1989

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Recommended Citation
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PIERCING THE SOCRATIC VEIL: ADDING AN ACTIVE LEARNING ALTERNATIVE IN LEGAL EDUCATION

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After that time those who are selected from the class of twenty years old will be promoted to higher honour than the rest, and the sciences which they learned without any order in their early education will now be brought together, and they will be able to see the natural relationship of them to one another and to true being.

Yes, he said, that is the only kind of knowledge which, in a few fortunate persons, takes lasting root.¹

—Plato, Republic

Legal education has not reached the ideal espoused by Plato in the Republic. In fact, talking and listening to students, professors and judges, and researching educational literature, it is clear that traditional legal education falls far short of the expectations of most of the participants in the legal profession as well.

I. THE PROBLEM

Despite new approaches and frequent calls for educational reform, the core legal education curriculum has undergone relatively little change since Langdell’s case method became dominant.² A conflict has often been waged by those who are

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The author thanks the Bush Foundation, St. Paul, Minnesota, for a Bush Fellowship which allowed her to enroll and complete the Master of Judicial Studies program, University of Nevada-Reno/National Judicial College. This Essay is in partial fulfillment of the requirements for the Master of Judicial Studies degree program at the University of Nevada-Reno in cooperation with the National Judicial College.

theorists, wanting more sophisticated abstraction, and practice-oriented educators wanting more concrete learning. The time has come to recognize that the gulf separating these two competing philosophies can be bridged: it is not necessary to choose between two competing doctrines. It is possible to integrate theory and practice into our teaching methods. Piercing the "Socratic Veil" and adding an active learning alternative could offer students the opportunity to know the relationship of theory and practice to one another—a knowledge which Plato maintains is the only kind which "takes lasting root."

II. The Traditional Teaching Method

The traditional law school teaching method seeks to teach students rational, logical, dispassionate analysis. It encourages students to argue "over the meaning and application of rules that play a major role in the articulation of appellate court opinions." Traditional educational dogma encourages this end through the use of the Socratic method of teaching.

The theory behind the Socratic method is that the student is motivated by the teacher's questions to reason rather than to recite. The teacher, as enabler, challenges students to understand on their own accord. The teacher leads the students to generalizations and inferences regarding the subject matter under study, and prompts the student. In effect, the teacher says to the student, "If you wish to know, you must exert your own intellectual effort. You must work with the data from ex-

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3. Spiegelman, supra note 2, at 249.

4. The author is on the part-time faculty of William Mitchell College of Law, St. Paul, Minnesota. She informally questioned faculty members of WMCL, University of Minnesota, Hamline University, University of Wisconsin, Bolt School of Law, Marquette University School of Law, University of San Diego School of Law, and Arizona State University School of Law. One notable exception was SUNY.


6. See Friedlander, A Psychologist's Second Thoughts on Concepts, Curiosity, and Discovery in Teaching and Learning, 35 HARV. EDUC. REV. 18, 27 (1965) (discussing teachers presenting a body of facts or ideas in such a way so that the student is led to make correct inferences about unstated facts or ideas by momentum, as it were, of information that has already been presented).
perience yourself. Through your own inquiry will come knowledge."  

The Socratic method possesses three qualities which every teacher would do well to emulate. First, be clear about your objectives; second, know why you are doing what you are doing; and third, choose a technique to suit your objective. These three qualities are manifested by Socrates in the *Meno*.  

Another very important objective of the Socratic method involves the notion that we clarify our thoughts by testing them against alternatives. The job of the teacher is to bring counterinstances before the student for his or her consideration. The centrality of this point to the Socratic method cannot be overemphasized. "The fundamental educational principle—that ideas must be confronted with alternative ideas—is at work here. When ideas are exposed to one another they are refined, their limitations are recognized, and their deeper meanings grasped."  

A critical tactic in the Socratic strategy is to seek continual clarification of a proposition of definition by testing it with alternative conflicting possibilities. Socrates held the view that "we make mistakes only because we do not collect together all of the acts which are like each other, and we confuse them with acts which do not really belong to the same class." Socrates employed his teaching method among friends rather than mere disputants. Furthermore, he questioned adults who had experience in the world.  

Socrates used his method for inquiring into moral issues for which he did not already have correct answers. Thus illustrating that the Socratic method is not useful when the proper answers to questions are already known. "The method itself is a way of exploring the kinds of answers that can be given to questions and perhaps a way of weeding out bad answers and moving toward good ones."  

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10. *Id.* at 188.


12. *Id.*
The Socratic method is a slow and complicated one. It is slow because the questions must move from one small point to the next, always eliciting responses before advancing. It is slow because it allows, or rather encourages, the student to trace the consequences of his thoughts so that he detects his own errors.\(^{13}\)

If the Socratic method serves as the basis of an effective teaching method, why then is it necessary to change, why ought we "pierce the Socratic veil" and add an active learning alternative?

III. Why We Need Change

The law school curriculum and the Socratic teaching method conveys a certain message: "combat and competition (and winners and losers) are the product of human interaction."\(^{14}\) In the "Kingsfield model" of law school teaching,\(^{15}\) the professor begins the class by calling on a student to recite the facts of the day's case. If the student can manage an adequate response, the professor proceeds with a series of questions about the reasoning of the case that inevitably leads the student towards a question to which there is no possible answer.\(^{16}\) At this point, the professor tries another student (usually one who has volunteered), who resolves the problem by rejecting one or more of the first student's assumptions. As the semester progresses, the competition intensifies as aggressive students actively seek the ultimate prize—the public esteem (or, for some, the lack of public disdain) of the eminent professor himself.\(^{17}\)

The "Kingsfield model" leads to women's silence in the classroom. Professor Stephanie M. Wildman says,

[O]ften when I call on a woman, she will reply, "I don't know," whereas a man, equally unsure of an appropriate re-


\(^{14}\) Spiegelman, supra note 2, at 249.


\(^{16}\) Hantzis, Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching, 38 JOUR. L. EDUC. 155 (1988) (a discussion of classroom issues in light of both models with the purpose of facilitating a distinctively feminist approach to the issues).

\(^{17}\) Wildman, The Question of Silence: Techniques to Ensure Full Class Participation, 38 J. LEGAL EDUC. 147 (1988) (discusses the silence of women in the classroom and how sexism contributes to women's silence).
response will start to answer and be wrong or off the point, but feel free to be vocal and to monopolize the airwaves.

This phenomena—men’s willingness to “take up space” and women’s choice of silence—may be culturally taught and learned for our survival.18

It is clear, however, that our responsibility as teacher is to somehow participate in changing this cultural role.19

Anecdotal evidence suggests that many women students still perceive the law school environment as hostile to women.20 In the fall of 1986 a pilot study of students’ perceptions of gender bias, under the direction of Professor Taunya Lovell Banks, generated 155 responses from one school.21 In this study, specific questions were designed to: “(1) test the basic findings of the pilot study; (2) explore the reasons for women’s silence in the classroom; and (3) determine whether students think the sex of the professor has any effect on class participation and on the use of offensive comments.”22 The survey results confirm the initial thesis that men tend to volunteer in class more often than women:

The survey results also comment on the law school atmosphere and teaching methods in general. For example, 76% of all respondents believe that one or more of their law school professors ‘puts down’ or belittles students. This statistic alone suggests that students of both sexes continued to be bullied and belittled in law school classrooms. Thus, the classroom environment may be hostile to most law students, although more so for women than men.23

According to Professor Lovell Banks, “The preliminary findings [from the survey] . . . suggest that women are silent because the law school classroom environment, structure, and language tend to exclude women or make them feel inferior.”24

Anyone who has used the Socratic method in class knows the havoc it spreads among the egos. Socratic approach can

18. Id. at 151. See also C. Gilligan, In a Different Voice: Psychological Theory and Women’s Development (1982).
21. Id. at 139.
22. Id. at 140.
23. Id. at 141.
24. Id. at 146.
arouse a high level of affective reaction in students—frustration, agitation, and tension. Frequently, the teacher humiliates, devastates, beats down and even discourages the students with the sharpness of the questioning.\textsuperscript{25} The relationship of trust and respect necessary for teaching is often destroyed. Educator-author Donald Snygg cites this very aspect of the Socratic method as his objection to Socrates: “Dozens of generations have admired Socrates, but from what I have read, the victims of his dialogues usually felt beaten but unconvinced.”\textsuperscript{26}

The Socratic method can teach students a way of gaining knowledge on their own: students learn how to gain knowledge autonomously. Through this method the student comes to understand a topic. By talking aloud, by presenting her ideas to someone else, and by listening to her own reaction to another person’s ideas, an individual clarifies her own position. But, this method of learning only serves the individual. It is virtually impossible to conduct a Socratic dialogue with 200 students. The Socratic method requires considerable interchange among participants, and too large a group prohibits such exchange. For a skilled teacher in a Socratic dialogue, the maximum number of students is somewhere around thirty.\textsuperscript{27} Beyond this number it is quite easy for a discussion intended to be Socratic to slip into a lecture punctuated with occasional student contributions. The optimum number is perhaps in the range of twelve to twenty, “for below this there may well be a lack of diversity among students and a paucity of knowledge to be pooled.”\textsuperscript{28}

A growing number of law professors are promoting alternatives to the Socratic method of teaching. Some are suggesting a total teaching method change, while others believe adding active learning alternatives to the Socratic method is more feasible. No one, however, is predicting the death of the Socratic system as a way to teach law students, but active teaching strat-
egies do add another dimension to learning, thereby enhancing the educational experiences of the law student.

Morton Horowitz, Harvard law professor, stated, “We need more small exercises rather than one exam at the end of the year.”29 The goal of active learning is to get students more involved with the subject they are studying. Large lecture classes can be broken down into small groups for learning through projects, discussion or structured exercises.

Thomas Aquinas once said, “There is a two-fold way of acquiring knowledge—by discovery and by being taught... Discovery is higher.”30 Those who support an active learning alternative claim that using such a method is a continuation of the very method students have used in order to gain knowledge all their lives. That is to say, people learn to act by acting; they learn to live by living; they learn to do things by doing them. After all, law schools exist to enable law students to become lawyers. After the first year, however, law students often view traditional methods of legal instruction and the preparation required for traditional law classes to be far removed from the type of professional education that they are ready to receive.

An active learning alternative used as a complete teaching method, or in conjunction with the Socratic method, presents this very opportunity students seek: a specifically designed, limited framework in which the teacher teaches about selected topics by having his students actively engage in them.

Actually this is not a new concept. John Dewey in 1916 when speaking of the role of the teacher said the following:

> We can and do supply ready-made “ideas” by the thousand; we do not usually take much pains to see that the one learning engages in significant situations where his own activities generate support, and clinch ideas—that is, perceived meanings or connections. This does not mean that the teacher is to stand off and look on; the alternative to furnishing ready-made subject matter and listening to the accuracy with which it is reproduced is not quiescence, but


30. Denhart, The Active Learning Alternative, UPDATE ON LAW-RELATED EDUCATION 5 (Spring 1988) (discussion about the University of Minnesota faculty discovering that lectures are not the only way to teach; citing Aquinas to point out that discovery is hard to come by in the stereotypical large lecture class).
participation, sharing in an activity. In such shared activity, the teacher is a learner, and the learner is, without knowing it, a teacher—and upon the whole, the less consciousness there is on either side, of either giving or receiving instruction, the better. 31

Socrates said something on this matter: "No compulsion then, my good friend, . . . in teaching children; train them by a kind of game, and you will be able to see more clearly the natural bent of each." 32

In using an active learning alternative, whether it be a simulated exercise, small group problem, role-playing, or internships, the student is assimilating the material in order to be able to efficiently carry out actions toward her goal. Hence, active learning alternatives encourage the student to learn since learning is directly pertinent to goal attainment.

An additional argument for the active learning alternative centers on the motivations which arise with the use of these techniques. People like to be participants. Animals and humans love to explore, to try things out, to be the causes or effects. 33 Active learning alternatives provide this kind of participant pleasure. Since a student already has the motivation to participate, she will therefore learn, since learning is required in order to participate. Thus, the teacher may harness the motivation that the student brings with her to the teaching situation.

Furthermore, this active participant pleasure spurs the student on to keen study. As an active participant in the confrontation, she can see and sense the issues as they arise. The identification with a particular side compels continued probing. Most people are naturally partisan, thus when they are trying to understand the reactions of others, in a complicated hypothetical situation, they are more effective if they are forced to identify actively with one of the participants.

This built-in motivational thrust which results from active learning models is for many the clearest advantage of using

33. See MCKENNEY & DILL, INFLUENCES ON LEARNING IN SIMULATION GAMES, AM. BEHAVIORAL SCIENTIST, OCT. 1966, at 28.
these alternatives. Through active learning alternatives the student can eliminate the interval between learning and applying. The student can learn and apply soon thereafter.

The third argument for active learning alternatives concerns the method of reasoning that active learning encourages, and necessarily forces the student to practice. The specific design of the active learning alternative necessitates critical and intuitive thinking. Active learning not only involves careful planning and understanding of one's own moves but it also requires an analysis of how other people operate. Active learning demonstrates to the student the value of analysis, rational planning, and countering moves.

Moreover, a student can benefit from intuition if it leads the student to her short or long range goal, thus, results rather than methods are stressed. As the alternative exercise proceeds the student learns a combination of facts, processes, and strategies.

An area where the active learning alternative appears to be most effective is in providing a vehicle for teaching certain social values and ethics such as competition, cooperation, empathy and integrity. In addition, the specific design of alternative learning encourages students to communicate frequently with fellow students.

**IV. Active Learning Stumbling Blocks**

The active learning alternative is not without some problems which the teacher needs to address. Although the learning objective may be common to all participants, the rate of learning and the specific learning techniques employed by several individuals may differ. Using an active learning alternative requires more teacher-student interaction—more constructive criticism and encouragement. The teaching requirement of accurate feedback enables the student to assess her progress (or lack thereof), make whatever adjustment is necessary, and, in turn, become more efficient in her output. Regular exchange

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34. In a study involving students playing games of logic, Robert Allen concluded that motivation increased with games. Similarly, in reviewing the findings of six simulation studies, Cherryholmes concludes that the motivation was high when the teacher employed active learning alternatives. See Cherryholmes, Some Current Research on Effectiveness of Educational Simulations: Implications for Alternative Strategies, 10 Am. Behavioral Scientist, Oct. 1966, at 4.
between the student and teacher develops a positive sense of accomplishment within each student as individual goals are met. In addition, feedback given often and positively can then be understood and applied, rather than just collected as is often the case with a single exam grade.

Active learning alternatives may sometimes require having additional resource persons available to the students. This in turn may be cost-prohibitive. In addition, if the specific design is a small group exercise, the problem of holding individuals accountable is always present. Within groups, people who work harder should get greater recognition.

None of these problems are unmanageable. The challenge for legal educators is to incorporate the active learning alternative, whether it be simulations, role plays, small group discussions, live-client experiences or internship experiences into the teaching method used. The ultimate goal should be to teach students to learn from their own experience.

V. THE LEGAL PRACTICUM

In an effort to provide alternatives to the Socratic method-to pierce the Socratic veil and involve students in a cooperative learning experience William Mitchell College of Law created and implemented a course called the Legal Practicum. The Legal Practicum is a course of academic study that blends theory and practice through participatory seminars and clinical experiences. The students in the Legal Practicum have an opportunity to apply knowledge and skills gained in their studies to cases as they would arise in actual practice. The course is designed to prepare students for legal practice by simulating the diverse problems members of a law firm will encounter, providing both a variety of real and simulated clients and cases and the opportunity for in depth intellectual analysis.

The Legal Practicum is an innovative and creative approach to legal education. It combines the best of both simulated and fieldwork experiences with challenging seminars. The legal

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35. A book containing all of the problems used in the Legal Practicum will be forthcoming in the summer of 1990, published by West Publishing Company. Authors John Sonsteng, Roger Haydock and June Cicero offer problems designed for the course as well as adaptations available for use in other courses as active learning alternatives.
practicum is available to approximately twelve to twenty-four law students each semester.

The basic structure of the Legal Practicum is to assign students to three-person “law firms.” The students are assigned to these firms according to their individual interest in various legal areas and their background experience. The students work within the three-person law firms under the supervision of faculty and tutors, who act as senior partners. Simulated cases, problems, and clients are presented to each law firm during the semester. They require each student to handle a significant variety of problems.

The problems encompassed the following substantive areas: corporate law, personal and business income tax, wills, real estate, commercial law, criminal law and procedure, constitutional law, civil rights, torts, family law, employment law, and landlord-tenant law. Each student-firm takes part in a court trial, an administrative hearing, a contract arbitration, federal and state court motion hearings, legislative conferences, depositions, and a Supreme Court appeal.

The cases involve proceedings in state and federal judicial and administrative forums, and the state legislature. The students interview clients, investigate facts, draft documents, prepare pleadings and briefs, compose memos, negotiate settlements, and exercise related skills.

Each week during the fifteen week semester, the student law firm receives information about continuing developments, and new clients and cases. Depending upon their complexity, some cases last a short time, others spanned several weeks.

Each week the students meet at scheduled times with the “senior partners.” These senior partners supervise the students’ activities and evaluate and critique their performances. In addition, the senior partners facilitate each session; they probe, question, and stimulate self-learning and analysis. Tutors with specialized expertise provide seminars in the substantive areas of the law, explaining theory and practice.

The students receive memos from the senior partners during the term of the course. These memos outline the problems that form the coursework throughout the semester. Additional information is provided by clients whom the students interview and represent. In most cases, the tutor-senior partner requests
a weekly memo from each student detailing research, progress, and goals regarding a particular problem.

Members of the full-time faculty and experienced adjunct teachers tutor in their areas of expertise. Each simulated case raises issues involving several substantive and procedural aspects of the law. The tutors who teach in the particular areas meet with the students anywhere from one to three hours a week. During these meetings, they question the students regarding their progress on a problem or case, guide them in determining the issues, help them analyze alternative solutions, and evaluate their performances. The tutors require the students to perform the necessary legal research and encourage them to reach their own conclusions regarding decisions, strategies, and tactics.

The other participants in the course include full-time and adjunct faculty who act as clients, opposing parties, and opposing counsel. For example, an adjunct acting as prosecutor opposes the students in their defense of a DWI case; a federal practitioner opposes the request for a temporary injunction in federal district court; and members of the Minnesota Supreme Court preside over presentations of oral arguments. Other attorneys and judges acting in various capacities are also involved in the course.

The course also involves individuals other than lawyers and judges, relying on their particular expertise. For example, a real estate agent negotiates with the students regarding a purchase agreement; a professional arbitrator arbitrates contract disputes among the students; witnesses to an auto accident are interviewed to elicit their statements; an administrative hearing officer decides an administrative case; and medical experts are prepared and deposed. Legislators sit as committee members to hear the students’ legislative proposals and lobbying efforts. Clerks of courts and administrative officers accept pleadings and documents filed by the students. In addition, the problems used in the Legal Practicum are readily adaptable to other instructional settings.

Students were asked to for their impressions of the learning alternative. Student responses were obtained from questionnaires sent out over a year to all students enrolled in the Legal Practicum course and other course using active learning alternatives. Overall, student responded positively to the Legal
Practicum and active learning courses despite their feelings that active learning required more effort.

More than half the students reported learning more or much more in active learning classes. One student wrote, "It seems like less effort even though you know you're working harder, because you get a chance to see the results of your work and to really do something with what you're learning." When asked "What part of the course helped you learn the most?" one student replied, "Simply the process of solving a problem. Being given a problem and being turned loose to solve it by any possible way—hopefully the best and most efficient." Most students in Legal Practicum made comments as follows: "This course brought all of my law school courses together... Finally things made sense and I realized what I needed to know to do the job."36

CONCLUSION

Marvin Minsky, in his book The Society of Mind, said, "Minds can lead more productive lives when working on problems that can be solved."37 Whether integrating an active learning alternative into a substantive law course or creating an entire active learning course such as the Legal Practicum, using active learning methods turns the twenty to 200 students in the classroom into teachers. Students teach each other. Forced to teach by virtue of the active learning process, students necessarily have a more concrete understanding of the material. In the process students improve their abilities to communicate and work with others—skills that will ultimately help them to use their knowledge and become skillful attorneys. Alternative educational methods not only expands the number of teachers, it provides a road map to understanding the course material.

The active learning alternative, however, is very time-consuming, especially at its implementation. It's very intensive and draining. Many professors may find the traditional Socratic method a better use of their time and energy.

For most students, education means sitting in the stands and watching others perform. Passive learning offers its share of enlightenment, even enjoyment. But as every athletic coach

36. All student comments were taken from confidential and anonymous end-of-the-semester evaluation forms at William Mitchell College of Law.

has said sometime in his or her career, "You learn by playing the game." Even Socrates searched for the right comparison. He likened teaching to midwifery—helping students give birth to ideas they already possess. Restructuring teaching methods to better serve the students may cost individual teachers time and effort, but it is more attractive than filling an empty vessels. Through an active learning alternative students can tie the present, the future, and her skills, values and knowledge all together to make the ongoing situation relevant, pertinent, and meaningful. Therefore, no matter what personal price, it is time to pierce the Socratic veil. An active learning alternative should become a part of every professor’s teaching method.

38. See 3 THE DIALOGUES OF PLATO, supra note 1, at 243–46 (refering to the Theaetetus).