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NOTE

ENDING THE CHILL OF COLD CALLING: A MULTIMODAL SOLUTION TO THE PITFALLS OF THE SOCRATIC METHOD

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ABSTRACT

The Socratic method—known to many first-year law students as "cold calling"—plays a significant role in the modern law school experience. The method is intertwined with the academic foundations of American legal education, and proponents champion its ability to teach students how to "think like a lawyer." However, this comes at a cost. As it is typically employed, the Socratic method has a documented history of negative impacts on the well-being of law students. Further, by focusing primarily on the analysis of judicial opinions in casebooks, the method mischaracterizes the purpose of legal reasoning in the first place: advocating for the best interests of the client.

Law schools should reduce their dependence on the Socratic method during the first year, and instead utilize a multimodal approach that incorporates a variety of teaching methods. This Note proposes that the American Bar Association, as a key player in shaping legal

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education, should amend its accreditation standards to instruct schools to introduce experiential learning as early as possible and require schools to regularly evaluate the diversity of their faculty's teaching methods. Without referencing the Socratic method by name or banning it outright, these changes would help introduce more students to the multifaceted nature of legal work—and would encourage legal education to better prepare law students for the work of an attorney.

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INTRODUCTION

The Socratic method is a mainstay of the modern American law school experience.[1] Almost any first-year law student can explain—perhaps as a shiver travels down their spine—the "cold calling" technique this method entails: the professor calls on an individual student at random and asks them to recite the facts of an opinion from the course casebook.[2] The professor then engages in a back-and-forth dialogue with the student, instructing them to piece together the judicial reasoning and extract the legal rules.[3] The dialogue may culminate with the professor telling the student to apply this rule to a new hypothetical scenario or otherwise provide an opinion on the strength of the legal argument.[4] Only after a long exchange is that student let off the hook as the professor moves on to another student.[5] Though many students find this method nerve-wracking, it is ostensibly designed to help them discover the fundamentals of

1. *See* Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. LEGAL EDUC. 562, 565 (2015) [hereinafter Abrams, *Reframing*] (stating that "[t]he Socratic method of law teaching persists universally in law schools"). It is important to note that the term "Socratic method" in the law school context describes a collection of educational practices and values. *See infra* Part II (discussing critiques of these practices). In contrast, cold calling is the pedagogical tool most often used to demonstrate the method. *See, e.g.*, Anne M. Coughlin & Molly Bishop Shadel, *The Gender Participation Gap and the Politics of Pedagogy*, 108 VA. L. REV. ONLINE 55, 60–61 (2022) (describing a typical exchange between a professor and an on-call student). The terms are not technically synonyms, but because they have been strongly linked historically, most first-year law students experience them as the same thing. *See infra* Section I.B (discussing the Socratic method's introduction and development); Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2324 (2017) (explaining that in law school, the Socratic method usually refers to professors coldcalling on students to answer questions and make arguments to defend their positions).

2. *See* Coughlin & Shadel, *supra* note 1, at 56, 60; *e.g.*, Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound, 1/31/90)*, 109 HARV. L. REV. 911, 915 (1996) ("Students are encouraged to [remain prepared] by being asked, at random, to recite some aspect of the assigned materials.").

3. *See* Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Methods a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267, 270, 272–73 (2007); Abrams, *Reframing*, *supra* note 1, at 570 ("Typical Socratic dialogue focuses on case outcomes and hypotheticals to consider the boundaries of the rules students have discerned from the cases.").

4. *See* Coughlin & Shadel, *supra* note 1, at 60; Areeda, *supra* note 2, at 915–16.

5. Coughlin & Shadel, *supra* note 1, at 60–61.

legal analysis.[6] Many educators deem it essential to helping students learn what it means to "think like a lawyer."[7]

The Socratic method is typically employed in first-year doctrinal courses where class discussion revolves around selected court opinions found in casebooks.[8] As legal education grew in prominence and prestige, the Socratic method became the primary way to teach the legal concepts illustrated in casebooks to large groups of new students.[9] The method remains dominant, and its reputation precedes it—so much so that popular internet forums like Reddit abound with advice (and memes) about strategies for navigating the dreaded cold call.[10]

However, a substantial number of scholars have criticized the Socratic method and its effects on student well-being.[11] The method's focus on public speaking often amplifies the voices in the classroom that are already the loudest, with women and minorities reporting more discomfort with the method than their white male peers.[12] The adversarial nature of the method places students and professors on unequal footing, thereby reinforcing

6. *See, e.g.*, David D. Garner, *Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597, 1636 (2000) ("[T]he Socratic method drills a method of inquiry that forms the foundation for more sophisticated legal thinking." (internal quotation marks and alterations omitted)).

7. *See, e.g.*, Jackson, *supra* note 3, at 276.

8. *See* Emily Zimmerman, *Pushing Back Against Langdell*, 83 U. PITT. L. REV. ONLINE 1, 2 (2022); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 569–70 (1991).

9. *See* Garner, *supra* note 6, at 1604; Jamie R. Abrams, *Legal Education's Curricular Tipping Point Toward Inclusive Socratic Teaching*, 49 HOFSTRA L. REV. 897, 900 (2021) [hereinafter Abrams, *Tipping Point*].

10. *See, e.g.*, lawyerforfire, *For the 1L's Terrified of Cold Calls*, REDDIT (Aug. 27, 2020, 6:02:49 PM EDT), https://www.reddit.com/r/LawSchool/comments/ihulx6/for_the_1ls_terrified_of_cold_calls/ [https://perma.cc/W82D-LUJY] (explaining the disconnection between a first-year law students' success during cold calls with their success as an attorney); dora_the_kgbagent, *When the Professor Is Getting Ready to Cold Call and Looks at Your Section*, REDDIT (Oct. 17, 2022 3:08:03 PM EDT), https://www.reddit.com/r/LawSchool/comments/y6jmot/when_the_professor_is_getting_ready_to_cold_call/ [https://perma.cc/NWE3-DRHE] (showing a meme a law student made, which states: "LOOK DOWN, LOOK DOWN, DON'T LOOK HIM IN THE EYE").

11. Abrams, *Tipping Point*, *supra* note 9, at 908 ("Critical scholars have specifically questioned the centrality of the Socratic method as the dominant paradigm for delivering legal education."); *id.* at 912 (stating that "problematic Socratic performances can harm students").

12. *Id.* at 910–12.

a hierarchical structure.[13] The random nature of cold calling can also exacerbate negative mental health outcomes as students anxiously anticipate being called on next.[14]

These and other negative effects of the Socratic method are well documented, and scholars have levied such critiques for more than fifty years.[15] However, relatively few critical commentators recommend eliminating the Socratic method altogether; most criticize the "harmful and ineffective *performances*" of the method rather than its underlying premises.[16]

Most students enter law school with the intention of working in legal practice (as opposed to academia).[17] A practicing lawyer's ultimate goal should be to serve the best interests of the client,[18] and careful legal reasoning typically plays a significant role in effective advocacy.[19] However, much of the law school curriculum is built upon legal analysis itself, decontextualized from its practical role as a tool to achieve the client's goals.[20] The Socratic method plays a key role in this decontextualization

13. *See* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 593 (1982) ("The [legal] classroom is hierarchical with a vengeance, the teacher receiving a degree of deference and arousing fears that remind one of high school rather than college.").

14. *See* Kathryne M. Young, *Understanding the Social and Cognitive Processes in Law School that Creates Unhealthy Lawyers*, 89 FORDHAM L. Rev. 2575, 2590–91 (2021) [hereinafter Young, Unhealthy Lawyers] (describing several students' stressful cold calling experiences).

15. Abrams, *Tipping Point*, *supra* note 9, at 915.

16. *Id.* at 903 (emphasis added).

17. Emily Zimmerman, *Re-Envisioning Law Student Scholarship*, 69 CATH. U. L. REV. 291, 292 (2020).

18. See MODEL RULES OF PRO. CONDUCT r. 1.3, cmt. 1 (AM. BAR. ASS'N 2020) ("A lawyer must . . . act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.").

19. This goal can be construed broadly; for example, an impact litigator may use a carefully crafted analytical strategy to win a case that changes the law in a particular area. The underlying idea is the same: legal reasoning is done in service of that goal—not as an activity itself. *See generally What Makes a Good Lawyer? Common Traits of Successful Attorneys Today*, ABRAHAM LINCOLN UNIV. (June 17, 2019), https://www.alu.edu/alublog/what-makes-a-good-lawyer [https://perma.cc/844L-CNWK] (providing ten traits the best lawyers share in common, which are key to fulfilling the goal of serving the client's best interests).

20. *See* Kennedy, *supra* note 13, at 597 ("Teachers teach [legal concepts] as though they had an inner logic, as an exercise in legal reasoning with policy . . . playing a relatively minor role."); *see also* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW 77 (2007) [hereinafter CARNEGIE REPORT] (commenting that while in law school students do not gain the "full range of understanding necessary for a competent and responsible legal professional").

because it maintains a narrow focus on extracting and applying abstract rules.[21] For this reason, the Socratic method is ill equipped to prepare students for careers as responsible legal advocates.

If law schools are truly invested in equipping students for success in the legal field, they must reduce their dependence on the Socratic method of teaching during the first year and instead utilize a multimodal approach.[22] Doing so would not only alleviate some of the method's negative impacts on law student well-being, but would also work to correct the method's mischaracterization of the nature of legal reasoning in the first place.[23] The American Bar Association ("ABA"), as a key player in the regulation of legal education,[24] should encourage multimodal teaching by amending its Standards for the Approval of Law Schools in two ways: (1) instructing schools to introduce experiential learning as early as possible, and (2) requiring schools to regularly evaluate the diversity of their faculty's teaching methods.[25] If implemented by law schools, these changes would introduce students to the multifaceted nature of legal work and align legal education more with the actual responsibilities of lawyers in practice.

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21. *See, e.g.*, Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113, 119 (1999) (explaining that one "school of critique of the Socratic method focuses on what the method does *not* teach, namely, everything except for the abstract and particular skill of case-based legal reasoning"); Garner, *supra* note 6, at 1600 (stating that one goal of the Socratic method is to "lead the student down a chain of reasoning either forward, to its conclusions, or backward, to its assumptions"(quoting Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571, 1573 (1993)).

22. *See* ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 132–33 (2007) [hereinafter BEST PRACTICES] (describing the benefits of integrating simulation-based forms of learning into law schools); *see also* discussion *infra* Part V (proposing multimodal pedagogy, the utilization of various teaching styles and practices to convey information in different ways, as an alternative to the Socratic method in legal education).

23. CARNEGIE REPORT, *supra* note 20, at 77 (stating that the Socratic method's "relentless emphasis on process *tends to eclipse the importance of legal doctrine itself*, leading to lawyers who are more technicians than professionals invested with a sense of loyalty and purpose" (emphasis added)).

24. *About Us*, A.B.A., https://www.americanbar.org/groups/legal_education/about_us/ (last visited Nov. 19, 2023).

25. *See ABA Standards and Rules of Procedure for Approval of Law Schools*, 2023 A.B.A. SEC. LEGAL EDUC. & ADMISSION TO THE BAR.

Part I of this Note provides a historical overview of the Socratic method's invention, development, and role in the legal classroom. Part II surveys the main critiques that scholars have levied against the Socratic method and its use in modern law schools. Part III highlights the substantive critique that the method mischaracterizes the nature of legal reasoning altogether and fails to teach students key lawyering skills. This Part also discusses how the Carnegie Report—a seminal text in legal education scholarship—thrusts these critiques into the spotlight. Part IV discusses the history of the ABA and how its accreditation standards impact legal education. Part V suggests measures that legal educators can take to adjust their pedagogy given these concerns and ultimately proposes changes to the ABA's accreditation standards that would encourage educational innovations.

I. HISTORICAL OVERVIEW

The earliest forms of legal education looked nothing like the law schools of today. In fact, law practice was originally viewed as a trade, where students were trained via apprenticeships that developed their practical skills.[26] Toward the end of the nineteenth century, however, prominent voices in legal education sought to transform the law school experience into a more elite academic pursuit.[27] This Part outlines the history of modern legal education and the Socratic method's key role in its development. Understanding this history will provide a foundation for the critiques and proposed reforms discussed throughout this Note.

26. *See* Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 522 (1991); *see also* Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 126–28 (1976).

27. *See* Weaver, *supra* note 26, at 529–30.

A. *Legal Education's Langdellian Origins*

Though named after the Greek philosopher Socrates,[28] the use of the Socratic method in legal education originated with Christopher Columbus Langdell, a law professor who became the dean of Harvard Law School in 1870.[29] Before Langdell's time, legal education was based largely upon apprenticeships that treated lawyering much like a skilled trade.[30] In contrast to early university education that focused on theoretical analysis, law students learned practical skills related to legal practice.[31] As law schools grew in popularity toward the end of the nineteenth century, instruction shifted slightly to the use of lectures and texts.[32] Students came to class having read and memorized relevant legal "texts"—secondary materials that discussed judicial reasoning[33]—upon which the professor would deliver a lecture.[34] In some instances, class sessions would also incorporate student recitations of memorized material, followed by a question-and-answer discussion period.[35] Most jurisdictions continued to use the apprenticeship model in some capacity until the

28. *See generally* James M. Ambury, *Socrates (469–399 B.C.E.)*, INTERNET ENCYC. PHIL., https://iep.utm.edu/socrates/ [https://perma.cc/9TUZ-5BS8] (last visited Oct. 11, 2023) (providing "an overview of Socrates: who he was, what he thought, and his purported method"). Socrates focused his philosophy on learning via dialogues. *See* Jackson, *supra* note 3, at 272. His teaching practices—which comprise the true Socratic method—are discussed in Part II.A.

29. Christopher M. Ford, The Socratic Method in the 21st Century 1 (2008) (Master's thesis, United States Military Academy), https://www.westpoint.edu/sites/default/files/inline-images/centers_research/center_for_teching_excellence/PDFs/mtp_project_papers/Ford_08.pdf [https://perma.cc/8WP6-NF6R].

30. Weaver, *supra* note 26; *see also* McKirdy, *supra* note 26 (explaining that legal education was based on an apprenticeship system in the Eighteenth Century).

31. *See* Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*,
57 CHI.-KENT L. REV. 429, 444–45 (1981) ("The training of the [law] clerk was essentially akin to the training of the blacksmith's apprentice; it was practical rather than theoretical. A university education, on the other hand, was predominantly an exposure to the principles and methods of analysis.").

32. *See* Ford, *supra* note 29; Weaver, *supra* note 26, at 522–25.

33. *See* Weaver, *supra* note 26, at 525–26.

34. Ford, *supra* note 29; Weaver, *supra* note 26, at 525–26.

35. This was known as the "Dwight method," named after Professor Theodore Dwight of Columbia Law School. Weaver, *supra* note 26, at 525–26, 525 nn.18–19.

beginning of the twentieth century.[36] Langdell entered this heterogeneous mix of pedagogical techniques when he began teaching at Harvard in the 1870s.[37]

Langdell brought a new perspective to his teaching philosophy that ran counter to the prevailing narrative: he viewed law as a "science" rather than a skilled trade and "believed that it should be studied by scientific methods."[38] He found it necessary to extract these "scientific" legal principles from their "original sources"—printed reports of court opinions.[39] Langdell believed that in contrast to the use of "texts," analysis of the opinions themselves would lead students to discover the fundamental principles underlying the law.[40] He also believed that there were a finite number of these fundamental legal principles and certain cases better exemplified them than others.[41] As a result, by handpicking the cases he deemed most worthy of study, Langdell "prepar[ed] and publish[ed] such a selection of cases as would be adapted to [his] purpose as a teacher."[42] Accordingly, the now-ubiquitous method of teaching law from a casebook was born.[43]

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36. *Id.* at 522 n.14; *see also* Stein, *supra* note 31, at 444–45 (stating that "it was not until well into the twentieth century that" scholars agreed that "legal education should be conceptualized as . . . a rigorous scientific method").

37. *See* Weaver, *supra* note 26, at 520.

38. *Id.* at 527.

39. *Id.* at 527–28.

40. *See id.* at 526–27.

41. C.C. LANGDELL, *Preface to* SELECTION OF CASES ON THE LAW OF CONTRACTS, at vi (Boston, Little, Brown & Co. 1871) [hereinafter LANGDELL, CONTRACTS].

42. *Id.*

43. *See* Weaver, *supra* note 26, at 543 ("Today, the case method is unquestionably the primary method of instruction in U. S. law schools."). Langdell explained the "scientific" reasoning behind the case method in the preface to his own Contracts casebook:

> Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility . . . is what constitutes a true lawyer . . . . Each of these doctrines has arrived at its present state by slow degrees; . . . it is a growth, extending in many cases through centuries. This growth is to be traced in the main through a series of cases; and much the shortest and best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied.

LANGDELL, CONTRACTS, *supra* note 41, at vi.

Langdell believed that law was a rigorous, inductive "science" that deserved a place in the world of the university.[44] He and his like-minded contemporaries strongly denied that law-as-skilled-trade had any place in the halls of academia.[45] Although the apprenticeship model persisted to some extent throughout Langdell's rise to prominence,[46] his theoretical framework and casebook model eventually won out and is still in full force today.[47] By centering his teaching around casebooks rather than skill-based apprenticeships, Langdell achieved the lofty goal of "transform[ing] legal education from an undemanding, gentlemanly acculturation into an academic meritocracy."[48] This legacy has persisted to the present day, with one commentator observing that "notwithstanding the myriad changes in the legal profession and in our understanding of how people learn, the contemporary law school remains remarkably Langdellian" in its structure and methodology.[49] The pedagogical hallmark of the Langdellian classroom was the Socratic teaching method.[50]

B. *The Socratic Method Introduced*

Alongside introducing casebooks into the classroom, Langdell also conducted class in a novel way by introducing the

44. Weaver, *supra* note 26, at 529 ("If law really was a science, then it deserved serious academic study.").

45. *See, e.g.*, *id.* at 530 n.31 ("If law is a science—and if it is not a science it has no place in the curriculum of a university—all will agree that the most scientific method should be adopted in teaching law." (quoting William A. Keener, *The Inductive Method in Legal Education*, *in* PROC. A.B.A. SEC. LEGAL EDUC. ANN. MEETING (Aug. 22, 1894), *reprinted in* 17 ANN. REP. A.B.A. 351, 473 (1894)).

46. *See* Weaver, *supra* note 26, at 522 n.14 ("The apprenticeship method survived in most jurisdictions at the beginning of [the twentieth] century.").

47. Weaver, *supra* note 26, at 518, 543. As explained *infra*, a shift away from Langdellian models toward a more skills-based pedagogy is more faithful to the core functions of legal analysis and would better prepare students for the actual demands of legal practice. *See infra* Part IV.

48. Bruce A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906–2000s*, 22 L. & HIST. REV. 277, 277 (2004).

49. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2026–27 (2012).

50. *Id.* at 1977.

Socratic method of legal teaching.[51] Known to modern law students as "cold calling," Socratic teaching occurs when a professor calls on a student at random and asks them a series of questions about the assigned reading material from the casebook.[52] The professor leads the students through a "fluid question and answer dialogue," which is designed to extract legal rules from cases and develop students' ability to reason effectively and argue their positions.[53] Built upon Langdell's framework of law as a scientific pursuit, the Socratic method is the "engine" that powers the meticulous extraction of legal principles from the judicial opinions included in the casebook.[54]

As with the casebook method, the Socratic method of teaching has become the dominant pedagogical approach in American legal education such that it is almost synonymous with the modern experience of law school.[55] It is a mainstay of first-year doctrinal courses, bar courses, and required upper-level courses, particularly in classes that tend to have high student-to-faculty ratios.[56] It is unclear how much Langdell wrote about his teaching philosophies,[57] but since his death in 1906, much has been written extolling the aims and virtues of the Socratic method.[58]

Legal education scholar Jeffrey Jackson, in arguing that the method should be expanded to legal writing classrooms, highlights three generally accepted benefits of Socratic teaching: "(1) it gives professors the ability to teach large bodies of students in an active manner; (2) it is instrumental in teaching cognitive

51. William C. Heffernan, *Not Socrates, but Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 399, 401–02 (1980).

52. Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2324 (2017); Jackson, *supra* note 3, at 272–73.

53. Abrams, *Tipping Point*, *supra* note 9, at 908.

54. Jackson, *supra* note 3, at 271.

55. *See* Abrams, *Tipping Point*, *supra* note 9, at 900 ("The Socratic method is . . . revered, widespread, and central to legal education curricula nationwide.").

56. *Id.*

57. *See generally* Kimball, *supra* note 48, at 281–82 (emphasizing the difficulty of understanding Langdell's full legal and teaching philosophies because of his copious volumes of work in unorganized drafts, handwritten documents, annotated casebooks, and other forms).

58. *See, e.g.*, Josef Redlich, *The Case Method of Instruction in American Law Schools*, 1 SW. L. REV. 23, 23 (1916) (describing the "great value" the Socratic method has in analysis).

skill development—to teach students to 'think like a lawyer;' and (3) it helps students to hone their verbal skills."[59] It is worth discussing each of these benefits in turn and how the Socratic method purports to promote them.

The random nature of "cold calling" is central to the idea that the Socratic method encourages a large classroom full of students to participate actively in the lesson.[60] A question-and-answer dialogue ostensibly involves only the professor and the student called upon, but if any student can get called on at any time, everyone has an incentive to pay attention for fear of being caught off guard.[61] Phillip Areeda, a Harvard law professor and ardent defender of the Socratic method in the 1990s, explained it this way:

> What you [the professor] try to do . . . is to induce the students you haven't called on to participate vicariously—to silently pretend that they must answer the question you have posed another or that they must respond to what another student says. . . . *You do this by randomly moving around the class, calling on a large number of students every hour. The risk of being questioned induces this vicarious participation.* By contrast, many will tune out—waiting for a professional summary—when the instructor selects only a few students for each day's dialogue.[62]

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59. Jackson, *supra* note 3, at 273–74. These goals, while not the sum total of what it means to be an effective lawyer, are worthwhile. The alternative teaching methods discussed in Part IV retain these benefits.

60. *See* Areeda, *supra* note 2, at 916.

61. *See id.*

62. *Id.* (emphasis added). Interestingly, at least one of Areeda's former students has documented a lasting negative impact from his teaching methods. *See* Gregory M. Duhl, *Over the Borderline—A Review of Margaret Price's* Mad at School: Rhetorics of Mental Disability and Academic Life, 44 LOY. U. CHI. L.J. 771, 797, 780 (2013). Indeed, as Professor Duhl wrote:

> I do not use the Socratic method or cold call on students; every time I think about doing so, I am brought back to my experience in Professor Areeda's antitrust class.
>
> . . .

This ability to engage multiple students despite talking directly with only one at a time is why the method is praised for its "efficiency, scalability, and . . . high faculty-to-student ratios."[63] Such features are particularly helpful for teaching core subjects—Torts, Contracts, Property, etc.—that are both foundational to legal education and tested on the bar exam.[64]

A particularly prominent claim is that the Socratic method helps students learn how to "think like lawyers."[65] According to Professor Jackson, the method is designed to introduce students to the process of critical thinking and argumentation, "as well as the need to justify . . . argument[s] in a logical manner that can withstand scrutiny."[66] Not only must law students know the black-letter law, but they must also learn how to synthesize rules from a body of cases or statutes and convincingly argue that they should apply in a certain manner.[67] Professor Areeda highlighted that, by forcing a student to "learn lawyerly analysis by actually doing it before his peers and the instructor," the Socratic method leads to an "internalization of th[e] questioning process" that ostensibly helps the student learn and retain more information.[68] On a more philosophical level, some proponents claim that the method "forces students to construct

> Professor Areeda was a "master of the Socratic method." On one of the first days of class, as I was trembling in my chair, he called on me. I had no idea what the answer to his question was, and he compassionately moved on to another student. Afterward, I panicked at the thought of going back to his class again—I stopped going to it, along with the rest of my classes that semester. I became too depressed to get out of bed . . . . I did not think I would finish law school.

Id.; see also id. n.38.

63. Abrams, *Tipping Point*, *supra* note 9, at 900.

64. *See Pass the First Time**, KAPLAN, https://www.kaptest.com/bar-exam/what-is-the-uniform-bar-examination [https://perma.cc/27AB-TQJ3] (listing these among the courses tested on the bar).

65. *See, e.g.*, Jackson, *supra* note 3, at 276; *see also* Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV. 397, 401, 401 n.14 (1997) (noting how prominent the "think like a lawyer" trope is, and taking issue with it).

66. Jackson, *supra* note 3, at 277.

67. *Id.* at 276 (calling these skills "the tools and skills of legal carpentry, rather than simply the lumber").

68. Areeda, *supra* note 2, at 922.

their own view of law," which helps them develop a "moral imagination."[69] According to this idea, internalizing the reasoning process helps "students become experts at critiquing their own prejudgments, leading to open-minded, bifocal, and sophisticated understandings of law."[70] Regardless of its inner workings, a key assumption is that "thinking like a lawyer" requires a specific type of sophisticated analysis that the Socratic method replicates in the classroom.[71]

Although critics claim that the Socratic method intimidates students or puts unnecessary pressure on them,[72] proponents often highlight that the method forces students to sharpen their public speaking skills, especially in stressful situations.[73] Professor Jackson argues that many undergraduate institutions rely on "a passive mode of learning," focused on consuming information such that "many students' verbal skills have become rusty by the time they arrive at law school."[74] Professor Areeda believed that "[f]or many students, the law school classroom is their first exposure to public speaking and argument, which will be scrutinized by their classmates and the instructor."[75] Socratic teachers acknowledge that making errors during public speaking situations is inevitable, and they believe that the method helps students refine their ability to deal with this in the relatively risk-free environment of the law school classroom.[76] Collectively, proponents of the Socratic method maintain that it teaches important skills that encourage "thinking

69. Kerr, *supra* note 21, at 117–18.

70. *Id.* at 117.

71. *See* Bateman, *supra* note 65, at 401 n.14 (challenging this assumption by explaining that thinking like a lawyer is no different from thinking like a nurse).

72. *See, e.g.*, Gersen, *supra* note 1, at 2325 (summarizing Duncan Kennedy's "acid critique of legal education," including his description of the Socratic method as "an assault").

73. Areeda, *supra* note 2, at 917; Kerr, *supra* note 21, at 128 (quoting a Socratic professor who said that "pressure 'is an important part of the profession; get used to it'").

74. Jackson, *supra* note 3, at 280.

75. Areeda, *supra* note 2, at 917.

76. *See* Jackson, *supra* note 3, at 281 ("[I]t is far better for students to learn to speak and craft a reasoned verbal argument in front of a small number of classmates than to do it for the first time in front of a judge or senior partner and to feel that their legal careers are limited because they lack speaking ability.").

like a lawyer"—claims that are in conversation with the voices of critics.

II. EXISTING CRITIQUES OF THE SOCRATIC METHOD

Critiques of the Socratic method are legion.[77] So numerous, in fact, that scholars and critical theorists have unleashed a "steady drumbeat" of criticism against the method for more than half a century.[78] Scholar-critics highlight the weaknesses of the method from various perspectives, including its disparate negative effect on women and minority students,[79] its reproduction of hierarchical systems,[80] and its potential to exacerbate negative mental health outcomes in students.[81] This Note does not analyze every individual critique in depth, but a survey of this "drumbeat" makes a strong case for educators to reconsider their dependence on the Socratic method and highlights the need for a new path forward.

A. *The Method Is Not Actually "Socratic"*

A preliminary critique of the Socratic method is that it bears little, if any, similarity to the method actually used by the classical Greek philosopher Socrates.[82] Socrates' educational dialogues were "dialectic," meaning that neither the teacher nor the student knew the truth, but they worked together to arrive at the answer.[83] Exemplified in a dialogue called the *Meno*, Socrates' method aimed to "prove that real knowledge [was] found

77. *See* Abrams, *Tipping Point*, *supra* note 9, at 900.

78. *Id.* at 899.

79. Young, *Unhealthy Lawyers*, *supra* note 14, at 2590–91; Abrams, *Tipping Point*, *supra* note 9, at 910–11.

80. *See* Kennedy, *supra* note 13, at 593.

81. Young, *Unhealthy Lawyers*, *supra* note 14, at 2576–77.

82. *See* Chloe Sovinee-Dyroff, *Introverted Lawyers: Agents of Change in the Legal Profession*, 36 GEO. J. LEGAL ETHICS 111, 132 (2023) ("The so-called 'Socratic' method, it turns out, is a far cry from Socrates' original method. In reality, Socrates' dialogues were personal and individualized."); Jackson, *supra* note 3, at 271 ("[T]he Socratic method as used in the law is not particularly akin to the questioning actually used by Socrates, at least not as it is generally understood.").

83. Jackson, *supra* note 3, at 271–72.

in the self, rather than acquired from others."[84] Socrates led his students through a process of gradual self-discovery, which was divided into two parts: the *elenchus* and the *psychagogia*. During the Socratic *elenchus*, the teacher's questions help the student realize "the nature and extent of his or her [own] ignorance."[85] After the student understands this and is left wondering where to go next, the teacher asks an additional series of questions in the *psychagogia* "that help the student construct the knowledge that the *elenchus* showed was lacking."[86] In this way, Socrates' students retained agency and ownership over their own learning.[87] Socrates saw himself as merely a "mental midwife, the student being the true parent of his or her own knowledge."[88] Rather than lording knowledge over students and berating them until they gave the "correct" answer, Socrates fostered a collaborative atmosphere centered on the student's enlightenment.[89] This collaborative philosophy contrasts sharply with the fear-based cold calling used by many a law professor.[90] Further, the Socratic method performed in law schools is not truly "dialectic" because one of the participants—the professor—already has an answer in mind.[91] On this basis, some scholars contend that calling the method "Socratic" is inaccurate, if not problematic.[92] Nonetheless, because Langdell

84. Richard K. Neumann Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L. J. 725, 730 (1989).

85. *Id.*

86. *Id.* at 730–33.

87. *See id.*

88. *Id.* at 732 (citing the *Meno*).

89. *See id.* at 733, 737 ("[W]hen Socrates speaks with a student—rather than an adversary—he treats the student with encouragement, if not affection during the *elenchus*; he congratulates the student . . . because he considers the recognition of ignorance to be an achievement; and the student usually emerges from the *psychagogia* with a sense of accomplishment.").

90. *Compare id.* at 733, *with* Areeda, *supra* note 2, at 916–17.

91. Jackson, *supra* note 3, at 272. This method of questioning is better characterized as "eristic." Rather than being a "joint inquiry in search of truth unknown to both participants," eristic inquiry has been described as a "contest of wits with the purpose of scoring victory over an opponent." J.T. Dillon, *Paper Chase and the Socratic Method of Teaching Law*, 30 J. LEGAL EDUC. 529, 531 (1980).

92. *See, e.g.*, Neumann, *supra* note 84, at 728–29 ("As actually practiced in the classroom . . . this method is not Socratic at all: the accurate term would be 'Langdellian' or even 'Protagorean'" after Socrates' philosophical rival.); *id.* at 732–33 ("[M]any law school teachers have

pioneered the method in legal education and coined its title, the moniker persists.[93]

B. *The Method Is Cruel, Hostile, and Combative*

The Socratic method is often criticized for its adversarial, hostile structure when implemented via cold calling.[94] Rather than walking alongside students on a collaborative journey of discovery, Socratic law professors often pepper students with questions that reveal what they *do not* know.[95] While this is a legitimate stage of true Socratic teaching (the *elenchus*), professors often dwell there, continuing to press the student even if they are clearly unprepared.[96] Some critics consider these tactics "cruel and psychologically abusive," based on the premise that humiliation and ridicule are ineffective pedagogical tools.[97] These critiques are not new; in 1977, Professor Suzanne Dallimore described what she called the "public-humiliation model" of Socratic teaching:

> If [the student] answers [the Socratic question] incorrectly or is unprepared, the professor makes a negative comment that embarrasses the student. If the student offers his analysis of the case, the professor forces him to commit to a line of reasoning and then proceeds to apply that reasoning to reach an absurd result. Again the student is humiliated. The theory behind the model is that once the student is permanently scarred, he will not forget whence the scars came and will be more

overdeveloped *elenchus* skills and underdeveloped *psychagogia* skills."); Jackson, *supra* note 3, at 272 ("[T]his mistaken linking of the classical Socratic method with Socrates has accounted for some of the more vitriolic criticism of the Socratic method and even criticism of Langdell.").

93. Weaver, *supra* note 8, at 518.

94. *See* J.T. Dillon, *supra* note 91, at 530.

95. Abrams, *Tipping Point*, *supra* note 9, at 908.

96. *See* Suzanne Dallimore, *The Socratic Method—More Harm than Good*, 3 J. CONTEMP. L. 177, 182 (1977).

97. Kerr, *supra* note 21, at 118; *see* Dallimore, *supra* note 96, at 182–83.

> careful and well-reasoned in his future responses.[98]

Although not every professor takes this humiliation to its extreme, Dallimore contends that "even the most compassionate of professors" may damage a first-year law student's "fragile . . . psyche" by pointing out the "stupidity of their errors."[99] This can breed hostility toward the teaching method and the professor, diminishing a willingness to engage with the material at all.[100] This certainly runs counter to the mission of an institution that aims to provide legal *education*.

Even when the method does not cause students to withdraw from the learning experience, the unpredictable nature of Socratic cold calling can negatively impact *how* students engage with the material.[101] In a 2020 survey investigating the law school practices that create unhealthy lawyers, law professor Kathryne Young interviewed a representative sample of first-year law students about a variety of topics.[102] Generally, the diverse pool of students expressed a range of attitudes toward classroom dynamics, including Socratic questioning.[103] However, 15% to 20% of these students described "extreme trepidation" about Socratic cold calling.[104] These students pointed out that professors tended to ask questions about relatively small details from the reading materials.[105] Preparing for the risk of getting called on "forced them to try to memorize minutiae, as opposed to trying to put together the bigger conceptual picture."[106] One student described feeling "like sometimes we are

98. Dallimore, *supra* note 96, at 182.

99. *Id.* at 183.

100. *Id.* ("[T]he student may develop hostility toward the method which manifests itself in hostility toward the professor and in a desire to withdraw from the whole experience.").

101. Young, *Unhealthy Lawyers*, *supra* note 14, at 2590.

102. *Id.* at 2575. Young now teaches at the George Washington University School of Law. *Kathryne Young*, GEO. WASH. SCH. OF L., https://www.law.gwu.edu/kathryne-young [https://perma.cc/Z4A7-T7F7].

103. *See* Young, *Unhealthy Lawyers*, *supra* note 14, at 2588–92.

104. *Id.* at 2590.

105. *Id.* These particular students were women of color, a factor that implicates other concerns about the method. *Id.*; *see infra* Part II.C.

106. Young, *Unhealthy Lawyers*, *supra* note 14, at 2590.

so scared of being cold called that we focus more on the details of the cases we're reading instead of the . . . actual core of what we're being taught through the case."[107] Another student noted a similar experience, saying that "[s]ometimes I'm so focused on trying . . . to prepare for the questions that [the professor]'s going to ask instead of trying to learn the material that will be important later on."[108] Strikingly, one student stated that she "would rather take an absence than go to [a cold call class] unprepared."[109] These comments all highlight the contradiction at issue here. Proponents of the Socratic method claim that it helps students "think like . . . lawyer[s]" by making them internalize methods of analysis and cultivate a "moral imagination" about the law.[110] However, the practice of fear-based cold calling seems to have the opposite effect for some students by forcing them to focus on knowing just enough information to avoid embarrassment.[111] Young sees this as part of the "gladiator" model of legal education, where competition is more valuable than problem solving.[112]

Some professors welcome these confrontational dynamics in the classroom and believe that performing the Socratic method in a fear-based way fosters excitement and growth.[113] Researcher Orin Kerr, investigating various professors' teaching philosophies, surveyed a cross-section of Harvard law professors about their use of the Socratic method.[114] The professors most devoted to the Socratic method strongly rejected critiques that it is "cruel or psychologically abusive."[115] One professor remarked that "nobody has ever died because of the Socratic method," and another professor stated that "pressure 'is an

107. *Id.*
108. *Id.*
109. *Id.*
110. *See* Jackson, *supra* note 3, at 276; Kerr, *supra* note 21, at 117–18.
111. *See* Young, *Unhealthy Lawyers*, *supra* note 14, at 2590; *see also* Kerr, *supra* note 21, at 120 ("Students in Socratic classes often know no more about the legal rules than they did at the beginning.").
112. Young, *Unhealthy Lawyers*, *supra* note 14, at 2586–87, 2590–91.
113. *See* Areeda, *supra* note 2, at 916.
114. Kerr, *supra* note 21, at 115.
115. *Id.* at 127.

important part of the profession'" and students need to "get used to it."[116]

C. *The Method Exacerbates Gender Disparities*

For decades, feminist legal scholars have critiqued both the white, male origins of the Socratic method and the way that its use in law schools inequitably impacts female students.[117] Historically, legal education itself was off-limits to women, as the early institutions of legal teaching were built exclusively by and for white men.[118] Even when women started to gain admission to law schools, perceptions and teaching practices reflected an exclusionary attitude.[119] Immense progress has been made since then—for example, women have outnumbered men in law school classrooms every year since 2016[120]—and the Socratic method is touted as a way to ensure that all students have an equal opportunity to participate in class.[121] However, studies suggest that reality looks quite different from this idealized conception.[122]

Education law scholar David Garner, in an article provocatively titled "Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education," synthesizes feminist critiques of legal education by discussing eight studies

116. *Id.* at 127–28.

117. *See, e.g.*, Lani Guinier, *Why Isn't* She *President?*, *in* BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 1, 2, 9, 13 (1997) (focusing on women and women of color law students' experiences in the classroom); Garner, *supra* note 6, at 1615–24 (collecting Guinier's and other studies); *see also* Kennedy, *supra* note 13, at 606 (suggesting that the hierarchical structure of legal education can make one "wonder . . . whether legal reasoning is intrinsically white").

118. Garner, *supra* note 6, at 1613 ("[A]t Harvard, the prevailing view was . . . that '[a professor] should regret the presence of a woman in his classes, because he feared it might affect the excellence of the work of the men . . . .'") (internal citations omitted); *see also* Kennedy, *supra* note 13, at 593 ("The teachers are overwhelmingly white, male, and deadeningly straight and middle class in manner.").

119. *See* Garner, *supra* note 6, at 1613.

120. Staci Zaretsky, *Women Are Dominating When It Comes to Law School Enrollment*, ABOVE THE LAW (July 14, 2022, 1:13 PM), https://abovethelaw.com/2022/07/women-are-dominating-when-it-comes-to-law-school-enrollment/ [https://perma.cc/4ZG4-AJGX].

121. *See, e.g.*, Areeda, *supra* note 2, at 916 (describing Areeda's "vicarious participation" theory).

122. Garner, *supra* note 6 *passim*.

that investigated female students' experiences in law school classrooms.[123] The studies found that women experience a disproportionate level of discomfort with various aspects of the legal education system, and Garner argues that the Socratic method fosters this gender disparity.[124] In the aggregate, the studies indicated two main areas where gender disparities are most prominent: classroom participation and perception of professor conduct.[125] Across the board, women participated in classroom discussion far less than their male peers.[126] Garner notes that "[e]very study addressing the issue has confirmed this result, regardless of the demographic makeup of the sample."[127] The studies suggest a few reasons for this, including insecurity about the merits of their ideas, professor bias in favor of calling on male students, and rejection of confrontational classroom ethics.[128] Women also often expressed negative perceptions of professor conduct.[129] They tended to feel that professors were generally unsupportive, did not respect students' opinions, and valued their ideas less because of their gender.[130] Although not all the studies considered the Socratic method directly, Garner finds it "reasonable to assume that [gender disparities in] such key elements of classroom dynamics would be a reflection of the dominant teaching methodology employed in those classrooms."[131]

One of these studies, which was expanded into a book called *Becoming Gentlemen*, drew a connection between Socratic classes

123. *Id.* at 1614–27. Garner is an expert and practitioner in education law. *See David D. Garner*, OSBORN MALEDON, https://www.omlaw.com/dgarner/ [https://perma.cc/G5JX-5ENT].

124. *See* Garner, *supra* note 6, at 1614–30.

125. *Id.* at 1627–28.

126. *See id.* at 1627.

127. *Id.*

128. *Id.* at 1627–28. One study suggested a fourth reason: that "women, although perfectly comfortable speaking in class, simply have little interest in dominating the classroom discussion" because they are "more concerned with furthering collegial cooperation." *Id.* at 1617, 1627. However, the researchers were unable to fully support this hypothesis. *Id.* at 1617 n.111. Because it seems like a problematic generalization, the author of this Note will decline to analyze it here. *Id.*

129. *See id.* at 1628–29.

130. *Id.*

131. *Id.* at 1629.

and the gendered hierarchy embedded in the law school experience.[132] Many women are put off by the Socratic back and forth, seen as a form of "gamesmanship" in which men are taught to dominate, and choose instead to "simply withdraw or seek to participate on different terms."[133] These effects are exacerbated in situations where women "internalize their alienation or are intimidated into silence."[134] Silence, in turn, may make women think that "they are not as smart or clever as their more vocal male peers."[135] As such, Garner argues that the "data support[s] an inference that the traditional Socratic method of legal pedagogy is at least partially responsible for negative experiences of women in legal education."[136]

While the studies Garner considered were conducted between the late 1980s and mid 1990s,[137] Professor Kathryne Young's 2020 survey of law students shows that the gender disparity in class participation persists in today's Socratic classrooms.[138] As part of the survey, Young asked a diverse sample of fifty-three law students the broad question, "Who talks in class?"[139] The responses revealed gendered patterns similar to those Garner analyzed:

> Of the thirty-three students who commented on the frequency of various demographic groups' participation, thirty-two discussed gender. Of these, eight said there were no gendered patterns. Six said women talked more than men (four of the six then explained that women made up around three-fourths of their law school classes, and they believed that women's participation was proportional). The remaining eighteen students who

132. *See* Guinier, *supra* note 117, at 12–13, 60.
133. *Id.* at 13.
134. *Id.* at 60–61.
135. *Id.*
136. Garner, *supra* note 6, at 1630.
137. *See id.* at 1615–24.
138. *See* Young, *Unhealthy Lawyers*, *supra* note 14, at 2588, 2590.
139. *See id.* at 2578–88.

> mentioned gender said that classroom discussions were dominated by men.[140]

Such results rebut the argument that the Socratic method equalizes gender disparities in classroom participation.[141] Several of these students attributed the disparities to socialization, stating that women were comfortable speaking in class only "if they were certain their questions were relevant or their answers were correct."[142] One student explicitly attributed this to a cultural "expectation on women to 'stay silent and let the men talk it out.'"[143] Further, even though only 15% to 20% of the students Young surveyed described "extreme trepidation" about Socratic cold calls, all but one of these students were women.[144] While their concerns were mostly pedagogical frustrations,[145] it is notable that "*no* men expressed similar sentiments."[146] Even "women who did not experience fear before cold calls sometimes experienced" frustration with their performance after class.[147] The precise reasons for gender disparities in classroom experiences may vary across the board, but they persist nonetheless.[148] The Socratic method, as a core element of law school pedagogy, likely plays a role in perpetuating these disparities and should be enough to give equity-minded legal educators pause.[149]

III. MISREPRESENTING THE PURPOSE OF LEGAL REASONING

Most critiques of the Socratic method are about its implementation. In other words, commentators are usually concerned

140. *Id.* It is significant that four of the eight students who found no gendered patterns "were men who, with no prompting, went on to describe a particular person or people (all women) whom they found 'annoying' or 'irritating.'" *Id.* at 2588 n.51.

141. *See id.* at 2588.

142. *Id.*

143. *Id.* at 2589.

144. *Id.* at 2590. Worse, "all but one of these women were nonwhite." *Id.*

145. As discussed *supra*, these students were uncomfortable with the method's emphasis on minutiae about cases rather than substantive concepts. *Id.* at 2590.

146. *Id.* at 2590 (emphasis in original).

147. *Id.* at 2591.

148. *See* Garner, *supra* note 6, at 1619, 1627–28.

149. *See id.* at 1598.

about "problematic *performances*" of the Socratic method,[150] specifically when done in ways that are fear-based[151] or exacerbate sexist environments.[152] As a result, most critics advocate for the adoption of modified Socratic teaching styles that are sensitive to the needs of negatively impacted students.[153] Few critics challenge the validity of the core reasons for using the Socratic method in the first place.[154] Scholars generally do not believe that the method should be scrapped entirely.[155] Part of the reason for this may be fatalism; the method has dominated law school pedagogy since Christopher Langdell's emergence a century and a half ago.[156] On the other hand, at least some scholars expressly agree with Langdell's underlying motivations, despite taking issue with the Socratic method on other grounds.[157] In any case, barring a dramatic cultural shift, it is likely that "Socratic teaching is not leaving legal education any time soon, as a practical matter."[158]

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150. *See, e.g.*, Abrams, *Tipping Point*, *supra* note 9, at 927–28 (explaining that various aspects of all traditional Socratic classrooms, including "classroom design, the penultimate exam, the lack of formative assessment, and sole use of appellate casebooks, or the centering of the professor" exemplify problematic performances).

151. Garner, *supra* note 6, at 1618–19 (quoting a student who, in Socratic classrooms, "*resent[ed]* being made to [participate] out of fear of humiliation").

152. *Id.* at 1648 ("[The] law school iteration [of the Socratic method] has historically disfavored female law students.").

153. *See, e.g.*, Abrams, *Tipping Point*, *supra* note 9, at 898 (stating that "Socratic teaching can (must) be performed inclusively," and proposing an alternative set of "shared Socratic values"); Gersen, *supra* note 1, at 2345 (suggesting that professors should call on students "mindfully"); Garner, *supra* note 6, at 1648–49 ("The solution . . . is not to scrap the [Socratic] method entirely, but rather to transform it to reflect the changing nature of what it means to be a lawyer.").

154. *See* Garner, *supra* note 6, at 1648 ("Most critics of the Socratic method—even feminist critics—are willing to concede that 'Socratic exchange can cultivate skills that are valuable in certain professional contexts.' As such, the Socratic method deserves a continued place in legal pedagogy.").

155. *See, e.g.*, *id.* (explaining that the Socratic method historically disfavored female law students and should be changed to reflect that lawyers are of both genders).

156. *See* sources cited *supra* Part I; *see also* Weaver, *supra* note 8, at 520 ("Langdell has been dead for nearly a century, but his ideas continue to influence us.").

157. *See* Gersen, *supra* note 1, at 2347 ("Despite [a] well-developed consensus that legal education must change to become more practical, the appeal and relevance of Socratic pedagogy lies still in what Langdell first understood.").

158. Abrams, *Tipping Point*, *supra* note 9, at 926.

Nonetheless, there are substantive reasons that law schools may benefit from significantly reducing their dependence on the Socratic method.[159] By focusing chiefly on theoretical legal analysis, the Socratic method obscures the practical, multifaceted strategies inherent in the practice of lawyering.[160] In legal practice, reasoning is a means to an end—advocating for the best interests of the client.[161] The Socratic method erroneously treats legal reasoning as an end in itself.[162] The practical demands of legal work conflict with the Socratic method's theoretical emphasis, and using it as the primary teaching tool can leave students unprepared for the realities of practice.[163]

A. *The Carnegie Report and its Impact*

In 2007, the publication of a seminal text on legal education thrust substantive critiques of the Socratic method into the spotlight.[164] That year, the Carnegie Foundation for the Advancement of Teaching released a widely read study on the educational practices of law school relative to how prepared law

159. *See generally* BEST PRACTICES, *supra* note 22, at 97 ("Law teachers need to be multimodal in our teaching and reduce our reliance on the Socratic dialogue and case method.").

160. *See* Weaver, *supra* note 8, at 570–71. When learning via the case method's focus on appellate opinions, students "do not see what the lawyer did in terms of ascertaining and developing the facts. They also do not see the lawyer's tactical decisions. Why did the lawyer choose to bring the case under certain legal principles rather than others? How did the lawyer decide which facts to present in relation to the law?" *Id.*

161. *See id.* A slightly broader version of this idea—"legal instrumentalism"—argues that law itself has no inherent value but is merely a tool to be wielded however society desires. *See, e.g.*, Brian Z. Tamanaha, *The Tension Between Legal Instrumentalism and the Rule of Law*, 33 SYRACUSE J. INT'L L. & COM. 131, 131 (2005). This idea contrasts with the "rule of law ideal," which argues that law should be "in accordance with a preexisting higher [moral] standard." *Id*. at 131–32.

162. *See* CARNEGIE REPORT, *supra* note 20, at 52 (discussing how the Socratic method of studying cases "emphasizes the formal, procedural aspects of legal reasoning as the central focus, making other aspects of cases peripheral or ancillary"); *see also id.* at 77 ("[T]he relentless emphasis on process tends to eclipse the importance of legal doctrine itself, leading to lawyers who are more technicians than professionals invested with a sense of loyalty and purpose.").

163. *See id.* at 78–84 (discussing law school's failure to prepare students for professional practice).

164. *See generally id.*

students are to enter the profession.[165] Popularly known as the Carnegie Report,[166] the study focuses on "the dramatic way that law schools are able to develop legal understanding and form [a] professional identity," paying particular attention to how the Socratic method and related pedagogical tools are deployed in the first year.[167] The report is part of a wider "comparative stud[y] of education in five professional fields: law, engineering, the clergy, nursing, and medicine,"[168] and the authors observe the unhelpful ways that law school differs from those other fields.[169] The Carnegie Report was a "watershed [moment] for legal education" primarily because of its context within the Carnegie Foundation as a whole and the report's accessibility to an audience beyond legal professionals.[170] The report continues to inspire discussion throughout the legal academy[171] and is widely regarded as a seminal text for scholars who are interested in reforming legal education.[172]

The Carnegie Report focuses primarily on the first year of law school, "because that experience is so significant in shaping the whole of legal education."[173] The Socratic method dominates

165. *See generally id.*; Susan L. Brooks, *Using a Communication Perspective to Teach Relational Lawyering*, 15 NEV. L. J. 477, 514 (2015).

166. *See, e.g.*, Brooks, *supra* note 165, at 514 (referring to the 2007 study as the "Carnegie Report").

167. CARNEGIE REPORT, *supra* note 20, at 3.

168. *Id.* at 15.

169. *See id.* at 6.

170. Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, 87 MICH. BAR J. 20, 20 (2008) (reviewing the Carnegie Report).

171. A Westlaw search for articles that mention "Carnegie Report" at least five times returned articles published as recently as Summer 2023. *See, e.g.*, O.J. Salinas, *Secondary Courses Taught by Secondary Faculty: A (Personal) Call to Fully Integrate Skills Faculty and Skills Course into the Law School Curriculum Ahead of the NextGen Bar Exam*, 107 MINN. L. REV. 2663, 2667 (2023) (reviewing the Carnegie Report's impact on law school curriculums); Garima Gupta, *Student Evaluation at Law Schools: Bridging the Gap Between 'Purpose' and 'Practice,'* 2022 CAN. LEGAL EDUC. ANN. REV. 99, 105 (2022) (explaining the Carnegie Report's discussion on "the importance of evaluation in law school education"); Megan Bess, *Transitions Unexplored: A Proposal for Professional Identity Formation Following the First Year*, 29 CLINICAL L. REV. 1, 3–4 (2022) (discussing the Carnegie Report and how it relates to law students forming a professional identity).

172. James G. Leipold, *There Are No Shortcuts, but the Road Is Getting Shorter*, NALP BULLETIN 38, 39 (Sept. 2023), https://law.stthomas.edu/_media-library/documents/holloran-center/nalp-roadmap-review-2023.pdf [https://perma.cc/4WB2-4UGH].

173. CARNEGIE REPORT, *supra* note 20, at 3.

the first-year experience, where it leaves lasting impressions on students as the "signature pedagogy" of law school.[174] Signature pedagogies—a term coined by the authors of the Report—are "the typical practices of teaching and learning by which professional schools induct new members into the field."[175] The Socratic method not only communicates content about what the law *is*, but it also teaches "a view of the legal profession as constituted . . . by a particular way of thinking, a distinctive stance toward the world."[176] Other scholars have discussed this way of thinking at length, particularly the way that the analytical structure of the Socratic method attempts to teach what the law *is*, leaving no room to critique the way that law reinforces hierarchies of race, gender, sexuality, and class.[177] Because this view is typically thrust upon students on day one of their legal education, it can leave lasting impressions on novice lawyers and impact how they understand the law as they enter practice.[178]

A key throughline of the Carnegie Report is the idea that the Socratic method improperly separates legal reasoning from the practical and moral realities of lawyering.[179] By promoting a "narrow and highly abstract range of vision" through an exclusive focus on high-level discussions of appellate cases, the method "can have a corrosive effect on the development of the full range of understanding necessary for a competent and

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174. *Id.* at 50.

175. *Id.* at 23–24. A profession's signature pedagogy has four dimensions:

> (1) its observable, behavioral features—the surface structure; (2) the underlying intentions, rationale, or theory that the behavior models—the deep structure; (3) the values and dispositions that the behavior implicitly models—the tacit structure; and (4) its complement, the absent pedagogy that is not, or is only weakly engaged—the shadow structure.

Id. at 24.

176. *Id.* at 50–51.

177. Abrams, *Tipping Point*, *supra* note 9, at 905. *But see* Ryan Patrick Alford, *How Do You Trim the Seamless Web? Considering the Unintended Consequences of Pedagogical Alterations*, 77 U. CIN. L. REV. 1273, 1324 n.237 (expressing a minority view that "[b]y teaching students the power of the Aristotelian approach to knowledge, the Socratic method also explains how law is a field of battle where rationality rules, and this understanding bolsters the credibility of the legal system and encourages novice lawyers to believe in the power of the law as a tool to achieve justice").

178. CARNEGIE REPORT, *supra* note 20, at 50–51.

179. *See id.* at 77.

responsible legal professional."[180] The authors describe this as a pedagogical "shadow" that obscures two key elements of lawyering from the student experience.[181] First, the Socratic method de-emphasizes the importance of the client.[182] Within the walls of the law school classroom, "[t]he skill of thinking like a lawyer is first learned without the benefit of actual clients . . . ."[183] The casebooks used in tandem with the Socratic method sometimes mischaracterize the role played by lawyers, portraying them as "distanced planners or observers" rather than as decision-makers intimately involved in navigating the legal system for their clients.[184] Second, the Socratic method promotes the idea that the legal profession "lacks ethical substance."[185] Because the method is laser focused on analytical reasoning apart from practical skills,[186] it "often forces students to separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine."[187] When issues of justice and fairness *do* arise, they are often discussed after the fact as "policy" considerations rather than as central concerns.[188] Because the Socratic method dominates the pedagogy of required first-year courses, nascent law students are subversively fed a concerning concept: "for legal professionals, matters of justice are secondary to formal correctness."[189]

The practice of law in any context involves navigating a complex set of practical factors and circumstances. The Socratic method emphasizes a narrow scope of legal reasoning and argumentation, and it tends to leave circumstances untouched.[190] By relying heavily on the Socratic method, legal education

180. *Id.*
181. *Id.* at 56–57.
182. *Id.*
183. *Id.* at 57.
184. *Id.*
185. *Id.*
186. Recall that the method arose out of Langdell's vision of law as a collection of "scientific" principles and his quest to differentiate the field from its apprenticeship-like origins. *See* discussion *supra* Part I.
187. CARNEGIE REPORT, *supra* note 20, at 57.
188. *Id.*
189. *Id.* at 58.
190. *See id.* at 77.

misses out on the full range of educational opportunities available to help shape students into well-rounded advocates.[191]

IV. THE ABA AND ITS IMPACT ON THE LAW SCHOOL CURRICULUM

Given the Socratic method's long history and the stalwart nature of the legal profession, large-scale institutional changes in the legal education system seem unlikely. However, there is a key institutional player that could serve as an unexpected agent of change: the American Bar Association.[192] As the sole body authorized by the U.S. Department of Education to accredit law schools, the ABA plays a powerful role in shaping the structure and priorities of American legal education.[193] The ABA has promulgated accreditation guidelines—now known as the Standards for the Approval of Law Schools ("Standards")—for a century, and the organization continues to release updated versions on an annual basis.[194] The Standards focus on the policies and procedures law schools must implement in order to obtain and retain ABA approval, and they address a wide range of topics relating to law school structure, operations, and curriculum.[195] They also contain additional comments ("Interpretations") that provide guidance on how law schools should implement particular Standards.[196] The earliest versions of the ABA Standards did not address law school curriculum in depth, but they began to do so increasingly over time.[197]

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191. *See id.* at 76.

192. *About the ABA Journal*, ABA J., https://www.abajournal.com/about [https://perma.cc/5785-M8LM]. As "the largest voluntary professional association in the world[, w]ith more than 400,000 members," the ABA plays a significant role in shaping the legal profession in the United States. *Id.*

193. *See Standards and Rules of Procedure for Approval of Law Schools*, 2023 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR, at v [hereinafter *ABA Standards 2023*].

194. *Id.* at vi; *Standards Archives*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/standards/standards_archives/ [https://perma.cc/37QS-WWMP] (listing the Standards by year and annual updates to the Standards).

195. *See generally ABA Standards 2023*, *supra* note 193.

196. *Id.* at v.

197. Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLINICAL L. REV. 681, 690–91 (2004) [hereinafter Joy, *Evolution of ABA Standards*].

Although many of the curriculum aspects of the Standards are permissive rather than mandatory,[198] they can still play a role in shaping law schools' educational practices due to the strong relationship between the ABA and American legal education.[199] Specifically, this Note argues that the ABA can use the Standards to promote a multimodal pedagogy in legal education. First, however, it is worth discussing the history of the ABA and the Standards that deal with the law school curriculum.

A. *History of the Curriculum-Related Standards*

The ABA was founded in 1878, and at its first annual meeting, the group set out to create "some plan for assimilating throughout the Union, the requirements of candidates for admission to the bar."[200] A general late-nineteenth century "movement to open the practice of law to anyone so desiring," coupled with the rising influence of Christopher Langdell, led the ABA to promote formal legal education and uniform standards for admission to practice.[201] The ABA's goal of formalizing legal education standards aligned with Langdell's mission to elevate the academic prestige of legal education.[202] In fact, by promoting Langdell's educational models, the ABA aimed "to raise standards, in order to protect the public, and . . . to enhance the status of the profession."[203] One commentator directly links Langdell and the ABA, stating that they shared a common goal of "rais[ing] the standards and status of legal education from its

198. *See ABA Standards 2023*, *supra* note 193, at 17–29 (describing ABA requirements for legal education).

199. *See Legal Education and Admission to the Bar*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/ [https://perma.cc/X9F3-8UT2] ("All state supreme courts recognize ABA-approved law schools as meeting the legal education requirements to qualify for the bar examination; forty-six states limit eligibility for bar admission to graduates of ABA-approved schools.").

200. Joy, *Evolution of ABA Standards*, *supra* note 197, at 685–86.

201. *Id.* at 687–88 ("By 1890, the ABA's project to tighten bar admissions standards was gaining ground . . . ."). Langdell's influence began in the 1870s, and he lived until 1906. *See supra* Part I.

202. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2023 (2012).

203. CARNEGIE REPORT, *supra* note 20, at 93.

apprenticeship roots."[204] The ABA grew in influence throughout the first part of the twentieth century[205] and in 1921, published its first set of legal education Standards.[206]

The ABA Standards were "minimalist" at first, but over time they grew in length and scope.[207] The Standards initially did not address the law school curriculum, but were instead focused on requiring graduation from certain law schools as a prerequisite for admission to the practice of law.[208] However, the 1969 edition of the Standards saw the addition of three new topics—"Teaching methods," "Curriculum," and "Additional means and methods of law training"—that were the ABA's first foray into regulating law school content and pedagogy.[209] These sections attempted to maintain a somewhat hands-off approach, stating plainly that "[t]he [ABA] does not desire to require any one method of presentation of legal materials . . . [and] makes no attempt to dictate the law school curriculum."[210] Despite this, the drafters appeared to express a slight preference for the Socratic method and casebook model.[211] The Teaching methods section stated that "[i]n general it may be said that teaching . . . is based fundamentally but not exclusively on the case method, and participation by the students in classroom discussion is a usual and desirable method of stimulating interest and work."[212] As this language suggests, the Standards were generally permissive and encouraged variation in teaching styles but declined to require them.[213]

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204. Spencer, *supra* note 49, at 2023.

205. *See* Joy, *Evolution of ABA Standards*, *supra* note 197, at 692 (stating that "the ABA was gaining stature and becoming involved in law school accreditation . . . in the late 1890s and early 1900s").

206. *Standards Archives*, *supra* note 194 ("In 1921, the American Bar Association promulgated its first Standards for Legal Education.").

207. *See* Joy, *Evolution of ABA Standards*, *supra* note 197, at 691.

208. *Id.* at 690.

209. *Id.* at 691; *Standards of the American Bar Association for Legal Education*, 1969 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 3–4.

210. *Standards of the American Bar Association for Legal Education*, *supra* note 209, at 14.

211. *See id.*

212. *Id.*

213. *See id.* ("Every effort will be made to determine the extent to which a school is working out the problem of employing the most effective means of teaching legal subjects.").

Over time, the ABA Standards began to require that experiential learning be a part of the law school curriculum.[214] For example, the 1978 Interpretation of one of the Standards broadly required law schools to "offer training in the professional skills."[215] When the Standards were revised in 1981, one Interpretation stated, "[a] law school's failure to offer adequate training in professional skills, whether through clinics or otherwise," violates the Standard governing experiential learning.[216] Thus, by the 1990s, the Standards required schools to *offer* experiential education, but did not yet make experiential learning a mandatory part of the curriculum.[217]

A critical shift occurred in 1992 when an ABA task force published study called the MacCrate Report, which documented the "gap between the teaching and practice segments of the profession."[218] This report signaled an awareness of the ways in which law schools failed to properly equip their students for practice.[219] It also "recommended that 'law schools should be encouraged to develop or expand' their lawyering skills offerings."[220] Similar to the Carnegie Report that would come later, the MacCrate Report spawned "a nationwide conversation about legal education" practices and the role of experiential learning.[221] As part of this recommendation, the report encouraged changes to the ABA Standards.[222] The ABA adopted the recommended changes, most notably by amending Standards

214. *See* Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 573 (2018) [hereinafter Joy, *Uneasy History*].

215. *Id.* at 568.

216. *Id.*

217. *See id.* at 568–70 (discussing the fact that although law schools increasingly offered experiential learning opportunities after a 1981 change to the Standards, "legal education was still primarily non-experiential").

218. Joy, *Uneasy History*, *supra* note 214, at 570 (quoting AM. BAR ASS'N, TASK FORCE ON L. SCHS. & THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 5 (Robert MacCrate ed., 1992) [hereinafter THE MACCRATE REPORT]).

219. *See id.* at 570, 574.

220. *Id.* at 570 (quoting THE MACCRATE REPORT, *supra* note 218, at 332).

221. *Id.* at 560, 571.

222. *Id.* at 571–72.

301 and 302, which governed curriculum.[223] Whereas before there was no requirement that experiential learning be available to all students, the new Standard 302 read that "a law school shall offer to all students . . . adequate opportunities for instruction in professional skills."[224] A 2005 amendment to Standard 302 took it a step further, requiring that "a law school *shall require* that each student receive substantial instruction in . . . professional skills."[225]

A final important shift occurred in 2014 when the ABA added a provision to the Standards instructing law schools to require at least six credit hours of experiential learning via "a simulation course, a law clinic, or a field placement."[226] This was in response to a proposal by a national organization of clinical law professors urging the ABA to strengthen accreditation standards by requiring an ambitious fifteen credit hours of experiential learning.[227] Although six credits became the requirement, the change nonetheless signifies that the ABA and its Standards recognize experiential learning as a key element of the legal education curriculum.[228]

Because the ABA wields significant authority over the practices used in law schools, it is important that the Standards reflect the wider goals of the profession.[229] To the extent that legal education needs to undergo a systemic shift, revised ABA Standards could be a tool to push law schools in the right direction. Historically, the Standards have evolved in response to the

223. *Id.* at 572.

224. *Standards for Approval of Law Schools and Interpretations*, 1996 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR § 302.

225. Joy, *Uneasy History*, *supra* note 214, at 573; *Standards and Rules of Procedure for Approval of Law Schools*, 2005 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR § 302.

226. *Standards and Rules of Procedure for Approval of Law Schools*, 2014 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR § 303(a)(3).

227. Andrew Strickler, *Profs Urge Law Schools to Raise 'Dismal' Skills Training Bar*, LAW360 (July 3, 2013, 7:25 PM), https://www.law360.com/articles/454976/profs-urge-law-schools-to-raise-dismal-skills-training-bar [https://perma.cc/G4QM-LGC7].

228. *See* Joy, *Uneasy History*, *supra* note 214, at 579 (discussing the ABA's efforts to clarify its experiential learning requirements in response to some law schools' resistance to offer "more than very minimal experiential education").

229. *See ABA Standards and Rules of Procedure for Approval of Law Schools*, 2013 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 151.

changing needs of the profession,[230] and this Note proposes that they should evolve further by explicitly endorsing multimodal pedagogy. This would help mitigate the aforementioned disadvantages of reliance on the Socratic method.[231]

V. MULTIMODAL PEDAGOGY ENDORSED BY THE AMERICAN BAR ASSOCIATION

Multimodal pedagogy—a diverse set of teaching practices used to communicate information in multiple ways—is generally a desirable approach in the field of education.[232] While few scholars have examined the use of multimodal pedagogy in legal education, the ones that do consistently cite two seminal texts as support: the Carnegie Report and *Best Practices for Legal Education: A Vision and a Roadmap*.[233] *Best Practices* was released the same year as the Carnegie Report, and the two studies appear to have been developed alongside each other.[234] Whereas the Carnegie Report is a meta-analysis of teaching methods and their impact, *Best Practices* was written by legal educators and

230. *See, e.g.*, Joy, *Uneasy History*, *supra* note 214, at 551, 566 (stating that "[a]ttention to professional skills in the ABA Standards came on the heels of law schools offering more lawyering skills and clinical courses after the realization that there were important skills other than those inculcated by the case method" (internal quotation marks omitted)).

231. *See supra* Part II.

232. *See* Lucy Anne Johnson, Bridging the Gap: Transcending Multimodal Pedagogies Used in Composition Courses to Teach Literature 2–3 (2013) (M.A. thesis, Northern Michigan University) (on file with Northern Michigan University), https://commons.nmu.edu/cgi/viewcontent.cgi?article=1459&context=theses [https://perma.cc/GS9N-R6SP] (defining the term "multimodal" and describing its relationship to learning styles).

233. *See, e.g.*, Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 295 (2008) (referencing BEST PRACTICES, *supra* note 22, and CARNEGIE REPORT, *supra* note 20, in tandem); Robert Minarcin, *OK Boomer–The Approaching DiZruption of Legal Education by Generation Z*, 39 QUINNIPIAC L. REV. 29, 32 n.9 (2020) (same).

234. *See* BEST PRACTICES, *supra* note 22, at vii (discussing the "contemporaneous" CARNEGIE REPORT, *supra* note 20); CARNEGIE REPORT, *supra* note 20, at 77 (citing BEST PRACTICES, *supra* note 22) ("[T]he Best Practices project report suggests that case dialogue is overused as a pedagogy, resulting in unbalanced learning."); *see also* Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909, 910 (2008) (stating that the reports "were both published in 2007 and distributed nationally. [Both publications] examine law school pedagogy throughout law school curriculums in light of the ambitious goal of preparing students for ethical and competent practice.").

reads more like a treatise.[235] It collects principles the authors believe foster high-quality legal education, summarizes key voices that support those principles, and describes practices that educators can use to enact the principles in their classrooms.[236]

Given the disadvantages of the Socratic method, this Part discusses multimodal pedagogy as an alternative intervention and proposes changes to the ABA Standards that would encourage law schools to adopt it.

A. *Advantages of Multimodal Pedagogy in Legal Education*

Both the Carnegie Report and *Best Practices* focus considerably on the Socratic method and agree that relying heavily on it has undesirable results for students and their preparation for the legal profession.[237] In devising an alternative model, both studies highlight some form of multimodal pedagogy.[238] The authors of the Carnegie Report suggest what they call an "integrative strategy" for legal education.[239] This strategy seeks to holistically unite each aspect of legal education—"the cognitive, the practical, and the ethical-social"—in a way that avoids emphasizing one at the expense of the others.[240] This stands in contrast to the Socratic method, which elevates the cognitive aspect of legal education above all else.[241] The report describes the curricular approaches of two law schools—CUNY and NYU—that

235. *See* BEST PRACTICES, *supra* note 22, at 1 (explaining the book's methodologies and goals for instructors); CARNEGIE REPORT, *supra* note 20, at 11, 13 (same).

236. *See* BEST PRACTICES, *supra* note 22, at 1 (describing the principles behind the study).

237. *Id.* at vii ("The central message in both BEST PRACTICES and in the contemporaneous Carnegie [R]eport is that law schools should: broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic case dialogue and the case method . . . .").

238. *See supra* notes 232–33 and accompanying text; Katz, *supra* note 234, at 910–11 (discussing how Best Practices and the Carnegie Report advocate for expanding law school pedagogy beyond doctrine and into different forms of education).

239. CARNEGIE REPORT, *supra* note 20, at 191.

240. *Id.*

241. *See id.*; *supra* Parts II–III.

the authors believe provide good examples of what an integrative strategy could look like.[242]

Best Practices states the matter even more plainly in a section titled, "Use Multiple Methods of Instruction and Reduce Reliance on the Socratic Dialogue and Case Method."[243] According to the study, law teachers "need to be multi-modal in [their] teaching," reducing their reliance on the Socratic method and instead utilizing the full range of pedagogical tools available.[244] The authors acknowledge that the Socratic method can be useful for developing certain skills and understanding.[245] However, they agree with the common critiques of the method, stating that its value is diminished because "we use it in large classroom settings, over rely on it in the first year, continue using it long after students 'get it,' and sometimes harm students by abusing the method."[246] Instead, *Best Practices* advocates for a multimodal approach tailored to the needs of a wide range of students.[247] Key reasons for using this approach include "encouraging deep processing, maintaining high levels of attention, fostering motivation, matching the mix of student learning styles within the classroom, and providing students with opportunities for feedback."[248]

Best Practices advocates for a multimodal approach via "context-based education" that centers learning around realistic scenarios rather than theoretical concepts.[249] This approach is dominant at the CUNY and NYU law schools, which were lauded by the Carnegie Report.[250] At CUNY, students begin their legal education by visiting real courtrooms during orientation and

242. CARNEGIE REPORT, *supra* note 20, at 34–43. CUNY calls its learners "student associate[s]," and its classrooms are set up like a law office. *Id.* at 36. NYU has students simulate legal tasks in context, called "working in role." *Id.* at 39–41.

243. BEST PRACTICES, *supra* note 22, at 97.

244. *Id.*

245. *Id.* at 99.

246. *Id.*

247. *See id.* at 97.

248. *Id.* As discussed, these are key aspects of holistic learning that the Socratic method does not teach. *See* discussion *supra* Part II.

249. *See* BEST PRACTICES, *supra* note 22, at 104.

250. CARNEGIE REPORT, *supra* note 20, at 34–43.

reflecting on their impressions.[251] Then, throughout the first year, "students concentrate on simulation exercises, including writing and speaking, built around legal issues that arise from their doctrinal courses."[252] Similarly, at NYU, students in the first year lawyering program work "in role," which involves "[s]imulation of legal tasks in context."[253] There, students are taught to "think critically about practice as they develop legal arguments, develop facts, interview and counsel clients, negotiate a transaction or dispute, mediate a claim, and plead a motion before a simulated court."[254] In both of these examples, context-based education furthers the core goal of "help[ing] students develop competence, which is the ability to resolve legal problems effectively and responsibly."[255]

B. *Revising the ABA Standards for Approval of Law Schools*

As the historical overview shows, the ABA Standards and the practices of law schools enjoy a symbiotic relationship where each is informed by the other.[256] The Standards shift as a result of voices calling for reforms in legal education, and these shifts impact the way legal education is administered going forward.[257] Academic freedom concerns would preclude the ABA from promulgating a Standard that explicitly bars the use of the Socratic method.[258] However, the evolution to an experiential learning requirement signals that the ABA recognizes the advantages of hands-on learning.[259] This Note argues that the ABA can make similar changes to two of its current Standards to promote multimodal pedagogy.

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251. *Id.* at 37–38.

252. *Id.* at 36.

253. *Id.* at 39.

254. *Id.* at 39–40.

255. BEST PRACTICES, *supra* note 22, at 104.

256. *See supra* Part IV. *See, e.g.*, Joy, *Uneasy History*, *supra* note 214, at 566.

257. *See* Thomas M. Steele, *The MacCrate Report: Its Impact on Education in Law Firm Management*, 23 PACE L. REV. 613, 614–16 (2003).

258. *ABA Standards 2023*, *supra* note 193, app. 1 at 47.

259. *See id.* § 303(a)(3), at 18.

1. *Modified Standard 303*

Standard 303(a) of the 2023–2024 Standards—the current Standard that mandates experiential learning—states that "a law school shall offer a curriculum that requires each student to satisfactorily complete . . . one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement[.]"[260] Because experiential learning is inherently multimodal,[261] the ABA can further promote a multimodal approach to first-year learning by incorporating language that requires schools to introduce students to experiential courses "[a]s early as possible" in their enrollment.[262] Without creating a new substantive requirement, this language would encourage law schools to place more first-year students in experiential courses.[263] If followed, this change would help first-year students gain early placement in learning environments that promote the development of real-life lawyering skills.[264] Most importantly, this would also mean less time spent in Socratic classrooms, which would alleviate some of the pitfalls of the Socratic method.[265] Over time, continued adherence to an "as early as possible" requirement may cause law schools to witness the advantages of exposing first-year students to experiential learning. These advantages include developing professional skills, applying legal knowledge to solve real-life problems, and developing the "competence" emphasized by legal education scholars.[266] This requirement would also encourage administrators to reorient the structure of the curriculum toward a multimodal approach.[267]

260. *Id.* § 303.

261. Consider, for example, the practical differences between professional responsibility courses, simulation courses, writing experiences, law clinics, and field placements—all of which are listed in Standard 303 itself. *See id.*

262. *See* BEST PRACTICES, *supra* note 22, at 111.

263. *See supra* notes 229–30 and accompanying text.

264. *See* BEST PRACTICES, *supra* note 22, at 111.

265. For discussion of these pitfalls, *see supra* Part II.

266. *See* BEST PRACTICES, *supra* note 22, at 142; discussion *supra* Section V.A.

267. BEST PRACTICES, *supra* note 22, at 111.

2. *Modified Standard 315*

Standard 315 currently instructs law schools to conduct ongoing evaluation of their legal education programs.[268] The Standard is one of the shorter ones, and reads in full as follows:

> The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.[269]

By referring to a plurality of "assessment methods," Standard 315 contains a slight awareness of the multimodal nature of teaching.[270] Similarly, Interpretation 315-1, which explains this Standard, refers to "capstone courses or other courses that appropriately assess a variety of skills and knowledge" as possible tools for measuring student competence.[271]

However, Standard 315 does not go far enough to ensure that multimodal teaching plays a key role in classrooms.[272] In service of clearly endorsing the benefits of multimodal education, the ABA should amend Standard 315 to specifically require law schools to conduct ongoing evaluations of *the variety of teaching methods used in class*. Without referencing the Socratic method by name or infringing upon academic freedom, this language would counteract some of the challenges posed by a heavy reliance on the Socratic method and other traditional forms of teaching simply by requiring that a variety of methods be used.[273] This standard can be interpreted in a way that requires law schools to pay particular attention to whether the first-year

268. *ABA Standards 2023*, *supra* note 193, § 315 at 26.
269. *Id.*
270. *See id.*; discussion *supra* Part V.
271. *ABA Standards 2023*, *supra* note 193, § 315 at 26.
272. *See* discussion *supra* Part V.
273. *See* discussion *supra* Part II.

curricula contain courses taught using a variety of pedagogical methods. Like the "as early as possible" language proposed above, this change would encourage law schools to utilize multimodal pedagogy without requiring that any specific method be used or banned. Over time, this would result in the Socratic method being used comparatively less often, simply because a variety of teaching methods are utilized and available.

C. *Enforcement Via ABA Site Visits*

One advantage of the ABA Standards is that they have a built-in enforcement mechanism: law school site visits.[274] Every ten years, ABA representatives visit each accredited law school to ensure continued compliance with the Standards.[275] Prior to a site visit, law school administrators submit self-study materials to the ABA that describe their institution's efforts to comply with the Standards.[276] A site evaluation team reviews these materials and then conducts its own factfinding by observing operations at the law school over the course of three days.[277] Site evaluation teams consist of seven volunteers and are typically a combination of lawyers, judges, and faculty or staff from various law schools.[278] During a visit, the site team sits in on multiple classes, examines facilities and resources such as the library, and evaluates the services offered by the school.[279] The team also reviews a variety of records, including sample exams, student work, and faculty scholarship.[280] Following these comprehensive observations, the team submits a report to the ABA detailing its findings.[281] The ABA then considers the report,

274. *ABA Standards 2023*, *supra* note 193, r. 4(b)(1), at 54.

275. *Id.*

276. *ABA Site Team Member Duties*, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/21siteeval/site-team-member-duties.pdf [https://perma.cc/EKW6-CRY5].

277. *See id.*; *Procedures for 2023-2024 Site Evaluation Visits*, 2023 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 3.

278. Cheryl Rosen Weston, *Legal Education in the United States: Who's in Charge? Why Does It Matter?* 24 WIS. INT'L L.J. 397, 403 (2006).

279. *Id.* at 403–04.

280. *Id.* at 404.

281. *Id.*

determines whether the law school complies with the Standards, and communicates its ultimate decision to the dean of the law school.[282]

Class visits comprise a significant part of site visits, suggesting that the ABA has significant exposure to the teaching methods used in law school classrooms.[283] Site teams sit in on at least 50% of the classes being taught during a visit, and team members attend fifteen to twenty minutes of each class they observe.[284] Teams are instructed to "visit classes taught by a mix of full-time faculty and adjunct faculty and do [their] best to observe at least some professional skills programs, live client clinics, legal writing classes, distance education classes, and field placement programs."[285]

When reporting on these class visits, site team members are instructed to fill out the relevant portion of an evaluation form.[286] This form is organized by Standard and has sections where team members can report their observations regarding a law school's compliance with each Standard.[287] For some Standards, the form also includes additional instructions that guide site team members' observations, prompting them to supplement the school's self-reported information with new data.[288] If the ABA were to amend the Standards to promote multimodal pedagogy, it could easily enforce compliance by prioritizing the approach during site visits. Given the considerable time site teams spend conducting class visits, ample opportunities exist to evaluate if and how professors vary their pedagogical approaches.[289]

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282. *ABA Standards 2023*, *supra* note 193, at 59, 79.

283. *Procedures for 2023-2024 Site Evaluation Visits*, *supra* note 277, at 8.

284. *Id.*

285. *Id.*

286. *Id.*

287. *SEQ-SRT Form and Instructions*, 2022 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 4.

288. *See id.* at 19–20, 28 (providing specific examples of facts for the site team to look for when evaluating whether the school adheres to Standards 301(a)–(b), 302, 303(a)(3), 303(b)(1), 304(e)–(f)).

289. *See Procedures for 2023-2024 Site Evaluation Visits*, *supra* note 277, at 8 (advising site visit teams spend fifteen to twenty minutes in approximately 50% of a school's classes).

Moreover, simple additions to the evaluation form can tell site teams what to look for when observing classes or experiential learning activities. On the 2022 evaluation form used during site visits, neither Standard 303(a) nor Standard 315 had additional instructions that specified the kinds of teaching practices that evaluators should look for.[290] If the ABA amended Standard 303 to include the proposed "as early as possible" language, it could include questions in the Standard 303(a) section of the evaluation form asking evaluators to notice: "How many experiential courses are available to first-year students? What proportion of first-year students participate in experiential courses generally? Among the experiential courses you observe, what proportion of the students are first-year students?" Similarly, if the ABA amended Standard 315 to require "ongoing evaluation of the variety of teaching methods used in class," the form could instruct evaluators to note each teaching method a professor uses and indicate whether one method is used more often than others in a given class session.[291] Although each team member gets only a short glimpse into each course that they visit, aggregating the observations of all seven team members would give reviewers a comprehensive understanding of the extent to which a law school utilizes a multimodal approach.[292]

Further, because law schools complete portions of this same form prior to site visits, they would be on notice about the criteria by which they are being evaluated.[293] Overall, incorporating an evaluation of teaching methods into the ABA site visit process would remind law schools that diverse teaching methods positively impact their ability to remain accredited. This would incentivize law schools to comply with the proposed

290. *See SEQ-SRT Form and Instructions*, *supra* note 287, at 21–24.

291. The instructions suggested in this paragraph would promote more well-rounded legal education whether or not the ABA amended the Standards as proposed in this Note.

292. *Procedures for 2023-2024 Site Evaluation Visits*, *supra* note 277; *see* discussion *supra* Part V.C.

293. *SEQ-SRT Form and Instructions*, *supra* note 287, at 3 ("The site team reports the information they collect on the same document that has been filled out by the Law School and reviewed by the staff.").

changes to the Standards and ensure that the changes have a real impact on how law students learn.

CONCLUSION

The Socratic method continues to dominate the first-year law school classroom.[294] Deeply intertwined with the creation of modern legal education, the method has endured for generations as the primary way that law students are inducted into the legal profession.[295] While some may appreciate the proliferation of the Socratic method, the scholarship paints a clear picture of its laser focus on legal reasoning and the harm that can cause to students in the classroom.[296] In addition, the Socratic method fails to prioritize the practical skills that law students will need as they transition into their legal careers.[297]

Key voices in legal education scholarship have highlighted the multimodal approach to pedagogy as a viable alternative to an overreliance on the Socratic method.[298] The Carnegie Report surveys the problems with the legal education system, with an emphasis on the first year, and articulates the fundamental challenges that result from reliance on the Socratic method. The authors' "integrative" approach to education seeks to use multiple strategies to train lawyers who are prepared for the responsibilities of practice.[299] *Best Practices* focuses on the classroom itself, outlining the benefits that come with diversifying teaching practices.[300]

While large-scale institutional change may seem daunting, the ABA Standards provide a ready avenue for potential change. The Standards have played an increasingly significant role in regulating law school curriculum over time. Changes in the priorities of legal educators have also impacted the

294. Abrams, *Reframing*, *supra* note 1, at 565.

295. *Id.* at 563.

296. *See, e.g.*, Abrams, *Tipping Point*, *supra* note 9, at 900.

297. *See* Kerr, *supra* note 21.

298. *See* BEST PRACTICES, *supra* note 22.

299. CARNEGIE REPORT, *supra* note 20, at 191.

300. *See generally* BEST PRACTICES, *supra* note 22 (discussing alternatives to the Socratic method for classroom instruction).

Standards.[301] For this reason, modifying the Standards today could influence the way legal education is done tomorrow without creating new mandates or legal requirements that would infringe on instructors' academic freedom. By adding key language to the two Standards that govern law school curriculum, the ABA can endorse a multimodal approach to legal education. Further, the ABA can easily enforce compliance with the new Standards by making multimodality a priority during site visits. If implemented consistently and patiently, these adjustments can lead to positive changes in legal education that will benefit students, lawyers, and ultimately their clients for generations to come.

301. *See* Joy, *Uneasy History*, *supra* note 214, at 566 (discussing how change in law school curriculum led to changes in ABA standards).