AALS New Law School Teachers Workshop
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Strategy precedes tactics, and tactics precede implementation

Sun Tzu: "Now, the general who wins a battle makes many calculations in his temple ere the battle is fought."

Your students aren't you

And, by the way, your current professor self is not your former student self

Recurring decisions

Ask vs. tell

Meeting students where they are, where we think they should be, or somewhere in between

Sequencing

Logical isn't necessarily pedagogical

The "Marbury Gap"

Returning to a topic

Sequencing within a class session

Students teaching each other

Wayfinding and Signaling

- Linking classroom discussion to assessment
- Preview and review
- Situating the material
- Wayfinding during class discussion
- An aside: Over-reliance on inductive learning

Time

- Being mindful about time (but not rushing)
  - Ask vs. tell
  - Compression and expansion
  - Avoiding the temptation of introductory material
  - Offloading (and flipping)
- Making difficult coverage choices
  - Message discipline
- A caution about PowerPoint

A final thought

"To give anything less than your best, is to sacrifice the gift" – Steve Prefontaine (1951-1975)

Please feel free to contact me if you have questions about anything from today's discussion

Resources:

Strategies and Techniques of Law School Teaching: A Primer for New (and Not So New) Professors, by Howard E. Katz and Kevin Francis O'Neill

Available free from your Wolters Kluwer representative or at my SSRN site

The Strategies and Techniques series (teaching advice on specific courses):

Torts, Contracts, Property, Civil Procedure, Constitutional Law, Legal Analysis and Writing, Criminal Law, Criminal Procedure, Family Law, Evidence, Professional Responsibility, Administrative Law, Federal Income Tax, Academic Support

Available free from your Wolters Kluwer representative or on the WK website

AALS Teaching Materials Network:

https://secure.stetson.edu/law/teaching-network/login.php

Perhaps of interest to those teaching first-year courses:

Teaching Legal Analysis Using the Unified Field Theory, by Howard E. Katz

The "unified field theory of legal analysis" method draws on learning theory as well as the experience of professors, especially those who teach element-driven courses (e.g. criminal law and torts). It emphasizes rules, and elements that comprise those rules, as the fundamental organizing principal of how to do legal analysis. This applies to what is done in class, where step-by-step articulation of elements, and application of facts to those elements, is emphasized rather than cases and court opinions as such. The goal is to connect what goes on in class on a day-to-day basis with what is expected of the students on a final exam: a good answer to a fact pattern-based, issue-spotting essay question.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3083005

My SSRN page:

https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=758091

My bepress page:

https://works.bepress.com/howardekatz/

Course Sequencing and Design
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The basic premise: strategy precedes tactics, and tactics precede implementation.

"The job is to figure out what to say and when and how to say it. First, you have to get your audience's attention. Once you've done that, you have to present your message in a clear, logical fashion – the beginning, then the middle, and then the end. You have to deliver information the way people absorb it, a bit at a time, a layer at a time, and in the proper sequence. If you don't get their attention first, nothing that follows will register. If you tell too much too soon, you'll overload them and they'll give up. If you confuse them, they'll ignore the message altogether."

from *Why We Buy: The Science of Shopping* by Paco Underhill

The following excerpts are adapted from *Strategies and Techniques of Law School Teaching: A Primer for New (And Not So New) Professors* by Howard E. Katz and Kevin Francis O'Neill:

Ordering the Progression of Topics: Logical Isn't Necessarily Pedagogical

A very important question is whether there are any topics to which the students must first be exposed in order to understand certain other topics. Not every foundational concept must be *mastered* before proceeding. If students would not be ready to tackle such a concept at the semester's outset, simply *introduce* the concept, proceed to less challenging topics, and then circle back to it later in your course. Another way of dealing with a foundational concept is to identify it for your students and then, before proceeding onward, ask them to make an *assumption* about it. More generally, you should be asking yourself how the topics may be sequenced so as to give your students the best opportunity to understand the material.

Ordering your topics in a seemingly logical progression is not always pedagogically sound. It's often true that you can greatly enhance your students' understanding of the material by arraying the topics in the sequence that would seem logical to someone who is already familiar with the topic. But there are at least two situations where logical is not pedagogical.

First (and this is a point that does not only apply to first-year, first-semester students) you don't want to begin the semester with an exceedingly difficult, recondite, or abstract topic. This can leave a large number of students confused and demoralized at the very outset. It's better to begin the semester with a doctrinal overview of your subject, or to present an introductory hypothetical that foreshadows themes or doctrines central to your course. Then, to give them a sense of confidence and to get them accustomed to your classroom methods, begin with material that is comparatively less difficult and less important.

For example, if you're teaching Torts, it might occur to you that negligence is the most important and central topic, and therefore the right one with which to start the course. Once students have learned this material, you might think to yourself, you can breeze through intentional torts at the very end of the semester or year. But if you think about the perspective of a student

in the first weeks of law school, it may be better to *begin* with intentional torts. In contrast to the murky waters of negligence, the law of intentional torts is comparatively easy to grasp. The elements are clearer and the material is more straightforward. Though it may not be the *logical* place to start, it's *pedagogically* advantageous for being less likely to overwhelm your students when they are first learning how to study, how to conduct themselves in class, and how to gauge your expectations. Justiciability in constitutional law is another example. It logically precedes deciding the case on the merits. But it is extremely difficult for students to understand what is at stake when they haven't yet studied any of the substantive areas of the course.

Second, you don't want to leave a key section of the course until the very end of the semester. The danger of doing this is that you may not reach the final reading assignment in your syllabus. Thus, you'll come to the end of the semester without having covered a key section of your course. Or, in order to reach that final section, you'll hurry through the preceding sections and leave your students confused and dismayed. Do this even if it means departing from a logical progression of topics. Students are capable of understanding a topic encountered out of order, particularly if care is taken to explain where that topic fits in the larger scheme of your course. Then, develop a list of new topics or elaborations of earlier topics that can be introduced in the final week or two of the semester. It can actually be an advantage to come back to a topic for greater depth of coverage, or to explore a sub-topic that relates to material previously covered, as it provides a good vehicle for review. In this way, you can take the awkward problem of how to end the semester and turn it to your advantage by making it an opportunity for review.

A word of caution about how to begin your course: Don't get trapped into spending *too* much time on introductory material. Instead of spending two or three weeks, keep it short. Then, five weeks into the semester, *comeback* to those introductory themes and your students will get more out of them. Once you spend that second or third week, it's gone — and you may be sorry in Week 13 when you're trying not to rush the end of your course.

One thing to keep in mind more generally about *any* sequence you decide on is to constantly "situate the material" – explain to the students what you are covering and how it relates to what has gone before and what will come after.

Avoiding the "Marbury Gap"

By exhorting you to avoid the "Marbury Gap," here is what we mean: When charting the sequence of your reading assignments, try to avoid long passages that provide background rather than conventionally-tested material. The classic example relates to the famous case of *Marbury v. Madison*. It is typical of many Constitutional Law books to present the case and then follow it with extended textual material on the decision's validity and implications. Logically, the issue of *Marbury's* "correctness" comes up at this point in the course. But a careful examination of *Marbury* and the follow-up material can easily consume two or three weeks of class time or more. Thus, a "Marbury Gap" is a long stretch of textual material, often theoretical or historical, that is so basic, or so remote, or so abstract as to be unlikely to be tested in a conventional manner, thus causing problems in the parceling out of assignments.

You need to consider what the reading assignments during this portion of the course will look like, and what sort of class discussion you can expect to generate if the assignment for the day is simply textual reading. This same concern arises in other law school courses. In Criminal Law, for example, many casebooks devote a long section to theories of punishment.

There is another aspect to this, and *Marbury* again serves as an example. In the pages following *Marbury*, most casebooks raise the question of whether or not judicial review is a good idea. But at this point in the course, your students probably haven't read a single substantive decision of the Supreme Court other than *Marbury* itself. Thus, your debate on judicial review takes place in a vacuum. Such material may be better handled by raising the broad question

and themes, but returning to the particulars later, once the students have more of the course under their belts.

How do you deal with a Marbury Gap? Consider breaking up the background or theoretical material into smaller pieces and turning it into a recurrent theme — one that you briefly introduce and later return to from time to time, tying it (if you can) to what your students are currently learning. Let's again look at *Marbury*. Use it initially to introduce the concept of judicial review. Come back to it later, especially when examining the separation of powers and the Supreme Court's role in construing individual liberties and the scope of federal legislative power. Viewed from those perspectives later in the semester, the legitimacy of judicial review and its crucial role in our system of checks and balances will have more meaning for your students. On those later occasions, you can assign some of the note material following *Marbury* to explore questions of theory or policy that your students would have been less able to appreciate at the semester's outset.

Waiting for the Right Time to Address Theory or Policy

The proper *sequencing* of the information you convey is critical to effective teaching. We must be sensitive to sequencing on both the micro level (ordering the progression of ideas when introducing a new topic or doctrine) and the macro level (ordering the progression of topics or doctrines over the span of a whole semester). When it comes to sequencing, be particularly careful about when to expose your students to theory or policy.

Students are much more receptive to discussions of theory or policy if they have first been exposed to some concrete examples of the *context* in which that theory or policy will play out. Thus, when charting the sequence of materials you will cover, our advice is this: Don't front-load theory or policy without first giving the students a real case to sink their teeth into. Particularly with any first-year course, you risk losing your students if you start out with abstractions. Let them see some facts and rules first. Then, after two weeks or so, go *back* over the same material and tease out the strands of theory and policy. Your students will be better equipped to grasp such material then.

The following is from *Best Practice for Legal Education* by Roy Stuckey and others:

Particularly given the intellectual demands of the skills and values law students are learning, law professors should sequence instruction so that students have early success and therefore build self-efficacy. In other words, law professors interested in teaching students case analysis skills would order their syllabi so that the students start with easier cases and build to more difficult ones. Likewise, all law professors should consider the order in which they teach the concepts under study. Perhaps, highly theoretical and difficult concepts such as estates in property law, personal jurisdiction in civil procedure, and consideration in contract law are not good places to start for new law school learners.