This paper will show that the Socratic Method, heavily utilized in most law schools, is inadequate for optimal law student learning. The Socratic Method has the potential to yield significant academic advantages that support its widespread use in law school classrooms. However, the benefits are limited, and therefore the Socratic Method should be used only when it is the best pedagogical means to achieve a particular educational goal. In fact, law school professors should employ a variety of teaching methods to effectively and efficiently facilitate their students’ acquisition of knowledge, practical skills and analytic abilities.

While referred to as the ‘Socratic’ Method, the instructional approach relied on by most law school professors actually involves a Socratic-style dialogue combined with the Case Method. Socrates used a question and answer system to facilitate learning by guiding the inquiry of those he engaged to develop new understandings, as well as to expose the limits of their

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1 Carolyn Grouse, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 62 J. LEGAL EDUC. 336, 359 (2013) (“The bottom line of planning and delivering instruction is that each teaching method has particular strengths and is suited to teach particular things. As such, each tool should be used intentionally to achieve particular goals.”)

2 Id.
Knowledge. Law School professors employ a version of this model using the Case Method, which was developed as a scientific approach to legal education by Christopher Columbus Langdell, dean of Harvard Law School, in the late 1800s. The Case Method involves reading appellate court cases to ascertain and analyze rules of law. The Socratic Method, as practiced in most law schools, involves the professor questioning one student at a time, typically without prior notice, about the intricacies of a case, and about the application of its rules and reasoning to hypothetical situations.

The Socratic Method facilitates active learning in the participating students, thus it is often a valuable alternative to the lecturing approach to instruction. Educational researchers have determined that learning requires more from students than just listening, and thus lecturing is often a relatively ineffective teaching tool. When appropriate, experts recommend the use of instructional strategies that engage students in active learning, involving higher-order cognitive tasks, such as analysis, evaluation and synthesis. Because the Socratic Method demands that the queried student engage in analytical thinking and problem solving, the student is forced into an active

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5 ROY STUCKEY ET AL, BEST PRACTICES FOR LEGAL EDUCATION 153 (Clinical Legal Educ. Ass’n 2007).
7 STUCKEY ET AL, supra note 5 at 156.
9 Id.
learning mode.¹⁰

In addition, developing students' analytic reasoning skills has precedence in most law school curricula. Because the Socratic Method requires analytic thinking and the application of legal principles, it is well-suited to teach these skills, which are necessary for the practice of law and for success in law school.¹¹ In fact, the Socratic Method has long been used to teach analysis, application and evaluation by demanding thoughtful case examinations, impromptu application to varying fact patterns, and the articulation of logical legal arguments.¹² Clearly, lecturing about legal reasoning would not involve active learning nor provide students an opportunity to practice these skills. However, by engaging students in questions that require them to articulate arguments, reason by analogy and think critically about both sides of a legal issue, the Socratic Method facilitates their ability to “think like a lawyer.”¹³

Additionally, the Socratic Method gives students practice at speaking in a stressful, public situation.¹⁴ An advocate of the method, Harvard Law School Professor Alan M. Dershowitz considers the Socratic Method an essential aspect

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¹⁰ See generally Paul Brest, The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers, 58 LAW & CONTEMP. PROBS. 5, 7 (1995) (“Coupled with the issue-spotting style of examination, [the Socratic] method of active learning turned out to be a superb way of inculcating the analytic skills and the skepticism about easy answers that are requisite to competence in any career in the law.”)
¹¹ STUCKEY ET AL, supra note 5 at 99.
¹² See WILLIAM M. SULLIVAN ET AL, EDUCATING LAWYERS 5-6, (The Carnegie Found. for the Advancement of Teaching, Summary 2007).
¹³ Id. at 98; But see id. at 102 (“Practicing lawyers seem to agree that the Socratic dialogue and case method is not a particularly effective tool for preparing lawyers for practice. . . . it does not teach law students to think like lawyers; it teaches them to think like judges. . . .”)
¹⁴ STUCKEY ET AL, supra note 5 at 159.
of law school education. In fact, Dershowitz explained “[t]he whole practice of law is Socratic. . . . You can’t be an effective advocate without mastering the Socratic Method.” The ability to articulate concepts convincingly and effectively before a professor and a classroom of peers is difficult for most students, especially when given the floor without warning. Because some manner of speaking in public is required of practicing attorneys, whether in meetings, with clients or before a judge, practice with the Socratic Method is invaluable. In addition, as students generally do not know when they will be called on, the Socratic Method motivates students to be prepared for class, which generally includes reading cases and briefing them in IRAC format, practicing another valuable analytic stratagem.

Despite the benefits the Socratic Method provides when artfully executed, it is commonly overused in law schools, compromising its effectiveness. Occasionally the method is the exclusive pedagogy used by professors, despite research that demonstrates that using a variety of teaching styles facilitates learning more effectively. A significant problem with dependence on the

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16 Id. But see Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, A Dialogue About Socratic Teaching, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 271 (1997) (“By asking students questions, [a professor] may in fact make it more difficult for them to answer and to do the critical thinking she wants them to do.”)
17 Nelson P. Miller & Bradley J. Charles, Meeting the Carnegie Report’s Challenge to Make Legal Analysis Explicit, 59 J. LEGAL EDUC. 192, 193 (2009-10) (“The IRAC framework is the generally accepted way of representing legal analysis. It begins by identifying the issue and the applicable rule, then matches facts to the law in an analysis or application, and then reaches a conclusion together, Issue, Rule, Analysis, and Conclusion, or IRAC.”)
18 STUCKEY ET AL., supra note 5 at 158.
19 Grouse, supra note 1 at 359 (“Educational theory posits that use of multiple methods enhances adult learning by challenging students to engage in different activities and come out
Socratic Method is that while the one student who is engaged in inquiry with the professor experiences active learning, the rest of the class, at best, are left passively listening to the exchange.\textsuperscript{20} In reality, many of those students likely find it difficult to concentrate on the dialogue periodically, and instead feel their attention drawn to Facebook or other diversions on their computers.\textsuperscript{21} To compensate, experts suggest that professors request students to document their thoughts about the Socratic questionings they observe in class for later use in class discussions or small groups.\textsuperscript{22} Even the most skillful Socratic professor will be unable to keep students’ rapt attention throughout a two-hour class.\textsuperscript{23} Conversely, professors can better retain students’ attention by employing multiple teaching methods.\textsuperscript{24} In fact, changing teaching techniques keeps the topic interesting to students and enhances the learning process.\textsuperscript{25} Thus, the Socratic Method should be used in combination with other pedagogies to facilitate attentiveness and learning.

In addition, law schools’ overreliance on the Socratic Method is inefficient for instruction of complex and unfamiliar legal principles because of the diverse learning styles of law students.\textsuperscript{26} The Socratic Method is likely to reach of their comfort zones from time to time. Using multiple methods also recognizes and validates different and varied learning patterns and styles.”) (footnote omitted).

\textsuperscript{20} STUCKEY ET AL, supra note 5 at 91.


\textsuperscript{22} STUCKEY ET AL, supra note 5 at 165.


\textsuperscript{24} Id.

\textsuperscript{25} Id.

\textsuperscript{26} Id. at 309.
those students with a preference for aural learning, and will occasionally be effective with verbal learners.\textsuperscript{27} However, students with propensities for visual or kinesthetic learning have been found to struggle in classes that rely on aural pedagogies—as well as to excel in classes where multiple teaching styles are used.\textsuperscript{28} To reach all students, a range of instructional approaches, that acknowledge different learning preferences, should be employed.\textsuperscript{29} Moreover, using a variety of educational methodologies benefits students with all learning styles because research has shown that to fully grasp a topic, students must adjust their thought processes through increasing levels of understanding.\textsuperscript{30} Thus, to supplement the Socratic Method, which best serves aural learners, visual techniques, such as using PowerPoint presentations, utilizing the classroom whiteboard and distributing hand-outs may be effective.\textsuperscript{31} Activities that involve writing or charting will service learners with a tactual preference, and pedagogies that involve active experience such as role playing, peer to peer instruction and simulated or clinical practice, will benefit kinesthetic learners.

Another drawback of the Socratic Method is that it can result in more confusion than illumination if poorly utilized by the professor.\textsuperscript{32} Used artfully, the method should evoke understanding of the subject matter. However, used clumsily, the Socratic Method often leaves students unsure of the point the

\begin{footnotes}
\footnote{Id. at 313.}
\footnote{Boyle & Dunn, supra note 4 at 222.}
\footnote{Id.}
\footnote{Madison, supra note 23 at 314 n.80.}
\footnote{Boyle & Dunn, supra note 4 at 229.}
\footnote{STUCKEY ET AL, supra note 5 at 82.}
\end{footnotes}
professor is trying to communicate. Socratic questioning inevitably yields both correct and incorrect answers from students and, unless skillfully crafted, the professor's subsequent questions often leave the class to misinterpret which is which. Moreover, critics of the method note that questioning is not an economical way for professors to convey information they possess but fail to reveal, at times playing a game of 'hide of the ball.' By employing alternative pedagogies to reveal the information more effectively, professors will in turn have more time to use the Socratic Method to efficiently achieve more compatible educational goals.

Furthermore, likely contributing to the confusion is the Professor's unilateral control of the Socratic dialogue. Research suggests that students learn best when they are able to exert some control over their learning experience. Because the direction of Socratic questioning is determined by the professor, it is likely bypass students' unspoken interpretations and misconceptions, and thus does not necessarily allow students to expand their understanding of the subject matter. Conversely, genuine discussions involve collaboration, and enable students to expand their existing knowledge. In fact, educational scholars suggest that discussions should be used more

33 Id.
34 Id.
35 See Madison, supra note 23 at 309; see also Richard K. Neumann, Jr., A Preliminary Inquiry into the Art of Critique, 40 HASTINGS L.J. 725, 741 (1989) (noting that questions not designed to build the student’s insight create a guessing game).
36 Madison, supra note 23 at 309.
37 STUCKEY ET AL, supra note 5 at 164.
38 Id.
39 Id.
40 Id.
frequently in law school classrooms.41 Discussions allow more students to be actively involved in the learning process, thereby enhancing their learning experience.42 Effective use of class and small-group discussion also encourages students to listen to one another, fostering respect and building community.43 This is particularly relevant because studies have shown that the Socratic Method may inhibit participation from women and minority students.44

Moreover, the Socratic Method may actually be harmful to students when employed improperly.45 Critics of the method contend that it promotes an adversarial classroom culture that is psychologically damaging to many law students.46 In fact, data suggests that between 20 to 40 percent of law students leave with psychological disorders, including substance abuse and depression.47 While Socrates used questioning in order to expose his interlocutors’ misapprehensions, to ameliorate the harmful effects of the method, law school professors must strive to avoid humiliating or embarrassing students who are flustered or unprepared to answer a question by reassuring them and moving on to another student.48 Additionally, the fear of being shamed in front of one’s peers hinders students’ capacity to focus and learn.49 Students will only take academic risks if they feel comfortable in their classroom environments and

41 Id. at 167.
42 Id.
43 Id. at 168
44 Patel supra note 15; STUCKEY ET AL, supra note 5 at 82.
45 STUCKEY ET AL, supra note 5 at 82.
46 Id.
47 Id. The author clarifies that “[t]hese problems are not inherent by-products of a demanding professional education; medical students do not experience similar difficulties.”
48 STUCKEY ET AL, supra note 5 at162.
49 Id. at 161.
secure that their contributions will be met with respect.  

Depending on the nature of the law school class and the particular goals of the professor, the ideal pedagogy may incorporate a minimal amount of lecturing and generous use of collaborative and experiential educational techniques including discussions, small-group work, role-plays, projects and clinical work, to supplement judicious use of the Socratic Method. Using an outcomes-based approach, professors should select educational methods that will best help the students achieve previously identified and explicitly defined instructional goals of the course. This is particularly important considering that it is possible to teach civil procedure in the space of a three hour lecture, for minimal competency to pass the bar exam. However, such a pedagogy would forego instruction on critical legal skills and analytical reasoning. It is clear that an ideal curriculum would be comprehensive and include teaching legal rules, as well as skills and abilities, beyond minimal competency.

Thus, the professor must first identify the particular “knowledge, skills and professional attributes,” the outcomes, students should acquire from the course, and then formulate the curriculum around those instructional outcomes. Accordingly, in addition to possessing the knowledge necessary to

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50 Id. at 83.
52 See Grouse, supra note 1 at 389-59.
53 As told to this author by Michael J. Kaufman, Associate Dean of Academic Affairs, Professor of Law and Director of Childlaw and Education Institute, Loyola University Chicago School of Law.
54 Kaufman, supra note 53.
55 Grouse, supra note 1 at 337.
pass the bar exam, a civil procedure professor may identify as course goals specific analytical skills, such as the ability to approach legal issues in a variety of contexts. Corroboratively, the most effective pedagogy may be a combination of small group work with the Socratic Method, to teach students to construct templates for analysis—synthesizing cases and factual situations into themes and patterns. Similarly, the specific practical skills identified as those the students should possess upon completion of the course may most effectively be taught through clinical work, drafting documents or developing legal strategies. Recognizing the different learning styles of law students, the professor may determine the most effective strategy to meet all of the course outcomes includes devoting a small portion of class time to lecturing, to efficiently introduce unfamiliar information; more time towards the skillful use of the Socratic Method, to develop analytical reasoning and oral advocacy skills; and substantial class time to working in small groups and on projects, where students are able to combine their own thoughts and generate a product. This may include discussions, drafting actual pleadings and motions, participating in adversarial role-playing scenarios and some type of experiential learning to put the instruction in context.

Moreover, skillful use of instructional techniques requires thoughtful exploration of their relative strengths and weaknesses, not only in the selection process, but also in order to exploit their potential in practice. For example, an

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56 See generally, Kaufman, supra note 53.
57 Id.
58 See Kaufman, supra note 53.
59 Id.
effective modification of the Socratic Method is the *Panel System*, in which the students are divided into groups or panels at the beginning of the semester. The panels are questioned in Socratic-style dialogue about the assigned material on the days designated to them. The Panel System was designed in recognition of the difference between standard preparation for class, which generally entails carefully reading an assignment one time, and deep preparation for class, which requires a more intense methodology. Deep preparation may require reading the material numerous times, discussing it with one's peers and attempting to explain it to others. It also involves identifying potential questions the professor may ask and formulating thoughtful, persuasive responses to those questions. The Panel System emphasizes the importance of deep preparation as essential to the practice of law, reflecting “the reality of preparing for a trial or drafting a client advice memo.” Because it frees the student from the fears associated with cold-calling, as well as encouraging realistic analysis, the Panel System effectively minimizes the drawbacks and expands the advantages of the Socratic Method.

After the pedagogies have been selected and instruction commenced, in order to determine whether the students are meeting the course objectives, assessments must be used during the semester to revise the educational

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60 As communicated to this author by Matthew Sag, Professor of Law, Loyola University Chicago School of Law. Professor Sag uses the Panel System in his first-year Property course, in conjunction with other pedagogies including discussions, small-group work, and multi-media presentations. For additional information regarding assessments, see *infra* note 73, and accompanying text.

61 *Id.*

62 *Id.*

63 *Id.*
strategy, as necessary. The objectives and means of the assessments employed impact the way students learn more than any other influencing factor. Assessments that are utilized to gauge how much the students have learned are summative assessments. Alternately, formative assessments are those designed to enhance learning and improve motivation by providing feedback to students about their performance. For both purposes, assessments must be “valid, reliable and fair,” and occur in the context of the educational objective being evaluated, in order to be effective.

Law schools primarily assess student learning though comprehensive exams—summative assessments, at the end of each semester. However, educational scholars contend that such exams are “neither valid, nor reliable, nor fair.” Furthermore, the scaled, bell-curve grading scheme hinders learning and obstructs the development of a sense of community by fostering unhealthy competition. This is particularly significant in light of the unfriendly, competitive classroom environment that misuse of the Socratic Method may promote. Thus, experts endorse the use of formative and summative

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64 Grouse, supra note 1 at 349.
65 STUCKEY ET AL, supra note 5 at 175.
67 Id.
68 Grouse, supra note 1 at 352 (“Validity means that an assessment tool must accomplish the purpose for which it was intended. Reliability means that the test or measuring procedure yields the same results on repeated trials”) (footnote omitted). The author explains that “[t]hese assessments need occur in the context of the evidence being sought and the outcome being taught. For example, basic knowledge may be suitably tested by a multiple-choice quiz, but measurement of deep insight may require contextual performance.”
69 Sargent & Curcio, supra note 66 at 379.
70 STUCKEY ET AL, supra note 5 at 177.
71 Id.
72 See supra text accompanying note 46.
evaluations throughout the semester, contending that giving students regular feedback improves learning, and multiple assessments enhance the accuracy of the grading structure and provide professors the ability to determine “whether students are learning what [professors] want them to learn.”

The norm-referenced curved grading system currently used by law schools only measures student performance in relation to class-wide performance, and thus fails to address the effects of an inadequate pedagogy that leaves the majority of a class unable to achieve the professor's instructional goals. Conversely, educational experts encourage the use of criteria-referenced assessments that explicitly identify the specific criteria the professors will use to evaluate the students' mastery of the skills and information taught. Because the criteria are revealed to the students as part of the learning process, it inspires “reflective, empowered, self-regulated learners.” Moreover, to be most effective, multiple evaluation methods should be used throughout the course, based on the goals of the assessment and the context of the material, such as multiple choice tests, essay exams, observations of clinical or performance, portfolio reviews and peer or self assessments.

In conclusion, while there are advantages to using the Socratic Method as

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73 Id. at 175,194. For example, in his first-year Property class, Professor Sag, see infra note 60, conducts two multiple choice exams during the semester, in addition to a final exam at the end of the course. Thus, the students are given valuable feedback regarding their performance and comprehension of the material; and Professor Sag is able to evaluate individual and class-wide understanding.

74 Id. at 181-82.

75 Id. at 182.

76 Id.

77 Id. at 192.
an educational tool in law schools, especially to develop analytical reasoning skills, it must be employed skillfully to avoid creating confusion and contributing to a hostile learning environment. When designing the curriculum for a particular class, the professor should use an outcomes-based approach to ensure that the Socratic Method is the most effective technique to meet the specific goal of the course it is intended to achieve. Moreover, the professor should select multiple pedagogies in this fashion, to design a curriculum that acknowledges the differences in student learning styles, to reach a broader range of learners and enhance the learning experience of all the students. Finally, formative and summative criteria-referenced assessments should be used throughout the semester, to improve students’ learning through feedback, and to provide the professor a measure of the effectiveness of the pedagogies used. The Socratic Method has a venerable prominence in law school education, but to achieve optimal law student learning, professors must respond to these advances in educational research, instead of relying on tradition as a guide.