>12</sup> but by spring 2011, applications started to dwindle as illustrated in the table below.

Reporting Year	Number of Applications
2010	2,831
2011	2,208
2012	2,298
2013	1,771
2014	1,859
2015	1,725 <sup>13</sup>

Applications dropped from 2010 to 2011 by approximately 22%, with a slight uptick from 2011 to 2012, then another significant drop from 2012 to 2013 of approximately 23%. California Western School of Law was not alone and in fact many schools fared far worse. For example, Thomas M. Cooley Law School saw applications plummet by 35.1%, and Whittier Law School saw applications fall by 32.2%.<sup>14</sup>

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<sup>9</sup> See Courtney G. Lee, *Changing Gears to Meet the "New Normal" in Legal Education*, 53 Duq. L. Rev. 39 (2015); see also Debra C. Weiss, *Law School Applicants Continue to Decline, and Schools get Less Choosy*, ABA JOURNAL (Mar. 20, 2015), available at:

[http://www.abajournal.com/news/article/law\\_school\\_applicants\\_continue\\_to\\_decline\\_and\\_schools\\_get\\_less\\_choosy](http://www.abajournal.com/news/article/law_school_applicants_continue_to_decline_and_schools_get_less_choosy).

<sup>10</sup> This is something that should be of concern to all law school leaders given the proposed ABA rules on attrition. At its March 2016 meeting, The Council of the Section of Legal Education and Admissions to the Bar “agreed to seek notice and comment on changes to Standard 501, which relates to a law school’s admissions policies and practices. The proposed changes include an interpretation creating a rebuttable presumption that a school is operating out of compliance with Standard 501’s requirement that it admit students who are capable of completing its J.D. program if the non-transfer attrition rate of its first-year class is 20 percent or higher.” American Bar Association, *Council Renders Decisions on ABA Standards and Law School Applications*, 47 SYLLABUS 4, 4 (2016).

<sup>11</sup> The Bookstore, Career Services Office, Facilities, Financial Aid and Information Technology also reported to me. During my first five years as Associate Dean for Administration, I also served as General Counsel to the law school.

<sup>12</sup> “Bulge” classes are larger than anticipated. For example, although California Western School of Law’s target class size was in the 280-320 range, in 2010 we had 382 matriculates.

<sup>13</sup> Christopher Baidoo, CALIFORNIA WESTERN SCHOOL OF LAW: ADMISSIONS DATA (2016) (Christopher Baidoo is the Assistant Dean for Admissions at California Western School of Law and provided this data by email on September 19, 2016).

<sup>14</sup> *Thomas M. Cooley Law School Profile*, LAW SCHOOL TRANSPARENCY (last visited Oct. 5, 2016), available at: <http://www.lsatscorereports.com/schools/cooley/>; see also Standard 509 Information Reports: Whittier Law School, in ABA REQUIRED DISCLOSURES (last visited Dec. 27, 2016), available at: <http://abarequireddisclosures.org>.

The average 2010 to 2011 year-to-year drop in applications to ABA law schools was 11%.<sup>15</sup> For the period from 2010 to 2015, law schools experienced a cumulative drop in applications of 38%.<sup>16</sup>

The general decline in the raw number of applications to law school is consistent with the total decline in the net number of law school applicants. For a variety of reasons, there was less interest in attending law school. In 2010, there were a total of 87,900 law school applicants and by 2015, the number had dropped to 54,500 as shown in the table below.<sup>17</sup>

Reporting Year	Number of Applicants
2010	87,900
2011	78,500
2012	67,900
2013	59,400
2014	55,700
2015	54,500 <sup>18</sup>

It naturally follows that there would be fewer entering law students during this period of decline. California Western School of Law certainly followed this trend. There was a huge year-to-year drop from 2010 to 2011, followed by a modest bump up in 2012, then another drop as illustrated in the table below.<sup>19</sup>

Reporting Year	Number of Matriculates
2010	382
2011	283
2012	309
2013	260
2014	263
2015	248 <sup>20</sup>

Other law schools suffered much more extreme decreases in the number of entering law students. Whittier Law School saw a steady decline from 274 matriculates in 2011 to 146 in 2015, a drop of 47%; while Florida Coastal School of Law saw an even steeper decline from 679 matriculates in 2011 to 320 in 2015, a drop of 53%.<sup>21</sup>

While declining numbers of applications, applicants, and matriculates created problems for law schools nationwide, more troubling for many law schools was the decline in entering credentials during this period. California Western School of Law was not immune. Over a five year period, the GPA for the 75<sup>th</sup> percentile of the entering class dropped from 3.5 in the 2010 reporting period to 3.41 in the 2015 reporting period.<sup>22</sup> The 75<sup>th</sup> percentile LSAT during that same period dropped from 157 to 153.<sup>23</sup> More troubling, the 25<sup>th</sup> percentile LSAT dropped from 151 to 147.<sup>24</sup> “The LSAT is a strong predictor of first-year law school grades and compares very favorably with admission tests used in other graduate and professional fields of study.”<sup>25</sup>

<sup>15</sup> ABA Volume Summary, in END-OF-YEAR SUMMARY: ABA (APPLICANTS, APPLICATIONS, AND ADMISSIONS), LSATS, CREDENTIAL ASSEMBLY SERVICE, AMERICAN BAR ASSOCIATION (last visited Oct. 22, 2016), available at: <http://www.lsac.org/lsacresources/data/lsac-volume-summary>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Note that California Western School of Law has a traditional entering class in the fall and a smaller entering class in the spring, and the numbers in the table represent the total number of entering students for fall and spring for each school year.

<sup>20</sup> Baidoo, *supra* note 13.

<sup>21</sup> Section of Legal Education: ABA Required Disclosures, Standard 509 Information Reports, AMERICAN BAR ASSOCIATION (last visited Oct. 4, 2016), available at: <http://abarequireddisclosures.org>.

<sup>22</sup> See Baidoo, *supra* note 13.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See LSAT Scores as Predictors of Law School Performance, LAW SCHOOL ADMISSIONS COUNCIL (last visited Oct. 22, 2016), available at: <http://www.lsac.org/jd/lsat/your-score/law-school-performance>.

Thus, a drop in average LSAT scores is problematic in and of itself but is even more problematic as you continue down the percentiles.<sup>26</sup> The same phenomena of declining entering credentials occurred across the spectrum of American law schools. For example, some of the hardest hit schools saw a 14% decline in entering students' GPAs and 5% for their LSAT scores.<sup>27</sup> Although most schools were not as hard hit, almost all were impacted as the average decline for both GPAs and LSAT scores was 2%.<sup>28</sup>

What caused these changes? No one can pinpoint the causes with accuracy but some generally agreed upon factors include an anemic legal job market<sup>29</sup> and the high cost of attending law school.<sup>30</sup> The combination of potentially crippling student loan debt and a weak job market with decreasing job prospects at lower entering salaries caused many potential law school applicants to pursue other options.<sup>31</sup>

Starting in 2011, the bottom fell out of the legal job market. There is no single reason for its deterioration but there was a perfect storm of three significant causes: globalization, advances in technology, and a buyer's market where clients insisted on more cost-effective lawyering and delivery of legal services.<sup>32</sup> One significant way globalization impacted the legal market was through legal service providers' outsourcing of many traditional legal jobs to countries with lower labor costs.<sup>33</sup> “[A] University of California study concludes that 14 million white-collar jobs are vulnerable to being outsourced offshore. These are not only call-center operators, customer service and back-office jobs, but also ... legal services.”<sup>34</sup> It simply became more cost-effective to outsource ministerial legal tasks such as entering data or organizing discovery, as well as those that did not require judgment, discretion, or true legal skills.

Rapid ongoing advances in technology also negatively impacted the number of legal jobs. It is now possible for computers and computer programs to do work previously handled by attorneys. “Automated document review, for example, has a strong effect on lawyer employment....”<sup>35</sup> Also, easily available and affordable websites seemingly offer law at one’s fingertips, accessible at the consumer’s convenience without the hassle, cost or fear of setting up an appointment with a lawyer.

<sup>26</sup> See Lisa C. Anthony et al., *Predictive Validity of the LSAT: A National Summary of the 2011 and 2012 LSAT Correlation Studies*, jn LSAT TECHNICAL REPORT SERIES (Nov. 2013), available at: [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-13-03.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-13-03.pdf); see also Noelle Price, *Lowering LSAT Score Requirements May Have Consequences*, JD JOURNAL (Jan. 16, 2015), available at: <http://www.jdjournal.com/2015/01/16/lowering-lsat-score-requirements-may-have-consequences/>.

<sup>27</sup> ABA Required Disclosures, *supra* note 21 (this data is an average of that from Florida Coastal School of Law and Thomas M. Cooley Law School).

<sup>28</sup> Section of Legal Education: ABA Required Disclosures: Compilation – All Schools Data, AMERICAN BAR ASSOCIATION (last visited Oct. 4, 2016), available at: <http://abarequireddisclosures.org>.

<sup>29</sup> Class of 2011 has Lowest Employment Rate Since Class of 1994, NALP BULLETIN (last visited Oct. 22, 2016), available at: <http://www.nalp.org/0712research>.

<sup>30</sup> Victor Gold, *Reducing the Cost of Legal Education: The Profession Hangs Together or Hangs Separately*, 66 SYR. L. REV. 497, 498 (2015).

<sup>31</sup> *Id.* at 498-500.

<sup>32</sup> Heather P. Baxter, *At a Crossroads: Where the Indigent Defense Crisis and the Legal Education Crisis Intersect*, 18 BERKELY J. AFR.-AM. L & POL’Y 25, 34 (2016) (explaining that the decline in the legal job market is a large contributor to the legal education crisis); see also Nicole Black, *Today’s Tech: Law School and Legal Job Prospects in 2016*, ABOVE THE LAW (July 14, 2016), available at <http://abovethelaw.com/2016/07/todays-tech-law-school-and-legal-job-prospects-in-2016/> (identifying the legal market, technology, and globalization as causes of the legal education crisis); Carole Silver, *Getting Real about Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STANFORD L. & POL’Y REV. 457 (2013).

<sup>33</sup> K.W. Gibson, *Outsourcing Legal Services Abroad*, LAW PRACTICE (last visited Oct. 23, 2016), available at: [http://www.americanbar.org/publications/law\\_practice\\_home/law\\_practice\\_archive/lpm\\_magazine\\_articles\\_v34\\_is5\\_pg47.html](http://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v34_is5_pg47.html).

<sup>34</sup> Paul C. Roberts, *The Offshore Outsourcing of American Jobs: A Greater Threat Than Terrorism* (Mar. 13, 2016), available at: <http://www.globalresearch.ca/the-offshore-outsourcing-of-american-jobs-a-greater-threat-than-terrorism/18725>; see also Emily Newburger, *The Source on Outsourcing*, HARVARD LAW BULLETIN (Sept. 1, 2006); available at: <http://today.law.harvard.edu/feature/the-source-on-outsourcing/>.

<sup>35</sup> Debra C. Weiss, *Will Technology Create a Lawyer ‘Jobs-pocalypse’? Doomsayers Overstate Impact, Study Says*, ABA JOURNAL (Jan. 5, 2016), available at:

[http://www.abajournal.com/news/article/does\\_technology\\_presage\\_a\\_lawyer\\_jobs\\_pocalypse\\_naysayers\\_overstate\\_impact](http://www.abajournal.com/news/article/does_technology_presage_a_lawyer_jobs_pocalypse_naysayers_overstate_impact).

Consider for a moment the success of non-lawyer legal service providers such as Rocket Lawyer and LegalZoom. Both of these online services provide the ability for legal service consumers to create their own legal documents and forms. Both services proclaim that they do not provide legal representation, are not law firms, and are not a substitute for an attorney or law firm. Yet they essentially provide the same deliverable that many of us do: contracts, wills, business formation documents, bankruptcy filings, and the list goes on. They provide consumers with the ability to create documents that are intended to accomplish a specific legal purpose.<sup>36</sup>

A recent Legal Zoom press release highlighted its success and penetration into the legal market, “LegalZoom has helped millions of Americans with their legal needs over the last 14 years, and has now achieved another industry milestone through their trusted network of attorneys. Independent legal plan attorneys have completed 200,000 consultations with LegalZoom customers searching for quality legal help.”<sup>37</sup> Technology in many instances has replaced lawyers for tasks more efficiently and economically accomplished by programs and automation. Although lawyers are still essential for many tasks from the highly sophisticated where lawyers simply cannot be replaced, to legal services for middle and low-income consumers, easy and widespread computer access now allows consumers easy access to DIY lawyering. It is clear that there are a range of technology-related forces that have resulted in a reduced need for lawyers.

An additional force that has negatively impacted the legal job market is a change in client expectations with respect to costs and services which resulted in belt-tightening, some layoffs and a reduction in hiring. “Economic pressures within the last decade have motivated all sectors of the professional services industry, including the legal profession, to closely examine their business practices and innovate to thrive in an ever more competitive landscape.”<sup>38</sup> Clients want legal services to be provided on a more efficient basis and for various reasons, law firms have been more amenable to a variety of billing schemes including flat rate services or discounted billable rates. “Since the financial crisis... the ‘realisation’ of law firms—the proportion of their standard rates that they collect in practice—has been sliding... Peer Monitor, a company that tracks the legal industry, said that the ratio in the United States dropped from 92% in 2007 to an all-time low of 83.5% in 2013.”<sup>39</sup> With an abundance of options, the buyers’ market in the legal world provided clients more clout and it appears that changes in billing arrangements that work in their favor may be here for the long haul. This in turn impacts the job market by reducing profitability, which may result in letting attorneys go, not replacing attorneys who leave regardless of the reason, and certainly not expanding the number of legal positions.

While the job market for attorneys shrank partly because of globalization, technology, and client demands for more cost-effective services, the average cost of a legal education grew out of hand.<sup>40</sup> “[L]aw school is expensive and comes with a massive financial risk.

<sup>36</sup> Blair Janis, *How Technology Is Changing the Practice of Law*, AMERICAN BAR ASSOCIATION (last visited Oct. 22, 2016), available at:

[http://www.americanbar.org/publications/gp\\_solo/2014/may\\_june/how\\_technology\\_changing\\_practice\\_law.html](http://www.americanbar.org/publications/gp_solo/2014/may_june/how_technology_changing_practice_law.html)

<sup>37</sup> LegalZoom Achieves Milestone of 200,000 Legal Plan Attorney Consultations, BUSINESS WIRE (last visited Jan. 23, 2017), available at:

<http://www.businesswire.com/news/home/20150324005036/en/LegalZoom-Achieves-Milestone-200000-Legal-Plan-Attorney>.

<sup>38</sup> David J. Diamond, *Alternative Fee Arrangements: Non-Hourly Billing Provides Opportunities for Firms to Improve Client Relationships*, 71 INTA BULLETIN 1, 1 (2016), available at:

<http://www.inta.org/INTABulletin/Pages/AlternativeFeeArrangements.aspx>

<sup>39</sup> Charging More, Getting Less: Lawyers’ Biggest Customers are Discovering that They can Haggle, THE ECONOMIST (Jan. 8, 2014), available at: <http://www.economist.com/news/business/21594317-lawyers-biggest-customers-are-discovering-they-can-haggle-charging-more-getting-less>; see also Neil Gluckman, *For Cost-Conscious Clients, Less is More*, THE AMERICAN LAWYER DAILY (Nov. 10, 2015), available at:

<http://www.americanlawyer.com/id=1202742137312/For-CostConscious-Clients-Less-Is-More?slreturn=20161006215332>

(“More than good project management, matching services to clients’ legal risks or striving to understand a client’s business, what clients want from outside counsel is good old-fashioned discounts, according to a report released Tuesday by the legal consultancy Altman Weil.”).

<sup>40</sup> Delece Smith-Barrow, *U.S. News Data: Law School Costs, J.D. Salaries*, U.S. NEWS & WORLD REPORT (Mar. 17, 2016), available at: <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2016-03-17/us-news-data-law-school-costs-jd-salaries>.

The American Bar Association reported that in 2012 the average borrowed amount for law school graduates was \$84,600 at public institutions and \$122,158 at private schools.<sup>41</sup> For most law students, student loans come to the rescue, making law school possible. Currently, the average student debt for law school graduates is \$118,889.<sup>42</sup> That means the approximate average student loan payment on graduation is \$1,000 per month.<sup>43</sup> Even if a prospective law student were willing to take on the debt load that accompanies a law degree from most law schools, with a weak job market and limited job prospects, it would be very difficult to make monthly payments on large student loans. For many of those who dreamed of law school or simply considered it a safe profession, the numbers no longer penciled out – the costs exceeded the benefits. Hence the decline in law school applications and applicants.

For many who decided to take the plunge and go to law school anyway, they entered with lower credentials as discussed above.<sup>44</sup> Law schools then had the responsibility to decide what, if anything, they could and would do to enhance the odds of student success. Many schools offer tutoring, academic success programs, or other supplemental programs. For example, Harvard Law School provides peer tutoring and academic advising,<sup>45</sup> the University of California Davis School of Law provides tutoring and an academic success resource center,<sup>46</sup> and California Western School of Law provides large-group tutoring, small-group labs, and academic achievement workshops.<sup>47</sup> While that is laudable and appropriate at the institutional level, that is not enough. I believe each faculty member has to do his or her part to set our students up for success in law school, on the bar examination, and in practice. The next part will elaborate on my personal response, contributions and classroom experiments and experiences.

### III. A Spectrum of Responses: Panic, Paralysis, Pivot

#### A. Introduction

The number of law school applications and matriculates, as well as their entering credentials, declined while I was still Associate Dean of Administration. Because of my position, I was more focused on the administrative impact involving my departments and budgets than I was with pedagogy. When my term as Associate Dean ended in 2013, I had a sabbatical year before returning to the classroom for the first time in eight years. I had already decided to select new text books that included experiential components, to toss my notes and power point slides, and to start fresh. That is when I hit my initial reaction – panic! Not only because of the volume of work in front of me but because the world had changed. Students were accustomed to more technology in the classroom and social media surely had an impact on students' attention span and writing skills. "According to scientists, the age of smartphones has left humans with such a short attention span even a goldfish can hold a thought for longer. Researchers surveyed 2,000 participants [and] ... [t]he results showed the average human attention span has fallen from 12 seconds in 2000, or around the time the mobile revolution began, to eight seconds. Goldfish, meanwhile, are believed to have an attention span of nine seconds."<sup>48</sup>

<sup>41</sup> Afoma Okoye, *Cost of Law School, Part 1: Financial Risk*, LAW SCHOOL INSIDER (May 27, 2016), available at: <http://www.kaptest.com/blog/law-school-insider/2016/05/27/cost-of-law-school-part-1-financial-risk/>

<sup>42</sup> *Law School Financing*, LAW SCHOOL TRANSPARENCY (last visited Oct. 22, 2016), available at: <http://www.lawschooltransparency.com/reform/projects/Law-School-Financing/>.

<sup>43</sup> Some graduates may qualify for programs such as public service loan forgiveness, but the options are limited and have strict requirements. See, e.g. *Public Service Loan Forgiveness*, FEDERAL STUDENT AID (last visited Oct. 22, 2016), available at: <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/public-service>; but see *Understanding Repayment: Income-Driven Repayment Plans*, U.S. DEP'T EDUC., FEDERAL STUDENT AID (last visited Dec. 27, 2016), available at: <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven>; *How to Repay your Loans: Student Loan Forgiveness, Cancellation, and Discharge*, U.S. DEP'T EDUC., FEDERAL STUDENT AID (last visited Dec. 27, 2016); available at: <https://studentaid.ed.gov/sa/repay-loans#forgiveness>.

<sup>44</sup> See ABA Required Disclosures, *supra* note 21.

<sup>45</sup> *Academic Support Services*, HARVARD LAW SCHOOL (last visited Nov. 6, 2016), available at: <http://hls.harvard.edu/dept/dos/accessibility/academic-support-services/>.

<sup>46</sup> *Academic Success Services*, UC DAVIS SCHOOL OF LAW (last visited Nov. 6, 2016), available at: <https://law.ucdavis.edu/academic-success/academic-success-services.html>.

<sup>47</sup> *Academic Achievement*, CALIFORNIA WESTERN SCHOOL OF LAW (last visited Nov. 6, 2016), available at: <https://www.cwsl.edu/academics/academic-achievement>.

<sup>48</sup> Leon Watson, *Humans Have Shorter Attention Span than Goldfish, Thanks to Smartphones*, THE TELEGRAPH (May 15, 2015), available at: <http://www.telegraph.co.uk/science/2016/03/12/humans-have-shorter-attention-span-than-goldfish-thanks-to-smart/>.

While attention spans were gradually shrinking, there was a steady decline in the average credentials of entering law students. "Law School Transparency, a nonprofit watchdog organization, spent nine months reviewing incoming LSAT scores for law schools. The report shows that law schools have been admitting students with lower LSAT scores since applications began to decline in 2011. While the LSAT is designed to predict success in the first year of law school, Kyle McEntee, co-founder of Law School Transparency, said it is also a strong indicator for success on the bar exam."<sup>49</sup> The nationwide trend that the Law School Transparency Project highlighted was present at California Western School of Law. Entering LSAT percentiles had dropped from four to five points on average at the 75<sup>th</sup>, 50<sup>th</sup> and 25<sup>th</sup> percentiles for the reporting period when I returned to the classroom.<sup>50</sup> The Law School Admissions Council asserts that the LSAT is one of the best predictors of law school success.<sup>51</sup> Accordingly, a decline in average LSAT scores meant a lower likelihood of law school and bar examination success. California Western School of Law frequently outperforms bar passage predictions and was recognized by National Jurist in 2015 as number 12 in the nation for best law schools for bar exam preparation.<sup>52</sup> Respecting the July 2016 California State Bar which had a low average first time pass rate of 62%,<sup>53</sup> David Frakt noted: "Only one school noticeably outperformed its predictors, Cal Western, which outperformed four law schools with higher LSAT scores."<sup>54</sup> However, even with California Western's impressive record of outperforming on the California Bar Examination, given the link between entering credentials, law school success and bar passage, I remained concerned about entering credentials, providing appropriate support, and returning to the classroom.

With the across the board drop in average LSAT scores, I knew my work was cut out for me. While I understood that I had to do something different, so much had changed in the eight years I had been out of the classroom and as I started to explore options, I was paralyzed. Where to begin? Then it came to me – design pivot pedagogy to CARE: Collaborate, Assess, Reach, and Engage. This part describes some of the steps I took to collaborate, assess, reach, and engage all students, with special sensitivity to the needs of high-risk students.<sup>55</sup>

### B. Collaborate

There are many ways to collaborate, starting with colleagues around common purposes. For example, the 2016-2017 school year is the first academic year that all law school course syllabi must include learning objectives, outcomes, and assessments pursuant to new ABA requirements.<sup>56</sup> It is reasonable for all professors who teach first year students to have some common learning objectives, outcomes and assessments for their students,<sup>57</sup> thus that is one logical point of collaboration. While brainstorming to develop these, it is likely that assessment and enrichment opportunities will emerge.

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<sup>49</sup> Mike Stetz, *Law Schools Admitting More At-Risk Students, Study Says*, NATIONAL JURIST (Nov. 16, 2015), available at: <http://www.nationaljurist.com/content/law-schools-admitting-more-risk-students-study-says>.

<sup>50</sup> See Baidoo, *supra* note 13.

<sup>51</sup> See *LSAT Scores as Predictors of Law School Performance*, LAW SCHOOL ADMISSIONS COUNCIL (last visited Oct. 22, 2016), available at: <http://www.lsac.org/jd/lsat/your-score/law-school-performance>.

<sup>52</sup> See Mike Stetz, *Best Schools for Bar Exam Preparation*, THE NATIONAL JURIST, (Feb. 2015), available at: <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0215/#/24>.

<sup>53</sup> See David Frakt, *Some Thoughts on the California Bar Exam*, THE FACULTY LOUNGE (Dec. 14, 2016), available at: <http://www.thefacultylounge.org/2016/12/some-thoughts-on-the-california-bar-exam-.html>.

<sup>54</sup> *Id.*

<sup>55</sup> According to the Law School Transparency 2015 State of Legal Education Report and Key Findings, high risk students in the law school context are defined as those with LSAT scores ranging from 147-149, very high-risk students are those with LSAT scores ranging from 145-146, and extreme risk students are those with LSAT scores ranging from 120-144. *See 2015 State of Legal Education: Key Findings*, LAW SCHOOL TRANSPARENCY (last visited Nov. 1, 2016), available at: <http://lawschooltransparency.com/reform/projects/investigations/2015/key-findings/>.

<sup>56</sup> *Managing Director's Guidance Memo: Standards 301, 302, 314 and 315*, AMERICAN BAR ASSOCIATION: SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (June 2015), available at:

[http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_outcomes\\_guidance.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf).

<sup>57</sup> For example, we would probably include case briefing, issue spotting, legal analysis, and case synthesis as objectives that students would achieve by the end of their first year.

Another logical point of collaboration is with other substantive faculty who teach the same course. For example, since I teach Property, a first year course, it makes sense to collaborate with all the other Property professors.<sup>58</sup> We inevitably will have some shared core learning objectives, outcomes and assessments, and can also learn from each other.<sup>59</sup> We can also collaborate by developing common exercises, hypotheticals, and assessments designed to reinforce the learning objectives and test whether the objectives have been achieved.

Finally, it can be productive to collaborate with legal skills faculty, academic support and other appropriate departments and personnel whose names and titles vary by school. As one example, substantive law faculty can work with legal skills faculty to provide substantive areas that lend themselves to legal skills exercises and application. California Western has an excellent Academic Achievement department which encourages collaboration whenever possible. For example, the Academic Achievement department will provide a summary of topics tested on the bar examination on a given bar course for faculty who teach those bar courses.<sup>60</sup> Although there is no guarantee that areas tested on in the past will be tested upon again in the future, there tend to be trends and for the benefit of our students, it is best to be familiar with those and prepare students accordingly. As another example, I also share my syllabi with Academic Achievement and seek feedback on the learning objectives, outcomes, and assessments. Another example is I provide drafts of my mid-term and final examinations to Academic Achievement in order to have another set of eyes confirm that the exams are fair, they test what is covered, there are no errors, and the language is clear and consistent. I am presently working with Academic Achievement and my class tutor to design multiple choice questions, hypotheticals and writing assignments that track our course coverage. In addition, it is ideal for first year classes to schedule class, tutoring, and office hours in sequence on the same day so students can prepare for class, attend and engage in class, and go to tutoring where they can apply what they have learned in the tutoring session and get individualized feedback. Then if they have remaining questions, they can go straight to a professor's office hours while the materials and questions are fresh in their minds. These are just some examples among the many ways to collaborate for the benefit of students.

### C. Assess

In addition to collaborating to better serve students, especially high-risk students, it is important to provide assessment opportunities so students get feedback and a sense of what they understand, what they have mastered, and what they need to improve. One way to provide an assessment opportunity is through the tutoring lessons described above where students get real time feedback, followed by a chance to visit faculty during office hours to address any remaining questions.<sup>61</sup> Faculty can also provide quizzes and mid-terms. For example, I have a mid-term in all my doctrinal courses (Property I, Property II and Business Organizations) and provide extra office hours the week before mid-terms, an optional extra class after mid-terms are returned to go over all the problems on the mid-term, and extra office hours after the optional extra class so students can ask mid-term specific questions.

I also provide assessment opportunities through "Socrative,"<sup>62</sup> which offers in-class self-assessment tools on the law in a given discrete area and allows real time feedback. I am grateful to California Western School of Law's Education Technology Department that introduced me to the Socrative website.<sup>63</sup> I use Socrative to provide in-class multiple choice questions when we have completed a topic. According to the Socrative website, with its tools, you can "[q]uickly assess students with prepared activities or on-the-fly questions to get immediate insight into student understanding. Then use auto-populated results to determine the best instructional approach to most effectively drive learning."<sup>64</sup>

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<sup>58</sup> The Vice Dean has encouraged faculty who teach the same course to meet and share ideas, learning objectives and outcomes, and other ideas.

<sup>59</sup> I am working with the other California Western Property professors now, and will then move on to all the 1L professors.

<sup>60</sup> I typically ask for a summary of California Bar examination questions but our Academic Achievement Department can provide summaries of other states' questions as well.

<sup>61</sup> See discussion *supra* Part III.B.

<sup>62</sup> See SOCRATIVE BY MASTERY CONNECT (*last visited* Oct. 22, 2016), available at: <http://www.socrative.com/>.

<sup>63</sup> Special thanks to Barbara Glennan, John Lancaster, and John Printz.

<sup>64</sup> *Id.*

Many of my colleagues use “clickers,”<sup>65</sup> but these require quite a bit of advanced planning so they do not permit spontaneous assessments.<sup>66</sup> Socrative, however, does not require multiple people to set up the system (just me), and it does not require days of lead time, so it works best for my purposes. Students register on the Socrative website at the beginning of the semester (it is free!), and set themselves up so they have ready access to the website at every class. I can load questions at my convenience and whenever we finish a topic, we log on to Socrative and do anywhere from one-four questions to test student understanding of the materials. I select the anonymous option so students know how they did, but they do not know how their classmates performed. One of the positive features about this technology is “[i]t allows teachers to pose questions and get immediate feedback from the entire class, and none of the students need to worry about exposing their ignorance.”<sup>67</sup> Here is a slide with the results from a four question day in Property with correct answers highlighted in green (the lighter shaded answers) and incorrect answers highlighted in red (the darker shaded answers).

Name: A-Z ▾	Progress ▾	#1	#2	#3	#4
Anon 01852	100% ✓	A	A	A	A
Anon 02818	100% ✓	A	A	C	A
Anon 077e7	100% ✓	A	A	A	A
Anon 08cia	100% ✓	D	A	C	A
Anon 096dc	100% ✓	A	B	A	A
Anon 2687e	100% ✓	D	A	A	A
Anon 2804e	100% ✓	A	B	A	A
Anon 2b48d	100% ✓	B	A	A	A
Anon 2f1bc	100% ✓	A	A	A	A
Anon 31f77	75%	A	B	A	
Anon 38f95	100% ✓	A	A	A	A
Anon 49a1e	100% ✓	A	A	A	A
Anon 62ab6	100% ✓	A	A	A	A
Anon 62cb4	100% ✓	D	A	A	A
Anon 6331b	100% ✓	A	B	A	A
Anon 64c57	100% ✓	A	A	A	A
Anon 64d01	100% ✓	A	A	A	A
Anon 739fb	100% ✓	C	D	C	B
Anon 755ba	100% ✓	A	A	A	A
Anon 7e657	100% ✓	A	A	A	A
Anon 7ee07	100% ✓	A	A	A	A
Anon 7f007	100% ✓	A	A	B	A
Anon 83049	100% ✓	A	A	A	A
Anon 8f655d	100% ✓	A	B	A	A
Anon 8f2575	100% ✓	A	A	D	A

As soon as students answer a question, they cannot change their answer, they get immediate feedback, and as noted above, I set up our system so it is anonymous for reporting purposes meaning neither their classmates nor I know how they did, but of course they know.

<sup>65</sup> Students Use Clickers to Help Guide College Lectures, ABC NEWS (May 5, 2005), available at:

<http://abcnews.go.com/Technology/DyeHard/story?id=727409&page=1> (“The heart of the technology is a ‘clicker,’ very similar to the remotes we use to run our television sets, which sends student responses by infrared signals to a computer system that displays the results instantly.”).

<sup>66</sup> At California Western School of Law, professors have to provide questions and correct answers to Student and Diversity Services and Education Technology several days in advance of the class when you plan to pose those questions so they can load everything into the appropriate equipment. I tend to constantly update my notes, slides, and questions up to just before class time so the clicker system does not work well for me.

<sup>67</sup> Socrative, *supra* note 62.

If they think they understand the materials and they are like the student above whose answers are all dark shaded (red), they know they need help! If they get the magic lighter shaded green answers, then they can affirm their understanding. Law students, especially first year students, do not get enough multiple choice practice experience – for many students, the first multiple choice questions they see from their professors are on the professors' final exams, which does not seem very fair. Through Socrative, they get multiple choice practice experience before examinations, and they have a chance to test their understanding of substantive materials as soon as we complete our study of those materials.

There are many different assessment opportunities and the important thing is for each faculty member to thoughtfully consider the best ways to assess students in their classes given their learning objectives and outcomes. Then they should carefully tailor and develop appropriate assessments. Law students should not have their grades for a course completely determined by one final examination. Out of fairness to them there should be ongoing and continuous assessments so students have an opportunity to recognize their strengths and weaknesses, effectively learn the materials, and better prepare for examinations.

#### D. Reach and Engage

Once past the paralysis stage, a final strategy I decided upon was to reach and engage students in a more meaningful way across the spectrum of students from high-risk to high-achieving, and everyone in between. I use the phrase “reach and engage” broadly to approach students through a variety of teaching methods and to approach substantive materials from various angles including Socratic,<sup>68</sup> lecture, power point, group exercises, case studies, peer assessments, and flipped classes. This part of the article starts with a brief description of “Experiencing Assignments,” then focuses on flipping the class as the other methods and approaches are self-explanatory.

##### 1. *Experiencing Assignments*

My Business Organizations text book, *Experiencing Business Organizations* by Michael A. Chasalow,<sup>69</sup> includes “*Experiencing Assignments*” in each chapter. “Students … are given assignments that they might receive if they were junior associates, working in a law firm.”<sup>70</sup> I assign each *Experiencing Assignment* at the beginning of the chapter or section of materials but ask students simply to review it, *not* to answer it. The *Experiencing Assignment* provides a framework for the materials that follow so students have a context for why we are covering the materials and the types of issues that might arise in connection with the materials. When we complete the section, students prepare the assignment as part of their homework before class. Then in class, they break up into their teams,<sup>71</sup> with instructions to report back on specific outcomes. In their teams, they compare their work product, agree and disagree on various points, learn from each other, and prepare their report back synopsis. Ultimately I select some groups to report back to the class and ask representatives from other groups to ask questions and moderate the report back session.

*Experiencing Assignments* provide a range of benefits. First, students are forced to review and synthesize the materials from the chapter in order to complete the assignment. As a four credit course, Business Organizations covers so much that a forced chapter review at the end of each chapter allows for better retention, an opportunity for application, and feedback from both peers (teammates) and the class (during the report back period). Second, for students who learn by doing, *Experience Assignments* provide teaching and learning modules in their preferred learning style. Third, *Experiencing Assignments* allow us to break up our two hour class periods in a way that benefits students. I typically sandwich *Experiencing Assignments* between lecture and Socratic case discussions. For example, we might finish up a set of assigned materials by discussing the cases and questions, then break up into teams for an *Experiencing Assignment* component. This would consist of students within a team comparing their work product then preparing a response to whatever I have asked teams to present to the class.

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<sup>68</sup> “The oldest, and still the most powerful, teaching tactic for fostering critical thinking is Socratic teaching. In Socratic teaching we focus on giving students questions, not answers. We model an inquiring, probing mind by continually probing into the subject with questions.” *Socratic Teaching*, CRITICAL THINKING COMMUNITY (last visited Nov. 5, 2016), available at: <http://www.criticalthinking.org/pages/socratic-teaching/606>.

<sup>69</sup> MICHAEL A. CHASALOW, EXPERIENCING BUSINESS ORGANIZATIONS (West 2013).

<sup>70</sup> *Id.* at xxviii.

<sup>71</sup> At the beginning of the trimester, I break the class up into teams of about five-eight students per team. They select their team name and are teammates for the duration of the trimester.

By breaking up long two hour classes in this manner, students can go from saturation mode where they are absorbing materials and participating through Socratic dialogue, to analytical mode where they apply the materials they have already learned to a discrete set of facts with their groups, back to saturation mode when we move on to the next set of materials. This back and forth allows them to absorb more when we return to lecture and Socratic dialogue later in a two hour class because they have made room in the cranial sponge during the analytical/application mode. This keeps students much more engaged than they would otherwise be in a long class.

## 2. Flipping the Class

The remainder of this part focuses on flipping the classroom, starting with a description of flipped classes, then urging law faculty to consider flipping the class even though it is more work for the professor and students. It also explains why I decided to use flipped classes and summarizes my experiences in the first two years of using flipped classes in first year courses, Property I and Property II, and an upper division course, Business Organizations. This part closes with basic guidance on “how” to flip the class.

### A. The “What” and “Why” of Flipped Classes

What is a flipped classroom? “The flipped classroom is a pedagogical model in which the typical lecture and homework elements of a course are reversed. Short video lectures are viewed by students at home before the class session, while in-class time is devoted to exercises, projects, or discussions...”<sup>72</sup> In other words, with a flipped classroom, you move lecture, background or black letter law into a video component that students watch before class, freeing up class time for application. Professor Slomanson stated “In the traditional classroom, professors spend the majority of their time dispensing information. The students spend the majority of their class time taking notes. Professors have little time to help them connect the analytical dots. In the flipped model, new content is presented in online, out-of-class videos. Class time may then focus on activities enhancing the overall learning environment.”<sup>73</sup>

Flipped classes sound interesting, but they require a significant amount of extra preparation and work. Why bother with a flipped classroom? According to a source, the top three reasons why teachers flip the class are one, it provides a better learning environment for students; two, it is now more feasible than ever to flip a class given the greater availability of technology; and three, there are positive results from initial utilization of flipped classes.<sup>74</sup> The bottom line is effective classroom flipping provides better opportunities for personalized learning, mastering information and retaining more information which I will explain below, all important goals generally, especially with high-risk students.

Flipped classes provide better opportunities for personalized learning because students can proceed at their own pace when reviewing videos instead of being stuck at the single pace a class lecture offers. This is beneficial for students because they do not hold the class up, there is no embarrassment if they do not understand something the first time, and they can rewind and watch ideas or videos as many times as they want or need. On the other hand, if students already understand the materials, they can fast forward. Many students will simply watch a video once to get the materials in a different form than the class or text provides. It is challenging to teach to all levels of students at all times but with flipped classes, students can go at their own pace. When looking at summaries of student viewership of my flipped classes during the first two years I used them, I observed that many students watched the videos once but others went back and either watched the entire video again or much more frequently just parts of the video.<sup>75</sup> What is important is students get to individually determine when to watch and how frequently to watch based on their individual needs.

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<sup>72</sup> 7 Things You Should Know About ... Flipped Classrooms, EDUCAUSE LEARNING INITIATIVE (last visited Sept. 25, 2016), available at: <https://net.educause.edu/ir/library/pdf/eli7081.pdf>.

<sup>73</sup> William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. LEGAL EDU. 93, 95 (2014) (citations omitted).

<sup>74</sup> The Center for Digital Education, *The Upside of Upside Down: Results From First National Survey on Faculty Perspectives on Flipped Classrooms*, SONIC FOUNDRY: ON DEMAND WEBINARS (last visited Sept. 25, 2016), available at: <http://www.sonicfoundry.com/resource/flipped-classroom-on-the-rise/>.

<sup>75</sup> I recorded flipped classes through Panopto, a video platform. See: <https://www.panopto.com/>. Panopto generates reports to see which students watched the videos, how long they watched, how many times they watched, and how long they watched each time.

Flipped classes also provide another way to transfer and absorb information, and the more channels for transferring information, the better opportunity to master and retain information. Students get their initial introduction to materials when they do their reading assignment. When they watch flipped classes they receive the materials differently – for example through illustrations of the concepts or a structural framework for the materials. After students attend class where we cover cases and engage in application, they have interacted with the materials in three different formats-reading the materials, watching a flipped class video, and participating in the class session. Regardless of students' individual learning styles,<sup>76</sup> they have probably been exposed to their preferred learning style by the time class is done. The combination of different ways of providing and receiving information and the repetition allows students to better master the information and retain more knowledge.

A Department of Education empirical study of online learning including flipped classes compared three learning modalities: exclusive face-to-face in-class instruction, exclusive online instruction, and hybrid instruction.<sup>77</sup> Students in online courses outperformed students in classroom-only courses, but students in hybrid or blended learning courses,<sup>78</sup> performed best of all.<sup>79</sup> While this is significant for any class, given the steady decline in entering credentials for law students since 2010 especially at the lower end, I thought flipped classes would provide a tool to help all students perform better through personalized learning, which would be especially important at the lower end to address attrition problems. If flipped classes help students master information and retain knowledge, then they are an important tool in the toolbox required for success in law school, the bar examination and law practice.

I have some more personal reasons for why I chose to flip the class. After eight years away from the classroom, I faced several challenges which convinced me I had to do something different. The broader law school world and legal markets changed,<sup>80</sup> and students changed. I left the classroom in 2007, and did not return until 2014. I observed that many law school students arrived with some degree and sometimes significant experience with online education, hybrid learning, flipped classes or regular use of technology in the classroom.<sup>81</sup> However, many law schools and law professors are very slow to change and to incorporate technology in the classroom. Thus, there seemed to be a serious disconnect in expectations and a gap between students' educational experiences before law school and during law school

Given the change in student experiences and expectations during my eight years away from the classroom and the reality that the average credentials of all new law students had declined which had more negative ramifications for high-risk students, I was interested in what I could do to bridge the gap. How could I stretch to meet students part way, to meet expectations, and most importantly, help all students but especially those towards the bottom of the class, while making class more engaging for everyone? Before returning to the classroom I considered how to meet students where they were technologically,<sup>82</sup> not all the time but some of the time.

<sup>76</sup> Commonly recognized learning styles include visual ("preference for seen or observed things, including pictures, diagrams, demonstrations, displays, handouts, films, flip-chart, etc."), auditory ("preference for the transfer of information through listening: to the spoken word, of self or others, of sounds and noises.") and kinesthetic or tactile ("preference for physical experience - touching, feeling, holding, doing, practical hands-on experiences."). See *Tips for Educators on Accommodating Different Learning Styles*, UMASS: DARTMOUTH (last visited Nov. 5, 2016), available at:

<http://www.umassd.edu/dss/resources/facultystaff/howtoteachandaccommodate/howtoaccommodatedifferentlearningstyles/>.

<sup>77</sup> Barbara Means et al, *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies*, U.S. DEPARTMENT OF EDUCATION: OFFICE OF PLANNING, EVALUATION, AND POLICY DEVELOPMENT (last revised Sep. 2010), available at: <https://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>.

<sup>78</sup> Hybrid or blended learning is the combination of a flipped class and classroom component.

<sup>79</sup> Means, *supra* note 77 at xiv-xv.

<sup>80</sup> See *supra* discussion Sec.II at 3 (describing the decline in law school applications and applicants, and the decline in credentials of entering law students).

<sup>81</sup> 2015 Online Report Card – Tracking Online Education in the United States, ONLINE LEARNING CONSORTIUM (last visited Sept. 25, 2016), available at: <http://onlinelearningconsortium.org/read/online-report-card-tracking-online-education-united-states-2015/>; see also I.E. Allen and Jeff Seaman, *Changing Course: Ten Years of Tracking Online Education in the United States*, BABSON SURVEY RESEARCH GROUP (Jan. 2013), available at: <http://www.onlinelearningsurvey.com/reports/changingcourse.pdf>.

<sup>82</sup> Amanda Lenhart, *Teens, Social Media & Technology Overview 2015*, PEW RESEARCH CENTER (April 9, 2015), available at: <http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/>; see also Aaron Smith et al., *College Students and Technology*, PEW RESEARCH CENTER (July 19, 2011), available at: <http://www.pewinternet.org/2011/07/19/college-students-and-technology/>.

I thought about how to incorporate a range of teaching styles that cater to different learning styles,<sup>83</sup> and how to reinforce materials through a blend of reading assignments, video assignments, assessments, in-class lectures, and case studies. I also wanted to make more time for in-class exercises, collaboration and experiential learning. Finally, I wanted to move some of our teaching outside the classroom partly for the reasons described previously and partly to allow us to wrap up early if we hit that saturation point where students cannot absorb any more. With flipped classes, I realized I could achieve many of these goals so I decided to take the plunge.

I designed my flipped classes so reading assignments are followed by video assignments prior to class attendance. A reading assignment is supplemented, explained, or illustrated through the flipped class video. Then when students arrive at class, we can jump right into application through cases, problems, and exercises. As noted, “[b]y design, the flipped model places more emphasis on the importance of homework or pre-class work to ensure that in-person class time is effective, allowing the instructor and the students to explore higher levels of application and analysis together.”<sup>84</sup>

When considering whether and how to flip the class. I was very interested in mastering information and retaining more knowledge. I also saw it as an opportunity to move black letter law, examples, background, overviews, and structural frameworks to flipped classes in order for students to receive the information more than one way, to present the materials in smaller time increments which are more readily digestible, and to make more class time for cases, hypotheticals, and exercises. Finally, flipped classes provided another way to reach my learning objectives and outcomes.<sup>85</sup>

My first year back in the class following the Associate Dean years, I flipped the class in two first year courses, Property I and Property II, and one upper division course, Business Organizations, a four-credit course taught in a concentrated format over nine weeks during the summer. Although I thought I would use flipped classes primarily in first year classes, I ended up using them sparingly in Property I and II. Why? I wanted to see students' body language and facial expressions early in their law school experience so I could gauge whether most students were following the materials and make adjustments as appropriate. Now that I have been back in the classroom two years, I plan to add more short flipped classes throughout Property I and II in the future.

#### B. Flipped Classes in First Year Courses: Property I and Property II

The first year using flipped classes in Property I, there were four flipped classes ranging in length from approximately six to sixteen minutes.<sup>86</sup> In Property II, there were three flipped classes also ranging in length from approximately six to sixteen minutes.<sup>87</sup> I used flipped classes in Property primarily to introduce a body of law and the black letter law in that particular area, and sometimes to provide background or a structural framework.

During the second year using flipped classes, I increased the number of flipped classes in Property I from four to six, ranging in length from approximately 5½ to just under 18 minutes.<sup>88</sup> I also increased the number of flipped classes in Property II from three to five, ranging in length from approximately 7½ to 14½ minutes.<sup>89</sup> Following is an overview of the data in table formats from my Property flipped classes in the first two years.

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<sup>83</sup> See M.H. Sam Jacobsen, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139 (2001).

<sup>84</sup> Barbi Honeycutt, *Ready to Flip: Three Ways to Hold Students Accountable for Pre-Class Work*, FACULTY FOCUS (Jan. 25, 2016), available at: <http://www.facultyfocus.com/articles/blended-flipped-learning/ready-to-flip-three-ways-to-hold-students-accountable-for-pre-class-work/>.

<sup>85</sup> ABA Standard 315 requires law schools to "conduct learning evaluation of the law school's program of legal education, learning outcomes and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competence in the learning outcomes and to make appropriate changes to improve the curriculum." *Program of Legal Education*, in ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2016-2017 (2016). The ABA is beginning application of this standard in the 2016-2017 school year.

<sup>86</sup> The average length was approximately 9½ minutes.

<sup>87</sup> The average length was approximately 11.6 minutes.

<sup>88</sup> The average length was approximately 11 minutes.

<sup>89</sup> The average length was approximately 11½ minutes.

## PROPERTY I FLIPPED CLASS ANALYSIS

FC Number/Topic	2015 Statistics <sup>90</sup>	2016 Statistics <sup>91</sup>
1-Briefing Cases	n/a	Length: 9:51 <sup>92</sup> Total viewers: 43 Watched all: 40 (about 93%) Watched less than all: 3 Multiple views: 21
2-Right to Exclude	n/a	Length: 5:32 <sup>93</sup> Total viewers: 42 Watched all: 41 (about 98%) Watched less than all: 1 Multiple views: 16
3-Adverse Possession	Length: 16:05 <sup>94</sup> Total viewers: 31 Watched all: 25 (about 81%) Watched less than all: 6 Multiple views: 10	Length: 17:50 <sup>95</sup> Total viewers: 40 Watched all: 38 (about 95%) +14% Watched less than all: 2 Multiple views: 20
4-Copyright	Length: 9:43 <sup>96</sup> Total viewers: 27 Watched all: 22 (about 81%) Watched less than all: 5 Multiple views: 7	Length: 13:08 <sup>97</sup> Total viewers: 39 Watched all: 36 (about 92%) +11% Watched less than all: 3 Multiple views: 18
5-Patent	Length: 6:25 <sup>98</sup> Total viewers: 27 Watched all: 24 (about 89%) Watched less than all: 3 Multiple views: 5	Length: 8:44 <sup>99</sup> Total viewers: 40 Watched all: 38 (about 95%) +6% Watched less than all: 2 Multiple views: 15

<sup>90</sup> At the beginning of the semester there were 34 students but by the end of the trimester there were only 31 students. Thus, it was difficult to measure the percentage of viewers relative to the total number of students in the class as that number changed gradually over the trimester.

<sup>91</sup> At the beginning of the semester there were 44 students but by the end of the trimester there were only 43 students. Thus, it was difficult to measure the percentage of viewers relative to the total number of students in the class as that number changed gradually over the trimester.

<sup>92</sup> The first flipped class in 2016, a new one, was on case briefing and it was just under ten minutes. A total of 43 students watched the video. Of the 43 students, 40 watched the entire video and three watched only part of the video, ranging from nine minutes (most of video) to just a few seconds.

<sup>93</sup> The second flipped class in 2016, also new, was on the right to exclude and it was about 5½ minutes. A total of 42 students watched the video. Of the 42 students, 41 watched the entire video and one watched only a few seconds of the video.

<sup>94</sup> The first flipped class of 2015 was on adverse possession and it was just over 16 minutes. A total of 31 students watched the video. Of the 31 students, 25 watched the entire video and six watched only part of the video, ranging from 15 minutes (most of video) to 33 seconds

<sup>95</sup> The third flipped class of 2016 was on adverse possession and it was just under 18 minutes. A total of 40 students watched the video. Of the 40 students, 38 watched the entire video and two watched only part of the video, ranging from eight minutes to about one minute.

<sup>96</sup> The second flipped class of 2015 was on copyright and it was just under ten minutes. A total of 27 students watched the video. Of the 27 students, 22 watched the entire video and five watched only part of the video, ranging from 8.76 minutes (most of video) to 6 seconds.

<sup>97</sup> The fourth flipped class of 2016 was on copyright and it was just over 13 minutes. A total of 39 students watched the video. Of the 39 students, 36 watched the entire video and three watched only part of the video, ranging from twelve minutes (most of video) to a few seconds.

<sup>98</sup> The third flipped class of 2015 was on patents and it was about 6½ minutes. A total of 27 students watched the video. Of the 27 students, 24 watched the entire video and three watched only part of the video, ranging from 4.74 minutes to 14 seconds.

<sup>99</sup> The fifth flipped class of 2016 was on patents and it was just under nine minutes. A total of 40 students watched the video. Of the 40 students, 38 watched the entire video and two watched only part of the video, ranging from eight minutes (most of video) to a few seconds.

6-Estates in Land	Length: 6:18 <sup>100</sup> Total viewers: 26 Watched all: 23 (about 88%) Watched less than all: 3 Multiple views: 5	Length: 7:48 <sup>101</sup> Total viewers: 33 Watched all: 29 (about 88%) Watched less than all: 4 Multiple views: 9
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## PROPERTY II FLIPPED CLASS ANALYSIS

FC Number/Topic	2015 Statistics <sup>102</sup>	2016 Statistics <sup>103</sup>
1-Leasing Real Property	n/a	Length: 9:01 <sup>104</sup> Total viewers: 42 Watched all: 39 (about 93%) Watched less than all: 2 Multiple views: 10
2-Selling Real Property	Length: 5:49 <sup>105</sup> Total viewers: 22 Watched all: 10 (about 45%) Watched less than all: 12 Multiple views: 21	Length: 7:40 <sup>106</sup> Total viewers: 42 Watched all: 38 (about 90%) +45% Watched less than all: 4 Multiple views: 15
3-Title Assurance	Length: 13:33 <sup>107</sup> Total viewers: 23 Watched all: 11 (about 48%) Watched less than all: 12 Multiple views: 19	Length: 13:53 <sup>108</sup> Total viewers: 41 Watched all: 31 (about 76%) +28% Watched less than all: 10 Multiple views: 15
4-Recording Acts	n/a	Length: 12:54 <sup>109</sup> Total viewers: 39 Watched all: 32 (about 82%) Watched less than all: 7 Multiple views: 15

<sup>100</sup> The fourth flipped class of 2015 was on estates in land and it was just over six minutes. A total of 26 students watched the video. Of the 26 students, 23 watched the entire video and three watched only part of the video, ranging from 5.37 minutes (most of video) to 16 seconds.

<sup>101</sup> The sixth flipped class of 2016 was on estates in land and it was just under eight minutes. A total of 33 students watched the video. Of the 33 students, 29 watched the entire video and four watched only part of the video, ranging from seven minutes (most of video) to a few seconds.

<sup>102</sup> At the beginning of the semester there were 28 students but by the end of the trimester there were only 25 students. Thus, it was difficult to measure the percentage of viewers relative to the total number of students in the class as that number changed gradually over the trimester.

<sup>103</sup> At the beginning of the semester there were 45 students but by the end of the trimester there were only 43 students. Thus, it was difficult to measure the percentage of viewers relative to the total number of students in the class as that number changed gradually over the trimester.

<sup>104</sup> The first flipped class of 2016, a new one, was on leasing real property and it was about nine minutes. A total of 42 students watched the video. Of the 42 students, 39 watched the entire video and two watched only part of the video, ranging from one minute to a few seconds.

<sup>105</sup> The first flipped class of 2015 was on selling real property and it was just under six minutes. A total of 22 students watched the video. Of the 22 students, ten watched the entire video and 12 watched only part of the video, ranging from 4.91 minutes (most of video) to one minute.

<sup>106</sup> The second flipped class of 2016 was on selling real property and it was just under eight minutes. A total of 42 students watched the video. Of the 42 students, 38 watched the entire video and four watched only part of the video, ranging from one minute to a few seconds.

<sup>107</sup> The second flipped class of 2015 was on title assurance and it was about 13½ minutes. A total of 23 students watched the video. Of the 23 students, 11 watched the entire video and 12 watched only a part of the video, ranging from 11.73 minutes to 1.26 minutes.

<sup>108</sup> The third flipped class of 2016 was on title assurance and it was just under 14 minutes. A total of 41 students watched the video. Of the 41 students, 31 watched the entire video and ten watched only part of the video, ranging from 13 minutes (most of video) to a few seconds.

<sup>109</sup> The fourth flipped class of 2016, also a new one, was on recording acts and it was just under 13 minutes. A total of 39 students watched the video. Of the 39 students, 32 watched the entire video and seven watched only part of the video, ranging from twelve minutes (most of video) to a few seconds.

5-3 <sup>rd</sup> Restatement, Servitudes & Common Interest Communities	Length: 16:01 <sup>110</sup> Total viewers: 15 Watched all: 14 (about 93%) Watched less than all: 1 Multiple views: 2	Length: 14:30 <sup>111</sup> Total viewers: 39 Watched all: 34 (about 87%) - 6% Watched less than all: 5 Multiple views: 16
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I have a few general observations about flipped classes and my Property courses, with the caveat that I am not suggesting anything causal, just observations. One interesting observation when comparing year two to year one of Property's flipped classes was the percentage increase of viewers who watched the entire flipped class for all flipped classes except for one as noted in the tables above, with especially noticeable increases in Property II. Why? I do not know for sure but one guess is perhaps the first time I used flipped classes students thought they were optional or not important. Students eventually learned that everything in the flipped classes was fair game for assessments. By the second year I used flipped classes, word had gotten out and more students treated flipped classes as part of their assignments, just like their reading materials (which is what was intended all along). A second observation was there was a jump in the number of multiple views, especially in Property I. This supports one reason faculty offer flipped classes - they enhance personalized learning. Students presumably watch flipped classes or parts of flipped classes multiple times for topics where they wanted more guidance or to help review before tests. A third observation was I unintentionally increased the length of each flipped class. I will be using flipped classes for the third time this school year and plan to re-tape each flipped class with the goal of reducing the length of each one. I also plan to add accompanying worksheets for each flipped class.

A final observation which admittedly requires more study and more years of data is there was some correlation between grades and viewership. For example, the three students who earned the highest grades in Property I Spring 2015 watched 100% of all the flipped classes. Of the three students who earned the lowest grades, one watched all the flipped classes, one watched about ½ of the flipped classes, and one watched less than one flipped class. In Property II Summer 2015, the two students who earned the highest grades again watched 100% of all the flipped classes. Of the four students with the lowest grades, one watched only one of three flipped classes; one watched only about 3½ minutes of one flipped class; one watched a few minutes of one flipped class, 1½ minutes of another flipped class and did not watch the third flipped class; and the final student watched no flipped classes. In Property I Spring 2016, many more students were enrolled including five with grades in the 90s (highest grades), and three with grades in the 60s (lowest grades). Of the five top scoring students, one watched 100% of all six flipped classes, and four watched 100% of five of the six flipped classes. Of the three lowest scoring students, the pattern was the same – one student watched 100% of all six flipped classes, one watched five of six, and one watched four of six. With more time, I would like to compare students' grades in my course with their overall GPAs and relative to their entering credentials. I was able to glean that the low performing student who watched 100% of all six flipped classes only earned a 66 in my class, but that was well above the student's 50 trimester GPA and 58.07 cumulative GPA so viewing the flipped classes may have been the difference between a 58 GPA and a 66 in Property. In Property II Summer 2016, I again had five students with grades in the 90s, and four with grades from 68 to 71. Of the five top scoring students, four watched all five flipped classes and one watched four of the five. Of the lowest performing students, one did not watch any flipped classes, one watched two of five, one watched parts of two flipped classes, and one watched 100% of three flipped classes and parts of two flipped classes. I am not suggesting anything causal, just observations. It is possible the best students do more work and their grades reflect that and vice versa, the worst students do less work and their grades reflect that. But I believe there is more involved and with more time I plan to study students' grades relative to their flipped class viewership, GPAs, and entering credentials. For example, in summer 2016, of the five highest scoring students in my class, four had earned Property II grades that were significantly higher than their other grades.<sup>112</sup>

<sup>110</sup> The third flipped class of 2015 was on the 3<sup>rd</sup> Restatement, Servitudes and Common Interest Communities and it was about 16 minutes. A total of 15 students watched the video. Of the 15 students, 14 watched the entire video and 1 watched just under 12 minutes of the video.

<sup>111</sup> The fifth flipped class of 2016 was on the 3<sup>rd</sup> Restatement, Servitudes and Common Interest Communities and it was about 14½ minutes. A total of 39 students watched the video. Of the 39 students, 34 watched the entire video and 5 watched only part of the video, ranging from 13 minutes (most of video) to a few seconds.

<sup>112</sup> The student with the highest grade, a 95, had a trimester GPA of 90.5; the two students who earned 93s had trimester GPAs of 85.64 and 83.64 respectively, and the student who earned a 92 had a trimester GPA of 89.

This reinforces my belief that flipped classes have the potential to help all students, regardless of their GPA.

### C. Flipped Classes and an Upper Division Course: Business Organizations

The first time I ever taught Business Organizations was also the first time I used flipped classes in the course. So everything was new for me *and* the students, and there was no precedent. During the first year, there were twelve assigned flipped classes, including an introduction to each chapter and additional flipped classes for more complicated materials or in longer chapters with significant sub-parts. The flipped classes ranged from approximately eight to 29 minutes.<sup>113</sup> Although the videos were admittedly long, the first time I used flipped classes in Business Organizations the class met 90 minutes twice a week and two hours once a week so the videos were short in comparison with classes. The second time I taught Business Organizations, the class met two hours twice a week and 75 minutes once a week. The videos ranged from about nine to just under 24 minutes.<sup>114</sup>

With an upper division course, I had similar goals as the first year Property courses - reach students with different learning styles and provide opportunities for personalized learning and mastering and retaining information. The latter goal was especially important given the volume of materials in this four unit course.<sup>115</sup> Students' ability to access the materials in so many different formats helped reinforce the lengthy set of materials and helped students retain the information. The table that follows provides an overview of the data for flipped classes in the first two years I used them in Business Organizations.

#### BUSINESS ORGANIZATIONS FLIPPED CLASS ANALYSIS

FC Number/Topic	2015 Statistics <sup>116</sup>	2016 Statistics <sup>117</sup>
1-Agency Introduction	Length: 10:08 Total viewers: 63 Watched all: 57 (about 90%) Watched less than all: 7 Multiple views: 34	Length: 23:46 [+ 13:38] Total viewers: 74 Watched all: 61 (about 82%) -8% Watched less than all: 13 Multiple views: 43
2-Agency Authority	Length: 29:07 Total viewers: 59 Watched all: 33 (about 56%) Watched less than all: 26 Multiple views: 24	Length: 16:27 [- 12:40] Total viewers: 71 Watched all: 60 (about 85%) +29% Watched less than all: 11 Multiple views: 26
3-Agency Issues & Torts	Length: 16:08 Total viewers: 47 Watched all: 27 (about 57%) Watched less than all: 20 Multiple views: 19	Length: 14:35 [- 1:33] Total viewers: 68 Watched all: 56 (about 82%) +25% Watched less than all: 12 Multiple views: 16
4-Partnership	Length: 15:26 Total viewers: 48 Watched all: 35 (about 73%) Watched less than all: 13 Multiple views: 22	Length: 15:30 [+ :04] Total viewers: 67 Watched all: 62 (about 93%) +20% Watched less than all: 5 Multiple views: 21
5-Corporations	Length: 19:12 Total viewers: 47 Watched all: 37 (about 79%) Watched less than all: 10 Multiple views: 23	Length: 17:31 [- 1:41] Total viewers: 65 Watched all: 61 (about 94%) +15% Watched less than all: 4 Multiple views: 25

<sup>113</sup> The average length was about 17½ minutes.

<sup>114</sup> The average length was about 16.66 minutes.

<sup>115</sup> My Business Organizations course covers agency, partnership, corporations, duties of care and loyalty, close corporations, public corporations, mergers and acquisitions, state law, federal law, and various restatements.

<sup>116</sup> At the beginning of the semester there were 63 students but by the end of the trimester there were only 61 students. Thus, it was difficult to measure the percentage of viewers relative to the total number of students in the class as that number changed gradually over the trimester.

<sup>117</sup> At the beginning of the semester there were 81 students but by the end of the trimester there were only 79 students. Thus, it was difficult to measure the percentage of viewers relative to the total number of students in the class as that number changed gradually over the trimester.

6-Duty of Care	Length: 15:05 Total viewers: 36 Watched all: 30 (about 83%) Watched less than all: 6 Multiple views: 19	Length: 13:38 [-1:27] Total viewers: 64 Watched all: 63 (about 98%) +16% Watched less than all: 1 Multiple views: 22
7-Duty of Loyalty	Length: 16:20 Total viewers: 39 Watched all: 29 (about 74%) Watched less than all: 10 Multiple views: 19	Length: 15:24 [- :56] Total viewers: 60 Watched all: 51 (about 85%) +11% Watched less than all: 9 Multiple views: 20
8-Shareholders	Length: 18:44 Total viewers: 46 Watched all: 25 (about 54%) Watched less than all: 21 Multiple views: 14	Length: 17:45 [- :59] Total viewers: 59 Watched all: 54 (about 92%) +38% Watched less than all: 5 Multiple views: 25
9-Control Issues In Corporations	Length: 24:41 Total viewers: 42 Watched all: 36 (about 86%) Watched less than all: 6 Multiple views: 18	Length: 23:49 [- :52] Total viewers: 61 Watched all: 51 (about 84%) -2% Watched less than all: 10 Multiple views: 25
10-Freeze Outs	Length: 8:34 Total viewers: 36 Watched all: 33 (about 92%) Watched less than all: 3 Multiple views: 11	Length: 9:00 [+ :26] Total viewers: 63 Watched all: 59 (about 94%) +2% Watched less than all: 4 Multiple views: 20
11-Mergers & Acquisitions	Length: 23:18 Total viewers: 42 Watched all: 32 (about 76%) Watched less than all: 10 Multiple views: 7	Length: 19:00 [- 4:18] Total viewers: 61 Watched all: 55 (about 90%) +14% Watched less than all: 6 Multiple views: 19
12-Hostile Takeovers	Length: 14:55 Total viewers: 43 Watched all: 34 (about 79%) Watched less than all: 9 Multiple views: 12	Length: 14:29 [- :26] Total viewers: 58 Watched all: 52 (about 90%) +11% Watched less than all: 6 Multiple views: 17

As with Property, I have some general observations about flipped classes and my Business Organizations course with the repeated caveat that these are observations, not statements about causation. First, from year one to year two, I intentionally tried to reduce the length of each video and mostly succeeded, cutting anywhere from 26 seconds to four minutes and 18 seconds off a given video.<sup>118</sup> Second, as with Property, there was a year-over-year overall increase in viewership. There was also an increase in the percentage of viewers who watched the entire video for almost all the videos – ten videos had double digit percentage increases in viewership and two videos had slight declines of 9% and 2%.

The final observation involves some correlation between grades and viewership, although the patterns were less consistent in Summer 2015 (that was the first time I ever taught Business Organizations which may have a stronger impact than Property which I had taught several times or the second time I taught Business Organizations). In summer 2015, five students earned grades in the 90s (the five highest grades). The student with the highest grade, a 95, watched 100% of 10 flipped classes and parts of the remaining two flipped classes. The student with the next highest grade, a 93, watched 100% of three flipped classes but skipped 8 flipped classes. Two students earned 92s-they each watched 100% of eight flipped classes and one student watched parts of three flipped classes and skipped one, and the other student watched parts of one flipped class and skipped three flipped classes. The student who earned a 90 watched 100% of 11 flipped classes and parts of one flipped class.

<sup>118</sup> The exception involved the first two flipped classes where I moved materials from the second flipped class to the first flipped class, this increasing the length of one and decreasing the other.

Except for the student who earned a 93, the rest of the students with the highest grades all watched at least 100% of 8-11 flipped classes and parts of one-three flipped classes (one student skipped one flipped class and another student skipped three flipped classes). It is hard to really correlate viewership with grades but one consistent is all the students with the highest grades outperformed their cumulative GPAs from 2-9 points. The students with the seven worst grades ranging from 73-75 had a range of viewing patterns but overall watched fewer flipped classes than the students with the highest grades. Three students earned grades of 75 and of those, one student watched 100% of nine flipped classes, part of one flipped class and skipped two flipped classes; one watched 100% of four flipped classes and skipped eight flipped classes; and the final student watched 100% of three flipped classes and skipped nine flipped classes. Three students earned grades of 74 and of those, one student watched 100% of eight flipped classes, parts of three flipped classes and skipped one flipped class; one watched 100% of seven flipped classes, parts of four flipped classes, and skipped one flipped class; and the final student watched 100% of one flipped class, parts of three flipped classes, and skipped eight flipped classes. The student who earned the lowest grade, a 73, watched 100% of five flipped classes, part of one flipped class and skipped six flipped classes. All the students with the lowest grades underperformed their cumulative GPAs from 1½ -6 points.

In Summer 2016, about 20 more students were enrolled in Business Organizations,<sup>119</sup> and the viewership patterns of the top performing students were more consistent than in Summer 2015.<sup>120</sup> Another difference is each flipped class in 2016 was accompanied by a worksheet. In Summer 2016, eight students earned grades in the 90s (the highest grades). The student with the highest grade, a 95, watched 100% of 10 flipped classes and parts of the remaining two flipped classes. The student with the next highest grade, a 94, watched 100% of eleven flipped classes and skipped one flipped class. The student with a 93 watched 100% of all twelve flipped classes. Two students earned 91s-one watched 100% of all twelve flipped classes and the other watched 100% of eleven flipped classes and skipped one flipped class. Three students earned 90s-two of them watched 100% of all twelve flipped classes and one watched 100% of ten flipped classes and skipped two flipped classes. In sum, four of the top seven students watched 100% of all twelve flipped classes and the remaining students watched 100% of at least ten flipped classes. Six of the seven students with the highest grades outperformed their cumulative GPAs from 2-6 points, and one student performed the same as that student's GPA. The students with the eight worst grades ranging from 73-75 also had a range of viewing patterns but overall watched fewer flipped classes than the students with the highest grades. Four students earned grades of 75 and of those, three students watched 100% of eleven flipped classes and skipped one flipped class; and the other watched 100% of five flipped classes, parts of one flipped class, and skipped six flipped classes. The student who earned a 74 watched 100% of two flipped classes, parts of two flipped classes and skipped eight flipped classes. Two students earned grades of 73 and of those, one student watched 100% of eleven flipped classes and parts of one flipped class; the other watched 100% of ten flipped classes, and skipped two flipped classes. The student who earned the lowest grade, a 72, watched 100% of eleven flipped classes, and skipped one flipped class. All the students with the lowest grades underperformed their cumulative GPAs from 1.6 to 7 points.

Business Organizations includes a tremendous volume of materials, which is a challenge for all students, but at least the materials build on each other. Thus, as the semester progresses and the building blocks are rolled out and stacked upon each other, the repetition and variety of ways of meeting the materials helps students eventually understand both the micro- and macro- level of detail. I had students read the assigned materials first, then watch a flipped class video for explanations, illustrations, clarification or overview, then in class we dove right into cases and exercises. This provided three different ways for students to intake the materials and by the time we got to the *Experiencing Assignment* exercises,<sup>121</sup> students seemed to be pretty well versed in the materials we had just covered and overall did a very good job providing counsel to hypothetical clients.

During my first two years of using flipped classes, I have been pleased overall and am flattered that several colleagues have started incorporating flipped classes as well. But as with all classes, especially new preparations, there is always room for improvement. I will continue to use flipped classes and plan to improve content and intentionally connect content with learning objectives, outcomes and assessments.

<sup>119</sup> I had just over 80 students in Summer 2016 compared to Summer 2015 when I had just over 60 students.

<sup>120</sup> However, as noted before, viewership was up across the board which may be partly because word got out that the flipped classes were mandatory, not optional, and they gave students a competitive advantage.

<sup>121</sup> See discussion *supra* Part III.D.1.

There are three specific areas of improvement I have worked on and will continue to work on: preparing formative assessments that are linked to flipped classes, creating more sophisticated videos, and drafting in-class components that complement the flipped classes. With respect to formative assessments, for Property, I want to incorporate one-to-two multiple choice questions within each flipped class or ask students to draft one-to-two questions based on materials in each flipped class. I have two purposes: first to assess whether students understand the materials, and second to ensure they are watching the flipped classes as opposed to running them in the background. I also want to produce more sophisticated videos by fine-tuning the graphs, pictures and slides to demonstrate what I am explaining, streamlining the commentary, and striving for one idea per slide. Finally, with respect to the in-class component, I want to better coordinate the in-class counterpart to each flipped class by developing more exercises beyond the text to achieve learning objectives and outcomes and provide more and different ways for students to demonstrate how they understand the topics. One final note respecting viewership is I understand that even if the data shows students have played all or part of a flipped class, that does not mean they have “watched” the class. I cannot control that but do my best to include content worth watching, incorporating multiple choice questions or follow up assignments, and perhaps being more explicit about each video containing something that will be on a test.

As previously noted, a flipped class is a pedagogical model where the lecture and homework components of a course are “flipped.” Students thus view short videos before class to complement their reading assignments, and more class time is devoted to application through cases, problems and exercises. With flipped classes there is additional class time for application of what students learned through the video as well as a chance for students to personalize learning geared to their pace, and more opportunities to master and retain knowledge in another format which can appeal to students with different learning styles. To achieve these benefits, it is important to carefully consider how to best flip a class.

#### D. How to “Flip” a Class

This part of the paper shifts to the “how” of flipped classes, with the caveat that there is no single way to flip a class or a one-size-fits-all approach, but there are still some general guidelines on how to flip a classroom. First, think carefully about *when* to flip a class. For doctrinal courses, flipped classes are useful to introduce materials, set out a structural framework or lay out the black letter law. They are also very effective for creating a bridge between a reading assignment and class discussion. By providing an introduction or framework in a flipped class video, in class a professor can go directly to cases or exercises to apply the materials.

While materials in the text may also provide an introduction to a section or chapter, with a flipped class a professor has a chance to elaborate beyond what is in the text or provide illustrations. For example, if you are teaching an area of law with elements like adverse possession, the text may introduce that area of law with a simple list of the elements. In a flipped class you can repeat the list but then for each element you can provide an example or facts that illustrate that element. You can follow up with some multiple choice questions to see if students understand the element and how to identify facts which support that element. Alternatively you can ask students to submit facts to demonstrate one of the elements. There are countless ways to ask students to apply the materials in the flipped class as part of the flipped class assignment. In class you can go right into cases and have a better qualitative discussion of the case rather than trying to explain each element.

You can also use flipped classes to provide a framework for materials. This is especially helpful for more complicated or lengthy materials as you can set out a big picture or “forest” so students have an overview and better understand how to plug subsequent materials into the framework and how those materials or the “trees” relate to each other. For example, first year students typically struggle with estates in land and future interests—these materials are not intuitive and they are very technical. A flipped class can provide a framework with all the labels and how estates in land and future interests relate to each other. Then in class we can get into the details of each tree and students already have a forest framework to place each tree.

Flipped classes are also a useful way to present the black letter law. Many times text books will introduce a new topic and either neglect to state the black letter law, play coy and evasive about it or just set it out in a confusing manner. There is no excuse for not knowing the black letter law to the extent it exists so I am a big fan of clearly setting it out in a flipped class rather than wasting class time on it, then devoting more class time to applying the law to a range of factual scenarios. I might also explain policies underlying the black letter law so when students apply the law to a given set of facts they can be informed by the purposes underlying the law and whether the facts support that purpose.

A flipped class might also provide examples of facts demonstrating application of the black letter law. With that type of background, we can hit the ground running in class and students seem to have a better and deeper understanding of the cases. Another good time to use a flipped class is for more complicated materials as it allows one more method to explain the materials and leaves more class time to do problems and apply the materials.

In terms of duration, a single flipped class should be relatively short – from five to 15 minutes is ideal.<sup>122</sup> Students are human and humans do not have long attention spans – as noted earlier, the average attention span dropped from 12 seconds in 2000 to 8.25 seconds in 2015!<sup>123</sup> A flipped class should supplement, not replace a class. A flipped class should be just long enough to cover the basic foundations of one topic that will complement the more difficult cognitive exercises undertaken during the in-person lecture.<sup>124</sup> Some educators even recommend limiting a flipped class to one minute's duration per grade level.<sup>125</sup> In that case, second and third year law students can handle 18-19 minute videos.

In addition to brevity, it is also important to be clear and concise. A flipped class is *not* the place to play hide the ball. Remember students cannot ask questions nor are there opportunities for dialogue, so be as clear as possible.

A flipped class provides a different medium for students and in order for it to accomplish the goal of providing individualized instruction, it should be structured so students can re-play concepts that are more difficult for them and possibly skip over or skim through materials that are easier. Thus you should prepare and record slides with an eye and ear for very brief breaks between concepts. In other words, pause briefly between slides.

One thing I learned from experience was to eliminate my visual presence in recordings. My first year of flipped classes featured a split screen with me talking on one side and power point slides on the other side. I found the visual of me too distracting so I re-recorded all my flipped classes and in the second year they featured only power point slides with my voiceover, with the goal of one idea or concept per slide. This created a cleaner visual image and made it easier for students to pause, rewind, or fast forward based on their individual needs.

I recommend integrating assessments to ensure students watch the videos and understand the materials. I have added multiple choice questions to some flipped classes. If I want to see a summary of student performance, I post the questions on my TWEN page so I can view the results. This helps me see whether students understand the materials and also provides a little insurance that students are actually watching the flipped classes, not just running them while ... [fill in the blank-making dinner, taking a shower, taking a nap, etc.]. If you post the questions directly in the flipped classes, it is easier and less clunky, but you cannot get instant poll results. In addition, it is easier for students who are watching together to share answers compared to when they individually log onto their TWEN accounts where their answers are recorded against their names. Another way to check whether students viewed a flipped class is to have them draft questions based on the flipped class and submit them before the next class. This exercise can serve one of two purposes and your purpose will dictate the type of question. First, to demonstrate they understand the materials, students can draft a multiple choice or true-false question, which the professor can review and share with the class (if the professor is satisfied with the quality of the question). Second, if students do not understand the materials, they can draft questions designed to clarify the materials. With this type of question, the professor can take the pulse of the class and determine whether the reading and flipped class were clear enough and whether a topic merits more class discussion. A final recommendation on how to prepare flipped classes is just get started and do not be paralyzed by the fear of perfection. It is better to start somewhere and improve every year!

In summary, with thoughtfully prepared flipped classes, students can individualize instruction by spending more time on materials they do not understand and less time on materials they do understand. By receiving materials in multiple media forms coupled with repetition of key concepts and black letter law, students are likelier to master and retain the material.

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<sup>122</sup> I understand I do not follow my own advice here for Business Organizations but given the two hour length of 2/3<sup>rd</sup> of my classes, the videos are still short relative to class length and I am working on reducing the length of the longer videos.

<sup>123</sup> See Watson, *supra* note 48.

<sup>124</sup> Jon Bergman & Aaron Sams, *The Flipped Classroom*, 17 CSE 24, 26 (2014).

<sup>125</sup> *Id.*

Finally, with time saved by moving some materials to flipped classes, you can spend more class time on exercises or on days when your coverage is particularly dense and students hit their saturation point faster, break up the materials by moving some materials into a flipped class and letting students out ten to fifteen minutes earlier.

#### IV. Closing

Law professors are privileged with jobs that allow us to research and produce scholarship about issues of importance, teach and train the next generation of lawyers, and engage in meaningful service. With respect to teaching, it is our responsibility to do our part to set our students up for success, especially when they arrive with lower entering credentials and perhaps less well prepared than prior generations in terms of their basic research and writing skills. We are still in the midst of uncertainty and do not know when, if ever, the number of law school applicants and applications, as well as their entering credentials, will rise. Perhaps smaller law school classes are the new normal. We may have several more years with students entering law school with lower average LSAT scores and GPAs. We do know this – the world changes and law professors need to be creative, diligent, and willing to put in the work to help students of today and the future succeed. Many of you have already pivoted – congratulations! I look forward to hearing about colleagues' experiments, successes, and even what did not work well. I applaud your willingness to try. If you have not yet pivoted, please give it some thought and get to work.