

# What Critiques Have Been Made of the Socratic Method in Legal Education?

## The Socratic Method in Legal Education: Uses, Abuses and Beyond

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### Abstract

*Legal education is known for its use of the Socratic method. It appears, however, that the Socratic method may not be just for law students any more: American educators are now considering the method in the teaching of non-law school students. One perceived benefit of teaching by the Socratic method is that a student will learn by critical thinking rather than rote memorization. A major criticism of the method, however, is that a student may suffer low self-esteem from the perception that the method engages in 'bullying'. The articles discussed in this literature review address the method in learning theory, the method in law school, criticisms of the method and proposals to use the method for non-law students. This article will analyze the Socratic method, the pros and cons of the method and its application outside of the law school.*

**Keywords:** Socratic method, legal education, learning theory, critical thinking, feminist pedagogy.

### A. Introduction

Legal education is known for its widespread use of the Socratic method; one scholar notes “[a] law school just isn’t a law school without the Socratic method”.<sup>1</sup> The Socratic method is a method of teaching by question and answer and was used by Socrates to elicit truths from his students. Christopher Columbus Langdell, Dean of Harvard Law School, first used it in the law school context in the early 1870s. Educators are now looking to expand the method beyond law school.

The articles selected for this literature review essentially fall into one of four categories: articles that describe the Socratic method in thinking, teaching and learning theory; articles that describe the use of the Socratic method in law school

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1 D.D. Garner, 'Socratic Misogyny? – Analyzing Feminist Criticisms of Socratic Teaching in Legal Education', *Brigham Young University Law Review* 4 (2000) , p. 1597.

education; articles that criticize the use of the Socratic method; and articles proposing that the method be used for educating non-law students. The articles will be discussed in their respective categories, as well as evaluated for their approach in addressing the Socratic method.

It is widely understood that the Socratic method has greatly influenced European universities in their manner of teaching. The focus of this literature review, however, is on the Socratic method as it applies to educational practices in the United States.

## B. Background

The female law student sat on the edge of her seat. She and a male classmate, Jerry, had been paired and assigned a case to prepare for their corporate taxation class. Expecting to be drilled mercilessly by the Socratic method, she had spent hours on the case the night before. Now, she was ready. Professor Weiss nodded for her to begin. "The next case, please?" The student looked down at her book, and nervously began with "*Krueger Company v. Commissioner*, 79 T.C. 65 (1982)". Professor Weiss then nodded at Jerry. "Mr Mayhew?" Taken aback, the female student looked up from her book. "I'm not done!" she exclaimed. Taken aback, Professor Weiss did not utter a word, and the student continued with her recitation of the case.

I was that female law student at Marquette University Law School back in 1987. During my three years in law school, I was taught via the Socratic method in many of my classes. But I knew what I was getting into; I had been warned about Marquette's penchant for the Socratic method when I chose Marquette over Wisconsin. The Socratic method was, however, the reason that I changed my seat from the front row to the 'nickel seats'. If a law professor was going to drill a student, it was unlikely that the professor would shout over some eighty bodies to get to the student's way at the top of the lecture hall. Yes, the Socratic method was an intimidating experience, but it did have its advantages: I was prepared for class, it made me think and I learned legal concepts.

I am now an adjunct law professor who teaches the Guardian ad Litem Workshop at Marquette. I do not use the Socratic method as it does not lend itself to a workshop setting where the students do more fieldwork than case analysis. But a part of me thinks that maybe I could be depriving my students of the benefits of the Socratic method. This article will also address the method's application in non-traditional law courses.

## C. The Socratic Method in Thinking, Teaching and Learning Theory

What is the 'Socratic method'? There appear to be as many definitions as there are authors,<sup>2</sup> and even some 'hair splitting' over the use of the term 'Socratic

2 J.L. Rosato, 'The Socratic Method and Women Law Students: Humanize, Don't Feminize', *Southwestern California Review of Law and Women's Studies* 7 (1997), pp. 37-62.

method' as compared to the term 'Socratic dialogue'.<sup>3</sup> This article makes no distinction between the terms 'Socratic method', 'Socratic dialogue', 'Socrates' Dialectics', 'Socratic teaching' and 'Socratic questioning' and will use such terms interchangeably.

Simply put, "[t]he Socratic Method uses a series of questions designed to channel the student's thought processes along predetermined paths".<sup>4</sup> There are three primary components to the Socratic method: "systematic questioning, inductive reasoning, and universal definitions."<sup>5</sup>

The importance of the Socratic method in critical thinking is set forth by Elder and Paul,<sup>6</sup> directors at the Center for Critical Thinking:

The art of Socratic questioning is important for the critical thinker because the art of questioning is important to excellence of thought. What the word Socratic adds is 'systematically', depth, and a keen interest in assessing the truth or plausibility of things.

Critical thinking is Socratic teaching. Keesing-Styles<sup>7</sup> states that "[c]ritical thinking encourages an analysis of situations and arguments to identify faulty or unreliable assertions or meanings". Critical thinking is not to be confused with 'critical pedagogy', which is "preoccupied with social injustice and examines and promotes practices that have the potential to transform oppressive institutions or social relations [...]". In other words, critical thinking identifies faulty assertions but is not proactive in rectifying the consequences of such assertions.

Maiorana<sup>8</sup> contends that many teachers emphasize rote learning rather than critical thinking. While the asking of questions is the most popular method in the teaching of critical skills, it has many shortcomings. These shortcomings include that it places the responsibility for questioning on the teacher; that it relies on the working in small groups; that the amount of content that can be handled is limited; and that it is used in the arts and humanities areas of study rather than in career classes. Maiorana proposes that a new approach of 'Means-End Critical Analysis of Subject Matter' ('MECA\*SM') be used instead, as it eliminates the shortcomings of the traditional Socratic method. MECA\*SM arranges the subject matter to show its purpose; thus, with the 'means and ends' already known, the student can concentrate on how to get there.<sup>9</sup> Except for Maiorana's article, liter-

3 S.R. Burgess, 'Against the Socratic Method: Fostering Student Self-Confidence and Intellectual Independence', *Focus on Law Studies* 6 (1990), pp. 10-11.

4 J.C. Overholser, 'Socrates in the Classroom', *Social Studies* 83(2) (1992), pp. 77-82, p. 1.

5 Overholser 1992, p. 1.

6 L. Elder & R. Paul, 'The Role of Socratic Questioning in Thinking, Teaching, and Learning', *Clearing House* 71(5) (1998), pp. 297-301, para. 6. Retrieved 3 May 2005 from EBSCOhost database.

7 L. Keesing-Styles, 'The Relationship Between Critical Pedagogy and Assessment in Teacher Education', 2003, para. 2. Retrieved 12 March 2005 from <[http://radicalpedagogy.icaap.org/content/issue5\\_1/03\\_keesing-styles.html](http://radicalpedagogy.icaap.org/content/issue5_1/03_keesing-styles.html)>.

8 V.P. Maiorana, 'The Road from Rote to Critical Thinking', *Community Review* 11 (1990), pp. 53-63.

9 Maiorana 1990, p. 1.

ature on MECA\*SM is nonexistent; the approach is offered here merely as a possible alternative to the Socratic method.

Harpaz outlines ten conditions for effective learning that he has 'borrowed' from current theories, including that "effective learning results from undermining". For this condition, Harpaz borrows from Socratic dialogues, John Dewey's theory of thinking and Piaget's constructivist theory. Harpaz contends that people learn when their cognitive schemes are undermined; a Socratic dialogue assists in this undermining process. A person will then learn in order to restore equilibrium. The ten conditions are not limited to law school students and are offered as teaching methods to improve schools in general.<sup>10</sup>

Lam proposes a model of disputing dysfunctional thinking/core beliefs. He argues that Socratic questioning, along with didactic questioning, induces a state of "cognitive tension or conflict" in the person's mind. Citing Vygotsky, Lam concludes that this tension would raise the consciousness of the person. The Socratic questioning would then cause an alteration in the person's thought process, with the result being a more "reality-based rational thinking".<sup>11</sup>

Picou, Cantrell and Barr, professors of finance, economics and business communications, respectively, at the University of Central Arkansas, write on teaching excellence at the college level. They state that two tasks are integral to teaching excellence: providing an environment to challenge students and guide their responses, and motivating learning. Picou proposes that the Socratic method be used in accomplishing these tasks, as the process of guiding students through questioning is important and it is a process that cannot be rushed. Picou argues that the Socratic method enables students to better retain their lessons and learn an essential mode of thinking. He also argues that when the method is used without criticism towards the student's response, it can encourage student participation. Picou also contends that the questions and exercises used in the Socratic method can produce creativity.<sup>12</sup>

#### D. The Socratic Method in Legal Education

Proceeding with the notion that conscious scrutiny of teaching methods in law school education is rare, Friedland, a visiting professor of law at the University of Georgia School of Law, distributed a nationwide survey to 2,000 law professors asking 'How do we teach and why?'<sup>13</sup> A total of 574 surveys were completed and returned. The survey indicated that an overwhelming majority of professors who taught first-year law school classes used what they perceived to be the Socratic

10 Y. Harpaz, 'Teaching and Learning in a Community of Thinking', *Journalism of Curriculum and Supervision* 20 (2005), pp. 140-141.

11 D. Lam, 'Cognitive Behavior Therapy Territory Model: Effective Disputing Approach', *Journal of Advanced Nursing* 25 (1997), pp. 1205-1209.

12 A. Picou, P. Cantrell & J. Barr, 'Suggestions for Producing Teaching Excellence', *Education* 119 (1998), pp. 326.

13 S.I. Friedland, 'How We Teach: A Survey of Teaching Techniques in American Law Schools', *Seattle University Law Review* 20 (1996), pp. 1-44.

method. Friedland concluded from the survey responses that law school professors care about how they teach and appear to be looking for alternatives to the Socratic method.<sup>14</sup>

Friedland's goal was to look for a relationship between any two of the following categories: years of teaching experience, gender, teaching method, tenure, teaching goals and willingness to try new teaching methods. By Friedland's own admission, the survey did not likely meet "standards of scientific exactitude"; however, the survey could still offer "useful and provocative insights".<sup>15</sup> Friedland performed a regression analysis using the six data sets and discovered several interesting correlations. As the number of years of teaching experience increased, so did the tendency for professors to use Socratic methods in first-year courses; newer professors preferred newer teaching methods.<sup>16</sup> However, in upper-level courses, the more years a professor has been teaching, the less likely it is that the professor will use Socratic methods. Female professors use non-Socratic methods in first year courses to a slightly greater degree than Socratic methods.<sup>17</sup>

If there is, in fact, a greater use of Socratic methods in first-year law classes, perhaps it is an attempt by the law school 'weed out' the inferior students. It appears that after the rite of passage occurs, non-Socratic methods are utilized in the second- and third-year courses. Furthermore, professors with more teaching experience are probably older and from the 'old school'; thus, they would more likely be entrenched in the Socratic method than less experienced professors. As for the correlation between female professors and more likely use of non-Socratic methods, female professors may very well have been victims of 'Socratic intimidation' (discussed below) and do not wish to put their students through the same agony.

Areeda, professor at Harvard Law School, notes that while he has taught his antitrust law class Socratically and otherwise, he has "ample evidence that students learned more and retained more about analyzing problems in the Socratic years".<sup>18</sup> Furthermore, Areeda adds that teaching a class using the Socratic method is very hard work for the instructor; while the professor does not have to prepare an expository lecture, what he does is something much more difficult: framing questions, responding with more questions and facilitating a discussion in a manner that allows students to discover answers for themselves.<sup>19</sup> Areeda concludes:

The student sees that he could have asked himself those questions before class; that the kinds of questions the instructor asked can be self-posed after

14 Friedland 1996, p. 44.

15 Friedland 1996, p. 35.

16 Friedland 1996, p. 39.

17 Friedland 1996, pp. 40-41.

18 P.E. Areeda, 'The Socratic Method', (Lecture at Puget Sound on 31 January 1990) *Harvard Law Review* 109 (1996), pp. 921-922.

19 Areeda 1996, p. 922.

class. The internalization of that questioning process is not an illusion. It is the essence of legal reasoning and the prize of SM.<sup>20</sup>

Areeda does not give any detail as to what is the ample evidence that students learn and retain more through the Socratic method; it would appear that he has formed this opinion through his own experience as a law professor.

Kronman analyses the use of the Socratic method, as employed through case method instruction, in the law school. He defines the Socratic method as the unwillingness to take the soundness of judicial opinions at face value; that is, the method allows law students to evaluate all the positions of a case regardless of how each position was treated in the court's opinion. Kronman sets forth the advantages of the Socratic method as follows: it allows students to concentrate on issues that will face them once they enter their law practices, it helps students to learn how to apply legal rules to real-life situations and it promotes the rhetorical abilities needed to practise law.<sup>21</sup> Kronman also argues that case method instruction forces grounds for moral imagination by strengthening a student's powers of sympathetic understanding and increasing tolerance for different attitudes.<sup>22</sup> The gist of Kronman's article is that the use of the Socratic method allows students to delve into each party's position in the legal opinion, and not just take the final opinion of the court as gospel.

What does the future hold for the Socratic method? Rabkin, president of the Nevada Chapter of the Federal Bar Association, advocates the continued use of the method, even in light of the advances made in technology: "The Socratic method, while perhaps now considered a dinosaur, helps to balance the failures of technology by instilling a problem-solving methodology where the computer does not or cannot do so."<sup>23</sup> Rabkin's contention is that there is nothing like a live discussion, as opposed to a videotaped lecture.

Hirsh and Miller note that legal education has remained relatively unchanged for the past 120 years in that the Socratic method is still "dominant in first year and many upperclass courses".<sup>24</sup> (This would appear to be consistent with the results of Friedland's survey, above.) With the widespread use of state-of-the-art technology in many law offices and courthouses, they urge law professors to make the effort to incorporate the use of this technology in the classroom. In the fall of 2003, the authors surveyed law school faculty and course descriptions set forth on websites regarding law school offerings on legal practice technology. While Hirsch and Miller found there to be "great stability in legal education", they note several "profound" changes over the past 120 years, such as the introduction of clinical and practical courses and the integration of electronic

20 Areeda 1996, p. 922.

21 A. Kronman, 'Leadership in Legal Education Symposium: The Socratic Method and the Development of the Moral Imagination', *University of Toledo Law Review* 31. (2000), p. 648.

22 Kronman 2000, p. 650.

23 A. Rabkin, 'Technology vs. the Socratic Method', *Nevada Lawyer* 6 (1998), pp. 22-23, p. 23.

24 K.J. Hirsch, & W. Miller, 'Law School Education in the 21st Century: Adding Information Technology Instruction to the Curriculum', *William & Mary Bill of Rights Journal* 12 (2004), pp. 873-884.

resources in legal research.<sup>25</sup> The stability to which they refer is the continued use of the Socratic method; they do note, however, that it has been supplemented by other teaching methods as would be utilized in clinical and practical courses.<sup>26</sup>

Mell, a professor of law at Michigan State University – Detroit College of Law, notes that through the Socratic method students learn how to “dispassionately assess even the most personal subject matter, as would a judge”.<sup>27</sup> She adds that the method forces students to understand “disparate views” by forcing students to take the varying positions of the parties in the case. Furthermore, it develops sophisticated legal reasoning. On the downside, Mell states that the Socratic method can “engender alienation and foster a lack of self-confidence in those students subject to its perceived bullying”. She notes that the method received mounting criticism as more women and minorities entered law school; furthermore, it was blamed in part for the underperformance of these groups. In the 1990s, the legal bar complained that the Socratic method did not prepare law students for the real world and that the dying method should be put to rest. Mell’s response to these critics is that the method has been modified from its “purest form” so as to be less robust, and is more frequently utilized along with a lecture format. Mell concludes that this trend is likely to continue.<sup>28</sup>

Hawkins-Leon proposes that the problem method be used in conjunction with the Socratic method in legal education.<sup>29</sup> She describes how she uses the methods in her criminal law and procedure course. First, the subject matter is covered utilizing the Socratic method. In a subsequent class period, the students are divided into ‘problem groups’ to address a pre-assigned problem through small-group discussion.<sup>30</sup> She contends that the combination of these teaching methods approximates the lawyer’s approach to the law, provides skills in issue management, increases the effectiveness of instruction, stimulates student interest in the material, allows integration of non-legal source material and encourages the testing of students’ understanding of assigned readings.<sup>31</sup> Hawkins-Leon calls for an updated survey of law professors to determine which method is being used in the law schools.<sup>32</sup> What appears to be the most attractive aspect of Hawkins-Leon’s problem-solving methodology is that a single individual does not bear the brunt of the questioning as would be the case if only the Socratic method were used.

25 Hirsch & Miller 2004, p 873.

26 Hirsch & Miller 2004, p 885.

27 P. Mell, ‘Taking Socrates’ Pulse: Does the Socratic Method Have Continuing Vitality in 2002?’, *Michigan Bar Journal* 81 (2002), pp. 46-47.

28 Mell 2002, p. 46.

29 C.G. Hawkins-Leon, ‘The Socratic Method-Problem Method Dichotomy: The Debate over Teaching Method Continues’, *Brigham Young University and Law Journal* 1998, pp. 1-18.

30 Hawkins-Leon 1998, pp. 12-13.

31 Hawkins-Leon 1998 p. 8.

32 Hawkins-Leon 1988, p. 7.

## E. Criticisms of the Socratic Method

'Why didn't Socrates just tell Meno what was expected of him?' (Question from a student during a class discussion of Plato's 'Meno' dialogue, in Linz, Lugton, Miller, Polo, Stair).<sup>33</sup> Not all students, it would seem, are impressed with Socrates' teaching.

And neither are all law professors. Thomas, an associate professor of law at the University of the District of Columbia David A. Clarke School of Law, asserts that law professors can become better 'teachers' if they anchor teaching practices in a "theoretical foundation based on the scholarship of how people learn".<sup>34</sup> The sad reality of law school, according to Thomas, is that some law students are just not learning as they should in law school in order to succeed.<sup>35</sup> According to Thomas, the problem is in the delivery of the instruction.<sup>36</sup> Thomas notes that teachers at levels other than law school must have formal education in teaching before they are allowed to teach, while the law schools have no such requirements for their professors. She believes that learning theory and law school teaching evolved separately, never the twain shall meet. Furthermore, Thomas does not consider the Socratic method to be a learning theory.<sup>37</sup> She does not tell us, however, what it is. Thomas also makes the assumption that formal training in teaching will make bad professors into good teachers. What might she say about all of the bad to mediocre teachers graduating from schools of education every year? This is not to say that some type of training in teaching is not advisable; however, Thomas offers much less than a fool-proof plan.

The lack of formal education for law professors is also noted by Rhode, a professor of law at Stanford Law School.<sup>38</sup> Rhode would agree with Thomas that law schools are not all that interested in theories about how students learn.<sup>39</sup> Nevertheless, Rhode does acknowledge that, in the hands of an adept professor, the Socratic method has educational value. In large classes, however, Rhode criticizes the use of the method, as it "discourages participation from too many students, particularly women and minorities".<sup>40</sup> Rhode fails to cite an authority for the latter assertion.

Kerr, an attorney with the United States Department of Justice, states that criticism of the Socratic method is as old as the method itself; the most vigorous

33 J. Linz, C. Lugton, R. Miller, L. Polo & M. Stair, 'Socrates was a Bad Teacher', *Independent School* 60(1) (2000). Retrieved 23 February 2005 from EBSCOhost database.

34 A.M. Thomas, 'Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy', *Widener Law Symposium* 6 (2000), pp. 49-137, p. 56.

35 Thomas 2000., p. 51.

36 Thomas 2000, p. 54.

37 Thomas 2000, pp. 101-102.

38 L. De Rhode, 'Kicking the Socratic Method and Other Reforms of Law Schools', *Chronicle of Higher Education* 47(20) (2001), p. B15.

39 De Rhode 2001, para.3.

40 De Rhode 2001, para. 6.



attacks on the method began in the late 1960s.<sup>41</sup> Kerr describes the Socratic method at its best and its worst. At its best, students of the Socratic method learn legal argument by actually being involved in a Socratic dialogue with the professor or vicariously through watching the exchange of another student with the professor. The Socratic method teaches sophisticated legal reasoning effectively to a large number of students, and through this method students learn to construct legal arguments on their own.<sup>42</sup> The downside is that it is psychologically harmful to students, that it does not teach a wide-range of lawyer skills and that it advances the professor's personal agenda.<sup>43</sup> Kerr concludes that the Socratic method now coexists, at least at Harvard University, with other pedagogies in law school classrooms.<sup>44</sup>

Garner provides a thorough history of the Socratic method, including its definition, origin, rationale and "ulterior motives".<sup>45</sup> These ulterior motives include snobism, economic efficiency, inertia and professional convenience.<sup>46</sup> Garner also describes some common criticisms of the Socratic method: that it is boring, that students learn little from watching a dialogue between another student and the professor, that it is an inefficient way to teach a large amount of information and that it allows the professor to refuse to answer direct questions.<sup>47</sup> Despite these general criticisms from students in general, Garner notes that perhaps the biggest critics of the Socratic method are female law students. Citing a study done in 1987 by Yale Law School, Garner concludes that the Socratic method alienates women from participating in class.<sup>48</sup>

It is interesting to note that what Garner considers to be a criticism of the method, namely that students learn little from watching a dialogue between another student and the professor, is contradicted by Kerr, who argues that students do learn vicariously.

Boghossian argues that Socratic pedagogy is susceptible to race, class and gender issues, impacting both the student's and the teacher's expectations from the dialogue.<sup>49</sup> Nevertheless, he contends that these issues are minimal, as the focus of the dialogue is on propositions and not the people.<sup>50</sup>

It appears unlikely, however, that issues of race, class and gender would have as little effect as Boghossian argues, especially if the dialogue is tainted because of these issues. Kuo criticizes the Socratic method of teaching on the grounds that it removes the case at issue from its socio-cultural context and only takes the cul-

41 O.S. Kerr, 'Article: The Decline of the Socratic Method at Harvard', *Nebraska Law Review* 78 (1999), pp. 113-134.

42 Kerr 1999, pp. 116-118.

43 Kerr 1999, pp. 118-119.

44 Kerr 1999, p. 131.

45 D.D. Garner, 'Socratic Misogyny? - Analyzing Feminist Criticisms of Socratic Teaching in Legal Education', *Brigham Young University Law Review* 4 (2000), pp. 1597-1609.

46 Garner 2000, pp. 1606-1609.

47 Garner 2000, pp. 1609-1611.

48 Garner 2000, p. 1615.

49 P. Boghossian, 'Socratic Pedagogy, Race and Power', in: G.V. Glass (Ed.), *Education Policy Analysis Archives* 10(3), (2002). Retrieved 3 May 2005 from ERIC database.

50 Boghossian 2002, para 2.

tural backgrounds of the parties into consideration when it serves a specific legal agenda.<sup>51</sup> She also criticizes the method in that when students pursue only the facts of the case being discussed, they siphon off the emotional and cultural context.<sup>52</sup> While the Socratic method finds cultural conflicts irrelevant under the belief that laws are unbiased and culturally blind, Kuo argues that the presumed objectivity of the law is from the white, middle-class perspective. Kuo is a professor of law, and she describes in her article the use of cultural defences in her criminal law course and why they are relevant. Kuo's work is essentially an attack on the dominant culture and how the Socratic method perpetuates this bias.

By her own admission, Rosato is a "legal educator and feminist who regularly uses the Socratic Method".<sup>53</sup> Rosato states that the Socratic method continues to be the primary pedagogy used in law school education, but claims that the 'true' Socratic method bears little resemblance to the method used in the law schools. The law school version can also be called 'hide the ball', where the professor knows the answer and humiliates the students until they come up with the answer the professor wants.<sup>54</sup> Rosato believes that the method is a valuable teaching methodology when used meaningfully.<sup>55</sup>

Rosato reviewed a number of studies that indicated women experience law school differently than their male counterparts; she notes, however, that the various studies did not ascertain the reason for the differing experiences. Rosato contends that the reason may be the use of the Socratic method.<sup>56</sup> She proposes three reasons why the method may affect women more negatively than men: women are more likely to censor future participation in classes if the method requires them to recognize the limits of their knowledge publicly; women are more self-conscious about sharing their thoughts in classroom discussions; and women may not be accustomed to male-oriented Socratic thinking.<sup>57</sup> Rosato argues that law schools should humanize the Socratic method rather than feminize it so that it is an effective teaching method for all students: "[T]he Socratic Method should not be circumscribed simply to accommodate women. To do so only patronizes women law students and reinforces the view still held by some that women do not belong in law school [...]"<sup>58</sup> 'Humanization' can be achieved through positive reinforcement, and by allowing students to assist one another with responses to the questions.<sup>59</sup> Rosato is quick to point out that whether the method is used in a humiliating manner is the fault of the professor rather than the method: "A teacher with a penchant for disparaging students would do so

51 S.S. Kuo, 'Culture Clash: Teaching Cultural Defenses in the Criminal Law Classroom', *St. Louis Law Journal* 48 (2004), pp. 1297-1311.

52 Kuo 2004, pp. 1298-1299.

53 Rosato 1997, at p. 49.

54 Rosato 1997, pp. 41-42.

55 Rosato 1997, p. 45.

56 Rosato 1997, p. 53.

57 Rosato 1997, p. 54.

58 Rosato 1997, p. 58.

59 Rosato 1997, pp. 60-61.

regardless of the pedagogy used.”<sup>60</sup> While Rosato approaches her criticism of the Socratic method from a feminist perspective, when compared with other feminist writers her work is a breath of fresh air. Rosato does not just shoot from the hip; rather, her criticisms are grounded in common sense rather than common stereotypes.

Proctor, a practising attorney, criticizes the Socratic method for creating an intimidating environment for law students.<sup>61</sup> She contends that the method not only fails to promote effective lawyering for either sex, but that it is especially harsh on women as it does not engage their initiative or problem-solving abilities.<sup>62</sup> She believes, however, that the Socratic method has made important contributions despite its negatives, and that the method should still be utilized by the law schools, although its needs to be significantly revised or supplemented.<sup>63</sup> This ‘revision’ can be carried out by ‘humanizing’ the method in terms of providing positive feedback to participating students, using the method in a more meaningful fashion by supplementing it with less structured teaching methods and by ‘deflating’ the method’s pompous stance.<sup>64</sup>

It is interesting to note that while there is much literature that notes the negative effects of the Socratic method on female students as opposed to their male counterparts, it was a male law student who filed a lawsuit against Wake Forest University and staged a hunger strike in protest against the Socratic method. The student alleged the he had been harassed by the law professors who used the Socratic method, which caused him to become depressed, lose weight and suffer from fatigue.<sup>65</sup> Perhaps a future prerequisite for law school admission should a favourable psychological evaluation.

## F. The Socratic Method in Educating Non-Law Students

The research concluded that the application of Socrates’ Dialectics could be profitable to primary school children as well as children attending the lower high school classes. Dialectics, therefore, could be considered a very important direction in teaching methodology, provided it respects the essence of the interactive process and is not reduced to a type of false dialogue or ‘dialogical’ monologue.<sup>66</sup>

60 Rosato 1997, p. 50.

61 P. Proctor, ‘Toward Mythos and Mythology: Applying a Feminist Critique to Legal Education to Effectuate a Socialization of Both Sexes in Law School Classrooms’, *Cardozo Women’s Law Journal* 10 (2004), pp. 577-602.

62 Proctor 2004, p. 588.

63 Proctor 2004, p. 593.

64 Proctor 2004, p. 593.

65 ‘Former Wake Forest U. Law Student Stages Hunger Strike’, *Chronicle of Higher Education* 44(20), p. A8.

66 C. Frangos, ‘A European Teaching Model: From Vygotsky to Socrates via Piaget’, (1987). From University of Thessaloniki, Greece. Retrieved 3 May 2005 from ERIC database.

Letts, an educational consultant, proposes that the Socratic method be used in elementary schools because she views the method as a solution to the violence plaguing schools.<sup>67</sup> Letts contends that, through Socratic dialogue, children begin to understand that they can disagree without violence. While Letts does not say so in so many words, her proposition for the use of the Socratic method is that it assists in developing a moral imagination within the student. A student need not wait until law school in order to appreciate all sides of an argument or issue. Use of the Socratic method in elementary schools has not been adequately addressed in academic journals. This article is from a trade journal rather than an academic one; however, it is included here as the article draws an articulate, albeit somewhat questionable, connection between the theories espoused in scholarly journals and how these theories relate to real life.

If the Socratic method can be effectively utilized in elementary schools, can it also serve an important purpose in the high schools? Pasi sets forth a lesson plan for the use of the Socratic method and contends that the method engages students and forces critical thinking.<sup>68</sup> This critical thinking is necessary for examining ethics, values and other character issues.<sup>69</sup> Pasi does not say so in so many words, but his lesson plan is actually a lesson plan for creating social imagination. Again, an article in a trade journal sets forth this proposition; scholarly journals appear to be more concerned with the use of the Socratic methods at post-secondary levels of education.

Whitaker ties the Socratic method to other theories of education and contends that its use in the high schools is not novel.<sup>70</sup> While critical thinkers like to proclaim their roots go back to Socrates, it is John Dewey, in *How We Think*, who is actually the inspiration for the combination of pragmatism and psychology. Whitaker traces the evolution of critical thinking in the high schools, noting that it caught on in the early 1980s as a mode of education reform; unfortunately, graduates from those schools were less able to read, write and think in the 1980s and 1990s. When used outside of the law school and away from white, middle-class laws, critical thinking appears to breed bearers of racial-group identity and racial-group thoughts. This is akin to the contentions of Letts and Pasi, who suggest the Socratic method be used to foster tolerance.

Amid the rhetoric on the possibilities of the Socratic method at the elementary and high school levels, an actual proposal for school reform resurrected the ideal of the Socratic method: the Paideia Proposal. In 1982, Mortimer J. Adler crafted the proposal for school reform that would prepare young students to earn a living, to be good citizens and to continue learning. There are three parts to Paideia instruction: didacticism, coaching and Socratic method. The educators most

67 N. Letts, 'Socrates in Your Classroom', *Teaching PreK-8* 24 (1994), pp. 48-49.

68 R.J. Pasi, 'Success in High School - and Beyond', *Educational Leadership* 54 (1997), pp. 40-42.

69 Pasi 1997, p.58.

70 A.K. Whitaker, 'Critical Thinking in the Tower Ivory', *Academic Questions* 16 (2002), pp. 50-59, Retrieved 5 March 2005 from EBSCOhost database.

interested in the programme are from the 'high risk' areas. The first programme was started in the public schools in 1984.<sup>71</sup>

Paideia's 'Great Books Program' uses Socratic seminars where teachers serve as facilitators eliciting answers and inquiry on books from *Plato* to *Virginia Woolf*. In 1989, students at Kilmer Paideia elementary school in Chicago won a national writing test and scored six points above the national norm.<sup>72</sup> Overall, however, critiques of Paideia's success are mixed.

Overholser, an assistant professor of psychology at Case Western Reserve University, states that, in order for students at the undergraduate level to use the Socratic method successfully, they must first be provided with basic information through a traditional lecture.<sup>73</sup> When the students are provided with the necessary background information, the teacher and the students can then discuss more complex applications. Overholser proposes that the method be used to discuss controversial issues, such as euthanasia, censorship and pornography. Graduate students can obtain the necessary background information from textbook readings.<sup>74</sup> He concludes that the Socratic method "[p]romotes creative and critical thinking, and fosters a collaborative learning atmosphere".<sup>75</sup> Overholser's view of the usefulness of the method at the undergraduate level somewhat contradicts the literature that criticizes the use of the method in law schools. Rather than fostering a 'collaborative learning atmosphere', it appears that the Socratic method in the law school setting has been known to create an atmosphere of personal anxiety. Thus, in order for the method to reap the benefits proposed by Overholser, the instructor would need to be committed to cultivating a positive learning environment.

Mitchell, Provost of Trinity College Dublin, also writes of utilizing the Socratic method at the undergraduate level.<sup>76</sup> He asserts that the purpose of an undergraduate education is the "development of the mind and of the mental skills of speech and communication, reasoning and analysis, creativity and imagination, and moral discernment". In order for these goals to be obtained, studies must be offered that are "backed by an active approach to learning, by problem-solving, and by the Socratic challenge to use reason to test, question, and explore".<sup>77</sup> As to how this is to be accomplished is unclear in Mitchell's work; he offers no lesson plan in his proposal.

Picou writes on teaching excellence at the college level. He states that two tasks are integral to teaching excellence: providing an environment to challenge

71 R.D. Brazil, *A covenant for change, the Paideia Manual: A Guide to the re-training of America's teaching force*. Chicago, IL: The Paideia Institute of Hyde Park 1992. Retrieved 3 May 2005 from ERIC database.

72 M. Kruglik, 'Great Books Revisited', *Curriculum Review* 30(1) (1990), pp. 3-7. Retrieved 3 May 2005 from EBSCOhost database.

73 J.C. Overholser, 'Socrates in the Classroom', *Social Studies* 83(2) (1992), pp. 77-82.

74 Overholser 1992, p. 77.

75 Overholser 1992, p. 77.

76 T.N. Mitchell, 'From Plato to the Internet', *Change* 31(2) (1999), pp. 17-22.

77 Mitchell 1999, p. 22.

students and guide their responses, and motivating learning.<sup>78</sup> Picou proposes that the Socratic method be used in accomplishing these tasks, as the process of guiding students through questioning is important and one that cannot be rushed. Picou argues that the Socratic method enables students to better retain their lessons and learn an essential mode of thinking. He also argues that, when the method is used without criticism towards the student's response, it can encourage student participation. Picou also contends that the questions and exercises used in the Socratic method can produce creativity.<sup>79</sup> 'Without criticism' are the key words here.

Pekarsky, an assistant professor in the Department of Educational Policy Studies at the University of Wisconsin-Madison, voices several concerns about the use of the method.<sup>80</sup> The first is the issue of deception. Pekarsky argues that even Socrates seemed to know the end of a line of inquiry at its very beginning, possibly setting 'traps' for those involved in the dialogue. Pekarsky also points out that the agenda for Socratic teachers is moral education and that the question is whether this type of inquiry has a place in our classrooms. Furthermore, Pekarsky points out that at those levels the method may have limited use, as its effectiveness will depend on the teacher's ability to understand the belief system and the character of the student involved in the dialogue. If this is not accessed correctly, the Socratic approach could be destructive.<sup>81</sup> While Pekarsky does not indicate at which level of education his observations apply, perhaps it is at all levels. It would seem, however, that greater care in assessing a student's ability to participate in the dialogue would be more critical at the elementary and high school levels than at the college level.

## G. Conclusion

As stated at the beginning of this literature review, the articles fall into one of four categories: articles that describe the Socratic method in thinking, teaching and learning theory; articles that describe the use of the Socratic method in law school education; articles that criticize the use of the Socratic method; and articles proposing that the method be used for educating non-law students. The critiques of the Socratic method also correspond to these categories: the assessments of the Socratic method in educational theory were neutral; the assessments of the Socratic method in legal education were often polar opposites; and the assessments that evaluated the method outside of the law school were optimistic about the possible benefits of the method when applied in a non-law school setting.

It appears from a review of the articles that authors who had first-hand experience with the Socratic method in law school education, such as law professors or

78 Picou, Cantrell & Barr 1998, pp. 322-338.

79 Picou, Cantrell, & Barr 1998, p. 326.

80 D. Pekarsky, 'Socratic Teaching: A Critical Assessment', *Journal of Moral Education* 23(2) (1994), pp. 119-134.

81 Pekarsky 1994, p. 134.

former law students, had very definite, personalized opinions on the advantages or disadvantages of the method. The authors who looked at the Socratic method in its purest form – as a method for teaching, thinking and learning – offered the most unbiased, pragmatic review. These authors seemed to offer an analysis without the emotional baggage of those somehow scarred by the method in actual practice.

There is no doubt that the Socratic method can be used as a tool for intimidation and marginalization, at least in the law schools. But care must be taken to view the method for what it is – a tool for educators. It is not the method that drills the student, it is the professor. It is not the method that intimidates the student, it is the professor. And it is not the method that dissipates violence in the schools, it is the professor. When used in the proper context by a masterful teacher, the use of Socratic dialogue can force students to re-examine ethical issues and help students learn to restore their lost equilibrium. But perhaps Chief Judge Deanell Reece Tacha, United States Court of Appeals, Tenth Circuit, said it best:

I recognize, of course, that the Socratic method is not perfect. Some professors have used it as a tool of sarcasm and rudeness. This behavior is not acceptable. That is not the Socratic method, and it should not encourage law schools to turn away from what I see as a very effective teaching tool.<sup>82</sup>

What has not been adequately addressed in any of the articles is the possible effect of 'educator bias' in the use of the Socratic method in non-law school classrooms. As the method is used in the law schools, there is little room for the intrusion of the educator's personal beliefs; the Socratic dialogue is more 'cut and dried' in the sense that it is structured within and around the text of the legal opinion. When the method is used outside of the law school, however, the issues addressed are often not grounded in a specific text, allowing the instructor more leeway with the dialogue. Also, much more research needs to be done to determine how the method can and should be structured for various maturity levels of students, and what topics are appropriate given the varying maturity levels, reasoning skills and attention spans within and between grade levels. Future research also needs to include the following questions in non-law school settings: Did the students feel intimidated or marginalized? Did violence within the school dissipate? Was greater tolerance achieved? What learning assessments can be used to evaluate student comprehension with and without the use of the Socratic method? Perhaps the outcome may be that the Socratic method has a place outside of the law schools and is, in fact, better utilized there. Another avenue for future research would be to follow female students who have been exposed to the Socratic method in non-law school settings through law school to see if early exposure placed them in a position that made them less susceptible to the negative effects of the method in law school.

82 D.R. Tacha, 'Refocusing the Twenty-First-Century Law School', *Southern Methodist University Law Review* 57 (2004), pp. 1543-1551, at pp. 1545-1546.

Nevertheless, it appears that the Socratic method in the law schools is here to stay. That is not to say, however, that its popularity is increasing or that it has a place in every subject area. Call them 'feminist courses' or 'soft law', the Socratic method may not necessarily be the best approach in courses on victim's rights or children's rights advocacy. Advocates of feminist pedagogy believe that feminist pedagogy is more appropriate where the focus of the course is on social change; yet, would not critical thinking via the Socratic method also support that same outcome?

Maybe the foes of the Socratic method from the law schools just did not have the nerve to stand up to the law professor and say '*I'm not done!*' If that is the case, it is time for the meek at heart to get over it and look at the method for what it may be worth. Besides, there is always sanctuary in the 'nickel seats'. And if that does not work, one can also go on a hunger strike.