Reframing the Socratic Method

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I. Introduction

It might seem surprising to see an article about the Socratic method in a Journal of Legal Education volume dedicated to innovations that ignite law teaching. From flipped classrooms to teaching with technology to clinics to community-based service learning, exciting innovations in legal education are frenetically swirling around us. Law schools are revamping the length,[1] substance,[2] and format[3] of legal education. In this context, the Socratic

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1. *See, e.g.*, *University of West Florida and Stetson University Partner to Shorten Time to Law Degree,* U. W. Fla. Newsroom (Dec. 11 2013), http://news.uwf.edu/index.php/2013/12/university-west-florida-stetson-university-partner-shorten-time-law-degree/(describing a 3+3 program allowing high-performing qualifying students to earn their bachelor's and juris doctorate degrees in six years instead of seven); *Advanced Students and International Standing,* St. Thomas U. Sch. L., http://www.stu.edu/law/JDAdmissions/ProspectiveStudents/AdvancedStandingandInternationalStudents/tabid/3583/Default.aspx (describing how qualifying foreign attorneys can complete a domestic juris doctorate in two years by receiving up to thirty credits of advanced standing credits from a prior institution) (last visited Jan. 1, 2015).

2. *See, e.g.*, *Bar Exam Preparation*, Chapman U. Fowler Sch. L., http://www.chapman.edu/law/student-resources/bar-preparation (last visited July 4, 2014) (describing an in-house bar preparation program which complements traditional doctrinal law school courses in an effort to fully prepare students for the bar exam); Aleatra P. Williams, *The Role of Bar Preparation Programs in the Current Legal Education Crisis*, 59 Wayne L. Rev. 383, 402-06 (2013) (chronicling the rise in bar preparation courses for credit).

3. *See, e.g.*, Press Release, Vermont Law School, Vermont Law Expands Distance Learning Program with Courses for JD Credit (June 19, 2014), *available at* http://vtdigger.org/2014/06/19/vermont-law-expands-distance-learning-program-courses-jd-credit/ (describing expanded online classes); Stephen Colbran & Anthony Gilding, *MOOCs and the Rise of Online Legal Education*, 62 J. Legal Educ. 405, 405-07 (2014) (discussing the advent of MOOCs–Massive Open Online Courses, which are useful for school marketing and reputational growth, community and outreach programs, and alumni development).

method as teaching pedagogy is anything but innovative in modern law teaching.[4]

Rather, the Socratic method has existed for thousands of years in its foundational inquisitive approach and has been the bedrock of legal education for well over a century. Core features of the modern case-based Socratic method in law schools include its (1) inquisitional format; (2) use of appellate cases; and (3) objective to teach students to "think like lawyers."

The Socratic method persists and endures in law teaching, even while it is increasingly surrounded by innovation and its use is declining.[5] The current approach to legal education is to *add* innovation, such as enrichment and skills opportunities, while simultaneously *retaining* the hallmarks of traditional legal education—the large, lecture-style doctrinal course taught using the Socratic method and the casebook rooted in appellate cases.[6] Law schools continue to design their budgets, curricula, and student experience around some degree of case-based, Socratic law teaching in large-lecture-style classrooms.[7] It persists in core first-year and bar exam lecture hall classes particularly.[8] Whether out of necessity, efficacy, sustained reverence, or agnostic indifference, law schools continue to deliver a large portion of legal education in this format.[9] This

4. *See, e.g.*, Michele R. Pistone & John J. Hoeffner, *No Path But One: Law School Survival in an Age of Disruptive Technology*, 59 Wayne L. Rev. 192, 197 (2013) (concluding that "there is one opportunity to save the traditional place-based law school" and that "to seize that opportunity law schools must finally and decisively reject what has for over a century sufficed in legal education and must commit themselves instead to an educational model that, to a greatly heightened degree, attempts to remedy flaws in the traditional school that have been identified over and over again in a series of measured and independent studies ranging across almost a century.").

5. William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law 50-59 (2007) (hereinafter "Carnegie Report") (stating that law schools largely uniformly rely on a single method of teaching—the case-dialogue method, which is accompanied by a system of competitive grading).

6. *See* Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About it,* 60 Vand. L. Rev. 609, 662-63 (2007) (explaining how experiential programs have developed, however, "these programs are not integrated with the lecture classes, and they have been marginalized by their later introduction into the curriculum and by the norms of the professoriate."); Ann Marie Cavasos, *Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market*, 45 Conn. L. Rev. 1113, 1128-29 (2013) (describing how schools supplemented course offerings with specialty programs, classes, and clinics such as drafting, interviewing, counseling, negotiation, and alternative dispute resolution following the MacCrate report).

7. *See* Pistone & Hoeffner, *supra* note 4, at 222 ("When law schools became the near-exclusive suppliers of professional legal instruction and the case method became the near-exclusive method of delivering that instruction, a case of 'too much of a good thing' developed.").

8. *See* Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School,* 143 U. Pa. L. Rev. 1, 3 (1994) (noting that the "Socratic Method remains the dominant pedagogy for almost *all* first-year instruction.").

9. *See* Rubin, *supra* note 6, at 613 (explaining how the Socratic method has weathered over a century of attacks and now "it has ceased to be viewed as a particular approach to legal

article begins from the premise that the large lecture hall Socratic method course will continue in legal education for the immediate and foreseeable future for a variety of reasons. Accepting this reality, but not endorsing it, this article highlights the unique dimensions of the Socratic method that could be better leveraged to strengthen other legal education reforms and innovations.

But the Socratic method admittedly has some advantages that none of the other curricular innovations has. It is repeated hundreds of times in different courses, whereas a typical student in a law clinic will represent just a handful of clients on discrete legal issues.[10] It is delivered to a large and diverse group of students allowing for competing perspectives and critical inquiry. It has robust volumes of existing teaching materials built around it making it the most economical method of law teaching.[11] It is comfortable for many professors and law faculties because they were taught this way and they have taught this way for decades, thus allowing greater buy-in and ease of adaptation.[12]

The case-based Socratic method can be reframed to create more practice-ready lawyers and better align the teaching technique with broader curricular reforms. Within the existing framework of law teaching—the same casebooks, professor-to-student ratios, and teaching styles—three straightforward adaptations can better align with other curricular innovations and create a more holistic student experience. These adaptations are (1) the consistent positioning of client(s) at the center of the Socratic dialogue; (2) the consideration of legal research and weight of authority as a precursor to client guidance and case outcomes; and (3) the consistent and frequent sensitization

education—as last generation's innovation—and has become a venerable institution that gains gravity and prestige from its antiquity."); Gary Shaw, *A Heretical View of Teaching*: *A Contrarian Look at Teaching, the Carnegie Report, and Best Practices*, 28 Touro L. Rev. 1239, 1242-43 (2012) (arguing that experiential learning does not teach analytical thinking better than the Socratic dialogue, nor does it foster better professionalism); Elizabeth Mertz, *Teaching Lawyers the Language of Law: Legal and Anthropological Translations*, 34 J. Marshall L. Rev. 91, 113 (2000) (summarizing a study indicating "a possible reason for continued adherence to a distinctive Socratic teaching approach" because it "contains a precise linguistic mirroring of aspects of [legal] reasoning.").

10. Roy Stuckey et al., Best Practices for Legal Education 178 (2007) ("Virtually all learning theorists agree that most learning is enhanced by repetition."). Posing questions to students on many occasions and in many different ways is central to the Socratic method: "through repetition and variation, a student can construct, or internalize, an independent understanding of a problem and its solution." *Id.* at 208.

11. Pistone & Hoeffner, *supra* note 4, at 211 (describing how the Socratic method allowed "large numbers of students [to be taught] at relatively little expense for instruction and materials.").

12. *See* Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 Stan. L. Rev. 1547 (1993) (noting that the Socratic method has not changed universally because for some faculty the Socratic method just works well); David R. Barnhizer, *The Purposes and Methods of American Legal Education*, 36 J. Legal Prof. 1, 5 (2011) ("We can begin with the fact that the character of the core law school curriculum and its primary methods is a reflection of the fact that because most law professors were extremely successful in their undergraduate and law school careers and feel endowed by that experience with the knowledge and ability required to teach well by means of the same approaches.").

to skills within the Socratic dialogue. These techniques can better position students within a coherent course of study to prepare practice-ready lawyers in ways that are inclusive and inviting.

II. The Socratic Method Persists Surrounded by Innovation

The Socratic method of law teaching persists universally in law schools,[13] varies greatly in its implementation,[14] and sparks very mixed reactions. Three key relevant features characterize the Socratic model of legal education: the casebook approach to learning through appellate cases, the Socratic inquisitive dialogue to teach course concepts, and the large lecture hall format.[15] The case-based Socratic method became the dominant method of delivering legal education in 1870, first introduced by Christopher Langdell of Harvard University.[16] Socratic teaching remains foundational to legal education and particularly central to first-year courses and upper-level bar examination courses.[17]

In its persistence, it has wielded mixed reactions. The Socratic method grounded law teaching in a scientific approach, which in turn gained it increased prestige.[18] Many talented and distinguished faculty members

13. *See* Rubin, *supra* note 6, at 610 ("Here we are, at the beginning of the twenty-first century, using a model of legal education that was developed in the latter part of the nineteenth. Since that time, the nature of legal practice has changed, the concept of law has changed, the nature of academic inquiry has changed, and the theory of education has changed."); Daniel R. Coquillette, *"The Purer Foundations": Bacon and Legal Education*, *in* Francis Bacon and the Refiguring of Early Modern Thought: Essays to Commemorate The Advancement of Learning (1605-2005) 145 (Julie Soloman & Cathering Gilmetti Martin eds., 2005) (observing that "this system still exercises an incredible grip on elite American law schools."). For a bibliography of legal scholarship devoted to the process of education in law school *see generally* Donald Kochan, *"Learning" Research and Legal Education: A Brief Overview and Selected Bibliographical Survey*, 40 Sw. L. Rev. 449 (2011).

14. *See* Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize Don't Feminize*, 7 S. Cal. Rev. L. & Women's Stud. 37, 40 (1997) (noting that there is no one definition of the Socratic method of teaching).

15. *See* Christopher M. Ford, *The Socratic Method in the 21st Century*, U.S. Military Acad. 1 (2008), http://www.usma.edu/cfe/literature/ford_08.pdf (summarizing how Langdell had two distinct but related contributions: "the introduction of the case method and the Socratic method"); Coquillette, *supra* note 13, at 145 (describing the "case book" and "Socratic Method" as the "classical underpinnings of American legal education.").

16. *See generally* Ford, *supra* note 15, at 2 (documenting the history of the Socratic method in legal education, which Langdell used as the "engine" to "power his case method").

17. *See* Rhode, *supra* note 12, at 1554 (stating that "the dominant paradigm for legal education remains the quasi-Socratic lecture focusing on doctrinal analysis.").

18. *See generally* Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906-2000s*, 22 Law & Hist. Rev. 277 (2004) (chronicling the legacy of Christopher Columbus Langdell). "Langdell thus transformed legal education from an undemanding, gentlemanly acculturation into an academic meritocracy." *Id.* at 277. *See also* Pistone & Hoeffner, *supra* note 4, at 208 (providing a historical chronology of legal education); Barnhizer, *supra* note 12, at 8 (providing a historical critique of the scientific law school).

applaud and revere its intellectual rigor in teaching students to think critically and analytically.[19] It can be taught to a large lecture hall of students using casebooks that have been in publication for decades,[20] making it highly cost-effective.

Yet it has also sparked widespread critique from various stakeholders.[21] Many have questioned its pedagogical effectiveness.[22] It has been attributed to the general malaise and depression of modern law students.[23] Many have criticized its disproportionately marginalizing effect on women and minority law students.[24]

In response to these criticisms, the Socratic method has certainly become more individualized across courses and faculty. For some, the Socratic method remains in its most traditional sense a means of rigorous critical inquisition to

19. *See, e.g.*, STUCKEY ET AL., *supra* note 10, at 210 (explaining that the Socratic method encourages students to think logically and then to explain their reasoning and conclusions in the classroom, which gives "abundant opportunities for putting their own minds into vigorous action, in order first that they might gain mental power, and secondly, that they might hold firmly the information or knowledge they have acquired"); Jenny Morgan, *The Socratic Method: Silencing Cooperation,* 1 LEGAL EDUC. REV. 151, 154 (1989) (nothing that the Socratic method has many advantages in that it tries to develop key analytic skills and rhetorical skills); Ford, *supra* note 15, at 2 (highlighting how the Socratic method helps students look for evidence to support their positions, understand logical construction of arguments, and draw valid conclusions); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 116-18 (1999) (summarizing descriptions of the Socratic method "at its best"); Phillip Areeda, *The Socratic Method*, 109 HARV. L. REV. 911 (1996).

20. *See e.g.*, Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?,* 43 CAL. W. L. REV. 267, 273-74 (2007) (highlighting how the Socratic method "gives professors the ability to teach large bodies of students in an active manner.").

21. *See, e.g.*, Morgan, *supra* note 19, at 153 (highlighting how critics of the Socratic method have said that it subordinates students of all genders, manipulates vulnerabilities, alienates students, and invades autonomy); Jackson, *supra* note 20, at 283-84 (summarizing and analyzing criticisms that the Socratic method humiliates students, establishes hierarchies, hides the ball, induces boredom, and does not teach skills); Kerr, *supra* note 19, at 118-22 (summarizing criticism of the Socratic method "at its worst").

22. *See, e.g.*, Ford, *supra* note 15, at 2 (noting that many critics believe that the Socratic method is not a very effective way to communicate information); Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 101 (2012) (summarizing how the typical law school course has such a high student-teacher ratio that it is hard to engage in meaningful pedagogy and student participation, which leaves students to hook into social media and "check out" of the classroom dialogue).

23. *See, e.g.*, Ford, *supra* note 15, at 3 (highlighting the psychological pressures and overwhelming anxiety attributed to the Socratic method).

24. *See, e.g.*, Guinier et al., *supra* note 8, at 3 (describing how "many women are alienated by the way the Socratic Method is used in large classroom instruction" and feel as if their voices were stolen from them); Elizabeth Mertz, et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1, 2 (1998) (unpacking and studying the impact of race and gender on classroom exchanges and concluding that "race and gender have an impact on student inclusion in law school classes, but that the patterning is complex, involving the interaction of a number of other factors.").

develop analytical skills. For others, it is tweaked from its traditional model to soften the intensity (e.g., volunteer participation, students "on call") and it is reinforced with professor summaries and reviews. It is also often supplemented with other teaching techniques such as group work, skills simulations, practice problems, and professor lecture.[25] The technique varies greatly by professor, class, and institution, but, despite its acknowledged considerable decline in use, it still persists almost universally.[26]

Notably, great innovation in legal education increasingly surrounds the case-based Socratic method.[27] Schools built strong clinical programs beginning in the 1960s and continuing to the present for students to represent clients in legal proceedings under faculty supervision.[28] Following the MacCrate report of 1992[29] and the Carnegie Report of 2007,[30] schools have vastly expanded skills courses, skills simulations, and skills assessment within the curriculum[31] and after graduation.[32] The academe has moved to formalize some of these

25. *See, e.g.*, Kerr, *supra* note 19, at 114 (describing the traditional Socratic method as more "myth than reality" because modern law school includes "an eclectic mixture of newer approaches, including toned-down Socratic questioning, student panels, group discussions, and lectures.").

26. *See, e.g.*, Ford, *supra* note 15 (noting the decline in the use of the Socratic method).

27. *See, e.g.*, Mary Wood, *FLIPPED: Prof Models New Way of Teaching*, UVA Law. (2012), http://www.law.virginia.edu/html/alumni/uvalawyer/f12/flipped.htm (summarizing a professor's flipped classroom model in which students watched a prerecorded lecture prior to the class meeting and then participated in more interactive learning while in class); Dan Rodriguez, *The Flipped Classroom*, Word on Streeterville, http://deansblog.law.northwestern.edu/2013/09/06/the-flipped-classroom/ (last visited Sept. 6, 2013) (stating that the Dean of Northwestern Law recently discussed the flipped classroom approach and planned expansions of infrastructure to further support this approach).

28. *See, e.g.*, Fernando Colon-Navarro, *Thinking Like a Lawyer: Expert-Novice Differences in Simulated Client Interviews,* 21 J. Legal Prof. 107, 109-10 (1997) (explaining that the Socratic method dominated law teaching until the 1960s, when clinical education emerged and changed legal education).

29. ABA Section of Legal Educ. & Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992) (commonly referred to as "MacCrate Report").

30. Carnegie Report, *supra* note 5.

31. Debra Cassens Weiss, *NYU Law School Will Offer New Study and Internship Options for 3Ls*, A.B.A. J. (Oct. 19, 2012), http://www.abajournal.com/news/article/nyu_law_school_to_offer_foreign_study_specialty_tracks_and_internships/ (highlighting how third-year NYU law students will have the option of studying abroad beginning in 2014, pursuing specialized study in a "professional pathways" program, or spending a semester in Washington, D.C., where they will intern in a government agency).

32. Ed Finkel, *INCubator-Style Programs Growing Among Law Schools*, Student Law., Oct. 2013, at 28, *available at* http://www.americanbar.org/publications/student_lawyer/2013-14/october-2013/incubatorstyle_programs_growing_among_law_schools.html (describing CUNY's launch of an Incubator for Justice project that allows eligible graduates to obtain 18 months of basic business and practice training); Sherry Karabin, *Nonprofit Law Firm Offers Residency Program to Graduates*, Akron Legal News (July 2, 2014), http://www.akronlegalnews.com/

reforms to acknowledge that formerly innovative experiences have become "best practices" for law schools universally.[33] Even as the Socratic method is increasingly surrounded by innovation, it still persists and endures in legal education. Reframing the Socratic method as attorney-client lawyering would help align this teaching method with other law teaching innovations.

III. The Socratic Method Reframed as Attorney-Client Lawyering

The case-based Socratic method began as a homogenous method of inquisitive legal instruction. The Socratic method lifted legal training from a vocational education to a type of science, thus "securing the place of law schools within the larger academic community of universities and colleges."[34] It has since been revised, tweaked, and adapted over the decades into a varied, diverse method of law teaching. As innovation swirls in legal education, the Socratic method needs to be strengthened to align with reforms in legal education overall and to create a more coherent transition from case-based Socratic courses to other curricular innovations.

The Socratic method can be reframed in three simple ways to make it client-focused, research-focused, and skills-sensitization focused. This approach best replicates law practice in which clients' needs and legal authority shape case outcomes and strategy. It also softens the teacher-student hierarchy by positioning the client as the point of inquiry, invites diverse participation, and is more transferable to other law courses and experiences because it exposes students to the full breadth of law practice.

a. Positioning Client(s) as the Central Focus of the Socratic Dialogue

First, the Socratic method can consistently begin and end with the client(s) as central to the dialogue. The client(s) are the litigants in the cases already being discussed in the traditional case method. Rather than positioning the "rule" as the center of the Socratic dialogue, the client(s) should sit consistently at the center of the Socratic approach and the rules then meet or do not meet the client's objectives.

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editorial/10544 (describing Cleveland-Marshall College of Law's Solo Practice Incubator, called Fair Shake Environmental Legal Services, designed to help graduates transition into practice through a two-year residency program); *California Western Launches Program to Serve Community, Support New Attorneys,* Cal. W. Sch. L. (June 28, 2012), http://www.cwslalumni.com/site/apps/nlnet/content2.aspx?c=pmL6KhNXLvH&b=3961963&ct=11928091; *20 Small Practice Center Launches*, Charlotte Sch. L., http://www.charlottelaw.edu/about/small-practice-center-launches (last visited July 1, 2014).

33. *See, e.g.*, Mary Lynch, *Council on Legal Education Maintains Tenure and 405, Adds Requirement of Six Experiential Credits and Calls for Notice and Comment on Paid Externships,* Best Prac. for Legal Educ. Blog (Mar. 16, 2014), http://bestpracticeslegaled.albanylawblogs.org/2014/03/16/council-on-legal-education-maintains-tenure-and-405-adds-requirement-of-six-experiential-credits-and-calls-for-notice-and-comment-on-paid-externships/.

34. *See generally* Rubin, *supra* note 6, at 631-48 (describing Langdell's approach to law as science and its curricular effects); Pistone & Hoeffner, *supra* note 4, at 207-08 (providing a historical overview of the history of legal education).

Typical Socratic exchanges begin with the question of what happened *in the case* or what the issue was *in the case*. This presents a fictitious context in which the case begins in the abstract with a set of clearly defined facts and neatly framed legal issues. The downsides of this appellate case-based approach are well-documented. In the traditional Socratic approach, students cannot see the choices that are made by lawyers as they process facts and identify legal causes of action.[35] Appellate opinions in casebooks give students the facts "painlessly and authoritatively as having been 'found' by the jury."[36] Of course, the factual recitations are "often horribly truncated or even outright eliminated."[37] This is problematic because it means that students never learn how facts are "found" and never see the "coloring" of facts by outside influences that might have influenced the judge or jury.[38]

The chart below explains the subtle tweaks to a Socratic exchange that a professor might make to inject the client(s) perspective into the course consistently.

EXISTING **Rule-Based Socratic Approach**	**PROPOSED** **Client-Based Socratic Approach**
What are the facts of the case?	Who is the plaintiff? What happened to the plaintiff? Why did the plaintiff seek counsel?
What is the issue in the case?	What recourse does the plaintiff seek? What cause of action is she using? How does the cause of action address her injury?
What is the court's holding?	How does the court's holding meet the client's objectives?
What is the rationale?	Why did the court side with (or against) the plaintiff?

Consider, for example, a case like *Griswold v. Connecticut* applying a right to privacy analysis to strike down a statutory ban on the use of birth control. Using a client-based approach, the professor might probe students to identify who the client(s) are in the case and what harms they suffered. These questions reveal a very particular client objective to use birth control within marriage when needed for medical reasons to prevent pregnancy, goals that distinctly

35. Rhode, *supra* note 12, at 1558 (explaining that "relatively little effort is made to explain the factual circumstances, legal choices, and ultimate consequences for litigants.").

36. Brian J. Foley, *Applied Legal Storytelling, Politics, and Factual Realism*, 14 J. Legal Writing Inst. 17, 35-36 (2008).

37. *Id.* at 36.

38. *Id.*

further the interests of wealthy married couples. The Connecticut statute also harmed other prospective clients, but their interests were not prioritized in this litigation. This realization might invite consideration of the historic, socio-economic, and racial implications of the client representation. Before jumping to a litigation-based strategy, the professor might also inquire if and how the statute might be modified to better meet the client's objectives, revealing that litigation is not always the first recourse to address client needs.

Beginning the Socratic dialogue with the client's initial problem and understanding why she retained a lawyer would help ground the Socratic dialogue in a lawyering perspective that is more transparent and transferable. This still illuminates the facts, but it does so utilizing a client-intake lens that launches a client relationship instead of a fictional appellate lens that is abstract and rule-based. This approach helps offset the fiction of using appellate cases to teach rules that are applied to messy indeterminate facts in trial courts. It begins where all cases begin—with a client—and the facts derive from the client relationship, extracted with lawyering skills. It also helps students reframe their law school perspective around the client's perspective(s) instead of the judge's perspective. It eliminates the "Langdellian notion of education [that] treats its subject matter as a pre-established set of rules of methodologies that exists 'out there' in a passive realm separate from and independent of the students."[39] This retains the analytical rigors of the Socratic method, but it grounds the rigor in a concrete set of tasks and relationships.

These minor tweaks are simply about the framing of the traditional Socratic dialogue. They can easily be injected in existing teaching materials and notes with minimal effort. As explained below, doing so would greatly increase the coherence of the law school curriculum for students, their acquisition of practice-ready skills, and the inclusiveness of the law school classroom.

b. Positioning Students as Attorneys

The corollary to the client-based focus is the students-as-attorneys focus. The typical Socratic dialogue is outcome-based. It is focused on the outcome of cases in the abstract. What argument wins? What is the holding? Reframing the dialogue around the work that led to certain client outcomes—legal research and other lawyering skills—would create more coherence in the legal education curriculum, more practice-ready lawyers, and more inclusive and inviting classrooms.

i. Injecting Legal Research into the Socratic Dialogue

Injecting a consistent research-based line of inquiry into the Socratic method would better leverage the Socratic dialogue to position students for success. Typical Socratic dialogue focuses on case outcomes and hypotheticals to consider the boundaries of the rules students have discerned from the cases.

39. Rubin, *supra* note 6, at 648.

By positioning the client at the center of the Socratic dialogue, students are instead called upon to lawyer on behalf of that client using governing authority.

Both practitioners and law teachers agree that current instruction of legal research is not as effective as it needs to be to prepare law students for practice, although they may disagree regarding the underlying reasons.[40] While the ubiquitous presence of computer-assisted legal research has likely exacerbated these issues, complaints regarding the instruction of legal research have existed since law schools began teaching legal research. Legal research is generally introduced as a component of a stand-alone research and writing skills-based course in the first-year curriculum.[41] It may at the students' election be supplemented with upper-level courses, but such advanced coursework is rarely required or sought.[42] Students often find it less stimulating than their other course offerings,[43] and inflate their sense of research skill mastery so as to undermine their perceived need for instruction.

The Socratic dialogue might inject some of the following questions to reframe it around a research-based approach:

40. *See* Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. Disp. Resol. 159, 163 (2013) (summarizing an LSAS study concluding that most hiring partners consider competent legal research essential for new graduates and roughly half indicated that law schools need to do more to train law students in effective and efficient legal research); Yasmin Sokkar Harker, *"Information is Expensive": Building Analytical Skill into Legal Research Instruction*, 105 Law Libr. J. 79, 80 (2013) (documenting increasing dissatisfaction among judges, attorneys and law-firm librarians with the researching capabilities of new lawyers and law students); Sarah Valentine, *Legal Research as Fundamental Skill: A Lifeboat for Students and Law Schools,* 39 U. Balt. L. Rev. 173, 173-74 (2009) ("Beyond laments about the lack of general lawyering skills, the bench and bar also routinely highlight the inadequacy of the legal research skills of recent law graduates.").

41. *See* Valentine, *supra* note 40, at 203 (highlighting concerns with teaching legal research as part of a first-year writing course because the writing assignments are selected to help students grasp concepts easily and there is "little chance for students to grapple with open-ended research problems that replicate the indeterminacy of the law.").

42. Matthew C. Cordon, *Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum*, 55 Baylor L. Rev. 1, 2 (2003) (law schools have placed more emphasis on "preparing students to conduct legal research by placing more emphasis on research courses in their curricula" in response to criticisms of existing instructional methods); Valentine, *supra* note 40, at 187 (noting that law schools are starting to "address the shortcomings of first year legal research education" with advanced legal research courses, but they are rarely mandatory and enrollment is limited).

43. Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education*, 95 Law Lib. J. 7, 10 (2003) ("Although the literature is replete with 'new' methodologies for [legal] research instruction, none of it has demonstrated that even the best taught and most innovative of legal research courses can compare with the excitement and intellectual interest that often can be found in the 'substantive' first-year courses.").

EXISTING Outcome-Based Socratic Approach	PROPOSED Precedent-Based Socratic Approach
What was the court's holding?	What precedent would the lawyer have found had she researched the issue after the lawyer was retained?
Various hypotheticals to test the limits of the holding.	What are the strengths and limits of the precedent?
	How confident would the lawyer be in predicting a legal outcome?
	How would the defendant marshal the same precedent?
	How does the court use the precedent here?
	What is the outcome of the case?
	How will the precedent in the case be used going forward? What are its limitations?

Focusing the Socratic dialogue through a research-based lens reinforces students' understanding of precedent and hierarchy of authority. The takeaway from these reframed exchanges mimics broadly the model of the "objective memo" of a legal research and writing course where students assess the viability of a claim. How strong was the case contemporaneously, and why? Appellate cases frequently summarize key precedent and explain how it governs or does not govern this client's issue. The professor might then use the additional legal research lens to unravel the role of lawyering to get from a client problem to a legal solution, particularly where the solution was not obvious at the outset.[44]

This positions legal precedent as central to the Socratic dialogue to shape the case outcome.[45] Consider, again, a case like *Griswold v. Connecticut*. The research-based Socratic method would consider what authority a legal researcher would have found if researching the client issues contemporaneously. Role modeling good legal research skills, the professor might begin by asking what the statute at issue states and why it is problematic for our client. The professor might explore the historical, social, and political roots of the statute's regulation of birth control. Only after understanding the statute would students then find *Meyer v. Nebraska*, *NAACP v. Alabama*, *Pierce v. Society of Sisters*, *Poe v. Ullman*, and

44. *See* Valentine, *supra* note 40, at 200 ("Legal research, like much of legal education, requires the teaching of problem-solving techniques since much of the work of a lawyer is 'creative problem solving.'").

45. *See id.* at 204 ("Teaching legal research as separate and apart from the rest of what law students learn is potentially worse from the student's perspective than not teaching it at all.").

the Brandeis article on the right to privacy as governing precedent.[46] Typical existing casebook coverage of this case already includes notes describing this underlying precedent in *Griswold v. Connecticut*. The professor might even assign students to briefly consider one source from the citations within the case or the notes following the case to consider the strengths and weaknesses of the authority to advancing our client's interests. The professor might preassign a row or group of students to listen thoughtfully to the reports of their classmates and be prepared to assess the strengths of the body of research that the attorneys found. Below is a chart of the results that might emerge from this exercise.

SOURCE	HOW IT HELPS	LIMITS ON USE
Brandeis "Right to Privacy" Article	"right to be left alone"	- secondary source - factually linked to media intrusions
Meyer v. Nebraska	- Substantive due process liberty interest in parents directing educational upbringing of children	- historical roots in nativisim - Lochner era - Is it about parents' rights (family?) or rights of teachers?
Pierce v. Society of Sisters	- Parents choose religious and mental instruction - Substantive due process	- liberty interests undefined - Lochner era
NAACP v. Alabama	- Uses penumbra analysis to consider fundamental rights	- First Amendment
Poe v. Ullman (Harlan Dissent)	- Substantive due process analysis - Privacy is implicated by way of the concept of liberty	- Abstract framing of right - Dissenting opinion

Students might then collaboratively assess the likelihood of success for the clients. This exercise quickly reveals the absence of clear supporting precedent and the absence of an unequivocal constitutional hook. This assessment, in turn, positions students to thoughtfully and objectively discuss how the majority, concurrences, and dissent actually marshaled the precedent to support their varied positions in *Griswold*.

This depth of analysis is particularly beneficial for paradigmatic iconic cases that shift the landscape in unique ways. The telltale indication of the appropriateness of this technique is embedded in existing casebooks' areas of emphasis. Where existing casebooks have taken the time to provide historical background and retain internal citations, this technique would bring the historical research and precedent to life in a simulation that allows

46. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).

the students to retain a more transferable research skills.[47] This research focus will dramatically strengthen students understanding of legal research and its relevance to law practice and synergize the existing instruction of legal research within the law school curriculum.[48]

ii. Skills Sensitization in the Socratic Dialogue

Finally, the Socratic dialogue would benefit from a skills-based framing.[49] The case-based Socratic method focuses on a very narrow and distorted range of legal skills.[50] It positions common law and analogical reasoning as central to the lawyering role.[51] This gravely marginalizes and distorts the role of the administrative state and legislative lawmaking.[52] Certainly there is not enough time to teach and develop skills within the doctrinal course through to mastery, but gesturing to the underlying skills that shape the innumerable client representations that are reprinted in our casebooks would provide critical context for students and broaden their experience. The goal here is a modest one of sensitizing students to the broad set of skills needed to lawyer effectively.

Below is a chart depicting the kinds of factual or procedural triggers that might exist in a current casebook that would allow the professor to gesture to, and reinforce the role of, lawyering skills in client representation:

47. *See* Valentine, *supra* note 40, at 200 (describing how legal research is "directly linked to legal thought, and should be taught as the complex set of skills it entails").

48. *See id.* at 226 (concluding that legal research needs to be rebuilt to "increase student success," "support bridges to other first year courses," and "help create the holistic view of education").

49. Newton, *supra* note 22, at 84 (concluding that law school courses should emphasize problem-solving, risk management, and strategic thinking, not just the pedagogical "think like a lawyer" training).

50. *See* Pistone & Hoeffner, *supra* note 4, at 201 (describing how the "system-wide concentration on an extremely limited range of legal skills has assured mediocrity in legal education.").

51. Rubin, *supra* note 6, at 616 (summarizing how Langdell believed that "real law was common law, and that only 'real' law should be allowed in the crucial first-year program.").

52. Rubin, *supra* note 6, at 615-31; *see also* Valentine, *supra* note 40, at 174 (noting that "all law students need training in statutory and regulatory research earlier and at a level not often undertaken in the past.").

EXISTING **Outcome-Based Socratic Approach** **Triggers to Skills Sensitization**	**PROPOSED** **Skills-Based Socratic Approach** **Lawyering Skills Sensitization**
Jury trial	Role of narrative and storytelling to achieve a favorable client outcome
Damages	Role of settlement considerations Role of case selection/intake and fee structures
Client loses at trial	Role of appellate standard of review and procedural timing of appeals Role of client counseling in decision to appeal
Clients loses final disposition	Role of client counseling Role of legislature when no judicial recourse is available Role of preventive lawyering to avoid the negative outcome
Recitation of case facts	Role of discovery in revealing admissible facts
Identifying the client	Role of ethics in understanding who the clight is and how to meet their objectives

This skills sensitization need not occur in every case or for every skill, but the general goal should be for students to leave a course in family law, criminal law, or environmental law with a sense of the skills necessary to succeed in these fields. Absent any conscious skills sensitization, for example, a torts student could leave a course seeing tort law through the lens of appellate law, which distorts the critical role of fact gathering, client narrative, damage calculations, and settlement considerations. Or a family law student could leave a course thinking that family law is about litigation, without seeing the central role of contracts, mediation, negotiation, financial valuation, and client counseling in the field. Other skills that could receive more sensitization within the larger Socratic dialogue would vary by discipline, but might include drafting, negotiation, mediation, administrative processes, local rules, time management, professionalism, and more. While it is not feasible to *teach* the skills fully, great value would come from sensitizing students to the concepts, terminology, and role of broad lawyering skills to inform their future course

selection, shape the professional job search, and connect the larger pieces of law school into a coherent whole.[53]

c. The Reframed Socratic Method in Action

Consider these three techniques in action together using a typical case in a casebook in the context of the larger legal education experience. Ask a typical student in a constitutional law course to summarize a landmark Supreme Court case. She will likely regurgitate back to you the "headline" significance of the case and the keystone facts. For example, *Reed v. Reed*, 404 U.S. 71 (1971) involved a challenge to an estate administration scheme that included a mandatory statutory preference for men to administer estates over women, and it was the first case to strike down a sex-based classification on equal protection grounds. The level of depth reflected in these likely student responses is quite typical of students studying a core doctrinal course. They read a series of cases, identify the propositions and rules for which the cases stand, critique the analysis and its rationale, and compile these individual cases into a broader understanding of the governing legal framework. Students tend to approach these studies as a historical exercise with the goal of piecing together the legal framework.

By reframing the Socratic method, instead of just presenting this case as the first to strike down a gender classification under the equal protection clause, we can challenge students to understand why the client sought counsel, to consider the arguments that lawyers would have made on her behalf in the late 1960s and the precedent they would cite, and to inject a skill-based framework as an overlay to the substantive rules. Our pedagogical goal is to get students beyond thinking of Ms. Reed as the first case in a series of cases applying equal protection analysis to sex-based classifications. We want to develop greater depth and context in the client relationship and lawyering role.

Imagine Ms. Reed presents herself as a client in your Idaho law firm contemporaneously. Using the case from the assigned reading in your course book, a student volunteer can generate the client narrative and present the issue as Ms. Reed might have done in her initial client meeting. Importantly, Ms. Reed does not present herself as a sex discrimination case or a constitutional case or a pioneer women's rights champion. Rather, she presents herself as a mother seeking to administer her son's estate and objecting to her ex-husband's automatic legal designation to administer it. This reveals the work of lawyering to get from client intake to the development of a legal cause of action.

Following the client narrative, students can consider–as a practitioner might–whether to take the case. This dialogue quickly reveals just how little we know about the case or the client from the appellate court opinion, an

53. *See* Rubin, *supra* note 6, at 658 (describing how law school should progress from the first year to the third because education is a development process). "The first year should be broadly contextual; it should provide students with a general picture of the legal system, expose them to basic legal materials, and introduce them to the basic modes of legal thought." *Id.*

important point indeed. Students may seek more information to consider the merits of the case and realize that appellate opinions are very thin on facts and human context.

Students can then do some research planning and brainstorming. Inevitably students' first instincts are to jump to the Constitution as the governing authority. Taking the time to develop a more rigorous research methodology like the one employed by Ms. Reed's lawyer will develop students' lawyering skills.[54] First, her lawyer would likely have consulted the probate order and the state administrative statutes before the Constitution because they were the basis for the underlying probate court's decision. The Idaho probate statutes worked in tandem. The first statute required probate courts to select the father or the mother as the possible administrator from a list of eleven classes of persons.[55] The other statute stated "of multiple individuals equally entitled, males must be preferred to females."[56] These materials would reveal at least two revelations to the students: (1) that the distinctions in the statute were, in fact, based on gender, and (2) that the probate court had no discretion under this statutory scheme. These revelations generate discussion regarding the legal remedies available to challenge a discriminatory legislative scheme on the basis of gender.

Only after students explore the state statutes and their interpretive case law would the United States Constitution be a likely source of authority to address Sally Reed's client objectives. Even within the Constitution, the Equal Protection Clause is not the clearest constitutional hook historically. Rather, using the notes and context already provided in the casebook, students as researchers on behalf of Ms. Reed can explore the viability of the Privileges and Immunities and Equal Protection clauses of the 14th Amendment,[57] the 19th Amendment,[58] and the proposed Equal Rights Amendment as possible vehicles to challenge these probate provisions. This exercise will allow the instructor to move efficiently through a considerable amount of case precedent

54. *See* Valentine, *supra* note 40, at 204 (current pedagogy "often imbue[s] students with a dangerous naivety in the face of the ever-growing wave of information they will be expected to find, sort, manage, and understand on behalf of their clients.").

55. Idaho Code Ann. § 15-312 (repealed 1972), *cited in* Reed v. Reed, 404 U.S. 71 (1971).

56. Idaho Code Ann. § 15-314 (repealed 1972), *cited in* Reed v. Reed, 404 U.S. 71 (1971).

57. U.S. Const. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws.").

58. U.S. Const. amend. XIX ("The right of citizens of the U.S. to vote shall not be denied or abridged by the U.S. or by any state on account of sex.").

including *Adkins v. Children's Hospital*,[59] *Bradwell v. Illinois*,[60] *In re Lockwood*,[61] *Minor v. Happersett*,[62] *In re Slaughter-House Cases*,[63] *Muller v. Oregon*,[64] *Goesaert v. Cleary*,[65] and *Hoyt v. Florida*.[66] This precedent is already presented to students in casebook notes. The work of the faculty in the reframed Socratic method is to transform the notes to a student-as-lawyer simulation. Students will then learn that the 14th Amendment was ratified in 1868 and over 100 years of precedent is either nonexistent or unhelpful for Ms. Reed. Students then conceptually understand the leniency and deference that the federal Constitution gave to this state statute and the long-standing legal precedent to support this. This information critically reveals to students the hard lawyering work that goes into taking a client's problem and translating it into a viable legal cause of action, a skill in which new graduates are particularly deficient.[67]

Students next explore the legal advice that they would give to Ms. Reed based on this legal research and deliver it to the client. Students might then also identify briefly the social, political, and historical factors that a litigator might consider in this era. This exercise reinforces the importance of objective analytical skills and positions predictive skills as the foundation of effective advocacy. The legal advice is unequivocally unfavorable for Ms. Reed based on the in-class research.

The lack of precedent reveals a dismal legal case. Revealing to the class that, in fact, Ms. Reed consulted sixteen lawyers who all refused to take her case powerfully culminates this exercise. The lawyer who ultimately took her case told her that she would have to appeal it all the way to the Supreme Court and it was unlikely she would win. He knew the case was not economically

59. Adkins v. Children's Hosp., 261 U.S. 525 (1923) (suggesting by implication that the 19th Amendment to the United States Constitution grants equal protection to women).

60. Bradwell v. Illinois, 83 U.S. 130 (1872) (denying a woman admission to the practice of law on the basis of sex and rejecting her argument that admission to the bar was one of the national privileges and immunities protected under the Constitution).

61. *Ex parte* Lockwood, 154 U.S. 116 (1894) (refusing to issue a writ of mandamus to order Virginia to admit women to the state bar).

62. Minor v. Happersett, 88 U.S. 162 (1874) (holding that the right to vote was not among the Privileges and Immunities of United States citizenship).

63. *In re* Slaughter-House Cases, 83 U.S. 36 (1872) (holding that rights protected under the Privileges and Immunities clause are limited to those that owe their existence to the federal government).

64. Muller v. Oregon, 208 U.S. 412 (1908) (upholding a state law prohibiting employment of women in any mechanical establishment or factory for more than ten hours a day).

65. Goesaert v. Cleary, 335 U.S. 464 (1948) (upholding a statute allowing women to serve as waitresses in taverns, but not bartenders).

66. Hoyt v. Florida, 368 U.S. 57 (1961) (challenging women's exclusion from jury selection under the 14th Amendment).

67. Harker, *supra* note 40, at 80 (describing how law graduates are notably lacking in the ability to find information that is pertinent to the legal problem by using analogies to link the information to the legal issue in question).

viable, but "the principle was viable" and "she felt strongly."[68] This difficult precedential framing is consistent with many iconic cases, and this realization for students can inspire new lawyers.

Thus, there must be something more going on here. Indeed the client narrative is far more compelling than the book would suggest.[69] Sally Reed had a stormy relationship with her ex-husband, Cecil. She had two miscarriages before she adopted Richard ("Skip") over Cecil's objections. When Skip was three or four years old, the father deserted the family. Sally had to support herself by caring for disabled veterans in her home. Skip worked mowing lawns and doing other odd jobs to raise money for college. By the time Skip was sixteen his father had remarried and had two grown stepsons. Skip was reluctant to go to his dad's for visitation. On the day of Skip's death, he was at his dad's for visitation. He called home asking to return to Sally's house. She persuaded him to stay. The police later informed her that Skip shot himself with his father's hunting rifle in the basement of his dad's house. The combined value of his estate was less than $1,000, but it was money that Skip was saving for college. This client narrative, like many others for iconic cases, is readily available in the casebook or teaching materials and illuminates critical context to how precedent was marshaled to a successful legal victory.

After reviewing the full facts and historical circumstances, students can then explore and discuss the *Reed* legal advocacy. What arguments did the lawyer make? This research-driven analysis of *Reed* sets up the conclusion that after 103 years of upholding such sex-based classifications, the court's decision to unanimously strike down this administrative statute was extraordinary. Through this research-driven and skills-based analysis, students will see the role that legal research, predictive legal advice, client counseling, client storytelling and narrative played in the successful lawyering by Ms. Reed's lawyers.

This is just one example of how the reframed Socratic method might work for iconic cases. The next section explores some of the benefits of reframing the Socratic method.

IV. The Benefits of Reframing the Socratic Method

For decades critics have challenged legal education to reform and adapt to changing needs.[70] Legal education today is threatened by low enrollment,[71]

68. Supreme Court Decisions and Women's Rights: Milestones to Equality 39-42 (Clare Cushman ed., 2001) (providing historical background to iconic women's rights cases).

69. *Id*.

70. *See* Cavasos, *supra* note 6, at 1128-29 (chronicling the ABA's work to reform the link between legal education and practice beginning with the 1992 MacCrate report, stressing that law schools needed to reinstate lawyering skills into the curriculum).

71. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. Times, Jan. 31, 2013, at A1 ("Law school applications are headed for a 30-year low, reflecting increased concern over soaring tuition, crushing student debt and diminishing prospects of lucrative employment upon graduation."). Low enrollment has caused layoffs and speculation regarding law

high tuition costs,[72] weak job placement, depressed salaries,[73] and scathing criticism from insiders and outsiders alike. Much of the work in response to these reform movements, however, has occurred around the Socratic method and on top of the existing Socratic approach. Modern reforms should also address the Socratic method itself, recognizing pragmatic limitations.[74]

a. Lending Coherence and Continuity to Legal Education

Modern students experience law school as a clunky and choppy series of independent parts. They begin by absorbing vast quantities of legal rules in doctrinal courses using the Socratic method casebook approach.[75] They layer on an introductory understanding of client-based research and writing in their research and writing courses. They experience externships and professional employment where they acquire additional skills mastery and subject matter expertise.[76] They return to consume more vast quantities of legal rules in doctrinal courses throughout the upper-level courses. They hunker down in an advanced skills class or two to acquire practice-ready skills like negotiation, arbitration, or trial practice. Only a select group of students will participate in a clinical experience where they will integrate clients, substantive law, and lawyering skills holistically with faculty supervision.

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school closures. *See* Ashby Jones & Jennifer Smith, *Amid Falling Enrollment, Law Schools are Cutting Faculty; Trims Send Grim Message to Elite Group Long Sheltered from Economy's Ups and Downs*, Wall St. J. Online (July 15, 2013), http://online.wsj.com/news/articles/SB10001424127887323664204578607810292433272 (describing a rise in layoffs, buyouts, early retirements, and canceled contracts for non-tenured faculty, particularly for middle- and low-tiered schools); Adam Cohen, *Just How Bad Off Are Law School Graduates*?, Time (Mar. 11, 2013), http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/ (describing how some law schools have reduced class sizes and noting that there has been speculation of closing law schools).

72. *See* Williams, *supra* note 2, at 393-94 (describing how law schools' costs have risen and job placement has declined).

73. Elizabeth G. Olsen, *Law School Jobs Fallout Approaches New Low*, Fortune (Sept. 11, 2013, 2:10 PM), http://fortune.com/2013/09/11/law-school-jobs-fallout-approaches-new-low/ ("With the legal job market foundering, fewer students are willing to take on the significant cost of a juris doctorate, and the waterfall of tuition dollars is slowing."); Bronner, *supra* note 71 (several law schools, such as the Vermont Law School, have begun layoffs and buyouts of staff because of a nationwide decrease of applicants as students are doing the math on increasing tuition and an unimpressive prospective job market).

74. Carnegie Report, *supra* note 5, at 187-88 (noting how the case method does not consider the complexity of people, situations, social needs, moral implications, etc.).

75. *See* Cavasos, *supra* note 6, at 1156 ("The pedagogy of the first year of law school is that students must study the foundational areas of law and master issue spotting" like a "boot camp" submersion into a "new world complete with its own languages: Latin and legalese.").

76. *See* Newton, *supra* note 22, at 81 (explaining that law students graduate with only a broad and basic understanding of common legal careers, in addition to whatever specific knowledge they happened to have gained during internships, externships, and summer jobs).

In this model, skills mastery is often separated from doctrinal rule mastery.[77] Doctrinal rule mastery occurs in the abstract without a client to whom the rules apply. Legal outcomes just exist and they do not affect actual clients with actual problems. Very few students can successfully piece together the various components to see a coherent training for the practice of law or a holistic course of study.[78]

The three techniques described above would greatly improve the continuity and coherence of legal education for law students. It would position the Socratic method to simulate for students the lawyering process and see it as a holistic curriculum involving clients, research, and skills in every component.[79] This makes the material more relevant and dynamic for students.[80]

Instead of studying concepts in the abstract, they can see the client as central to the entirety of legal education and the centrality of legal research to client representations. They would see how facts, history, and policy can marshal "bad" facts and precedent to a positive client outcome. They would see how the various skills that are taught in upper-level courses are interconnected to all subject matters.

This would help make students more effective when selecting courses or setting professional goals in the upper-level curriculum. It would shift the focus from "do I want to be a tort lawyer or a contract lawyer?" to "do I like drafting, objective or persuasive counseling, fact-intensive lawyering, or complex research?" Finally, it would add more coherence and continuity to a student's course of study by syncing up first-year and bar courses with other experiential and innovative programs.

77. *See id.* at 81 (concluding that most law students do not have a realistic understanding of what most lawyers do or how to be a lawyer).

78. *See* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. Legal Educ. 591, 596 (1982) (stating that law schools teach rudimentary essential skills in "a way that almost completely mystifies them for almost all law students").

79. *See* Newton, *supra* note 22, at 91 (arguing that the typical law school curriculum today fails to sufficiently develop "learning for transfer," which "refers to the extent to which one is able to transfer skills and knowledge from one context to another"). Adult learning in the context of legal education strongly supports the "movement away from empty mimicry of the traditional casebook method and Socratic Method," which have failed to provide law students "systematic training in effective techniques for learning law from the experience of practicing law." *Id.*

80. *See* Fines, *supra* note 40, at 160 (highlighting how the Carnegie Foundation recently suggested that law schools need to develop a "shadow structure" to complement the Socratic method consisting of clinical or practice experience of lawyering, which is the "contextualizing of the classroom's legal analysis and doctrine.").This enhances the teaching of legal knowledge and analytical skills by "placing analysis and doctrine in the context of real-world applications." *Id.*

b. Training Practice-Ready Lawyers

Reframing the Socratic method would also help prepare practice-ready lawyers consistent with critical challenges from various stakeholders.[81] Students would be more practice ready in their client focus, their understanding of the relevance of research, and their sensitization to the role of broad legal skills. Designing the modern Socratic method around the professor-student interaction achieves little in preparing practice-ready lawyers.[82] Some critics have stated that good Socratic teaching is about the students and bad Socratic teaching is about the professor and how smart she is.[83] I argue that good Socratic teaching should be about neither the professor nor the student, but the client(s).

The Socratic method brings great repetition, consistency, and continuity to the consumption of legal rules across subject matters.[84] By reframing the Socratic method around the clients in the cases, their competing objectives, and their quest to find legal remedies to solve actual problems, students see the client as central to every aspect of law school.[85] They see the critical work that lawyers do to bridge client harms to actionable causes of action. This approach debunks the myth that a client arrives in an attorney's office with a clear "torts" problem or "criminal law" problem.

81. *See, e.g.*, Carnegie Report, *supra* note 5, at 78-84 (describing how law schools, compared with other professional educations, do not train students for professional practice); David Segal, *What They Don't Teach Law Students: Lawyering,* N.Y. Times, Nov. 19, 2011, at A1, *available at* http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&_r=0 (criticizing law schools' emphasis on the "theoretical over the useful" and antiquated teaching techniques that leave students unprepared to perform basic professional tasks in their field); A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 Wash. & Lee L. Rev. 1949, 1958 (2012) (concluding that modern law schools are not designed to prepare students for practice upon graduation because they focus mainly on legal doctrine and place very minimal emphasis on core competencies needed to be a successful lawyer); Williams, *supra* note 2, at 392-93 (explaining that judges and employers alike have concluded that law school graduates leave school unprepared to practice law and concluding that students need to be ready to hit the ground running upon graduation).

82. *See generally* Pistone & Hoeffner, *supra* note 4, at 226 (chronicling the history of critics' arguing that legal education does not train lawyers for practice and noting that after a century of this critique, many students will still complete eight-five to ninety credit hours with only three to five hours' teaching skills).

83. Stephen L. Carter, *Review Essay, The Emperor of Ocean Park: The Quintessence of Legal Academia*, 92 Calif. L. Rev. 585, 591 (2004) (explaining how it is a breach of trust between the student and professor to ask questions for which no answer exists).

84. Stuckey et al., *supra* note 10, at 142 (noting that "it takes time to develop expertise in legal problem-solving," which can be developed only by actually working through the process of resolving problems "as against the hard world of consequences, of repeated success and failure, and some inductive efforts at understanding what works and what does not, what seems important and what does not.").

85. *See* Carnegie Report, *supra* note 5, at 75-78, 185-88 (explaining that law schools teach students to think like students and competitive scholars rather than attorneys engaged with the problems of clients).

Students will therefore graduate more prepared to tell the clients actual answers to actual questions in search of actual results. Far too often the Socratic dialogue leaves students with an exaggerated sense of indeterminacy because it values the intellectual exchanges built around the "maybe" answer.[86] This "maybe" approach complicates the transition to clinical lawyering. In-class simulations and problem sets can also be problematic because they are neatly structured with only clearly relevant information provided.[87] Existing approaches position students to graduate unable to translate indeterminacy into meaningful client advice. The reframed Socratic method would bridge indeterminate precedent to meaningful client counseling.

Students will also graduate more sensitized to the heavy lifting of legal research in client lawyering. Typical law students struggle to learn legal research because they are overconfident in their research abilities and they struggle to see the importance of legal research to their practice success. They likely recognize that this is a skill that they need *prospectively* when they are out in practice or writing an upper-level paper, but they likely see the skill set as largely divorced from the daily law school rule mastery of their first year.

Reframing the Socratic dialogue to inject a research-based perspective would help students to transition from law school to practice more effectively. They would see that the first step of every client representation after client intake is competent and comprehensive legal research. The authority cited within the case-based Socratic textbooks provides the perfect springboard to this practice-ready sensitization. Doctrinal faculty can push students to take that additional step between "what is the issue" and "what is the outcome" to see how lawyers marshaled precedent to yield a particular result. Students would regularly and consistently analyze the role of hierarchy of authority. They can consider how rules change as lawyers marshal changing social, political, and economic conditions to achieve new legal solutions that were previously discarded.

Finally, skills sensitization throughout the Socratic dialogue can help students see the holistic range of tasks that lawyers complete.[88] It would alleviate the distorted overemphasis on appellate cases and litigation. It would help students to see the predictive, persuasive, and preventive roles

86. Carter, *supra* note 83, at 593-94 (criticizing the tendency of professors to "dwell too long on indeterminacy" leaving students "without the recognition that most legal results are actually relatively predictable (and not uniformly unjust) the truly significant lessons of lawyering are lost.").

87. Fernando Colon-Navarro, *Thinking Like a Lawyer: Expert-Novice Differences in Simulated Client Interviews,* 21 J. Legal Prof. 107 (1997) (real-world problems present relevant and irrelevant information).

88. *See, e.g.*, Newton, *supra* note 22, at 84-85 (concluding that the typical law school curriculum is focused disproportionately on litigation topics and needs to reflect what lawyers actually do in their practice area, including business, transactional, and regulatory perspectives, as well as practical skills like courtroom navigation, client counseling, negotiation, and practice management).

that lawyers play. It would help students to see lawyers active in legislative, judicial, and executive branches.

c. Creating Inviting and Inclusive Classrooms

In the current Socratic approach, the individual professor-student relationship is the organizing principle to the Socratic method.[89] This positions student participation to be subordinate to the professor or competitive with classmates.[90] Students most often work collaboratively outside the Socratic method classroom in study groups or group exercises, but rarely in the classroom itself.[91] Reframing the Socratic method would also create a more inclusive and inviting law classroom without compromising the celebrated analytical rigors. This would greatly improve the student experience for all.[92] Students would role-play working through legal research results, interacting with opposing counsel, counseling clients, and developing case strategy.

These consistent reframings of the Socratic method would also create a more inclusive law school experience for all.[93] These approaches reduce the hierarchy of the professor over the students and invite participation.[94] The participation that is sought is more collaborative and inviting of diverse perspectives because it is offered as a means to advance client interests and goals, rather than to challenge the professor or a classmate. This would model collaborative, collegial, and productive lawyering for our students, not just adversarial competencies.

V. Conclusion

Legal education is struggling and stagnating. Dynamic and exciting reforms are underway at law schools throughout the country, but these reforms are built around and limited by the ancient architecture of the case-based Socratic

89. Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. Balt. L. Rev. 1, 44 (2012) (noting that while faculty expect that all students listen to and think carefully about all peer participation, Socratic dialogue directly affects only one student at a time, and students know the odds of having to speak in class are slim).

90. Morgan, *supra* note 19, at 162 (arguing that the Socratic method models competition, not cooperation, "reminiscent of a court—the judge speaks directly to the prosecution and defense lawyers, not they to each other").

91. *Id.* at 155 (concluding that one of the "most impressive aspect[s] of the law school milieu is the unpleasant quality of interpersonal relationships among students."). Morgan argues that the professor has to "take responsibility for what occurs in the classroom and cannot rely on student activity outside to remedy the classroom experience." *Id.*

92. *See* Newton, *supra* note 22, at 89-90 (encouraging the use of discussion to engage students and help them retain information, develop problem-solving and thinking skills, and understand diverse viewpoints, and noting that it is more motivating and engaging).

93. *See* Rosato, *supra* note 14, at 43 (explaining that legal education need not be so isolating or marginalizing, and that it can be "empowering").

94. Morgan, *supra* note 19, at 154 (criticizing the lack of student-student interaction).

method approach, which still persists and endures.[95] Reframing the Socratic method in a client-based, research-based, and skills-based approach would help catalyze other innovations in legal education.[96] It would create more client-conscious and practice-ready graduates learning in more inviting and inclusive classrooms.

95. *See* Robert J. Rhee, *On Legal Education and Reform: One View Formed from Diverse Perspectives,* 70 Md. L. Rev. 310, 327-28 (2011) (noting that very little has changed in the past several decades of law teaching, particularly in the first-year curriculum: some form of Socratic dialogue in conjunction with the traditional law school casebook method dominates).

96. *See* Pistone & Hoeffner, *supra* note 4, at 202 ("The only way forward is to innovate.").