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CONNECTION IN AN AGE OF CONNECTIVITY: AN EVALUATION OF SYNCHRONOUS AND ASYNCHRONOUS LAW CLASSROOMS

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CONNECTION IN AN AGE OF CONNECTIVITY: AN EVALUATION OF SYNCHRONOUS AND ASYNCHRONOUS LAW CLASSROOMS

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As the world was thrust into a global pandemic, legal education was forced to confront the evolution of technological teaching modalities. While these technological advances allowed legal education to prosper in the short-term emergency education situation, their continued use creates barriers between the student and teacher which diminishes a student's ability to develop critical lawyering skills. Based on our own roles as professor and student, we agree that deviating from in-person education will have detrimental effects for teachers and students and will undermine the collaborative relationship of the classroom. Legal institutions have refined in-person teaching methods, such as the Socratic Method, as mechanisms to engage and enhance teacher-student relationships. This Article evaluates the merits of distance learning and includes a discussion of a variety of emerging synchronous and asynchronous models but cautions how the evolution of distance education will jeopardize the relationship between teachers and students. The authors conclude that student-teacher collaborative relationships are built on trust and are best achieved through an in-person, synchronous environment.

INTRODUCTION

With the addition of various forms of distance learning to the traditional model of in-person classes, the method of delivering legal education is in flux. The movement to incorporate distance learning began before the pandemic, but the pandemic accelerated its use, as law schools pivoted abruptly to a total distance learning model. Most schools have returned to primarily in-person education but have continued to employ some of the synchronous and asynchronous forms of distance learning

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adopted during the pandemic.¹ This Article considers the various methods of delivering legal education, evaluates their strengths and weaknesses, and assesses how effective they are at fostering what the authors believe should be at the essence of all education: the connection between student and teacher.²

The authors' thesis is that legal education is best delivered in a live, synchronous format. A primary reason is that law school is teaching students a process of analysis and communication that they will use as lawyers. Although various forms of distance learning can be effective at imparting legal doctrine to students, these forms of education do not facilitate the same level of student-teacher engagement that is necessary to enable students to develop the skills sets they will need as lawyers.³ The heart of legal education therefore lies in the collaborative relationship that develops between student and teacher and among students in the law classroom.⁴ When students and teacher are interacting in real time and in the same geographic space, the resulting synergy prompts a level of engagement that can produce a deeper understanding of course material and the development of a skill set necessary for the practice of law.

Because of the importance of in-person teaching modalities, the American Bar Association (ABA) standards have always been strict regarding online education; law students have always been required to attend most of their classes in-person when pursuing a J.D. degree.⁵ Presently, students are only allowed to pursue fifty percent of their credits through distance education.⁶ However, the evolution of technology has led many law schools to consider offering more flexible options for student education.⁷

Part I of this Article explains the foundation for in-person legal education in the context of the Socratic Method and considers the advantages and disadvantages of in-person learning. Part II reflects on how remote learning worked during the pandemic as law schools scrambled to finish one academic year and continued with this form of education for the following academic year. This section then compares and contrasts how law schools are using remote learning post-pandemic as an alternative classroom. Part III continues this discussion and presents various forms of hybrid learning including permutations of synchronous

1. *See infra* Part II.B.

2. This Article only considers these issues in the context of the doctrinal classroom and does not address them in the context of skills classes or student-teacher conferences.

3. *See infra* Part III.

4. *See* E.M. FORSTER, HOWARDS END (Signet 1992) (1910) (*See* epigraph "Only Connect").

5. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023-2024 § 311(a) [hereinafter ABA STANDARDS].

6. *See id.* § 306(d).

7. *See infra* Part IV.

and asynchronous classes. Part IV evaluates a fully asynchronous model of learning in which students typically work on assignments independently at their own pace. Part V presents the authors' conclusions and summary of their reasoning.

I. THE SOCRATIC METHOD IN THE CLASSROOM

The heart of education lies in the relationship between student and teacher.⁸ Nowhere is that relationship purer and more direct than in the traditional law classroom where students and teachers engage in dialogue, role plays, and discussion designed to prompt student engagement in cases and problems. This relationship is fully manifested through the Socratic teaching methods implemented in the law classroom where the wisdom imparted upon students by professors is achieved through the refutation of any and all of the students' prior "knowledge."⁹ However, this connection relies on the equal engagement of both parties; a student cannot learn from what they do not know if they fail to engage with the material that they do not yet know.¹⁰ In the fourth book of Plato's *The Republic*, Socrates elaborates on how a willingness to learn is more powerful than pure intellect when he says, "the best-endowed souls become worse than the others under a bad education."¹¹ This quote is timeless in a classroom where engagement with new material is critical to the learning process; the newness of the material places everyone on a nearly level playing field and only those who are willing to participate in the pedagogical process will prosper.¹²

8. Mary Kate Kearney, *Reflections on Good (Law) Teaching*, 3 L. REV. M.S.U.-D.C.L. 835, 836 (2001) (observing that "[s]tudents crave time and attention. They want their teachers to care about them as students and as people. One master teacher summed up student perspective: 'The teacher has to be interested in me, me, me!'").

9. See Ilana Kowarski, *What is the Socratic Method that Law Schools Use?*, U.S. NEWS (Apr. 4, 2019, 10:57 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2019-04-04/what-is-the-socratic-method-and-why-do-law-schools-use-it> [<https://perma.cc/ACT4-8AFQ>].

10. See Thomas L. Shaffer & Robert S. Redmount, *Legal Education: The Classroom Experience*, 52 NOTRE DAME L. 190, 191 (1976) (stating that "[t]he student can never know what the professor knows and the student will carry into his life as a lawyer a conviction that he will never know that much").

11. PLATO, PLATO'S THE REPUBLIC 195, 491e (Desmond Lee 2nd ed., Penguin 2007) (375 BCE).

12. PLATO, PLATO'S THE APOLOGY OF SOCRATES 17a-42a (Thomas West, Cornell Univ. Press 1979) (387 BCE). While brilliant, Socrates' lines of questioning and intention to impart wisdom were only useful to those who were willing to admit that they had more to learn. In Plato's *The Apology of Socrates*, Meletus asserts what he knows to be true about Socrates despite Socrates' compelling monologue opposing it during his trial. Meletus' unwillingness to open his mind results in Socrates' sentence and inevitably his death. The repercussions of such closed-mindedness are important because it highlights how we can lose the best opportunities to better ourselves and our experiences if we keep an open mind; Meletus had the opportunity to learn and instead he assisted in sentencing the man who could have led him to true wisdom.

The Socratic process is designed to do more than disseminate legal principles to students; students and teachers work together with the teacher guiding students through the kind of legal analysis they will be required to do as lawyers helping to solve their clients' problems.¹³ When the professor has developed a relationship of trust with students in the classroom, they can collaborate to empower the students to be ready to conduct their own legal analysis. One of the underlying goals is that the teacher will guide students through discussion and analysis of an issue and that students will engage with the professor and with each other to explore a legal doctrine.¹⁴ Although various tools of engagement can be used, including but not limited to statutes, cases and problems, a primary purpose is that students will be acquiring a skill set in addition to substantive knowledge. These tools allow students to build foundational skills they will use as practicing lawyers.

As a result of these pedagogical goals, there are numerous advantages to having students and teachers in the same place at the same time.¹⁵ The energy generated by the interaction among classroom participants fuels student engagement and learning. From a professor's perspective, the ability to "read the room" allows them to adjust the tempo and tenor of class discussion. For example, if students are starting to "check out" midway through a class, the teacher might break students into small groups to better engage them. The importance of students' non-verbal communication in a classroom should not be underestimated as it allows the professor to better assess the learning of students in the present moment. In sum, the tactile aspects of in-person learning, though not quantifiable, should not be underestimated.

From a student's vantage point, they also have the ability to develop relationships with their professors and peers.¹⁶ In the classroom, students engage with the professor and each other primarily verbally so they can ask questions and get immediate feedback. In addition, they communicate with each other nonverbally by nodding in agreement or disagreement with a classmate's comment and through eye contact or other body language. They often nod at another student's comment in agreement or

13. Elizabeth Garrett, *The Socratic Method*, UNIV. CHI. L. SCH. (1988), <https://www.law.uchicago.edu/socratic-method#:~:text=The%20Socratic%20Method%20provides%20all,teaches%20them%20to%20think%20critically> [<https://perma.cc/ZLG6-F67D>].

14. *Id.*

15. See Steve Cohen, *The Necessity of In-Person Education*, COLUM. CLIMATE SCH. (Aug. 16, 2021) <https://news.climate.columbia.edu/2021/08/16/the-necessity-of-in-person-education/> [<https://perma.cc/2LXT-3QXJ>] (discussing the necessity of returning to in-person education after COVID-19, despite the success of remote learning during the pandemic).

16. The classroom is "a laboratory for human relations, a place where, by demonstration and by hypothesis, the tenor and skill for dealing with human beings are relevant subjects for explication and testing." Shaffer & Redmount, *supra* note 10, at 218.

disagreement, make eye contact, and generally engage with each other. Another advantage to the classroom is that it places students in a professional environment that should simulate how they are expected to behave as lawyers. When students show up for class, they can be preparing for internships, clerkships, and next steps in their career.

The disadvantage of in-person education to the professor is largely confined to logistics, as it limits their flexibility in terms of when and where they teach. However, in-person education can have more consequential adverse effects on certain types of students. For example, the “silent but gifted” law student may not flourish in the classroom.¹⁷ These types of law students are always prepared and motivated but have trouble speaking up due to their anxiety and fear of public speaking.¹⁸ This may peak during certain experiences, such as getting cold-called, and may make the student seem ill-prepared, thus casting a poor perception on the student.¹⁹ Furthermore, some students have health challenges which make it difficult, if not impossible, to attend class on a daily basis.²⁰ For these students, the flexibility provided when they have the option to attend class remotely can facilitate their success.²¹ Even without a medical reason, many students who are balancing the demands of work and family responsibilities appreciate the convenience of remote learning.

II. THE REMOTE CLASSROOM

A. *During the Pandemic*

Although some law schools had been experimenting with remote classes on a limited basis pre-pandemic, the pandemic thrust all law schools into remote learning overnight.²² Most schools finished the 2019-

17. Heidi K. Brown, *The “Silent but Gifted” Law Student: Transforming Anxious Public Speakers into Well-Rounded Advocates*, 18 J. LEGAL WRITING INST. 291, 292 (2012). Brown writes about the talent of law students that is often overlooked due to the debilitating silencing by the anxiety of public speaking and how this can be overcome to help all students prosper in the Socratic teaching environment.

18. *Id.* at 291–92.

19. *Id.*

20. Student author speaks from personal experience in a reflection on balancing medical disabilities with the stringent attendance requirements of law school.

21. Stephanie Ward, *Law Student Want More Distance Education Classes, According to ABA Findings*, A.B.A. J. (Jul. 21, 2022, 1:28 PM), <https://www.abajournal.com/web/article/law-students-want-more-distance-ed-classes-according-to-aba-findings> [<https://perma.cc/F2HB-68T2>]. This survey was a survey of 1,394 3L students conducted by The American Bar Association’s Section of Legal Education and Admission to the Bar in 2022. *Id.* The results reveal that an overwhelming majority of students want an option to take more distance education courses. *Id.* However, the results do not show that they favor distance education over in-person education.

22. Yvonne Dutton & Seema Mohapatra, *Teaching Law Online: COVID-19 and Law Teaching: Guidance on Developing an Asynchronous Online Course for Law Students*, 65 ST.

20 academic year with remote classes and continued with these virtual classes for the entire 2020-21 academic year. Few professors and students were prepared for this experience, but there was no choice: they had to make it work.²³

The main advantage of remote classes during this period was that it served as the best substitute on short notice for the in-class experience. It provided students with a synchronous classroom and allowed for teachers and students to continue to engage with each other remotely. During the 2019-20 academic year, students and teachers had been in person for the majority of the year, including the first half of the second semester, and so already had developed a working relationship in classes. This was not the case during the 2020-21 academic year when teachers and students never met in person and worked together remotely for the whole year.

Some of the advantages were born out of necessity. The main advantage to remote learning was that it gave law schools the chance to remain open and students the opportunity to receive an education. From the school's perspective, this was a critical economic necessity. From a student's perspective, it allowed them to continue, or in some cases begin, their legal education uninterrupted. Often, a camaraderie developed between students and professor as a result of their shared mission. That idea of "we are all in this together" also complemented the student perspective of full participation or idea of being "all in" because there were truly no other options. In addition, some first-year students reported that the remote classes initially made the transition to law school feel less intimidating than attending classes in-person.²⁴ Finally, the advantages of students and professors being able to protect their and their family's health and welfare by remaining at home outweighed the downsides and inconveniences of remote education.

The situation, however, was far from ideal. Many students and teachers faced significant challenges from lack of access to reliable internet and/or finding an appropriate in-home location to "attend"

LOUIS L.J. 471, 472 (2021). COVID-19 online education began immediately during the March 2020 lockdown. *Id.* However, Dutton and Mohapatra clarify that the rapid COVID-19 online teaching protocols cannot be compared to modern distance education because they were not meticulously planned but were instantaneously implemented. *Id.* at 473. Therefore, they refer to COVID education as "emergency online programming." *Id.* at 474.

23. *Id.* at 471. The authors take a stronger stance than Dutton and Mohapatra regarding the importance of in-person learning versus the utilization of carefully constructed synchronous and asynchronous models. Furthermore, we instead delve into the psychology of students and professors to determine why material is best disseminated in-person versus through a screen.

24. Online survey with Professor Kearney's 2020-21 Zoom Torts Class, Student, Widener Univ. Commw. L. Sch. (May 24, 2023) [hereinafter "Professor Kearney's Torts Survey"] (survey on file with the authors) (stating that "[a]s a 1L, I felt that it was easier to engage in class on Zoom because I was still in the comfort of my own room, and I was not as nervous of what other people thought of me. I raised my hand and talked more than I would have if it were in person").

school.²⁵ In addition to logistical issues, teachers had to devise ways to impart both legal doctrine and skills in ways that would prepare students for the bar exam and the practice of law. By necessity, the traditional closed book law school exam became an open book exercise that did not require students to learn the law in the way they would be expected to for the bar exam.²⁶ Many professors adapted in-class techniques, such as small group discussions using break-out rooms, and Poll Everywhere to vary teaching techniques and engage students in active learning. Professors continued to encourage student participation either through student volunteers or cold-calling on students.

These efforts, however, were hindered by the innate differences between remote and in-person learning. Class size was a critical factor in the effectiveness of a teacher being able to encourage class participation. Some classes were too large for all students to appear on a computer monitor so a professor could not see all students simultaneously.²⁷ The professor lost the ability to “read the room” because the body language of students was not visible, and it was difficult to maintain eye contact with more than one student at once. It was easy for students to be distracted by having their phones or other devices readily accessible during class, and many students (and some professors) experienced difficulty accessing reliable internet and appropriate learning spaces. Attending law school in the laundry room or with other family members in the same room was far from ideal.

The jury is still out on the effectiveness of remote education in terms of preparing students for the bar exam and the practice of law. Since the Class of 2023 just graduated and took the bar exam, early indications suggest that students were not as well-prepared as their predecessors.²⁸

25. Many students surveyed commented on how difficult it was to stay focused in a Zoom class because of outside distractions. A typical student comment was, “[s]ome of the challenges I ran into were outside noise. Even though I tried to wear headphones most of the time, I still got interrupted by my roommate, apartment personnel, animals, landscapers outside, etc.” *Id.*

26. See Vikas Bajaj, *Open vs. Closed Book: Succeeding on Law School Exams*, AM. BAR. ASSOC.) (Apr. 16, 2018) https://www.americanbar.org/groups/law_students/resources/student-lawyer/student-essentials/open-book-vs-closed-book-law-school-exams/ (discussing the benefit of closed book exams in preparation for the bar exam since it is also closed book).

27. Note that this disadvantage assumes that the professor required that all students have their cameras on during a synchronous class session.

28. Karen Sloan, *US Bar Exam Officials Blame Low Scores on COVID Disruptions, Repeat Testers*, REUTERS (Mar. 31, 2023, 4:35 PM), <https://www.reuters.com/legal/government/us-bar-exam-officials-blame-low-scores-covid-disruptions-repeat-testers-2023-03-31/>.

B. *The Remote Classroom Post-Pandemic*

Since in-person education has resumed during the past two academic years, law schools have retained distance learning to varying degrees.²⁹ This section will consider four different forms of synchronous, remote education: classes which meet entirely on remote learning platforms (such as Zoom), hybrid classes which are conducted partly in person and partly remotely, hybrid classes in which the professor and some students meet in person while others are remote, and classes which are a combination of synchronous and asynchronous styles.

Students and teachers have grown comfortable with the full remote model of teaching and learning, and many have adapted successfully to this method. Fully remote classes, which are conducted similarly to those during the pandemic, afford the greatest amount of flexibility to all involved. For example, a law school can run an entire summer school program with professors and students in far-flung locations. This is advantageous to professors who can teach from anywhere in the world while pursuing research or other activities and to students who can maintain full-time summer employment and still take classes without having to travel to the law school. The main benefit to the law school is economic; these classes have the potential to capture a larger market of students and thus garner greater income.

Many students developed a proficiency at learning remotely during the pandemic.³⁰ A significant benefit of continuing this model is permitting students to retain increased agency over their education. In the same way that workers value the ability to work at home, law students attending school remotely have the ability to be in an environment that they can control. The time saved by not being in person places them in a better position to balance law school with other demands on their time, such as work and family. As a result, they may be able to work in legal internships and summer jobs while still getting summer credits through distance education classes.

Of course, student engagement is also linked to a professor's remote teaching style. A professor who engages students by "cold calling" on them may get a higher level of student participation by necessity, but that might also increase student anxiety as they focus less on the material and

29. *Distance Education*, A.B.A. (Jan. 21, 2022), https://www.americanbar.org/groups/legal_education/resources/distance_education/.

30. Stephanie Ward, *Law Student Want More Distance Education Classes, According to ABA Findings*, A.B.A. J. (July 21, 2022, 1:28 PM), <https://www.abajournal.com/web/article/law-students-want-more-distance-ed-classes-according-to-aba-findings> [<https://perma.cc/F2HB-68T2>]. The proficiency was notable enough that 68.65% of students in a survey of 1,394 3L students said they wanted the option to take more distance education courses. *Id.* However, 58.41% of the same students said they preferred in-person education. *Id.* Therefore, there is a need for students to feel as if they have agency over their education but not necessarily favoritism toward distance education.

more on concerns about being called on.³¹ On the other hand, a professor who demands participation can increase students' ability to learn by requiring them to stay involved in the discussion and ignore distractions.

Although remote learning post-pandemic is not a new experience for students and teachers, there are significant differences between it and remote education during the pandemic. During the pandemic, the law classroom existed exclusively via remote learning platforms. Because no synchronous, in-class option was available, students and teachers were forced to make it work. In contrast, a remote classroom post-pandemic is an alternative to an in-person class and may be considered a weak substitute. Students may be more apt to view an occasional remote class as a "free pass" and be less inclined to participate and engage.³²

In addition, the screen format of a remote class underscores the passivity of the experience. For a generation of students that has grown up on screens, attending a remote class may be akin to watching a movie.³³ Based on their other uses of screens, students may be conditioned subconsciously not to participate during remote learning sessions.³⁴ In addition, students may be more likely to be using other screens (such as their phones) during a remote class especially if they do not view class as a conversation but instead as a one-way street.³⁵

III. FOUR FORMS OF HYBRID CLASSES³⁶

A number of hybrid alternatives have developed as law schools combine synchronous and asynchronous classrooms. One form of hybrid class occurs when the same class alternates between in-person and remote sessions. For example, our law school experimented with this format for its evening division program: students met in person three nights out of the week, and classes were held remotely the fourth night. Since the

31. A few students surveyed felt self-conscious about participating because of concerns about how they looked or sounded on camera. Professor Kearney's Torts Survey, *supra* note 24.

32. An informal survey of Professor Kearney's year-long contracts class in 2022-23 Contracts class yielded unanimous results. Students unanimously agreed that they welcomed having one out of every four classes on Zoom because it gave them a "night off" from commuting. However, while appreciating the flexibility that it afforded them, they also unanimously agreed that they "learned better" when present in the classroom.

33. See generally Alexandru Mărchidan, *More Technologized is Not More Educated*, INT'L. CONF. ELECS., COMPUTS, & A.I., (2019) (drawing comparisons between behaviors of watching television and watching an on-screen lecture).

34. Erik Peper et al., *Avoid Zoom Fatigue, Be Present and Learn*, 8(1) NEUROREGULATION 47, 49 (2021).

35. *Id.*

36. These four forms were extracted and generalized by the different ways that different schools are executing their distance education. Some schools are following and capping distance education at what the ABA Standard 311(e) allows for, and other schools have applied for more lenient distance education under ABA Standard 105.

remote night rotated each week, the outcome was that in a class held twice a week, one out of every four classes took place remotely. Again, flexibility and the desire to accommodate evening students, many of whom work full days and commute long distances,³⁷ drove the decision in large part. That, coupled with the desire to remain competitive with other schools offering distance learning options, motivated the choice.

There are some significant differences which distinguish this use of remote learning from remote classes during the pandemic. During the pandemic, students had no options other than remote learning, so they had to make it work. In contrast, when remote classes are interspersed with in-person learning, students know they will have the chance to reconnect with the professor and their classmates and may not make the same effort to engage during remote classes. Furthermore, a downside of conducting a class remotely that is normally in-person is that it may make it less of a priority for students to be fully engaged during class. Because students are often in a comfortable home environment during class, they may be relaxed or distracted and not feel the need to “show up” with the same amount of attention and effort that they would expend if attending in person.³⁸

A corollary to this form of hybrid education is an arrangement in which some classes are fully remote while others are in person. The advantage to the professor is the flexibility of being able to teach remotely as discussed above. From an institutional perspective, this arrangement is beneficial because it provides a law school with a bigger pool of faculty to teach.³⁹ This might be particularly desirable for highly specialized subjects taught by adjunct professors. However, having some classes remote and others in person may present logistical challenges to students. Depending on how the classes are scheduled, students may not get the benefit of the flexibility afforded by distance learning. For example, if the remote class is on the same day or evening as in-person classes, students will have to be on campus that day. If they are on campus for another in-person class and then have to attend a remote class, they may have trouble accessing an appropriate space at the law school for their remote class.

A third form of hybrid learning involves a professor and some students in a classroom while other students participate remotely. This can be an effective way of accommodating students temporarily when they have good reasons, such as family emergencies, health issues or commuting problems, or on a more long-term basis for medical reasons.

37. Some students at Widener Law Commonwealth commute up to two hours to and from school every day.

38. Professor Kearney’s Torts Survey, *supra* note 24.

39. Note that while this could be beneficial to the administration in implementing more classes and increasing their economic gain, it could become detrimental to the professors who are teaching in-person more frequently and are therefore most likely accruing more work than their colleagues who have the opportunity to teach fully remotely.

Students do not have to fall behind in these situations and can stay, at least to a limited extent, involved in class discussion. The disadvantage primarily lies in the challenge to the professor of splitting their focus between students in the classroom and students who are remote. Often, the professor inadvertently or even consciously ignores the remote students.⁴⁰ The resulting exclusion of remote students from the conversation diminishes the partnership between student and teacher. Because the students are ignored, they may have a different and inferior educational experience from their counterparts in the classroom.

A fourth form of hybrid learning includes some of the newly ABA-accredited programs in which students engage with a specified amount of synchronous and asynchronous work.⁴¹ This ratio of synchronous to asynchronous depends on the program and the changes they applied for through the ABA.⁴² While some of these programs are nearly fully asynchronous, the ABA has not yet allowed for a fully asynchronous legal education because “critical lawyering skills” can only be learned in an in-person setting.⁴³ Thus, a student may struggle to act as a competent attorney if they have not acquired such skills in a traditional, synchronous classroom.

IV. ASYNCHRONOUS LEARNING⁴⁴

The unprecedented pandemic created a necessity for all law schools to create allowances for the law school curriculum to be administered asynchronously while the world was in quarantine. However, the success of the emergency asynchronous learning model has led multiple ABA-accredited schools to move toward a post-pandemic asynchronous learning option. This asynchronous model is typically a combination of self-paced video lectures or reading assignments followed by questions

40. In Professor Kearney’s experience, some of her colleagues have revealed that this type of teaching is their least favorite form of teaching because the required multi-tasking of teaching to two different groups of students detracts from the focus on the curriculum that needs to be imparted to such students.

41. Julia Johnson, *Law Schools Introduce a Wave of New Online and Hybrid Options*, NAT’L JURIST (Jan. 12, 2023, 10:00 AM), <https://nationaljurist.com/national-jurist/news/law-schools-introduce-a-wave-of-new-online-and-hybrid-options/> [<https://perma.cc/9ZAT-DQPK>]; *Online Hybrid J.D., VT. L. & GRADUATE SCH.* (2023), <https://www.vermontlaw.edu/onlinejd> [<https://perma.cc/4J5S-96TU>].

42. See ABA STANDARDS *supra* note 5, § 105.

43. *An ABA-Approved Online Law Degree Program*, SYRACUSE UNIV. (2023), <https://jdinteractive.syr.edu> [<https://perma.cc/YKQ3-Y8VT>] (discussing the mostly asynchronous “JDinteractive” establishing the requirement of in-person residential classes to build “critical lawyering skills”).

44. This section does not refer to the “emergency planned programming” required by the pandemic but instead a thoughtfully crafted asynchronous course which was originally intended to be asynchronous.

which are used to gauge understanding and are counted as graded assignments.⁴⁵

For asynchronous learning to be successful, a student must be fully engaged and willing to actively learn the material being presented. As previously mentioned, watching a video lecture tends to be a passive activity that hinders the ability of a student to be actively present.⁴⁶ However, the Socratic method used in a traditional law school classroom also presents this problem; while one student is forced to be actively engaged with the professor, this opens the door to allow for other students to be passive about the teaching experience. Thus, if asynchronous learning is engineered in a way that forces every student to participate consistently and actively, it could be a valuable tool in a law school's arsenal.

Professor Kenneth Swift is at the forefront of fully asynchronous learning and has managed to engineer a successful form of asynchronous learning.⁴⁷ However, this was only achieved through twelve years of development.⁴⁸ Swift has taught over twenty-five asynchronous courses that he structured himself using the "Blackboard" method.⁴⁹ Blackboard is an interface which allows students to interact with the material while they are reading and they are only able to complete the course module if they have answered 100% of the questions correctly.⁵⁰ Swift believes that asynchronous courses may be beneficial because there is a decline in 2L and 3L student engagement and the Blackboard method requires students to complete the readings in order to reach the graded discussion assignments.⁵¹ He also believes that his method puts everyone on a level playing field before the discussion assignment because each student has "at least the same basic understanding of the black letter law."⁵²

While Professor Swift's model is a powerful method of learning, it took him "a dozen years" to cultivate a successful asynchronous learning model.⁵³ His model has been fine-tuned for years—unlike the emergency asynchronous models that have been instituted and retained by law schools post-pandemic. This differentiation is what complicates asynchronous learning; Swift has proven that success through asynchronicity can best be achieved when there is a meeting of the minds between the engagement of the teacher and the students in an effort to

45. See Kenneth R. Swift, *Five Truths Learned After a Dozen Years of Asynchronous Online Teaching*, 65 ST. LOUIS L.J. 691, 694–96 (2021).

46. Mărchidan, *supra* note 33.

47. Swift, *supra* note 45, at 692.

48. *Id.*

49. *Id.* at 694.

50. *Id.*

51. *Id.* at 695.

52. *Id.*

53. *Id.* at 691.

manifest the same work ethic that a synchronous class requires.⁵⁴ However, this is a fine line, and without perfect execution it is very easy to fall into the traps of complacency, distraction, and disinterest. Students also run the risk of getting lost in a maze of questions that cannot be answered by a professor, leaving them trapped within the same undecipherable hypothetical. That is why it remains to be seen whether new, untested law school asynchronous programs will be able to produce the same results as Swift's methods.⁵⁵

While more schools are moving toward asynchronous models through specific requests to the ABA under Rule 24,⁵⁶ there are still few statistics on the efficiency of new post-pandemic asynchronous models because trends in bar passage rates are not yet fully available.⁵⁷ Asynchronous learning may be more convenient for students and cheaper for institutions; however, if there is a statistically significant decline in bar passage rates, this is a clear indication that asynchronous learning is not an effective method for learning the law.

CONCLUSION

The student-teacher relationship is built on trust and collaboration. The authors believe that the best way to build that relationship is through in-person learning where students and teachers mutually endeavor to

54. *Id.* at 697

55. Like Professor Swift's carefully cultivated asynchronous program, Southwestern Law has launched its first fully online J.D. program with no in-person attendance requirements. President and Dean Darby Dickerson describes it as "a carefully considered, thoughtfully designed program that will allow students to interact with faculty and other students meaningfully while providing scheduling and geographic flexibility." This type of program aligns with the authors' opinion that asynchronous legal education only has the potential for effectiveness when it is designed with a functional asynchronous purpose. Christine Charnosky, *Southwestern Law Launches First Fully Online JD With Full – and Part – Time Options*, THE RECORDER (Sept. 29, 2023), <https://www.law.com/therecorder/2023/09/29/southwestern-law-launches-first-fully-online-jd-with-full-and-part-time-options/>.

56. *Id.*

57. Sloan, *supra* note 28; Doug Lederman, *Syracuse Law Gains Approval for (Mostly) Online J.D.*, INSIDE HIGHER ED (Feb. 14, 2018), <https://www.insidehighered.com/quicktakes/2018/02/15/syracuse-law-gains-approval-mostly-online-jd> [https://perma.cc/XSE8-BARD]. Syracuse has the first fully online JD program (JDInteractive) which is ABA-accredited. The program consists of fifty percent of live online classes and fifty percent of self-paced asynchronous classes. Students also must attend "short, intensive residential classes" which are in-person experiential opportunities that help build critical lawyering skills and allow students to connect with professors. These classes are five to six days long total and sometimes occur in a single week. The experiential requirement was established because the ABA still requires at least some in-person contact (even if it's minimal) to ensure that a person has the adequate critical lawyering skills to represent the profession. However, the rest of the program is outside the boundaries set by the ABA in Standard 311. For example, Syracuse Law allows for 66/87 credits online, 50% of which are allowed to be asynchronous. More schools are moving quickly in this direction because the pandemic opened the door for distance education to be necessary and thus, accessible.

explore an area of law with the teacher acting as a guide. When students and teacher are separated either or both by time and space, the connection between them is more attenuated and more readily dilutes the learning experience. While this can be offset by thoughtful, intentional remote synchronous or asynchronous learning opportunities, these merely act as a supplement which cannot yet replace the law classroom dynamic. As it stands, it is unrealistic to assume all students will take accountability over their distance education and pursue it actively and responsibly. Therefore, these alternative classrooms must create opportunities for student engagement and participation as well as for professor feedback if they intend to replace the traditional active learning experience.

As legal education heads into its next chapter, its continued success requires open lines of communication between student and teacher. Under Socratic principles, this partnership requires the full engagement of both parties, and the classroom dynamic of conversation between student and teacher sparks this engagement. This dynamic is worthless if students are stuck in a cycle of passive learning where they fail to reap the benefits of and retain the knowledge that the teacher intends to impart to them. A good education cannot prosper if the student is not receptive to both the process and the end goal. While the student must assume responsibility for their own success, the teacher and school have an obligation to provide them with the tools to do so. The connection established by student and teacher in person and in real time still provides the best opportunity to facilitate student engagement, and thus, learning.