

TOWARD DIVERSITY IN TEACHING METHODS IN LAW SCHOOLS: FIVE SUGGESTIONS FROM THE BACK ROW

*By Paul Bateman**

I. INTRODUCTION

Several years after beginning teaching at the law school, I took my seat in a first year torts class, not as a student, not as a teacher, and not as part of an evaluation team. I took my seat purely as an observer because I wanted to experience the law school class as a student, albeit without the academic pressure attendant on a student's participation in a class.¹ My purpose was to observe and it seemed to me unfair to draw any conclusions based on an occasional visit to a law school class, so I attended for the entire year in torts and, in the following year, the entire semester in criminal law. I completed the readings and stayed on pace with the class—another student took notes for me when I was away at a conference for three days. I briefed the cases and I followed class discussion. Mercifully, I was not called on. The professors were excellent, and I obviously learned a great deal about torts and criminal law. However, my purpose was not to enrich my understanding of those topics—which it did—but to observe the process of the law school class.²

* Associate Professor of Legal Research and Writing and Director, Academic Support Program, Southwestern University School of Law. The author gratefully acknowledges the research assistance of Laura H. Bak-Boyчук, James R. Hemingway, and Parham Patrick Parhami in preparing this article. The author also wishes to thank Southwestern University School of Law for the award of a summer research grant to encourage this research.

1. While I have taught at the law school since 1981, I did not attend law school.

2. A learning theorist observed law classes at the University of San Diego Law School in 1986. Steven Hartwell & Sherry Hartwell, *Teaching Law: Some Things Socrates Did Not Try*, 40 J. LEGAL EDUC. 509 (1990). The observer's recommendations included:

(1) increased use of objective tests, (2) increased feedback in class by having students respond to a series of brief questions at the beginning of class, (3) increased use of special study sections to more actively involve students in problem solving, (4) adopting a non-Socratic approach such as the "Keller Plan" (an individualized, incremental learning program with frequent tests), (5) organizing a workshop among faculty on the teaching of law, and (6) setting up a "quality control" group

It is beyond the scope of this article to present all my observations from that experience, but with that experience I appreciated several things about the law classes I attended: that law professors are highly organized; that volumes of information are delivered at each class meeting; and that when a professor varies the teaching method, even if only slightly, then one hears a different set of voices in the classroom that day. This last observation about the effects of varying the teaching method drew me to the topic of this article. How might we diversify the way we teach so that we hear not just from the “communicating core” of the class, but also from those who often remain silent?

At law school the correlation between class attendance and class standing at the end of the first year is high. However, one of the first alienating experiences a student may face at law school is the law school class itself. The problem is compounded when we recognize the almost overwhelming use of the Socratic method as a teaching method at law schools, to the exclusion of many other effective alternatives and supplements to that method. Even though it has been almost 130 years since Harvard’s Langdell introduced the Socratic, or more properly the Protagorean method,³ into the classroom in 1870,⁴ not much has changed since then.⁵

However, a small minority of law teachers do use methods other than the Socratic method, though rarely so in first year classes.⁶ In a recent study of law school teaching methods, respondents to a survey

of students from the course to provide continuous feedback from students about their own learning.

Id. at 509 n.3.

3. Almost twenty years ago, William C. Heffernan convincingly demonstrated that the “law school Socratic method” is more accurately characterized as Protagorean. The principal difference between the Socratic method used at law schools and the true Socratic method is the presence of a text, something which Socrates would be reluctant to place between him and his students since it would interfere with Socrates’ goal of searching for ethical knowledge already posited in a student’s soul. See William C. Heffernan, *Not Socrates, But Protagoras: The Sophist Basis of Legal Education*, 29 *BUFF. L. REV.* 399, 412 (1980). Richard K. Neuman also describes what we have come to know in law schools as the Socratic method as the “Langdellian” or “Protagorean” method of instruction. Richard K. Neuman, Jr., *A Preliminary Inquiry in to the Art of Critique*, 40 *HASTINGS L.J.* 725, 728 (1988-1989).

4. Langdell may not have been the first to have introduced the method as is generally thought. See Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 *VILL. L. REV.* 517, 520-21 (1991).

5. For an historical review of teaching approaches regarding the Socratic method, see Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 *CUMB. L. REV.* 943 (1995-1996).

6. See Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 *SEATTLE U. L. REV.* 1, 28 (1996).

listed several alternative teaching methods including the lecture method, small groups, role playing, and the catch-all category of "other methods."⁷ The "other methods" category, a fairly large sample,⁸ included using writing projects, videos, guest lecturers, simulations, and discussions. My thesis here is that we should continually strive to use diverse teaching methods such as these because in our attempts to enroll and encourage a diverse student body—and I use the term "diversity" broadly to include age, sexual orientation, culture, and ethnicity—we still may overlook the missing diversity in our teaching styles. Furthermore, by diversifying our approaches to the way we present material in the classroom, we are more likely to reach more students more of the time. While we do make choices about the appropriate teaching method to employ, the basis for these choices often lies more with our own comfort level than with our students' needs and their particular learning styles.⁹ Students' learning styles and their significance to legal education are a crucial consideration, but one that is beyond the scope of this article.¹⁰ Studies that have evaluated varied teaching methods at law

7. *Id.* at 28-31.

8. This category was between 21 and 48 percent. *Id.* at 31.

9. None of the survey respondents indicated that they considered students' learning styles when choosing a teaching method to best foster student learning. *Id.* at 32 n.84.

Because traditional law school pedagogy is limited to only one learning style, it does not address the varied cognitive styles represented in each class. Students whose cognitive style does not comport with the Socratic method will have to learn legal reasoning on their own. They may struggle unnecessarily until they find a way to learn the material. Rather than force students to take extra steps and translate these teaching methods to fit their cognitive style, law teachers should adapt their styles, methods, and program designs to accommodate the students' diverse patterns of thought.

Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315, 324 n.17 (1997).

10. However, it is clear from the increasing interest among law school academic support professionals that research results may emerge to better direct our choice of teaching method because to increase learning among our students, we need to use teaching strategies based on learning theory. See Vernellia R. Randall, *The Myers-Briggs Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63 (1995-1996). See also Joseph C. Dimperio, *Some Reflections on Teaching the Law: Better Lawyers from Better Law School Instruction*, JURIS, Fall 1996, at 14. Dimperio's thesis is straightforward, that what is being taught needs to be matched with the best way to deliver that subject. Professor Vernellia Randall's research on law students and the Myers-Briggs Type Indicators (MBTI) gives us a clearer picture of the various learning styles found in our classrooms. The Myers-Briggs Type Indicator (MBTI) is a well-known personality instrument. What is particularly interesting about Professor Randall's findings is that, without an understanding of learning style, we as professors can be misled about a student's classroom performance, as can the student.

schools have concluded that the method used has little to no effect on the examination results of students, with one possible exception.¹¹ Nevertheless, while those studies indicate generally that the selection of one particular teaching method over another teaching method has little effect on student examination performance, the suggestion from these findings is, then, that relying wholly on the Socratic method is no better—and no worse—than teaching by other methods.¹² My thesis is that since all those teaching methods that have been tested and reported in the literature appear to be equal, then why not vary the menu we offer our students? However, as this article will demonstrate, with increasingly sophisticated ways of describing cognitive learning styles, and with more carefully designed experiments, we may find that supplements to the traditional methods of law school teaching may be more fruitful than was first thought.

Part II of this article analyzes the goals of the Socratic method both from the point of view of law school education and from the points of view of other educational fields. Those goals may have strayed from those Socrates' would recognize. Part III outlines the criticism of the Socratic method. While the Socratic method has received increased respect as a result of some studies of elementary school classes, the criticism among the law school community continues to grow, although some of that negative criticism may actually be more properly directed at aspects of law school education other than the Socratic method of instruction. Part IV of the article describes five supplements to the traditional law school class, and attempts to show the ways in which those supplements to the Socratic method can fill students learning needs in a way that the Socratic method alone cannot. Computer-Assisted Instruc-

Furthermore, once students understand their learning style strengths and weaknesses as those learning styles relate to the study of law, they can adjust their study approaches to legal material. Cf. ALFRED G. SMITH, *COGNITIVE STYLES IN LAW SCHOOLS* (1979). Professor Smith's conclusions indicated that there was no significant correlation between cognitive style and law school success. *Id.* at 130. "[C]ognitive style measures differences in information processing and not whether one form of processing is better than another." *Id.* at 132. However, in Professor Smith's study, all students received the same method of instruction, no matter what their cognitive style might have been.

11. The exception may be computer-assisted instruction. Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System?*, 36 J. LEGAL EDUC. 167, 177 (1986).

12. However, in these studies it appears that students were randomly selected to receive the various teaching methods rather than being matched to a method that would best suit a student's learning style. See Hartwell & Hartwell, *supra* note 2, at 511. While students were randomly assigned, the students were nevertheless "stratified" by an index composed of LSAT scores and undergraduate grade point averages. *Id.* at 512.

tion as well as the student learning contract in particular seem to offer much promise for enhancing law school instruction and for enhancing the ways in which students approach the process of the study of law.

II. THE GOALS OF THE SOCRATIC METHOD

[I]f law professors were to employ the educational methods of Socrates, then they would violate the fundamental norms of their profession.¹³

What we mean by the Socratic method at law schools is debatable. Here I will refrain from describing its purpose as one that trains students to “think like a lawyer,” a description that, while adding to the mystery of legal education, does little to clarify it.¹⁴ Most would agree that the method’s goal is to develop higher level thinking skills, skills used in problem solving, in reflective thinking, inquiry or logical reasoning. For the law student, this means developing those skills that will enable

13. Heffernan, *supra* note 3, at 412.

14. This is a mystifying definition to law students and to other professionals outside the legal arena. It has been described as:

one of the ungraspable carrots that is continually dangled in front of students. However, despite its status as one of the organizing principles of legal education, the teaching community has left the concept remarkably underdeveloped. Could this be because ‘thinking like a lawyer’ is more myth than reality; because lawyers—and this includes the judiciary—think as . . . the rest of us; and because the only difference is in the rationalization or obfuscation, not in the processes?

Richard F. Devlin, *Legal Education as Political Consciousness—Raising or Paving the Road to Hell*, 39 J. LEGAL EDUC. 213, 216 n.18 (1989). Describing the process as “thinking like a lawyer” implies either that lawyers think more rationally than other people or that lawyers, in “thinking like a lawyer,” practice a devious art! The first definition is not only arrogant, but inaccurate. Speaking from her own experience as a nurse, Professor Vernellia Randall has noted that:

[t]he general unspoken implication is that “thinking like a lawyer” is uniquely different from thinking like a nurse, a physician, or any other profession. Yet, it is my observation that the skills required to think like a lawyer are exactly the skills required to think like a nurse. To think like a nurse you must be able to take a set of facts provided by a patient, define the nursing problem, select which of the facts provided by the patient are pertinent to the problem, determine what nursing rules apply to the situation, formulate and select alternative nursing diagnoses, and draw valid conclusions from the facts, nursing knowledge, and inferences.

Randall, *supra* note 10, at 65 n.2. “Thinking like a Lawyer” has also been characterized as “an attempt to divorce emotion from logic.” David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61, 78 (1994). However, logical analysis will always be informed by the value systems that each of us has developed as a result of our various experiences with life.

the student to draw reasonable inferences, recognize assumptions, think deductively, interpret various points of view, and evaluate arguments.

Students often strain under this expectation because many fresh from the undergraduate setting are far more used to thinking and writing descriptively rather than analytically. The obvious symptom of this kind of thinking shows up in exam writing with sentences that begin "The defendant can argue . . .," which then leads the student into a description of arguments rather than an analysis and evaluation of those arguments. With that kind of writing and thinking experience, new law students understandably experience problems developing inferences and evaluating arguments.¹⁵ This problem seems pervasive, with one commentator on legal education blaming the failure of elementary, secondary, and undergraduate education to change their basic methods of teaching, as well as to blame television which "can impart its lessons only impassively, as children cannot interact with a teacher who cannot hear or see them."¹⁶ Part of the terror of the Socratic method may lie in the continually changing and diminishing preparation of students who plan to attend law school.

Educational theorists have described the goals of the method as ones which develop:

- (1) attitudes of inquiry that involve an ability to recognize the existence of problems and an acceptance of the general need for evidence in support of what is asserted to be true

- (2) knowledge of the nature of valid inferences, abstractions and generalizations in which the weight or accuracy of different kinds of evidence are logically determined, and

- (3) skills in employing and applying the above attitude and knowledge.¹⁷

15. Under an evolutionary theory of student learning, the ability to analyze rather than merely describe arguments occurs at a fairly advanced stage. See Lustbader, *supra* note 9, at 349.

16. Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 956 (1995-1996).

17. Thomas Edwin Teagle, *The Socratic Method of Teaching: Its Effect on the Development of Critical Thinking Skills of Upper Grade Elementary School Students* 29 (1986) (unpublished Ed.D. dissertation, Northern Arizona University) (on file with Northern Arizona University Library) (citing W. WATSON AND E.M. GLASER, *WATSON AND GLASER CRITICAL THINKING APPRAISAL* (1964)).

C.G. Kemp has described the method as:

- (1) the ability to define a problem.
- (2) the ability to select pertinent information for the solution of a problem.
- (3) the ability to formulate and select relevant and promising hypotheses[es].
- (4) the ability to recognize stated and unstated assumptions.
- (5) the ability to draw conclusions validly and to judge the validity of inference[s].¹⁸

The Socratic delivery takes the form of a dialectic or conversation. In Plato's dialogues, Socrates claimed he never taught didactically because he claimed that he did not know enough to do so. His well-known metaphor of being the midwife to the birth of understanding—without coaching directly—suggests a low-key, unauthoritarian position as teacher. Scholars have agreed with this assessment. However, while some scholars have indicated that Socrates would not have allowed himself to be a part of an intimidation process,¹⁹ others have argued that Socrates' method could indeed include intimidation.²⁰

While the goals of the Socratic method are attainable, we must recognize the difficulty that lies in trying to teach these skills in the context of the unfamiliar and complex legal concepts under discussion. Perhaps the Socratic method is something we are more likely to use in first-year classes because of the training we believe it provides our students. In large first-year sections, we are more likely to rely on the control we may need over the class during the first semester or the first-year. That the Socratic method of teaching in law schools prevails is borne out by

18. Teagle, *supra* note 17, at 30 (citing C.G. Kemp, *Improvement of Critical Thinking in Relation to Open-Closed Belief Systems*, 31 J. EXPERIMENTAL EDUC., 321-23 (Mar. 1963)).

19. See THOMAS L. SHAFFER & ROBERT S. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* 8 (1977).

20. "It is clear that Socrates *did* intimidate his students. The most famous example of this is to be found at *Meno* 80A-B where Meno, in expressing frustration over Socrates' questioning, states that he believes Socrates to be 'exercising magic and witchcraft over' him. (Guthrie trans.)" Heffernan, *supra* note 3, at 400.

the results of Steven I. Friedland's recent survey of the way law teachers teach.²¹ Professor Friedland's survey indicated that the most widely used teaching technique was the Socratic method:²² a staggering ninety-seven percent of those teaching first-year classes²³ reported using the Socratic method, with the use of alternative teaching techniques decreasing as a teacher became more experienced²⁴ or tenured!²⁵

So what is wrong with using the Socratic method of teaching? The answer is "nothing" as long as that method is not the only method used among several that are available. We do not have to look to learning styles²⁶—although we should—to see the problem with bringing Socrates to the classroom every day. Students tell us that it demeans and confuses students, and neglects substance of the law, encourages irrelevant discussion, encourages monopolization, and brings out the noisy and the empty. Furthermore, it increases the distance between faculty and students. But seriously, folks, there are some other reasons why its exclusive use may be inappropriate.

III. CRITICISM OF THE SOCRATIC METHOD

"As you take your seat, a bead of sweat begins to trickle down your brow, your palms feel sweaty and [your] heart begins to race a hundred miles an hour. A booming voice cries out your name and you're off!"²⁷ No, this is not a description of the latest near-death experience at Magic Mountain. It is a student's description of the Socratic method. Furthermore, the students describing this experience were students for whom this method was a welcome experience. Imagine the description that might have been written by students for whom the Socratic method was less than welcome.²⁸

21. Friedland, *supra* note 6.

22. *Id.* at 32.

23. *Id.* at 28. However, some critics report anecdotally that the method is in decline. B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 651 (1991).

24. Friedland, *supra* note 6, at 38.

25. *Id.* at 37.

26. A learning style can be described as "the characteristic ways each individual collects, organizes, and transforms information into useful knowledge and action." Richard M. Henak, *Effective Teaching: Addressing Learning Styles*, TECH. TCHR., Nov. 1992, at 23-24.

27. Romy Schneider et al., *Make Room for Prof. Christensen's Admin Law*, THE COMMENTATOR (Southwestern University School of Law, Los Angeles), May 1996, at 12.

28. For a summary of the psychological and social problems uniquely attributed to law school students, see Suzanne C. Segerstrom, *Perceptions of Stress Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 594 (1996); Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985);

First, though, we should recognize the respect afforded the Socratic method. While its most obvious use is in law school classes, Socratic teaching has been used and *tested* in elementary and secondary public schools. Those who have tested its ability to raise the critical thinking skills in children have praised the method's ability to improve those skills.²⁹ For example, a study of elementary school teaching methods completed in 1993 indicated that the most effective teaching method was the Socratic method's use of open-ended questions.³⁰ An earlier study of fifth and sixth grade school children's critical thinking skills also concluded that critical thinking skills were higher among students taught using the Socratic method compared to those taught by teachers using the didactic method.³¹ Various other studies of elementary and high school students have reached pretty much the same conclusion.³²

Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511 (1983). Furthermore, these symptoms have been empirically reported and tend to be unique among law students as opposed to students in other professional school settings. See Segerstrom, *supra* at 595. Some students have also referred to the method as "teaching by terror," although that description may reveal more about a professor's teaching personality than about the Socratic method!

29. Perhaps even further afield is the respect the Socratic method has earned in violin instruction. See Chris A. Costantakos, *Demetrius Constantine Dounis: His Method in Teaching the Violin* (1985) (unpublished Ph.D. dissertation, New York University) (on file with the New York University Library).

30. Jennifer Kay Killian, *A Delphi Study: Perceptions of Effective Methods of Teaching Critical Thinking Skills in Secondary and Talented Programs* (1993) (unpublished Ed.D. dissertation, East Texas State University) (on file with the East Texas State University Library).

31. Teagle, *supra* note 17, at 208. Teagle's research also suggested that the boys were better inductive thinkers than girls, although the girls in the experimental group were better inductive thinkers than the girls in the control group. *Id.* at 132.

32. Chapter Two of Teagle's dissertation reviews several studies of the use of the Socratic method in elementary and secondary public schools, including Mary Friend Adams, *An Examination of the Relationship between Teacher Use of Higher Level Cognitive Questions and the Development of Critical Thinking in Intermediate Elementary Students*, 35 DISSERTATION ABSTRACTS INT'L 5978 (1974); Martin A. Cohen, *Teacher Questioning Behavior and Pupil Critical Thinking Ability: A Study of the Effects of Teacher-Questioning Behavior on Pupil Critical Thinking Ability in Three Academic Subjects Offered in a Suburban High School*, 33 DISSERTATION ABSTRACTS INT'L 6745 (1972); Allan D. Frank, *Teaching High School Speech to Improve Critical Thinking Ability*, 18 SPEECH TCHR. 297-302 (1969); Harry J. Ghee, *A Study of the Effects of High Level Cognitive Questions on the Levels of Response and Critical Thinking Abilities in Students of Two Social Problems Classes*, 36 DISSERTATION ABSTRACTS INT'L 5178-88 (1975); Kenneth B. Henderson, *The Teaching of Critical Thinking*, 39 PHI DELTA KAPPAN 280-82 (Mar. 1958); DONALD W. I. OLIVER & FRED M. NEWMANN, *THE RISE OF ORGANIZED LABOR: WORKER SECURITY AND EMPLOYER RIGHTS*, (1967); Edna M. Loveless, *Developing Critical Thinking Skills in Eighth Grade English Classes*, 31 DISSERTATION ABSTRACTS INT'L 681 (1969); Robert A. Mines, *Levels of Intellectual Development and Associated Critical Thinking Skills in Young Adults*, 41 DIS-

One legal commentator sees the interest that other disciplines have shown in Langdell's methods as a sign that law schools "should not abandon the case method (or other problem solving techniques) too readily. Rather, we should integrate other teaching options . . . into our basic educational scheme."³³

Law professors using the Socratic method in undergraduate courses have reported that their students responded "with enthusiasm and energy to the chance for dialogue; few exhibit[ed] signs of resentment or ill effects."³⁴ However, the enthusiasm those undergraduates exhibited may have been due in part to the novelty of the approach in a large undergraduate class, and to the relationship between those classroom activities and the students' examination in that class.

A variety of criticism of the Socratic method is much easier to find.³⁵ When the case method was first introduced, Langdell's contemporaries deplored it. However, the reasons for the discontent were different from those we might express today.³⁶ Student reaction was bad enough that Harvard's enrollment dipped significantly by the 1872-1873 academic year.³⁷ Resistance to Langdell's teaching methods was overcome partly through Langdell's own single-mindedness about the best way to teach law, and partly through the hiring trends at Harvard

SERTATION ABSTRACTS INT'L 1495 (1980); Ronnie Williams, *The Teaching of Critical Thinking Skills by the Socratic Method in Selected Units of Introduction to Business*, 33 DISSERTATION ABSTRACTS INT'L 4818 (1972); and Sara L. Winocur, *The Impact of a Program of Critical Thinking on Reading Comprehension Remediation and Critical Thinking of Middle and High School Students*, 42 DISSERTATION ABSTRACTS INT'L 996 (1981).

33. Richmond, *supra* note 5, at 958.

34. Kevin M. Clermont & Robert A. Hillman, *Why Law Teachers Should Teach Undergraduates*, 41 J. LEGAL EDUC. 289, 294 (1991).

35. See generally Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); Warren Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377 (1980); Robert J. Condlin, "Tastes Great, Less Filling": *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986); Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321 (1982); Edward J. Devitt & Helen Pougiales Rowland, *Why Don't Law Schools Teach Law Students How to Try Lawsuits?*, 13 WM. MITCHELL L. REV. 445 (1987); Marc Feldman & Jay M. Feinman, *Legal Education: Its Cause and Cure*, 82 MICH. L. REV. 914 (1984); Paul J. Spiegelman, *Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web*, 38 J. LEGAL EDUC. 243 (1988).

36. Weaver, *supra* note 4, at 534-36.

37. *Id.* at 536. However, it may have been Langdell's inexpert teaching, rather than the case method itself, that led to the enrollment drop. See Richmond, *supra* note 5, at 943-44.

through the next several years, whereby teachers sympathetic to Langdell's methods were recruited and hired.³⁸

Among the criticisms expressed today, for example, is that female students are often overlooked or feel uncomfortable volunteering in the classroom.³⁹ One wonders to what extent other cultural influences in highly diverse classrooms work against the method. Furthermore, the Socratic method has also been charged with demeaning and discouraging students.⁴⁰ More criticism is aimed at the setting in which the method is used, charging that it is ideally suited to instruction of the individual, not of a large group of students, with reduced effectiveness as the group becomes greater than thirty students.⁴¹ In addition, in talking with students who have sought counseling from me about their anxiety, that anxiety is often profoundly associated with attending law school and the law school class.⁴² While my expertise is not as a psychological counselor—and I refer such problems to those who are—it is clear to me that the law school experience is greatly responsible for their anxiety. Such students constantly find that the alienation they have felt during the first semester springs from the law school classroom. While not every student becomes anxious about this situation, most are negatively affected by it. (Some students are anxious because of self-imposed pressures that arise from a narrow definition of success at law school to include only top ten percent performance. The ones I counsel are usually worried about mere survival.) While some may argue that those students affected by the classroom to that extent should not be in law school, my position would be that perhaps we need more of them, and we need to hear more from them as we become more attuned to the various and diverse personalities in our classrooms.

38. Weaver, *supra* note 4, at 537-39.

39. See June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1014 (1989); Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1565 (1993).

40. Cicero, *supra* note 39, at 1015. See also John W. Wade, *Some Observations on the Present State of Law Teaching and the Student Response*, 35 MERCER L. REV. 753, 764 (1984); Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 640-41 (1973). Professor Stevens surveyed the Yale class of 1972. Eighty percent of Stevens' respondents indicated that teaching methods contributed significantly to their stress. *Id.* at 640.

41. Cicero, *supra* note 39, at 1015.

42. Research on anxiety and its affect on learning indicates that highly anxious students may become increasingly more anxious with a method such as the Socratic method. Such students need a highly structured teaching method such as lecture. Fred J. Dowaliby & Harry Schumer, *Teacher-Centered Versus Student-Centered Mode of College Classroom Instruction as Related to Manifest Anxiety*, 64 J. EDUC. PSYCHOL. 125 (1973).

However, even though I favor alternative and supplemental methods of instruction, we have to evaluate this criticism carefully because the Socratic method is an easy target for criticism, especially when the criticism's source may lie elsewhere. For example, while law students exhibit higher levels of stress than students at other kinds of graduate schools,⁴³ the stress associated with time pressures, employment prospects, law school tuition, the lack of feed-back,⁴⁴ and the impersonality of large classes may actually be a more common stress provider than the use of a particular teaching method.⁴⁵

Some critics charge that the crucial legal problem solving skill of creative thinking is restrained by the Socratic method.⁴⁶ The total package of the traditional law school class—Socratic puzzles with negative classroom criticism, and evaluation only by final examination—provides little feedback, which in turn negatively affects creativity and motivation.⁴⁷ The grounds for this criticism lie in what psychologists describe as the two stages in the creative process: in the first stage, students play with ideas, some of which may be unrealistic and uncritical instead of ordered and methodical; in the second stage, thoughts become articulated in an ordered and methodical way.⁴⁸ What often happens in

43. See G. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 225-26.

The initial pressure the students feel just to figure out what a 'tort' is militates against their having any creative thoughts about the subject. These behaviors should not be at all unexpected; education researchers have concluded that creative thinking is enhanced by successful thinking experiences and is inhibited by fear of failure and pressure to conform to peers for the sake of educational survival.

James E. Moliterno, *The Secret of Success: The Small-Section First-Year Skills Offering and its Relationship to Independent Thinking*, 55 MO. L. REV. 875, 879-80 (1990).

44. Lack of feedback may be one of the primary causes of law school stress. In advocating the use of small section classes in the first year of law school, one critic noted that "first year law students have unacceptably few opportunities to experience meaningful success, and as a result have a much diminished chance of developing into the independent, critical thinkers we all hope they will become." Moliterno, *supra* note 43, at 876. Furthermore, "the best law learning happens when a student successfully solves a problem by creative thinking, articulates the process by which this positive result was achieved, and a teacher responds that the student's independent thoughts have value." *Id.* at 877 (emphasis in original).

45. Ronald M. Pipkin, *Legal Education: The Consumers' Perspective*, 1976 AM. B. FOUND. RES. J. 1161, 1184.

46. Culp, *supra* note 14, at 76.

47. See Steven D. Pepe, *Clinical Legal Education: Is Taking Rites Seriously a Fantasy, Folly, or Failure*, 18 U. MICH. J. L. REFORM 307, 321 (1985).

48. ALEXANDER F. OSBORN, YOUR CREATIVE POWER: HOW TO USE IMAGINATION 92

the Socratic classroom is that the professor is looking for stage two dialog in response to the application of the Socratic method, whereas the students are still at stage one. The parallel under a true Socratic method would be first, in the ironic or destructive phase, to move from unconscious ignorance to conscious ignorance, and then second, in the maieutic or constructive phase, to move from this conscious ignorance to a clear and rational truth. One wonders how often our students get to step two in the law school classroom! This is analogous to the novice trying to produce carefully crafted prose on a new topic by the first draft. Provided this novice can overcome the writer's block that develops under these conditions, the prose produced will be highly unimaginative and highly self-conscious. Similarly, the thinker needs the same freedom to produce ideas unfettered by the rigors of the Socratic method. To fully appreciate the creative process, students need to be able to play with ideas, some of which may be unrealistic and uncritical instead of ordered and methodical.⁴⁹ However, as Professor David Culp has noted, a first-year law student is faced with a mass of new information that must first be assimilated before the student's creative processes can truly run free with that new information.⁵⁰ This may further imply that the Socratic method is ill-placed as an instructional tool in the first semester, and perhaps the first year, of law school.

Several commentators have also noted contributing problems with case books that in many ways drive classroom direction and provide the basis for informing students who are embroiled in the Socratic method. Case books may indeed go to the heart of any reforms in the way we teach law students. Early criticism in 1908 described the reputation of case books, even then, as being "entrenched behind a barrier of authority almost impervious to direct attack."⁵¹ This same critic bemoaned the use of appellate opinions instead of the client's flesh and blood case from which the appeal arose.⁵² Such criticism has been echoed more recently, with one commentator identifying the cause of his dispassion as a law student with the reading material to be "the manner in which the heavily edited appellate opinions filling my casebooks had been bleached of complete narrative by successive generations of redactors

(1940).

49. *Id.* at 92. See also GEORGE SHOUKSMITH, INTELLIGENCE, CREATIVITY AND COGNITIVE STYLE 104, 142 (1970).

50. Culp, *supra* note 14, at 92.

51. Charles F. Carusi, *A Criticism of the Case System*, 2 AM. L. SCH. REV. 213, 213 (1908).

52. *Id.* at 215.

[composed] of lawyers, judges, and law professors.”⁵³ Other recent criticism has focused on the scarcity of recent cases that find their way into the latest editions.⁵⁴

Clearly, a syllabus driven by a case book’s table of contents rather than the individual professor’s take on a course is problematic. One of the most obvious problems is that professors may tend to skip around in the case book in an attempt to capture those parts of the case book that best represent the teacher’s individual preference for teaching the course. This inefficiency has led many professors to construct their own materials for a course, whereby cases are selected for their clarity and coverage so that students may actually have to read fewer cases and fewer pages to cover an area. An added feature of this approach is that professors are able to select those cases that can be read as the practitioner would find them—in their entirety and rich with the real-world context of the legal issues. Indeed, in some law school programs, professor-oriented texts have become a necessity since case books do not exist for highly innovative law school courses.⁵⁵

Finally, the MacCrate Report complains that “[t]oo often, the Socratic method of teaching emphasizes qualities that have little to do with justice, fairness, and morality in daily practice. Students too easily gain the impression that wit, sharp responses, and dazzling performance are more important than the personal moral values that lawyers must possess and that the profession must espouse.”⁵⁶

53. Jan M. Levine, *Words from the Podium*, SCRIVENER, Spring 1997, at 2. See also Alan Watson, *Introduction to Law for Second-Year Law Students?*, 46 J. LEGAL EDUC. 430, 435-41 (1996) (discussing the problems of edited cases in case books); Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 466-67 (1989); Karl N. Llewellyn, *On the Problem of Teaching “Private” Law*, 54 HARV. L. REV. 775, 792-93 (1941).

54. See generally Michael L. Closen, *Teaching with Recent Decisions: A Survey of Past and Present Practices*, 11 FLA. ST. U. L. REV. 289 (1983).

55. Southwestern’s Conceptual Approach to Legal Education (SCALE) contains several courses for which there is no case book or for which the scope of a traditional case book would be inefficient. See Darrell B. Johnson, *SCALE—A Conceptual and Transactional Method of Legal Study*, 35 J. LEGAL EDUC. 97, 102 (1985). In addition, in several SCALE classes, students read trial and intermediate appellate decisions in addition to the final reviewing court’s opinion. From this experience, SCALE students are able to analyze more completely the underlying transaction. *Id.*

56. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM* 236 (1992).

IV. PROPOSED ALTERNATIVES AND SUPPLEMENTS

1. *Debriefing Classroom Participation*

Since the Socratic method is the most commonly used classroom technique among those who teach first-year law classes,⁵⁷ students find that a supplement to their classes that enhances their understanding of the method's goals is a natural and worthwhile venture.⁵⁸ One of the crucial skills we need to offer students is the ability to understand and appreciate the Socratic method, especially since they will receive very little concrete feedback before their first set of exams. With an increased understanding of the Socratic process in the law school classroom there is a greater likelihood that a student will participate more fully in that class, and that fuller participation may be the most likely predictor of law school success.⁵⁹

Much of what is written about academic assistance issues focuses on learning styles and various concrete assistance about how to read cases, how to outline, and how to take exams. In addition, a fair amount of advice is offered on what are considered the "non-academic" issues such as finances and the alienation many students feel at law school. However, the single most overlooked item is to show students how they can maximize the classroom experience.⁶⁰ Since a student spends an average of 450 hours a year sitting in class, it is critical that students

57. Ruta K. Stropus also recognizes this inevitability. Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L. J. 449, 465 (1996). While 94% of the respondents to the Friedland survey indicated that they chose the Socratic method for its effectiveness, none suggested that the effectiveness was based on learning style. Furthermore, 59% of the respondents said they chose a particular style of teaching because they were comfortable with it, not because it was the best way to teach the material. Friedland, *supra* note 6, at 32. A true Protagorean teacher would indeed use other methods. Heffernan, *supra* note 3, at 418-21.

58. Even merely mentioning the idea to students can become empowering to students. Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 152 (1988).

59. Hartwell & Hartwell, *supra* note 2, at 519. The University of San Diego Law School study indicated that while learning method had little effect on student examination success, students who participated to a high or medium level in a particular learning method performed better than students whose participation was low. *Id.*

60. Professor John Rogers has defined the purpose of the law school class as "to maximize student learning of what the teacher intends to teach." John M. Rogers, *Class Participation: Random Calling and Anonymous Grading*, 47 J. LEGAL EDUC. 73, 73 (1997). Class participation "is valuable for giving each student practice in verbal agility." Wildman, *supra* note 58, at 150.

maximize that experience. Class participation is crucial and central to a good law school education and its attendant successes, and it is one I believe can go a long way to reducing the alienation factor felt by so many students at law school.

Like many of my colleagues, I believe that the Socratic method of teaching at law school is here to stay. Since it is, it makes sense to help students accommodate to that method of teaching so that they do not find the whole process of law school, as evidenced in the law school classroom, to be an alienating experience. What I propose is fairly simple and involves little in the way of extra resources. What we have done at Southwestern is to debrief students on their classroom performance.⁶¹ By involving students in this process, rather than excluding them, a student's comfort level with the law school classroom improves as does the level of socialization to the study of law and hence the opportunities for academic as well as other kinds of success at law school.⁶² Further, it makes pedagogical sense to teach students some of the strategies for mastering the content of what they have read and discussed in class. Here I will describe the method we have used at Southwestern since 1992.

In our summer program for entering first-year students, I sit as an observer while the students participate in class—usually torts, property, or contracts. I take notes about the kinds of questions students were asked, their responses, and about the professor's particular teaching style that day. Teaching style can vary even within a particular professor so that on some days many students are called on, on other days, only two

61. I first reported this technique in *Debriefing Students Can Demystify the Classroom*, LAW TEACHER, Spring 1996, at 5. I have described this process at two recent LSAC sponsored academic assistance workshops at Seattle University School of Law in June 1996 and at Pace University School of Law in June 1997. The University of Denver College of Law began using this method in the Summer 1996, and Ruta K. Stropus describes a similar method used at Northern Illinois College of Law, Stropus, *supra* note 57, at 478 n.189. As far as I know, no one has yet attempted the debriefing such as I describe here outside of a small, academic support class setting. One of the challenges of academic support programs is to create a supportive environment while at the same time providing the tools required for success in the law school classroom devoid of the safety nets academic support programs can provide.

62. Success at law school involves being actively involved in the process. For some students this results in high grades, but for some students their success at law school can better be measured by their involvement in programs such as the student bar, community volunteering, the externship program, etc. Success as a descriptor cannot be limited only to those students in the top ten percent of the class. "[T]he success to be most rewarded and encouraged is the student's expression of an independent thought . . ." Moliterno, *supra* note 43, at 881.

or three are called on. When the class ends, we reserve about forty-five minutes of each morning session to debrief students on their performance in the just completed class. The debriefing usually covers the following topics: case briefing, teaching style, the use of hypothetical questions, and classroom technology.

Case briefing focuses on the process rather than the format and the discussion focuses on ways in which the brief could be more useful given the nature of that day's class. This topic also allows for a discussion of the value of briefing, a value that is often lost on students when they recognize only the format of briefing, for which there is much information.⁶³ What we find from these sessions is that students discover early in their legal education that their briefs are either too long (the student has not recognized the material from the immaterial) or they are too short (the student has leaned toward the abstraction and toward knowing only rules without a clue about their limits and peculiarities). We ask questions about how their briefs helped in class, or how they hindered. Our point is to help students recognize that their briefs are going to be one of the tools they will rely on in order to participate in class. From this kind of discussion, students begin to see that good briefing can keep them involved even when they are not called on. In addition, I provide students with a short essay that describes how to construct a brief—again focusing on the process—and on how to use that brief for classroom participation.⁶⁴

Effective teaching should include guiding students about the best way of studying the material. By discussing the connection between their briefs and class discussion we are also beginning to guide students about the best way to study the material, a pedagogical principle often overlooked by law teachers, but a principle crucial for a student's development from novice to expert.⁶⁵ It would be an interesting experiment if, instead of concerning ourselves with content coverage, we left that up to the students and instead devoted classroom time to discussing and

63. Several texts contain instructions for briefing cases, including WILLIAM STATSKY & R. JOHN WERNET, JR., *CASE ANALYSIS AND FUNDAMENTALS OF LEGAL WRITING* (3rd ed. 1989); MARJORIE DICK ROMBAUER, *LEGAL PROBLEM SOLVING: ANALYSIS, RESEARCH AND WRITING* 15 (5th ed. 1991); and HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* 25 (2d ed. 1991). In addition, several "how-to-succeed-at-law school" books contain briefing instructions. IRA SHAFIROFF, *INTENSIVE EXAM WRITING (ESSAY) SEMINAR* 27 (1st ed. 1992); HELENE SHAPO & MARSHALL SHAPO, *LAW SCHOOL WITHOUT FEAR: STRATEGIES FOR SUCCESS* (1996).

64. Chapter Two of my classroom materials contains a short essay on briefing. PAUL BATEMAN, *ESSENTIAL STUDY SKILLS FOR LAW SCHOOL SUCCESS* 7 (1996).

65. Dimperio, *supra* note 10, at 15.

promoting ways of mastering the material, a skill that would then allow students to become independent learners. Professor Dimperio comments that “[t]oo often, we teach at the knowledge level (the facts), and the student’s first experience, comprehension (organizing facts) and application (use of the facts) is the examination. For most students, the examination is too late to deal with the comprehension and application of content for the first time.”⁶⁶

We also discuss teaching style within the context of the “Socratic Method.” Clearly, not every professor will use the method all of the time. At times there really is no substitute for straight lecture. But professors also exhibit different styles in ways that negatively affect the classroom, unless the students are ready for them. For example, calling on students by name rather than by recognizing a named or unnamed volunteer keeps the class focused and suggests that there will be no option to place out of the discussion since volunteers will not be taking the load that day. Furthermore, a professor will sometimes call on several students, sometimes just two or three to the exclusion of the other members of the class. Here is an opportunity to alert students to the need to stay tuned even when they are not likely to be called on. From this, they learn that while they may not be able to participate actively in class each day, they can do so vicariously through their briefs and their class notes. From these clues, students begin to see the value of preparation and participation.

A common problem is that students do not recognize the value of a hypothetical question put to the class. Students often see these kinds of questions as convenient teaching tools for the professor. What many students fail to recognize is that these questions are miniature examination questions that have a value beyond the classroom, namely the final examination itself. Therefore, the debriefing, where it makes the connection between preparation and classroom participation, also makes the connection between what goes on in the classroom and the final examination, probably one of the most misunderstood aspects of law school education.

Finally, we discuss classroom technology, or perhaps the lack of it. While many law school classrooms are handsomely equipped with audio and visual aides, the fact is that most professors use these aides rarely if at all. My own law school experience in regularly attending classes revealed that law professors rarely use them. In fact, many rarely write on

66. *Id.*

the board.⁶⁷ The whole classroom experience, for the most part, is auditory. Therefore, when a professor does write something on the board—we tell them—write it down for yourself because that doodling on the board may represent the teacher's formulation of the rule, or may have set out the steps in analysis the professor expects to see on an examination answer.

Above all, we preach the gospel of review—review before and after every class. This is an important feature for students to learn and experience because many of them come from undergraduate models where last minute review at the end of a semester before the final examination would likely be effective. Not so in law school where perhaps the best undergraduate model may be that of the foreign language major who has had to review daily in order to cultivate a new vocabulary and its idioms.

This debriefing, then, provides students with a practical guide to that which is at hand—the law school classroom—as well as a guide to the larger picture at law school—the connection between what goes on in the classroom and what appears on the final examination question at the end of three months. In the short run we have seen the level of student participation in the classroom increase dramatically, especially among shy students. And it is a participation arising from understanding, not from the brave raising their hands. In the slightly longer view, we have also seen that the lessons from these debriefings also carry over from one class to the next, for when we change subjects and professors in the second week of the class, student participation drops only slightly on the first new day, but by the second day, the participation is again at a high level. This suggests the value of the debriefing since students can transfer this understanding to a new and initially uncomfortable class-

67. I am still rather stunned at the infrequent use of Audio-Visual equipment in law school classrooms, especially when their use has become crucial in presenting complex information in the court room. It seems that the move from chalk board to white board was the major technological breakthrough of the last twenty years! Probably the simplest and generally the most effective piece of classroom equipment is still the overhead projector, and preparing transparencies has become easier with the development of presentation software. The advantages to the teacher are obvious: preparing slides or overhead transparencies makes the teacher think through a lesson plan before hand, and makes the teacher think of the best ways to present that information. My own experience has been that it allows me to be better organized in class. In addition, less time is spent with writing often illegible information on the board. Furthermore, the slides or overhead transparencies can also be distributed to students as an outline guide to the presentation, which increases student involvement with the topics being presented. See James Eager, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389, 410-12 (1996-97).

room experience. The long term payoff for students and for the law school is that rather than fighting the process of the law school classroom, students begin to appreciate it because they can see where it is going, and they can see how they can better prepare to reap its benefits. What is particularly compelling—and sound—about debriefing students on their classroom performance is that law students are highly dependent learners during their first few weeks of law school. To become independent learners, students need to be guided through the opening stages of their legal education. At this stage they lack experience to benefit from a trial and error approach. Furthermore, by teaching students about the process of the classroom, and especially about the way the Socratic method works, students are more able to evaluate their own progress during the semester because they are better equipped to recognize the relationship between reading and briefing cases and classroom discussion on the one hand, and the kinds of questions they may be asked on an examination.

2. *Writing Assignments Throughout the Semester*

By far the most common complaint among law students is the lack of concrete feedback they receive during the semester of study.⁶⁸ Another classroom ingredient is to include evaluation instruments over the whole course, not just as a final examination. (I already hear the groans because of the extra grading this requires!) But wait, perhaps it is not so bad, and I suspect that the groans come not from having used graded exercises or short exams during the course, but more from the uninformed dread of using them. Southwestern University School of Law's SCALE program has used writing assignments in addition to final examinations since the program's inception in 1975, with written assignments in courses such as Criminal Procedure, Jurisdiction, and Civil Practice in the first year in addition to the traditional legal writing and moot court writing experiences. In their second (transactional) year, SCALE students write from fifteen to twenty such assignments in addition to final examinations. The virtues are several, but not the least of them is that examination stress is reduced substantially—partly because of the frequency of examinations in that program, and partly because of the additional evaluation instruments students are required to write throughout the curriculum.⁶⁹

68. Hartwell & Hartwell, *supra* note 2, at 521.

69. For a discussion of the SCALE curriculum, see generally Johnson, *supra* note 55.

The objectives in using this approach are four-fold:

- (1) to teach an aspect of the course that is not covered in class;
- (2) to provide students practice in the process of legal analysis as a supplement to classroom recitation;
- (3) to learn how to manage time; and,
- (4) to teach students the importance of detail and precision in law practice.⁷⁰

Law professors who have tried this suggestion have found that it resulted in greater learning by the students which in turn paid off for the professor with better final exams to read.⁷¹ By adding writing assignments to a course, students report less anxiety when going into the final exam because of the appropriately timed feedback. By using intermediate assignments not only do students receive some early and concrete review, but the teacher is able to evaluate where students may have misunderstood material, which in turn enables the professor to correct misconceptions a class might have before the next exam.⁷² Furthermore, it may even be appropriate to use the Socratic method of questioning in response to the writing itself.⁷³ Again, the value of these assignments far outweighs the cost of the extra grading since we can expect higher quality final exams. In fact, there are several ways to overcome the stress of grading these intermediate problems including keeping the assignments short and with a well defined research universe, using student teams to write the answers, and using class time to review the papers.⁷⁴

70. Kathleen S. Bean, *Writing Assignments in Law School Classes*, 37 J. LEGAL EDUC. 276, 284 (1987).

71. See John M. Burman, *Out-of-Class Assignments as a Method of Teaching and Evaluating Law Students*, 42 J. LEGAL EDUC. 447 (1992). Professor Burman used the assignments in a first year Torts class and in a third semester Professional Responsibility class. Professor Bean reported using the assignments in various courses, including a second semester property course. Bean, *supra* note 70, at 280.

72. Burman, *supra* note 71, at 457.

73. See Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885, 885-86 (1991).

74. Burman, *supra* note 71, at 452.

One can grade the assignments with a focus on particular aspects only, such as the issue statement, the clear articulation of an exception to a rule, or the recognition of certain facts as key facts in an analysis. As long as this approach in evaluation is clear to the students when papers are returned, professors can evaluate them quickly, and students can use the evaluation effectively, especially if we view the comments we provide as “feedback for improvement, rather than comments that will justify the grade.”⁷⁵ In addition, assignments do not have to be long assignments. I have found that single issue statements or single paragraph analyses to be effective tools for diagnosing the general level of student competency, say, after the first few weeks of a class. Once we view intermediate evaluation instruments as teaching tools rather than as grading tools only, then their value in helping us become better teachers becomes obvious.

Where the concern about freeing time for evaluating these assignments is problematic, another alternative is to make the assignments collaborative efforts. Most law school curricula include collaborative exercises in student moot court and trial competitions. However, except for these isolated occurrences, collaborative exercises are rare at most educational institutions no doubt because of the administrative problems and because of the need to evaluate students singly. Written collaborative exercises will not only involve students in mastering legal concepts, but will also require them to learn the art of negotiation with their colleagues as well as the trials of writing by committee. It is less clear that student examination performance will increase, but that should not be too great a factor in selecting this model to supplement a course since the skills we might want to engender are of a different type. Students working through a collaborative exercise are going to be testing the personality skills and personal negotiating styles of those students involved.

While a collaborative exercise will reduce the number of papers that have to be read, the value to the student still remains. In addition, a collaborative exercise reduces the competitive culture of the law school class and prepares law students for the work place where collaboration may be more the rule than the exception, and may indeed be “an essential component of professional practice.”⁷⁶

75. Bean, *supra* note 70, at 278.

76. Robert J. Condlin, *Learning From Colleagues: A Case Study in the Relationship Between “Academic” and “Ecological” Clinical Legal Education*, 3 CLINICAL L. REV. 337, 346 (1997).

In addition, by including intermediate assignments, students may then become responsible for their own learning. One twist to this idea is to assign an area that may not be covered in class, but may still appear on the final exam.

There is a further advantage to the students. Active participation will lead to an appreciation of the intuitive side of legal analysis that can only begin to emerge once students become fully immersed in a problem, an immersion that occurs only when they have time to reflect on various arguments, a luxury not afforded during a final exam, and one which allows efficient teaching of the social and ethical values we associate with law practice.⁷⁷ Finally, writing assignments provide a “touch stone of relevance” sometimes lacking in law school⁷⁸ and provide a way to teach some lessons of law practice not easily taught by traditional law school teaching methods.⁷⁹ The virtue of this approach is that it provides a clear alternative to the traditional law school approach that students are accustomed to, that it supports an active learning environment, and that it mirrors law practice.

3. *Games in and out of the Classroom*

While there are no hard studies to prove it, introducing games into the classroom can increase student cooperation, motivation, and may improve doctrinal learning. While games may be an innovation in the law school classroom, the technique is not new to other forms of adult education. By using games in the classroom, students “learn by experiencing the consequences of their actions and should get meaningful practice in that which has been learned.”⁸⁰ Several conclusions about the effectiveness of games in the law school classroom are worth noting, among them that students who are not performing well at law school may improve, that games provide practice in problem solving, and that students uninterested in the subject can become, at least temporarily, interested.⁸¹ Professor Jennifer Rosato reports that she used the format of some familiar television game shows to complement the Socratic

77. Cicero, *supra* note 39, at 1019.

78. Bean, *supra* note 70, at 285.

79. *Id.* at 286.

80. J. Thomas Butler, *Games and Simulations: Creative Educational Alternatives*, TEACHING TRENDS, Sept. 1988, at 20. Butler describes the pedagogical considerations in designing and implementing games and simulations in the classroom.

81. *Id.* at 20.

method in her Civil Procedure course.⁸² While Professor Rosato admits to there being no hard evidence that gaming dramatically improves learning, as long as there are no losses,⁸³ why not provide diverse teaching approaches in the classroom?

Perhaps one reason for our not using games in the traditional law school classroom is that they may seem to trivialize the law school experience. However, while using games in the classroom may seem too novel or too trivial for a serious intellectual endeavor, sound educational theory supports the use of games at least as a supplement to a law school class. Perhaps most surprising, educational theory actually suggests that games as a supplement to the traditional class setting are particularly effective when that traditional setting employs the Socratic method as its main teaching method. Since games manipulate variables through hypotheticals, games can provide a nice fit for those classes where the Socratic method is the norm.⁸⁴ In fact, one professor has created and used a *Dillon v. Legg*⁸⁵ board game “to provide students an interesting means of manipulating the *Dillon* variables in contexts which call into question the difficult line-drawing problems when a court rejects a relatively clear rule in favor of one with flexible standards”⁸⁶ In this board game, the variables of physical proximity, temporal proximity, and relationships—the factors for negligent infliction of emotional distress under the *Dillon v. Legg* test—are represented in a stack of cards, much like the Community Chest and Chance cards in Monopoly. Players pick from the piles before throwing the dice.⁸⁷ By using a game of this kind that requires students to isolate and to manipulate the variables in the test—

82. See Jennifer L. Rosato, *All I Ever Needed to Know about Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom*, 45 J. LEGAL EDUC. 568, 569-70 (1995). Professor Rosato has used “Buffalo Creek Family Feud” in her Civil Procedure course. *Id.* (This game weds the format of the television game show with the substance of the Buffalo Creek litigation described in GERALD STERN, *THE BUFFALO CREEK DISASTER* (New York, 1976).) *Id.* I have used a version of the television game “Jeopardy” for teaching a lesson in legal citation. See also James L. McKenney & William R. Dill, *Influences on Learning in Simulation Games*, 10 AM. BEHAVIORAL SCIENTIST, Oct. 1966 at 28; Cleo H. Cherryholmes, *Some Current Research on Effectiveness of Educational Simulations: Implications for Alternative Strategies*, 10 AM. BEHAVIORAL SCIENTIST, Oct. 1966, at 4.

83. Rosato, *supra* note 80, at 572.

84. William Wesley Patton, *Opening Students' Eyes: Visual Learning Theory in the Socratic Classroom*, 15 LAW & PSYCHOL. REV. 1, 6 (1992) (citing Jerker Rönnerberg, *Cognitive Psychology in Scandinavia*, 27 SCANDINAVIAN J. PSYCHOLOGY 95, 100 (1986)).

85. 441 P.2d 912 (Cal. 1968).

86. Patton, *supra* note 84, at 7.

87. *Id.* at 8-10.

and educational theory supports this conclusion—students will have deeper understanding and better recall.⁸⁸

4. *The Student Learning Contract*⁸⁹

Earlier in this article, I suggested it would be an interesting experiment if, instead of concerning ourselves as teachers with content coverage, we left that up to the students and instead devoted class time to discussing and promoting ways of mastering the material. This skill would then allow students to become independent learners. An approach that comes very close to this suggestion is the idea of using student learning contracts, an idea that has been used with great success in undergraduate classes and clinical law programs, and could be adapted for use in traditional law school classes.

The Socratic method makes the classroom an extremely professor-centered activity;⁹⁰ any feature that changes that dynamic has the potential for altering the relative responsibilities for a student's education. One of the features of many undergraduate and graduate programs is the option for independent study, or for the option of taking a course whose syllabus is directed at least partly by the students themselves.⁹¹ The professor's contribution to the design of these kinds of courses would, of course, be directed to ensuring adequate course coverage and rigorous evaluation of student exams or work product. While the idea of forming a contract with students regarding their academic course of study may seem a natural match at a law school, few law schools report that the

88. *Id.* at 6. The increased recall is a result of the so-called Von Restorff Phenomenon, whereby students can increase their recall and understanding of information when those items are isolated and manipulated by the students. *Id.* (citing Rönnerberg, *supra* note 84).

89. For a discussion of using learning contracts as a tool to facilitate learning self-directedness among adult student learners generally, see Ralph G. Brockett & Roger Hiemston, *Bridging the Theory-Practice Gap in Self-Directed Learning*, in *SELF-DIRECTED LEARNING: FROM THEORY TO PRACTICE* 35 (Stephen Brookfield ed. 1985).

90. The ultimate professor-centered classroom might be one in which the professor lectures only. Increasingly and perhaps in direct relation to the rising cost of law school tuition, I hear students respond that they have paid to hear the professor, not their fellow students. This reaction suggests that many law students' expectations for the classroom are largely counter to the expectations of professors, that the classroom is a shared learning experience.

91. For a brief history of the use of student learning contracts, see Jane H. Aiken, et al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 n.1 (1985). For a discussion of independent learning, see Rosemary S. Caffarella & Edward P. Caffarella, *Directedness and Learning Contracts in Adult Education*, 36 ADULT EDUC. Q. 226, 226-28 (1986).

method is used.⁹² In the last few years, however, interest in the use of the learning contract has increased as an option for providing appropriate supervision in law school clinical programs as well as an option for including an interactive component in student learning.⁹³ Furthermore, experiments using student learning contracts indicate some improvement in student learning and test performance.⁹⁴ However, several suggestions for making this work in the traditional law school courses have been offered that bear consideration.⁹⁵

The value of a student learning contract lies in three characteristics. First, since students become more involved in their own learning and mastery of a subject, they are more motivated to learn and therefore work harder.⁹⁶ Second, because the contract is formed with the student's input, at least part of the course design can take into account the student's own learning preferences and the student can learn at an individualized pace.⁹⁷ This, of course, presents the problem of whether the student's own perceived pace is adequate enough for course coverage. That problem, though, can be overcome through the negotiation of the contract. Third, the student learning contract changes the balance of power between student and professor,⁹⁸ which some professors may see as an advantage, others as a distinct disadvantage.⁹⁹

While these suggestions may seem radical at first glance, the reality is that we all have a student learning contract in place by means of our course syllabi we distribute to students. Syllabi typically indicate the order of march for the course, including the course materials and the reading assignments for each day or week, and any assignments that have to be handed in during the semester and the nature of their evaluation and their effect on the course grade. There may also be a description of the kind of final examination to be given in that course as well as

92. See Aiken et al., *supra* note 91, for a discussion of the learning contract used at Georgetown University Law Center's clinical program. The authors also report the infrequency with which learning contracts are used at law schools. See *id.* at 1048 n.3.

93. See, e.g., Stacy Caplow, *A Year in Practice: The Journal of a Reflective Clinician*, 3 CLINICAL L. REV. 1, 7 (1996); Condlin, *supra* note 76, at 438 n.22; J. P. Ogilvy, *The Use of Journals in Legal Education: A Tale for Reflection*, 3 CLINICAL L. REV. 55, 56 (1996).

94. Aiken et al., *supra* note 91, at 1050.

95. *Id.* at 1085-90.

96. *Id.* at 1049.

97. *Id.*

98. Aiken et al., *supra* note 91, at 1049.

99. Professor Mark Broida changes this balance of power in his student conferences. See Mark Broida, *Balancing Power in Student Conferences*, THE LAW TEACHER, Fall 1997, at 4.

its date and time. In addition, we probably include other contract items such as the policy on attendance and other administrative matters affecting the course. In my experience as a teacher, such syllabi have become longer over the last twenty-five years.¹⁰⁰ We may not realize the potential teaching tool that the syllabus as a student-learning-contract may represent, since the student learning contracts I describe here are really only an extension of what is already in place.

The benefits of a student learning contract include the act of writing out the goals and methods for the class. With this explicit information, students can better understand our expectations in terms of the work load, especially if the contract includes the minutiae of course information, such as how we will respond to lack of preparation, as well as the loftier information regarding our educational goals and methods. One professor who has used the student learning contract in a traditional law class sees the negotiation over the amount of reading, for example, to be a productive way to manage the class.¹⁰¹ If the class reveals "that only fifteen percent of students will read more than six hundred pages . . . the instructor might . . . select the most important six hundred pages" in return for some contracted for agreement about student preparedness.¹⁰²

A further benefit to using the student learning contract is that it more actively involves the student in the learning process. Those who have used these contracts with students suggest that they can be adapted to the large traditional course by involving students not so much in the minutiae of the way the course will be run, but at least involving students in the larger pedagogical concerns of the class by discussing rather than negotiating the amount of time to be spent on class content as opposed to time spent on process. By process we mean those aspects of a course having to do with *how* the course is taught and *how* students should approach mastering the material.¹⁰³ In addition, the professor can discover the consensus of the class for matters such as the amount of material and the number of pages required for course coverage. Such a discussion allows students to fully appreciate our expectations as professors while, at the same time, allowing professors to appreciate the like-

100. My own experience while a teaching fellow at Kent State University was that course syllabi began to become longer and more "contractual" in the years immediately following the shootings at Kent State in 1970.

101. Aiken et al., *supra* note 91, at 1088.

102. *Id.*

103. *Id.* at 1087.

likelihood of students being able to read all that we assign. This in turn can lead to a fuller understanding about where compromises can and cannot be accommodated.

5. *Computer-Aided Instruction*

Early experiments on law school teaching methods have generally concluded that the method of teaching has little to no effect on student performance.¹⁰⁴ In most of these experiments, large classes were divided into groups and were taught using a particular teaching method. The results of the experiments were consistent: students performed at about the same level on examinations no matter which teaching method was employed. However, the picture becomes more intriguing once individualized teaching components are added to the mix, especially when that individualized teaching component is computer-assisted instruction.¹⁰⁵

Paul F. Teich, writing in 1986, described the results of several experiments conducted on law school classes and undergraduate law classes.¹⁰⁶ The conclusion from these experiments was that the choice of teaching method made no significant difference in the student performance on examinations; rather, what did make a difference was the introduction of some element of individualized instruction, and that “[o]nly one recently developed method—computer-aided instruction—appears unique in its capacity to boost group performance levels.”¹⁰⁷ If any one teaching method has a dramatic effect, it is the use of Computer-Assisted Instruction (CAI) as a supplement to traditional instruction. Professor Teich further reported that CAI provided students with “statistically significant benefits,”¹⁰⁸ and “suggested that a combined case-method and computer-aided instruction was superior to either method used alone.”¹⁰⁹

The success or failure of CAI as an instructional method is the most easily tested of all the suggested alternatives and supplements I

104. See generally Hartwell & Hartwell, *supra* note 2; Teich, *supra* note 11.

105. See Teich, *supra* note 11, at 175-84.

106. See generally *id.*

107. *Id.* at 178.

108. *Id.* at 177. Two experiments were conducted at the University of Illinois College of Law, Peter B. Maggs & Thomas D. Morgan, *Computer-Based Legal Education at the University of Illinois: A Report of Two Years' Experience*, 27 J. LEGAL EDUC. 138 (1975), and one at Cornell Law School, Harry G. Henn & Robert C. Platt, *Computer-Assisted Law Instruction: Clinical Education's Bionic Sibling*, 28 J. LEGAL EDUC. 423 (1977).

109. Teich, *supra* note 11, at 177.

have discussed so far. Professor Teich's review of the literature several years later confirmed his tentative thesis: CAI may enhance the exam performance of students, may reduce study time, is liked by students, is best used in conjunction with other teaching techniques, and, perhaps surprisingly, is best used in the so-called soft subjects—law being one of them.¹¹⁰ Part of the reason for the enhanced performance of students who supplement their study with CAI is the frequent testing and the almost immediate feedback.¹¹¹ These two characteristics of CAI—the frequent testing and the timely feedback—may prevent or diminish two of the major reasons for student anxiety, especially in the first semester of the first year.

Various models for feedback exist. In general, law school teachers are confined to thinking of feedback only in terms of evaluations of long final examinations. However, effective feedback on very short assignments can be highly effective because of the focus of the assignment and hence its evaluation and because of the speed with which the feedback can be delivered to students. Feedback on short assignments such as case issue statements or holdings as well as feedback on very short examination questions such as those often found in the “questions” sections in case books lend themselves ably to a CAI model if we include online discussion forums or e-mail forums as part of the CAI model. Indeed, while I do not intend to promote The West Education Network (TWEN) over other computer models, one of its grand features is that students can post e-mail answers to short questions, which can then be evaluated by the professor with sample answers quite speedily.

Furthermore, with the recent general availability of TWEN, Computer-Assisted Instruction can be tailored to each professor's courses. While TWEN is so far limited to providing class materials and discussion forums for a particular course, it seems to be a step toward providing that individual component of a class that many large law school classes cannot provide, since discussion is complemented by the e-mail discussion forums that TWEN provides. In addition, in light of recent studies that show the value of CAI, it seems proper for us to devote more resources to developing materials for law school educational supplements such as Computer Assisted Legal Instruction (CALI) and other computer driven instructional materials.

Clearly, too, this supplement to the law school classroom is the

110. Paul F. Teich, *How Effective is Computer-Assisted Instruction? An Evaluation for Legal Educators*, 41 J. LEGAL EDUC. 489, 492-97 (1991).

111. *Id.* at 493.

most expensive of those I have suggested, since CAI involves the expense of hardware, to begin with, and the time and resources necessary to develop appropriate software programs, whose up-front costs and time commitments can be very high. Nevertheless, with a larger and larger number of students each year becoming accustomed to computers and indeed carrying them around with them, CAI may in fact be a very welcome and natural supplement to law school instruction. Since CAI appears to be the one supplement to other teaching methods whose success can be empirically verified, it makes sense to look for matches between some of the other supplements discussed in this article, especially those supplements involving games and simulations, which appear to be a natural match with CAI.¹¹²

Finally, even discouraging results from other studies may take some hope from CAI. For example, the students who consistently took the weekly quizzes in the Hartwell and Hartwell experiment performed at a higher level than students using other methods, and indeed performed better than students who only occasionally took the quizzes.¹¹³ From this result, the Hartwells suggested that computerizing these quizzes, with comments and suggestions, might be a step in the right direction.¹¹⁴ Again, the principal feature of this approach would be the speedy if not immediate feedback that appears to be the one crucial improvement that law teaching could make.

V. CONCLUSION

I do not want to promote any one of the methods I have described here over another. The presence of diverse teaching methods, whether across the curriculum or within a single class, is preferable to teaching sameness within a law school. However, some methods are less costly than others in terms of time spent developing and administering them,¹¹⁵ as well as in the concrete costs of computer equipment. But we do need to be aware of the benefits of each supplement as well as the similarities and exchanges available among them. For example, CAI as a model alternative is already capable of including some of the best features of

112. Patton, *supra* note 84, at 8 n.24.

113. Hartwell & Hartwell, *supra* note 2, at 522-23.

114. *Id.* at 522 n.37.

115. Professor Teich indicates that a one-hour CAI lesson may take as much as 100 hours to construct. Teich, *supra* note 110, at 497 (citing James A. Kulik & Chen-Lin Kulik, *Review of Recent Research Literature on Computer-Based Instruction*, 12 CONTEMP. EDUC. PSYCHOL. 22, 28 (1987)).

frequent testing and feedback that out-of-class assignments present, and has the ability to incorporate the features of games and simulations. With an increase in the use of computer technology in the law school and the law firm, the teaching and learning dynamic is also being modified. Finally, seeking out the diverse ways in which we can teach can only strengthen our own understanding not only of the material we teach, but also of the best way to communicate particular kinds of information and skills.