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SOCRATES AND LANGDELL IN LEGAL WRITING: IS THE SOCRATIC METHOD A PROPER TOOL FOR LEGAL WRITING COURSES?

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I. INTRODUCTION

Although the Socratic method, in some form or another, has been the dominant teaching tool for first-year classes since the dawn of the modern law school, it is not generally thought of as a tool for the teaching of legal writing classes, and relatively little has been written about its use in that context.¹ However, the Socratic method has the

* Associate Professor of Law, Washburn University School of Law. I would like to thank Jim Levy, Lyn Goering, Steve Ramirez, Mary Ramirez, Brad Borden, Kelly Anders, Bill Merkel, and Aida Alaka for their comments. Special thanks to Dean Dennis Honabach for his comments and Washburn Law School for its financial support of this project. Finally, I would like to thank Melissa Castillo, J.D. 2006, and Heather Ansley, J.D. 2006, for their research and editing help.

1. There are some exceptions to this statement. A few authors have advocated using Socratic methodology in certain facets of the legal writing process. *See, e.g.*, 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 (1991); James B. Levy, *50,000,000 Elvis Fans Can’t Be Wrong: The Socratic Method Works*, 14 SECOND DRAFT 5 (2000); Craig T. Smith, *Synergy and Synthesis: Teaming “Socratic Method” with Computers and Data Projectors To Teach Synthesis to Beginning Law Students*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 113 (2001).

potential to be a useful tool to enrich the teaching of all of the components of a legal writing class.² Further, while the Socratic method has endured many criticisms, the typical legal writing class is particularly suited to ameliorating those criticisms and to bringing out the advantages of the Socratic method.³

Now, more than any other time since the advent of the modern law school, law professors seem to be seeking better ways to teach. There has been an explosion in scholarship by legal writing professors, much of it dedicated to exploring and discovering new and better ways to teach.⁴ Many of these techniques take advantage of new learning theories or advances in technology to provide new and better tools for teaching.⁵

Likewise, professors in other first-year law school classes have not been idle with regard to the examination of new and better ways to teach. Indeed, more and more teachers of other courses in the first-year curriculum are experimenting with methods that were traditionally considered to be solely within the province of legal writing, including memo writing and research exercises.⁶ As this experimenta-

2. See *infra* Part III.

3. See *infra* Parts IV-VI.

4. See, e.g., Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155 (1999); Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts in Legal Method and Analysis*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 37 (2001); Anne Enquist, *Critiquing Law Students' Writing: What the Students Say is Effective*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 145 (1996); Nancy Soonpaa, *Using Composition Theory and Scholarship To Teach Legal Writing More Effectively*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 81 (1997). For more examples of scholarship along these lines, see Michael R. Smith, *The Next Frontier: Exploring the Substance of Legal Writing*, 2 J. ASS'N LEGAL WRITING DIRECTORS 1 nn.12-13 (2004). For older articles, see generally George D. Gopen & Kary D. Smout, *Legal Writing: A Bibliography*, 1 LEGAL WRITING: J. LEGAL WRITING INST. 93 (1991).

5. See, e.g., Robin A. Boyle & Lynne Dolle, *Providing Structure to Law Students—Introducing the Programmed Learning Sequence as an Instructional Tool*, 8 LEGAL WRITING: J. LEGAL WRITING INST. 59 (2002); James B. Levy, *Better Research Instruction Through "Point of Need" Library Exercises*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 87 (2001); Angela Passalacqua, *Using Visual Techniques To Teach Legal Analysis and Synthesis*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 203 (1997).

6. Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing*

tion continues, the distinction between what are traditionally considered “doctrinal” classes, “clinical” classes, and “methods” classes has increasingly lost meaning.

It is important to remember, however, that this exchange of methodology from traditional casebook classes to legal writing classes can work both ways. In the rush to keep up with all the “bells and whistles” of modern technology and educational theory, it is important for legal writing professors to keep in mind that some traditional techniques may in fact be very useful as teaching tools in the legal writing arsenal. One of these tools is the Socratic method.

This article explores the Socratic method and its use as a potential tool for the teaching of legal writing. Part II discusses the Socratic method and its attributes and distinguishes the Socratic method itself from those methods to which it has been inappropriately linked. Part III discusses the advantages attributed to the Socratic method and concludes that those same advantages can be realized in, and are appropriate goals of, legal writing classes. Finally, Part IV goes on to discuss the criticisms of the Socratic method and concludes that while there are real concerns, the effect of these concerns can be reduced or eliminated, particularly in the context of legal writing classes. Although the Socratic method cannot be, and should not be, the sole means of teaching in any course, it is particularly effective in teaching some concepts and should be utilized as a part of the total arsenal of teaching tools available to the legal writing professor.

II. THE SOCRATIC METHOD: ITS RISE AND DEFINITION

A. *Rise of the Method*

The use of the Socratic method as the predominant law school teaching tool came into vogue at the same time as the system with which it is most often linked, the case method. In 1870, Christopher Columbus Langdell became dean of Harvard Law School.⁷ Langdell

Pedagogy in the “Casebook” Classroom (Without Grading Papers), 10 LEGAL WRITING: J. LEGAL WRITING INST. 23 (2004); Susan P. Liemer, *Many Birds, One Stone: Teaching the Law You Love, in Legal Writing Class*, 53 J. LEGAL EDUC. 284, 294 (2003).

7. ARTHUR SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN*, 1817-1967, at 162 (1967).

believed that law should be taught, not as a skilled trade, but rather as a science.⁸ In furtherance of this belief, he introduced the case method of law study, in which students learned the law by reading and discussing cases to extract the scientific legal principles.⁹ In utilizing the case method of study, Langdell relied primarily on what was termed the “Socratic method.”¹⁰ As practiced by Langdell, the Socratic method consisted of having a student analyze each of the cases and then asking a series of questions designed to draw out the legal content of the case.¹¹ Langdell and the students would then work to synthesize and contrast the cases so that, ultimately, the entire area of the law would be made clear.¹² Langdell’s use of the method was an attempt to “foster analytical skills, encourage independent learning, and provide students with the opportunity to practice and refine verbal and rhetorical skills.”¹³

Although Langdell’s methodology was a source of consternation for his students and was disliked even by the faculty, he persevered in its use.¹⁴ Eventually, the case method, and with it the Socratic method, became the predominant means of the teaching of law in the United States.¹⁵ Since that time, the advent of alternative teaching methodolo-

8. See Russell L. Weaver, *Langdell’s Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 527 (1991). Part of Langdell’s motivation was that viewing the study of law as a science helped to justify the existence of law schools by establishing the law as a subject of serious scientific inquiry. *Id.* at 529-30.

9. See *id.* at 531-33. Langdell did not introduce the case method right away. He came to Harvard as the Dane Professor of Law in the spring of 1870, and he lectured on Partnership and Commercial Paper that term. See Samuel F. Batchelder, *Christopher C. Langdell*, 18 GREEN BAG 437, 439 (1906). Langdell’s use of the case method began the next fall, when he assumed the deanship. *Id.* at 440.

10. William C. Heffernan, *Not Socrates, But Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 399, 401-02 (1980); Weaver, *supra* note 8, at 532. According to Heffernan, it was Langdell who coined this term for his method. Heffernan, *supra*, at 402 (citing JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* 12 (1914)).

11. REDLICH, *supra* note 10, at 12, *quoted in* Heffernan, *supra* note 10, at 402.

12. *Id.*

13. 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, 455 (1996).

14. SUTHERLAND, *supra* note 7, at 179-80.

15. See Weaver, *supra* note 8, at 540-43.

gies has expanded the options available for the teaching of law. Nevertheless, the Socratic method remains a significant teaching tool.

B. *The Socratic Method Defined*

From the outset, it is important to distinguish the “Socratic method” from Langdell’s “case method,” for the two are not synonyms.¹⁶ Rather, the Socratic method was the “engine” Langdell chose to power his case method; however, even he did not use the Socratic method exclusively, and in his later stages of teaching, abandoned it altogether for a lecture format.¹⁷ While the Socratic method has been tethered to the case method in much of the legal literature, the case method can be used without necessarily using the Socratic method, and more importantly for the field of legal writing, the Socratic method can be used without recourse to the case method.¹⁸

Further, it is important to understand that the Socratic method as used in the law is not particularly akin to the questioning actually used by Socrates, at least not as it is generally understood.¹⁹ While the

16. See Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911, 911 (1990) (noting that “[a]fter all, Socrates had never heard of *Lawrence v. Fox*, *Palsgraf*, or *Marbury v. Madison*”). But see Suzanne Dallimore, *The Socratic Method—More Harm than Good*, 3 J. CONTEMP. L. 177, 177 (1977) (noting that “the Socratic method is rarely used in the average law class without incorporating the use of a casebook”). Dallimore also notes that “[a]lthough articles have been written emphasizing either the case method or the Socratic method, the articles invariably involve the interrelation between the two.” *Id.* at 177 n.2; see, e.g., Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate over Teaching Method Continues*, 1998 BYU EDUC. & L.J. 1, 5 (1998) (utilizing the case method and Socratic method somewhat interchangeably).

17. See SUTHERLAND, *supra* note 7, at 176-77 (1967); CHARLES H. WARREN, HISTORY OF THE HARVARD LAW SCHOOL AND EARLY LEGAL CONDITIONS IN AMERICA 458 (1908). Langdell’s abandonment of the Socratic method was not by choice. Rather, in his later years of teaching, Langdell’s sight became increasingly worse, and he found it impossible to continue with the use of the Socratic method. However, he had occasionally foregone the use of the Socratic method from the start when dealing with harder cases, preferring to state and analyze these cases himself. *Id.*

18. See Steven Alan Childress, *The Baby and the Bathwater: Developing a Positive Socratic Method*, 18 LAW TEACHER 95, 106 n.1 (1984); Weaver, *supra* note 8, at 545.

19. See Childress, *supra* note 18, at 95 (stating that the Socratic method, as

“classical” example of Socratic questioning to which the Socratic method is most often linked is Plato’s dialogue the *Meno*, the questioning used in that dialogue bears little if any resemblance to the Socratic method as used in law schools.²⁰ As in the *Meno*, Socrates’s dialogues are dialectic—that is, the truth is not known to either of the participants, and the questioning is pursued in an attempt to figure out the truth.²¹ The questioning used in the Socratic method is not dialectic because one of the participants (the professor) knows the answer.²² The purpose of the Socratic method is for the professor to guide the student in discovering that answer for himself or herself.²³ In fact, this mistaken linking of the classical Socratic method with Socrates has accounted for some of the more vitriolic criticism of the Socratic method and even criticism of Langdell.²⁴

If the Socratic method is neither the case method nor Socrates’s method, then what is it? The tendency of legal commentators is to define the Socratic method by defining what it is not.²⁵ However, there is a basic definition: the heart of the Socratic method lies in professor-student interaction. In the most traditional sense, the professor calls upon a student and engages that student in a colloquy, either about a

used in law schools in the United States and United Kingdom, is “a game Socrates never played”); Peter M. Cicchino, *Love and the Socratic Method*, 50 AM. U. L. REV. 533, 539-49 (2001); Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 728-29 (1989) (stating that the technique as practiced in law schools should more properly be referred to as “Langdellian” or even “Protagorean” after Protagoras, a rival of Socrates).

20. See Cicchino, *supra* note 19, at 539-48 (cataloging the problems with the *Meno* as a basis for the Socratic method). *But see* Thomas D. Eisele, *The Poverty of Socratic Questioning: Asking and Answering in the Meno*, 63 U. CIN. L. REV. 221 (1994) (attempting to draw parallels between Socrates’s questioning in the *Meno* and the Socratic method).

21. See J.T. Dillon, *Paper Chase and the Socratic Method of Teaching Law*, 30 J. LEGAL EDUC. 529, 531 (1980).

22. *Id.*

23. Neumann, *supra* note 19, at 729.

24. See, e.g., Lisa Eichhorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 110 (1998) (linking Socrates and Langdell through the Socratic method to show Langdell’s alleged bias against legal writing).

25. See, e.g., Areeda, *supra* note 16, at 911-14 (stating that the Socratic method is not the recitation of the assignment, “antiphonal catechism,” an opinion survey, a “token mid-lecture pause,” or a “critical legal studies invention to demonstrate indeterminacy”).

case or about some other problem.²⁶ As the student answers, the professor poses other questions in an attempt to get the student to delve into the problem in more detail.²⁷ The professor may continue with one student for a time or pose questions to a number of students.²⁸ The students who are not actively answering the question are expected to be following along and considering the problems and answers in case they are called upon next.²⁹

Given this relatively simple and innocuous definition, it seems strange that the Socratic method has engendered such debate. However, commentary and criticism regarding the method is replete throughout legal scholarship, and a fairly comprehensive list of the method's virtues and, to a much greater extent, its flaws has been developed.³⁰ The question for professors teaching legal writing is whether, in the context of teaching that particular course material, the averred virtues of using the method outweigh its alleged flaws. In order to perform this weighing, it is first necessary to look at what advantages the use of the Socratic method brings.

III. ADVANTAGES OF THE SOCRATIC METHOD

Whether their aim is to praise the Socratic method or bury it in criticism, commentators generally agree that the Socratic method provides three very important benefits: (1) it gives professors the ability to teach large bodies of students in an active manner;³¹ (2) it is in-

26. See JAMES E. MOLITERNO & FREDRIC I. LEDERER, AN INTRODUCTION TO LAW, LAW STUDY AND THE LAWYER'S ROLE 183 (2d ed. 2004); Andrew Moore, *Conversion and the Socratic Method in Legal Education: Some Advice for Prospective Law Students*, 80 U. DET. MERCY L. REV. 505, 505-06 (2003).

27. See Moore, *supra* note 26, at 506.

28. See Areeda, *supra* note 16, at 916 (favoring calling on a large number of students over sticking with just one).

29. See *id.*; MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS 16 (2005).

30. For commentary favoring the method see Areeda, *supra* note 16; Childress, *supra* note 18; Stropus, *supra* note 13. For commentary against the method's use see Dallimore, *supra* note 16; Hawkins-Leon, *supra* note 16; Laura Kalman, *To Hell with Langdell!*, 20 LAW & SOC. INQUIRY 771, 771-72 (1995); Jenny Morgan, *The Socratic Method: Silencing Cooperation*, 1 LEGAL EDUC. REV. 151 (1989).

31. See Elizabeth Garrett, *Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools*, 1 GREEN BAG 2D 199, 201-02 (1998) (reviewing LANI

strumental in teaching cognitive skill development—to teach students to “think like a lawyer”;³² and (3) it helps students to hone their verbal skills.³³ These benefits are as useful in legal writing classes as in their casebook-centered counterparts.

A. Advantages of the Socratic Method as a Tool for Active Learning

One of the principle benefits that the Socratic method confers is to allow large bodies of students to engage in “active learning.”³⁴ “[S]tudents learn better when they are actively involved in the learning process” rather than passively taking notes as the teacher dispenses information.³⁵ Research has shown that active learning techniques foster the development of thinking skills; “help[] students grasp, retain, and apply content” to new situations; and improve student motivation to learn.³⁶

The Socratic method helps extend the benefits of active learning to larger groups. Through Socratic questioning and answering, the professor and the student being questioned engage directly in active learning.³⁷ More importantly, on another level, the rest of the class is also engaged in active learning: the use of the Socratic method encourages the students to read the material and think critically about the material before class so that they can respond if called upon.³⁸ Further, because the students do not know at what point in the discussion they will be called on, they are encouraged to actively follow the dialogue

GUINIER, MICHELLE FINE & JANE BALIN, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997)); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 406 (1999).

32. See James R. Beattie, Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471, 493-94 (2003); Childress, *supra* note 18, at 101-02; Garrett, *supra* note 31, at 201; Edward D. Olhbaum, *Basic Instinct: Case Theory and Courtroom Performance*, 66 TEMP. L. REV. 1, 8-9 (1993); see also MOLITERNO & LEDERER, *supra* note 26, at 173 (stating that the primary goal of the Socratic method is to “teach students to think”).

33. See Stropus, *supra* note 13, at 468-69.

34. See Garrett, *supra* note 31, at 201-02.

35. Hess, *supra* note 31, at 402-03; see Areeda, *supra* note 16, at 921 (stating that students “learn best by doing”).

36. Hess, *supra* note 31, at 402-03.

37. *Id.* at 406.

38. Garrett, *supra* note 31, at 202.

between the professor and the answering student and be ready to engage in it if called upon to do so.³⁹ Thus, to a large extent, the Socratic method encourages all of the students to engage in the same process as the student who is “on call,” if only in their own minds.⁴⁰

At first glance, this benefit of the Socratic method might seem to be of little added value to the legal writing course. It is true that the standard legal writing course, of whatever description, generally has a much lower class size than other first-year courses.⁴¹ Because of this smaller class size, legal writing faculty are able to, and already do, employ a large variety of “active learning” techniques, such as individual in-class exercises, group exercises, and in-class writing.⁴²

However, even though legal writing classes contain more opportunities for active learning than other first-year courses, there is still a large amount of time that is spent in traditional classroom instruction.⁴³ The 2004 joint survey of the Association of Legal Writing Directors and the Legal Writing Institute indicated that the average instructor spent approximately one-third of in-class time in what the survey categorized as “lecture.”⁴⁴ It is this one-third of classroom time that should be of concern to legal writing professors. The standard legal writing class has many concepts to cover, and because each of them fit together, it behooves professors to make sure that they are

39. *Id.*; Hess, *supra* note 31, at 406.

40. *See* Hess, *supra* note 31, at 406; Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 117 (1999) (arguing that the Socratic method causes students to “learn legal analysis by doing it, either in their own minds or in an oral exchange with the professor”).

41. *See* ASS’N OF LEGAL WRITING DIRS./LEGAL WRITING INST., 2004 SURVEY RESULTS (2004) 4, available at <http://www.alwd.org/alwdResources/surveys/2004/surveyresults.pdf> [hereinafter ALWD SURVEY]. “In the 2003-04 academic year, the ‘average’ [legal writing] faculty member taught 45 entry-level students . . .” *Id.* at v. Further, this number reflects total students rather than class size. At my school, I am responsible for forty-four students overall, but they are divided into two sections, which means that the actual size of each class is twenty-two students, rather than the seventy-five in most of the other first-year courses.

42. *See id.* at 10-11. These activities are in addition to the major out-of-class writing assignments given throughout the year, including the preparation of office memoranda, client letters, and trial and appellate briefs. *Id.* at 10.

43. *See id.*

44. *See id.* The actual percentage was 32.8%, with the minimum response at 5% and the maximum response at a somewhat curious 100%. *Id.*

communicating these concepts to the students in the most effective manner possible. To the extent the Socratic method can help foster greater learning on the part of the students, it is a useful tool for the legal writing professor's teaching arsenal.

*B. Advantages of the Socratic Method as a
Tool for Cognitive Development*

The second asserted virtue of the Socratic method is its usefulness in helping to further students' cognitive development in the law. Perhaps the most important and difficult task for law students in their first year is to learn how to "think like a lawyer."⁴⁵ Teaching this skill is important because law schools must do more than simply teach students black letter law. The law itself is subject to change, and students who know only the black letter law will soon find their knowledge outdated.⁴⁶ In addition to the black letter law, students must learn legal reasoning: how to analyze the reasoning behind a particular case or statute in order to pick out the relevant legal ideas; how to synthesize legal rules from a number of cases and apply those rules to novel situations; and how to construct logical arguments for why such an application is correct.⁴⁷ In teaching these skills, law schools provide students with the tools and experience they will use in practice, rather than simply giving them information—the tools and skills of legal carpentry, rather than simply the lumber.⁴⁸

45. See Childress, *supra* note 18, at 102; see also Burnele V. Powell, *A Defense of the Socratic Method: An Interview with Martin B. Louis (1934-94)*, 73 N.C. L. REV. 957, 987 (1995). Professor Martin Louis states that "using your knowledge of the law to work on a case[] is the most difficult and most important art" for a lawyer. *Id.*

46. I am not advocating that law schools only teach process, as students need to know black letter law as well.

47. See Garrett, *supra* note 31, at 201. Garrett states that "lawyers are, first and foremost, problem solvers, and the primary task of law school is to equip our students with the tools they need to solve problems." *Id.*

48. See Weaver, *supra* note 8, at 550. Weaver references the following quote from New York lawyer Charles Thaddeus Terry:

"The mind is not a receptacle to be crammed with unrelating chunks of information. The purpose of education is to teach the student to think. The power to think does not depend upon memory. What the student will need for his business or professional career is not scraps of knowledge. The possession of a lot of lumber does not make a carpenter. It is ability and

This is not an easy process, in large part because it is often different from anything that students have experienced prior to law school. Most of the teaching students have experienced prior to law school places a premium on knowledge of facts rather than process.⁴⁹ Even at the undergraduate level, professors are often seen as dispensers of information whose job is to convey the subject matter to students for their consumption.⁵⁰ As a result, students who are used to learning in a passive manner can find that the use of the Socratic method induces “significant culture shock.”⁵¹

The Socratic method teaches legal reasoning in a variety of ways. The probing nature of the Socratic method teaches students the forms of argument that they will engage in as lawyers, as well as the need to justify that argument in a logical manner that can withstand scrutiny.⁵² Questioning through the Socratic method also helps highlight basic errors or flaws in reasoning so that students can understand their nature and how to avoid them in the future.⁵³ The method also encourages students to engage in critical inquiry, not only of their own thoughts, but also of the thoughts of the professor and other students.⁵⁴ Further, the Socratic method helps teach precision, not only in the use of language, but also in reasoning itself.⁵⁵ Most importantly, the Socratic method encourages students to engage in these concepts independently, by working through the process themselves (albeit with guided

skill in the use of tools which make a carpenter. Lumber is obtainable at all times. Skill in the use of tools is the result of handling them.”

Id. at 550 n.96 (quoting Young B. Smith, *The Study of Law by Cases: A Student's Point of View*, 3 AM. L. SCH. REV. 5, 253 (1913)).

49. See Stropus, *supra* note 13, at 474-75 (noting that in most undergraduate courses students are “passive consumers of information, rather than independent thinkers and analysts”).

50. See *id.* at 475.

51. Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 957 (1996); see also SCHWARTZ, *supra* note 27, at 17.

52. See Childress, *supra* note 18, at 102.

53. *Id.*

54. *Id.* at 103. Childress notes that because the student must engage in critical inquiry regarding both his thinking and the thinking of his professor, “[t]he method not only causes the student to think; it makes him think twice.” *Id.*

55. *Id.*

direction by the professor) rather than having the arguments simply given to them by the professor.⁵⁶

It is difficult to overstate the importance of acquiring this analytical skill: Professor Ruta Stropus notes that in today's competitive law firm environment, "the opportunity and financial costs associated with lawyer training have made any meaningful 'on the job' training obsolete";⁵⁷ instead, "[l]aw firms demand that the model attorney come 'completely assembled' and 'ready to work.'"⁵⁸ Thus, from the time they walk through the doors of the law firm, newly-minted lawyers must have the ability to "think like lawyers" and to do so independently, with minimal help from senior attorneys.⁵⁹

Teaching students to "think like lawyers" goes to the heart of what legal writing classes do. While all classes in law school should be geared toward teaching students the analytical skills necessary for law practice, the legal writing classroom provides an especially fertile laboratory for this particular set of skills.⁶⁰ Legal writing courses are generally unencumbered by the need to educate students in a particular subject's black letter law and thus are able to provide a greater focus on the process of legal analysis.⁶¹ Further, because legal writing courses are not wed to any particular area of the law or the case method, they can expand this analysis to material beyond appellate court cases to include a wide variety of factual situations encompassing many different areas of the law.⁶²

56. See Stropus, *supra* note 13, at 467 (stating that the approach used through the Socratic or "Langdellian" method depends upon individual effort rather than a context provided by the text or an expert); Areeda, *supra* note 16, at 915 (stating that methodologies are better absorbed by actual practice than by passive instruction). This focus on independent learning ties in with the other benefit of the Socratic method: its tendency to encourage "active learning." See *supra* notes 34-44 and accompanying text.

57. Stropus, *supra* note 13, at 470.

58. *Id.* at 471.

59. *Id.* at 471-72.

60. See David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 140-42 (2003).

61. *Id.* at 143. This is not to say that legal writing courses are devoid of doctrine, but rather that the doctrine of legal writing focuses less on black letter law than on "best practices" and legal strategy. See Smith, *supra* note 4, at 8-13.

62. See Romantz, *supra* note 60, at 142-43. Of course, many of the so-called "doctrinal" courses have made substantial innovations in this process, as shown by

Given this commitment to the teaching of legal analysis, and the particular suitability of legal writing courses to teach it, it would seem foolish to ignore a tool that shows promise to help in this endeavor. Failure to consider the Socratic method should not be excused by pointing out the many other ways in which legal writing courses strive to teach legal analysis; rather, legal writing teachers should be willing to consider, and to employ where beneficial, every tool which contributes to conferring this vital skill.

There are a number of ways in which the Socratic method can be used to help teach analytical skills in the legal writing classroom. Many of the standard texts used in legal writing contain exercises that can be worked through Socratically.⁶³ Legal writing professors have also experimented with using the Socratic method, combined with technology, to enhance the teaching of case synthesis.⁶⁴ Technology, combined with the Socratic method, can also be used to walk students through the research process, with the students making choices as to which research material to consult, and the professor displaying the results on a screen as each choice is made.

Further, the application of the Socratic method is not limited to the actual class time itself. Mary Kate Kearney and Mary Beth Beazley have reported success with using the Socratic method in commenting on students' writing.⁶⁵ Under this approach, the professor

the number of courses that now integrate statutory analysis and problem-centered teaching in their pedagogy. Although to some extent still focused on one particular area of the law, these courses provide a more holistic view of the law than reliance on simply reading appellate opinions can provide. *See, e.g.*, Hawkins-León, *supra* note 16, at 8-9 (stating that one of the professed accomplishments of the problem method is that it allows for "the integration of relevant, non-legal source materials . . . which may lead to a more enriched curriculum and allow students a greater breadth of inquiry").

63. *See, e.g.*, CHARLES R. CALLEROS, *LEGAL METHOD AND WRITING* (2002); LINDA EDWARDS, *LEGAL WRITING AND ANALYSIS* (2003). The teacher's manual for Edwards' book notes that one of the ways in which the exercises may be used is "in a more-or-less Socratic fashion." LINDA EDWARDS, *LEGAL WRITING AND ANALYSIS TEACHER'S MANUAL 1* (2003).

64. *See* Smith, *supra* note 1, at 115. Smith contends that using technology such as document projectors and projections of computer screens can provide a "visual focus and context for Socratic questioning" that can help students. *Id.* at 123.

65. *See* Kearney & Beazley, *supra* note 1, at 890-902. According to Kearney and Beazley, the use of Socratic comments in critiquing student writing fosters independence on the part of the students and is better than the standard critique where

responds to the students' writing with Socratic questions that help the students to comprehend the problems a reader has in understanding the students' writing and forces the students to take responsibility for revising the writing.⁶⁶

While these examples are by no means exclusive, they counteract the perception that the Socratic method is of little use in legal writing classes. Rather, the Socratic method provides benefits in learning legal analysis that extend throughout the curriculum.

C. *Advantages of the Socratic Method as an Additional Encouragement to Talk*

Although more of a by-product than an actual goal, at least originally, a very important additional benefit of the Socratic method is that it encourages students to talk.⁶⁷ This in and of itself is a vital skill no matter what type of law the students will actually go on to practice. Talking is the foundation for many things that lawyers do—talking to clients, talking to judges, and talking to other attorneys.⁶⁸ However, because undergraduate education relies on a passive mode of learning, many students' verbal skills have become rusty by the time they arrive at law school, at least rusty in the sense of verbally crafting logical arguments.⁶⁹

the instructor suggests a correction. *Id.* at 899-900. Using the Socratic comment helps to strike a balance between making comments that are too general, giving the student little guidance, and comments that are so specific that they “appropriate the revision from the student.” *Id.* at 901. When the professor makes the correction, the students “do not understand why the teacher’s revision is better.” *Id.* at 902.

66. *Id.* at 900-01.

67. See Stropus, *supra* note 13, at 468-69.

68. See Garrett, *supra* note 31, at 202 (noting that “[s]peaking in public, whether in the courtroom, before a group of clients or opposing counsel, or in a meeting of lawmakers working to draft a statute, is part of every lawyer’s job, so developing the ability to present ideas forcefully and effectively in such contexts is integral to becoming a lawyer”).

69. See ERNEST L. BOYER, COLLEGE: THE UNDERGRADUATE EXPERIENCE IN AMERICA 81 (1987) (noting that “three fourths of the students in a senior course agreed that they could have completed [their entire undergraduate education] without having ever spoken in class”); Stropus, *supra* note 13, at 469 n.134 (arguing that the “lack of verbal training in undergraduate education places a premium on its role in law school”). I offer myself as an example of this phenomenon. Prior to college, I was a frequent talker in class and out. However, by the time I finished my under-

Because the Socratic method requires students to speak in class, the students have the opportunity to “refresh” their speaking skills and to refine their ability to craft a logically correct and convincing argument.⁷⁰ This verbalization also helps students to see both the strengths and weaknesses of their arguments, and the arguments of their professors and colleagues, in a way that they would not get by simply reading about the arguments or passively listening as the arguments are recited to them.⁷¹

Further, the Socratic method allows students to hone their verbal skills in a relatively “safe” environment, especially in legal writing classes.⁷² Although some who have been through the Socratic method may disagree with the assessment of the classroom as a safe place,⁷³ it is far better for students to learn to speak and craft a reasoned verbal argument in front of a small number of classmates than to do it for the first time in front of a judge or senior partner and to feel that their legal careers are limited because they lack speaking ability.⁷⁴ The legal writing classroom is in fact one of the safest places to do so, given that the number of persons in the class are generally much smaller than in other first-year classes.

Once again, this might seem like a small benefit for legal writing classes. After all, legal writing programs already do many things that

graduate degree, I had been lulled into silence and found it difficult to contribute. It took law school to reawaken my verbal skills. Now, as my wife would attest, you can't get me to shut up.

70. See Kerr, *supra* note 40, at 117; Stropus, *supra* note 13, at 469.

71. Stropus, *supra* note 13, at 469. Stropus argues that this is especially beneficial: “For as every attorney knows, it is one thing to ‘learn a body of doctrinal law or to speculate on policy arguments; it is quite another to verbalize that knowledge.’” *Id.* (quoting Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 150 (1988)).

72. See Garrett, *supra* note 31, at 204 (noting that a classroom is a “relatively safe place compared to the professional world”); see also Paul D. Carrington, *Hail! Langdell!*, 20 LAW & SOC. INQUIRY 691, 747 (1995) (stating that “[i]n being required to engage in public dialogue with a teacher, students are eased into the role of advocacy in a public forum”).

73. See *infra* notes 88-98 and accompanying text.

74. Interestingly, not all students appear to agree with this assessment. See Powell, *supra* note 45, at 967. Professor Louis noted that some of his students told him they would “rather worry about learning [speaking skills] effectively in practice than finding out now that they are ineffective at it.” *Id.*

require students to communicate, including oral advocacy.⁷⁵ However, many of these communication opportunities are of the more formal variety, where the students have a great deal of time to prepare in advance.⁷⁶ There is considerable value in providing students with more frequent opportunities to “think on their feet” and to respond to rapidly developing situations. Lawyers, no matter their practice area, do not always have the luxury of a large amount of lead-time before they must pull together an argument and respond. The Socratic method encourages students to follow along in the discourse and be ready to respond, on topic, on short notice.⁷⁷ This ability can be highly valuable in the legal world where lawyers are often required to perform legal analysis quickly and react to changing circumstances. It is a key component of communication and one that legal writing classes should seek to foster.

Further, as noted above, the legal writing classroom provides an especially safe haven for law students to develop their speaking skills. Part of this is simply due to the size of the classes; it is much less intimidating for a person to talk in front of 21 of his or her classmates than 75 to 100 of them. More important, however, is that the small size of the legal writing class allows for more camaraderie between students, as well as a closer-knit professor-student relationship. Similarly, the nature of the assignments in legal writing requires more professor-student interaction than in other first-year courses. Taken together, these factors result in a classroom dynamic that is much less intimidating than in other first-year courses and provide a more inviting atmosphere for the student to develop his or her verbal skills. Thus, the legal writing class can serve as an important intermediary between the less verbal undergraduate experience and the verbally

75. See ALWD SURVEY, *supra* note 41, at 10. The 2004 survey of legal writing curriculums reveals that 56 responding programs included a pretrial motion argument, 28 programs included a trial motion argument, 138 programs included an appellate brief argument, 62 programs included an in-class oral presentation, 42 programs included an oral report to a senior partner, and 16 included some “other oral skill.” *Id.*

76. See *id.* The lead time on many of the oral communications opportunities such as trial motion argument and appellate brief argument are quite lengthy. In my class, for instance, students have almost two weeks from the time they turn in their final draft of the brief to the time that they give their oral argument.

77. See Stropus, *supra* note 13, at 469.

demanding first-year law school experience: those law students who “cut their teeth” by speaking in their smaller legal writing class gain not only the confidence, but also the verbal reasoning skills that will allow them to speak, and speak well, in their other classes.

* * *

As the above analysis demonstrates, the Socratic method has the potential to provide great benefits in learning many of the skills that legal writing classes seek to teach. The Socratic method helps advance “active learning,”⁷⁸ which can be of benefit even in highly active legal writing classrooms, and it helps promote analytical⁷⁹ and verbal⁸⁰ skills, both of which are important goals of a legal analysis, research, and writing program. Further, the nature and environment of legal writing programs have the capability to make these attributes of the Socratic method even more effective.⁸¹

However, this analysis alone does not mean that the Socratic method is an advisable tool for the legal writing classroom. Despite the benefits of the Socratic method, it has also been highly criticized, and many of those criticisms come in areas of special importance to legal writing. Thus, it is vital to weigh those criticisms against the Socratic method’s benefits in order to determine its advisability for the legal writing classroom.

IV. CRITICISMS OF THE SOCRATIC METHOD

Perhaps more than any other teaching technique, the Socratic method has drawn a host of criticism on a variety of fronts. The method has been criticized on the grounds that it (1) humiliates and terrorizes students;⁸² (2) is especially harsh on women and tends to establish a “hierarchical status quo”;⁸³ (3) “hides the ball” and wastes

78. See *supra* Part III.A.

79. See *supra* Part III.B.

80. See *supra* Part III.C.

81. See *supra* notes 41-44, 60-66 and accompanying text.

82. See Dallimore, *supra* note 16, at 182-84; Kalman, *supra* note 30.

83. See LANI GUINIER, MICHELLE FINE & JANE BALIN, BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 58-62 (1997); Kerr, *supra* note 40, at 121.

class time;⁸⁴ (4) induces boredom in students and laziness in professors;⁸⁵ and (5) does not teach needed skills.⁸⁶ However, while all of these criticisms have some merit, most of them have little to do with the Socratic method per se; rather, they have to do with individual professors' use (or misuse) of the method.⁸⁷ To the extent that the argument is that the Socratic method is particularly susceptible to such misuse, the argument may be valid. However, even then, some modifications can be made to help ameliorate some of the disadvantages of the Socratic method, while still keeping its advantages.

A. Exploring the Argument That the Socratic Method Tends to Humiliate or Terrorize Students

The main charge that has been leveled against the Socratic method's use is that the method humiliates and terrorizes students. This is unfortunately also the aspect of the Socratic method that has become most sensationalized in books and movies: Professor Kingsfield calling a student who does a bad job answering a question down to the podium, giving him a dime, and stating, "Go call your mother, and tell her you'll never be a lawyer";⁸⁸ or Professor Perini, dismiss-

84. See Areeda, *supra* note 16, at 914-16.

85. See Dallimore, *supra* note 16, at 181-82.

86. See *id.* at 179-81; Kerr, *supra* note 40, at 119-20.

87. See *infra* notes 100-102 and accompanying text.

88. JOHN J. OSBORN, *THE PAPER CHASE* 3 (1971). It should be noted, however, that Kingsfield never actually utters this line in the book. Rather, it is a story passed down through the ranks of the law students. According to some versions of the story, the student, on his way out of class, screams "You're a son of a bitch, Kingsfield," at which point Kingsfield tells him "That's the first intelligent thing you've said. Come back. Perhaps I've been too hasty." *Id.* Thus, the story emphasizes how much of a supposed game the Socratic method is for professors, who callously disregard the impact of their actions on the students while seeking to make witty comments. Interestingly, it appears that the story actually happened. See ATTICUS FALCON, *PLANET LAW SCHOOL* II 331-32 (2003). The real incident took place in the classroom of Edward Henry "Bull" Warren, who taught at Harvard from 1904 to 1943. Warren didn't actually offer the student money, but did tell him to leave the classroom. As the student was leaving, he turned and stated that Warren could "go plumb straight to Hell." At which point Warren stated: "Sit down, Sir. Sit down. Your response makes it clear that my judgment was too hasty." *Id.* The story from *The Paper Chase* has also inspired a story wherein a student, who has received the same treatment at the hands of a Kingsfield-admiring law professor, turns around on the way

ing students' answers with "No," "Never," "Silly," and "You think *that* makes sense?"⁸⁹ At times, it seems as if the Socratic method must be popular literature's metaphor for everything that is supposed to be difficult and dehumanizing about law school.⁹⁰

However, hyperbole from popular fiction (and nonfiction) aside, there is ample evidence that a large number of students have found the Socratic method, at least in the way it was conducted in their classes, to be both humiliating and terrorizing.⁹¹ Part of this terror comes from the perceived hostility and smugness of the professors in questioning. Duncan Kennedy, in his essay *How the Law School Fails: A Polemic*, reported: "A great many students, of all levels of academic competence and of many varieties of personality, feel the [S]ocratic method (the basic question and answer, suggestion and criticism, approach, rather than the stricter version once popular and now practiced by only a few teachers) is an assault."⁹² Kennedy characterizes the experience as one where "the professor smil[es] quietly to himself as he prepares to lay [the student's] guts out on the floor yet once again, paternally," and one in which the professor has "a license to inflict pain."⁹³ Another former student reported that, as a result of the Socratic method, she saw the law school as "a jungle through which one proceeded warily, always anticipating a pouncing."⁹⁴

out of class and says: "NO Clyde. I have a BETTER idea. YOU take this dime, and you go call ALL YOUR FRIENDS!!!" James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1688 (1971).

89. SCOTT TUROW, ONE L 73 (1977).

90. See Kerr, *supra* note 40, at 134 (stating that "the Socratic method serves as a proxy for all that is right or wrong with traditional legal education"). A rather extreme example of this is the boldly titled fictional book MICHAEL LEVIN, *THE SOCRATIC METHOD* (1987). The book's ineffective and incompetent professors all rely on the Socratic method, although use of the Socratic method is not actually portrayed. *Id.* A professor who uses the method with a vengeance attributes the suicide of three students to "strictly Socratic method stuff." *Id.* at 182.

91. See Stropus, *supra* note 13, at 456-57. Although generally complementary toward the Socratic method, Stropus concedes that "when abused, the method can have devastating effects." *Id.* at 457.

92. Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71, 72-73 (1970). This essay was written while Kennedy was still a student at Yale. *Id.* at 71.

93. *Id.* at 74, 80.

94. Kalman, *supra* note 30, at 771. Kalman reports that "[t]hough I never actually suffered a traumatic experience because of the Socratic method, I assumed I

Another perceived source of humiliation and terror comes from the use of the Socratic method as the student's only external source of personal validation prior to the exam.⁹⁵ With little external feedback on how they are progressing, many students find that their self-esteem depends on their demonstrations of ability in class.⁹⁶ If these students make a mistake when called on, the psychological effects can be devastating to them.⁹⁷ Further, this need for validation can also cause students to engage in disrespectful behavior towards their peers in the course of Socratic questioning in an effort to distinguish themselves.⁹⁸

These perceived problems with the Socratic method are particularly troubling to professors who teach legal writing. The closer-knit professor-student relationship provided by the smaller class sizes and frequent one-on-one contact in legal writing works both ways. Just as students come to view their legal writing class as their "home room," legal writing professors feel a special responsibility toward the intellectual development of those students. There is a well-founded reluctance on the part of such teachers to employ a method of teaching that has the potential to alienate or cause psychological trauma to students, or to damage the teacher-student relationship that is essential to learning many of the skills that legal writing seeks to teach—at least not without solid proof that the pay-off will be worth it.⁹⁹

risked one daily." *Id.*

95. See Stropus, *supra* note 13, at 457.

96. See Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 286-87 (1979) (reporting lack of feedback as a pressing problem in law schools).

97. See *id.* at 287; Stropus, *supra* note 13, at 457.

98. See Garrett, *supra* note 31, at 203.

99. This is most certainly not because such professors lack the will to instill intellectual rigor in their students. Rather, it is a recognition that many of the skills taught in legal writing classes depend on the students' willingness to absorb and apply the information communicated, to take critical comments on their writing without perceiving them as personal attacks, and to give their best effort in every single phase of the analytical, research, and writing process. This process requires a large amount of trust in the professor and cannot be easily achieved if the students perceive the professor as hostile or feel alienated.

This is not to say that the dynamic is not the same in other law school courses—just that it is particularly pronounced in legal writing courses. After all, ten alienated and traumatized students in a one-hundred-person contracts class, while not desirable or even healthy, is not really an impediment to the conduct of the class. The same number of alienated and traumatized students in a twenty-two-person legal

However, it is questionable whether these perceived problems are really the fault of the Socratic method itself. Rather, as many commentators have noted, they appear to be the result of the *misuse* of the Socratic method in such a way as to turn it from a tool to encourage learning into a tool to feed the ego of the professor.¹⁰⁰ When the questioning of a student becomes simply a vehicle for the professor to demonstrate his or her superiority over the students, or to “play to the crowd” by putting down one student, then the fault lies with the professor, not the method.¹⁰¹ While there is an argument to be made that

writing section, where each student also has mandatory individual meetings with their professor, is a real problem. On the whole, it would be better for both courses if students were sufficiently challenged and pushed without being humiliated or traumatized.

100. See Areeda, *supra* note 16, at 917-18; Garrett, *supra* note 31, at 203. Philip Areeda decried an example of the method’s misuse where the instructor keeps pressing a hypothetical to the extreme until a student is forced to agree that his answer does not work for all related cases. According to Areeda, this approach leaves “the student with the impression that he was fodder for the instructor’s ego-satisfying demonstration of superiority.” While “[i]t is a perfectly appropriate lesson that an otherwise sound proposition may cease to be sound when pressed to the extreme,” “there are gentler ways to make that point,” such as discussing the extremes and then working toward the middle to see how intermediate cases should be resolved. Areeda, *supra* note 16, at 917-18.

101. See Garrett, *supra* note 31, at 203 (noting that “[p]rofessors who are intolerant of opposing perspectives, who are mean or rude to students, who abuse their power in order to intimidate students are bad teachers—whether they engage in a Socratic dialogue or use a lecture format”).

There has been some tendency for advocates of the Socratic method to deny that such conduct is a problem. See Childress, *supra* note 18, at 99 (noting the common criticism that “any attempt to ‘humanise’ the Socratic Method quickly runs into charges of emasculation”). According to the standard justification, the humiliation and terror brought on through Socratic questioning are important to prepare students for the stress of law practice. *Id.* It is perhaps an indictment of this view that this was the justification offered by Professor Clapp in Levin’s book, *The Socratic Method*. When informed by the dean that another of his students had committed suicide, Professor Clapp protested, “We’ve got to train our students to be tough and to stand up for themselves under fire in the courtroom.” LEVIN, *supra* note 90, at 182. The justification is simply incorrect. As Professor Susan Dallimore points out, there is no real correlation between the kind of toughness needed to endure being embarrassed by a professor and the toughness needed for law practice. Dallimore, *supra* note 16, at 184. Rather, the practice of law involves dealing with people and, often, cooperating with them. In such circumstances, the toughness brought on by being humiliated by a professor can be counterproductive. See *id.*; Childress, *supra*, at 102. Childress argues that such humiliation produces cynicism and quotes Professor Paul Carrington

the Socratic method provides more of a forum for such behavior than other teaching methods because it encourages more interaction between student and professor, the method is not the cause of the problem.¹⁰²

It is possible to retain the benefits of the Socratic method while at the same time guarding against the risk that students will be humiliated or terrorized by its application. One way to reduce the potential for humiliation and terror is for the professor to provide context for his or her use of the Socratic method.¹⁰³ In effect, the professor educates the students about the methodology, explaining that the Socratic method is employed to teach concepts, not to humiliate students, and that while students may make a mistake, such mistakes are not only an inevitable part of the learning process, but also a valuable contribution to the discussion.¹⁰⁴ By explaining the purpose behind the methodology, the professor can “demystify” the process and reassure students that there is indeed a “method” to the professor’s use of the Socratic method, thus reducing the students’ stress.¹⁰⁵

If the real problem is not the method itself, but professors’ tendency to misuse the method, then there is an easy antidote: respect.

for the proposition that “the cynical lawyer is an ugly menace, not only to others, but ultimately to himself.” *Id.* at 102, 108 n.33 (quoting Paul D. Carrington, *Training for the Public Profession of Law: 1971*, in *NEW DIRECTIONS IN LEGAL EDUCATION* 95 (H. Packer & T. Ehrlich eds., 1972)). I contend that it is possible to apply the Socratic method in a rigorous manner without humiliation. *See infra* notes 103-116 and accompanying text.

102. *See* Childress, *supra* note 18, at 107 n.20 (contending that personal abuses can surface in other discussion methods and that even lectures, depending on tone and attitude, can hurt students psychologically); Garrett, *supra* note 31, at 203.

103. *See* Stropus, *supra* note 13, at 478-79.

104. *Id.*

105. *See id.* at 479. I would not, however, recommend explaining the concept in the same way as Professor Kingsfield in the film version of *The Paper Chase*. Kingsfield’s idea of “demystifying” the process was explaining that:

We use the Socratic method here. I call on you, ask you a question, and you answer it. . . . Through this method of questioning, answering, questioning, answering, we seek to develop in you the ability to analyze that vast complex of facts that constitute the relationships of members within a given society. . . . You teach yourselves the law, but I train your mind. You come in here with a skull full of mush, and you leave thinking like a lawyer.

THE PAPER CHASE (Twentieth Century Fox 1973).

First, professors must have respect for their students. This really should not be terribly difficult. Many students come to law school having enjoyed successful careers in other fields; other students may have undergone rigorous military training; even students who come to law school straight from their undergraduate programs have often enjoyed great success in both academic and extracurricular pursuits. Law students are not children; rather, most of them are just three years away from being practicing lawyers. The task of a law professor is to help train them for this profession, because the law professor has experience that the students do not yet have. However, this does not mean that law students' previous accomplishments are not deserving of respect. It is important for professors to remember this need for respect when using the Socratic method and to communicate this respect to the students.

Just as important is the professor's security that students will respect the professor's role in the process. Some of the worst abuses of the Socratic method appear to stem from the professor's insecurity. A professor who is secure in his or her authority is one who is less likely to "play to the crowd" by putting down one student or to demonstrate his or her superiority by showing that he or she can "outdraw the students at ten paces" on a legal issue.

Generally speaking, this too should not be such a difficult thing to do. There is a reason that students have come to law school, and I think that most of them are predisposed to respect the professor's knowledge and ability. Even those who do not, however, are hardly likely to be forced into respect through public humiliation.

In arguing for respect as an antidote to the misuse of the Socratic method, I do not mean to suggest that professors should abandon requiring detailed critical analysis in favor of simply being nice. Such a course of action is not respectful towards the students; rather, it is paternal.¹⁰⁶ Students need to be told when they are going down the wrong path, or else the Socratic method loses much of its effectiveness.¹⁰⁷ This requirement might result in taking students outside their comfort level and may still cause some student stress. However, this

106. See Childress, *supra* note 18, at 105 (stating that a "loose discussion method" that does not attempt to correct mistakes and where every response is considered relevant is "more condescending than understanding").

107. See Powell, *supra* note 45, at 964-65 (interviewing Professor Martin B. Louis).

type of stress is a part of active learning and, if done in a respectful manner, should not cause unwarranted humiliation for the students.¹⁰⁸

As stated by Professor Martin B. Louis, respectful rigorous questioning is “like playing tennis against the pro. Every now and then he’ll hit one by you just to show you left an opening. I don’t hate my tennis pro because he demonstrates to me that I didn’t do it right and I was vulnerable to a passing shot.”¹⁰⁹ However, Professor Louis is also quick to point out that a “pro who simply . . . hit the ball by you all the time and simply made you feel inadequate is a poor teacher.”¹¹⁰

Granted, it is not always easy to find the right line between sufficiently challenging students and causing unwarranted stress. The line may change from student to student and from one part of the material to the next. However, if professors respect their students and are secure in the knowledge that their students respect them, the line becomes much easier to discern.

Further, I would argue that finding the balance between challenging students and causing them humiliation is easier for those professors teaching legal writing than those in other courses. First, most legal writing courses take place during the first year of law school.¹¹¹ Students in their first year often enter school eager to learn and thus are more likely to prepare seriously and want to do well. This does not always happen with students in their second or third years, when the class rank becomes more established. Second, legal writing programs tend to break down the class work into discrete skills with immediate real-world application, as opposed to other first-year courses in which it may take some time before students begin to put everything together.¹¹² Third, legal writing classes have a number of assignments throughout the course of the year that give students feedback in a variety of ways.¹¹³ As a result, students have benchmarks for their performance other than whether or not they perform well during Socratic questioning in class.

108. *Id.* at 965. Professor Louis contends that this is the kind of pressure that students are paying for. *Id.*

109. *See id.* at 961 (interviewing Professor Louis).

110. *Id.* at 964.

111. *See* ALWD SURVEY, *supra* note 41, at 6.

112. *See id.* at 9-11 (reporting on the curriculum of legal writing programs).

113. *Id.*

Most important, however, is the classroom dynamic fostered by the smaller class size and the level of one-on-one communication with the professor. Because the class size is smaller and the students are forced to have personal interaction with their professor and each other, the classroom dynamic is simply more close-knit than in a class of 70 to 100 students in which the student may not have personal interaction with the professor except during those times when the student is called on in class. This closer contact with the professor makes the professor seem more “human” to the students; he or she is not the seemingly unapproachable, Zeus-like figure at the front of the classroom who dispenses wisdom, but whose contact with an individual student is mostly limited to a lightning strike of a question hurled from on high.¹¹⁴ Instead, the legal writing professor is that person who has been working closely with students throughout the year on a variety of assignments which have immediate and easily understood practical application.¹¹⁵ In such a setting, students are more apt to develop a reservoir of trust in the professor and respect for the things that the professor is trying to teach them. Conversely, the professor learns about the individual strengths and backgrounds of the students and is more apt to develop a level of respect for them. This reservoir of strength and mutual respect can go a long way towards discouraging abuse of the Socratic method and preventing problems if such abuses occasionally do occur.¹¹⁶ The mutual respect that students build for

114. I realize that I am mixing mythology in my metaphor. Athena, of course, was the Greek goddess of wisdom; Zeus tended to stick with the lightning bolts. *See* THOMAS BULFINCH, *MYTHS OF GREECE AND ROME* 16-21 (Bryan Holme ed. 1979). I also do not want to imply that professors who teach other courses are somehow actually distant and unapproachable. I know that most of my colleagues make a concerted effort to be available, and more importantly, helpful to students. I am suggesting that, nevertheless, a professor may seem unapproachable in a large class setting.

115. Again, I am not saying that other classes do not have practical application; however, the practical application is generally not as clear to students until they have been in those classes for a period of time.

116. I learned this lesson personally near the end of last year. During that time, my class and I were discussing strategies in oral argument. The oral argument portion of the curriculum is graded on a satisfactory/non-satisfactory basis, as opposed to other assignments that are assigned points. One of my students then asked, “Well, if it’s not graded, then what do we get out of it?” Rather than seeing the obvious and expounding on the benefits that engaging in oral argument could confer in the legal realm, I was in a particularly poor mood that day and responded negatively. My response, “I could give you a cookie,” resulted in significant laughter, but I knew im-

each other in the smaller legal writing classroom also encourages cooperation and discourages students from turning on each other, at least not venomously, in a Socratic classroom.

Thus, it appears that the legal writing classroom is particularly well situated to combat the abuses of the Socratic method that critics charge humiliate or terrorize students. Because of the nature of the concepts taught, the smaller class size, and the level of trust and respect brought on through one-on-one contact between the student and the professor, concerns of abuse can be ameliorated and the benefits of using the Socratic method as a learning tool more fully realized.

B. Exploring the Argument That the Socratic Method Is Especially Harsh on Women and Tends to Establish a “Hierarchical Status Quo”

Another charge often levied against the Socratic method is that it is especially harsh on women and tends to establish a “hierarchical status quo” that places women (and to some extent, racial minorities) on the bottom.¹¹⁷ In their book, *Becoming Gentlemen: Women, Law School, and Institutional Change*, Professors Lani Guinier, Michelle Fine, and Jane Balin criticize the legal system, and the Socratic method in particular, for this reason.¹¹⁸ Other commentators have taken a similar stance.¹¹⁹

These arguments have particular resonance in the field of legal writing. Of all the first-year courses, legal writing courses are dispro-

mediately that I had crossed the line and said as much to the student later. The student’s response was along the lines of: “That’s okay, we know you. You’re allowed to zing us once in awhile.” Although not an example of the misuse of the Socratic method, the incident drove home to me the importance of having an environment of mutual trust and respect in the classroom.

117. See GUINIER ET AL., *supra* note 83, at 61-66.

118. *Id.*

119. See, e.g., Jennifer Gerarda Brown, *Apostasy?*, 75 CHI.-KENT L. REV. 837, 840 (2000) (arguing that the Socratic method often “leaves many women feeling silenced, devalued, and deadened, both intellectually and emotionally”); Morrison Torrey, Jennifer Ries & Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 280-84 (1998); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1300-01 (1988).

portionately taught by women.¹²⁰ The gender disparity in staffing, along with often substantial differences in the status of the positions, has led to charges that the legal writing field has become a “‘pink ghetto’ for women faculty.”¹²¹ Given these issues, the utilization of a teaching method that may have the propensity to disenfranchise women is rightfully of special concern to legal writing teachers.

1. *Ritualized Combat?*

One of the main criticisms regarding women and the Socratic method is that the method itself marginalizes women because it encourages an adversarial atmosphere that women find uninviting.¹²² According to this line of criticism, the Socratic method becomes a form of “ritualized combat” that plays to the strengths of men more than those of women.¹²³

Professor Guinier argues that while some students, “mostly men,” are eager to raise their hands and participate even though they have not yet organized their thoughts, others, “including many women,” are “put off by the gamesmanship and simply withdraw or seek to participate on different terms.”¹²⁴ Guinier characterizes women students as eager to learn by listening first to others and to participate in a way that builds on or connects to the comments of others, but preferring to keep silent unless they have something to say that is “truly relevant.”¹²⁵ Guinier argues that women students in particular seem to

120. See ALWD SURVEY, *supra* note 41, at 50-52. Moreover, this shows no signs of changing in the near future. Responses to the 2004 ALWD/LWI survey indicate that, of the new full-time legal writing professors hired at responding schools from 1999-2004, approximately 67% (105) were females and 33% (51) were males. *Id.*; see also Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 119-21 (1997) (reporting similar figures); Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562, 562 (2000) (reporting that three-fourths of doctrinal faculty are men).

121. Arrigo, *supra* note 120, at 118.

122. See GUINIER ET AL., *supra* note 83, at 13-14.

123. *Id.* at 13.

124. *Id.*

125. *Id.* at 13-14. Guinier draws an analogy to NBC Sports’ coverage of the 1996 Summer Olympics. NBC’s research had shown that men would sit through almost any competition “as long as they got to see some winners and losers,” while

“prefer a more cooperative rather than a competitive environment,” and so are unreceptive to a Socratic method that focuses on winning the game rather than collaboration to synthesize information.¹²⁶

Other commentators, however, dispute this argument.¹²⁷ In her review of Guinier, Fine, and Balin’s book, Professor Elizabeth Garrett asserts that claims regarding the Socratic method’s disproportionate effect on women are difficult to assess accurately.¹²⁸ Further, she argues that even if it is true that women respond differently to the use of the Socratic method than do men, exposure to the Socratic method may be even more important in that it forces women who will become lawyers to “present ideas to groups, defend those ideas, and propose solutions to legal problems,” all skills they will need in the legal arena.¹²⁹

Similarly, Professor Jennifer Rosato argues that the abilities fostered by the Socratic method, such as thinking in what she calls the “primary language” of legal discourse, are even more important for women to master than they are for men.¹³⁰ She argues that the use of the Socratic method “ensures that women students are as comfortable and experienced as men in ‘thinking like a lawyer.’”¹³¹ Further, she contends that the Socratic method itself is not to blame for the problems reported by women law students.¹³² Instead, she argues that inappropriate conduct by professors and students, lack of institutional

women preferred to understand the personal identities of the athletes and form a “rooting interest.” *Id.* at 14.

126. *Id.* at 14-15. Guinier disagrees with those who would argue that women who are reluctant to participate in class are “not cut out to be good lawyers.” *Id.* at 15. She notes that lawyers are basically problem solvers and that while being able to answer quickly is a useful skill, “students who function cooperatively . . . are more likely to arrive at the optimal solution . . . than are those who approach problems in a competitive, adversarial manner.” *Id.* at 15-16.

127. See, e.g., Garrett, *supra* note 31, at 203-05; Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don’t Feminize*, 7 S. CAL. REV. L. & WOMEN’S STUD. 37, 54-58 (1997).

128. Garrett, *supra* note 31, at 204 n.8. Garrett notes that her experiences with the Socratic method were “different from Professor Guinier’s and from those of many of the women that she quotes.” *Id.* at 204.

129. *Id.* at 204.

130. Rosato, *supra* note 127, at 54-56.

131. *Id.* at 54.

132. *Id.* at 49-53.

support for women law students, and the adversarial nature of the legal system are more important factors; these factors would still exist even if the Socratic method were abandoned.¹³³

The criticisms and counterarguments with regard to the Socratic method's alleged marginalization of women raise two very important questions. First, does the Socratic method itself actually negatively affect women more than men? Second, even if such a negative effect does occur, is this a valid reason not to use it?

With regard to the first question, the anecdotal evidence would suggest that, at least to some extent, a problem does indeed exist.¹³⁴ However, its magnitude is not clear. While it is true that many women report that they dislike the Socratic method, the same may also be said of some men.¹³⁵ While the study relied upon by Professors Guinier, Fine, and Balin does appear to show a dramatic difference in the class participation rate of women and men in the sample law school classroom, it makes no attempt to correlate the results with the use of the Socratic method in the particular classrooms.¹³⁶

133. *Id.* Rosato acknowledges that the Socratic method might have some effects that could fall more heavily on women than men. *Id.* at 54. She notes that the Socratic method "requires the students to recognize the limits of their knowledge" and that this might cause women to censor their thoughts in a greater proportion than men. *Id.* Further, she posits that women "may feel more self-conscious 'sharing their thoughts'" in class than men, particularly when they are unsure whether those thoughts are correct. *Id.* She also admits that competitiveness in attracting the attention of the professor might be more attractive to men than women and that the Socratic method might require more "male-oriented" thinking. *Id.*

134. See GUINIER ET AL., *supra* note 83, at 46-54 (detailing narrative experiences of some law students at the University of Pennsylvania). One particular third-year student stated, "I really resent being an instrument for many . . . a professor's lecture." *Id.* at 49. However, even these compelling narratives may not be of great use in establishing that the system negatively impacts women more than men. As Elizabeth Garrett notes, a smaller number of men and a larger number of women than expected answered the survey from which many of the narrative responses were drawn. Garrett, *supra* note 31, at 204 n.9.

135. See Garrett, *supra* note 31, at 204.

136. See GUINIER ET AL., *supra* note 83, at 78-84 (relating the questions asked in the 1990 survey by third-year student Ann Bartow at the University of Pennsylvania). None of the questions on the Bartow Survey asks about the teaching method used, and no data is provided as to how many of the professors used the Socratic method or to what extent it was used. *Id.* These types of questions are important to any link between the Socratic method and the rate of the class participation of women, because of the varying teaching methods and even varying degree of the use

As noted by Garrett, a true empirical analysis of the possible adverse effect of the Socratic method on women, as distinct from men, would be difficult to accomplish.¹³⁷ Thus, it is questionable whether there will ever be sufficient empirical evidence to allow for a conclusion that the Socratic method disadvantages women as compared to men.¹³⁸

Nevertheless, even without empirical evidence, the fact that so many women law students feel uncomfortable with the Socratic method does suggest the presence of a problem. Rosato presents one explanation of why the Socratic method may be less hospitable to women than men.¹³⁹ She notes that, while it is difficult to generalize for an entire gender, evidence suggests that traditional society in general tends to encourage and reward girls for operating in a cooperative manner and boys in an individual, assertive manner.¹⁴⁰ As a result, many women may come to law school with less practice (or at least less encouragement in practicing) with the sort of “male-oriented” discourse that the legal profession encourages, and the Socratic method in particular seems to reward.¹⁴¹

of the Socratic method in law schools. *See* Kerr, *supra* note 40, at 131-32 (arguing that because “most students may experience very little (if any) traditional Socratic teaching, it is hard to see how the pervasive underperformance of women law students can be attributed to the Socratic method”); *see also* Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 53 HOFSTRA L. REV. 955, 974-79 (2004) (criticizing the methodology of studies showing that women are more negatively affected by the Socratic method than men).

137. Garrett, *supra* note 31, at 204 n.8. Garrett notes that such a study would have to find “appropriate control groups of women students” and would have to find some way of measuring adverse impact. *Id.*; *see also* Vitiello, *supra* note 136, at 979-80 (emphasizing the difficulties that any attempt to perform an empirical study of the Socratic method would encounter).

138. *See* Vitiello, *supra* note 136, at 979-80.

139. Rosato, *supra* note 127, at 54-56.

140. *Id.* at 55-56.

141. *Id.* In support of this contention, Rosato references Carol Gilligan’s book, *In a Different Voice*. *Id.* at 55 n.86. Gilligan’s book compares the logical reasoning of men and women, concluding that the “‘male voice’ . . . values reason over passion, objectivity over subjectivity, and scientific clarity over independent relativity,” while the “‘female voice’ . . . values relationship over right, subjectivity over objectivity, and care over conquest.” K.C. Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U. L. REV. 1141, 1143-44 (1985) (citing CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S*

However, even if there is some evidence that the Socratic method poses particular difficulties for women law students, this is not sufficient reason to abandon it. As Rosato notes, the language of standard legal discourse encouraged by the Socratic method is the “first language” used by practicing lawyers and judges.¹⁴² She argues that while women law students often bring a unique and valuable perspective to law school, including the ability to consider a problem from a variety of perspectives such as the “second language” of traditionally oppressed groups, these same students may have a problem in communicating these perspectives in the way the legal establishment values if they are not also fluent in the “first language” of the law.¹⁴³ She believes that because the Socratic method helps teach this “first language” of standard legal discourse, it may prove to be especially valuable to women.¹⁴⁴

This is not to suggest that only women are less practiced in the “first language” of the law. Indeed, many men, because of cultural biases or educational experiences, may be just as unfamiliar with the language of standard legal discourse. For these students, the Socratic method is just as beneficial in indoctrinating them in the process of “thinking like a lawyer” and providing them with the necessary tools to ensure that the other important viewpoints that they bring to the law will be heard.¹⁴⁵

Further, to the extent that the Socratic method does pose some difficulties for women in particular, they are the sorts of difficulties that the environment of the typical legal writing course is well suited to

DEVELOPMENT 26-38 (1993)).

142. See Rosato, *supra* note 127, at 55. Rosato asserts that “[m]any lawyers and judges speak the primary language almost exclusively and may not value or understand multiple languages.” *Id.* at 57.

143. *Id.* at 55-56.

144. See *id.* at 57.

145. I think it will be interesting to see how these other viewpoints affect the practice of law. After all, these other viewpoints are less valued in the law at the moment because the law has traditionally been an Anglo-Saxon male-dominated field. As more and more women and minority attorneys join the practice of law, they might precipitate a fundamental shift in values. Much will depend on whether these attorneys hold on to their other languages or are forced to adopt the traditional mold. On the one hand, this is a good argument for law schools to teach in a variety of methods. However, because law schools still have to prepare lawyers for the actual practice of law, they cannot neglect preparation in neutral principles.

ameliorate. The nature of legal writing classes can go a long way in alleviating the adversarial atmosphere that many women report finding intimidating. In such terms, the questioning occasioned by the Socratic method more closely resembles a dialogue between friends than the “ritualized combat” critics allege.

Moreover, the nature of legal writing courses also reduces the amount of “gamesmanship” in which students engage. Unlike the other first-year courses, where performance in class is the only way for students to measure their progress prior to exams, the format of legal writing courses provides ample opportunities for students to gauge their progress and receive feedback.¹⁴⁶ Also, the varied nature of the legal writing assignments ensures that every student has meaningful contact with the professor, something that is difficult to achieve in the larger first-year courses. This provides less need for students to compete with each other to allay their own apprehensiveness.

Most importantly, because the environment of the typical legal writing class is generally more cooperative, it provides a more comfortable place in which those students who are less practiced or experienced in the “first language” of legal discourse can gain experience in speaking it. This benefit is amplified by the fact that teaching students to speak the language of legal analysis and discourse is one of the explicit missions of the legal writing class. By enabling students to gain practice in “thinking like lawyers” and communicating those thoughts in a relatively non-threatening environment, the legal writing classroom can provide students with the tools and confidence necessary to use those skills in their other courses and, ultimately, in practice.

2. *Maintaining Hierarchy*

The other charge related to the effects of the Socratic method on female law students is that the Socratic method encourages and reinforces traditional hierarchical roles.¹⁴⁷ According to this critique, because the Socratic method focuses on withholding knowledge and

146. See *supra* text accompanying note 113. Many of these other opportunities are exercises in collaboration and cooperative learning.

147. See Jennifer Jaff, *Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning*, 36 J. LEGAL EDUC. 249, 258-61 (1986); Kerr, *supra* note 40, at 121-22.

forcing students to figure it out for themselves, it can be used to reinforce the dominance of the professor in a way that is hierarchical and patriarchal.¹⁴⁸ Under this criticism, the Socratic method mainly allows the professor to set himself or herself up as the omniscient sage who “knows all but he need not share his knowledge.”¹⁴⁹

To a great extent, the characterization of the Socratic method as professor-centered is true. That is, it is the professor who controls the questioning, at least initially, although the students’ responses may sometimes lead the professor down pathways that he or she may not have anticipated to an answer that he or she might not have known ahead of time. However, the extent to which this hierarchy is male-dominated is open to question.

If the criticism is that the reinforcement of the hierarchy to the disadvantage of women comes from the fact that the Socratic method is professor-driven and the professor is usually male, then the times are changing rapidly. As of 2004, women comprised 35.3% of all law school faculty.¹⁵⁰ Consequently, the criticism that the Socratic method reinforces male-dominated hierarchy should diminish as more and more women become law professors.¹⁵¹ Certainly, it is much less of a

148. Jaff, *supra* note 147, at 258-61; *see also* Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN’S L.J. 93, 104 (2004) (stating that “[t]he Socratic [m]ethod clearly reinforces a hierarchy in the classroom,” and that the Socratic method seems “analogous to the bizarre male bonding experience of fraternity/military hazing”).

149. Cheryl M. Herden, *Women in Legal Education: A Feminist Analysis of Law School*, 63 REV. JUR. U.P.R. 551, 557 (1994).

150. RICHARD A. WHITE, ASS’N OF AM. LAW SCH., STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS TABLES 2004-2005, Table 1A, <http://www.aals.org/statistics/0405/html/> (follow “1A” hyperlink). *But see* Martha Chamallas, *The Shadow of Professor Kingsfield: Contemporary Dilemmas Facing Women Law Professors*, 11 WM. & MARY J. WOMEN & L. 195, 197 n.9 (2005) (noting that the figures from the American Association of Law Schools may be somewhat inflated since the Association uses a “broad definition of ‘faculty,’ which includes some non-tenure track instructors, such as legal writing instructors with the title of ‘assistant professor,’ a group which is disproportionately female”).

151. This will occur, however, only if these new women law professors are accorded the same status in the law school as male professors. If the newly-minted women professors are accorded the second-class citizenship of a contract position or a non-tenure track assistant professor position, the result may be the opposite. *See* Arrigo, *supra* note 120, at 142-43 (discussing the perceived negative attitudes re-

problem in the field of legal writing, where, as noted above, the professors are predominantly female.¹⁵²

If, however, the argument is that the Socratic method reinforces a male-dominated hierarchy because it is intrinsically “male-oriented”—that the very existence of its professor-centered hierarchy values those characteristics traditionally associated with men and “de-values and distorts those characteristics traditionally associated with women”¹⁵³—then the charge will not be answered with the passage of time and the addition of more women to law school faculties. Defending the Socratic method in this context requires a look at legal education and its relation to the actual practice of law.

Guinier, Fine, and Balin argue that the “male-oriented” values instilled by the Socratic method, such as the dispassionate analysis of neutral principles of law, are not the only skills needed to be an effective lawyer.¹⁵⁴ They rightly note: “Not all problems belong in court. Not all problems lend themselves to litigation.”¹⁵⁵ Rather, the lawyer’s most important skill is that of a problem solver, and many times, cooperation is better than competition at resolving legal problems and disputes.¹⁵⁶

While Guinier, Fine, and Balin’s characterization of the role of the lawyer is powerful, at its core it is an argument that the skills taught by the Socratic method should not be the only ones taught in law school, not that those skills are not valuable.¹⁵⁷ While many of the skills identified by Guinier, Fine, and Balin are of great value to the well-rounded lawyer, the fact remains that much of the law is conducted in an adversarial setting, where the language is that of neutral legal principles.¹⁵⁸ Further, the legal system is often hierarchical. There will be many situations in the practice of law when students will

garding teachers in those positions).

152. See *supra* note 120 and accompanying text.

153. See GUINIER ET AL., *supra* note 83, at 66-67.

154. See *id.* at 15.

155. *Id.*

156. See *id.* at 15-16.

157. Even Guinier, Fine, and Balin admit that some of the skills taught by the Socratic method are “useful.” See *id.* at 16.

158. See Rosato, *supra* note 127, at 51-52. Professor Rosato notes, “For the most part, I am not preparing my students for jobs in academia and I am not teaching them to be graduate students in the humanities.” *Id.* at 51.

have to defend their reasoning and views to a host of figures who are more powerful in the legal hierarchy, including judges, supervising attorneys, senior partners in law firms, and clients.¹⁵⁹ While these figures may value the nuanced reasoning of the well-rounded lawyer, it is a safe bet that they will first want the lawyer to be able to analyze the problem in the neutral language of legal discourse.¹⁶⁰

The critics of the Socratic method are correct in arguing that the practice of law should not be just about litigation and dispassionate, neutral legal inquiry. To ignore the virtues of cooperation and empathy in the practicing lawyer ignores reality. While the Socratic method may be hierarchical and place an emphasis on the dispassionate neutral analysis of the law, so does the practice of law. Ideally, the well-rounded lawyer should be well versed in both so-called “male-oriented” and “female-oriented” thinking. Thus, the fact that the Socratic method promotes dispassionate, neutral legal inquiry does not diminish its utility. Rather, the use of the Socratic method as a teaching tool presents an opportunity for students to gain experience in the type of reasoning they will be expected to use in the practice of law and to face the type of questioning that they will be expected to answer when presenting their views to other members of the legal community. Further, it allows them to do so in an environment where the stakes are considerably lower than they are likely to be in the practice of law.

This is especially true in the legal writing classroom.¹⁶¹ Although the main focus of the legal writing class is on teaching students to think like lawyers using neutral principles and to express those thoughts clearly, legal writing classes also often teach practical matters such as the lawyering process and client counseling.¹⁶² Further, because legal writing classes are usually smaller, allowing students to work more closely with their individual professor, the problems associated with professor-dominated hierarchy are reduced.¹⁶³

159. See Beattie, *supra* note 32, at 484.

160. See Rosato, *supra* note 127, at 57 (explaining that many judges and lawyers speak this “first language” of legal discourse almost exclusively and may fail to value other views).

161. See *supra* notes 72-74 and accompanying text.

162. ALWD SURVEY, *supra* note 41, at 10.

163. See *supra* notes 114-16 and accompanying text.

C. Exploring the Argument That the Socratic Method “Hides the Ball” and Wastes Class Time

A third criticism of the Socratic method has to do with the process itself. Critics charge that the Socratic method allows the professor to “hide the ball” and is an inefficient means to impart information.¹⁶⁴ According to this critique, professors using the Socratic method do not give students what they need, that is, the black letter law.¹⁶⁵ This is at odds with the standard academic practice where, as Socratic method defender Phillip Areeda states: “[T]he Physics [Department] does not ask you to deduce the existence or the nature of gravity by sitting under a tree until an apple falls on your head. They tell you straight out about gravity.”¹⁶⁶

If the mission of legal education were solely to educate students in the black letter law, then these criticisms would be valid. The Socratic method is clearly an inefficient way to educate students about the black letter law. Rather than telling students what the law is, the Socratic method forces them to deduce it and apply it through reasoning.¹⁶⁷

However, the transmission of the black letter law to students is neither the sole nor possibly even the primary goal of legal education.¹⁶⁸ As noted previously, one of the most important goals in law school is to teach the student to “think like a lawyer” and to use those reasoning skills to apply the black letter law to novel situations.¹⁶⁹ While the black letter law may be quickly outdated, it is the process of

164. See Areeda, *supra* note 16, at 914-15; Beattie, *supra* note 32, at 486.

165. See Vitiello, *supra* note 136, at 991. As one writer humorously puts it:

The Socratic [m]ethod . . . is based on the profound observation that if you (a) ask questions, but provide no answers (even when there are answers or close approximations of answers), (b) confuse people enough by asking unfathomable questions and by never asking questions that tie together the material you are discussing, and (c) terrorize people enough that they can't concentrate in class for fear of being called on, they are bound to go out and buy commercial outlines in a desperate attempt to learn something.

Kevin H. Smith, “X-File” *Law School Pedagogy: Keeping the Truth Out There*, 30 *LOY. U. CHI. L.J.* 27, 38 (1998).

166. Areeda, *supra* note 16, at 914-15.

167. See *id.* at 915.

168. See *id.*

169. See *supra* notes 45-48 and accompanying text.

legal reasoning that endures. Thus, to a great extent, the process of reasoning that critics of the Socratic method see as “hiding the ball” actually *is* a part of the ball; that is, the process of reasoning is the skill that legal education seeks to impart.

With regard to legal writing, in fact, the process is most of the ball. While most other first-year classes endeavor to teach both the doctrine of black letter law and the process of reasoning, the doctrine of legal writing classes focuses on “best practices” and legal strategy and is devoted in large part to analysis and reasoning.¹⁷⁰ The “ball” in legal writing is mostly the process of legal reasoning, and the process of legal reasoning is what the Socratic method is designed to teach.¹⁷¹

D. Exploring the Argument That the Socratic Method Induces Boredom in Students and Laziness in Professors

Another criticism of the Socratic method is that it tends to induce boredom in the students and that because it relies on the students to work through the information, it allows professors to be lazy.¹⁷² This criticism also challenges the assumption that the Socratic method actually does what it purports to do: cause students to participate vicariously in the conversation.¹⁷³ If the critics are to be believed, students subjected to the Socratic method continually exist in one of two states: either scared to death of being called on¹⁷⁴ or bored silly by a process that they have already mastered.¹⁷⁵ According to some critics, these states exist simultaneously in Socratic classrooms¹⁷⁶ or inevitably follow sequentially.¹⁷⁷

170. See Smith, *supra* note 4, at 8-11 (exploring the substance of legal writing classes).

171. See Areeda, *supra* note 16, at 915. Phillip Areeda notes: “To be sure, one could lecture about legal method, hoping that students will passively absorb the instruction. But methodologies are better absorbed when actually practiced by the student and when made concrete by actually being used to solve a legal problem.” *Id.*

172. Dallimore, *supra* note 16, at 181-82, 184.

173. Torrey, *supra* note 148, at 103.

174. See Kalman, *supra* note 30, at 771-72; Torrey, *supra* note 148, at 103.

175. Dallimore, *supra* note 16, at 184; see Torrey, *supra* note 148, at 103.

176. See Torrey, *supra* note 148, at 103.

177. Dallimore, *supra* note 16, at 183-84.

While the argument that the Socratic method unduly induces fear in law students has been discussed above, the question of boredom is a new critique. According to Professor Morrison Torrey, one of the flaws of the Socratic method is that “[i]t is boring to try and follow someone else’s conversation that seems to have no conclusion, just more questions.”¹⁷⁸ Professor Susan Dallimore argues that this boredom is more acute in second- and third-year students because “the method provides no new challenge after the initial learning period.”¹⁷⁹

The charge that the Socratic method is inherently boring appears to be a matter of dispute. Certainly, there are some who find it boring to follow and prepare to participate in a dialogue between the professor and another student; however, there are others who report finding it interesting.¹⁸⁰ Part of the reason for this discrepancy is that the Socratic method does require a great deal of effort by the professor, and some “buy-in” and effort on the part of students. The professor using the Socratic method must take care to keep the questions clear and the conversation enthusiastic and focused. If the professor poses questions that are too complex, or allows the conversation to wander too far afield, or to become unclear, then the result can indeed be boredom.¹⁸¹ Similarly, the Socratic method demands that the students actually put forth a good faith effort, not only to read and attempt to understand the material beforehand, but also to attempt to follow the discussion.¹⁸² It requires more effort than passively listening to lecture. However, if the effort is given, the Socratic method, used correctly, is not boring.

There is some truth to the criticism that the Socratic method is sequentially boring—that is, that once the student internalizes the process, the method begins to lose effectiveness. Even defenders of the Socratic method point out that the method is best utilized in first-year courses and that upper-level courses might be better taught through some other tool.¹⁸³ However, this criticism, like that of the critics who

178. Torrey, *supra* note 148, at 103.

179. Dallimore, *supra* note 16, at 184.

180. *See, e.g.*, Powell, *supra* note 45, at 960. I personally found the Socratic method to be very interesting during my first year in law school—frightening at times, but interesting nonetheless. Certainly, I found it to be much more interesting than my undergraduate studies, where the teaching was mostly by lecture.

181. *See* Areeda, *supra* note 16, at 919-20.

182. *Id.* at 915-16.

183. *See* Childress, *supra* note 18, at 104 (stating that “[t]he technique’s use-

argue that the law should be more than a study of neutral legal principles, is simply an argument that the Socratic method should not be the exclusive teaching tool used in law school. This is undeniably true. Law students learn in a variety of different ways, and thus the use of a single method of teaching will not reach all students.¹⁸⁴ I would go farther and say that the Socratic method should not even be the exclusive teaching tool used in any one class.

This is especially true in the context of legal writing. The number of skills taught in a legal writing program make reliance on any one teaching method impractical, if not impossible.¹⁸⁵ Some things in legal writing are better communicated by lecture; some are more fruitfully communicated in small groups; and others through actual practice.¹⁸⁶ However, although the Socratic method should not be the only tool, it is one useful tool among many. The use of a number of different teaching methods tailored to the needs of the specific material taught will not only maximize the communication of information, but should also cut down on the perceived “boredom factor” associated with the use of any one method.

Somewhat related to the criticism that the Socratic method bores students is that its use encourages professors to be lazy.¹⁸⁷ The picture painted by this critique is one in which the professor is able to rely on the same materials year after year, confident in the knowledge that if students ask questions on topics not covered, he or she can deflect them by simply asking them back to the students as questions.¹⁸⁸

fulness as a structured method is probably spent by the end of the first year”); Areeda, *supra* note 16, at 919 (noting that the Socratic method is best utilized in “highly analytical (and somewhat less ideological) subjects, such as contracts”).

184. See Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 247 (1998) (advocating a variety of teaching styles); Stropus, *supra* note 13, at 482-83.

185. See Levy, *supra* note 1, at 5-6. While I suppose it might be possible to teach someone the correct brief format Socratically, I shudder to think of doing it.

186. *Id.*

187. See Dallimore, *supra* note 16, at 181-82.

188. See *id.* Dallimore asserts:

Any teaching method which allows professors to use the same casebooks and notes year after year certainly does not motivate them to try alternate or innovative methods. It may be that such a system reduces professor motivation to keep up with new developments or even to prepare thoroughly for class presentations.

I question whether any of the critics who assert that the Socratic method encourages laziness have ever tried to conduct a class using the method. In order to use the process correctly, the professor teaching the class must not only prepare as if he or she was giving a lecture on the cases and law, but also determine what questions to ask, and what questions will follow, which will lead students to what he or she hopes is the correct result.¹⁸⁹ Then, the professor must skillfully guide the discussion so as to keep the class on track.¹⁹⁰ I find preparation for the Socratic method to be far more difficult than preparation for any of the other formats that I use, including lecture and small group discussions.¹⁹¹

There may be some professors who, having once performed the Socratic method, seek only to recreate the same discussion in subsequent iterations of the course. However, it is likely these same professors would bring intellectual laziness to any method taught. Overall, the Socratic method is one of the more difficult tools to use correctly, not a tool for the lazy educator.

E. Exploring the Argument That the Socratic Method Does Not Teach Needed Skills

A final argument that has been levied against the Socratic method is that it fails to teach skills needed for the practice of law.¹⁹² This argument criticizes the Socratic method as too theoretical and complains that it does not efficiently teach black letter law or the practical skills necessary for the practice of law.¹⁹³

Id. This perception has perhaps been fueled by classic literature on the Socratic method. In the book version of *The Paper Chase*, Professor Kingsfield spends time before class doing sit-ups instead of reviewing his notes, secure in his knowledge of the casebook he authored “years ago.” OSBORN, *supra* note 88, at 3-4.

189. Smith, *supra* note 165, at 45-46; see Areeda, *supra* note 16, at 922 (noting that the preparation for using the Socratic method is “far harder” than preparing an expository lecture).

190. Areeda, *supra* note 16, at 922.

191. Lecture is actually the least intensive in terms of preparation. Small group work requires the professor to not only determine how to effectively ask the questions to get the proper results, but also how to referee the groups to make sure that they do not get sidetracked or confused.

192. Dallimore, *supra* note 16, at 179.

193. *Id.* at 180. Dallimore argues that, once analytical skills are mastered,

To a large extent, this criticism is correct: the Socratic method, as the sole pedagogical tool, cannot teach the law student everything that he or she needs to know to practice law. However, this is not a complaint against the Socratic method itself. Rather, it is a complaint against the exclusive use of the method—a practice that has by now become exceedingly rare.¹⁹⁴

The Socratic method should not be the sole means for the teaching of the law; rather, it can be an effective tool that complements other methods of teaching. The Socratic method's great strength lies in its ability to teach legal analysis. It makes sense to play to that strength when teaching analysis, while using other teaching styles as required to best teach other concepts.¹⁹⁵ By using a combination of teaching methods that provide a variety of approaches, the learning experience of law students can be greatly enhanced.¹⁹⁶

Nowhere is there a more fertile laboratory for this type of experimentation in teaching methods than the legal writing classroom. Legal writing professors endeavor to teach a variety of skills, including analysis, research, and effective written communication. Not all of these skills are best delivered through the Socratic method.¹⁹⁷ In response, most legal writing classrooms use a variety of teaching methods, including lecture, small groups, and group and individual writing exercises.¹⁹⁸ The need for such diversity in teaching can help ameliorate the over reliance on the Socratic method and can allow the Socratic method to be used for what it does well—helping students to learn legal analysis and methodology.

“doctrine in a given area can be taught by a hornbook-lecture approach in about half the time, and the rest of the schools’ time and energy can be directed toward courses in drafting, writing and supervised clinical programs.” *Id.*

194. See Kerr, *supra* note 40, at 122-24 (examining the decline in the use of the Socratic method at Harvard).

195. See Stropus, *supra* note 13, at 479-83 (favoring the integration of teaching methodologies for maximum effect).

196. *Id.* at 482-83.

197. See Levy, *supra* note 1, at 5-6 (noting that lecturing and other methods may be the best way to impart many skills because of the extensive explanations required).

198. See *supra* note 42 and accompanying text.

V. CONCLUSION

In searching for new methods to teach legal analysis in a legal writing course, professors should not forget to consider one of the oldest techniques: the Socratic method. Although originally developed for use in other courses, the Socratic method can play a part in teaching the legal writing curriculum as well. The benefits of the Socratic method in promoting active learning, teaching cognitive skills such as legal analysis, and encouraging students to find their voice are consistent with many of the goals that a legal writing class seeks to teach. Further, the particular dynamics of the legal writing classroom have the potential to make the Socratic method even more effective.

While there are criticisms of the Socratic method, the majority of them are due to a misuse of the method rather than the method itself. It is true that the method may be susceptible to misuse; however, with sufficient realization of this problem, such tendencies can be reduced. The dynamics of a legal writing classroom, with its smaller class size and greater student-teacher interaction, can further reduce the risks of misuse.

Clearly, the Socratic method cannot be the only, or even principal, method of teaching in legal writing classes. However, it can be a useful teaching tool for the things that it does well and should be employed where its use would enhance the learning process. Even though it is one of the oldest methods in law teaching, the Socratic method may enjoy a renaissance in the legal writing classroom.