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Lecture

Socratic Method and the Irreducible Core of Legal Education

Donald G. Marshall[†]

Thanks to all of you for coming today. And a special thanks to the many students—present and former—that are here. This lecture is for them.

Since we are gathered to celebrate the creation of the first endowed position for teaching at the University of Minnesota Law School, I thought it appropriate if I talked about teaching, and in particular, teaching law. I do that with trepidation because I fear that in some respects I will be attempting to describe the indescribable. Although this is my twenty-eighth year of teaching, and I have loved teaching from the moment I entered my first class, I have always regarded the dynamics of the classroom as a fascinating mystery. With teaching, you can intuit that you have had a successful class, and often not know exactly what you and the students did or how you and the students did it.¹ But I will try.

I will give my views of the why, the what, and the how of teaching law. I stress with respect to the how that I will be describing how I think law *should* be taught; not how *I* teach it. My description is an aspiration I strive to achieve but sometimes do not. I've titled my talk "Socratic Method and the Irreducible Core of Legal Education." By "irreducible core" I mean

[†] Emeritus Professor and Law Alumni Distinguished Teacher, University of Minnesota Law School. B.A. 1953, Williams College; J.D. 1960, Yale University. This article is a transcript of a lecture I delivered on January 19, 1994, when I was inaugurated as Law Alumni Distinguished Teacher. It has been edited just to delete irrelevances and to add a small number of footnotes. Because the lecture was prepared in December 1993, the sources cited in these footnotes are those I consulted prior to that date. Copyright © 2005 by Donald G. Marshall.

1. Richard B. Parker, *A Review of Zen and the Art of Motorcycle Maintenance with Some Remarks on the Teaching of Law*, 29 RUTGERS L. REV. 318, 326 (1976).

the absolutely essential knowledge, thoughtways, values, habits, attitudes, and traditions a student must begin to make her own before undertaking a career in the public profession of the law. My thesis is that that core can be best taught by a variety of different types of dialog adapted to the learning situation of the moment, and which I have called in my title—somewhat misleadingly—Socratic Method.

Popular myth has it that Socratic method is pervasive in American law schools. But nothing could be further from the truth. The fact is that teaching and learning by genuine dialog has all but disappeared from the second and third years of law school, and is fast disappearing from the first. (By genuine dialog I mean a dialog based on respect for the promise of the students' minds and a determination to help them realize that promise by providing intellectual challenge.) Professors are substituting other pedagogical forms: One—the lecture—transmits facts and principles, but not the essentials of legal education, which require teacher-student and student-student interaction. A second—the pro-forma dialog—is a disguised lecture, structured around a series of questions which the teacher asks and then answers himself.² A third—the avuncular dialog—is one conducted by a kindly professor who, in his desire to be loved, avoids making any significant demands upon his students. The straightforward lecture is a waste of valuable classroom time and space, and has been ever since the invention of the printing press. The pro-forma dialog is both a waste and a deception. The avuncular dialog an insult to the students, who are entitled to be challenged. Hence, this call for revival of Socratic method.

But I'm ahead of myself. I am already talking about the how of law teaching, when I should be talking about the why and what, because the why and the what lead ineluctably to the how. Furthermore, the why, what, and how follow from the fact that this is, and should be, a professional school.

Why teach law? As far as I am concerned, there is only one correct answer: because you want to help students prepare themselves for entry into the legal profession. Now, a statement of that sort makes some legal academics nervous. They think it is too narrowing. They hear phrases like "preparation for entry into the legal profession" and they immediately think

2. See THOMAS L. SHAFFER & ROBERT S. REDMOUNT, *LAWYERS, LAW STUDENTS, AND PEOPLE* 168, 176–77 (1977).

of vocational training in the most parochial of senses. In the sense that the economist, Thorstein Veblen, understood when he said law schools belong in universities about as much as schools of fencing or dancing.³ Only somebody who has never practiced or has practiced in a mechanical, mundane fashion—without seeing the possibilities for personal redemption through a life in the law—could entertain that view. The fact is that members of the legal profession engage daily in an endeavor which is intellectually based, humanistically motivated,⁴ and richly varied.

Intellectually based. That's what Justice Holmes meant when, in an address to the students of Brown University, he said, "The law is the calling of thinkers . . . a man may live greatly in the law as well as elsewhere."⁵ He should have said that a man or woman can live more greatly in the law than most elsewhere, but he was right about the law being a calling of thinkers. The lawyer must constantly apply the "arts of thought and rationality"⁶ as she functions within and contributes to the growth of a variety of legal processes. That requires high-order intellectual capacities including, among others, powers of appropriate generalization, of distinguishing relevant from irrelevant similarities, of discrimination, of particularization, and of reasoned, lucid articulation.⁷

Humanistically motivated. As I understand it, the legal profession is a functional group obliged to master a body of scholarly knowledge, to be applied in light of articulated standards of conduct, for the purpose of providing a public service. Note the three elements of that definition, all worded in the form of obligation: the obligation of professional competence, the obligation of professional responsibility, and the obligation of public service. Humanistic motivation is what underlies the

3. THORSTEIN VEBLLEN, THE HIGHER LEARNING IN AMERICA: A MEMORANDUM ON THE CONDUCT OF UNIVERSITIES BY BUSINESS MEN 211 (1918).

4. For a discussion of humanistic motivation, see generally Francis A. Allen, *Humanistic Legal Education: The Quiet Crisis*, in *ESSAYS ON LEGAL EDUCATION* 9 (Neil Gold ed., 1982).

5. Oliver Wendell Holmes, Your Business as Thinkers (February 17, 1886), in *THE MIND AND FAITH OF JUSTICE HOLMES: HIS SPEECHES, ESSAYS, LETTERS, AND JUDICIAL OPINIONS* 31, 31 (Max Lerner ed., 1943).

6. Francis A. Allen, *Mr. Justice Holmes and "The Life of the Mind,"* 52 *B.U. L. REV.* 229, 233 (1972), reprinted in FRANCIS A. ALLEN, *LAW, INTELLECT, AND EDUCATION* 2, 6 (1979).

7. See Paul T. Wangerin, *Skills Training in "Legal Analysis": A Systematic Approach*, 40 *U. MIAMI L. REV.* 409 *passim* (1986).

obligation of public service. Lawyers provide public services in many ways. I shall mention only two—provided by every working lawyer and vital to the existence of the Republic. First, every working lawyer fulfills a charge to “maximiz[e] the social interest in tranquility” by providing means for the avoidance or peaceful resolution of dispute.⁸ And that charge—that common responsibility of the bar—is no mean thing. After all, it is, in the last analysis, the existence and smooth-functioning of institutional processes for the avoidance and orderly resolution of conflict that permit the release of our people’s creative energies and the use of those energies to achieve constructive and socially desirable goals.

Second, every working lawyer provides public service by assuring that all individuals and interests have meaningful access to both the prophylactic and remedial processes of the law. The importance of that service cannot be overemphasized. Law is central to the functioning of American society in a way that is true of few other existing or past societies. De Tocqueville noted that characteristic of this country 160 years ago in his monumental work, *Democracy in America*.⁹ Americans go to law. One may deplore that propensity, as increasing numbers of people—in and out of public life—do. But deplore as they may, our use of law is not going to diminish. Too many modern developments reinforce that aspect of our national character: industrialization, urbanization, accelerating mobility, growing cultural heterogeneity, the depersonalizing of markets for the distribution of goods and services, and the unfortunate deterioration of so many nonlegal institutions which used to be agencies of informal control—all centrifugal forces that drive toward a noncommunitarian mindset and lead inevitably to dependence on formal institutions. We as a people have always insisted and will continue to insist on framing urgent social, economic, and political questions in legal terms. In so doing, we will continue to place great problems of social order in the hands of lawyers for definition and in the hands of judges, legislators, and administrators for resolution.¹⁰

8. Phil C. Neal, *De Tocqueville and the Role of the Lawyer in Society*, 50 MARQ. L. REV. 607, 613 (1967).

9. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 99 (J.P. Mayer ed., George Lawrence trans., Harper & Row 1966) (1835) (“No other nation in the world has organized judicial power in the same way as the Americans.”).

10. William J. Brennan, Jr., *The Equality Principle in American Constitutional Jurisprudence*, 48 OHIO ST. L.J. 921, 923 (1987) (“We place great problems of social order in the hands of lawyers for their definition, and in the

Richly Varied. Lawyers practice in private firms, with the government and in for-profit and not-for-profit corporations. They act as judges, legislators, and governmental administrators. They become private-sector policymakers. And they are influential participants and leaders at every level of community. Such roles, and the tasks within them, are diverse and complex. One consequence of that diversity and complexity is that the image of the lawyer-professional used to guide the content and method of law school teaching is necessarily general. Another is that that image must encompass a broad vision.

There you have it. Intellectually based. Humanistically motivated. Richly varied. To help prepare students for entry into such a profession is not narrowing; it is liberating. Indeed, the law teacher can find derivative redemption in such a life. That's the "why" of law teaching. Now for the what.

I take it as a basic premise that we in the law schools ought not to attempt to teach anything that can be as well or better taught by law firms, broadly defined. We ought to teach only that which we can teach better and which the student absolutely must make her own before entry into the profession. That is an inseparable body of knowledge, thoughtways, habits, and values which are essential to an understanding of the nature of law, and which I call the irreducible core of legal education. All courses at the irreducible core are, or should be, courses where teacher and student, by studying together, develop that constellation of cognitive and moral capacities necessary to understand the nature of law—using "law" here not in the popular and least interesting sense of a body of rules, but in the sense of an "obligatory system that functions through a complex set of decision-making [processes]," each of those processes being in itself law.¹¹ Rules (what lay persons ordinarily think of as law) are part of those processes, and materials used in those processes, but there are other important materials, such as doctrines, principles, concepts, maxims, conventions, fictions, and, of course, language. Learning how to become a lawyer is very much a matter of learning how to use all of those materials in light of a received tradition of use.

One of those processes—the one I shall concentrate on, for illustrative purposes—is the common law process, by means of

hands of judges for their ultimate resolution.”).

11. Graham Hughes, *Rules, Policy and Decision Making*, 77 YALE L.J. 411, 435 (1968).

which judges in our system create and implement law. A variety of intellectual skills, related cognitive capacities, and professional values are necessary to understand, and operate effectively within, that process. I say not only “understand” but “operate effectively within,” because lawyers’ participation in judge-created law is a vital aspect of that process; the student must understand the lawyer’s role and develop the skills necessary to perform it if she is fully to understand the nature of this form of law.¹²

To start with, the students have to learn how to read and analyze published judicial opinions, for they are the primary visible source of data about the nature of judicially created law. They have to learn how to reduce an opinion to its constituent elements, to analyze each independently and in relation to the others, then through an act of synthesis arrive at a tentative statement of the proposition or propositions for which the opinion stands, and which will be used more or less as a guide to resolution of future disputes. They have to learn how to analyze a series of related opinions to ascertain how judges in the later cases treat seemingly guiding propositions of earlier cases—and they have to learn how to use this knowledge to determine the effective reach and limits of those earlier propositions.

That involves understanding the concept of *stare decisis*, the use of precedent, and the creative tension between precedent and the effectuation of public policy. In connection with precedent, the student must master analogical reasoning and the skill of reconciling apparent contradictions.¹³

By analyzing opinions, students have to learn what counts, in light of a received rhetorical tradition, as persuasive justifications for judicial answers to particular legal problems. Concomitantly, they develop a sense of which arguments of counsel are likely to be regarded as convincing, which provocative, and which acceptable. The convincing argument usually appears in the opinion as a justification for decision; the provocative is mentioned and rebutted; the acceptable ignored, but not denigrated.

12. For a succinct description of the common law as a process and the practicing lawyer’s essential role in that process, see generally Thomas D. Eisele, *The Activity of Being a Lawyer: The Imaginative Pursuit of Implications and Possibilities*, 54 TENN. L. REV. 345 (1987); Harry W. Jones, *Our Uncommon Common Law*, 42 TENN. L. REV. 443 (1975).

13. See Wangerin, *supra* note 7, at 459–64.

In addition to developing a feel for what arguments of counsel count, the students must learn how to construct, present, and defend such arguments themselves. To do that, they have to develop, in addition to the intellectual skills I've already mentioned, a series of related cognitive capacities. They must learn how to listen, hear, understand, evaluate, formulate, and articulate; and, to do that, they must hone, to a fine edge, the mental attributes of attention and alertness.

I listed among the essential cognitive capacities the lawyer must have "articulation"—the ability to communicate clearly, concisely and, if possible, with grace. That involves knowledge of and feel and respect for the English language, a mastery of legal language, and the skill of precise expression. The precision of the law student's analyses is disclosed by the precision of her expression. She has to learn to state her process of decision and her ideas in concise, accurate, and lucid language.

In addition, she must commit herself to dialectical reasoning as a valuable means of testing the validity of any proposition—that is, she must recognize the wisdom and instrumental power in the idea expressed by the Poet Richard Eberhart when he wrote:

Each argument begets its counterpart,
Only in opposites the truth is human,
Intelligible¹⁴

Finally, the student must learn, and make her own, a series of professional attitudes, values, and habits, including: skepticism toward any generalization when initially perceived, invariant thorough preparation, critical self awareness, the capacity and temperament for autonomous study, a concern for the welfare of others and the community, and, preeminently, a determination to do justice. Only then will she begin to understand the nature of the law we call "common."

There's the what of law teaching. Now, the how. I put it to you that what I have called the irreducible core of legal education can be most successfully taught by use of the dialog method of instruction. All other pedagogical methods, except clinical, are one-dimensional or, at most, two. The dialog, properly conceived and used, is multidimensional.¹⁵ Because the ir-

14. RICHARD EBERHART, UNDERCLIFF: POEMS 1946–1953, at 59 (1953), quoted in Howard Nemerov, *Contemporary Poets*, ATLANTIC MONTHLY, Sept. 1954, at 67.

15. For these and related thoughts I am indebted to JOSEPH AXELROD,

reducible core of legal education is an inseparable constellation of thoughtways, professional values, personal values, habits, and attitudes, only a multidimensional pedagogical technique will do. Only such a technique allows achievement of multiple teaching-learning goals at the same time. Dialog, artfully employed, does that by facilitating communication at different levels of abstraction, at different times during the class hour, and often at several levels of abstraction simultaneously.

I have used the phrase “Socratic Method” in the title of this lecture as a synonym for dialog. Actually, that use is misleading, because “Socratic Method”—the pedagogical technique used by Socrates in the public market and other meeting places of ancient Athens—is today only one form of dialog. Many others have evolved from Socrates’s prototypical technique. Although all forms, skillfully used, are multidimensional, particular forms are best used when a particular learning goal is predominant. The teacher must be ever alert to this fact because it is her or his job to tailor form to goal. I shall briefly describe two of those forms; but before doing so, I want to say something about characteristics common to all dialogs.

A dialog, as I use the term, is simply a conversation between teacher and student—in question and answer form—where the teacher asks the questions, and, in so doing, provides some direction. By selecting the questions, she selects the agenda of conversation. And by varying the nature of the questions, she produces discourse at varying levels of generality with varying degrees of focus. By adjusting the generality and focus of the questions she adjusts the conversation to the learning goal of the moment, allowing her to move from one goal to another or back and forth between goals during a single class hour.

Ideally, the dialog involves two people—teacher and student. That’s what President Garfield meant when he was asked for his definition of the ideal university, and responded: “Mark Hopkins at one end of a log and a student at the other.”¹⁶ In the law school context, conditions are far from ideal. Class size var-

THE UNIVERSITY TEACHER AS ARTIST (1973).

16. Mark Hopkins was Garfield’s philosophy professor at Williams College. Although some commentators question whether the quote is accurate, see, e.g., Houston Peterson, *Mark Hopkins: 1802–1887*, in GREAT TEACHERS 75 (Houston Peterson ed., 1956), generations of Williams graduates believe with all their hearts that the story is true and that it captures the essence of a Williams education.

ies from 20 to 110. One of the consequent challenges for the teacher is to create the illusion that each student is sitting at the other end of the log. In a very real sense each student is, because the theory of the group dialog is that although at any given moment one student is participating in the conversation aloud, every other student is participating silently, ready to jump in at midstream to continue it.

As that description indicates, all group dialogs are multirelational. The relationships are of three sorts. One between the teacher and each student. A second between each student and every other student. And a third between the group and each of its members. Learning opportunities derive from all three relationships. The students not only learn from the teacher, they also learn from each other. And, most interestingly, learning occurs as a result of the relationship between the group and each of its members. The group develops a life of its own—a spirit of inquiry, an ethic of civility and mutual support, a standard of professional behavior. The result of the multirelational nature of the dialog is that products of it are joint creations—all members of the group and the group itself contribute to the learning that occurs. The students tend to believe—at least, when first exposed to the dialog method—that they are only talking, but what they are doing is creating. “They are not simply talking any more than a poem on a printed page is simply a sequence of words.”¹⁷

In addition to being multidimensional and multirelational, the dialog method entails active student participation in the learning process. If I had to pick the single most important virtue of the dialog method, it would be this: dialog is a pedagogy based on the premise that active learning almost always produces understanding of a higher quality than passive learning. It is a recognition of the wisdom conveyed by the old saw: “Tell me, and I will forget. Show me, and I will remember. Involve me, and I will understand.” Involvement—at least, informed involvement—in the learning process provides great motivation to learn and produces a qualitatively different form of knowing.

Whatever the form of dialog, when the teacher asks a question, each student has to utilize the six cognitive capacities used by the practicing lawyer daily in the performance of most law jobs. She has to listen, hear, understand, evaluate, formulate a response, and stand ready to articulate and defend it.

17. AXELROD, *supra* note 15, at 8.

Moreover, each student has to utilize the same six cognitive capacities with respect to every comment made by a fellow student because she will have to formulate a tentative conclusion about the comment in order to follow the teacher's response or, if called on, to make one herself. In addition, the student hones the mental attributes of attention and alertness because it is only those attributes that allow the use of the other cognitive capacities.

Among the capacities honed by student participation in the dialog is "articulation." In her articulation of a response (to teacher or fellow student) she demonstrates and develops her feel for the English language, the language of the law, and for concise, accurate, lucid expression.

By daily participation in dialogs the student also develops confidence in her ability to speak before a group whose mission it is to evaluate and challenge her ideas or their presentation. And that, after all, is the lawyer's essential milieu. As confidence develops, quality of participation increases, and, eventually, if the process works, the student makes the dialog method and dialectical reasoning her own, using it over a professional lifetime as a means of self-education and self-examination.

Those are some of the features and learning potentials common to all dialogs. Other features and learning potentials are characteristic of particular types of dialog—a fact that allows the teacher to match and mix: match dialog to the dominant learning goal and mix dialogs as the dominant goal changes during a single class hour. There are about four basic dialog types, which by modification and blending can be adjusted to produce almost limitless variety. Time does not permit description of all four. For illustrative purposes, I will briefly describe two used for the first time, as far as we know, in classical Greece, the two which are the prototypical dialogs from which all others derive.

I start with the Socratic dialog, strictly speaking—that is, the dialog as conducted by Socrates in ancient Athens. Socrates did not publish. For an understanding of his distinctive pedagogy we are therefore dependent on descriptions in the writings of others, primarily Plato, Xenophon, and Aristophanes.¹⁸ Of these three, the one who chronicled Socrates's teaching most

18. See, e.g., *Encyclopaedia Britannica*, 15th ed., s.v. "Socrates"; Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L. REV. 725, 729 n.15 (1989).

extensively was Plato, who was Socrates's student. Plato's writings include a number of dialogs which purport to be accurate recollections of exchanges between Socrates and another.

As recounted by Plato, the dialogs of Socrates have a fixed form, structure, and purpose—all related to a distinctive theory of knowledge, a theory which may sound strange to modern ears. As to form, Socrates asked a series of related questions and the student answered them. Each question was responsive to the student answer to the preceding question. Most noteworthy, for present purposes, was Socrates's invariant adherence to questions; he rarely made a declarative statement.

As to structure, the typical Socratic dialog had four stages.¹⁹ In the first, Socrates asked questions until a student answer contained an assertion which Socrates deemed a misconception. In the second, Socrates asked a series of questions designed to lead the student step by step toward realization that his statement was erroneous and why. The third stage was the discovery and acknowledgment by the student that his statement was misconceived. In the fourth, Socrates asked a final series of questions which helped the student discover the relevant valid assertion.

As to purpose, Socrates's dialogs were a form of moral education, the purpose being to discover ethical truth and thereby induce virtuous behavior.²⁰ (One of Socrates's questionable substantive beliefs was that if men know virtue, they will act virtuously.) Since Socrates's goal was moral education, his dialogs always dealt with the validity of large propositions.²¹

As to his epistemology, Socrates believed a person's soul contains all ethical knowledge. Teaching ethical truths is, therefore, simply a matter of finding the questions that were keys to unlock the soul and allow the student to discover knowledge he always possessed.²²

The particular learning potential of the Socratic dialog does not depend on Socrates's theory of soul-possessed knowledge. One can reject that theory and still recognize the wisdom

19. Neumann, *supra* note 18, at 730–31.

20. William C. Heffernan, *Not Socrates, but Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 339, 407–09 (1980).

21. *Id.*

22. *Id.* at 409.

underlying his pedagogy—the wisdom that knowledge has a different quality and a different feel when the teacher-aided student discovers it for himself.

In the law school context, the Socratic dialog, strictly speaking—that is, the dialog where the teacher's only utterances are in the form of questions—should be used, but sparingly. “Sparingly” because such a dialog is time consuming; because many class hours of nothing but questions from the teacher can cause intolerable student frustration; and because the series of questions designed to expose the student misconception can have a destructive effect if not followed by a creative and powerfully restorative series that helps the student discover the valid assertion. Therefore, the Socratic dialog, strictly speaking, should be used only when the truth of large propositions are at stake. For example, discussions of such moral propositions as the nature of justice, or the nature of a particular form of justice, or the demands of justice in a prototypical situation (for example, do and should we have the duty to come to the aid of a stranger in peril) are well suited to the Socratic dialog. Unmodified Socratic technique also works well when examining the validity of large propositions that are not ethical in nature; and the teacher should always be alert to the utility of a mini-Socratic dialog when, during the course of another type of dialog, she discovers a student misconception that can be identified and cured with a limited series of questions. Apart from those three situations, the Socratic dialog should be modified for most law school discussions to make it more directional. That can be accomplished if the teacher intersperses her questions with declarative statements that provide students with less subtle clues to the existence and nature of the misconception and that expedite the timing and impact of the restorative part of the dialog. However, the teacher who modifies Socrates's technique must be ever alert to the danger of significantly diminishing student self-discovery, and to the ultimate sin of making the dialogue avuncular.

A second basic form of dialog is the Protagorean—named after Protagoras, another Athenian, “the leading Sophist and Socrates' rival.”²³ Unlike Socrates, Protagoras left some writing. Plato also wrote about Protagoras. In fact, a famous Platonic dialog, the *Protagoras*, recounts an exchange between

23. Neumann, *supra* note 18, at 729.

Protagoras and Socrates.²⁴ In his teaching Protagoras did not, like Socrates, emphasize the question to the practical exclusion of any other form of statement. Protagoras asked questions, but he made more statements in declaratory than interrogatory form, and the primary form he used was the argument. Protagoras's main goal was to train students in the skills of rhetoric. His typical dialog was a debate with a student in which he illustrated the techniques of effective argumentation.²⁵

The Protagorean dialog is obviously useful to the law teacher of today to accomplish a variety of learning goals. Argument and counter-argument (rhetoric) is a useful tool for the law student and the lawyer to test the truth value of almost any proposition. With regard to common law study, in particular, the Protagorean dialog can be used to test the reach and limits of doctrine, to verify a tentatively selected proposition as the, or a, guiding proposition in a judicial opinion, and to apply case-derived guiding propositions to hypothetical situations, to name just a few uses. Used in imaginative combination with other forms of dialog, Protagorean dialog should be a staple of the law school teaching-learning process.

If a law teacher uses a dialog method of instruction—Socratic, Protagorean, Langdellian,²⁶ in aid of role playing, or a blend or modification of any of those—whatever the form, there are some essential personal characteristics that he or she must demonstrate. Those characteristics follow from the ultimate purpose of the dialog—to maximize learning by encouraging participation in the process of discovery, including, most significantly, discovery of the dialogue as a means of autonomous learning. First, the teacher must have genuine respect for classroom space and time, for the dialog process, and for all potential participants; and she must make that respect evident by her preparation. The neophyte instructor often underestimates

24. PLATO, *PROTAGORAS AND MENO* (Betty Radice ed., W.K.C. Guthrie trans., Penguin Books 1956).

25. Heffernan, *supra* note 20, at 414–15.

26. Christopher Columbus Langdell was appointed professor at Harvard Law School in 1870 and subsequently became dean. He is generally credited with introducing the case method of study in American law schools. Langdell described his in-class discussions with students about cases as “Socratic,” but some, *e.g.*, Heffernan, *supra* note 20, think Langdell's dialogs were more like those of Protagoras than those of Socrates. Indeed, some regard Protagorean and Langdellian dialogs as the same in essential respects. *See, e.g.*, Neumann, *supra* note 18, at 728–29. For a discussion of Langdellian dialogs, see Heffernan, *supra* note 20, at 401–02; Neumann, *supra* note 18, at 739–44.

preparation time and effort because she thinks that a dialogue, like an ordinary conversation, has its own momentum. Consequently, she enters the classroom with a yellow scratch pad, containing three or four points she wants to cover and starts off with a question to Mr. Jones. Jones gives an answer that she (the teacher) didn't anticipate and therefore doesn't fully understand, or she apprehends its meaning but does not see in the time available to respond how Jones's comment can be used as a step in the collective journey of discovery that is the hallmark of a successful class. She moves to another student, repeating her initial question verbatim, and prays for a response she can immediately understand and use; or, more likely, she lapses into a mini-lecture, checks off the first point on her scratch pad, and moves on to the second. The students perceive that as an effort that failed and may attribute it to lack of professionalism. In addition to all other values lost in the aborted dialog, the teacher has missed the opportunity to model professional behavior.

The instructor could have avoided, or at least minimized, that loss with thorough preparation. That involves mastery of relevant substantive law, but such mastery is only the beginning. The crucial part of preparation—the most demanding and creative part—requires acts of imagination. The teacher has to imagine the class hour before it occurs. She has to conduct a dialog in her head including a variety of responses to her inquiries and a separate branching dialog using each imagined student response as an integral step. Some people call that “scripting,” but that term, in this context, is a disservice because it is seriously misleading. It implies a process that is too mechanical and manipulative. The acts of imagination I envision are analogous to the warm ups of an athlete or the finger exercises of a pianist. They are designed to limber the mind of the teacher, so that she doesn't suffer brain cramp during the class hour. But she must not allow herself or her student to become a slave to her imagined dialogs—the purpose of her warm up is to release the creative potential of her intellect so that she can make flexible and productive use of student comment.

A second personal quality or characteristic that the teacher conducting any sort of dialog must possess is compassion. By “compassion” I do not mean sappy sentimentality that leads to the pro-forma dialog or the avuncular dialog. By “compassion” I mean respect for all potential participants in the process and something more—an appreciation that although dialog imagi-

natively used is the most effective pedagogical vehicle for learning the irreducible core of legal education, it can be, when misused, destructive. Most people have never been required to state their views before an audience whose mission it is to evaluate and criticize those views or their presentation. That is the essential milieu of the lawyer, but not most others. The dialog is potentially threatening to the uninitiated, and the teacher must always be alert to conducting it so as not to wound. She should make it clear by her behavior that she respects the enterprise that is the dialog, and that the dialog is part of, and she should never sharpen her intellect, curry favor, or seek personal satisfaction at student expense. She must not only avoid affirmatively harming students, she must build each and every student's confidence in his ability to perform. She must encourage and foster student willingness to expose themselves by risking mistake and, if the risk materializes, coming back and trying again.

In addition to being thoroughly prepared and manifesting compassion, the teacher must model the constellation of other professional characteristics she wishes the students to make their own. This is the primary way that communication at simultaneous levels occurs. The teacher's participation is like a rich literary metaphor. She teaches excellence by doing excellence—by displaying to the best of her ability professional virtues she wishes her students to make their own.

Lastly, to achieve maximum effectiveness the teacher must do what she can to include everyone in the dialog. Each student must see himself at the other end of the log. The chances of that vision occurring will be maximized if the teacher does a number of things. First, she should call on a mix of volunteers and nonvolunteers. In the ideal dialog, the students would volunteer eagerly to participate. But neither life nor classroom discussion is ideal. In every class, a percentage of the students are reluctant to participate. There are undoubtedly many reasons for that, one being fear of appearing foolish. For some, the prospect of participation is threatening, for a few, overwhelming. But participation is essential if the student is to profit from the process.

I noted previously that the theory of the group dialog is that although one student is participating aloud at any given moment, all others are silently formulating imagined responses to teacher or fellow-student comment. The dialog works, or not, to the extent that silent participation occurs. That form of par-

ticipation requires enormous self-discipline. In the course of a class hour, it is easy and natural for the student to drift off—thinking of what occurred in his life yesterday, or what will occur tomorrow, or not thinking at all—and in those moments of drift he loses the thread of the conversation. The prospect of being called on for vocal participation reinforces the self-discipline necessary for silent participation. It provides an incentive because the students rapidly learn that if they are called on to participate, the quality of their vocal participation will depend on the extent and quality of the silent participation that preceded it. Insisting on participation by nonvolunteers also provides students with maximum incentive to study assigned materials, because they also rapidly learn—if the teacher has carefully selected the materials—that the quality of their vocal participation will be largely a result of the quality of their preparation, a lesson that every practicing lawyer is reminded of daily.

A sense of group involvement in the dialog is also more likely to occur if the teacher works with more than a few vocal participants during a class hour and if the nonvolunteer participants are randomly selected. Random selection increases the incentive for adequate preparation and silent participation. I say the teacher should randomly select the nonvolunteers. Actually, in a large class—say above fifty—she should randomly select from different physical areas of the class. Selection should be in an order that envelopes the class in the conversation—first a student to the left, then in the rear; a student to the right, then the middle and the front—until, being enveloped, all are on that log.

Finally, maximum involvement depends, in part, on maximum understanding. The teacher can increase the chances of understanding by a judicious mix of question and declarative statement, by providing clues at appropriate stages (in both interrogatory and declarative form), by assuring that she and every vocal student participant can be clearly heard, by welcoming questions (of a sort and at times that do not significantly disrupt the dialog), and by the enthusiasm she brings to the classroom. That last characteristic cannot be overestimated. Enthusiasm is contagious in most areas of life, and certainly in the classroom. Teacher enthusiasm elicits student enthusiasm. And student enthusiasm facilitates learning.

Well, there you have it. Those are my ideas on the why, the what, and the how of teaching part of the irreducible core of legal education. I have ideas about teaching other parts of the irreducible core—other processes which are law, but that's a topic for another day.

I started this lecture by telling you I feared I would be attempting to describe the indescribable. I feared that because, when push comes to shove, teaching is an art form—at least, evocative teaching is; and the quintessential evocative mode, properly used, is the dialog.²⁷ One can no more convey the essence of a successful dialog than one can convey the overall impact of a painting. Take an O'Keefe or a Hopper, reduce it to its constituent elements—color, line, form, subject matter, medium, application—and what have you said? Not much about its effect on the viewer, because its effect is not reducible to its constituent elements. It is in part a resultant of those elements, but it is much more. It is a creation that ultimately defies analysis. Indeed, analysis may drain it of its life, the way a punch line of a good joke loses its punch when explained. Maybe that's true of evocative teaching also. Maybe, in the end, every serious evocative teacher, through the act of teaching, seeks redemption by expressing his own personal vision in his own personal way. And maybe it is that combination of animating vision and distinctive style that is the crucial, ineffable ingredient of the teaching-learning process.

I end where I began—with thanks. Thanks to about 4,500²⁸ students with whom I have been privileged to study. They have been the reason for my professional life. If a fair number think I have truly helped them prepare for a life in the law, that's redemption enough for me.

27. For a detailed description of “evocative” teaching, see AXELROD, *supra* note 15, at 7–55.

28. Now, it's about 6,000.