

Law School Pedagogy Post-Pandemic: Harnessing the Benefits of Online Teaching

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I. Introduction

In spring 2020, the COVID-19 pandemic resulted in an emergency shift to online teaching and learning in institutions of higher learning.¹ For most colleges and graduate schools, responding to the sudden emergence of COVID-19 meant delivering their courses synchronously online by videoconference on Zoom or a similar video communications platform.²

While many had hoped that students would be returning to campuses and attending their classes live by the fall 2020 semester, the threat of the pandemic

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1. See, e.g., Andrew Smalley, *Higher Education Responses to Coronavirus (COVID-19)*, NAT’L CONF. STATE LEG. (Mar. 22, 2021), <https://www.ncsl.org/research/education/higher-education-responses-to-coronavirus-covid-19.aspx> (stating that more than 1300 institutions in the fifty states canceled in-person classes or shifted to remote teaching in spring 2020); Charletta A. Fortson, *Now Is Not the Time for Another Law School Lecture: An Andragogical Approach to Virtual Learning for Legal Education*, 65 ST. LOUIS U. L.J. 505, 505 (2021) (“COVID-19 forced nearly every institution of higher learning, as well as others, to quickly pivot from a traditional face-to-face teaching model to an online teaching model.”).
2. See, e.g., Jon Marcus, *Will the Coronavirus Forever Alter the College Experience?*, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/04/23/education/learning/coronavirus-online-education-college.html?action=click&module=Well&pgtype=Homepage§ion=Educa tion> (suggesting that most schools shifting to online teaching in the Spring used Zoom as the primary method to deliver courses); Marin Imhoff, *University Offers Professors Training Courses to Help Prepare for Online Learning*, REV. (Oct. 8, 2020), <http://udreview.com/university-offers-professors-training-courses-to-help-prepare-for-online-learning/> (noting University of Delaware Provost Robin Morgan’s statement that the majority of classes are now online and being taught through Zoom); Lauren Aratani, *‘Zoom University’: Is College Worth the Cost Without the In-Person Experience?*, GUARDIAN (Oct. 6, 2020), <https://www.theguardian.com/world/2020/oct/06/zoom-university-college-cost-students-in-person-experience> (noting the term “Zoom University” for universities relying heavily on Zoom delivery synchronously).

continued to cause disruptions to in-person learning for several semesters.³ For example, certain colleges in the California university system continued to be online in fall 2020.⁴ Further, colleges that welcomed students back to in-person classes recognized the possibility of having to pivot online again upon viral surges within the campus community. Indeed, several schools made national news when they shifted either entirely or temporarily to online classes within weeks of re-opening their campuses because of virus outbreaks linked to gatherings that failed to comply with guidelines on social distancing and mask-wearing.⁵

The pandemic also led law schools to expand their online offerings for the 2020–2021 academic year. Ordinarily, the American Bar Association (the “ABA”) limits to thirty the number of online course credits that law students may apply

3. Zoom is a leading vendor of video communications services to educational institutions, offering a cloud platform for video and audio conferencing. *Zoom for Education*, ZOOM (2021), <https://zoom.us/education>. For background on most schools’ use of Zoom, see Sean Gallagher & Jason Palmer, *The Pandemic Pushed Universities Online. The Change Was Long Overdue*, HARV. BUS. REV. (Sept. 29, 2020), <https://hbr.org/2020/09/the-pandemic-pushed-universities-online-the-change-was-long-overdue>; Liz Mineo, *Time to Fix American Education with Race-for-Space Resolve*, HARV. GAZETTE (Apr. 10, 2020), <https://news.harvard.edu/gazette/story/2020/04/the-pandemics-impact-on-education/>; *Will a Return to School During the COVID-19 Pandemic Look Like?* UNICEF (Aug. 24, 2020), <https://www.unicef.org/coronavirus/what-will-return-school-during-covid-19-pandemic-look>; Jacob Martinez, *Take this Pandemic Moment to Improve Education*, EDSOURCE (June 22, 2020), <https://edsource.org/2020/take-this-pandemic-moment-to-improve-education/633500>.
4. University of California was online on a campus-by-campus basis, *see, e.g.*, Henry Yang, *COVID-19 Update: Fall Instruction and Campus Housing*, UC SANTA BARBARA (Aug. 28, 2020), <https://chancellor.ucsb.edu/memos/2020-08-28-covid-19-update-fall-instruction-and-campus-housing>; Public Affairs, *UC Berkeley to Begin Fall Semester With Remote Instruction*, BERKELEY NEWS (July 21, 2020), <https://news.berkeley.edu/2020/07/21/uc-berkeley-to-begin-fall-semester-with-remote-instruction/>.
5. *See, e.g.*, *University Shifts to Two Weeks of Remote Instruction, Quarantines Two Residence Halls*, UNIV. WISCONSIN–MADISON (Sept. 9, 2020), <https://smartrestart.wisc.edu/university-shifts-to-two-weeks-of-remote-instruction-quarantines-two-residence-halls/>; Ashley A. Smith, *CSU Chancellor Announces 23 Campuses to Remain Virtual for Spring Term*, EDSOURCE (Sept. 10, 2020); *Suspension of In-person Classes for the Fall*, TEMPLE UNIV. (Sept. 3, 2020), <https://news.temple.edu/announcements/2020-09-03/suspension-in-person-classes-fall>; Nick Niedzwiadek & Andrew Atterbury, *Colleges Crack Down on Student Behavior as Virus Threatens More Closures*, POLITICO (Aug. 30, 2020), <https://www.politico.com/news/2020/08/30/college-students-coronavirus-closures-404567>; Robert Farrington, *What Happens If Your College Campus Closes Again This Fall?*, FORBES (Sept. 1, 2020), <https://www.forbes.com/sites/robertfarrington/2020/09/01/what-happens-if-your-college-campus-closes-again-this-fall/>; Joshua A. Barocas & Jennifer E. Lacy, *The Pandemic is an Extraordinary Opportunity to Reform US Education*, VOX (Aug. 7, 2020), <https://www.vox.com/2020/8/7/21358422/school-closure-covid-19-gap-year-standardized-tests>; Leslie Brody & Lee Hawkins, *Reopening Schools Try to Decide When They Should Close Again Due to Coronavirus Cases*, WALL STREET J. (July 30, 2020), <https://www.wsj.com/articles/reopening-schools-try-to-decide-when-they-should-close-again-due-to-coronavirus-cases-11596101401>; Jane C. Hu, *States Are Focused on Reopening. But What About Reclosing?*, SLATE (June 25, 2020), <https://slate.com/technology/2020/06/state-reclosing-coronavirus-criteria-spike.html>; Jeremy Hobson & Allison Hagan, *Coronavirus May Mark The End For Many Small Liberal Arts Colleges*, WBUR (May 13, 2020), <https://www.wbur.org/hereandnow/2020/05/13/coronavirus-small-college-closures>; *30 Greek Houses on IU’s Bloomington Campus are Under Quarantine*, WTHR (Sept. 2, 2020), <https://www.wthr.com/article/news/health/30-greek-houses-on-ius-bloomington-campus-are-under-quarantine/531-06d64280-8712-4e00-86d8-2bc3724d8775>.

toward their J.D. degree.⁶ In response to the pandemic, however, the ABA gave law schools waivers to that policy to cover the 2020–2021 academic year, allowing them to go fully online, or to allow students to apply an increased number of online credits toward their degrees.⁷ In light of the ABA’s pandemic policies, some law schools, such as Harvard and Berkeley, moved all their classes online during fall 2020.⁸ At the authors’ law school, Indiana University Robert H. McKinney School of Law, students had the option to attend small socially distanced classes in person during the 2020–2021 academic year. In addition, however, the school expanded its online offerings, both synchronous and asynchronous, to allow students to learn remotely.⁹ Other law schools similarly increased their online offerings for the fall semester to accommodate pandemic health and safety concerns.¹⁰

Still today, no one knows how long the threat of this pandemic will last.¹¹ While vaccine distribution helped the return of more in-person interaction, viral activity continues to threaten normality.¹² A post-pandemic future may include mask-wearing during high levels of community transmission, staying home when one is sick, and eliminating handshakes as a common greeting.¹³

6. ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017-2018, *Standard 306(e)* (2019).
7. ABA, *Granted 140 Law School Requests to Extend Variances from Standards 105(a)(12) and 311(e) (Distance Education)* (November 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/2021/2021-nov-pandemic-variance-extensions.pdf.
8. Harvard Law Today, *Harvard Law School Expects Robust, High-Quality Online Program for the Fall 2020* (June 3, 2020) <https://today.law.harvard.edu/harvard-law-school-expects-robust-high-quality-online-program-for-the-fall-2020/>; Erwin Chemerinsky, *Dean’s Announcement: Fall 2020 Classes Will be Conducted Remotely*, BERKELEY L. (June 26, 2020), <https://www.law.berkeley.edu/article/fall-instruction-memo-6-26-20/>.
9. Marilyn Odendahl, *‘As good as, but different’: Law schools prepare to welcome students*, THE IND. LAW. (July 22, 2020), <https://www.theindianalawyer.com/articles/as-good-as-but-different-law-schools-prepare-to-welcome-students>.
10. Staci Zaretsky, *Another Law School To Host Fall 2020 Classes Online Without Reducing Tuition*, ABOVE THE L. (July 2, 2020), <https://abovethelaw.com/2020/07/another-law-school-to-host-fall-2020-classes-online-without-reducing-tuition/> (stating Harvard Law, Berkeley Law, Vermont Law, UConn Law, and Cooley Law had all gone entirely remote for fall 2020); Bill Cresenzo, *Law Schools Adjusting to New Era of COVID-19*, S.C. LAWYERS WKLY. (Sept. 1, 2020), <https://sclawyersweekly.com/news/2020/09/01/law-schools-adjusting-to-new-era-of-covid-19/> (stating South Carolina is providing more online and hybrid classes than ever before).
11. Peter H. Huang & Debra S. Austin, *Unsafe at Any Campus: Don’t Let Colleges Become the Next Cruise Ships, Nursing Homes, and Food Processing Plants*, 96 IND. L.J. SUPPLEMENT 25 (2020) (proposing online teaching as a health and safety measure for as long as the pandemic lasts).
12. See, e.g., Elizabeth Ralph, *Here’s How the Pandemic Finally Ends*, POLITICO MAG. (Sept. 25, 2020), <https://www.politico.com/news/magazine/2020/09/25/how-covid-19-pandemic-ends-421122>; Naomi Thomas, *US Likely To See a Surge of Covid-19 in the Fall, Fauci Says*, CNN (April 7, 2022), <https://www.cnn.com/2022/04/07/health/fauci-covid-fall-surge/index.html>.
13. Lincoln Graves, *New Normal? Experts Say Some Things Post Pandemic May Change Permanently*, KATU (Oct. 2, 2020), <https://katu.com/news/local/>

The pandemic has also made people more comfortable interacting in a virtual environment. Working remotely and holding virtual meetings and conferences will likely play a larger role in the future, as people have learned that those methods can produce successful results while also carrying benefits in terms of convenience and cost savings for businesses, and even for the environment.¹⁴ To the extent that professors deliver a quality online learning experience, student demand for online courses may also increase.

Nevertheless, a narrative has emerged that deemed the emergency remote teaching in spring 2020 substandard, predicting that students would not learn as well online¹⁵. There has been some evidence to suggest that students were dissatisfied with the online courses delivered in the aftermath of the lockdowns that were imposed across the United States in spring 2020, despite significant efforts by faculty to learn how to teach remotely to finish their courses during the onset of a global pandemic.¹⁶ The lack of previous investment in online

new-normal-experts-say-some-things-post-pandemic-may-change-permanently.

14. A number of employers have indicated that they may allow many of their workers to work remotely in the future after seeing the successful results of the pandemic-required work-at-home program. Catherine Thorbecke, *Twitter Says it Will Allow Employees to Work from Home 'Forever'*, ABC NEWS (May 12, 2020), <https://abcnews.go.com/Business/twitter-employees-work-home-forever/story?id=70641702> (stating that if employees wished to work from home in the future, they could choose to do so); Catherine Thorbecke, *What Offices May Look Like in a Post-Pandemic Era, If They Exist at All*, ABC NEWS (May 8, 2020), <https://abcnews.go.com/Business/offices-post-pandemic-era-exist/story?id=70512282> (stating that Microsoft and Zillow have suggested they will be extending their remote work policies in the future based on their learning from this "experiment"). Virtual conferences have also been successful. Michael Price, *As COVID-19 Forces Conferences Online, Scientists Discover Upsides of Virtual Format*, SCIENCE (Apr. 28, 2020), <https://www.sciencemag.org/careers/2020/04/covid-19-forces-conferences-online-scientists-discover-upside-virtual-format>; Nic Fleming, *What's on the Agenda for Post-pandemic Meetings?*, NATURE (Aug. 3, 2020), <https://www.nature.com/articles/d41586-020-02254-z>.
15. See, e.g., Charles Hodges, *The Difference Between Emergency Remote Teaching and Online Learning*, EDUCASE REVIEW, (Mar. 27, 2020), <https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning>; Lauren Manfuso, *From Emergency Remote Teaching to Rigorous Online Learning*, EdTECH (May 7, 2020), <https://edtechmagazine.com/higher/article/2020/05/emergency-remote-teaching-rigorous-online-learning-perfcon>; Natalie Milman, *This is Emergency Remote Teaching, Not Just Online Teaching*, EDUCATION WEEK, (Mar. 30, 2020) <https://www.edweek.org/ew/articles/2020/03/30/this-is-emergency-remote-teaching-not-just.html>; Ryan Craig, *What Students Are Doing Is Remote Learning, Not Online Learning. There's a Difference*, EdSURGE (Apr. 2, 2020), <https://www.edsurge.com/news/2020-04-02-what-students-are-doing-is-remote-learning-not-online-learning-there-s-a-difference>; West LA College, *Traditional Online Learning vs Emergency Remote Learning* (n.d.) <http://www.wlac.edu/WLAC/media/documents/AFT/Traditional-Online-Learning-vs-Emergency-Remote-Learning.pdf>.
16. Lindsay McKenzie, *COVID-19 and Online Education Decisions*, INSIDE HIGHER ED (July 30, 2020), <https://www.insidehighered.com/news/2020/07/30/survey-data-reveal-impact-covid-19-perceptions-online-education>; Robin Lake, *Students Count: Highlights from COVID-19 Student Surveys*, CTR. FOR REINVENTING PUB. EDUC. (July 7, 2020), <https://www.crpe.org/thelens/students-count-highlights-covid-19-student-surveys>; The Associated Press, *Students at 25 Colleges Sue for Refunds After Campuses Close Because of Coronavirus*, NBC NEWS (May 5, 2020), <https://www.nbcnews.com/news/us-news/students-25-universities-sue-refunds-after-campuses-close-duc-coronavirus-n1200746> (stating that the lawsuits alleged that the emergency online classes were "poor substitutes for classroom learning").

learning technology by universities meant that many students had to finish “their coursework in video chat rooms this spring, instead of having the opportunity to take advantage of high quality interactive and pedagogically sound online options.”¹⁷ Online teaching as a whole, however, should not be judged by the online content that was delivered on an emergency basis in response to an unforeseen and unique crisis.

This article challenges the broad and overarching criticisms of online teaching and learning that emerged in the wake of the pandemic’s emergence, suggesting that traditional live law school instruction can benefit by borrowing from certain online teaching methods. No doubt some types of students may not learn as well online as they do in the classroom, and some online classes may not be designed to deliver a quality learning experience. However, studies of pre-pandemic online law courses suggest that students were quite satisfied with their asynchronous online courses.¹⁸ In addition, our experience teaching asynchronous online courses for the past five years shows the many benefits of a well-designed online course that can enhance student learning. Specifically, in a well-designed asynchronous online class, students have opportunities for frequent formative assessments; they receive regular teacher and student feedback on their work; and they are required to “speak up” in class through written and oral discussions. This article examines each of these elements of online course design, offering strategies for their continued use in live classrooms post-pandemic.

II. Formative Assessments

Assessments are the method by which professors collect evidence of student progress toward achieving identified learning goals.¹⁹ Assessments can be either summative or formative.²⁰ The two types differ in their purposes, with summative assessment seeking to “determine the student’s overall achievement in a specific area of learning at a particular time.”²¹ In other words, summative assessments are used to grade or rank students.

17. Richard Arum & Mitchell L. Stevens, *What Is a College Education in the Time of Coronavirus?*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/opinion/college-education-coronavirus.html>.
18. See, e.g., Yvonne M. Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver*, 96 DENV. L. REV. 493, 528 (2019); Victoria Sutton, *Asynchronous, E-Learning in Legal Education: A Comparative Study with the Traditional Classroom*, 70 SYRACUSE L. REV. 143, 156 (2020) (“The question, ‘[h]ow satisfied were you with this course compared to other law courses’, surprisingly resulted in a normal distribution, suggesting that the respondents were just as satisfied with this course as they were with any traditional law course.”).
19. Connie M. Moss, *Research on Classroom Summative Assessment*, in SAGE HANDBOOK OF RESEARCH ON CLASSROOM ASSESSMENT 235, 238 (2013).
20. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).
21. Moss, *supra* note 19, at 235.

Although summative assessments are considered necessary in the current structure of the United States legal education system,²² the method is not without its critics. For example, some commentators argue that high-stakes summative assessments can reduce the motivation of some students to learn.²³ Instead of embracing and enjoying the learning process, some students find that an emphasis on summative assessments causes them to focus on the potential outcome of a favorable grade. For other students, summative assessments can have an even more deleterious effect: They may face test anxiety and also experience low self-esteem and negative perceptions of themselves as learners when they receive lower grades.²⁴ Another negative aspect of summative assessments is that they tend to reduce teacher engagement with students as individuals.²⁵

Formative assessments, on the other hand, are not used for grading students in the course. Instead, formative assessments aim to provide feedback to students and faculty on course performance while the course is in session.²⁶ Formative assessments provide students with a low-stakes environment in which to practice and master relevant content and skills.

Another benefit of formative assessments is that they encourage students to develop self-regulated learning.²⁷ Self-regulated behaviors include setting goals, managing time, structuring one's environment to maximize studying, and seeking out help with tasks. In other words, students can work to acquire skills and behaviors that make them motivated and help them learn.²⁸ Research

22. More than in many other academic programs, grades matter in law school. They yield a ranking of students that is integral to rewards such as scholarships, law review positions, and judicial clerkships. Grades are also used to determine penalties such as academic probation.
23. Wynne Harlen, *Teachers' Summative Practice and Assessment for Learning—Tensions and Synergies*, 16 CURRICULUM J. 207, 210 (2005).
24. Margaret Ryznar & Yvonne M. Dutton, *Lighting A Fire: The Power of Intrinsic Motivation in Online Teaching*, 70 SYRACUSE L. REV. 73, 81-82 (2020).
25. Moss, *supra* note 19, at 235, 238.
26. See Olympia Duhart, *"It's Not for A Grade": The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491 (2015) (explaining that summative assessments are graded while formative assessments are ungraded).
27. Ian Clark, *Formative Assessment: Assessment Is for Self-regulated Learning*, 24 ED. PSYCH. REV. 205, 210-11 (2012).
28. See, e.g., Roger Azevedo et al., *Does Adaptive Scaffolding Facilitate Students' Ability to Regulate Their Learning with Hypermedia?*, 29 CONTEMP. EDUC. PSYCHOL. 344, 362 (2004) (finding that students who engaged in self-regulating processes and strategies in a hypermedia environment performed better than those who used less or no self-regulation); Cherg-Jyh Yen & Simon Liu, *Learner Autonomy as a Predictor of Course Success and Final Grades in Community College Online Courses*, 41 J. EDUC. COMPUTING RES. 347, 356 (2009) (finding that "[s]tudents with higher learner autonomy are more likely to complete a community college online course with higher final grades"); Richard Lynch & Myron Dembo, *The Relationship Between Self-Regulation and Online Learning in a Blended Learning Context*, 5 INT'L. REV. OF RES. IN OPEN & DISTANCE LEARNING 1, 10 (2004) (finding that "there is a significant and positive relationship . . . between self-efficacy and performance in online education"); Lucy Barnard et al., *Online Self-Regulatory Learning Behaviors as a Mediator in the Relationship Between Online Course Perceptions with Achievement*, 9 INT'L. REV. OF RES. IN OPEN & DISTANCE LEARNING 1, 8 (2008) (finding that "[o]nline self-regulatory learning behaviors

on the effects of self-regulated learning shows how such learning can increase students' motivation in the classroom.²⁹

A professor can conduct formative assessments through a number of different methods: for example, targeted quiz questions, problem sets, writing assignments, and peer- and self-evaluations that promote reflection and knowledge identification and sharing.³⁰ Essentially, the idea is to help students practice and develop course content or skills, while also providing the teacher with information about student performance and the effectiveness of instructional techniques.³¹ Through this type of assessment, both the student and the teacher may identify content or skills with which students may be struggling so that the teacher can make immediate adjustments to lessons, learning materials, or instructional techniques.³²

Historically, law school teaching has relied heavily on a standard model: “students prepare for class by reading assigned texts or completing other assignments, then attend class where the teacher leads a Socratic dialog, facilitates a discussion, or presents a lecture.”³³ Part of the standard model also relies heavily on summative, as opposed to formative, assessments. In many law school classes, students are assessed through one final exam that accounts for the student's entire grade in the course.³⁴ This is most often the case in the law school's large-enrollment courses that professors teach without teaching assistants to help with grading in contrast to many undergraduate large-enrollment courses where hiring a number of teaching assistants to assist with grading throughout the course is common.³⁵

Of course, the standard model is not applied in all law classes by all law professors. Indeed, in the past several years, the ABA, among others, has called

were only weakly associated with better academic achievement by themselves” and that self-regulation works best when combined with online communication and collaboration).

29. See, e.g., Paula Paulino et al., *Self-Regulation of Motivation: Contributing to Students' Learning in Middle School*, 8 THE EUROPEAN PROC. OF SOC. & BEHAV. SCIS. 1, 4 (2016), https://www.european-proceedings.com/files/data/article/38/805/article_38_805_pdf_100.pdf; Carol Sansone et al., *Self-Regulation of Motivation When Learning Online: The Importance of Who, Why and How*, 59 EDUC. TECH RES. & DEV. 199, 201, 209-10 (2011).
30. See Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 380 (2012) (reviewing different types of formative assessments).
31. Sargent & Curcio, *supra* note 30, at 380 (offering “evidence that formative assessments help law student performance on a cumulative final exam”).
32. Kathleen M. Cauley & James H. McMillan, *Formative Assessment Techniques to Support Student Motivation and Achievement*, 83 CLEARING HOUSE 1, 1 (2010).
33. Gerald F. Hess, *Blended Courses in Law School: The Best of Online and Face-to-Face Learning?*, 45 MCGEORGE L. REV. 51, 52 (2013).
34. Hilary G. Escajeda, *Legal Education: A New Growth Vision, Part III—The Path Forward: Being Both Human and Digital*, 97 NEB. L. REV. 1020, 1048 (2019).
35. See, e.g., Grant M. Hayden, “The University Works Because We Do”: *Collective Bargaining Rights for Graduate Assistants*, 69 FORDHAM L. REV. 1233 (2001).

on law professors to move beyond the high-stakes final exam model and provide students with opportunities for low-stakes formative assessments throughout the semester.³⁶ Specifically, ABA Standard 314 provides: “A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”³⁷

Some professors teaching their live courses have embraced these recommendations and introduced, for example, midterm exams.³⁸ Others have used clickers to poll students in live time on quiz questions projected on a PowerPoint slide.³⁹ Professors in live courses may also assign CALI lessons online, which have quizzes built into them.⁴⁰ The use of formative assessments in live classes is increasing in light of the ABA requirement, but as yet there is no uniform approach.⁴¹

In the live classroom setting, law professors typically assess and interact with students by way of the Socratic dialogue. In the asynchronous online class environment where this is not possible, formative assessments and feedback on those assessments are the norm to keep track of student learning—the professor builds formative assessments into the course material because of the nature of having to show student attendance and engagement. In other words, the more structured assessments in online teaching are a principal method by which the professor interacts with students.

Indeed, the learning management systems through which asynchronous online courses are offered provide the professor with many tools to create regular and varied formative assessments.⁴² Many universities use the same learning management system for both live and online courses, allowing professors teach-

36. As Professor Victoria L. VanZandt explains, “In 2014, the American Bar Association (ABA) enacted new Standards for the Accreditation of Law Schools (Standards) focusing on outcomes assessment, which require a change in law schools’ traditional pedagogy. This change is a seismic shift, requiring formative assessment throughout the curriculum, a major step away from law schools’ traditional reliance on the Socratic Method with one high stakes, summative final exam.” Victoria L. VanZandt, *The Assessment Mandates in the ABA Accreditation Standards and Their Impact on Individual Academic Freedom Rights*, 95 U. DET. MERCY L. REV. 253, 253 (2018).
37. AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020–2021, *Standard 314* (2020), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure.pdf.
38. See, e.g., Elizabeth Ruiz Frost, *Feedback Distortion: The Shortcomings of Model Answers as Formative Feedback*, 65 J. LEGAL EDUC. 938, 938 (2016).
39. See, e.g., Cynthia Ho et al., *An Active-Learning Approach to Teaching Tough Topics: Personal Jurisdiction as an Example*, 65 J. LEGAL EDUC. 772, 794 (2016).
40. *Lessons*, CALI, THE CENTRE FOR COMPUTER-ASSISTED LEGAL EDUCATION, <https://www.cali.org/lesson> (2020).
41. Heather M. Field, *A Tax Professor’s Guide to Formative Assessment*, 22 FLA. TAX REV. 363 (2019) (noting various faculty approaches to formative assessments).
42. See, e.g., *Building Assessments in Canvas*, *Canvas @ Yale Help Site*, YALE (2021), <http://help.canvas.yale.edu/m/55452/1/1228810-building-assessments-in-canvas>.

ing live courses to supplement their classroom teaching with online activities, such as quizzes. However, professors teaching asynchronous online courses in particular have a real and specific incentive to use the available technology, as it provides them with a variety of ways to interact with their students, often through the mechanism of formative assessments.

There are numerous ways to administer formative assessments on online platforms such as Canvas. Essentially, if the professor has an idea for an assessment, there is likely a way to facilitate that assessment with the learning management system. One assessment method that is particularly useful for many different types of courses is the quiz.⁴³ Professors can create quizzes in various formats, such as multiple-choice, fill-in-the-blank, matching, true/false, and even short essay. For objective quizzes with multiple-choice and true/false questions, the online learning platform can even grade those quizzes automatically, thereby giving students immediate feedback on their performance by revealing the correct answers and explanations upon the student's submission of the quiz.⁴⁴ The professor, meanwhile, receives a computer-generated report on student performance on that quiz once it closes.

The learning management system also accommodates more subjective assessment methods. Using discussion boards, for example, the professor can ask the more theoretical questions that stimulate class discussion.⁴⁵ The professor poses a question to the students and requires them to respond to that post in writing or by uploading a video of themselves responding to the prompt. In addition, professors can require students to upload responses to fact pattern essay questions like those typically found on law school exams. Feedback can come in the form of a sample answer that the professor annotates, or the professor can require the student to learn through self-assessment or peer assessment.⁴⁶ In the self- or peer-review context, the professor will often provide a rubric—something that the professor can create and make available to students through the learning management technology. Professors can also easily give individual feedback on student written submissions through the learning management system, either through comments on the paper or summary comments in a direct communication to the student.

The authors have used these and other types of formative assessments in the asynchronous online courses that they have taught at IU McKinney using Canvas. Neither of us grades these formative assessments; rather we tell students in the syllabus that the assignments are designed to help them and us assess

43. See, e.g., Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 68 (2006).

44. *Id.*

45. Jacob D. Skousen & Spencer C. Weiler, *Aligning Educational Objectives with Educational Activities: Examination of Student Perceptions on Two Asynchronous Learning Activities*, 25 J.L. BUS. & ETH. 1, 6-7 (2019).

46. Sargent & Curcio, *supra* note 30, at 383 (noting the effectiveness of essay questions followed by annotated model answers in helping some law students “break down legal rules and perform a complex factual analysis on a final exam”).

their learning of the material, and that they also constitute their attendance and participation in the class. Thus, we explain that failing to complete assignments is the equivalent of missing a class, and that after a certain number have been missed, the student may be dropped from the class. In our five years of teaching online, we have found that the great majority of students complete all or nearly all of the formative assessments in our courses without the extrinsic motivation of graded assignments.⁴⁷

For each module that we create, we also create at least one assignment that is designed to assess student learning of the lesson content. For example, Professor Ryznar tests the students' knowledge of intestacy rules in her online trusts and estates course through both a quiz and, separately, an essay question to which she supplies a model answer. The quiz allows students to test their understanding of the details of the intestacy rules, while the essay question enables them to piece together the big picture of a real-life estate distribution after someone dies without a will. Professor Ryznar then reviews the class performance, noting common mistakes and misunderstandings. She then shares her feedback with the class.

Professor Dutton also uses quizzes and practice essay questions in her asynchronous online classes. In some cases, she structures her assessments so that they not only assess understanding of the course material, but also allow students to practice and become competent in lawyerly skills. For example, in her criminal procedure class, Professor Dutton has required students to listen to a Supreme Court oral argument and submit reflection papers. Students comment on the content of the parties' arguments and the nature of the judge's questioning and also compare what they heard in the argument with the written opinion. Professor Dutton also uses discussion posts to help students become competent in writing organized and supported arguments. She not only comments on the content of the posts, but also provides comments explaining the use of topic sentences to begin paragraphs, or the need to cite to evidence, or the need to address and resolve a counterargument. In her international criminal law class, she requires students to videotape themselves making oral arguments—playing either defense or prosecution—based on a hypothetical fact pattern. Before the video, students must submit outlines, which Professor Dutton reviews and comments on. Professor Dutton also requires students to peer-review one another's arguments based on a rubric she supplies in Canvas. The video argument helps students become competent in presenting arguments orally, while the peer review helps students learn how to assess the work of others and provide constructive feedback. Professor Dutton also gives students individual comments on their arguments—both substantive and performance-based comments.

These are just a few of the many ways that professors have assessed students in online courses. In each instance, the assessment helps the students and the professor know whether the students are learning the course material. "Effective teaching not only involves imparting information and understandings to

47. For background on extrinsic versus intrinsic motivation in online teaching, see Ryznar & Dutton, *supra* note 24.

students . . . but also involves assessing and evaluating students' understanding of this information, so that the next teaching act can be matched to the present understanding of the students."⁴⁸

After each assignment, therefore, we send an announcement to students generally stating our assessment of how students did on the assignments. To the extent that the assignments show that there were some concepts a significant number of students were not grasping fully, we find a way to clarify. Both of us have written announcements sharing additional information on a topic, or sharing links to additional readings or supplemental videos on the topic. Professor Dutton has also followed up with additional videotaped lectures that she shares with students through Canvas's announcement feature. If the assignments reveal that a particular student is struggling to understand a topic or concept, we offer to follow up with a conversation on Zoom.

In sum, online teaching lends itself to meeting the ABA's increased emphasis on formative assessments, particularly in a manner that generates concrete student performance data while the course is in session, and while that performance can be noted and improved if necessary. In a live classroom, professors often receive student performance data by simply looking around the room and seeing students. If students nod or seem to understand the material in another way, or if they correctly answer any oral follow-up questions, the professor may be satisfied and move on. If these professors want written and clear performance data on each student in the class, however, one method is to borrow the assessments methods of an online course by setting up some quizzes or other learning activities in their school's learning management system.⁴⁹

III. Regular Feedback

Regular feedback is another beneficial feature of the asynchronous online class.⁵⁰ It is the norm in these courses to have regular feedback from the professor and also from other students.⁵¹

Regular feedback comes in a number of forms. First, the very process of completing assignments provides students feedback on how well they are understanding the subject matter or how well they are mastering course-level

48. John Hattie & Helen Timperley, *The Power of Feedback*, 77 REV. EDUC. RES. 81, 88 (2007) (noting appropriate feedback increases the ability of students to detect their own errors and clarify learning goals).
49. Doing so could provide "the pathway forward to designing and delivering state-of-the-art legal education." Escajeda, *supra* note 34, at 1049.
50. "[F]eedback is conceptualized as information provided by an agent . . . regarding aspects of one's performance or understanding." Hattie & Timperley, *supra* note 48, at 81.
51. See, e.g., Ronald J. Colombo, *Teaching a Synchronous Online Business Organizations Course to J.D. Students: A Case Study*, 48 HOFSTRA L. REV. 873, 914 (2020) ("I found that the students came to our virtual classes better prepared and remained more engaged throughout each session than their counterparts in my other classes. I base this observation upon the students' responses to the questions I posed to them, and the students' questions asked of me.").

or professional skills.⁵² Simply by taking a quiz, for instance, students will learn whether they have mastered course concepts. If the student does not do well on the quiz, she receives an early warning that her understanding was faulty or incomplete. The process of responding to a discussion post-prompt or an essay question can also provide feedback to the student. For example, early in the course, the student may find she is having difficulty stating a position and backing it up with evidence, recognizing that her answer is insufficient compared with other students' posts on the discussion board. Drafting a few discussion posts throughout the semester helps her practice the skills of supporting an argument with evidence or writing a topic sentence.

Notably, feedback is an important way for law professors to meet the ABA's requirement of regular and substantive interaction. Standard 306 as approved by the Council of the Section of Legal Education and Admissions to the Bar at its February 2022 meeting requires that distance education law school courses given for credit "must provide regular and substantive interaction between the students and faculty teaching the course."⁵³ This standard defines regular interaction and substantive interaction as follows:

- a. Regular interaction between a student and a faculty member in a distance education course shall include:
 1. providing the opportunity for substantive interactions with the student on a predictable and scheduled basis commensurate with the length of time and the amount of content in the course as defined by Standard 310(b);
 2. monitoring the student's academic engagement and success; and
 3. ensuring that the faculty member is responsible for promptly and proactively engaging in substantive interaction with the student when needed on the basis of such monitoring, or upon request by the student.
- b. Substantive interaction in a distance education course requires engaging students in teaching, learning, and assessment, consistent with the content under discussion, and includes at least two of the following:
 1. providing direct instruction;
 2. assessing or providing feedback on a student's coursework;
 3. providing information or responding to questions about the content of a course; or
 4. facilitating a group discussion regarding the content of a course.⁵⁴

52. Jarene Fluckiger et al., *Formative Feedback: Involving Students as Partners in Assessment to Enhance Learning*, 58 COLLEGE TEACHING 136, 137 (2010); Hattie & Timperley, *supra* note 48, at 81 (appropriate feedback increases students' ability to detect their own errors and clarify learning goals).

53. ABA, *Standards and Rule Amendments Approved by the Council at its February 2022 Meeting* (February 2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/feb22/22-feb-standards-rules-amendments.pdf.

54. *Id.*

A major reason that the ABA requires substantive and regular interaction is because of federal regulations. Specifically, the Higher Education Act, a set of federal laws last updated in 2008, requires online programs receiving federal financial aid to include “regular and substantive interaction” between the instructor and students. Although the Act did not define “regular and substantive interaction,” the Department of Education issued a final rule, effective July 2021, which aimed to clarify, through new definitions, the requirements of regular and substantive interaction between students and instructors for a course to be considered distance education (eligible for federal financial aid) and not a correspondence course (ineligible for federal financial aid). For the distance education course, which includes courses delivered over the internet synchronously or asynchronously:

substantive interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least two of the following—

- i. Providing direct instruction;
- ii. Assessing or providing feedback on a student’s coursework;
- iii. Providing information or responding to questions about the content of a course or competency;
- iv. Facilitating a group discussion regarding the content of a course or competency; or
- v. Other instructional activities approved by the institution’s or program’s accrediting agency.⁵⁵

Not only does feedback satisfy ABA regulations on online courses, it also helps students learn and improve. One study has concluded that feedback likely yields impressive gains in students’ performance.⁵⁶ Another study demonstrated that students who received individualized feedback in one first-year law school class outperformed those students in another class who did not receive any

55. 85 Fed. Reg. 54,742, 54,809 (Sept. 2, 2020), <https://www.federalregister.gov/documents/2020/09/02/2020-18636/distance-education-and-innovation>. Furthermore,

An institution ensures regular interaction between a student and an instructor or instructors by, prior to the student’s completion of a course or competency—

- (i) Providing the opportunity for substantive interactions with the student on a predictable and scheduled basis commensurate with the length of time and the amount of content in the course or competency; and
- (ii) Monitoring the student’s academic engagement and success and ensuring that an instructor is responsible for promptly and proactively engaging in substantive interaction with the student when needed on the basis of such monitoring, or upon request by the student.

Id.

56. Hattie & Timperley, *supra* note 48, at 104.

feedback.⁵⁷ Moreover, law students who “receive feedback throughout the semester report greater gains in critical-thinking skills.”⁵⁸

Another benefit of feedback is that it can increase student motivation to learn and master skills.⁵⁹ Students receiving feedback while the course is in progress can respond to it, address areas of concern, and thereby improve their performance on later assignments. In other words, the feedback process allows students to feel a sense of accomplishment, which necessarily increases motivation to learn.⁶⁰

In live courses, students being subject to Socratic questioning may infer from that exchange that they have learned the material and are able to apply it.⁶¹ The course of the questioning may also signal to them that they have not mastered the material or that they have misunderstood some concepts.⁶² The Socratic method, however, may not provide students with individual feedback on their performance—particularly those students who may be passively listening while their colleague is the one being questioned.⁶³ Some professors may also include midterms, quizzes, or other activities in their live classes, and provide students with feedback on that work.⁶⁴ Nevertheless, only asynchronous online classes must include substantial professor feedback as the norm.

In a well-designed asynchronous online course, students therefore need not wait until the final exam and the receipt of their grade to find out that they did not really understand the reading or lectures, or how to apply the course material. This is not necessarily the case in some live law school classes. As one professor notes, in many law school classes, including those in the critical first year:

the only assessment most students experience is a three or four hour end-of-the-semester final exam Most law school final exams contain no feedback to students other than a score or a grade. Moreover, when students seek to review their final exam performance with their teacher, they find that most

57. Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139 (2017).
58. Amanda L. Sholtis, *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1, 5 (2019).
59. *Id.* “Besides providing meaningful feedback to students, live critiquing also builds confidence and motivation, which are keys to successful learning. Students gain insights into how the professor views and evaluates their work. These insights can demystify the grading process and help students see how to improve. With increased understanding of the professor’s expectations, and confidence that they can meet those expectations, students may intensify their efforts and deepen their learning.” *Id.* at 8 (citations omitted).
60. *See generally id.*
61. Gary Shaw, *A Heretical View of Teaching: A Contrarian Looks at Teaching, The Carnegie Report, and Best Practices*, 28 Touro L. REV. 1239, 1281 (2012).
62. Edith R. Warkentine, *Kingsfield Doesn’t Teach My Contracts Class: Using Contracts to Teach Contracts*, 50 J. LEGAL EDUC. 112, 132 (2000).
63. Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QLR 397, 411 (1997).
64. *See supra* Part II.

law teachers provide little additional meaningful feedback on their individual final exam performance. In short, the after-the-fact nature of these summative assessments “forecloses the possibility of giving meaningful feedback to the student about progress in learning.”⁶⁵

In a well-designed asynchronous law class with regular formative assessments, students should have numerous opportunities to get feedback on their work that will help them produce better work during the remainder of the course, but also be better prepared for the final exam and for practice as a lawyer. Research suggests that effective formative feedback is specific, simple, descriptive, and focused on the task.⁶⁶ Helpful formative feedback can focus on different aspects of student learning: the professor can give direct feedback on the student’s understanding of the content addressed in the assignment. The professor can also provide feedback on the student’s improvement over time.⁶⁷ Effective formative feedback can come from the instructor, but it can also come in the form of self- or peer assessments.⁶⁸

In our asynchronous online courses, we provide feedback to students on every formative assessment. We also make efforts to follow the guidance on effective feedback: keeping it focused on the task, but also ensuring that we provide feedback on different aspects of learning and include opportunities for self- and peer assessment. For instance, in our courses, we typically create quizzes during the design phase so that those will later generate automatic feedback to students. We use multiple-choice, true/false, and even essay questions. After the student submits a quiz, the learning management system Canvas highlights incorrect answers in red and correct answers in green. In addition, we also include explanations that appear after the student submits the quiz. Those explanations provide details on why particular answers are or are not correct, and sometimes we even direct students to pages in the reading or other links for further reference.

For discussion boards, we provide individual feedback to students. As noted, we will comment on content, but we also might use discussion boards to comment on writing and argument skills. For essays, we provide feedback on content, and also on structure and organization, for example. Our feedback is sometimes individual to each student, while other times we create sample answers and grading rubrics that we share with the students to allow them to self-assess their work according to certain criteria. We also use those rubrics for peer reviews—requiring the reviewing student to follow the rubric in providing feedback to the submitting student. We review each essay submitted, and even when our primary form of feedback is a sample answer, we still respond individually to

65. Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 79 (2010) (citations omitted).

66. Fluckiger et al., *supra* note 52, at 137.

67. *Id.*

68. *Id.*

students who may need individual attention to help them improve. Finally, for every assignment submitted we send a group announcement to students to comment on the class performance and trends identified in student work. To the extent we identified an area where students generally need to improve, we address that in the group announcement.

Providing regular feedback to students is necessarily time-consuming, but as even our examples illustrate, one can employ strategies to make feedback less burdensome on the professor. Quizzes that self-grade, sample answers, and rubrics can all be created in advance during the course design phase. The students still receive feedback on their work while the course is in progress. Yet in the case of quizzes, the professor's role will be limited to reviewing them to ensure that students complete them and checking to see if there are any topics that a great number of students failed to answer correctly. If the professor identifies a subject with which students are struggling, she can then send a class announcement clarifying the topic and/or providing the students with additional resources on that topic. Responding to discussion boards, video posts, or paper submissions usually requires more hands-on time from the professor. With paper submissions, however, the professor can start with personalized feedback to students and move to some form of self- or peer review, accompanied by a sample answer, an annotated sample answer, or a rubric. To the extent warranted pedagogically, one of the strategies we employ is to vary the assignments so that not every week or module requires intense personal feedback from the professor.

Other strategies for varying the weekly amount of time on feedback include Professor Lindsay Masland's three-tiered feedback system popular with her students, which she uses in courses designed with Universal Design for Learning principles.⁶⁹ Her feedback system is particularly useful for professors with significant numbers of students, because it provides quantitative and qualitative feedback to each student while keeping the professor's own workload manageable. In Tier 1 feedback, Masland develops detailed rubrics for the assignment, including learning objectives and examples of different levels of achievement, which she shares with her students. To trigger Level 2 feedback, students must request professor input. Masland then provides line-by-line annotations on the student work. According to Masland, approximately fifteen percent to twenty percent of students regularly seek Level 2 feedback. Finally, for those students who want even more feedback, Masland initiates Level 3 feedback, which consists of a face-to-face meeting in which she discusses the work with the student in detail, strategizing ways for the student to improve in the future. In her experience, only one or two students in large-enrollment courses seek Level 3 feedback each semester.

In sum, feedback is a core component of the asynchronous online course that is not only required, but also beneficial to the student's ability to learn and progress. Providing regular feedback to students is a time-consuming endeavor for the professor—during course design and while the course is in session. However,

69. *Tiered Feedback Serves Faculty and Students*, COLLEGE STAR, <https://www.collegestar.org/news/tiered-feedback-serves-faculty-and-students> (last visited Jan. 6, 2022).

there are strategies to ensure that feedback is both useful to the students and not otherwise overwhelming given the professor's other law school responsibilities. And in our experience, based on our own student surveys and focus groups, we have found that regular feedback is one of the things that students most appreciate about our asynchronous online courses.⁷⁰ For that reason alone, we consider providing feedback to our students well worth our effort.

IV. Universal Participation

Finally, a well-designed asynchronous online course naturally avoids the problem identified by many studies of the traditional classroom—reduced classroom participation by certain groups of students, often including women and minority students.⁷¹ Indeed, professors using the Socratic method in a live classroom may “cold-call” on some groups of students less, either consciously or unconsciously.⁷² In one recent study at the University of Chicago Law School, even when there was a similar amount of cold-calling between men and women, “[w]omen were observed to participate voluntarily slightly less in class sessions in which at least 50% of participation events were cold calls (women accounted for 39.5% of the voluntary participation events in these classes).”⁷³ Another study at Yale Law School showed that “[o]n average, male students volunteered to speak 40% more than female students. . . .”⁷⁴ Indeed, “[w]omen’s under-participation has been demonstrated in nearly every study that has been conducted.”⁷⁵ In addition, “[r]acial discomfort also often leads to minimized

70. Dutton et al., *supra* note 18, at 528 (“For example, one student said that having the regular assessments and ‘getting that feedback throughout the semester is something you don’t get in 95% of the in-class courses here, and I think for me it has helped my learning and has solidified my understanding of the material in these classes, because I’m checking myself along the way.’”).
71. Carole J. Buckner, *Realizing Grutter v. Bollinger’s “Compelling Educational Benefits of Diversity” – Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 888 (2003-2004); Elizabeth Mertz with Wamucii Njogu & Susan Gooding, *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998) (finding participation disparities by gender and race).
72. In one study at Yale Law School, “[t]he average number of times that a male student is asked to speak without volunteering (‘cold calling’) is 17% higher than the average number of times that a female student is asked to speak without volunteering. . . .” Sari Bashi & Maryana Iskander, *Why Legal Education is Failing Women*, 18 YALE J.L. & FEMINISM 389, 407 (2006).
73. Mallika Balachandran et al., *Speak Now: Results of a One-Year Study of Women’s Experiences at the University of Chicago Law School*, 2019 U. CHI. LEGAL F. 647, 661-62 (2019).
74. Bashi & Iskander, *supra* note 72, at 406. *See also* Lauren A. Graber, *Are We There Yet? Progress toward Gender-Neutral Legal Education*, 33 B.C. J.L. & SOC. JUST. 45, 67 (2013) (“A majority of Berkeley Law women reported that they had never asked a question or volunteered.”). In the University of Chicago Law School study, “Notwithstanding the generally favorable view professors had of cold calling, some professors noted that it may have drawbacks Four professors pointed out that cold calling may make some students uncomfortable in a way that is counter-productive.” Balachandran et al., *supra* note 73, at 662.
75. Graber, *supra* note 74, at 66. “At Harvard, male students were more likely than female students to speak voluntarily during class. Columbia found that first-year women were three times

interactions between minority students and their professors.”⁷⁶ Some minority and women students may therefore feel less comfortable volunteering in class.⁷⁷ And some groups of students self-silence when they believe their views may be out of line with the majority.⁷⁸ Other reasons, too, have been identified to explain lower class participation by some students: student confidence, personality traits, peer behavior, age and year in school, instructor’s behavior and use of pedagogical methods, class logistics, and classroom climate.⁷⁹

Not regularly participating in classroom discussions can have deleterious effects on students’ development. By failing to participate, students miss the opportunity to practice analytical and communication skills that are necessary for the successful lawyer.⁸⁰ Those students who do not participate also miss out on the opportunity to build a professional relationship with the professor. As a result, they may have more difficulties obtaining guidance and recommendations that are common when the professor knows a student well based on classroom interactions.

It is not only the silenced group of students missing the benefits of participation; the lack of universal class participation impacts the learning of the entire class. For example, the entire class cannot “take advantage of the information,

more likely to report ‘never’ or ‘rarely’ volunteering and the University of Pennsylvania found that over half of women never, or only occasionally, participated. A majority of Berkeley Law women reported that they had never asked a question or volunteered . . . Like women at other schools, women at BC Law report participating significantly less than their male classmates. Women were between 1.5 and 1.8 times more likely than men to never participate in any form. This leaves 20% of women who have never uttered a voluntary word in the law school classroom. In contrast, men were 2.5 times as likely to ask questions in class at least once a day and were 1.7 times more likely to volunteer answers at least once a day.” *Id.* at 66-67.

76. Buckner, *supra* note 71, at 891.
77. “While scholars began studying the intersection of gender and legal education in the 1970s, the subject attracted more widespread attention only with the publication of Lani Guinier’s landmark study of women students at the University of Pennsylvania School of Law in the late 1980s and early 1990s.” Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1219 (2005). Guinier’s study noted that the Socratic method alienated female students and that they participated in the classroom less than their male counterparts, which also led to their feelings of alienation. Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).
78. Cass Sunstein explains that “self-silencing is everywhere” when students believe that their views are out of step with those of their peers on topics such as politics, religion, gender, and race. Cass R. Sunstein, *Self-Silencing and Online Learning*, 70 J. LEGAL EDUC. 205, 206 (2022).
79. Michele J. Eliason & Ruby Turalba, *Recognizing Oppression: College Students’ Perceptions of Identity and its Impact on Class Participation*, 42 THE REVIEW OF HIGHER EDUC. 1257, 1259 (2019); Kelly A. Rocca, *Student Participation in the College Classroom: An Extended Multidisciplinary Literature Review*, 59 COMMUNICATION EDUC. 185 (2010).
80. Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 532 (1998).

experiences, or perspectives” of other students.⁸¹ In many cases, the “‘classroom discussion is livelier, more spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds.’”⁸²

These benefits of diversity in the classroom parallel those found in the professional world. A recent study showed that companies with at least three female directors enjoyed higher returns and had a higher overall value than those without notable female representation in the corporate boardroom.⁸³ One reason offered for this result is that organizations make better decisions if they have diversity among their employees.⁸⁴ Furthermore, “major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”⁸⁵

In the asynchronous online class, all students are required to participate in every class—not only benefiting their development, but also ensuring a diverse classroom with a range of opinions and experiences to share. Every student must participate in online activities, often for course participation credit.⁸⁶ Every student must submit each quiz, discussion board, and poll posted in an online course. Moreover, as described above, in the asynchronous online class, the students are exposed to a variety of different types of assignments, allowing them to practice and build a host of different lawyerly skills.⁸⁷ Professors teaching online have therefore noted increased course participation when compared with a live classroom.⁸⁸

81. Sunstein, *supra* note 78.

82. *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).

83. Linda-Eling Lee et al., *Women on Boards, Gender Trends in Gender Diversity on Corporate Boards*, MSCl (2015), <https://www.mscl.com/documents/10199/04b6f646-d638-4878-9c61-4eb91748a82b>.

84. *Id.*

85. *Grutter*, 539 U.S. at 330.

86. See, e.g., Vernellia R. Randall, *Teaching Diversity Skills in Law School*, 54 ST. LOUIS U. L.J. 795, 803 (2010) (noting that one professor has “an online class participation component to all my courses because I find that I can ask specific questions and have everybody think about it”).

87. “Online courses better prepare students to use email, participate in listservs, and interact with websites in a professional, rather than personal, context.” Joseph A. Rosenberg, *Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*, 12 SMU SCI. & TECH. L. REV. 19, 34 (2008).

88. Students “participate at a greater rate in online courses than in traditional classes.” Michael L. Perlin, *“Ain’t No Goin’ Back”: Teaching Mental Disability Law Courses Online*, 51 N.Y. L. SCH. L. REV. 991, 995 (2006). “[T]he level of student involvement and comprehension demonstrated by students’ substantive written products far exceed[ed] what I experienced when I last taught the class as a live seminar.” Max Huffman, *Online Learning Grows Up—and Heads to Law School*, 49 IND. L. REV. 57, 77 (2015); “One of these students reported that he preferred to participate online because he sometimes felt intimidated by the law students in the live class. Another public health student said that, when participating online, he was less afraid that others would disagree with his opinions. Additionally, some students from both groups were more willing to discuss controversial subjects and express unpopular opinions online.” Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 RUTGERS

Asynchronous online courses increase participation in another way: through their flexibility and accessibility. Students and faculty from around the country or around the world can be part of an online class.⁸⁹ Further, online programs give access to those who might otherwise not have the opportunity to attend professional schools.⁹⁰ For instance, parents can participate in classes from home, and working adults can earn a law degree while still earning a living.⁹¹

Asynchronous online courses further avert some of the equity and accessibility issues that can arise when the online course is delivered synchronously.⁹² It is true that synchronous online courses offer geographic flexibility and, like asynchronous online classes, allow students to attend classes from any location. However, the need to schedule a synchronous online class meeting at a particular time means that students with work or other commitments may not be able to take the course. The need to meet online at a particular time also may pose difficulties for students who need to share a household computer or students who may lack a stable internet connection.⁹³ The asynchronous online course with recorded lectures and assignments that students can do on their own schedule during the week avoids these issues. Moreover, in an asynchronous online course, students do not need to appear before a Zoom web camera, obviating concerns

COMPUTER & TECH. L.J. 33, 43 (2003).

89. See, e.g., Harry J. Haynsworth, *Temporary Distance Education Guidelines Provide Opportunities for Flexibility and Innovation*, 34 IND. L. REV. 47, 53 (2000) (describing a cybercrimes seminar in which experts from across the country served as assistants in the course, regularly participated in the online class discussions, and also critiqued the statutory provisions drafted by the students).
90. Arum & Stevens, *supra* note 17 (A residential program “categorically excludes those whose life circumstances make them unable to leave their family homes and forgo paid work to attend college.”); Andrew Delbanco, *Universities Must Offer More than ‘Zoom From Your Room,’* FIN. TIMES (July 13, 2020), (“More than one-third of undergraduates commute to underfunded two-year community colleges. Until the vast disparities of wealth and status among educational institutions are addressed, we need better online learning for everyone.”). *But see* Joshua Littenberg-Tobias & Justin Reich, *Evaluating Access, Quality, and Equity in Online Learning: A Case Study of a MOOC-based Blended Professional Degree Program*, 47 INTERNET & HIGHER EDUC. art. 100759 (2020) (noting that online learning favored already-advantaged groups, such as male students and students with master’s degrees, who had already developed self-regulated learning skills and were therefore more likely to successfully complete the online courses).
91. See, e.g., Celeste Hammond et al., *Online Learning and Transactional Skills Courses*, 18 TRANSACTIONS: TENN. J. BUS. L. 521, 527 (2016) (“I had several parents of young children in that class, including one whose baby was born during the semester, and having the course available online made it so much easier for her to participate.”).
92. See, e.g., Tabitha Moses, *5 Reasons to Let Students Keep Their Cameras Off During Zoom Classes*, THE CONVERSATION (Aug. 12, 2020), <https://theconversation.com/5-reasons-to-let-students-keep-their-cameras-off-during-zoom-classes-144111>.
93. See, e.g., Greta Byrum, *Addressing the Social Cost of Digital Transition: A New Decennial Census for 2020*, 47 FORDHAM URB. L.J. 883, 884 n.1 (noting that the pandemic has only highlighted the main digital equity concern regarding uneven access to the internet).

about their socioeconomic environment, such as their apartment backdrop, as compared with that of their peers.

The obvious negative aspect of the virtual world is the lack of face-to-face socialization and networking. As some have noted, “[R]esidential programs provide a great deal more to students than mere coursework. They are relationship machines, generating countless friendships, intimate partnerships and professional network ties. That machinery doesn’t translate easily to digital life....”⁹⁴ However, students and the professor do regularly engage with one another in the online classroom, albeit differently from how they interact with the live classroom.⁹⁵

In sum, there are many opportunities for the professor and students to engage in an online course. In addition, online teaching offers an opportunity to elevate student voices otherwise not heard in the classroom.

V. Conclusion

Online teaching will likely survive the pandemic—and perhaps even thrive in a post-pandemic world. In response to the pandemic, schools have already invested in many of the fixed costs associated with creating quality online programming.⁹⁶ Vendors, such as Zoom, are also responding to the pandemic and improving their products for online teaching.⁹⁷ New vendors are also arising in the educational space, such as Class for Zoom, a company independent from Zoom.⁹⁸ Indeed, “in the multi-billion dollar market for fully online courses and degrees, a variety of powerful new platforms and technologies have emerged, grounded in cloud computing, enormous datasets, and artificial intelligence.”⁹⁹

Beyond the availability of technology, however, the evidence supports that the asynchronous online course offers a robust learning experience for the student, with many benefits that are not necessarily the norm in the law school’s curriculum. Through formative assessments, regular feedback, and universal participation, students can harness the online learning experience as well as practice and build skills they need to be successful practicing lawyers. The Socratic classroom has its benefits, but a well-designed asynchronous online class allows students to learn in a different way—a way that may be particularly

94. Arum & Stevens, *supra* note 17.

95. *See supra* Part III.

96. Allison Pohle, *The Coronavirus Pandemic Is Making College Students Question the Price of Their Education*, WALL STREET J. (Aug. 28, 2020) (noting that “universities now have many other expenses related to providing instruction during the pandemic, including technology for remote classes”).

97. Jane Wakefield, *Zoom Boss Apologises for Security Issues and Promises Fixes*, BBC (Apr. 2, 2020), <https://www.bbc.com/news/technology-52133349>.

98. Natasha Mascarenhas, *Zoom’s Earliest Investors are Betting Millions on a Better Zoom for Schools*, TECH CRUNCH (Sept. 23, 2020), <https://techcrunch.com/2020/09/23/class-for-zoom-earliest-investors-are-betting-millions/>.

99. Gallagher & Palmer, *supra* note 3.

useful for those students who may not be comfortable with a final exam as the primary assessment method or who do not regularly participate in live classroom discussions.¹⁰⁰ Professors can harness these benefits of the asynchronous online course, either in the online classroom or by integrating online methods into their live classes. While much was lost in the pandemic, some may have been gained too—including experimentation in new teaching methods that, when paired with traditional methods, can benefit the teaching and learning of today’s law students.

100. Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955, 970 (2005) (noting that introverted students may not learn as well in a Socratic classroom as extroverted students); Michael Hunter Schwartz, *Towards A Modality-Less Model for Excellence in Law School Teaching*, 70 SYRACUSE L. REV. 115, 117 (2020) (noting the myths of in-person law teaching and the various ways in which in-person teaching falls short); James McGrath & Andrew P. Morriss, *Online Legal Education & Access to Legal Education & the Legal System*, 70 SYRACUSE L. REV. 49, 60 (2020) (recognizing that “[c]omplaints about the quality of law school teaching are legion”); Heidi K. Brown, *4 Lessons we Can Learn as a Profession From the Pandemic*, <https://www.abajournal.com/magazine/article/four-lessons-we-can-learn-as-a-profession-from-the-pandemic> (“Making the quick switch to ‘emergency remote law teaching’ in March, some educators indicated they planned to merely shift their in-person teaching style onto the online platform and continue cold-calling students, but now on video. As a researcher of how traditional models of legal education already underserve introverted, naturally quiet and shy students, I yearn for this crisis to inspire an evolution in legal education.”).