Survey Says—
How to Engage Law Students in the Online Learning Environment

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I. Introduction

Necessity is the mother of invention. It may also be the mother of progress. Advancements in remote learning, both technologically and societally, have resulted from the COVID-19 pandemic. Legal professionals—including educators and administrators—have been forced to accelerate the incorporation of technology into their practices and classrooms. During the COVID pivot of spring 2020, legal educators began to realize, perhaps begrudgingly, that quality online teaching requires enormous forethought, planning, and technological competence.[1] Exceptional online education is premised on dynamic engagement between the professor, students, and content.[2] This article uses original empirical evidence of student preferences to connect online legal education to educational theory and identifies concrete strategies for increasing law student engagement

1. Charles Hodges et al., *The Difference Between Emergency Remote Teaching and Online Learning*, Educause Rev. (Mar. 27, 2020), https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning (explaining how the emergency remote teaching that occurred during the 2020 COVID pivot does not qualify as online learning).

2. Throughout this article, professor, instructor, teacher, and educator will be used interchangeably to refer to a person who teaches something. These titles are not used in accordance with legal education's caste system. Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. Ass'n Legal Writing Dirs. 12 (2002) (identifying the seven castes in legal academy, including "tenured and tenure track faculty, deans, clinical faculty, law library directors, legal writing directors and faculty, and adjunct faculty"). Additionally, the terms "learner" and "student" will be used interchangeably to refer to a person who is learning.

and enjoyment. Because of the centrality of the learner in distance education, to provide the best legal education online, we must first focus on the student.

Research relating to distance education—which is the precursor to online learning—and student engagement, while dating back to at least the 1970s, has focused primarily on undergraduate and, to a lesser extent, graduate courses outside of the law.[3] Before the pandemic, little research had been directly aimed at understanding engagement in the online learning environment for law students. The lack of research was due, in part, to the limited number of law schools that have approval from the American Bar Association to provide legal education in such a format.[4] Before the COVID-19 pandemic, only eight ABA-accredited law schools were teaching law students pursuing a Juris Doctor degree in the online environment, with the first approval being granted to Mitchell Hamline School of Law in 2015.[5]

This article aims to fill the gap between existing pedagogical research and current law school practices in two ways. First, it examines existing research from other fields, transfers it to the legal context, and uses it to lay a foundation for strategies that will become "best practices" in online legal education.[6] Second, it presents the results of new empirical research about students' experiences with engagement strategies that reinforce, and, in some instances, qualify recommendations that are based on pedagogical research alone. In presenting and discussing this new research, this article explores how students best engage with classmates and how they perceive technology-based learning and interaction tools. It also examines those communications that students most value from professors and the most effective ways to engage students with course materials.

Overall, the article asserts that understanding law students' perceptions of online teaching strategies and aligning (the process of reaching mutual understanding between professors and students) those perceptions with the realities

3. JOHN R. VERDUIN, JR. & THOMAS A. CLARK, DISTANCE EDUCATION: THE FOUNDATIONS OF EFFECTIVE PRACTICE 8 (1991).

4. Former ABA Standard 306, which was recently deleted and incorporated into Standard 105, bars ABA-accredited law schools from providing J.D. degrees solely via distance education, including online. Stephanie Francis Ward, *Law Schools Should Have Flexibility in Responding to 'Extraordinary Circumstances,' ABA House of Delegates Says*, ABA J. (Aug. 3, 2020, 4:18 PM), https://www.abajournal.com/news/article/various-legal-ed-proposals-approved-by-aba-house-of-delegates.

5. These schools are Mitchell Hamline School of Law, Syracuse University College of Law, University of Dayton School of Law, Touro College Jacob D. Fuchsberg Law Center, University of Denver Sturm College of Law, Loyola University Chicago School of Law, and Seton Hall University School of Law. Trish Sammer, *8 ABA-Approved Online Law Schools*, NITRO COLL. (Dec. 15, 2020, 11:28 AM), https://www.nitrocollege.com/blog/online-degrees/aba-approved-online-law. I was a visiting professor at Mitchell Hamline in the spring of 2020 and the survey was conducted during my time there.

6. My use of quotation marks reflects the tentative nature of any effort at the present time to identify "best practices" in online legal education. Due to the rapidly changing environment, any approach to a consensus about effective practices must be fluid and broadly defined to be as inclusive as possible, since both students and professors who have not self-selected online courses are now immersed in them. An inclusive, tentative approach is also needed to avoid staleness, to prevent today's best practices from becoming tomorrow's stifling restraint.

of law school can lead to more engaging classrooms, both online and in person, and improve the law school experience. To accomplish this, law professors must take the time to think through how they plan to manage the virtual classroom, be intentional about building meaningful rapport with students, and provide students with the opportunity to build relationships with one another. Failing to consider carefully and plan for these factors will leave students unengaged. Research on learning theory has long recognized the importance of student engagement to quality learning. "Student engagement is defined as 'the student's psychological investment in and effort directed toward learning, understanding, or mastering the knowledge, skills, or crafts that academic work is intended to promote.' "[7] It improves student satisfaction, increases student self-motivation, reduces feelings of isolation, and ultimately leads to better learning outcomes, especially in an online learning environment.

In Part II of this article, I discuss legal distance education and the ABA, exploring the history of online legal education and the ABA's prohibition against fully distant education for J.D. students. In Part III, I provide the theoretical framework for the survey used in conducting my empirical research on student experiences, which is based on educational theorist Michael Moore's theory of transactional distance, in which he identifies three core interactions as the cornerstones of online learning. [8] The article then turns to a discussion of my empirical research on student engagement, placing the survey results within the broader context of higher education literature and practices in Part IV. Finally, Part V offers several concrete strategies for increasing law student engagement and reducing the psychological and communication space or transactional distance between the content and the professor and between the student learners themselves. The educational theories, research findings, and learning strategies discussed throughout the article can inform all teaching, whether online or in person. The insights from this article can also assist program leaders, curriculum committees, and other groups in making strategic decisions about teaching practices and how best to approach and evaluate online opportunities for legal education.

7.   Florence Martin & Doris U. Bolliger, *Engagement Matters: Student Perceptions on The Importance of Engagement Strategies in the Online Learning Environment,* 22 Online Learning 205, 205–06 (2018) (quoting Fred M. Newmann, Gary G. Wehlage & Susie D. Lamborn, *Student Engagement and Achievement in American Secondary Schools* 12 (1992)) (noting how distance-learning literature has explored the definition of engagement for decades). In this article, interaction and engagement will be used interchangeably. *See id*. at 206.

8.   Professor Moore is Professor Emeritus in the College of Education at Pennsylvania State University. *Michael Grahame Moore*, *Distinguished Professor Emeritus of Education*, PennState Coll. of Educ. (2022), https://ed.psu.edu/directory/michael-grahame-moore. He is highly regarded as a pioneer and leading theorist of distance education. Doug Erickson, *Q&A: A Founder of Distance Education Weighs in on its Educational Benefits*, *News*, Univ. of Wis. (Apr. 1, 2020), https://news.wisc.edu/qa-a-founder-of-distance-education-weighs-in-on-its-educational-benefits/.

II. Legal Distance Education and the ABA

Online legal education, with limited approval by the ABA, is relatively new. Unlike other higher education institutions, law schools have little experience with it and distance education.[9] While other graduate programs have leveraged technological innovations to provide increased educational opportunities, legal education and institutions—primarily, J.D. programs—have remained virtually unchanged.[10]

In 1998, Concord School of Law, created by Kaplan Education Centers, became the nation's first fully online law school.[11] It is accredited by the Committee of Bar Examiners of the State Bar of California—thus allowing its graduates to seek admission to the California Bar.[12] However, it is not accredited by the ABA.

As the governing body for law schools, the ABA has limited the number of courses that J.D. students can take online and issued a complete bar against obtaining a J.D. degree solely through distance education courses.[13] Beginning in 2002, the ABA's Section of Legal Education and Admissions to the Bar started allowing law schools to offer online courses to J.D. students.[14] Law students were prevented from taking any distance education courses in their first year of law school, and law schools could grant only four credit hours per semester

9.   Rebecca Purdom et al., *Distance Learning in Legal Education: Design, Delivery and Recommended Practices*, Working Grp. on Distance Learning Legal Educ. 9 (2015), https://am.aals.org/wp-content/uploads/sites/4/2019/12/AM20DistanceLearningByrnesPaper.pdf.

10. Jacqueline D. Lipton, *Distance Legal Education: Lessons from the *virtual* Classroom*, 60 IDEA: L. Rev. Franklin Pierce Center for Intell. Prop. 71, 73 (2020); *see also*, GA Mooney & JG Bligh, *Information Technology in Medical Education: Current and Future Applications*, 73 Postgrad Med J. 701 (1997).

11. Herb D. Vest, *Felling the Giant: Breaking the ABA's Stranglehold on Legal Education in America*, 50 J. Legal Educ. 494, 501 (2000).

12. Concord Law School, https://www.concordlawschool.edu (last visited Dec. 21, 2020); Vest, *supra* note 11. *But see*, A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 Wash & Lee L. Rev. 1949, 1999 n.195 (2012) (noting that one of Concord's graduates did successfully petition the Massachusetts Supreme Judicial Court for permission to sit for that state's bar exam, which he passed).

13. The ABA defines distance education courses as a "one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously." Standards And Rules Of Procedure For Approval Of Law Schools, Am. Bar Ass'n Section Of Legal Educ. And Admissions To The Bar, *Definitions (7)* (2021), 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 at ix. This definition necessarily includes online education.

14. Standards for Approval of Law Schools and Interpretations: Rules of Procedure for Approval of Law Schools, Policies of the Counsel of the Section of Legal Education and Admissions to the Bar and of the Accreditation Committee 31 (2002), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/2002_standards.pdf.

with a maximum total of twelve hours.[15] Slowly, the ABA began to expand the number of credit hours students could take online.

Most notably, in 2013, the ABA began granting waivers or variances to schools to start offering distance-learning options.[16] Among them was Mitchell Hamline School of Law, which launched the first hybrid (part in person and part online) program in 2015.[17] Mitchell Hamline's hybrid program "put[] a four-year course of study almost entirely online, with each semester beginning or ending (and in some years, both) with an on-campus intensive experiential component in each of the courses. The final 'Keystone' semester ha[d] online course work, but adds an externship or clinical component… ."[18] In the fall of 2020, Mitchell Hamline launched the newest iteration of the program, calling it blended learning but maintaining aspects of the hybrid program.[19]

At the beginning of the 2019–2020 academic year, eight ABA-approved law schools provided online J.D. courses.[20] Then the COVID-19 pandemic hit in the spring of 2020, forcing almost all education, from elementary to graduate schools (including legal education), to pivot to a remote or online format. Because of the COVID pivot, the ABA provided variances or exceptions to its general prohibition against complete distance education for J.D. degrees,

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15.   2002 STANDARDS, *supra* note 14, §306(d), (e).

16.   Purdom et al., *supra* note 9, at 9; Victor Li, *Law School's Online-hybrid Degree Program Gets First-ever Approval From ABA*, ABA J. (Dec. 19, 2013, 7:45 PM), https://www.abajournal.com/news/article/william_mitchell_online-hybrid_law_school_program; STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR 7 (2014) (adding a new variance process found in Standard 107), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.pdf.

17.   Purdom et al., *supra* note 9, at 9.

18.   David I.C. Thomson, *How Online Learning Will Transform Legal Education*, *in* THE RESEARCH HANDBOOK ON DIGITAL TRANSFORMATION 23, 36 (F. Xavier Olleros & Majlinda Zhegu eds. 2016).

19.   *Blended Learning at Mitchell Hamline*, MITCHELL HAMLINE SCH. L. (2022), https://mitchellhamline.edu/academics/j-d-enrollment-options/blended-learning-at-mitchell-hamline ("It is a four-year program that can be finished in three years. It has substantial on-campus time that includes the case-study workshop; a flexible design that allows students to customize their schedules and curriculum; and an 'asynchronous' structure that allows students to complete the online portion of their studies entirely on their own schedule."); Jen Randolph Reise, *Moving Ahead: Finding Opportunities for Transactional Training in Remote Legal Education*, 47 MITCHELL HAMLINE L. REV. 32, 48-49 (2020).

20.   Sammer, *supra* note 5. Four law schools had ABA waivers: Mitchell Hamline, Syracuse University, University of Dayton, and University of New Hampshire. *Id.* Four others provide part-time hybrid programs that, because of their structure, do not require waivers yet still maintain their ABA accreditation: Touro Law, Sturm College of Law, Loyola-Chicago, and Seton Hall. *Id.*

allowing all ABA-approved law schools to provide legal education online.[21] Between 2015 and February 2020, J.D. students could take up to one-third of their credit hours through distance education, and up to ten hours could be taken within the first year.[22] As of fall 2021, schools were authorized to seek extensions for existing variances to continue providing online or hybrid courses without violating the ABA's distance education standards.[23] With law schools having now explored online teaching—albeit in an emergency setting, which is not the same as true online education—the question remains: Where does legal education go from here?

The homogeneity of legal education had remained stagnant until the COVID pivot. Law schools and the legal profession have been forced to recognize the value of using distance education, and legal educators are exploring best practices for delivering content in an online environment. Because this pivot was forced by COVID and not by choice, online legal education remains mired in controversy. Professor Nina A. Kohn best summarizes the opposing views of online legal education. She explains: "Some describe online education as an opportunity to reimagine legal education. Others caution that online education could undermine the rigor of traditional legal education, potentially to the disadvantage of both new lawyers and those they serve."[24] These arguments are not new and, as will be explored in a future article, are inextricably tied to online education's deep roots in correspondence education.

However, how effective online legal education is and whether the online environment undermines the rigors of legal education are beyond the scope of this article. My focus here is on the methods and strategies for improving online legal education based on empirical evidence. Understanding how to provide high-quality legal distance education can also inform in-person education, providing ways to enhance teacher, student, and content interactions when face to face and to effectively "flip"[25] the classroom. ABA standards provide room

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21. American Bar Association Guidance Memorandum on Emergencies & Disasters from the Managing Director (Feb. 2020), https://www.americanbar.org/content/dam/aba/administrative/ legal_education_and_admissions_to_the_bar/20-feb-guidance-on-disasters-and-emergencies. pdf.

22. ABA Standards and Rules of Procedure for Approval of Law Schools §306(a) (2019).

23. *See, e.g., Legal Education and Admissions to the Bar,* Am. Bar Ass'n (May 25, 2021), https://www. americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_ to_the_bar/2021-may-emergency-variance-extensions.pdf (listing the schools that received extensions to existing variances for summer 2021 and/or fall 2021).

24. Nina A. Kohn, *Online Learning and the Future of Legal Education,* 70 Syracuse L. Rev. 1, 1 (2020).

25. *See,* e.g., *Flipped Classroom Trends: A Survey of College Faculty,* Fac. Focus (2015), https://www. facultyfocus.com/wp-content/uploads/2015/08/Flipped-Classroom-Trends_FF-Report-2015. pdf; et al., *Igniting Law Teaching Conference 2014: Flipping a Law School Course,* LegalED, http:// legaledweb.com/flipping-a-law-school-course (last visited Jan. 16, 2021); Peter Sankoff & Craig Forcese, *The Flipped Law Classroom: Retooling the Classroom to Support Active Teaching and Learning,* 2015 Canadian Legal Educ. Ann. Rev. 119, 119 , https://www.acpd-calt.org/2015_volume_articles ("The essence of the flipped classroom is straightforward. Instead of asking students to analyse scenarios by reading beforehand, and using class time to provide lecture content, the 'flip' uses

for experimentation without running afoul of limits on distance education as long as students and professors are not separated for more than one-third of the instruction.[26]

There is limited research on legal online education and even less research on students' perceptions of the engagement strategies and how those perceptions compare with distance education theories and literature.[27] This article aims to fill those gaps. But first, we must discuss the theoretical framework that provides the basis for examining and improving student engagement and online legal education.

III. Theoretical Framework: Moore's Theories

Educational theorist Michael Grahame Moore has outlined two core theories of online education, the "three interactions" and the "theory of transactional distance."[28] Moore is considered a founding father of distance education.[29] Attempts at creating a theoretical approach to distance learning began in the early to mid-1900s.[30] These early studies were "based both on intellectual inquisitiveness generally and on practical requirements implying, among other things, a desire to know as a result of feelings of social and education responsibility among practitioners."[31] However, distance education theory supported by empirical research did not come of age until the 1970s and 1980s, the period that included Moore's works.[32] He was the first to present a pedagogical education theory for education that takes place outside of the classroom.[33]

In 1989, Moore first identified the three interactions that must occur in distance education for meaningful learning to occur: learner to learner, learner

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a variety of new technologies to reverse the standard pattern. Under this model, professors deliver prepackaged lectures outside of class, allowing classroom time to be repurposed for a range of interactive pursuits.").

26. *See* 2021 Standards, *supra* note 13, at ix (defining distance education courses).

27. *See generally, e.g.*, Victoria Sutton, *Asynchronous, E-Learning in Legal Education: A Comparative Study with the Traditional Classroom*, 70 Syracuse L. Rev. 143 (2020); Yvonne M. Dutton et al., *Assessing Online Learning in Law Schools: Students Say Online Classes Deliver,* 96 Denv. L. Rev. 493 (2019).

28. Michael G. Moore, *Theory of Transactional Distance*, *in* Theoretical Principles of Distance Education 22, 93 (Desmond Keegan ed., 2005).

29. *See* Erickson, *supra* note 8.

30. Borje Holmberg, *Perspectives of Research on Distance Education* 13-14 (1988) ("With few exceptions (like Feig 1932 and Bittner & Mallory 1933) studies testifying to interest in research in [distance education] did not appear until after the second world war, however, and the earliest monographs date from the 1960s. The sixties also saw a number of articles and occasional papers with seminal idea. . . . The first bibliographies of distance-education writings also appeared in the 1960s."), https://files.eric.ed.gov/fulltext/ED298355.pdf (citations omitted).

31. *Id.*, at 14.

32. *Id.*

33. Erickson, *supra* note 8.

to instructor, and learner to content.[34] He sought not only to differentiate the three types of interactions but to create uniformity among distance educators.[35] He implored educators to "organize programs to ensure maximum effectiveness of each type of interaction, and ensure they provide the type of interaction that is most suitable for the various teaching tasks of different subject areas, and for learners at different stages of development."[36] Then, in his seminal paper in 1993, he provided a framework for understanding these interactions in distance education and how they contribute to student success.[37]

A. Moore's Three Interactions

The three interactions are defined as follows: 1) learner to learner interaction is the interaction among learners, alone or in group settings, that occurs with or without the instructor;[38] 2) learner to instructor interaction is the interaction between the learner and the subject matter expert who prepared the course material or instructor;[39] and 3) learner to content interaction is the interaction between the learner and the course subject or content.[40]

The learner to learner interaction serves to teach students how to function in a group or committee, which is an essential skill for functioning in society.[41] This interaction occurs in activities such as weekly group presentations, followed by peer discussions. Such activity "not only acknowledges and encourages the development of [students'] expertise but also tests it, and teaches important principles regarding the nature of knowledge and the role of the scholar as a maker of knowledge."[42]

Next, the learner to instructor interaction attempts to achieve the same goals held in common with all other educators—"to stimulate or at least maintain the student's interest in what is to be taught, to motivate the student to learn, to enhance and maintain the learner's interest, including self-direction and self-motivation."[43] It allows the instructor to enter into a dialogue with each student and attend to each student's individual needs.[44] The instructor can assess the learner's application of new knowledge, clarify misunderstandings, recommend

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34.   Michael G. Moore, *Editorial: Three Types of Interaction*, 3(2) Am. J. Distance Educ. 1, 1 (1989). He had begun working on this theory in the 1970s. Holmberg, *supra* note 30, at 14.

35.   *Id.*

36.   *Id.* at 5.

37.   Moore, *Transactional Distance*, *supra* note 28.

38.   *Id.* at 4.

39.   *Id.* at 2.

40.   *Id.* at 2.

41.   *Id.*

42.   Moore, *Editorial*, *supra* note 34, at 5.

43.   *Id.*

44.   *Id.* at 3.

supplemental materials, elaborate key points, draw analogies based on student's experiences, and more—all according to each student's individualized needs.[45] The interaction with the instructor is most valuable to the student for reality testing and feedback.

Finally, the learner to content interaction "is the process of intellectually interacting with content that results in changes in the learner's understanding, the learner's perspective, or the cognitive structures of the learner's mind."[46] Moore continued to work in distance education and refine his theories, eventually developing his theory of transactional distance.

B. Moore's Theory of Transactional Distance

Building on his prior work, Moore in 1993 published his seminal theory of transactional distance, in which he defined transactional distance as the psychological and communication space between teacher and learner.[47] It is "a psychological and communications space to be crossed, a space of potential misunderstanding between the inputs on instructor and those of the learner."[48] A key insight in this theory is that transactional distance is relative, not absolute.[49] Thus, the psychological and communication space (transactional distance) between teacher-learner, learner-learner, and learner-content can be measured by the extent of dialogue, structure, and learner autonomy in the course.[50]

Moore asserted that in distance education, the degree of transactional distance is based on three variables: dialogue, structure, and learner autonomy.[51] Dialogue is a positive interaction that is purposeful, constructive, valued by

45. *Id.*

46. *Id.*

47. Moore, *Transactional Distance*, *supra* note 28, at 22.

48. *Id.* at 23.

49. *Id.* Moore's theory builds on Robert Boyd's theory of education transaction and John Dewey and Arthur F. Bentley's concept of transaction. Dewey and Boyd developed the concept of transaction, which is "the interplay among the environment, the individuals and the patterns of behaviors in a situation." ROBERT DEAN BOYD & JEROLD W. APPS, REDEFINING THE DISCIPLINE OF ADULT EDUCATION 5 (1980). Boyd expanded their concept to establish his theories of educational transaction. *Id.*; Moore, *Transactional Distance*, *supra* note 28, at 32 (citing Robert D. Boyd, *Psychological Definition of Adult Education*, 15 ADULT LEADERSHIP 160 (1966)). "Transaction" in the distance education context "is the interplay of teachers and learners in environments that have the special characteristic of their being spatially separate from one another." Michael Grahame Moore, *The Theory of Transactional Distance*, *in* HANDBOOK OF DISTANCE EDUCATION 66, 68 (Michael Grahame Moore ed. 2013). Boyd used dialogue, structure, and transaction to identify the transactional distance in the learning process. *Id.*

50. Moore, *Transactional Distance*, *supra* note 28, at 22; *see also* Terry Anderson, *Getting the Mix Right Again: An Updated and Theoretical Rationale for Interaction*, 4 INT'L REV. OF RES. IN OPEN & DISTANCE LEARNING 1 (2003); Yau-Jane Chen, *Dimensions of Transactional Distance in the World Wide Web Learning Environment: A Factor Analysis*, 32 BRIT. J. OF EDUC. TECH. 459 (2001); Kayode C.V. Ekwunife-Orakwue & Tian-Lih Teng, *The Impact of Transactional Distance Dialogic Interactions on Student Learning Outcomes in Online and Blended Environments*, 78 COMPUTERS & EDUC. 414 (2014).

51. Moore, *Transactional Distance*, *supra* note 28, at 23.

teacher and learner, and aimed at improving the student's understanding.[52] The environmental factors that influence dialogue include the number of students in a class, the opportunity for communication, the students' and teacher's physical and emotional environments, and personalities.[53] Structure is defined as how well a program can respond and accommodate each learner's individual needs.[54] Moore identified six processes that must be structured in an effective distance-learning program: presenting; supporting the learners' motivation; stimulating analysis and criticism; giving advice and counsel; arranging practice, application, testing, and evaluation; and arranging for student creation of knowledge.[55]

Finally, Moore defined learner autonomy as the extent to which the learner, rather than the teacher, determines the learning goals, experiences, and evaluation of decisions.[56] He described such a learner as one who is emotionally independent of the instructor.[57] This means such a person is self-directed and, at most times, does not need an instructor between him or her and the content.[58] Moore acknowledged that many adults are not ready for such autonomy-based learning, in part, because of how schools are structured and must acquire such skills with the assistance and guidance of a teacher.[59]

Moore posited that there exists a "relationship between dialogue, structure and learner autonomy, for the greater the structure and the lower the dialogue in a [program] the more autonomy the learner has to exercise."[60] He explained that dialogue among learners—through teleconference, presentations, group work, and more—helps students develop analytical skills, synthesize knowledge, and enhance motivation while providing teachers an opportunity to test and evaluate students' understanding.[61] He also explained that a highly structured program that schedules every minute provides no opportunity for dialogue, resulting in no input from the learners or deviations keyed to a learner's needs.[62] When this occurs, the transactional distance between teacher and learner is high, placing the student in the position of having to decide if and how he or she will use the instructions provided.[63]

52.   *Id.* at 24.

53.   *Id.*

54.   *Id.* at 26

55.   *Id.* at 28–30.

56.   *Id.* at 31.

57.   Moore, *Transactional Distance*, *supra* note 28, at 31.

58.   *Id.* at 32.

59.   *Id.*

60.   *Id.* at 27.

61.   *Id.* at 33.

62.   Moore, *Transactional Distance*, *supra* note 28, at 26.

63.   *Id.* at 27.

C. Empirical Research to Validate Moore's Theory

Since its debut, Moore's theory of transactional distance has gained wide recognition in distance and higher education circles as a key pedagogical theory.[64] Numerous empirical studies were developed to validate his theory.[65] However, the literature reveals a lack of consensus on the working definitions of the related constructs, which concerns scholars.[66] In analyzing these early studies, education research scientist Paul Gorsky and psychologist Avner Caspi found that the theory could be reduced to a simple formula—an increase in dialogue will result in decreased transactional distance—and concluded that it was neither supported nor validated by empirical research.[67] They critiqued the relationship as tautology and not theory.[68] Despite the lack of unanimous acceptance of the early empirical studies, the theory continues to be valued as a core tenet of distance education, even by its critics, including Gorsky and Caspi.[69]

Subsequent research has found that transactional distance can be reduced in online classes when rich communication tools are used to facilitate high dialogue and high structure, contrary to Moore's original hypothesis, in which he maintained that transactional distance is low when structure is high.[70] Transactional distance is reduced in these web-based or online courses when "the learner is able to ask questions and receive timely responses, when the learning

64. *See, e.g.*, Xiaoxia Huang et al., *Measuring Transactional Distance in Web-Based Learning Environments: an Initial Instrument Development*, 30 Open Learning 106, 1007 (2015) (revisiting and assessing "studies focused on conceptual discussions and empirical verification of the theory [of transactional distance], and, in so doing, develop[ing] an instrument that measures each construct of the original transactional distance model in current web-based learning environments marked by newer communication technologies").

65. Handbook, *supra* note 49, at 42-43; Robert M. Bernard et al., *How Does Distance Education Compare with Classroom Instruction? A Meta-Analysis of the Empirical Literature*, 74 Rev. Educ. Rsch. 379 (2004); Robert M. Bernard et al., *A Meta-Analysis of Three Types of Interaction Treatments in Distance Education*, 79 Rev. Educ. Rsch. 1243, 1243–89 (2009).

66. Handbook, *supra* note 49, at 43.

67. Paul Gorsky & Avner Caspi, *A Critical Analysis of Transactional Distance Theory*, 6 Q. Rev. Distance Educ. 1, 7 (2005).

68. *Id.*

69. *See id.* at 10; Yiannis Giossos et al., *Reconsidering Moore's Transactional Distance Theory*, 2009 European J. of Open, Distance and E-Learning 1, 6 (2009) ("As Moore's *Theory of Transactional Distance* is one of the core theories of distance education, the continuation of its theoretical processing is valuable as well as the verification of this theoretical processing."). *See also* Randy Garrison, *Theoretical Challenges for Distance Education in the 21st Century: A Shift from Structural to Transactional Issues*, 1 Int'l Rev. of Res. In Open and Distance Learning 1, 3 (2000) (asserting that theories such as transactional distance "are invaluable in guiding the complex practice of a rational process such as teaching and learning at a distance."); Insung Jung, *Building a Theoretical Framework of Web-Based Instruction in the Context of Distance Education*, 32 Brit. J. Educ. Tech. 525, 527 (2001) (explaining that transactional distance theory "provides a useful conceptual framework for defining and understanding distance education in general").

70. Xiaoxia Huang et al., *Understanding Transactional Distance in Web-Based Learning Environments: An Empirical Study*, 47 British J. Educ. Tech. 734, 746 (2016). Transactional distance is an important theoretical model in distance education.

pathway supports the learner's goals and is clearly understood by the learner, and when the objectives of the course are clear and the content supports those objectives."[71] Such learning environments typically include well-organized discussions, videoconferencing that allows real-time communication, two-way video environments, and blended learning using flipped classrooms.[72] Researchers have also found that transactional distance and the interactions among the three factors will vary based on the learning environment, thus expanding Moore's original formulation.[73]

Empirical research on the theory of transactional distance has continued with the goal of moving it from a conceptual theory into an operational one with concrete definitions that explain what dialogue, structure, and learner autonomy look like and how they function in real learning environments. Studies have expanded from undergraduate distance education to postgraduate and high school education.[74] However, no such research or studies exist for online legal education. This is due in part to the ABA's aversion or hesitation concerning distance education, despite students' familiarity and comfort with it. I hope to fill this gap and provide empirical findings on engaging law students in the online learning environment.

IV. Empirical Research on Student Engagement

In the spring of 2020, while I was a visiting professor, I surveyed law students in Mitchell Hamline's blended learning program about their perceptions of the online engagement strategies used by their professors.[75] I asked students to

71.   Alex Casteel, *Moore's Theory of Transactional Distance*, ALEXCASTEEL, http://alexcasteel.com/moores-theory-of-transactional-distance/ (last visited Dec. 21, 2020).

72.   *Id.*

73.   Alex Casteel, *Factors of Transactional Distance*, ALEXCASTEEL, http://alexcasteel.com/factors-of-transactional-distance/ (last visited Dec. 21, 2020).

> For example, learning content that is subjective in nature, such as teacher education, is highly dependent upon successful multi-directional communication in order for learners to perceive connectedness with the learning environment. On the other hand, learner performance within task-oriented courses that teach specific physical skills, such as block laying and concrete work, depend less upon multi-directional communication and more upon content delivery (structure) and the learner's ability to navigate the content (learner autonomy).

> *Id.* (citations omitted).

74.   *See, e.g.*, Elizabeth Murphy & Maria Ángeles Rodríguez-Manzanares, *Revisiting Transactional Distance Theory in a Context of Web-Based High-School Distance Education*, 22 INT'L. J. DISTANCE EDUC. 1 (2008); Garry Falloon, *Making the Connection: Moore's Theory of Transactional Distance and its Relevance to the use of a Virtual Classroom in Postgraduate Online Teacher Education*, 43 J. RSCH. TECH. EDUC. 187 (2011).

75.   Because the survey was conducted while I was teaching at Mitchell Hamline, this may have introduced some bias (real or perceived) into the survey since some of the respondents were my students. However, the survey was anonymized, and the questions did not have any identifying markers that would allow anyone reading the answers to be able to identify the

identify the most important factors in an effective online learning environment and the strategies they found to be the most and least valuable in their learning experience. The purpose of this survey was to 1) understand how students perceive various engagement strategies used in online law courses, 2) identify what strategies law students find most and least valuable, and 3) provide students with an opportunity to explain in concrete ways how their online legal education can be improved.

Students in Mitchell Hamline's blended program spend the first two years in classes that are two-thirds in person and one-third online.[76] They are required to travel to St. Paul, typically twice a semester, and attend intensive class sessions that contain skills training and real-world case studies.[77] The remainder of the semester is fully asynchronous. "Each week, students watch pre-recorded lectures, do readings, or complete an assignment applying class material, such as a discussion post or a problem set."[78] Other aspects of the program—such as the intensive week-long, in-person sessions and weekly office hours (which function like lecture halls and not informal meeting times with students)—are synchronous, with everyone meeting at the same time.[79] Students are also randomly assigned to discussion groups in each class so that by the end of their law school career they have had substantial interaction with their cohorts.[80] In the last two years of the program, students have the option of taking classes fully online, fully in person, in the evenings or on weekends, and in the blended program.[81] The survey was administered to students enrolled in the blended program, which included those taking blended learning and fully online courses.

A. Survey Says

Using the survey created by Martin and Bolliger,[82] law students in Mitchell Hamline's blended learning program were questioned about their perception

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respondents.

76. *Blended Learning at Mitchell Hamline*, Mitchell Hamline Sch. L. (2022), https://mitchellhamline.edu/academics/j-d-enrollment-options/blended-learning-at-mitchell-hamline/.

77. Reise, *supra* note 19.

78. *Id.* at 48.

79. *Id.* at 54, n.116.

80. *Blended Learning*, *supra* note 76.

81. *Id.*

82. Martin & Bolliger, *supra* note 7, at 205. This study surveyed students in online courses from eight universities across the United States. The researchers conducted extensive review of the literature on student engagement in higher education to develop the survey using Moore's theory of interaction as the guiding theoretical framework. The study confirmed "the importance of all three types of engagement strategies in online learning, especially learner to instructor engagement . . . [and suggested] that engagement can be enhanced both in the interactive design of online courses and in the facilitation of the online courses." *Id.* at 218. The researchers concluded that the instructor was the most essential element in online education. *Id.* Participants "expected instructors to assist them in their learning and create meaningful learning experiences, as evidenced by their assigning relatively high ratings for

of the engagement strategies used in their blended learning courses. They were asked to identify what they believed were the most important factors in the online learning environment and what strategies they found to be the most and least valuable in their learning experience. Like the original survey, students were asked to rate on a scale of 1 (very unimportant) to 5 (very important) how important the strategies or activities identified were to their interactions as online learners. The questions were organized according to Moore's three interactions—learner to learner, learner to instructor, and learner to content.

Of the 586 students who were invited to participate in the survey, 139 responded, with a response rate of 23.7%. The average age for students was approximately forty years old (39.8) and responses were almost equal across the three class levels (1L, 2L, and 3L). An appendix containing the survey methodology is on file with the author. Overall, students thought the engagement strategies identified in the questionnaire were somewhat important.

The student survey questions and answers are organized based on Moore's "three interactions" theory. The survey results generally align with what most professors intuitively know about their students, especially after engaging in remote teaching for the past two academic years. Of the three subscales, the learner to instructor subscale had the highest mean score.[83] This means that students generally valued strategies that allowed them to engage with their professors. Students also thought that strategies that encouraged them to engage with one another were the least important. Students were generally neutral about engaging with one another.

B. Contradictions/Individual Differences

Within the survey results there were some contradictions. For example, peer interaction, discussion boards, and videos had directly conflicting results. While seven students rated it the most valuable to their learning and three found lack of peer interaction least valuable (in other words, finding peer interaction to be very valuable), twenty-four did not want that interaction to take place in group projects or peer-review work. Additionally, fifteen students liked discussion boards, but twenty-three did not. Also, while thirty-two students found videos were the most valuable aspect of the course material and four found them as the most valuable part of the instructor interaction/presence, seventeen found them to be the least valuable part of the course.

An examination of the data based on gender, age, and experience with online classes revealed that students generally agreed about what was most and least valuable in the learner to instructor and learner to content categories. However, in the learner to learner categories, the results varied based on gender, age, and

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items pertaining to grading rubrics, checklists, forums, and student orientations." *Id.* at 219.

83.   Appendix on file with the author.

experience.[84] Additionally, 75% of students ages twenty to twenty-nine were very familiar or highly skilled (or on a professional or pro level) with online classes, and no one was unfamiliar with them. In contrast, approximately 20% of students in each of the remaining age groups were unfamiliar with online courses. Notably, regardless of how the information was reviewed, the mean for the most valuable strategy in the learner to learner category did not leave the neutral (neither important nor unimportant) rating.

C. A Deeper Dive Into Survey Results

Perhaps more important than the quantitative findings of the survey are the students' answers to the open-ended questions. These questions allowed students to explain their answers and gave insight into why they liked or disliked certain strategies.

1. Learner to Learner Interaction

Perhaps not surprisingly, students were neutral about the engagement strategies in the learner to learner subscale. This could be due, in part, to the competitive nature of law school, including the dreaded course curve. Students rated working collaboratively using online communication tools as the most important engagement strategy for the learner to learner interaction. However, the mean for this strategy was 3.05, which means it was neither important nor unimportant. This is in keeping with other portions of the survey, where a majority of students rated group projects and peer-review work along with online discussions as the least valuable engagement strategies. This supports Moore's theory that peer group interaction does not help to stimulate or motivate adult learners, as they tend to be self-motivated.[85]

Next, students did not like introducing themselves using an ice breaker discussion or a video. They also disliked posting audio or video files in threaded discussion boards. These strategies received the lowest mean scores, of 2.5 and 2.43, respectively. This finding is inconsistent with the literature and the original Martin and Bolliger survey, in which ice breaker discussions were rated as the most important engagement strategy.[86] Prior research indicates that in the online environment, these activities provide students with a supportive and friendly atmosphere that can create meaningful and entertaining experiences.[87] However, prior studies were not specifically targeted at the law school audience.

Furthermore, while students generally disliked group work, they valued community and connecting with one another. They simply did not want professors orchestrating and participating in social activities beyond class time. They

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84. See Appendix Table 7 listing the items students found most and least valuable in the leaner-to-learner category based on the various classifications.

85. Moore, *Editorial*, *supra* note 34, at 5.

86. Martin & Bolliger, *supra* note 7, at 216.

87. *Id.*

wanted opportunities and spaces to connect with their peers and the broader law school community. They did not want professors or school administrators to curate "social hour." They can and will eventually create these opportunities on their own. What they wanted were spaces where they can go to learn about one another and develop connections, which they will carry on outside of the space provided. They thus sought occasions to increase dialogue with little structure. This is consistent with Martin and Bolliger's original survey findings, in which students rated virtual lounges as the least important strategy in the learner to learner engagement, and further contradicts prior research that praised virtual lounges and socially orchestrated online gatherings by professors with students beyond the virtual classroom.[88] As with the graduate students in the original survey, time is at a premium for law students, and they seek only activities that they view as directly furthering their learning.

However, despite students' lack of interest in engaging with one another through group work and professor-led social activities beyond class time, research shows that peer interaction and socialization are important aspects of learning.[89] "Social learning theory . . . suggests that people learn from one another via observation, imitation and modeling."[90] Students need the opportunity to frequently communicate with one another through various means. Based on the survey results, for students to value communication and interaction, it must be purposeful, positive, and meaningful.

Although technology now provides more opportunities for interaction in an online environment, peer interaction opportunities and activities must be designed in a way that allows participatory practice, skills and competency development, and knowledge validation.[91] According to researchers, "reflective learning and co-construction of knowledge are not an inevitable consequence of allowing students to interact with each other."[92] To support learning, "[c]onversational contributions need to be simultaneously parsed according to their disciplinary value, their location within the chain of collective argumentation, their relevance to the instructional goals, and their role as indicators of the student's ongoing understanding."[93] In other words, the dialogue generated in peer-to-peer activities must be assessed according to how well the discussions demonstrate mastery of the course materials and align with learning objectives. The discussions should allow students to show how they have processed and

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88. *Id.* at 216; Ivan Harrell II, *Increasing the Success of Online Students*, 13 J. of the Va. Cmty. Colls. 36, 44 (2008).

89. Heather J. Leslie, *Trifecta of Student Engagement: A Framework for an Online Teaching Professional Development Course for Faculty in Higher Education*, 13 J. Rsch. Innovative Teaching & Learning 149, 155 (2019).

90. *Id.*

91. Jorge Larreamendy-Joerns & Gaea Leinhardt, *Going the Distance with Online Education*, 76 Rev. of Educ. Res. 567, 590–91 (2006).

92. *Id.* at 591.

93. *Id*

transformed explanations into arguments and rhetorical devices, used inferences from the content to support their positions, and reshaped concepts into meaning.

2. Learner to Instructor Interaction

Unsurprisingly, students highly valued the strategies in the learner to instructor subscale. They particularly found grading rubrics, regular announcements/e-mail reminders, and due date checklists important or very important—with grading rubrics for all assignments as the most important.[94] The use of grading rubrics and the benefits to both students and faculty are well established within higher education pedagogy for in-person teaching.[95] They are just as vital to students in an online environment. Online learning management systems (LMS) allow instructors to directly embed rubrics into an assignment. Research has shown that giving assignments that contain grading rubrics improved student performance, regardless of major, gender, year in college, and baseline knowledge.[96] While rubrics are important, careful thought and consideration must be given to formatting, the language used, and the learning outcome to be measured.[97]

Posting a "due date checklist" or "work to complete" and regular announcements or e-mail reminders were the next highest rated. Students want clear guidelines and expectations. Students want to understand what professors expect of them and how to achieve that expectation. The high value placed on grading rubrics and checklists is consistent with the original study and other research.[98] The results are also consistent with Moore's 1989 theory that interaction with the instructor is the most valued by students.[99]

Students rated journals or opportunities to reflect through revision analysis as the least useful for learning. This finding is consistent with Martin and Bol-

94.   Appendix on file with the author.

95.   *See*, *e.g.*, Anders Jonsson & Gunilla Svingby, *The use of Scoring Rubrics: Reliability, Validity and Educational Consequences*, 2 Educ. Res. Rev. 130 (2007); Eileen Stuyniski, *How Rubrics Help You and Your Students*, U. Conn. (June 23, 2015), https://kb.ecampus.uconn.edu/2015/06/23/howrubricshelpyouandyourstudents-2/#; Linda Mabry, *Writing to the Rubric: Lingering Effects of Traditional Standardized Testing on Direct Writing Assessment Author(s)*, 80 The Phi Delta Kappan 673, 678 (1999) ("Rubrics are designed to function as scoring guidelines, but they also serve as arbiters of quality and agents of control. Moreover, the control is not limited to assessment episodes but influences curriculum choices, restricts pedagogical repertoires, and restrains student expression and understanding."). *But see* Alfie Kohn, *Speaking My Mind: The Trouble with Rubrics*, 95 English J. 12 (2006), https://www.alfiekohn.org/teaching/rubrics.pdf.

96.   Rebecca J. Howell, *Exploring the Impact of Grading Rubrics on Academic Performance: Findings from a Quasi-Experimental, Pre-Post Evaluation*, 22 J. Excellence Coll. Teaching 31, 45 (2011).

97.   W. James Popham, *Special Topic / What's Wrong—and What's Right—with Rubrics*, 44(2) ASCD (Oct. 1, 1997), https://www.ascd.org/el/articles/whats-wrong-and-whats-right-with-rubrics (identifying the problems with rubrics and explaining how to correct them); Mark Wise, *Rubric Repair: 5 Changes that Get Results*, Cult of Pedagogy (Mar. 17, 2019), https://www.cultofpedagogy.com/rubric-repair/.

98.   Martin & Bolliger, *supra* note 7, at 216.

99.   Moore, *Editorial*, *supra* note 34, at 4.

liger's original research article but inconsistent with prior literature.[100] Research has shown that reflective activities, in the classroom or online, can meaningfully engage learners and improve learning by enhancing knowledge retention.[101] These activities include journaling, diagramming mind maps, and conducting online discussions.[102] Thus, while students may perceive reflection as having little engagement value, research shows that it is an important aspect of learning.

Overall, the learner to instructor subscale had the highest mean score of all three interactions. Professor interaction/presence was the second-most-valued strategy reported by students in the open-ended question about valuable strategy. Students valued anything that allowed them to connect with their professors. Students want professors who are engaged and care about them. As one student stated, a "professor that sincerely cares about his [or her] students and topic inspires all!" They also need social interaction among one another and with the professor to help them understand complex content and to give them a sense of community.[103] Research shows that learner-instructor interaction is critical in helping students establish a sense of community.[104] The instructor's communication style is important "in showing students how to engage in behaviors that build community in an online course. Students observe instructor behavior and learn from it, taking cues in such areas as the initiation of conversations, acceptance of opposing viewpoints, offering of encouragement, and use of tact in disagreements."[105]

3. Learner to Content Interaction

Students listed working on realistic scenarios to apply content (e.g., case studies, reports, research papers, presentations, client problems) as the most beneficial strategy in the learner to content interaction. This desire for realistic scenarios is based on the need to learn by doing (whether students are consciously aware of this is uncertain) and doing can be accomplished through problem-solving activities. "Problem solving sets goals for the acquisition of declarative and procedural knowledge, requires learners to integrate knowledge, and provide opportunities for practice."[106] This is consistent with the prior survey

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100. Martin & Bolliger, *supra* note 7, at 217.

101. Florence Martin & Jeffrey Ertzberger, *Effects of Reflection Type in the Here and Now Mobile Learning Environment*, 47 Brit. J. Educ. Tech. 932, 934 (2015), https://bera-journals.onlinelibrary.wiley.com/doi/10.1111/bjet.12327.

102. *Id.*

103. Larreamendy-Joerns & Leinhardt, *supra* note 91, at 591 ("Social interaction (i.e., student-student, student-teacher), more than student-content, is viewed then as the privileged occasion for instruction because it sets the conditions for cognitive conflict to occur and provides students with opportunities to engage in negotiation of meaning and argumentation.").

104. Jo L. Shackelford & Marge Maxwell, *Contribution of Learner–Instructor Interaction to Sense of Community in Graduate Online Education*, 8 MERLOT J. of Online Learning & Teaching 248, 256 (2012).

105. *Id.*

106. Larreamendy-Joerns & Leinhardt, *supra* note 91, at 587.

and with research that found active learning was effective in engaging students and improving their academic outcomes.[107]

Structured discussions with guiding questions and/or prompts were listed as the second-most-important strategy. Students want structured discussion prompts that allow them to reflect critically and deepen their understanding of the materials. This is contrary to Moore's assertion that high structure results in high transactional distance. But it is consistent with other research that has found that "highly structured online engagement was more effective in facilitating critical thinking and interaction than discussions with less structure."[108] Moore's original theory did not factor in the online learning environment. Subsequent research, seeking to validate Moore's theory, has found that the correlation between structure and dialogue varies based on the environment and area of study.[109] The survey results further complicate Moore's theory and show that in online legal education, structure is necessary to reduce transactional distance.[110]

4. Open-Ended Answers

Answers to the open-ended questions focused heavily on course content. Students noted that the most beneficial strategies built into their courses were well-organized course content and course materials presented across multiple mediums. Several students valued clear instructions and guidelines—including weekly assignments, goals, and due dates—and the engaged presence of their professors in video, e-mail, regular office hours, and class meetings. Several students noted how flexibility and asynchronous lectures were key for them. However, this could be because they self-enrolled in an online program. Others also discussed how they needed questions and assignments that tested their grasp of legal theories. Ultimately, students desired engaging lecture videos, well-organized assignments and discussions, clear learning outcomes, and delineated course expectations.

Students also explained why they listed group projects and peer-review work as the least valuable strategy to engage them as online learners.[111] Students found it difficult to coordinate with other students' schedules and noted that, as a result, one person ended up doing most of the work. Online discussions were a close second as least valuable. Students disliked excessive discussion posts that

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107. Martin & Bolliger, *supra* note 7, at 217.

108. Dylan Rodgers, *The Importance of Online Discussions and How to Make Them Awesome*, Schoology: Exchange (Nov. 8, 2016), https://www.schoology.com/blog/importance-online-discussions-and-how-make-them-awesome. *See also* Laura Jacobi, *The Structure of Discussions in an Online Communication Course: What Do Students Find Most Effective?*, 14(1) J.U. Teaching & Learning Prac. art 11 15 (2017).

109. *See* Casteel, *Factors of Transactional Distance, supra* note 73.

110. The amount of structure needed is a topic for future research.

111. Several factors may have affected student's perceptions, including how the peer-to-peer activities were structured. Thus, responses about peer activities may be more about structure rather than content. Further research is needed.

did not allow them to provide personal experiences or outlooks. One student explained how "[f]aculty need to moderate online discussions more effectively and intentionally give an equal chance to all students to participate." Students also noted that too much social interaction or busywork was the least valuable. One student even stated, "Online 'social' communication forum. Please don't install this function, we are social outside the classroom via [F]acebook and social media. Do not need this for class."

In identifying other beneficial strategies, students were most concerned about class organization, assignments, the professor's interaction and presence, and discussions. Students recommended shorter prerecorded videos, synchronous discussions, asynchronous coursework, interactive assignments, timely feedback on discussion board posts, and access to the professor.

D. Limitations and Future Research

In this article, I tie empirical evidence of student preferences to educational theory, identifying concrete strategies for increasing law student engagement and enjoyment. While this survey is useful in identifying effective strategies for engaging law students, it has its limitations. It does not gauge the effectiveness of the engagement strategies, although research supports that the more engaged the student the better the learning outcome.[112] Future empirical work is needed to assess and validate the strategies in the online legal education context.

Also, the students who took part in this survey were generally already embarked upon their careers and looking to transition into the legal profession. These students purposefully pursued online education. They are older than typical law students, with an average of forty.[113] However, a closer examination of the survey results shows that the strategies that students aged twenty-one to thirty found most and least valuable were the same as those reflected in the mean results for learner to content and learner to instructor categories. Results differed by age in the learner to learner category, which comports with other law student findings.[114]

Furthermore, the responses were derived from one law school in the Midwest. Many students likely had the same professor, which could have resulted in

112.   *See* Leslie, *supra* note 89, at 151.

113.   According to LSAC and ABA data, the average non-online law school age range for law students is twenty-two to twenty-four. Max Feo, *Average of Law Students – Age Issues*, Milern, https://milern.com/7-age-issues-for-law-school (last visited Dec. 26, 2020). "Some other sources cite law school average range at 22-30, with the average age of law students– graduates at about 26 years old." *Id.*

114.   Jakki Petzold, *Law Student Time Usage by Age*, LSSSE (July 27, 2018), https://lsssse.indiana.edu/blog/law-student-time-usage-by-age ("The academic experiences of younger and older students are quite different. Younger 1L students (age 27 or below) contribute less often to classroom discussions than their older peers. However, younger students are more likely to engage in email communication with faculty members and to talk about career plans with faculty or an advisor. Older 1L students (over age 35) were less likely to engage with students and faculty members outside of class. Older students were also generally less likely to have serious conversations with classmates who are different from them.").

skewed responses. The small sample size and the fact that the students probably had relationships with one another and might have discussed their likes and dislikes outside of class may have also limited the results. Surveying students from different law schools would likely yield additional insightful results. Also significant are that participants self-selected to complete the survey, all data were self-reported, and some questions were unanswered.

Future research could also test instructors' beliefs about their teaching strategies and compare those with responses from students to gauge how we perceive our teaching versus how our teaching is received. Other studies could test whether various online teaching strategies resulted in the better acquisition of knowledge, despite what the professor or the students thought about the strategy. More research could also focus on measuring and testing Moore's theory of transactional distance in online legal education. Moreover, the strategies identified in the survey and the tools and activities recommended as listed in the following section are not all-inclusive. More research is needed to identify more strategies—especially those unique to law students.

The survey responses reveal a disconnect between what students value and what research suggests are good practices—for example, reflections and journals. These areas of tension provide opportunities for professors to engage in more dialogue and explain or "sell" the students on the importance of the activity and tie it back to the overall learning outcomes. Although law school is different from other areas of education, there are certain fundamentals of teaching and learning that still apply. By connecting student perceptions and educational theories, we can create tools and strategies that reduce transactional distance and increase engagement.

V. Improving Law Student Online Engagement

The following are practical tips for increasing dialogue, creating structure, and encouraging learner autonomy in the three learner interactions—student to student, student to instructor, and student to content—as explained in Section III. They are based on the law student perception survey results discussed in Section IV, established practices within legal and higher education, and my own experiences. The recommended strategies show how we can use our understanding of students' perceptions to increase student engagement.

An understanding of student perceptions of engagement strategies is important, because student engagement and satisfaction affect student learning and achievement.[115] Knowing what strategies students find valuable will allow us to use tools and activities that increase dialogue; provide structure; promote learner autonomy; and improve learner-to-learner, learner-to-content, and learner-to-

115.   *See* Leslie, *supra* note 89, at 149 (explaining how faculty that used the Trifecta of Student Engagement framework to improve student-to-content engagement, student-to-student engagement and student-to-instructor engagement saw improved student grades and learning outcomes); *see also The Changing Landscape of Legal Education: A 15-year LSSE Retrospective*, LSSE, https://lssse. indiana.edu/wp-content/uploads/2015/12/LSSSE_Annual-Report_Winter2020_Final.pdf.

teacher interaction.[116] The more engaged the student, the better the learning outcomes.[117] According to research, "student engagement [is] positively associated with student academic achievement, progression, graduation, satisfaction and deeper learning."[118] It is also synonymous with learner-centered teaching, an approach in higher education that has been proved to be effective.[119] Although face-to-face courses tend to be teacher-centered, the same concepts for online engagement and learner-centered teaching can be adapted for and incorporated into in-person classes.

This section connects Moore's work, distance education pedagogy, and student responses to provide practical ways to reduce the transactional distance (the psychological and communication space for misunderstanding) between learners, on one hand, and their instructors, fellow learners, and course content, on the other. Reducing the transactional distance is important because "[l]ow transactional distance suggests a high level of connectedness between the learner and the learning environment while high transactional distance implies a lack of connectedness between the two."[120] With reduced transactional distance, students can better engage in the course and improve learning outcomes.

A. Engaging Learner to Learner

As the survey shows, law students typically do not like peer-to-peer interaction. Part of this is due to the competitive nature of law school. But peer interaction is an important aspect of learning. Below are ways to improve learner to learner engagement to reduce transactional distance by increasing dialogue and providing structure as needed.

> **Effective Asynchronous Discussions—**As noted in the surveys, students generally disliked discussion boards, seeing them as busywork. However, when done correctly, asynchronous online discussions through discussion boards or other forums allow students to demonstrate knowledge of key concepts, build community, reflect deeply, build consensus, and think critically—which are important for peer-to-peer activities.[121] Thus, taking care in creating the boards is a crucial aspect of engaging students with one another.

116. Contrary to Moore's assertion, high structure coupled with high dialogue can reduce transactional distance. This is especially true in the online learning environment. Research has shown that the correlation between structure and dialogue varies based upon the learning environment. *See* Casteel, *Factors of Transactional Distance, supra* note 73. The survey results show that in online legal education, some structure is necessary to reduce transactional distance.

117. Leslie, *supra* note 89, at 150.

118. *Id.* at 151.

119. *Id.* at 150.

120. Casteel, *Factors of Transactional Distance, supra* note 73.

121. Leslie, *supra* note 98, at 157–58; *See also* Robert Jorczak & Danielle N. Dupuis, *Differences in Classroom Versus Online Exam Performance Due to Asynchronous Discussion*, 18 Online Learning 1, 3 (2014), https://olj.onlinelearningconsortium.org/index.php/olj/article/view/408/104 (discussing and explaining the research demonstrating the advantages of asynchronous discussions via

First, be judicious with the number of discussion posts required. Weekly postings and responses are ineffective and are viewed by students as busywork. Having students comment on multiple boards and respond to a specific number of posts per week or semester is not a best practice.[122] It reduces the organic nature of the conversation and makes it more mechanical.

Instead, consider purposeful discussions that are tied to clear learning objectives and that are limited to three to four posts a semester. Count the discussion prompts as part of the students' grades. Discussions are not the proper place for essay responses. Scholars advocate for a humanistic approach that uses authentic, natural, and informal language.[123] This can help make discussions feel less like busywork.

Second, structure discussion prompts in ways that allow multiple responses or views. Students disliked excessive discussion posts that did not allow them to provide personal experiences or outlooks or, as one student noted in the survey, that did not "have sufficient structure to create a diverse set of responses." Use open-ended questions to encourage deep thinking and promote open dialogue. Also, make yourself visible to help redirect the conversation should it get off track, but allow students to lead. One student explained how "[f]aculty need to moderate online discussions more effectively and intentionally give an equal chance to all students to participate." But beware that students will start to depend on the instructor if the instructor is too involved in the discussion and in answering questions, causing student-to-student interaction to decline.[124]

Next, provide students with clear and straightforward directions, being sure to note when students are required to cite their sources. Post a sample response that gives students an example of what is expected. Other strategies to stimulate discussions include "(1) assigning roles to learners; (2) posing provocative debate topics; (3) inviting experts to give presentations or join in online discussions; and (4) creating a case study that requires learners to define problems, search for resources, and discuss ways to solve problems."[125]

To generate the highest levels of participation, discussion prompts should provide clear guidelines and allow students to have unique responses.[126]

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different forums and how these discussion support learning).

122. Erin Howard, *Best Practices in Online Discussion Boards*, Lethbridge C.: Learning Connections (Aug. 5, 2015, 16:25), https://lc2-ca.lethbridgecollege.net/item/235-best-practices-in-online-discussion-boards.

123. Leslie, *supra* note 89, at 158.

124. Jacobi, *supra* note 108, at 3.

125. J. Yuan & C. Kim, *Guidelines for Facilitating the Development of Learning Communities in Online Courses*, 30 J. Comput. Assisted Learning 220, 227 (2014) (citations omitted).

126. Jacobi, *supra* note 108, at 3 (citation and quotations omitted).

Effective discussion board prompts have the added benefit of building social presence by capitalizing on student experiences, providing the opportunity for storytelling, and applying the concepts learned in class.[127] Concrete ways of accomplishing this goal include the following:

- Have students summarize a rule of law or concept as a tweet with a 280-character limit. Have students include hashtags.

- Post a video clip of a trial court proceeding or oral argument and have students rule on the matter, sitting in the position of the judge. Require students to issue a ruling with supportive explanation.

- Have students create an online or radio advertisement for a rule of law or legal concept and post it in the discussion board. Students can also create a clickbait ad with an enticing title and summary.

- Place students into small groups. Post a fact pattern with multiple issues and have each student in the small group identify one issue that has not been mentioned by another group member. Students will then have to respond to another person's issue in IRAC form. Professors can also post a problem and ask students to advise the client on how to proceed. Students can post individual responses and then work as a group to decide on the best course of action. With each fact pattern or problem, provide students with a sample response or model answer.

- Provide students with opportunities to respond to questions using various multimedia. Have students post video responses as though they were presenting to a judge or a partner. Students can also prepare voice thread responses as a voicemail to a partner.

- An alternative to text-based discussions is to ask students to post a piece of digital art that relates to a topic and reflect on the meaning of the work in relation to the topic.[128] Professors can require students to explain a legal theory or concept using online images or a meme, using meme generators like https://imgflip.com/memegenerator. This then causes the discussion board to look more like a gallery and reflection space.

Ice Breaker Videos—Law students do not like ice breakers. They can be time-consuming, with students focused on aesthetics and recording to minimize errors. As one student noted, "[T]he focus becomes the video itself/graphics rather than content." When this happens, students lose focus on the content. These videos, however, have great benefits, especially in increasing dialogue. The video ice breakers allow the professor to get

127. *Id.*

128. Sharon A. Riggs & Kathryn E. Linder, *Actively Engaging Students in Asynchronous Online Classes – IDEA Paper 64*, at 8 (Dec. 2016).

to know the students and the students to get to know one another, setting the foundation for further communication. Videos also allow students to become comfortable with the technology, which is becoming more common in the broader legal community.[129]

How the assignments are structured is vital for student success. Limit the number of times students can record and rerecord videos (e.g., limit them to three tries). Explain to students how cumbersome it can be to create the videos and what you do to reduce your recording attempts. Allow flexibility in the rubric for recording errors. Encourage students to create scripts or bullet points to help them navigate awkwardness and limit recording attempts. Also, remind them that videos should be conversational. Join in the ice breaker, don't just moderate. Students want to get to know you too. Your ice breaker and lecture videos should include times when you make a mistake but correct it and continue. Students feel more comfortable making mistakes and continuing when they have seen it modeled. Allow students the opportunity to view one another's videos, but do not mandate responses. Students will be naturally inclined to comment on videos they find interesting or nicely done. This allows for dialogue to happen naturally, instead of being forced as part of a graded assignment.

An example of an effective ice breaker assignment is Ann Sinsheimer's The Culture Box assignment.[130] Students are asked to pick two or three items—anything from a physical object to quotes or descriptions—that focus on the following areas:

> 1) Things that represent who they are, which might include significant events that shaped them and their view of the world; 2) things that represent who they are in a professional sense or illustrate significant past experiences, perceptions, or insights that led them to their choice to study law at this time; and 3) things that represent what they think about the law, the legal profession, and their vision in regards to a legal education.[131]

129. Robert Ambrogi, *7 Ways the Pandemic Will Forever Change Law Practice*, ABOVE THE LAW (Apr. 27, 2020, 11:50 AM), https://abovethelaw.com/2020/04/7-ways-the-pandemic-will-forever-change-law-practice/; John A. Torres, *Judges Say Some COVID-19 Changes to Court Proceedings May Become Permanent*, FLORIDA TODAY (Jan. 1, 2021, 5:50 PM EST), https://amp.floridatoday.com/amp/3945904001?__twitter_impression=true&fbclid=IwAR2iY8Zv_-GMKa-Rcccaf-9GQ8leRexImYZTkz4EsJdv4H-_OZZXSf6-ZhH4; *Adapt or Fail: Industry Changes Law Firms Can't Afford to Ignore*, AMERICAN BAR ASSOCIATION (Nov. 25, 2020), https://www.americanbar.org/groups/law_practice/publications/techreport/2020/sponsored-mycase/.

130. Ann N. Sinsheimer, *Exploring Diversity with a "Culture Box" in First-Year Legal Writing*, 32 SECOND DRAFT 23 (2019).

131.   *Id.* at 23.

This assignment allows students to engage with one another and with the professor. It allows them to share something about themselves and their new profession. This ice breaker assignment is flexible and can be adapted for online synchronous and asynchronous courses.

The Culture Box assignment, ice breakers, and discussion prompts can be coupled with online platforms like Padlet or Flipgrid,[132] which allow students to engage interactively with one another and with course content, as dictated by the professor. Students can post video responses, YouTube links, and more to prompts while also having the opportunity to comment on other students' posts.

Shared Docs–Using shared documents like Google Docs, Microsoft Share-Point, collaboration in Canvas, or any other shared document source helps with students' general dislike for group work. This tool allows you to see students working on the assignment when they are in breakout rooms or in small groups when in person. Require each student to answer a question or input information into the document to help with the shared distribution of the assignment. Shared documents can also be used for group assignments completed beyond class time. They reduce scheduling conflicts and require students to meet less frequently, which is often the source of student disdain for group assignments.

Students can also conduct anonymous peer-review assignments using platforms like Peerceptiv.[133] Students review one another's documents based on a rubric. They also evaluate the feedback they receive from the reviewer.

B. Engaging Learner to Instructor

Naturally, students valued meaningful interactions with the professor. Except for reflections, students found the strategies that engaged them with the instructor to be important or very important. Even so, there are still concrete ways to increase dialogue, provide structure that renders the dialogue more effective, and decrease the transactional distance between learners and instructor.

Reflection and Revision–While students may perceive reflection or journaling as having little engagement value, research shows that it is an important aspect of learning or thinking about how to learn—i.e., metacognition.[134] It helps students become self-aware and self-directed.[135] Get creative and

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132. Padlet, https://padlet.com/ (last visited Sept. 1, 2021); Flip, https://info.flipgrid.com/(last visited Sept. 1, 2021).

133. *How it Works*, Peerceptiv, https://www.peerceptiv.com/how-it-works/ (last visited Sept. 1, 2021).

134. *See* Leonora G. Weil et al., *The development of Metacognitive Ability in Adolescence*, 22 Consciousness and Cognition 264 (2013).

135. John Spencer, *Five Ways to Boost Metacognition in the Classroom*, Spencer author (Aug. 13, 2018), https://spencerauthor.com/metacognition.

use different formats. Instead of written reflection or journals, use video reflections. Have students record themselves as they review a prior draft or record a video (in "dear diary" style) as they reflect on their work.

Metacognition is not limited solely to reflection journals. You can create self-reflective surveys, which can be in multiple choice, essays, or both. Essay exams also improve metacognition. Although multiple-choice questions are quicker to grade, adding several short-essay questions helps improve how students reflect on their learning and prepare for taking exams.[136] To-do lists and checklists are also great metacognition and self-assessment tools. Additionally, you can provide students with specific metacognitive strategies and model an approach. For example, provide students with a fact pattern and walk them through the steps they should take to identify and analyze the issue. Another fun and engaging method of reflection is to have students create portfolios or a professional website using free platforms like Wix or Weebly.[137] Some learning management systems (LMSs), like Canvas, have a built-in e-portfolio function.[138] Professors can add reflection to these assignments by asking students to make inferences and present evidence.[139]

In the law school context, metacognition is most prevalent in the use of the Socratic method. "The Socratic method at its best is an example of one education technique that law education does particularly well: teaching students to dialogue by increasing their self-awareness and practice. The Socratic method is a deeply metacognitive skill."[140] However, for thinking, learning, and developing critical inquiry skills to take place in the law classroom, the Socratic method and cold-calling must be done effectively. Students must learn to create their own questions and not just simply respond to the professor's prompts. "Socratic dialogue teaches students to respond to questions, ponder positions, and ask follow-up questions, leading to the formulation of ideas, inventions, and better solutions."[141]

Focused Office Hours—Students highly value office hours. But often they do not know what to ask. To make office hours more effective, have short,

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136. Marilyn Price-Mitchell, *Metacognition: Nurturing Self-Awareness in the Classroom*, Edutopia: Brain-Based Learning (Apr. 7, 2015), https://www.edutopia.org/blog/8-pathways-metacognition-in-classroom-marilyn-price-mitchell.

137. Admittedly, this may be time-consuming for students. But in this tech-driven society, more law students are thinking about their "brand" and online persona. *See, e.g.*, Claudia Toro & Jennifer Leonard, *Online Branding for Law Students*, ABA Career Center, https://www.americanbar.org/careercenter/blog/online-branding-for-law-sudents/.

138. *What are ePortfolios?*, *Canvas Basics Guide*, Canvas (Jan. 16, 2021, 3:13 PM), https://community.canvaslms.com/t5/Canvas-Basics-Guide/What-are-ePortfolios/ta-p/1.

139. Riggs & Linder, *supra* note 128, at 5.

140. Deborah L. Borman & Catherine Haras, *Something Borrowed: Interdisciplinary Strategies for Legal Education*, 68 J. Legal Educ. 357, 380 (2019).

141. *Id.* at 384.

specific content that you plan to review. For example, you can discuss how to brief cases, how to edit and proofread legal documents, or how to manage their time and calendar when they have multiple projects. You can also discuss cases in the news that relate to the current course topic and show real-world application of the rule of law. Use this time to clarify anything that students may have misunderstood during class or cover a topic you did not have a chance to review during class. Another option is to discuss topics that are more broadly related to the profession such as professionalism, mentors and sponsors, how to network, and work/school life balance. Keep your discussion and presentation short, twenty minutes or less. Keeping these meetings short and focused will encourage students to stop by and help generate questions.

Lesson and Assignment Objectives—Because your students are adult learners, they value clear instructions and guidelines but also need to understand how what they are learning and how the assignments they work on fit together. This is why "[f]or every lesson and assignment, you should also state the objectives . . ., indicating what learners will be expected to do, how, when, and where. Depending on the level of outcome you are trying to achieve, you should use appropriate action verbs to elicit the desired level from your students."[142] Examples of effective objective statements include the following: create a well-organized outline that will assist you in drafting your argument; identify key sources or rules that support your argument; write an effective question presented using under/does/when; draft assertive point headings that state the action you want the court to take and the reason the court should take the action; and edit your argument section for focus, clarity, and emphasis. Tell students, plainly, what they are to do and how to do it. Verbs like "know" and "understand" should not be used unless students are also told how they are to show such knowledge or understanding.[143] Connect smaller assignments with how they relate to graded assignments and broader course goals.

Vary the Ways You Give Feedback—Giving students feedback is a critical area of student engagement. Because of the technological features of the online environment, feedback can be given via different mediums, including audio, video, or written. "Prompt feedback allows learners to examine their current knowledge, reflect on their learning and receive recommendations for

142. Darina M. Slattery, *Implementing Instructional Design Approaches to Inform Your Online Teaching Strategies*, Faculty Focus (Sept. 16, 2020), https://www.facultyfocus.com/articles/online-education/implementing-instructional-design-approaches-to-inform-your-online-teaching-strategies. *See also* Benjamin S. Bloom et al., Taxonomy of Educational Objectives: The Classification of Educational Goals, Handbook 1, Cognitive Domain (1956); David R. Krathwohl, Benjamin S. Bloom & Bertram B. Masia, Taxonomy of Educational Objectives, The Classification of Educational Goals Handbook 2, Affective Domain (1970).

143. Slattery, *supra* note 142.

improvement."[144] In giving feedback, create a supportive and collaborative environment with open dialogue. Work with students to create mutually agreed-upon goals and reinforce them via follow-up action plans. [145] For it to be most effective, feedback should be timely, consistent, objective, and fair.[146] This can be accomplished by using a rubric. Most LMSs can embed a grading rubric directly into class assignments.

Another tool to help provide instant feedback during "live" or synchronous classes and help you gauge the class is the polling function. You can use PollEverywhere, the built-in poll function in Zoom, or countless other tools available online. The poll helps you to question the class about any topic and allows you to receive immediate answers. The answers can be anonymous, which lets students feel more comfortable in being honest about what they do not understand. Using this feedback from the students, you can then determine how the class should proceed. Build flexibility into the class and think through ahead of time what you will focus on based on the class consensus.

Automatically graded questions and quizzes are another way for students to receive immediate feedback. You can create quizzes with explanations as to why an answer is correct and the others are incorrect. Most LMSs have a built-in quiz function. Other quiz platforms include CALI QuizWright, West Academic Assessment, and Core Knowledge for Lawyers.[147]

Regular Announcements—Understandably, students love receiving regular announcements about due dates and upcoming assignments. But instead of simply listing this information, give students an overview of how the assignments relate to one another. Recap what they did last week, what they will do this week, and why it's important. Provide an overview page at the beginning of each module in Canvas or LMS. List each week's objectives and summarize what they did last week and how they'll build on that skill in the upcoming week. You can also use short weekly introductory videos or audio recordings that are two to three minutes long. They can be very informal and recorded on your phone.

C. Engaging Learner to Content

While students found the interactions to be particularly important, they were most concerned with the course content, as indicated by their answers to the questions about the most, least, and other valuable strategies. Students

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144.   Leslie, *supra* note 89, at 159.

145.   *Id.*

146.   *Id.*

147.   *See* CALI, https://www.cali.org/content/about-quizwright (last visited Sept. 1, 2021); *West Academic Assessment*, West Academic, http://westacademicassessment.com/ (last visited Sept. 1, 2021); *Core Knowledge for Lawyers*, Carolina Academic Press, https://coreknowledgeforlawyers. com/ (last visited Sept. 1, 2021).

specifically identified organized course content; succinct, prerecorded lectures; and presenting class materials in a variety of formats as most valuable and rated excessive social interaction and busywork as the least valuable. Below are ways to increase engagement and reduce the transactional distance between learners and content.

Engaging Lecture Videos—Overall, students like prerecorded lecture videos. However, they do not like professor-created videos that are too long, talk at them, or feature the professor simply reading from a PowerPoint. To be more effective, provide students with clear, succinct, and engaging prerecorded lectures. Use the videos to help guide students' understanding of class readings or as a preparation tool for synchronous class meetings. Your videos do not have to be perfect or of the highest quality. Students do not want, and professors do not need to create, highly produced lecture videos. Professors do not need to become screen actors. Rather, to create engaging videos, be your authentic self. Bring your personality and enthusiasm. Research shows that videos showing the instructor speaking in a natural, conversational, and enthusiastic tone are the most engaging. "[S]tudents really appreciate knowing that it's their actual teacher behind the video."[148]

When creating videos, prepare a script (even if it is in bullet points) and infuse it with stories, anecdotes, a sense of humor, and your personal style.[149] Your script should be prepared with your students in mind. Imagine speaking to them as you write. When you record, make mistakes, correct them during the video as you would in person, and continue with the lecture. To the extent possible, use PowerPoint slides with your videos. Do not read directly off of the slides; they should not serve as your script. Studies show that "the best instructional videos are highly focused, use visual cues to highlight key information, and minimize the use of on-screen text."[150] As will be discussed below, your PowerPoint should have minimal words.

Embed interactive quizzes and questionnaires into the lecture videos using programs like Edpuzzle, PlayPosit, and Panopto. Research shows that students who take notes or answer questions while watching lecture videos retain the lecture material better than if they watch passively.[151] Embedding quizzes into the video requires students to provide an answer to the question before they can continue watching the lecture. Doing this increases student engagement, provides students with an opportunity for self-assessment, and allows you to receive quick feedback and formative assessment data.

148. Kareem Farah & Robert Barnett, *A 5-Step Guide to Making Your Own Instructional Videos*, EDUTOPIA (Aug. 20, 2019), https://www.edutopia.org/article/5-step-guide-making-your-own-instructional-videos.

149. Purdom et al., *supra* note 9, at 28.

150. Farah & Barnett, *supra* note 148.

151. Farah & Barnett, *supra* note 148.; Josef Buchner, *How to Create Educational Videos: From Watching Passively to Learning Actively*, 12 OPEN ONLINE J. RSCH. & EDUC. 1 (Sep. 2018).

The information gleaned from the quizzes will allow you to assess whether students understand the topic and determine how to proceed with subsequent lectures. The quizzes should be ungraded, since the goal is feedback. Another option is to require students to score fifty percent or better on all quizzes to earn full credit.

Lecture videos should be five to seven minutes long and no more than twenty minutes long.[152] Because this is a video recording, you must speak precisely and carefully.

PowerPoint—If using PowerPoint lectures, either in synchronous class meetings or in prerecorded lectures, keep them short. Provide imagery that relates to your materials rather than text. PowerPoint is best for conveying visual imagery.[153] According to researchers, using various visual representations helps facilitate the learning of complex materials.[154] But images must be used strategically, be instructionally relevant, and support thoughtful explications of core concepts.[155]

If you add language, keep it to a minimum. Students noted that they do not like it when professors read from the slides. Any language should be "takeaways" or critical details from the lecture.[156] Do not include more than

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152.   Purdom et al., *supra* note 9, at 28-29.

> A large consensus of distance learning providers agree that video presentations should be "chunked" or broken into short segments, each of which is easily identified and repeatable. This segmentation of videos and material allows students to easily access and review specific content on demand. In most subject areas, 5-7 minute videos are considered ideal. Where topics are too complex to explain in a 5-minute segment, videos should be as short as possible, if only to assist students in searching for particular topics. Thus, a 2-hour lecture may be broken into multiple ten or fifteen-minute segments, each labeled for particular content. To accommodate students with a variety of needs, and to support regular students working through difficult concepts, it is strongly suggested that all videos posted for student use be accompanied by a written transcript.

> Larry Lagerstrom et al., *The Myth of the Six Minute Rule: Student Engagement with Online Videos*, Paper presented at 2015 ASEE Annual Conference & Exposition, Seattle, Washington, Paper #13527 ("[A] rule of thumb for maximum video length would be in the range of 12-20 minutes.").

153.   Emily A. Moore, *Adapting PowerPoint Lectures for Online Delivery: Best Practices*, Facultyfocus (Jan. 7, 2013), https://www.facultyfocus.com/articles/online-education/adapting-powerpoint-lectures-for-online-delivery-best-practices; Richard E. Mayer, Multimedia Learning] 183-194 (2001) (discussing the principles that shape the design and organization of multimedia presentations, which he defined as presentations that use both words and pictures); 12 *Principles of Multimedia Learning*, Univ. of Hartford, Fac. Ctr. For Learning Dev., https://www.hartford.edu/faculty-staff/faculty/fcld/_files/12%20Principles%20of%20Multimedia%20Learning.pdf (last visited Aug. 8, 2022).

154.   Larreamendy-Joerns & Leinhardt, *supra* note 91, at 585.

155.   *Id.* at 586.

156.   *Id.*

four lines of text. Use short, descriptive words. Also, use information-design rules and practices to make the information more appealing and stimulating.[157] Take the extra few minutes to find visually appealing yet relevant images, beyond the standard PowerPoint imagery.

Class Structure—In giving feedback on the other beneficial strategies questions, students were most concerned about class organization and structure. So it is important to take time to think through how the class will be structured. During synchronous class meetings, do not immediately start with a class lecture. Use the first two to three minutes to check in with your students, set the tone for the day, explain the learning objective for the day, or connect the prior lesson with the current lesson. Give students feedback on a previous assignment or discuss something notable from the news. Another option is to list the upcoming homework and reading assignments. No matter what you choose, take a minute or two to engage the students and capture their attention at the outset of class.[158]

Next, keep any lecture presentations short—no more than fifteen minutes. Use the remaining class time for class discussions and activities. Having an engaging class helps to prevent Zoom fatigue or burnout and supports knowledge construction.[159] "The lecture approach found in some forms of distance education does not contribute to active student learning. Most students benefit from a two-way flow of information and from the mediation of an instructor as they attempt to make sense of complex content."[160] Finally, add in breaks or stretch times to help students refocus.[161] After twenty to thirty minutes of lecturing or classwork, either synchronously or

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157. *Information Design Rules*, The VCG (2022),https://thevisualcommunicationguy.com/information-design-basic-rules; *Making Better PowerPoint Presentations*, Vanderbilt Univ. (2022), https://cft.vanderbilt.edu/guides-sub-pages/making-better-powerpoint-presentations.

158. *See, e.g.*, Maj. Wolfgang S. Weber, *The Most Crucial Two Minutes of Class*, Faculty Focus (Apr. 24, 2019), https://www.facultyfocus.com/articles/effective-teaching-strategies/the-most-crucial-two-minutes-of-class; Laura Schisler, *A Starter Activity to Begin Any Class*, Faculty Focus (July 20, 2020), https://www.facultyfocus.com/articles/effective-teaching-strategies/a-starter-activity-to-begin-any-class.

159. *See* Kate Murphy, *Why Zoom Is Terrible*, N.Y. Times (Apr. 29, 2020); *Student Construction of Knowledge*, Yale: Poorvu Center for Teaching and Learning (2021)https://poorvucenter.yale.edu/ConstructingStudentKnowledge; How People Learn: Brain, Mind, Experience, and School, Nat'l Res. Council (2000).

160. Shackelford & Maxwell, *supra* note 104, at 249.

161. William R. Chaney, *Top-of-Hour Break Renews Attention Span*, 19(6) Teaching Professor 4, 4 (2005) ("I have experimented with an instructional technique I call the 'Top-of-the-Hour-Break.' Class starts on the half-hour and lasts for 50 minutes. I interrupt each session at exactly the top of the hour to show a two- to three-minute video clip, to conduct a short hands-on activity, to show tangible items, to chat about my personal experiences traveling, or to discuss private consulting activities."); *Pedagogical Best Practices: Residential, Blended, and Online*, Harv. Univ.: Teach Remotely, https://teachremotely.harvard.edu/best-practices (last visited Dec. 26, 2020) ("Stretch times: consider encouraging students to 'stretch' every 20-30 minutes for 30 seconds. It can be harder to focus attention on a screen than in a classroom, and you and they will benefit from a brief moment of physical activity.") (emphasis removed).

asynchronously, add an interactive activity like a poll, a video clip, a discussion question, a stretch break, or anything that gives students a break and helps them regain their focus.

Realistic Scenarios—Law students highly value the opportunity to apply their newly gained knowledge to actual cases. So, provide students with assignments that take them beyond the classroom. Have them review actual court documents. Have them learn how to access court records and processes. Bring practicing attorneys and judges into the classroom, either in prerecorded videos or during synchronous class meetings. Where possible, use cases you personally worked on, being sure to protect confidentiality. Have students function as first-year associates under realistic pressures and constraints. For example, create a voice recording—simulating a voicemail—in which you ask students to prepare a case summary or research an issue within twenty-four hours, giving them only limited information.[162]

VI. Conclusion

Exploring students' perceptions of the engagement strategies used in the online environment is key for increasing interaction and decreasing transactional distance among students, teachers, and content. Understanding the student perspective can help educators align student expectations with the realities of law school and course functions, which in turn will result in more effective learning outcomes, increased student engagement, and a better law school experience. However, this requires intentionality and forethought.

The survey results are not only useful for blended or online law programs but can also instruct in-person teaching. Distance education is a subset of higher education that has its own theories and best practices that can be integrated with current classroom methodologies. The article recommendations are situated within the distance education pedagogy—which has a better understanding of engagement practices using psychology and assessment techniques that draw on distance educators' years of research and literature. The recommended strategies are also based on legal traditions and legal education pedagogy. The article explains what students want in comparison with what they need and recommends ways to close the transactional distance through the proper leveraging of technology. It acknowledges that while the survey and student responses are helpful, they need to be assessed within the context of learning

162.   According to Knowles' theory of andragogy,

> adults normally [did] not pursue learning simply for the sake of learning, but because they needed to immediately apply what they were learning to life situations. Knowles . . . believed learning experiences should be structured around life situations versus subject matter, and that learners desire to be aware of the relevance of what they learn in relation to their life tasks or goals.

Laurie C. Blondy, *Evaluation and Application of Andragogical Assumptions to the Adult Online Learning Environment*, 6 J. Interactive Online Learning 116, 125 (2007) https://www.ncolr.org/jiol/issues/pdf/6.2.3.pdf.

outcomes and objectives, established practices, and proven theories. Furthermore, while many of the recommended strategies have been known as effective in an online teaching modality, the hope is that educators will bring them back into the ground classroom post-pandemic.

Legal education has come late to the game when it comes to online education, but now that changes in ABA requirements have facilitated the potential for a paradigmatic shift, why not make the most of decades of theoretical and empirical research into what works in distance education to inform legal education holistically? Reframing long-held beliefs about the conventions of legal education through the lens of transactional distance theory and shoring up the body of empirical research on the effectiveness of specific pedagogical (or andragogical) practices in legal education not only ensures the rigor of legal education but also ensures that legal education will continue to feel relevant to and invite engagement from its students.