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The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues

Cynthia G. Hawkins-León*

I. INTRODUCTION

Although there are a number of teaching methods, the two primary methods of law teaching today are the Socratic Method and Problem Method. This paper will discuss the positive and negative attributes of both methods and will relate the details of an informal study that the author conducted over a two-year period.

Though widely utilized in American law schools today, the Socratic Method of instruction has been criticized as teaching the legal thought process by example rather than forcing students to engage in their own rigorous mental analysis. Further, critics state that the Socratic Method focuses more on the holding of a case rather than how the holding was reached.

Supporters of the Problem Method proffer it as a better approach to law teaching because it provides students the opportunity to apply rules of law to complicated written fact patterns and then to discern a “correct” answer that is similar to a practicing lawyer’s approach to mastering the law. At the same time, the Problem Method allows for the frequent testing of students which maximizes the efficiency of a teaching program. The Problem Method has been touted as improving upon the virtues of the Socratic Method. However, critics of the method fear that it is more costly than the Socratic Method because it is best utilized in classes of forty students or less. Also, due to in-depth problem-solving and role-playing, a professor may be forced to cover less material when using this method of instruction.

Although the Problem Method appears to have gained recognition and some amount of acceptance during the last decade, it

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is not a newly developed approach to law teaching. In fact, as early as 1942, an Association of American Law Schools ("AALS") committee report discussed the pros and cons of the Problem Method.¹ By 1958, the Problem Method was utilized by all professors in both second and third-year courses at the Notre Dame Law School.²

The primary issues to be discussed in this article are: Whether there is a benefit to teaching law by the Problem Method rather than the time-honored Socratic Method? Is some combination of the two methods most appropriate?

As a law professor who just completed her second year of teaching, I am still struggling with the Socratic Method-Problem Method dichotomy. When facing the new challenge at the beginning of the 1995-1996 academic year, I felt that it was important to adopt a teaching style that I was comfortable with rather than to fall lock-step into the way I had been taught law some ten years before. For the reasons to be expressed throughout this paper, I conclude that the most appropriate teaching method (for the newly initiated law professor of a so-called "code course") is a combination of the Socratic Method and the Problem Method, with a strong emphasis on the Problem Method.³

I conclude that today's law school graduates should be more prepared to take on and successfully complete assignments that would face an entry-level practicing attorney. Gone are the times when it was sufficient to merely think like a lawyer — law school graduates need to be able to perform like lawyers.⁴ As has

1. Association of American Law Schools 1942 Reports of Committees, at 85 (Committee on Teaching and Examination Methods) (hereinafter "1942 Report").

2. Bernard J. Ward, *The Problem Method at Notre Dame*, 11 LEGAL EDUC. 100 (1958).

3. The author, in her first year Criminal Law and Procedure course, integrates formal problems into class discussions. For further discussion of the author's use of the Problem Method, see section V, "The Problem Method Applied," *infra*.

4. Myron Moskowitz, *Beyond the Case Method: It's Time to Teach With Problems*, 42 J. LEGAL EDUC. 241, 245 (1992). See generally, Jay M. Feinman and Marc Feldman, *Achieving Excellence: Mastery Learning in Legal Education*, 35 J. LEGAL EDUC. 528 (1985); Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57 (1992). "[The model lawyer] is a lawyer who uses rights-based reasoning to analyze legal problems in terms of competing, mutually exclusive claims. [S]he can argue all sides of any issue, because [s]he has no personal stake in any of [her] arguments." Lani Guinier, Michelle Fine, & Jane Balin, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 46 n. 116. "To lawyer effectively, a contemporary attorney may need more than the ability to spot issues or engage in quick-response timed legal analysis, as measured by blind-graded examinations." *Id.* at

been strenuously argued by legal scholars for at least the past ten years, the void separating the law school experience from that of practice must be bridged.⁵ One way to bridge the gap is through the use of the Problem Method in “traditional” subject-matter courses. Another is through the use of skills courses, simulation experiences, and clinical courses.⁶

In general, legal employers, from law firms to government agencies, want new attorneys that have some facility for and experience in the practice they seek to enter.⁷ Employers no longer have the money to invest in apprenticing new attorneys. Due to budget constraints, this is particularly true for government hires. For example, when the Government of the District of Columbia drastically reduced its expenditure for non-personal services, some departments reacted by abolishing funds designated for employee training.⁸ This budget cut burdened lawyers and non-lawyers alike. Unfortunately, it is incumbent upon law schools through their curricular offerings to fill the void created.

86-87 (citations omitted).

5. See generally, Jay Feinman and Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985); Gerald Korngold, *Legal Education for Non-Litigators: The Role of the Law Schools and the Practicing Bar*, 30 N.Y.L.S. L. REV. 621 (1985); Michael Meltsner, *Healing the Breach: Harmonizing Legal Practice and Education*, 11 VT. L. REV. 377 (1986); Alex Johnson, Jr. *Think Like a Lawyer, Work Like A Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Barbara Bennett Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977 (1993).

6. See generally, Bryant G. Garth and Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (results and analysis of survey of lawyers' views of the skills necessary for the practice of law). “In using an active learning alternative...the student is assimilating the material in order to be able to efficiently carry out actions toward her goal.” June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCH. L. REV. 1011, 1018 (1989). The increase in the number of skills-related courses in the law school curriculum has been touted as “the most significant development in legal education in the post-World War II era.” *Legal Education and Professional Development — An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association Section of Legal Education and Admissions to the Bar (July 1992) (hereinafter “MacCrate Report”), at 6.

7. William R. Trail and William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 202, 219-26 (1996). “Students and lawyers alike are challenging law schools to develop a program of legal education that prepares students who are capable of representing clients upon graduation.” *Id.* at 219.

8. District of Columbia Appropriations Act 1993, Pub. L. No. 102-382, 106 Stat. 1422 (1992).

This leads us to the far-reaching question of: What is the purpose and effect of a legal education in the 1990's and into the next century? Although it is difficult to find definitive answers to this question, a decision needs to be made by the legal academy to ensure the merit of law professors and law teaching well into the new millennium. In trying to determine the future, it helps to digress, look at the past, and ask ourselves: How did we get to this point in the development of legal education?

II. THE SOCRATIC METHOD OR CASE METHOD APPROACH TO LEGAL INSTRUCTION

A. *Historical Background*

The starting point for this article is the origin of the Socratic Method. In the 1870's, Christopher Columbus Langdell first introduced the idea of teaching law by the Socratic Method at Harvard Law School.⁹ Langdell touted his method as "much of the shortest and best, if not the only way of mastering...[legal] doctrine."¹⁰ Langdell theorized that law should be taught as a science (meaning inductively with the case as the raw material).¹¹ At the time, his "new" idea was met with great disdain and rancor.¹² The critics of the Socratic Method claimed that the teaching of a mass of unclassified and often unrelated cases through Socratic instruction resulted in student confusion and a lack of understanding of broad legal doctrine.¹³

Prior to the adoption of the Socratic Method, the primary method of classroom law teaching was by the lecture-textbook method.¹⁴ Students learned through the passive means of listening to lectures, reading textbooks that explained the rules of the cases, and memorizing the cases presented.¹⁵ There was little or no interaction with the teacher.¹⁶ An additional route to the bar

9. Moskowitz, *supra* note 4, at 242. See generally, Russell Weaver, *Langdell's Legacy: Living With the Case Method*, 36 VILL. L. REV. 517 (1991).

10. Christopher Columbus Langdell, *A Selection of Cases on the Law of Contracts* vi, vii (1871).

11. J.H. Landman, *The Problem Method of Studying Law*, 5 J. LEGAL EDUC. 500, 502 (1953).

12. *Id.* at 502.

13. Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System*, 36 J. LEGAL EDUC. 167, 170 (1986).

14. Moskowitz, *supra* note 4, at 242.

15. *Id.*

16. *Id.*

was through the practice of “reading law” as an apprentice in an attorney’s office.¹⁷

Despite original criticisms, the “basic science” approach of the Socratic Method was found to be an improvement over the lecture-textbook method of teaching.¹⁸ The professor, utilizing the Socratic approach, helped to sharpen students’ minds through honing their analytical skills. Students were required to read cases, extrapolate significant rules and the court’s analysis, and articulate their understanding of the rules of law and judges’ policy considerations.¹⁹ Langdell theorized that the teacher/student interaction encouraged by the Socratic Method of teaching produced better lawyers than teaching by the lecture-textbook method.²⁰

Although discussion has continued over the last 100 years, as time went on, despite the initial hesitance to adopt the method,²¹ the Socratic Method became the primary method of teaching in American schools.²² The Socratic Method has been praised for helping students to:

- (1) develop analytical skills;
- (2) force them to think on their feet;
- (3) encourage intellectual rigor;
- (4) learn about the legal process; and
- (5) learn about the lawyer’s role or function.²³

The Socratic Method remains the primary method of law teaching today.²⁴

17. Seven states retain this method of allowing a person who has not graduated from a three-year law school program (or part-time/evening equivalent) to reach the bar: California, Maine, New York, Vermont, Virginia, Washington and Wyoming. Robert M. Jarvis, *True or False: Do You Know Your Bar Exam?*, *The Student Lawyer*, Mar. 1997, at 16. See also, John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 *J. LEGAL EDUC.* 157, 161 (1993); MacCrate Report, *supra* note 6, at 108.

18. Moskowitz, *supra* note 4, at 244.

19. *Id.*

20. *Id.*

21. Weaver, *supra* note 9, at 541-42. Twenty-five years after Langdell introduced the Case Method at Harvard, most law schools still utilized the lecture method of law teaching. At that time, only six schools had completely adopted the Socratic Method. *Id.*

22. Teich, *supra* note 13, at 167.

23. Weaver, *supra* note 9, at 549-61.

24. *Id.* at 518; Teich, *supra* note 13, at 167. The Socratic Method was accepted without attention to the fact that it requires active learning by law students who will

B. Criticisms of the Socratic Method

In spite of its overwhelming adoption and acceptance, the Socratic Method of teaching has been criticized. First, since the Socratic Method was designed to enable teacher and students to examine a case as raw material in a scientific approach to legal study,²⁵ it has been found by some to be too scientific an approach. Second, since the main purpose of legal education in the 1990's is to train lawyers, the Socratic Method has been criticized for failing to provide practical and practiced experience.²⁶ Third, the Socratic Method of study is further criticized for placing less of an emphasis on the holding of a case than on the way in which the holding was reached.²⁷ In a 1942 report of the committee on teaching and examination methods issued by the AALS, the committee found that in theory the Socratic Method was to be used to apply the legal principles used in a case to differing fact patterns.²⁸ In reality, the Committee found students viewed cases as authoritative solutions to be read and absorbed.²⁹ In essence, the students stopped their study and analysis without reaching the full potential of the mode of inquiry.³⁰ Fourth, by the Socratic Method, students are shown what others have done in the past rather than shown what to do in the future and to be allowed to practice their learned skills through analyzing, distilling, and attempting to resolve a lengthy fact pattern/scenario.³¹ As stated quite succinctly by Professor David Cavers, "past legal solutions are important to use in solving new problems, but studying solutions is not learning how to use them."³² Fifth, the Socratic Method provides no

have practiced passive learning techniques for the majority of their educational lives. See generally, Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943 (1995-1996).

25. Moskowitz, *supra* note 4, at 242. Langdell's belief that "law is a science that can be reduced to fundamental rules through scientific analysis - has long since been repudiated." Weaver, *supra* note 9, at 547 (citation omitted).

26. Moskowitz, *supra* note 4, at 244-45.

27. *Id.* at 244.

28. 1942 Report, *supra* note 1, at 87.

29. *Id.*

30. *Id.*

31. David F. Cavers, *In Advocacy of the Problem Method*, 43 COLUM. L. REV. 449, 455 (1943).

32. *Id.*

“well-defined or elaborated technique for case review.”³³ Sixth, the Socratic Method was accepted without attention to the fact that it requires active learning by law students who will have practiced passive learning techniques for the majority of their educational lives.³⁴ Finally, in case reading, students are not required to relate law to fact—students are required to read and discuss cases that did this for them.³⁵

III. THE PROBLEM METHOD APPROACH TO LEGAL INSTRUCTION

A. *General Factors*

The Problem Method purports to offer all of the benefits of the Socratic Method plus more.³⁶ Also, the Problem Method has been described as the major alternative to the Socratic Method of law teaching.³⁷

The AALS inquiry into the use and practicality of the Problem Method culminated in 1966 with the issuance of a report providing the results of a survey it conducted. The Committee sent out 1000 questionnaires consisting of six pages with a total of sixty-two questions.³⁸ The purpose of the survey was to determine the usage of the Problem Method and professors' reactions to the teaching method.³⁹ Unfortunately, only 134 questionnaires were returned from fifty-two law schools.⁴⁰ Despite the numerical results, the AALS committee concluded that it was probable that twice as many of the recipients of the questionnaire utilized the method.⁴¹

With the increased utilization of the Problem Method over the last 30 years, it is advisable that a new survey be conducted by the AALS of its member schools to ascertain law professors'

33. Suzanne Kurtz, Michael Wylie, and Neil Gold, *Problem-Based Learning: An Alternative Approach to Legal Education*, 13 DALHOUSIE L.J. 797, 802 (1990).

34. See generally, Richmond, *supra* note 24, at 943.

35. Ward, *supra* note 2, at 101.

36. Moskovitz, *supra* note 4, at 241.

37. See generally, Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL EDUC. 654 (1984).

38. Association of American Law Schools 1966 Proceedings Pt. 1, Report of the Committee on Teaching Methods, The Problem Method Survey and Appraisal, at 205 (hereinafter "1966 Report").

39. *Id.* at 205-6.

40. *Id.*

41. *Id.*

views and ideas on the Socratic Method-Problem Method dichotomy as an update to the 1966 Survey and Report.⁴²

B. Goals of the Problem Method

According to the 1966 AALS Report and other sources, some of the goals and accomplishments of the Problem Method are that it:

- (1) Closely approximates the lawyer's approach to the law. Students must find their own answers to questions rather than merely read and memorize someone else's answer(s).⁴³
- (2) Provides training in planning and advising and teaches the skill of organization or issue-management (the organization of a cumbersome set of facts and issues).⁴⁴
- (3) Broadens the range of matters open to consideration by students because they are required to prepare answers to an established problem set.⁴⁵
- (4) Increases the effectiveness of instruction in comparison to the Socratic Method.⁴⁶
- (5) Stimulates student interest in legal study as students are likely more prepared for class participation since they have received the problem in advance and can therefore anticipate class discussion.⁴⁷
- (6) Allows the integration of relevant, non-legal source materials (such as economics and psychology) which may lead to a more enriched curriculum and allow students a

42. The author intends to conduct such a survey as an update to the AALS 1966 survey. It should be noted that, although the most dominant, the Problem Method and the Socratic Method are not the only available teaching methods. For example, the broader application of skills training and simulation are gaining respect and popularity. Trail and Underwood, *supra* note 7, at 234-43. See generally, Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis or More?*, 100 DICK. L. REV. 245 (1996); Stacy Caplow, *Autopsy of a Murder: Using Simulation to Teach First-Year Criminal Law*, 19 N.M. L. REV. 137; Thomas A. Robinson, *Simulated Legal Education: A Template*, 42 J. LEGAL EDUC. 296 (1992). Any updated survey ought to include questions regarding the use of both skills training and simulation and their relative effectiveness.

43. 1966 Report, *supra* note 38, at 207.

44. *Id.* at 208.

45. *Id.*

46. *Id.* at 209.

47. *Id.* at 210.

greater breadth of inquiry.⁴⁸ The disadvantage here is that law students often have a tendency to ignore the relevance of non-legal materials.⁴⁹

(7) Allows and encourages testing of students' understanding of the assigned readings.⁵⁰ The AALS 1942 Report stated that "frequency of examination is ... urged as a method for maximizing the efficiency of a teaching program."⁵¹ In application, the Problem Method allows for frequent examination of students' performance—a professor could require answers to various problems to be submitted in writing for review and written comment and grading.

There are three key features to the effective use of the Problem Method: First, the problem itself must be complex. It should include several issues and involve one or more cases and statutes.⁵²

Second, the problem is distributed to the students in advance of class. Students are expected to work on the problem outside of class and come to class to discuss their results. Each student is assigned a relevant role to play within a situation that could be faced in a practice setting. Due to the pre-assignment of roles and problem, an opportunity exists for in-depth legal analysis by the students with the professor (unlike the impromptu in-class hypothetical where students are caught more by surprise and therefore are not able to prepare their responses in advance).⁵³

Third, the problem is the focus of in-class discussion. Since the cases, statutes, and other resource materials provide information to enable the student to solve the problem, the benefits of the Socratic Method of study are also realized.⁵⁴ It should be noted that an adequate outline of the problem is the most important factor in an effective discussion of a complex problem.⁵⁵ During class discussion, it may be necessary and benefi-

48. Ogden, *supra* note 37, at 662-63. See also, Cavers, *supra* note 31, at 453.

49. *Id.*

50. Ward, *supra* note 2, at 101.

51. 1942 Report, *supra* note 1, at 88 n.4.

52. Moskowitz, *supra* note 4, at 250.

53. *Id.*

54. *Id.*

55. *Id.* at 256-7. The Moskowitz Model is as follows: Base headings (Roman numeral – I, II, ...) for each of the sections or questions in the problem; secondary headings (alphabetized – A, B, ...) for the major rules of law that apply to that

cial for the professor to assist students in proper outline preparation.

C. *Criticisms of the Problem Method*

Despite the virtues of the Problem Method, there are several disadvantages that should not be ignored. Several criticisms are as follows:

- (1) The professor must devote more time to course preparation in order to draft problems and their answers.⁵⁶ The creation of textbooks utilizing the Problem Method of instruction is of immeasurable assistance. Course books for some subjects already exist and some problem books have been created for use with a standard textbook.⁵⁷ Students are also required to be more consistent in their class preparation and may have to spend more time preparing for class.⁵⁸
- (2) The Problem Method is more costly than the Socratic Method because its usage is most effective in smaller classes. Research has shown that ideally no more than 40 students should be enrolled in a course taught by the Problem Method.⁵⁹ This factor causes the Problem Method to be more costly than the Socratic Method which is ideal for large class sizes.⁶⁰
- (3) Professors are not as much at liberty to teach via lecture when the Problem Method is utilized.⁶¹
- (4) Due to the in-depth discussion of individual problems, critics fear that less course material is covered when the Problem Method is utilized.⁶² Contrary to this concern

particular part of the question; third level headings (numerical - 1, 2, ...) for the constituent parts of the various rules of law (if any) and additional sub-headings to list all key facts found in the fact pattern which should be considered on a particular issue.

56. *Id.* at 267; Ogden, *supra* note 37, at 664.

57. 1966 Report, *supra* note 38, at 214. Some existing Problem Method textbooks are: Edward H. Rabin and Roberta R. Kwall, *Fundamentals of Modern Real Property Law* (3rd ed. 1992) and Myron Moskowitz, *Criminal Law* (3rd ed. 1996). An example of a problem book designed to be used with a standard casebook is: Joseph D. Grano, *Problems in Criminal Procedure* (3rd ed. 1997), which may be used with Yale Kamisar, Wayne LaFave, and Jerald Israel, *Modern Criminal Procedure* (8th ed. 1994).

58. Moskowitz, *supra* note 4, at 254.

59. Ogden, *supra* note 37, at 664.

60. *Id.*

61. Kurtz, *supra* note 33, at 808.

62. Ogden, *supra* note 37, at 665.

the results of the 1966 AALS survey showed that more course material was covered by professors utilizing the Problem Method.⁶³

IV. THE TWO METHODS COMPARED

A comparison of the requirements of the Problem Method versus those of the Socratic Method can be made on several levels: reasoning versus memory of information;⁶⁴ conduct versus processing information;⁶⁵ natural setting for learning versus an artificial setting;⁶⁶ and the problem, as the priority, versus the principles, as the priority.⁶⁷

When the Socratic Method was compared to the Problem Method by respondents to the 1966 AALS survey, the Problem Method was perceived by professors who used the Problem Method predominantly as being "much better" by a margin of 4 to 1 in its development of student abilities.⁶⁸

In general, law professors realize that there are several objectives that a teacher seeks to achieve in a particular course.⁶⁹ For example:

- (1) Learning basic substantive law – to enable the student to practice law in a particular subject matter.⁷⁰ The Problem Method of instruction is particularly effective in courses requiring familiarity with statutes or codified general rules such as the Federal Rules of Civil Procedure or the Administrative Procedures Act.⁷¹
- (2) Attaining or refining judgment and analysis skills – these skills include issue recognition and analysis, case strategy, tactics, and decision making.⁷²

63. 1966 Report, *supra* note 38, at 220, 251-4.

64. 1942 Report, *supra* note 1, at 87.

65. *Id.*

66. *Id.*

67. *Id.*

68. 1966 Report, *supra* note 38, at 241.

69. Ogden, *supra* note 37, at 657. *See also*, Charles R. Calleros, *Variations on the Problem Method in First-Year and Upper-Division Classes*, 20 U.S.F. L. Rev. 455, 455-56 (1986).

70. Ogden, *supra* note 37, at 657.

71. *Id.*

72. *Id.* at 658.

(3) Teaching lawyering skills – i.e., interviewing, counseling, negotiating, legal research and writing.⁷³ For example, students of Civil Procedure could be required to draft a complaint or a summary judgment motion from a supplied fact pattern.⁷⁴ Arguably, the most important lawyering skill is problem-solving.⁷⁵

(4) Learning professional responsibility – including learning the ethical rules of the profession, professional rules, and professional behavior standards.⁷⁶ The Problem Method forces a certain level of student participation and responsibility which may prevent students from operating at a “sub-professional level.”⁷⁷ In addition, the teacher serves as a role model for civil lawyer-like behavior.⁷⁸

Teaching a course through the Problem Method is a good vehicle for the attainment of all four of these objectives.⁷⁹

V. THE PROBLEM METHOD APPLIED

As a new law professor, I decided to experiment with the usage of the Problem Method in my Criminal Law and Procedure course.⁸⁰ During the first year of law-teaching, as a preliminary introduction to the Problem Method, with the book publisher’s permission, several of the problems in Myron Moskowitz’s *Cases and Problems in Criminal Law* were assigned and digested by the class. The first year, the only adopted text was a traditional casebook by Joshua Dressler entitled *Cases and Materials on Criminal Law*.

During the second year of law teaching and the follow-up year of the experiment, the Moskowitz text was adopted in the

73. Ogden, *supra* note 37, at 660.

74. *Id.*

75. *See generally*, Costonis, *supra* note 17; Stephen Nathanson, *Developing Legal Problem-Solving Skills*, 44 J. LEGAL EDUC. 215 (1994).

76. Ogden, *supra* note 37, at 661.

77. *Id.*

78. *Id.*

79. *Id.* at 657.

80. The Criminal Law and Procedure course at Duquesne University School of Law is a first year mandatory year-long four (4) credit course meeting once a week for one hundred (100) minutes. Whereby, approximately three (3) credits of course time are devoted to the study of substantive criminal law and approximately one (1) credit is devoted to an introductory review of the basics of criminal procedure.

course and thoroughly intertwined into the course along with the Dressler text.⁸¹ Typically, the subject matter was first covered through a discussion utilizing the Socratic Method and the Dressler text. In a second class period (or portion thereof) on the same subject matter, the class was divided into "problem groups" to address a particular pre-assigned problem from the Moskovitz text.⁸² To encourage and facilitate in-depth discussion, the problem groups consisted of five to six students.⁸³ A student group leader was selected from each group on a rotating basis to address the class on their group's assigned aspect of the problem. Class members and the professor queried each group leader to expand the discussion and answer unaddressed aspects of the problem. Additionally, group members provided assistance to their group leader during the class discussion period as the need arose. During the course, each student in the class served as a group leader for at least one problem session.

During either the problem group session or as an entire class led by the group leaders, the students were actively involved in the five basic steps of problem-solving. The five basic steps are: identification and definition of the problem, interpretation of the problem through fact-gathering and issue-spotting, identification of options for solution of the problem, evaluation of options and determination of the preferred option or solution, and implementation of the preferred solution.⁸⁴

This utilization of the Problem Method was enthusiastically received by the students. In their course evaluations, nearly three-quarters of the respondents mentioned the problem groups as a positive factor in the course. In these evaluations, no student stated any negative opinion regarding the problem groups.

In my opinion, student performance and class preparation was measurably better for the group sessions.⁸⁵ This was despite

81. Myron Moskovitz, *CASES AND PROBLEMS IN CRIMINAL LAW* (3rd ed. 1996); Joshua Dressler, *CASES AND MATERIALS ON CRIMINAL LAW* (1994).

82. For several subjects, only the Problem Method text was utilized for class assignment and discussion.

83. The professor randomly assigned students to groups taking care to evenly distribute male and female students; and to separate students who were normally seated together. The class consisted of thirty-three (33) students and was divided into six (6) student groups consisting of between five (5) and six (6) students each. A group size of five (5) to eight (8) students is recommended. Kurtz, *supra* note 33, at 809.

84. Kurtz, *supra* note 33, at 803-806. See generally, Stephen Nathanson, *The Role of Problem Solving in Legal Education*, 39 J. LEGAL EDUC. 167 (1989).

85. Students, by their own admission, stated that they: (1) felt better prepared

the fact that the students were not given their specific daily group assignment until the beginning of the class. All students were expected to read and brief all cases within the assigned reading and come to class with an outline of the answer to the problem. The students then met in their groups for twenty to twenty-five (20-25) minutes to discuss their assignment.⁸⁶

The Problem Method was thus integrated into the traditional course with successful results.

VI. THE PURPOSE AND EFFECT OF LEGAL EDUCATION

A. *General Purpose of Legal Education*

The law professor is caught in a paradox. He or she is attempting to achieve the purpose of legal education within a space of three to four years—to equip law students with all (or the majority) of the following (often competing) faculties which will enable them to become competent legal practitioners. Namely, a capacity to think through and unravel fact patterns,⁸⁷ the ability not to accept the opinions of others without review and reflection,⁸⁸ the talent to make a searching analysis of a group of facts and disclose the legal problem involved,⁸⁹ enough imagination to discover possible solutions,⁹⁰ the patience to investigate the validity and practicality of the various solutions,⁹¹ and the courage to form and then act upon their own judgment.⁹²

These general purposes as stated in 1966 are just as important today as generally expressed in *Legal Education and Professional Development — An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap produced by the American Bar Association, Section of Legal Education and Admission to the Bar (July 1992) (the “MacCrate Report”).⁹³

for the group sessions; and (2) were more at ease standing in front of the class and addressing their classmates when they were assigned a goal-oriented, measurable task.

86. Within the one hundred (100) minute class period, the allocation of time was flexible depending upon the difficulty of the task: Students often spent thirty (30) or more minutes participating in their group discussions.

87. Ward, *supra* note 2, at 101.

88. *Id.*

89. 1966 Report, *supra* note 37, at 208.

90. *Id.* at 209.

91. *Id.* at 240-1.

92. *Id.*

93. See generally, MacCrate Report, *supra* note 7, at 121-221 (a discussion of the

As previously stated, the intrinsic nature of the characteristics law that faculty members are trying to instill in their students to enable them to become successful lawyers makes for an impossible feat. Additionally, the singular use of the Socratic Method of teaching stresses only the adversarial nature of the legal profession and tends to place a lesser emphasis on the above-named characteristics.

The roles of a lawyer that have increased during the 1990's are that of planner and advisor to clients. As somewhat of a prophecy of this development, the 1966 AALS report suggested that law teaching should assist students in learning these needed skills.⁹⁴ Another significant change affecting legal practice was the "boom" in the number of law school graduates during the 1960's, 1970's, and 1980's leading to a need for greater specialization within the profession. Additionally, technological developments such as the fax machine and the lap-top computer have served to significantly increase competition within the bar in all practice areas.⁹⁵

These changes alone are sufficient to require the legal academy to review whether the dominant mode of teaching developed more than one hundred years ago is sufficient, without modification, to prepare law students for the real world of legal practice in the new millennium. As previously stated, preparation to think like a lawyer is no longer sufficient. Law students need preparation to act and react like lawyers.

B. *The Effects of Legal Education*

Juxtaposed with the purpose of legal education are the varying effects of legal education upon male and female law stu-

skill of problem solving is found on pages 141-51). Certain additional skills are also crucial — namely, creativity, sound judgment, independent judgment, and a realistic view of one's own abilities and limitations. *Id.*, at 150-51. "[T]he MacCrate Report hews aggressively to a practitioner-oriented concept of legal education. Its template for determining what and how law schools should teach derives from its description of what lawyers actually do." Costonis, *supra* note 17, at 157. Although the MacCrate Report has been considered seminal, an in-depth discussion and analysis of the Report is beyond the scope of this article. For critiques of the MacCrate Report, see generally, Costonis, *supra* note 17, and Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report — of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994).

94. 1966 Report, *supra* note 37, at 208.

95. MacCrate Report, *supra* note 6, at 11, 13-120.

dents. Despite earlier literature and studies that found the law school experience and performance to be the same for men and women, the results of a recent study tend to show an ascertainable performance differential in law school between the sexes.⁹⁶ Although the resultant credentials throughout law school appear not to be gender-neutral, male and female students enter law school with comparable undergraduate records and relevant credentials.⁹⁷ The logical conclusion being that the law school experience creates or causes a gender-based performance differential.⁹⁸

Particularly relevant to our discussion here, performance data and personal accounts from the University of Pennsylvania School of Law study indicate that the Socratic Method of law teaching serves to alienate female law students and adversely affects their performance level.⁹⁹ Competitiveness engendered by the Socratic Method may serve to stifle performance by certain students.¹⁰⁰

As previously stated, the Socratic Method requires students to reply when called upon and thus demands class discussion and participation. Law students have reported that, in general, they feel hostility towards those students who speak out in class. In addition, students claim to openly act upon this hostility.

96. See generally, Guinier, *supra* note 4. "Although other studies found lower rates of classroom participation among women law students, no one had systematically documented the extent of gendered difference; nor had anyone researched the academic and emotional costs paid by women for their 'different' or 'dominated' experiences. Our study is the first that attempts to weave a full analysis out of self-reported survey data, actual academic performance data, and open-ended narrative responses." *Id.* at 12 (citations omitted). Five prior studies show that female students volunteer for and join in class discussion less frequently than do their male counterparts. *Id.* at 12 n. 32. See generally, Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988). The issue of the "silencing" of minority law students of both sexes (either from peer pressure or personal choice) needs to be fully studied and addressed as well. This issue, although of great importance, is outside of the scope of this article.

97. Guinier, *supra* note 4, at 21-32.

98. *Id.* (Compare Figure I, p. 24; Table II, p. 22; and Table III, p. 23).

99. *Id.* at 2, 32-59. The study involved three separate components of data: (1) a review of the academic performance data of all enrolled students from 1990 through 1992 (981 students); (2) responses to a survey conducted in 1990 (366 total students); (3) narrative responses to the 1990 survey (104 students). *Id.* at 10-11.

100. *Id.* at 45-52, 62-63. It can not be said (and the data does not indicate) that all male students thrive under the Socratic Method, and neither can it be said that all female students are stifled by it. However, some students find that "the hierarchy of the Socratic classroom and the grading system creates a dysfunctional level of stress." *Id.* at 89 n. 243 (citation omitted). See generally, Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 (1988).

ity both during class and outside the classroom.¹⁰¹ Such “retaliatory” acts for perceived overzealous class participation tend to be counter-productive to the overall effectiveness of this teaching method.

Survey results in the University of Pennsylvania study indicate that, during the three years of law school, male students ask questions in class at approximately twice the rate of female students; thus, receiving greater feedback and attention from professors.¹⁰² Although female law students comprise, on the average, over forty percent of the student body,¹⁰³ the University of Pennsylvania study and others indicate that their presence is not fully felt due to a lack of concomitant participation.

It has been proven that the Socratic Method has a disparate impact upon the participation levels and therefore the experiences of male and female law students. Further study is needed to determine whether the Problem Method serves to equalize participation amongst the sexes and lessen hostility often engendered by the Socratic Method in particular and the law school experience in general.

VII. CONCLUSION

A dilemma facing all academics is how best to instruct our students so that we teach to the entire class in a manner that increases the students’ comprehension and their ability to apply the material once learned. After two years of law school instruction, I conclude that teaching through the Problem Method goes far in reaching this laudable goal. However, whether one teaching method is superior to another remains inconclusively resolved.

The time is ripe for an updated survey of law professors at American law schools to take up the discussion where the 1966 AALS survey ended—to determine the extent of the use and utility of the Problem Method approach to law teaching. Further study is also needed to determine whether the problem method serves to equalize participation levels between the sexes and to lessen the hostility often encouraged by the law school experi-

101. Guinier, *supra* note 4, at 51.

102. *Id.* at 33 n. 86.

103. MacCrate Report, *supra* note 6, at 18.

ence in general and the Socratic Method of teaching in particular.

Although there are no easy or clear answers, it is up to legal educators to strive for the optimum possible result. To quote Oliver Wendell Holmes, the optimum result is "to teach law in the grand manner and to make great lawyers."¹⁰⁴ Arguably, what law schools can realistically aspire to accomplish with students in three years is the mastery of a "reasonable range of lawyering tasks."¹⁰⁵

It has been posited that "minds can lead more productive lives when working on problems that can be solved"¹⁰⁶ — the Problem Method may well be the means to reach this end.

104. Oliver Wendell Holmes, Jr., *The Use of Law Schools*, Collected Legal Papers 35, 37 (1921).

105. Trial and Underwood, *supra* note 7, at 226-27.

106. Marvin Minsky, *The Society of the Mind* 49 (1986).