

ARTICLES

The Elephant In Law School Classrooms: Overuse of The Socratic Method as an Obstacle to Teaching Modern Law Students

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ABSTRACT

This article contends that if law schools paid attention to the discoveries in the field of education, law school teaching would improve dramatically. Instead, the Socratic method continues to dominate legal education. The method dominates even though it can be shown not only (1) to be an ineffective method for fully achieving educational objectives; and (2) to be an elitist approach that discriminates against both minority and female students as well as the increasing number of law students with diverse learning styles.

This article reviews findings in both legal education and education generally to demonstrate discoveries about the ways people learn and educational methods that have proved to be most effective in light of these discoveries. This article answers common objections to a departure from the purely Socratic approach. Moreover, this article demonstrates the method in which the author identified educational objectives for a first-year law school course (Civil Procedure) and then designed a diverse set of educational methods to achieve those objectives. Within this course, the Socratic method plays a part, but it is no longer King (or Queen) in the classroom. The professor employs the method when it serves the

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educational objectives. The result is a course that better serves the entire class – regardless of race, gender, or learning style.

TABLE OF CONTENTS

INTRODUCTION	294
I. A CALL FOR CHANGE IN LAW SCHOOLS	298
II. PROBLEMS IN THE CLASSROOM	299
III. ANSWERS TO COMMON OBJECTIONS.....	303
IV. INFORMATION PROCESSING, LEARNING STYLES, AND THE NEED FOR BOTH ATTENTION TO CONTEXT AND FOR DIVERSE TEACHING TECHNIQUES.....	309
<i>A. The Challenges to All Students in Processing Information</i>	<i>310</i>
<i>B. Learning Styles and the Value of Visual Teaching.....</i>	<i>312</i>
<i>C. The Value of Context in Learning Information.....</i>	<i>315</i>
<i>D. The Necessity for Diverse Teaching Methods.....</i>	<i>320</i>
V. DIVERSE TEACHING METHODS FOR COMPLEMENTING SOCRATIC DIALOGUE IN FIRST-YEAR CIVIL PROCEDURE.....	323
<i>A. Subject Matter Jurisdiction</i>	<i>326</i>
<i>B. Personal Jurisdiction.....</i>	<i>327</i>
<i>C. Venue.....</i>	<i>328</i>
<i>D. The Progress of a Civil Action.....</i>	<i>329</i>
<i>E. Rules and Procedures Promoting Fair Resolution of Claims.....</i>	<i>330</i>
1. <i>Pleadings, Motions, and Joinder</i>	<i>330</i>
2. <i>Joinder.....</i>	<i>333</i>
3. <i>Discovery.....</i>	<i>333</i>
4. <i>The Erie Doctrine.....</i>	<i>334</i>
VI. WHY NEW LAW PROFESSORS ARE PECULIARLY EQUIPPED TO ASSIST IN CHANGING THE LEGAL ACADEMY FROM WITHIN	336
CONCLUSION	339
ADDENDUM 1.....	340
ADDENDUM 2.....	342
ADDENDUM 3.....	346

INTRODUCTION

Like the proverbial “elephant” plaguing a dysfunctional family, which everyone recognizes as a root problem but no one dares talk about, overuse of the Socratic method is the elephant in law schools. If we define “dysfunction” as something that prevents effective functioning of a system (whether a family or an educational system), the legal education system fits the characterization of dysfunctional. In short, legal teaching needs a serious overhaul. Whereas most other academic fields have adapted teaching methods to match advances in learning theory and educational

practices over the past half century, teaching in law schools has been stuck in neutral for the most part.

Although pioneers have been sounding the call for change in law schools for some time,¹ most professors continue to cling to case-based Socratic method as the primary, if not exclusive way, to teach law students. Published in 2007, a book entitled *Best Practices in Legal Education* has now indicted law schools for failing to adapt.² Relying in part on the findings of *Best Practices*, as well as my own research and experiences, this article contends that, while the Socratic, case-based method can serve as one tool for teaching in law schools, effective teaching needs to incorporate methods designed to reach a broader range of learning styles. As if the *Best Practices* report were not enough, the Carnegie Foundation for the Advancement of Teaching published a book in 2007 echoing many of the same concerns. Entitled *Educating Lawyers: Preparation for the Profession of Law*,³ the book questions the effectiveness of the case-based, Socratic method of teaching and expresses concern over law schools' failure to employ other methods now well entrenched in the education of other professions.⁴

Make no mistake, a metamorphosis is underway. If baby boomers are the TV generation, and the last generation of the twentieth century was the X Generation, young women and men now entering law school are known as the "Millennial Generation."⁵ Failing to recognize changes in students, from one generation to the next (particularly changes in the way they process information) represents a major part of the problem in legal education. Consider the technological changes of which they have been a

1. Parts III and IV below cite a number of articles and books that have been published between the mid to late 1990s and now in which these scholars saw the dysfunction and called for change. These works refer to a growing recognition that the dominant model of case-based Socratic education in law schools was deficient. The implication is that some in legal education have known for at least two decades that law schools are failing to teach as effectively as they should. Nevertheless, as the two studies released in 2007 (one by a group of experienced law professors, and the other by the Carnegie Foundation), business has continued as usual in legal education – *i.e.*, the case-based Socratic method continues to dominate, despite substantial evidence that law students need more diverse teaching methods. See *infra* notes 2-4 and accompanying text.

2. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007), available at http://cleaweb.org/documents/bestpractices/best_practices-full.pdf.

3. See, *e.g.*, WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 56-60, 75-78 (2007).

4. See *id.*

5. In an excellent paper published by the American Bar Association, Diane Thielfoldt and Devon Scheef explain the differences between "Generation X" (which they define as those born between 1965 and 1976) and "Millennials" (which they define as those born between 1977 and 1998). See Diane Thielfoldt & Devon Scheef, *Generation X and the Millennials: What You Need To Know About Mentoring the New Generations*, LAW PRACTICE TODAY (ABA Law Practice Management Aug. 2004), available at <http://www.abanet.org/lpm/lpt/articles/mgt08044.html>.

part, and largely embraced. Personal computers are almost as prevalent in homes as are televisions. The Internet explosion, not to mention the advent of powerful search engines such as Google, is a little over a decade old. For these students, the Internet has been a way to learn, communicate, and engage thoughts and the world. Cellular phones are part of their lives – not just to answer calls wherever they may be on the planet, but to take photos, send e-mails, and even to search the Internet. Most have seen videoconferencing – where parties in different locations speak as if they were in the same room, communicating in verbal and body language because the participants can see each other in real time. Indeed, Millennials know, better than most teachers, how to develop and use PowerPoint slides that are dynamic and visually appealing.

Like any metamorphosis, beauty and wonder are not the only characteristics of the process. Resistance, and calls to retrench, always seems to accompany change. The status quo seeks to maintain, you guessed it, the status quo. As the authors of the *Best Practices* report bluntly observe, very few “legal educators have educational training or experience when they are hired, and few law schools provide more than [brief] assistance to help new [professors] develop their teaching skills.”⁶ As a result of legal academia’s neglecting to make the skill of teaching a priority, few law professors practice the diversity of teaching methods most likely to help the greatest number of students achieve mastery of the subject taught.⁷ Legal academia has no doubt failed to address this need for a number of reasons. Even if the following are not the only reasons for the failure,⁸ two false presumptions likely explain a great deal: (1) teaching is really not that hard and a professor smart enough to be selected to be on a law faculty ought to be intelligent enough to teach herself how to teach, and/or (2) teaching skills are somehow genetic. Anyone who finds either of the above reasons even remotely appealing should read Ken Bain’s *What the Best College Teachers Do*.⁹ There, Bain relies not simply on his own views but on those of the most respected teachers across the country to shatter many of the false beliefs about teaching in higher education, including the two false premises stated above.¹⁰ A person’s raw

6. STUCKEY ET AL., *supra* note 2, at 78.

7. *See id.* at 79.

8. In his excellent article entitled: *Teaching Law By Design*, Professor Michael Hunter Schwartz lists a number of the other likely reasons law schools and teachers have stuck with the same model of legal education, despite evidence that it is deficient. *See* Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 360-65 (2001) (suggesting reasons such as promotion and tenure systems that do not encourage innovation in teaching and, to some extent, deemphasize the significance of teaching versus scholarship, law school economics, and downright aversion to change).

9. KEN BAIN, *WHAT THE BEST COLLEGE TEACHERS DO* (Harvard Univ. Press 2004).

10. *See id.* Concerning the notion that a teacher’s abilities are somehow inherent, Bain comments as follows:

intelligence does not mean that he or she will be effective at teaching.¹¹ Moreover, excellent teachers develop the skills necessary to teach in much the same way that most talented craftsmen (or workers) do – by working at it, and caring about their work.¹²

This article unfolds in several parts. Part I summarizes the key findings of the group of seasoned legal educators who produced the *Best Practices* Report.¹³ Because the Carnegie Foundation's findings are more general than the detailed and specific findings of the *Best Practices* report, the article relies more on the latter than the former. Nevertheless, any reader would benefit from studying both reports and would be hard-pressed to find inconsistencies.

Part II summarizes the deficiencies in legal education, as articulated by the authors of the *Best Practices* report.¹⁴ Part II also offers a preview, developed more fully in Part V, of the ways to overcome these deficiencies.

Part III presents the most common objections raised in favor of persisting in a case-based approach to legal education, dominated by the Socratic method.¹⁵ In other words, this section articulates the most common arguments for maintaining the status quo. In Part III, the author articulates responses to each of these objections.

Part IV offers a review of educational theory and teaching methods that predate the *Best Practices* Report.¹⁶ As this section shows, some law professors have known – and raised concerns – even before the 2007 studies that agree with these professors. As the articles and studies in Part IV show, law school teaching is out of step not only with general educational principles that are decades old, but also with a growing body of research on legal education. The research on law student learning styles is particularly intriguing. That research shows that the twenty-one to thirty-one-year-old Millennial Generation¹⁷ of law students now dominating law school classrooms has more diverse learning styles than ever. The research

Perhaps the biggest obstacle we face is the notion that teaching ability is somehow implanted at birth and that there is little we can do to change whether we have it or not. Our subjects struggled to learn how to create the best learning environments. When they failed to reach students, they used those failures to gain additional insights. Most important, because they subscribed to the learning rather than the transmission model of teaching, they realized that they had to think about ways to understand students' learning.

Id. at 173.

11. *See id.* (explaining that simply because a teacher knows information and seeks to transmit what she knows is a common fallacy about effective teaching).

12. *See id.* at 174 (“Part of being a good teacher . . . is knowing that you always have something new to learn . . .”).

13. *See infra* notes 21-27 and accompanying text.

14. *See infra* notes 28-40 and accompanying text.

15. *See infra* notes 41-57.

16. *See infra* notes 58-129 and accompanying text.

17. For a discussion of the meaning of “Millennial Generation,” see *supra* note 5.

further demonstrates that the visual and technological revolution of the past two decades has affected the way these students learn best.

Part V describes a number of the diverse methods that the author has used in teaching his first-year Civil Procedure course.¹⁸ As this part illustrates, the author has found these teaching methods to be an effective complement to case-based, Socratic dialogue.¹⁹ Finally, Part VI explains why new law professors may well play a crucial role as catalysts for a change in law school classroom teaching methods.²⁰

I. A CALL FOR CHANGE IN LAW SCHOOLS

The year 2007 marks the culmination and publication of *Best Practices for Legal Education* – a project conducted by seasoned law professors designed to evaluate how effectively law schools are preparing students for legal practice.²¹ This *Best Practices* project was initiated in August 2001 and has been a collaborative effort over the course of the last six years.²² The project was motivated by the professors’ “concern about the potential harm to consumers of legal services when new lawyers are not adequately prepared for practice” as well as helping graduates succeed in the law practice and lead healthy lives.²³ The result of the project has been clear: a call for “legal educators, lawyers, and judges . . . to reevaluate [] assumptions about the roles and methods of law schools and to explore new ways of conceptualizing and delivering learner-centered legal education.”²⁴ Although *Best Practices for Legal Education* is quite lengthy, it stands as a clarion call to legal educators everywhere who care for the future of their profession and for students. Any law professor would do well to read it from front to back.

Best Practices for Legal Education argues that the improvement in educating lawyers is necessary because, although one might assume that law schools would adopt the best educational practices of other disciplines, most law schools in fact have not.²⁵ As a result, “[l]aw schools are not adequately preparing most students for practice, and licensing authorities are not adequately protecting clients from unprepared new lawyers.”²⁶ As noted above, the Carnegie Foundation for the Advancement of Learning published the results of its independent study into law school educational

18. See *infra* notes 130-160 and accompanying text.

19. See *infra* notes 37-40, 130-160 and accompanying text.

20. See *infra* notes 161-166 and accompanying text.

21. See STUCKEY ET AL., *supra* note 2, at vii-ix.

22. *Id.* at viii.

23. *Id.* at 1.

24. *Id.* at 3.

25. *Id.* at 2.

26. *Id.* at 210.

methods.²⁷ Particularly in the light of these two most recent studies, law schools ought to come out of denial – *i.e.*, honestly recognize that when case-based, Socratic teaching dominates as much as it does, law students as a whole suffer. The method favored for over a century may allow some percentage of law students to excel. However, many, if not a majority, of law students fail to receive the quality of education of which the legal academy is capable of providing, if it only takes its head out of the sand.

This article does not attempt to duplicate the work of the *Best Practices* project or of the Carnegie Foundation study. Instead, it offers further evidence supporting both projects' call for change. Moreover, the author provides concrete examples of methods that he has used in an effort to provide a more diverse teaching experience. The author's examples are from Civil Procedure because that is his area of expertise, but the methods can be adapted to any course. The point of explaining in detail the different teaching methods is to show how the professor can engage students not only through reading cases and oral dialogue, but also through other means that enhance and reinforce the teaching of a subject. These include visual methods that often are combined with Socratic dialogue in class, as well as techniques designed to provide "hands on" learning for those who learn best in that way. The author employs these alternative teaching methods because he is convinced that the findings on student learning styles – that people have diverse ways of learning information – are true, and that all students benefit from diversity in teaching methods.

Now that senior members of legal academia have shown the courage to expose the dysfunction in legal education, this article in part challenges new law faculty to serve as leaders in the movement to improve law school teaching. Because they are often more technologically savvy than more senior law professors, and because they in fact may share some of the traits of the students they teach (*e.g.*, having been influenced by the increased dominance of visual images in the culture), new faculty are perhaps best equipped to lead the change in law school teaching. But senior faculty ultimately has to be willing to recognize the need to change. Thus, this article challenges all law professors (both rookies and veterans) to re-evaluate their individual pedagogies in the classroom and, if necessary, to reform them if they do not align with best educational practices.

II. PROBLEMS IN THE CLASSROOM

As the evidence presented in this article shows, law students of today are not like the students who attended law school when the current model of teaching evolved. The method of reading casebooks and answering Socratic dialogue still provides many law students with basic knowledge and, for a small group, will instruct them really well. Is there something wrong, however, with a model that accepts that only a small group will

27. See SULLIVAN ET AL., *supra* note 3.

learn really well? And, more troubling, is there something even unfair when – as studies show – law professors and this small (dare one say, elite) group who do well in the traditional model match each other – both groups representing a fraction of law schools and the legal profession? “Legal educators can improve their teaching . . . by understanding [the] basic characteristics of adult learners” and incorporating the methods that reach a broader group of learners than law teachers are currently reaching.²⁸

Best Practices for Legal Education makes this simple, yet remarkably profound, statement:

Legal educators generally ignore long-recognized basic principles of curriculum development, which involves four stages:

Stage 1: Identifying educational objectives that the school or course should seek to attain.

Stage 2: Selecting learning experiences that are likely to be useful in attaining those objectives.

Stage 3: Organizing the selected learning experiences for effective instruction.

Stage 4: Designing methods for evaluating the effectiveness of the selected learning experiences.²⁹

Why is it that we (educators of the legal profession) have not been at the cutting edge of better educational and curriculum development? If one’s goal is to reach as many of his or her students as possible and inspire them to learn whatever legal rules are applicable, and to sharpen their analytical skills as applied to that subject, then one could call that tailoring one’s approach to learning styles. One could also call it effective teaching. The evidence is now in: diverse teaching methods help all students, not just a few. As is explained more fully below, research shows that even those who have a preference for aural learning (and, hence, are the ones who should best learn in a Socratic-focused class) benefit from having other

28. GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 11 (1999). Professor Hess and Professor Friedland’s book is on the first to provide law teachers with examples of diverse teaching methods with which to complement the Socratic method. Indeed, their book offers valuable advice on how a teacher may question students more effectively in the Socratic tradition. *See id.* at 55-79. In this author’s opinion, Professor Hess and Professor Friedland’s book represents an essential aid with which to teach one’s course in a more diverse (and effective) manner than the typical law school class.

29. STUCKEY ET AL., *supra* note 2, at 2-3; *see also* HESS & FRIEDLAND, *supra* note 28, at 21-53 (including suggestions by which to address each of these states in designing a course).

methods of teaching support the “aural” learning offered by the Socratic method.³⁰

Does the unwillingness to embrace methods to complement the Socratic method actually represent an unhealthy elitism? Evidence suggests that the large-class Socratic format discourages participation of many students, particularly women and minorities.³¹ If women and minorities do not benefit from the pure-Socratic approach, we ought to ask ourselves whether professors are ironically perpetuating a subtle form of discrimination by their insistence upon a purely Socratic classroom. The *Best Practices* Report maintains that, although the Socratic dialogue and case method still have their place in legal education, they are not alone sufficient to teach all law students the skills and knowledge they need as practicing attorneys and, as such, the classic model of law school teaching has been criticized on many levels.³² The study concludes that, in order to adequately educate legal professionals, we law professors must be “multi-modal in our teaching and reduce our reliance on the Socratic dialogue and case method.”³³ “The Socratic dialogue and case method has significant defects as an instructional tool. Its impact on individual students is sporadic, it emphasizes certain steps of the cognitive process while ignoring others, and it does not provide a feedback mechanism to address and correct deficiencies [in students’ skills].”³⁴

The author does not believe that most law faculty would cling to a method to discriminate in favor of the few. Indeed, most faculties when made aware of this tendency are more likely to seriously reconsider whether to adopt more diverse teaching methods. The most likely explanation for professors’ resistance is the concern that teaching in a form other than the Socratic model will be too much work. Anyone who ponders that point for awhile should recognize the flaw in such thinking. Effective Socratic questioning – done well – takes quite a bit of time and effort.³⁵ Could part of the time each week be devoted to some other methods that are just as, if not more, challenging, but provide diversity to the classroom? As will be shown below, these other methods often

30. See *infra* notes 77-83 and accompanying text.

31. See STUCKEY ET AL., *supra* note 2, at 112.

32. See *id.* at 132-41.

33. *Id.* at 132.

34. *Id.* at 134.

35. Both the *Best Practices* report and Professor Hess and Professor Friedland’s excellent book on teaching methods include a chapter on ways to improve use of the Socratic method. See STUCKEY ET AL., *supra* note 2, at 207-234; HESS & FRIEDLAND, *supra* note 28, at 55-79. On the subject of Socratic dialogue and the misperception that effective Socratic questioning is easy, the author cannot help but recall a colleague’s recollection of a conversation with his spouse. As the story goes, my colleague was trying to explain the need to spend more time preparing for class. The spouse’s response was priceless: “Oh, don’t give me that! Just use that Socratic thing where you ask the students questions and make them do all of the work.”

enhance Socratic dialogue by using a visual aid that focuses the key part of a dialogue (and avoids wasting time describing orally through a series of questions and answers what can be seen instantly).³⁶

Part V will describe in more detail a variety of methods to teach Civil Procedure. An example of one of these methods demonstrates the pedagogical value of departing from the Socratic-only mode. This is just one example, and does not even involve the kind of visual tools that the author describes in Part V. However, the author chooses this example because it shows how even a traditional Socratic approach can be varied by putting the students in the position of someone who *experiences* the real-life impact of a procedural doctrine.³⁷ The example involves the constitutional requirement of notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*³⁸ is the watershed case for the due process requirement of giving defendants notice of proceedings and an opportunity to be heard. The case is in most Civil Procedure casebooks for good reason: it is a United States Supreme Court case that articulates the rules for this area of the law that, ever since, have been the standard. *Mullane*, however, is highly complicated, and deals with different classes of trust beneficiaries for which the bank was the fiduciary. The facts provoke more than a few yawns from the most ardent civil procedure buffs. If any case should prompt a law professor to provide some method to spice up the class discussing it, this case does.

Instead of following the usual path of launching into questions about *Mullane*, the following introduction will bring home, personally, the value of notice and an opportunity to be heard. In the class preceding the introduction of *Mullane* and its recognition of a constitutional right to notice and an opportunity to be heard, the author makes it a point to walk around the classroom more than usual. In the next class, before even discussing *Mullane*, the author begins by noting the lack of a policy in the school or the course syllabus banning use of laptop computers for non-class-related uses during class time.³⁹ The author then points out that he believes the syllabus nevertheless imposes an implicit requirement of students to pay attention to the professor and not use laptops for purposes other than class-related work. At this point, the author states the following: "I observed ten of you in my last class surfing the Internet and asked the Dean of Academic Affairs about how I should deal with such behavior. We decided that I should dock the ten of you one letter grade off whatever

36. See, e.g., *infra* notes 48-51, 147-148

37. The author thanks Professor Michael Hunter Schwartz primarily for the suggested method of getting students' attention. In collaborating on an earlier version of this article, Professor Schwartz suggested this method as one that I should consider in teaching notice and an opportunity to be heard.

38. 339 U.S. 306 (1950).

39. Needless to say, one could not do so if the law school had such a policy or the professor imposes such limitations in her syllabus.

you make on your exam. I will notify you by e-mail after class which of you are affected.” After a long pause (during which one could hear a pin drop in the classroom), the author smiles and asks: “What’s wrong with the approach I just described?” If some student wants to discuss ex post facto laws, the professor can redirect them to the procedural flaws in the “hearing.” Did the professor make the affected students aware of the meeting with the Dean at which their conduct would be discussed and their grade affected? If students were present and had the opportunity to speak, would that possibly have changed the result? Could they have explained that they were looking up a term the professor had referred to? Could the students have called as witnesses the students seated near them to say whether they were distracted by the alleged Internet surfing?

When the class launches into *Mullane* and related cases, students are more likely to pay attention to the importance of the requirements for notice and an opportunity to be heard. At worst, the professor ought to notice fewer yawns. At best, the professor will demonstrate in a lasting way why courts insist on constitutionally sufficient notice and perhaps, as an incidental effect, discourage students – once they become lawyers (or judges) – from engaging in ex parte practices to which some lawyers will stoop even when not authorized by the Rules.⁴⁰ When one has experienced the feeling of injustice at discovering opposing counsel and the judge assigned to handle a case have been talking about the case out of one’s presence, one can easily see the analogy to having a case brought before a court without a party’s knowledge due to inadequate notice. Both scenarios are inherently unfair, and by underscoring the impropriety of such communications except in the rarest cases, we help students to begin developing a sense of professional responsibility that an upper-level course on ethics will reinforce. In my judgment, this type of lesson is one that cannot be reinforced enough – and there is no reason to assume that, just because students will have a course in ethics later, the professor should not begin to raise such issues in the first year.

III. ANSWERS TO COMMON OBJECTIONS

Many law professors chafe when approached with the idea that the Socratic method could or should be complemented by diverse teaching styles. This section describes the most common objections to more diverse teaching methods. The section also responds to each objection.

When one seeks to depart from exclusive reliance on the case-based, Socratic method, one of the first objections one hears is that the introduction of diverse teaching methods makes the learning process less rigorous. The second objection is that the Socratic dialogue has been

40. A party can legitimately approach a judge without notice to one’s adversary – *i.e.*, ex parte – in limited scenarios such as when the grounds for a temporary restraining order under Federal Rule of Civil Procedure 65 are met.

effective for over a century,⁴¹ and why should it be changed now? The third objection asks whether a student, whose learning style requires alternative teaching methods to the Socratic dialogue, will have difficulty practicing law. The fourth objection asks why it is the professor who must adapt to a new teaching style and not the student himself.

To answer the objection that diverse teaching methods strip the Socratic method of its pedagogical strength, one should begin by asking what purpose a good Socratic dialogue serves. Most would agree that its purpose, ideally, is to challenge students to sharpen their legal analysis and prepare them for real world practice. Michael Vitiello states, for instance, that Socratic discussion “is not a broad ranging discussion of theories, but instead, forces students to prepare for class, increasing their ability to learn the material and to learn legal analysis by applying rules to new facts.”⁴² One of the goals of Socratic dialogue is to keep students prepared for class and skillful in oral dialogue. This preparation will in turn equip students for their post-law-school “trial by fire” of a hot appellate bench or a feisty trial judge. As an associate before a senior partner or a green attorney before a judge, a young lawyer cannot afford to be unprepared in her research and must be able to think on her feet.

Other educational methods, however, challenge students to think as well as, or better than, the Socratic method. Many of these alternative methods also mirror the skills needed in law practice. For example, ask most litigators if they have spent more time on performing written analysis of a legal problem (whether in the form of an opinion letter to a client, an objective interoffice memorandum, or a brief) or in oral arguments. The author has little doubt that written analysis will for many, if not most, lawyers be the activity they identify as having taken up more of their time. Indeed, the predominant mode of assessing student performance in a course is not by oral questions (as is the norm in some other graduate disciplines) but rather by written analysis in a final exam. Periodically forcing students to write an analysis on a challenging hypothetical presents every bit as much a challenge as the same time spent in Socratic dialogue. Nor do professors have to grade or even review every student’s analysis. She can, instead, tell students they must turn them in. An assistant can review the papers to see whether a student made a good-faith effort. The professor would be well advised to review some herself because the value of such exercises is not solely for the students. Sound pedagogical tenets have long

41. See Daniel R. Coquillette, *The Legal Education of a Patriot: Josiah Quincy Jr.’s Law Commonplace (1763)*, 39 ARIZ. ST. L.J. 317, 324 (2007) (“Christopher Columbus Langdell became dean of the Harvard Law School in 1871 and thereafter began teaching classes by the ‘Socratic’ method. Langdell was chosen to head the Law School because of his idea that law could be approached scientifically (rather than practically) and the underlying principles of law discovered by ‘dissecting’ appellate cases.”).

42. Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955, 965 (2005).

shown that effective education includes some classroom assessment techniques by which the teacher can gauge aspects of the topic that students may not be grasping fully.⁴³

The author takes a somewhat different approach from having graduate assistants review “practice” exam answers. At least one class each semester, after covering sufficient material, the author reserves a class for students to take an “exam” in class. They receive an essay (often a past final exam essay) that would, if it were the final exam, have to be answered within an hour for the student to have time to address the rest of the exam. The author then tells students that he will be roaming around to ensure they are writing something. If a student is absent that day, she must write her answer at another time, in a conference room. Rather than grading the exams, the author then calls on students in the next class to discuss the steps to constructing an excellent essay answer to the exam. In this way, first-year students at least have the experience of writing an exam (and realizing the need to synthesize materials we have covered so as to meet time pressure) before the final exam, where they will have to answer several essays.⁴⁴

In addition, attorneys spend their professional careers educating others, including, clients, other counsel, judges and juries. Professors should alert them that, as part of their job in the profession, they will have to teach these groups and perhaps others. Educational methods should equip students with tools to better educate those who (in the case of, for instance, clients and jurors) are not acquainted with applicable legal concepts, theories, or rules.⁴⁵ In order to explain a complex legal concept or theory to a client or jury, an attorney must adapt her “teaching style” to them. The diverse methods proposed for the classroom give the attorney experience in understanding and explaining legal concepts in different

43. See Schwartz, *supra* note 8, at 347, 383-86, 404 (2001) (instructional design should be reflective, having an “analysis phase” or “evaluation stage” to determine whether the instruction is successful. The instructional designer should assess whether the “goals are being met as efficiently, effectively, and appealingly as possible,” and prioritize “any gaps between what should be happening and what actually is happening.” They should identify the “causes(s) of any failures to achieve the stated goals.” Evaluation is important for assessing student performance and providing information about needed revisions in the instructional material.)

44. The author also encourages students to schedule an appointment to review their in-class answers to the “practice” exam, particularly if the follow-up class shows that they did not answer in a thorough, logical manner.

45. The challenge of the Socratic dialogue as a means of equipping lawyers for practice has been present in America since before the Socratic system of education itself. Evidently the antecedent to the agonies of the case method was the “commonplace” method which along with the apprenticeship model was the primary method of learning law in Colonial America. Coquillette, *supra* note 41, at 319, 334-35. It seems that American students have always been challenged with cases analysis and the complementary methods argued for here are not meant to take away that challenge but to better arm the student to be a lawyer.

ways. That experience will benefit her as she works with clients, jurors, and other non-lawyers in the real world. The author follows what one may call a “transparent” approach of telling students (1) why the professor employs a variety of teaching methods (*e.g.*, explaining that the class includes students with a variety of learning styles, that diverse methods are essential to some [such as a visual learners], and that diverse teaching methods help students even if they have a verbal/aural preference); and (2) that they will themselves in the not-too-distant future have to teach groups with a far more diverse range of learning preferences than a law school class. The author gives the example of a jury, but also makes clear that even non-litigators are now expected to present effectively to clients. When clients use PowerPoint slides, graphs, and diagrams as a regular part of their job (businesses of all sizes certainly do), will they not expect their lawyer to have the same facility? The point of encouraging students to recognize that they will ultimately have to convey what they are learning is that, when students start thinking of ways to teach material, they are more likely to learn the material themselves.

And now the author takes on the question of rigor. This objection appears to rest on the notion that Socratic-style questioning is somehow the pinnacle of intellectual rigor and anything else represents a softening of standards. When visual aids enter the equation, some even perceive these as “dumbing down” the curriculum. Many students, however, learn more efficiently when visual aids are used to help clarify a legal hypothetical.⁴⁶ And, for the reasons that follow, the author questions the assumption that analysis employing visual aids need be any less rigorous. It may be true, as some contend, that judges will not provide visual aids in asking questions. However, effective advocates intuitively rely on diagrams or other visual aids in engaging a judge or jury. And judges do, when so engaged, often rely on the diagrams themselves to ask further questions. If a professor teaches first-year students, moreover, it should go without saying that they are *not* yet advocates. The notion that somehow the primary goal of the first-year course should be to have students ready to deliver oral arguments is misplaced. As explained below, the author sees mastery of the subject matter as a primary objective in his first-year civil procedure course.⁴⁷

Although Parts V and VI demonstrate the point in greater detail, an example here underscores the point that visuals need not reduce the rigor of legal analysis. Joinder of claims and parties is a subject that many professors combine with supplemental jurisdiction. Students need to learn that, even if a Federal Rule permits joinder of a party or claim, the federal

46. See *infra* notes 48-51, 147-148 and accompanying text.

47. See HESS & FRIEDLAND, *supra* note 28, at 21-53; see also STUCKEY ET AL., *supra* note 2, at 3. If one examines the sources on which both Professors Hess and Friedland and the *Best Practices* report rely, these include not only research and scholarship focused on legal instruction, but even more so on well-established pedagogical principles published in educational texts, journals, and other such respected resources.

court may not have jurisdiction over that party or claim. Often the professor will spend two weeks of Socratic, case-based dialogue involving cases that illustrate every type of joinder permitted under the Federal Rules of Civil Procedure – reinforcing that even if a rule permits joinder, the federal court must have jurisdiction too.⁴⁸ Toward the end of joinder analysis, most casebooks incorporate *Owen Equipment and Erection Co. v. Kroger*.⁴⁹ The case shows how Rule 14 of the Federal Rules of Civil Procedure allowed a third-party defendant to be brought in by the defendant and even allowed the original plaintiff to sue the third-party defendant. Because the plaintiff was a citizen of the same state as the third-party defendant, however, the Court held that the plaintiff's claim violated principles of complete diversity of citizenship and that the court lacked jurisdiction over the claim even though the Rule permitted it.⁵⁰ Although not passed at the time, the supplemental jurisdiction statute incorporates the ruling of *Owen*.⁵¹

Because of the complexity of the parties and claims in *Owen*, PowerPoint slides are an effective tool to depict the scenario and address the rules. The professor doubtlessly saves valuable time by this means. The professor need not short-circuit the process of asking the students to work through each step in the process. The value is that, toward the end of joinder and supplemental jurisdiction, the professor can cover a complex case quickly while still challenging students.

The second objection to moving toward more diverse teaching methods can be summed up as: “Why rock the boat?” Although it is true that the Socratic dialogue in law schools has been around for over a century without alternative methods, we as legal educators must ask ourselves why it is that we come to work everyday. If the purpose of our profession is to educate and train students to become competent professionals and advocates, should we not constantly evaluate and reevaluate our teaching methods? In practice, the effective lawyer must constantly evaluate and reevaluate her theory of a case to tighten up her legal arguments. Should not a law professor, whose calling is to educate young lawyers, be constantly evaluating, reevaluating, and tightening up her teaching methods to be the most effective educator she can be? As explained in response to the first objection, and as is shown more fully in the remaining sections of this article, different methods of teaching should offset the deficiencies of the Socratic method. In light of that, the question we really should be asking is: “Why *not* rock the boat?” The boat clearly needs rocking.

The third objection to diverse teaching methods might be posed as the following question: Will not a student whose learning style requires a

48. See 28 U.S.C.A. § 1367 (West 2008).

49. 437 U.S. 365 (1978).

50. *Id.* at 374.

51. See 28 U.S.C.A. § 1367(b) (West 2008).

teaching method different from the standard Socratic method have a difficult time in the practice of law? Michael Vitiello states well the necessary skills of a young lawyer:

[T]he overwhelming majority of lawyers must be able to read and analyze statutes, rules, and cases. They must be able to take complex facts and figure out how the various rules and cases apply to those facts. They must be able to draft coherent legal documents whether they are litigators, transactional lawyers, or administrative advocates. They must be able to digest and synthesize large amounts of material.⁵²

Vitiello makes the argument that the vast majority of lawyers will need to have the skills of a verbal learner in that they will be required to gain knowledge through written texts.⁵³ He then asks whether students of the other learning styles that have difficulty learning by written text (which is what lawyers primarily do) should not make a different career choice that will call upon that individual's strengths.⁵⁴ The student who *cannot* learn *at all* by the verbal method (through written word) probably will not make a competent attorney. However, the diverse teaching methods explained in this article should help give students the skills they need to be more proficient at reading complex legal writing and analysis and equip them to apply real world facts to rules and case law. Is it not self-serving, moreover, to suggest that law faculty should have to teach only those to whom verbal learning comes easy? Instead, law professors should consider whether they can do more to help those in class, who come to law school with learning strengths other than verbal, to grow in verbal analysis and aid them in class, and to use those strengths to help hone their verbal learning skills. Besides, for those students in the classroom who are primarily verbal learners, such teaching can help to reinforce their understanding.

The fourth objection asks: Why must the teacher change her teaching habits to reach the needs of a broader group of students, and not place the onus on students to adapt? A more blunt way of stating this objection is to say that it is not the professor's job to "cater to learning styles." A fair response to this objection is that legal academia has been catering to a learning style for far too long – a specific one with which law faculty are comfortable. By varying her teaching methods, the professor not only challenges students with a highly verbal/aural learning style (*i.e.*, the case-based Socratic), but also others who can benefit significantly from diversity in teaching methods. As is shown below, all students – regardless of their preferences – benefit from expanding teaching methods to include a diverse mix.⁵⁵

52. Vitiello, *supra* note 42, at 1011 (citations omitted).

53. *Id.*

54. *Id.*

55. *See infra* notes 77-83 and accompanying text.

Another response to the fourth objection relates to efficiency. As professors, we know that time is a very precious commodity in both law school and practice. Let us assume a situation where a complementary (diverse) method can convey information more quickly and effectively to students than the traditional Socratic approach.⁵⁶ If a professor can save fifteen minutes in class, and avoid time-wasting confusion, she can then move to more in-depth questions and further push students in dialogue. The professor is in charge of time management in the classroom, and it is her responsibility to ensure that specific topics are covered before the end of the semester. If it is the calling of a professor to teach her students the best she can, then she should strive for both efficiency and productivity in the classroom. The Socratic, case-based approach is often inefficient. By using other methods to achieve efficiency, the professor enhances course coverage. As noted above, the alternative methods may be paced as the professor deems appropriate. However the professor who chooses to alternate teaching methods is likely to see increased efficiency. My description above about the use of a modest PowerPoint presentation to show the complicated configuration of parties and claims in the *Owens v. Kroger* case offers but one example of such efficiency.⁵⁷

IV. INFORMATION PROCESSING, LEARNING STYLES, AND THE NEED FOR BOTH ATTENTION TO CONTEXT AND FOR DIVERSE TEACHING TECHNIQUES

This section of the article is designed to show that the *Best Practices* Report is saying what educational theorists in other disciplines have known for a good while. Information processing is a challenging job in any discipline. In the field of law – where students are expected not only to learn both content and analytical process, and then apply what they have learned to new factual scenarios – the information processing challenge may be as great as in any field. Moreover, the research on learning theories has provided substantial insights into how different people learn. Some research suggests that the effect of our highly visual culture may have impacted learners that otherwise would not necessarily find visual aids helpful. Even more interestingly, new studies of law school students provide evidence that the law student of today is not like the law student of old. Finally, this section describes how diverse teaching methods are well known to help persons from a variety of backgrounds and learning styles.

56. See *infra* Part V (describing a number of methods).

57. See *supra* notes 48-51 and accompanying text. Part V of this article offers other methods that, far from taking time from class, advance the analysis to key points.

A. *The Challenges to All Students in Processing Information*

Psychologists have demonstrated the challenges all learners face in processing information.⁵⁸ If we receive information but do nothing to reinforce it, the information will be lost in a reasonably short time.⁵⁹ Even if we reinforce the information and thus do some initial processing, the data will remain in short-term memory for some time but again will be lost if the person does not perform further processing.⁶⁰ If information is elaborated upon, organized, or catalogued, (put into a framework) then not only the information itself will be moved from short-term memory to long-term memory, but also will the procedures by which one has analyzed.⁶¹ Yet all the steps necessary to work effectively with the information and analytical processes studied to that point are still not complete.⁶² Information and analytical processes can make it to long-term memory and still be forgotten so as to be inaccessible when the person needs them most.⁶³ By further reinforcement, the person can get the information from long-term memory to working memory – the place where, if one has done the processing necessary to assimilate information and processes, she will be able to perform the high-level brain activity of analyzing facts and problems in the subject she has studied.⁶⁴

58. See, e.g., Schwartz, *supra* note 8, at 372 (cognitivists compare a learner's mental processing to a computer, as "[h]undreds of pieces of information reach the senses every moment"); ROGER H. BRUNING ET AL., COGNITIVE PSYCHOLOGY AND INSTRUCTION 7 (Pearson Prentice Hall 4th ed. 2004) ("Expertise depends on building repertoires of automated cognitive processes and . . . there are really no shortcuts to acquiring them."); *id.* at 15 ("[O]nly a small amount of information can be processed at one time."); *id.* at 17 (everyone's attention is limited, so everyone has a limited information processing capacity).

59. See BRUNING ET AL., *supra* note 58, at 18 (if information is perceived but not transformed or analyzed, then it will be lost); *id.* at 77 ("[I]f only superficial or surface aspects of the new information are analyzed, the information will be less well-remembered. . . . [M]emory depends on *depth* of processing."). See generally Eric A. DeGroff & Kathleen A. McKee, *Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles*, 2006 B.Y.U. EDUC. & LAW J. 499 (2006).

60. See BRUNING ET AL., *supra* note 58, at 26-27 (short-term memory has limited capacity and duration and is subject to interference); *id.* at 30 ("[W]orking memory is responsible for active information processing rather than strictly passive short-term maintenance of information."); *id.* at 66 ("Maintenance rehearsal is the direct recycling of information in order to keep it active in short-term memory."); *id.* at 67 (elaborative rehearsal is when the information to be remembered is related to other information. "When long-term memory is desired . . . some form of elaborative rehearsal should be employed.").

61. See *id.* at 67.

62. See *id.* at 55 (activation is needed to reverberate information from long-term memory back into working memory).

63. See *id.* at 36 (meaning and organization are important for long-term memory. "Recall depends on our understanding what information means and being able to find it.").

64. See *id.* at 30 ("[W]orking memory is the place where meaning is made in the information processing system."); *id.* at 55 (working memory and long-term memory are not "separate places" but rather . . . closely interrelated. The current contents of consciousness set up a pattern of activation in [long-term memory]; this activation of [long-term memory],

In any course, a professor does students a service by explaining, at some time near the beginning of a semester, the hurdles to learning, especially to learning complex legal topics that the student will be expected in the final exam to pull from her working memory under time pressure and apply information to a set of facts she has never seen before. This discussion probably fits best in the initial class of a semester discussing the professor's expectations of student preparedness. The professor could, for example, show a diagram illustrating the multi-step process everyone must go through in learning.⁶⁵ A helpful diagram appears in Professor Michael Hunter Schwartz's book, *Expert Learning for Law Students* – another of the indispensable books for the libraries of those seeking to better understand the challenges to both law students and law professors in the improvement of legal education.⁶⁶ Some learning experts identify as many as seven steps in the processing of information.⁶⁷ Not coincidentally, a traditional benchmark in marketing is that consumers must be exposed to at least seven instances of a product or advertising message to have it stick.⁶⁸

in turn, 'reverberates' back into working memory."); *id.* at 59 ("Information is taken in, processed in a single central processor of working memory, and stored in and retrieved from long-term memory.").

65. BRUNING ET AL., *supra* note 58, at 26 (Step 1: initial sensory receipt from incoming stimuli. Step 2: entering of information into short-term memory after initial processing); *id.* at 27, 36, 66 (Step 3: short-term memory maintained despite intervening information by rehearsal. Constant rehearsal and repetition are crucial for keeping information in working memory.); *id.* at 30, 67 (Step 4: elaborative rehearsal used to get information into long-term memory); *id.* at 55, 59 (Step 5: information processed and activated to get into long-term memory); *id.* at 58 (Step 6: activation "reverberates" information from long-term memory to working memory); *id.* at 60 (Step 7: when needed, information is pulled from long-term memory into working memory).

66. MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* 24 (Carolina Academic Press 2005) (figure 1 entitled "A Cognitivist Model of How Humans Learn," demonstrates the process starting with the stimuli received into a person's brain and the path into working memory and long-term memory).

67. *See supra* note 65 (identifying the seven steps in processing information).

68. *See* Joe R. Hinojosa, *The Food and Drug Administration's Final Rule on Tobacco Advertising is All But Final: Commercial Speech Doctrine Will Be Tested Once More Under a Stricter Central Hudson Analysis in the Aftermath of 44 Liquormart, Inc. v. Rhode Island*, 28 ST. MARY'S L.J. 729, 774 n.188 (1997) ("An advertising professor's recent study of commercial exposure and its effect on consumers has concluded that a 'single advertising exposure' over a period of seven days may be just as effective as a media blitz for a longer period of time."); Bill Platt, *Become a Recognized Name - You're in Control of Your Own Destiny*, May 30, 2007, <http://www.keywordtext.com/pudding/20.html> (last visited Aug. 20, 2008) ("Most marketing polls suggest that it will take you seven exposures before you will have earned enough trust to get a sale online or offline. What that means is that your potential customer must see your name and your ads a minimum of seven times before you can expect their interest to peak enough to give you a second look."); Bob Osgoodby, *The Rule of Seven*, MARKETING IRJ, <http://www.insiderreports.com/storypage.asp?storyID=20001012&ChanID=MR> (last visited Aug. 20, 2008) ("In any advertising program, professionals will tell you it takes a[t] least five to seven exposures before someone may act on your ad.").

With the data overload that the average person now experiences on a daily basis, psychologists suggest that more than seven instances of exposure are necessary to get a message to stick with a consumer.⁶⁹

By reviewing the multiple steps in storing information and analytical processes, the professor can help students to see that reading the material once before class is insufficient. In the multi-step framework outlined above, the classroom treatment of a topic is but one step in the process of achieving the goal of learning information such that a student can recall it when needed. Students will thus better understand how they need to begin the process of learning before ever entering a class session devoted to a given topic. Indeed, they may even begin to appreciate the value of preparing case briefs prior to class. Perhaps more importantly, students will also appreciate the value of the work they need to do after a class session on particular material. If a student does not return to the material and ponder how it fits within the context of a course, and how to progress through the logical series of steps that comprise the analytical framework for that topic, the student will likely find herself struggling later. Hence, the value of relying on some form of organizational structures such as outlining or hierarchical flow charts cannot be exaggerated.⁷⁰ Nevertheless, students who believe the work is complete upon outlining a course will likely find themselves unprepared later.⁷¹

B. Learning Styles and the Value of Visual Teaching

In addition to the challenge just identified for everyone to learn information so as to be able to apply it, we face another level of challenge in the variety of students' learning styles.⁷² The reality of diverse learning

69. Platt, *supra* note 68 ("Most marketing polls suggest that it will take you seven exposures before you will have earned enough trust to get a sale online or offline. What that means is that your potential customer must see your name and your ads a minimum of seven times before you can expect their interest to peak enough to give you a second look."); Osgoodby, *supra* note 68 ("In any advertising program, professionals will tell you it takes a[t] least five to seven exposures before someone may act on your ad.").

70. See SCHWARTZ, *supra* note 66, at 147-70.

71. See *id.* at 171-86.

72. Throughout this article, the author uses the phrase "learning styles" broadly to refer to a person's preferred mode or modes of learning. Although a plethora of learning style inventories have developed, perhaps the most accessible is VARK – "V" for visual preference, "A" for aural preference, "R" for reading/writing preference, and "K" for kinesthetic preference. An excellent description of the VARK model may be found at <http://www.vark-learn.com/english/index.asp>. The 16-question free questionnaire on the site helps one determine one's likely preference(s). A more detailed questionnaire, with a report by experts, may be purchased. The site has a useful description of each learning preference in an understandable format. More sophisticated learning style inventories, such as the Kolb learning styles inventory, are useful for empirical research such as the research on law student learning styles conducted by Professor DeGroff and Professor McKee. See DeGroff & McKee, *supra* note 59.

styles is a fact of which law professors are becoming increasingly aware.⁷³ Indeed a growing body of research on law school learning styles now exists.⁷⁴ That research suggests that traditional views of the learning styles of law students are changing.⁷⁵ Traditionally, we have presumed that the majority of law students are verbally and aurally oriented learners, processing information best through reading it and writing about it, or at least were aural learners, learning information best through hearing a lecture or some form of Socratic dialogue.⁷⁶ Although law students continue to show a verbal and aural preference for learning, this dominance is no longer so clear cut.⁷⁷ In any event, findings show that persons with one dominant way of learning can benefit from receiving information in another way.⁷⁸ Indeed, evidence suggests that the explosion of visual

73. See DeGroff & McKee, *supra* note 59, at 509; Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 216-23 (1998) (giving examples of law professors who have recognized that students learn in diverse ways); M. H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 149 (2001) (many law teachers have used personality assessments to help students understand their learning styles); Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 101-02 (1996).

74. DeGroff & McKee, *supra* note 59, at 505, 509 n.50; see, e.g., Jacobson, *supra* note 73.

75. DeGroff & McKee, *supra* note 59, at 506-07; Jacobson, *supra* note 73, at 140-41 (law students are more diverse today, leading to diversity of thought); Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943, 943-44 (1996) (law students used to learn most effectively from case or problem method, but today's students do not).

76. Jacobson, *supra* note 73, at 151; Richmond, *supra* note 75, at 943-44, 949-50; see RICHARD E. MAYER, MULTIMEDIA LEARNING, in 41 THE PSYCHOLOGY OF LEARNING AND MOTIVATION: ADVANCES IN RES. AND THEORY 85, 86 (Brian H. Ross ed., 2002) ("Since its inception, the psychology of learning has favored verbal rather than pictorial forms of learning . . .").

77. DeGroff & McKee, *supra* note 59, at 506-07; Jacobson, *supra* note 73, at 151-52; Richmond, *supra* note 75, at 944; see JANE M. HEALY, ENDANGERED MINDS: WHY OUR CHILDREN DON'T THINK 38 (1990) ("[S]tudies over the last few decades did suggest that verbal abilities have recently begun to decline relative to nonverbal ones."); *id.* at 132 ("Perceptive professionals report that children in classrooms seem to be thinking and learning in increasingly more nonsequential and visual ways."). *But see*, Boyle & Dunn, *supra* note 73, at 227-28 (a study conducted on first-year law students at one law school found that only 8% were found to have high visual strength. "Visual strength," though, was defined as the ability to accurately remember what one reads or sees, what the present article calls being "verbally oriented.").

78. DeGroff & McKee, *supra* note 59, at 517; see Jacobson, *supra* note 73, at 142-44 (different learning styles can help students achieve their maximum potential. "When professors teach to diverse learning styles, students will become aware of different learning processes and can assess which ones work best for them in given situations. Most significantly, students may discover that their traditional methods of studying are not adequate to achieve analytical competence."); *id.* at 151 (students use all of their senses to absorb information, but that some learn better when absorbing the information through a particular sense).

media in our culture has changed the way in which persons who might otherwise have been purely verbally oriented learners have come to rely on visual aids in processing information.⁷⁹ In other words, even assuming the majority of a law class process information verbally (reading the assigned materials and hearing class discussion), these same students benefit from visual presentations that challenge them to integrate the topic.⁸⁰ A student in the same class who has a strong visual-orientation likely will fail to grasp the material as effectively, if at all, without the visual aids.⁸¹ In other

79. See DeGroff & McKee, *supra* note 59, at 505-07 (underdeveloped verbal precision may be caused by increased use of visual stimulus, such as television and video); Jacobson, *supra* note 73, at 151-52 (number of visual learning students seems to be increasing, maybe because of early use of computers or instruction geared toward different intelligences); Richmond, *supra* note 75, at 956 (television accustoms children to learn passively); HEALY, *supra* note 77, at 52 (“[C]hildren’s brains today might be constructing slightly different road systems from those, say, twenty years ago. If they are being attracted to different types of stimuli, both structure and function could be altered.”); *id.* at 55 (contending that it is possible that children who grow up with a lot of exposure to television might be different from those who grew up with input from an individual speaker); *id.* at 80 (television and computers may influence to children to listen passively because they are accustomed to fast-paced and constantly-changing information); *id.* at 127 (contemporary culture, with its video games, television, music focused on the “feel,” and “gestural, telegraphic speech,” puts more focus on “holistic and visual skills, often at the expense of language and analysis”); *id.* at 210-211 (“A number of studies have shown that children get information from television primarily through attention to visual action and nonverbal sounds (booms, crashes, music), not through following the dialogue. . . . Yet, as programs are increasingly designed to attract attention, the child viewer gains the habit of ignoring language in favor of visual and auditory gimmicks.”); *id.* at 216 (“The overall effects of television viewing and other forms of video on the growing brain are poorly understood, but research strongly indicates that it has the potential to affect both the brain itself and related learning abilities. Abilities to sustain attention independently, stick to problems actively, listen intelligently, read with understanding, and use language effectively may be particularly at risk.”).

80. DeGroff & McKee, *supra* note 59, at 517 n.105; see Jacobson, *supra* note 73, at 143-44 (“Teaching to diverse styles will also move law students to a higher, more evolved level of thinking because the students can adjust their cognitive activity to the desired outcome.”); see also *id.* (students need to move through different levels of learning, represented in the different learning styles approach, to master the subject); Schwartz, *supra* note 8, at 377 (suggesting law teachers should instruct all students in using “concept maps that visually express the relationships among the ideas under study” and “flow charts that depict logical flows in the analytical process”); *id.* at 379 (“[S]tudents learn new material better when it is presented graphically, by way of hierarchy and flow charts.”); MAYER, *supra* note 76, at 106 (“People learn more deeply from words and pictures than from words alone.”); *id.* at 110 (this holds more true for visual presentations that are integrated); BRUNING ET AL., *supra* note 58, at 22 (presenting information both visually and auditorially seems to increase the chances that it will be perceived); *id.* at 31 (learning improves when information processing takes places using two modalities (i.e. verbal and spatial components)); *id.* at 54 (visual material is more memorable than simply verbal information; and, using both increases learning and memory).

81. See DeGroff & McKee, *supra* note 59, at 506; Jacobson, *supra* note 73, at 151-52 (“Because of law school’s heavy reliance on written materials, students who learn more effectively by absorbing information through modes other than through reading may have difficulty.” “[V]isual learners in law school may be disproportionately represented in the

words, visual presentations help everyone in the class, but for those with a visual orientation, the visual component is crucial.⁸²

Other research suggests that forcing a student who prefers one way of learning to use a different approach has multiple benefits. Learning not only in one's preferred method, but also in other less dominant methods, may actually enhance the student's recall of a topic.⁸³ Again, the emerging evidence supports the use of more than one type of teaching method in order to challenge students to learn in different ways.

C. *The Value of Context in Learning Information*

People learn information more effectively if they have a logical framework in which to place the information.⁸⁴ Knowledge is much more likely to be recalled in long-term memory if the concepts can be linked together in a logical framework.⁸⁵ This principle is so universal that it applies to virtually every learner, regardless of learning style.⁸⁶ An aural-

bottom of the class." Also, Professors DeGroff and Mckee here explain that visual learners absorb information in its entirety, not in parts. Therefore, when visual learners absorb information verbatim, *i.e.*, memorize it, they fail to synthesize the information with other ideas, prioritize it, and establish connections between ideas. As a result, they are unable to develop an analytical framework, purge irrelevant information, and "understand and critically evaluate the reasoning and logical support for the ideas."); Boyle & Dunn, *supra* note 73, at 228 ("Only students with high auditory strengths will remember as much as '75 percent of what they hear in a normal 40 or 50 minute lecture.' Those with low auditory strengths would find learning-by-listening extremely difficult.").

82. See Jacobson, *supra* note 73, at 151-52 ("Because of law school's heavy reliance on written materials, students who learn more effectively by absorbing information through modes other than through reading may have difficulty." "[V]isual learners in law school may be disproportionately represented in the bottom of the class.").

83. See BRUNING ET AL., *supra* note 58, at 22 (advancing the view that presenting information "both visually and auditorially" leads to "a higher likelihood of being perceived than information presented only in one format"). See generally Schwartz, *supra* note 8.

84. See NATIONAL RESEARCH COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 238-39 (John D. Bransford et al. eds., 2000) (most effective learning happens when learner uses prior knowledge to understand new material. This requires an understanding of the organized nature of the material in which to place new information. "Expertise requires well-organized knowledge of concepts, principles, and procedures of inquiry."); Howard R. D. Gordon, Paper presented at the Annual Meeting of the American Research Association in San Diego, CA: Selected Instructional Delivery Methods and Teaching Techniques for Teaching School Law Courses, 5 (Apr. 13-17, 1998) (learning is when learner constructs meaningful relations between new knowledge presented and existing knowledge. Well designed instructional strategy prompts learner to actively make these connections (called "generative learning"). Generative learning leads to better understanding and longer retention of what is learned.); STUCKEY ET AL., *supra* note 2; Tim Riordan, Ph.D., Paper presented at the Annual Forum on Exemplary Teaching in Washington, D.C., Beyond the Debate: The Nature of Teaching, 3 (Mar. 13, 1993) (that to advance student learning, it is important to approach subject matter as a framework).

85. HESS & FRIEDLAND, *supra* note 28, at 4.

86. See Jacobson, *supra* note 73, at 163 (a structural overview of the course, at beginning or end of the course, benefits both field-dependent/holist and top-to-bottom

oriented person (one who learns by hearing information) and a visual-oriented learner (one who learns best by seeing information) both need the logical context equally.⁸⁷ Learning styles, moreover, are matters of relative dominance.⁸⁸ An aural-oriented learner still benefits from visual information in processing information.⁸⁹ Likewise, a visual-oriented learner benefits from oral information in processing information.⁹⁰ Thus, an aural learner will learn more effectively even if the context is offered primarily in visual form. In the same fashion, visual learners will integrate information better if they receive the context orally. No matter what learning styles exist in any given audience, everybody will process the information more effectively if they are provided with a logical framework – what I like to refer to as “context” or, more simply, “the big picture.” In particular, legal education would be more effective if law teachers used context-based education throughout their curriculum to teach theory, doctrine and analytical skills.⁹¹ In addition to the benefit of supplementing a student’s preferred mode of learning if that mode happens to be one other than a visual preference, visual tools are especially helpful to students in developing a framework for organizing otherwise isolated concepts.⁹²

Any good jury lawyer knows the value of providing a logical context in which jurors can place information. If you want a verdict for your client, jurors must understand the reasons why they should so find.⁹³ They need a

processors and field-dependent/holist and bottom-to-top/factually oriented processor, respectively); *id.* at 159 (all learners use both right and left-brain hemispheres, though most have a dominant part that affects how they process information); *id.* at 171 (“[A]ll stages of the learning cycle are equally important. . . . Without an analytical framework, learners would collect experiences without determining what they could build from them, would get lost in details, and would have difficulty applying or using information because they would have no structure for analogy or for making modifications.”).

87. See Jacobson, *supra* note 73, at 163-64 (that to accommodate all learning styles a professor could give a structural overview at both the beginning and end of each topic. Both field-independent/serialists and field-dependant/holistics benefit from having a structure for the material.).

88. See Gordon, *supra* note 84, at 4, 7-8 (noting that some people have dominant styles, and others are more flexible, with how they gather, organize, and evaluate information (the theory on which learning styles is based). And, noting that learning styles are not always clustered into neat categories, but that they fall on a continuum of preference.); Boyle & Dunn, *supra* note 73, at 227 (the learning styles vary with age. Also, students can use secondary and tertiary learning strengths to learn from teachers with differing learning styles.).

89. See Jacobson, *supra* note 73, at 151 (“While students use all of these modes for absorbing information, some students learn better when they absorb information in a particular way.”).

90. See *id.*

91. See generally STUCKEY ET AL., *supra* note 2.

92. HESS & FRIEDLAND, *supra* note 28, at 82.

93. Cf. Valerie P. Hans & Krista Sweigart, *Jurors’ Views of Civil Lawyers: Implications for Courtroom Communication*, 68 IND. L.J. 1297, 1303-04 (1993) (one of the best ways to influence jury decisions is to use a story framework showing one side’s

framework in which to fit the facts and law that will come flying in their direction for perhaps days, weeks, or months.⁹⁴ The opening statement is the primary vehicle for introducing a framework into which jurors may fit the information they will be receiving in the trial.⁹⁵ The closing argument is the primary vehicle in which trial lawyers persuade jurors that the information they have received, as introduced in the framework offered in opening statement, justifies a verdict for their clients.⁹⁶ Indeed, the modern approach to trial advocacy hinges its entire philosophy on introducing a logical framework in opening statements and emphasizing that framework in closing.⁹⁷

The same phenomenon occurs in the classroom. Here, we have significant research and findings to support the conclusion that students will process and store information more effectively if provided a context into which to place the information.⁹⁸ After seeing an overall framework into which discrete subjects can be placed, students are more likely to retain and be able to access information.⁹⁹ In the first couple of classes each semester, for instance, the professor can help students to see the broad framework in which to place the topics they will cover that semester. Each time the class begins a new topic, the professor can reinforce the

argument); Ty Alper et al., *Stories Told and Untold: Lawyering Theory Analyses of the First Rodney King Assault Trial*, 12 CLINICAL L. REV. 1, 5-8 (2005) (juror's understanding of a case's relevant events is the most important aspect of juror's decision).

94. See Hans & Sweigart, *supra* note 93, at 1303, 1315-17, 1329-30 (the framework model is critical to giving structure to a case and affecting jury decision making).

95. Alper et al., *supra* note 93, at 114, 118-19 (jurors decide issues based on story-like framework by looking at evidence in light of evidentiary and procedural rule framework. Opening statement is one of most important devices for constructing framework.); Hans & Sweigart, *supra* note 93, at 1329-30 (opening statements impact jurors by creating cognitive schemata).

96. See Alper et al., *supra* note 93, at 118-19 (closing argument is an opportunity to fit elements of trial into structure for jury to accept).

97. See *id.* at 113 (recent legal scholarship emphasizes vast role of narrative structuring, i.e., framework, in trial advocacy).

98. Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 56-57 (2001); Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 336-37 (1995); see Gordon, *supra* note 84, at 5 (learning is when learner constructs meaningful relations between new knowledge presented and existing knowledge. Well designed instructional strategy prompts learner to actively make these connections (called "generative learning"). Generative learning leads to better understanding and longer retention of what is learned.); see, e.g., NATIONAL RESEARCH COUNCIL, *supra* note 84, at 32-43, 236-39 (research showing, for example using master chess players, that expertise is built when knowledge is organized in meaningful patterns).

99. Cf. Maranville, *supra* note 98, at 56-57 (students are more likely to remember information when they have "anchor points" around which to organize it); Blasi, *supra* note 98, at 336-37 (cognitive science suggests that a schema, i.e., cognitive structure containing set of variables, enables incoming information to be understandable, intelligible, and meaningful).

connection to the larger framework by reminding student of the framework presented earlier. Part V explains how the beginning of the first semester of the author's Civil Procedure course (dedicated mainly to subject matter and personal jurisdiction) differs from the start of the second semester (dealing with the panoply of subjects concerning how to get a case from start to finish).¹⁰⁰ Having provided a broad framework, the author then, throughout the semester, takes a few minutes at the beginning of each class to remind the students of the context in which the topic of that particular class fits, how it relates to the topic of the last class, and where in the overall framework the class has progressed. Often, the professor will ask students a series of questions that elicit answers to these questions. Because students soon learn to anticipate these questions, they begin contemplating for themselves where the materials assigned for a class fit into the course.

Although analogies can be drawn between jurors and law students, the job for law students is more difficult than for jurors for several reasons. First, the student needs to do far more than reach a verdict or conclusion. Law school exams predominantly require students to provide reasoned answers.¹⁰¹ The student thus must offer skillful analysis integrating the facts and the law, provide counter-arguments where appropriate, discuss the strengths and weaknesses of competing views, and offer policy analysis that supports a sound answer.¹⁰²

Second, unlike jurors, law students typically are not permitted the luxury of collaborating on their exam with a group of other law students. Anyone who has served on a jury, observed juror deliberations in a mock-jury-trial, or discussed with jurors after trial the process by which they deliberated, knows that the group works together.¹⁰³ One juror will remember certain information; another juror will remember something else.¹⁰⁴ Jurors then talk among themselves and, in the process, often weed out faulty reasoning.¹⁰⁵ Conversely, for any type of law exam – open-book, closed-book, take-home, or in-class – students produce their own

100. See *infra* notes 130-160 and accompanying text.

101. See Lawrence M. Grosberg, *Should We Test for Interpersonal Lawyering Skills?*, 2 CLINICAL L. REV. 349, 364 (1996) (compared to testing methods employed in general, the traditional essay law school exam is most commonly used test format).

102. See Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 439-41 (1989) (essay exams test ability to make legal analysis, identify legal rules and apply to facts); Grosberg, *supra* note 101, at 364 (essay exams test ability to analyze or apply law to fact pattern, make legal reasoning, organize answers, write, and work quickly).

103. See Nancy Pennington & Reid Hastie, *Practical Implications of Psychological Research on Juror and Jury Decision Making*, 16 PERSONALITY AND SOC. PSYCHOL. BULL. 90, 100-01 (1990).

104. NANCY S. MARDER, *THE JURY PROCESS*, 157-58 (2005) (jurors add to each other's recollections).

105. See *id.* at 148 (jurors correct mistaken views).

response.¹⁰⁶ Thus, a law student must have all course information stored in long-term working memory to access that information and apply it on her exam.¹⁰⁷

Finally, although law students typically have to access more information than jurors during the semester, the reverse is true when each is called upon to apply the facts to the law. Although some jury trials are complex and lengthy, the average jury trial is twenty-three hours for civil trials or four-and-a-half days for criminal trials.¹⁰⁸ Jurors typically have access to items that help them remember information, such as notes, exhibits, demonstrative evidence, and the like.¹⁰⁹ Most law school exams are closed-book and time-pressured.¹¹⁰ Thus, the student taking the exam has to recall information solely from memory.¹¹¹ Even open-book exams require recall from memory if they are time-pressured because the student cannot usually finish the exam while referring to external sources frequently.¹¹²

Law students, like jurors (or anyone, for that matter), need a framework in which to understand new information. Perhaps the professor can leave it to the students to find that context in some courses because students have some familiarity with the subject in everyday life. Conversely, most law students, for instance, have entered into a contract before law school. Most law students, like most laypersons, lack familiarity with courts and the rules by which courts operate. The rules of procedure are, in effect, invisible to them. For this reason, most first-year law students need to know the broader context of procedure – and the larger principles underlying them. Absent that framework the student's understanding of procedural requirements will often be shallow. Even

106. See D. Don Welch, "What's Going On?" *In the Law School Curriculum*, 41 HOUS. L. REV. 1607, 1618 (2005) (most of law student's study and preparation is solitary).

107. See Kissam, *supra* note 102, at 459 (to skillfully apply legal analysis on exam, students must have prior internalization of the material).

108. Jack B. Weinstein, *The Restatement of Torts and the Courts*, 54 VAND. L. REV. 1439, 1446 (2001) (providing average for civil jury trials); David L. Cook et al., *Criminal Caseload in U.S. District Courts: More Than Meets the Eye*, 44 AM. U. L. REV. 1579, 1596 (1995) (providing average for criminal jury trials).

109. See MARDER, *supra* note 104, at 148 (jury can request to see an exhibit or ask questions).

110. See Paul T. Wangerin, *The Problem of Parochialism in Legal Education*, 5 S. CAL. INTERDISC. L.J. 441, 453 (1997) (a majority of law school professors give closed-book essay exams).

111. *Id.* at 453-54 (memorization is necessary for succeeding on closed-book exams); Kissam, *supra* note 102, at 458 (internalization and memorization are necessary for exams with time constraints).

112. Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 86 (2007) (even open-book, open-note exams require memorization of some information when they are time constrained).

worse, the student may – like so many lawyers – grow into an advocate who treats the system as a game.

D. The Necessity for Diverse Teaching Methods

Educational experts have for many years promoted the need for diverse teaching methods as a means of helping students with diverse learning styles to grasp material.¹¹³ These diverse methods are equally applicable to law students and legal analysis as they are elsewhere. Gerald F. Hess and Steven Friedland, in their book *Techniques for Teaching Law*, state: “Research shows that active learning methods facilitate the development of higher-level thinking (analysis, synthesis, evaluation) and skills acquisition, which are critical goals for most legal educators.”¹¹⁴ According to Professors Hess and Friedland, “active learning styles” are those where students engage in more than listening but also answer questions, work in small groups, or complete writing assignments.¹¹⁵

The diverse teaching methods advocated in this article are in line with the kind of teaching methods other fields have found to be effective.¹¹⁶

113. See DeGroff & McKee, *supra* note 59, at 508 (“Educational psychologists and learning theorists suggest that one step [in helping students to achieve law school competency objectives] is to recognize that the students’ different modes of absorbing (decoding) and processing (cataloging) information require different instructional strategies.”); Boyle & Dunn, *supra* note 73, at 214-16; Randall, *supra* note 73, at 101-02 (law teachers need to know and teach learning styles); Schwartz, *supra* note 8, at 362-63; ALICE Y. KOLB & DAVID A. KOLB, A KEY TO MEETING THE ACCOUNTABILITY DEMANDS IN EDUCATION, in *LEARNING STYLES AND LEARNING* 57 (Ronald R. Sims & Serbrenia J. Sims, eds., 2006) (“Studies from diverse fields indicate that educators need to adapt their teaching styles and instructional methods to facilitate the learning process by offering a variety of learning opportunities appropriate to different student learning styles and to different subject matters.”); STEPHEN D. BROOKFIELD, *THE SKILLFUL TEACHER* 268 (2006) (teachers should use a diversity of materials and methods in their practice to increase the chance of connecting with a majority of the students (because at some point, each student’s preferred learning style will be accommodated). Further, by introducing students to learning styles that they may be unfamiliar with, the teacher will broaden the students’ repertoires and help them to succeed in a wider range of situations); BAIN, *supra* note 9, at 116 (the best teaching involves diversity).

114. HESS & FRIEDLAND, *supra* note 28, at 14.

115. *Id.* at 13-14.

116. Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV. 397, 398-99, 419-20, 424-25 (1997) (including lecture method, small groups, role playing, writing projects, videos, guest lecturers, simulations, discussions, games, and computer-aided instruction); Paul S. Ferber, *Adult Learning Theory and Simulations - Designing Simulations to Educate Lawyers*, 9 CLIN. L. REV. 417, 432 (2002) (identifying the use of simulations, even for courses like Criminal Law, Corporate Law, and Civil Procedure); Paula Lustbader, *Seven Principles for Good Practice in Legal Education - Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 448, 457 (1999) (using analogy for Civil Procedure students relating general schema to planning a party); BAIN, *supra* note 9, at 116 (providing examples of visual information: pictures, diagrams, flowcharts, timelines, films, demonstrations; and examples of auditory input: speech or visual symbols of auditory

Educators in all fields have moved away from the strictly oral-based lecture method to these other methods.¹¹⁷ The reason is simple: if many students need more than lectures (or Socratic, oral-based dialogue) to grasp the material, then the teacher needs to provide teaching methods that help those students.¹¹⁸

Perhaps decades ago the law student population was so dominated by verbal/aural learners that law professors could rely solely on Socratic dialogue.¹¹⁹ Mounting evidence suggests that this is no longer true.¹²⁰ In addition to having students with a broader range of learning styles, persons who might naturally be verbally and aurally oriented learners have been influenced by our highly visual culture.¹²¹ Thus, more law students will

information). See DeGroff & McKee, *supra* note 59, at 542 (suggesting case analysis, legal concept mapping, group discussions, role playing, simulations, charts, outlines, and models); BROOKFIELD, *supra* note 113, at 101 (PowerPoint, cartoons, film clips, guest speakers, moving position around the room while teaching, break lecture into “chunks”).

117. See KOLB & KOLB, *supra* note 113, at 57 (“Studies from diverse fields indicate that educators need to adapt their teaching styles and instructional methods to facilitate the learning process by offering a variety of learning opportunities appropriate to different student learning styles and to different subject matters”); BROOKFIELD, *supra* note 113, at 268 (teachers should use a diversity of materials and methods in their practice to increase the chance of connecting with a majority of the students (because at some point, each student’s preferred learning style will be accommodated). Further, by introducing students to learning styles that they may be unfamiliar with, the teacher will broaden the students’ repertoires and help them to succeed in a wider range of situations.). See, e.g., BAIN, *supra* note 9, at B7 (the best teaching involves diversity).

118. See Boyle & Dunn, *supra* note 73, at 216, 222, 223, 225 (showing various law faculty support for using a variety of teaching methods to accommodate the diversity of learning styles); KOLB & KOLB, *supra* note 113, at 57; BROOKFIELD, *supra* note 113, at 268.

119. Richmond, *supra* note 75, at 943-44 (twenty years ago legal educators assumed, correctly, that students learned actively and best through case or problem method (i.e., Socratic method), but today this is no longer true).

120. DeGroff & McKee, *supra* note 59, at 505-06; Richmond, *supra* note 75, at 943-44 (twenty years ago, legal educators assumed students learned actively and best through case or problem method (i.e., Socratic method), but today this is no longer true); Jacobson, *supra* note 73, at 151; Boyle & Dunn, *supra* note 73, at 218.

121. See DeGroff & McKee, *supra* note 59, at 505-06; Jacobson, *supra* note 73, at 151-52; HEALY, *supra* note 77, at 52 (“[C]hildren’s brains today might be constructing slightly different road systems from those, say, twenty years ago. If they are being attracted to different types of stimuli, both structure and function could be altered.”); *id.* at 55 (it is possible that children who grow up with a lot of input from television might be different from those who grew up with input from an individual speaker); *id.* at 80 (television and computers may influence children to listen passively because they are used to fast-paced and constantly-changing information); *id.* at 127 (contemporary culture, with its video games, television, music focused on the “feel,” and “gestural, telegraphic speech,” puts more focus on “holistic and visual skills, often at the expense of language and analysis”); *id.* at 210-11 (“A number of studies have shown that children get information from television primarily through attention to visual action and nonverbal sounds (booms, crashes, music), not through following the dialogue Yet, as programs are increasingly designed to attract attention, the child viewer gains the habit of ignoring language in favor of visual and auditory gimmicks.”); *id.* at 216 (“The overall effects of television viewing and other forms

benefit from alternative means of instruction.¹²² Indeed, more students likely will find such diverse teaching methods crucial to integrating the material.¹²³

Those who resist moving from the traditional Socratic style may be motivated to experiment with other teaching methods by recognizing that they often make the classroom experience more interesting.¹²⁴ Law professors have to recognize that the way they learned (or still perceive the world) is not necessarily the way everyone else does.¹²⁵ Law professors are likely among a small subset of any group: if a group is highly verbally oriented, law professors are probably in the top one percent of that

of video on the growing brain are poorly understood, but research strongly indicates that it has the potential to affect both the brain itself and related learning abilities. Abilities to sustain attention independently, stick to problems actively, listen intelligently, read with understanding, and use language effectively may be particularly at risk.”).

122. See DeGroff & McKee, *supra* note 59, at 507 (“However, the findings of this study suggest that attention to student learning styles may facilitate the development of logical reasoning skills both in the classroom and in academic support programs.”); *id.* at 536, 540; Randall, *supra* note 73, at 101; Schwartz, *supra* note 8, at 362, 391-92; Bateman, *supra* note 116, at 399 (“[B]y diversifying our approaches to the way we present material in the classroom, we are more likely to reach more students more of the time. . . . Students’ learning styles and their significance to legal education are a crucial consideration”); Lustbader, *supra* note 116, at 455; Richmond, *supra* note 75, at 958 (teachers should integrate other teaching techniques to help contemporary law students, who have developed passive learning habits, to better learn).

123. Bateman, *supra* note 116, at 399 (“[B]y diversifying our approaches to the way we present material in the classroom, we are more likely to reach more students more of the time. . . . Students’ learning styles and their significance to legal education are a crucial consideration”). See DeGroff & McKee, *supra* note 59, at 507 (“However, the findings of this study suggest that attention to student learning styles may facilitate the development of logical reasoning skills both in the classroom and in academic support programs.”).

124. See Lustbader, *supra* note 116, at 455-56 (providing examples of various diverse teaching techniques and positive student feedback); Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941, 956-61 (1997) (providing examples of different teaching techniques to enhance student learning and positive student feedback); DeGroff & McKee, *supra* note 59, at 541; BROOKFIELD, *supra* note 113, at 267-68 (every class should employ “at least three different learning modalities”).

125. See DeGroff & McKee, *supra* note 59, at 504 (“Law professors, however, were typically high achievers in law school themselves, and most probably found legal analysis relatively natural.”); Bateman, *supra* note 116, at 399 (law teachers often consider their own comfort level rather than their students’ needs and individual learning styles when deciding what teaching methods to employ); Schwartz, *supra* note 8, at 364-65 (law professors are likely to not use varying methods of instruction because they learned through traditional methods when they went to school, enjoyed it, and did well); *id.* at 386-87 (one instructor error is egocentrism in instructional design, which assumes the learners are like the instructor. Also, law professors may develop high levels of expertise in their fields, which distances them from their students.).

group.¹²⁶ In other words, law professors are not representative even of law students.¹²⁷ The visual age has impacted established (*i.e.*, more veteran) law professors less than incoming law students.¹²⁸ Law professors who are unwilling to consider such factors objectively may not teach to their maximum potential. Worse yet, they may keep students from learning to the best of their ability.¹²⁹

V. DIVERSE TEACHING METHODS FOR COMPLEMENTING SOCRATIC DIALOGUE IN FIRST-YEAR CIVIL PROCEDURE

Any educator should first identify the educational objectives that she has for a course *before* choosing the educational methods she will use in the classroom. Contrary to this approach, most law school professors appear not to consider their objectives at all. Instead, the professor seems to assume that everyone knows that the objective is to learn the subject of whatever the course happens to be and, as part of that, the student will infer from the Socratic process that she must reason logically to sound conclusions. Likewise, the professor appears typically to accept without further examination that the Socratic method will be the best method for achieving the unstated objective.

The author believes that, consistent with fundamental educational theory, law professors must be more intentional in their approach to designing a course than the mode just described. The professor should examine whether she has objectives beyond conveying content and

126. See DeGroff & McKee, *supra* note 59, at 504 (“Law professors, however, were typically high achievers in law school themselves, and most probably found legal analysis relatively natural.”).

127. See *id.* at 504.

128. See *id.* (“Law professors, however, were typically high achievers in law school themselves, and most probably found legal analysis relatively natural.”); Jacobson, *supra* note 73, at 151-52 (the number of visual learning students seems to be increasing, maybe because of early use of computers or instruction geared toward different intelligences); Richmond, *supra* note 75, at 956 (television accustomed children to learn passively); Schwartz, *supra* note 8, at 364-65; HEALY, *supra* note 77, at 52 (“[C]hildren’s brains today might be constructing slightly different road systems from those, say, twenty years ago. If they are being attracted to different types of stimuli, both structure and function could be altered”); *id.* at 55 (it is possible that children who grow up with a lot of input from television might be different from those who grew up with input from an individual speaker).

129. See Bateman, *supra* note 116, at 399 (law teachers often consider their own comfort level over their students’ needs and individual learning styles when deciding what teaching methods to employ); Schwartz, *supra* note 8, at 386-87 (law instructors’ teaching is not as effective and appealing for learners when they teach from an egocentric point of view (using only examples the instructor is familiar and comfortable with and techniques that work well for the instructor)); Charles R. Beck, *Matching Teaching Strategies to Learning Style Preferences*, 37 TCHR. EDUCATOR 1, 11 (2001) (when teachers emphasize those teaching strategies that reflect their own learning styles, they neglect students who do not share the same style preference).

demonstrating the need for thorough, step-by-step logical analysis to a sound conclusion (we may call these “Primary Objectives”). Does she, for instance, want to have students develop other skills, such as drafting a legal document, articulating her analysis while standing (as many judges require in their courtrooms), etc. (we may call these “Subsidiary Objectives”)? Once the professor has identified all of these objectives, she can design the course with educational methods that are most likely to achieve the objectives.¹³⁰

In the fall and spring courses of first-year Civil Procedure, the author has adopted Primary Objectives such as mastery of civil procedure and the ability to employ the applicable rules, statutes, and constitutional provisions to protect the interests of clients and ensure their cases get to the merits (if representing a plaintiff) or are defended effectively (if representing a defendant). The author also adopts Subsidiary Objectives such as teaching students to analyze legal problems logically. Then, the author identifies the educational methods most likely to reach the goals. During this process, the author determined that the Socratic method assists in achieving the course objective at times. However, the author identified other methods that also achieved the objectives of teaching both content and thorough analysis. In other words, the Socratic method is not the only method that will achieve these goals. Moreover, the educational research described above shows that the Socratic method does not achieve these Primary Objectives most effectively for some learning styles. By incorporating a diverse set of educational methods, the professor thus better teaches the course to the entire class even if her only objectives are to teach content and lawyerlike analysis. As to the Subsidiary Objectives, the Socratic method can be useful to teach a student to articulate her views orally, particularly if the professor asks the student to stand when responding. Other Subsidiary Objectives, such as teaching students to draft pleadings, cannot be achieved effectively by the Socratic method.

By engaging in this intentional approach to identifying course objectives and the methods most likely to achieve those objectives, the author’s Civil Procedure class resulted in a mixture of Socratic dialogue and a variety of non-Socratic educational methods. The professor’s experience has been that this approach has more effectively taught not only the content of Civil Procedure, but also the analytical process necessary to solve legal problems that arise in this area and certain skills that even first-year law students can and should learn. Since adopting this approach to teaching Civil Procedure, student evaluations have almost unanimously reported two interesting outcomes. First, students have observed that this approach is every bit as challenging as a purely Socratic teaching method. Second, they have suggested that the diverse methods of teaching have

130. See STUCKEY ET AL., *supra* note 2, at 39-91; HESS & FRIEDLAND, *supra* note 28, at 21-53.

made the process of learning the material, the legal analysis, and the skills to be far more interesting than a purely Socratic approach.

As just suggested, an advantage of varying the professor's teaching style is to keep students' attention. Again, educational research suggests a reason for that: Shifts in the manner of teaching in a classroom enhance learning.¹³¹ In other words, simply doing something different periodically will automatically help the teaching process.¹³² A civil procedure professor may appreciate this more than professors who teach naturally interesting subjects. Variation in teaching style helps make the subject more interesting. Even the best Socratic teachers will not keep students' attention throughout a class. Providing variety – especially in a course such as Civil Procedure, but likely in all courses – enhances the learning experience.

In other words, when the Socratic method accomplishes specific educational objectives better than other methods, then it should be the vehicle for accomplishing that objective.¹³³ As the *Best Practices in Legal Education* Report makes clear, however, Socratic dialogue is being used without the intentionality required of sound teaching.¹³⁴ It is being used in many cases exclusively. If complementary methods will enhance goals that the Socratic method can assist in achieving – but not achieve all on its own – then we are obliged as teachers to use these complementary methods as well.

One preliminary note worth mentioning is the question of materials to use in a class. Textbooks for particular subjects that vary from the case method are rare.¹³⁵ Some subjects have materials that can supplement a casebook. For instance, Civil Procedure professors can use a book like *A*

131. BROOKFIELD, *supra* note 113, at 268 (teachers should use a diversity of materials and methods in their practice to increase the chance of connecting with a majority of the students because at some point, each student's preferred learning style will be accommodated); BAIN, *supra* note 9, at B7 (the best teaching involves diversity); *see* Lustbader, *supra* note 116, at 455-56 (providing examples of various diverse teaching techniques and positive student feedback); Hess, *supra* note 124, at 956-61 (providing examples of different teaching techniques to enhance student learning and positive student feedback); DeGroff & McKee, *supra* note 59, at 541.

132. *See, e.g.,* Rogellio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Students*, 43 SANTA CLARA L. REV. 1, 117-18 (2002).

133. STUCKEY ET AL., *supra* note 2, at 211.

134. *Id.* at 132.

135. Of the traditional Civil Procedure casebooks, the author's favorite is RICHARD D. FREER & WENDY COLLINS PEROME, *CIVIL PROCEDURE: CASES, MATERIALS, AND QUESTIONS* (LexisNexis, 5th ed. 2008). Professor Freer has published an excellent hornbook that offers hypothetical questions and suggested approaches that track his Professor Perdue's casebook. *See* RICHARD D. FREER, *INTRODUCTION TO CIVIL PROCEDURE* (Aspen 2006). For a general book on diverse teaching methods, HESS & FRIEDLAND, *supra* note 28, provides excellent ideas.

Documentary Companion to a Civil Action.¹³⁶ This book allows students to review materials in an actual lawsuit. Integrating a lawsuit into the teaching of a course certainly has pedagogical value. However, texts that, themselves, help the professor use teaching methods that challenge the students in different ways to learn and analyze material are few.

A. Subject Matter Jurisdiction

Students are often not familiar with principles of federalism. Some attribute that to the failures of American education.¹³⁷ Regardless of the reason, we may no longer assume that students entering law school have a grasp of principles of civics necessary to appreciate the federal system of government. In light of this truth, the professor can – without seeking to undertake the unreasonable goal of cramming in a remedial civics course – provide a foundation for the subject matter jurisdiction. Two techniques help with this foundation. First, the professor can assign the Constitution as part of the reading assignment for the first class on subject matter jurisdiction. If the Constitution is not part of the students' required statutory and rules supplement, the syllabus can refer students to an Internet site containing the Constitution.¹³⁸ In the first class on subject matter jurisdiction, the professor can then review the key sections of the Constitution – Article I and Congress' delegated powers, Article II and the President's powers, Article III and the federal judiciary's powers, Article IV and the supremacy clause, along with the Bill of Rights. One will, of course, end up spending more time discussing Article III than other provisions. However, provisions such as the Tenth Amendment¹³⁹ help students to recognize the existence of parallel federal and state systems of government.

A visual tool that helps most in teaching personal jurisdiction and venue, but also is useful to introduce at this point, is a map of the United States.¹⁴⁰ To such a map one can attach either an overlay or a cloth cut-out that is the same shape as the United States. The overlay or cut-out (a plastic picnic table cover works well) – in a single color (the author uses blue), or red/white/blue if you prefer – can depict the federal system. The

136. LEWIS A. GROSSMAN & ROBERT G. VAUGHN, *A DOCUMENTARY COMPANION TO A CIVIL ACTION* (1999). This book is one of a series based on Jonathan Harr's book, *A Civil Action*, concerning a celebrated toxic tort case.

137. See INTERCOLLEGIATE STUDIES INST., *THE COMING CRISIS IN CITIZENSHIP: HIGHER EDUCATION'S FAILURE TO TEACH AMERICA'S HISTORY AND INSTITUTIONS* (2006), available at http://www.americancivilliteracy.org/report/2006_report.html (last visited Aug. 20, 2008).

138. One such website is http://www.archives.gov/national-archives-experience/charters/constitution_transcript.html.

139. U.S. CONST. amend. X.

140. See <http://www.mapsales.com> (last visited Aug. 25, 2008) (providing a variety of links to different wall maps of different costs).

professor can explain that the criteria determining entry into any federal court are applied nationally. Thus, the overlay or cut-out – when placed over the United States – serves as a reminder of the parallel federal and state judicial systems that exists in every state. The professor can observe that the remaining classes on subject matter jurisdiction refine the criteria for satisfying the limited jurisdiction of federal courts. The professor may then ask: Are litigants without a forum if they have claims but do not satisfy the criteria for federal jurisdiction? In a group the size of a first-year law school class, some will be ready with the answer that state legal systems stand ready for litigation of disputes. Lifting the overlay or cut-out, the professor can emphasize that the state systems not only stand ready, but actually handle most cases in our country.¹⁴¹ Students are also surprised to hear that most federal claims can be brought in state court or federal court, though one will mention that removal jurisdiction (which one will cover later) affects whether a plaintiff will be able to stay in state court.

B. Personal Jurisdiction

Nothing illustrates personal jurisdiction as well as a large, multi-color map of the United States.¹⁴² Using Velcro strips available at any office supply store, one can easily put items on the map to depict the facts of a case or hypotheticals. For instance, the professor could attach a car on the state where an accident happened – attach another item (the author uses a gavel) to indicate where suit is filed, *i.e.*, the forum – and a Lego or toy figure on the defendant's home state. For whatever reason, seeing the case depicted in such a fashion brings home to students the realities at stake in personal jurisdiction cases. To explain *World-Wide Volkswagen v. Woodson*,¹⁴³ for instance, the author places on the map (1) cardboard cutouts including the New York car dealership's name and a separate cutout for the distributorship serving Connecticut, New Jersey, and New York, (2) contrasted with two cars attached to the map in Oklahoma to depict the accident, and (3) a gavel showing that Oklahoma is where suit is brought against the car dealership and distributorship. The combination of these visual displays on the map, and the Socratic dialogue accompanying a review of the case, help students understand why the Northeastern

141. Recent studies suggest that state courts handle as many as ninety times the number of cases as federal courts. *See, e.g.*, JOSEPH W. GLANNON, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS 64 & nn.2-3 (6th ed. 2006).

142. Laminated maps, at websites such as the one noted above at note 146, can be purchased online for a reasonable price. These maps will often be larger than the standard, non-laminated wall maps of the United States. Lamination is useful because, as explained in the text, one can place Velcro strips on the maps, or use tape, to fix items depicting various cases. The author has been able to use the same map for close to five years with little wear and tear because it is laminated.

143. 444 U.S. 286 (1980).

defendants lacked sufficient minimum contacts to make it fair for them to anticipate being haled into Oklahoma courts. A modification to the above-described set-up that the author likes to then employ, in teaching students to consider variations on the facts of a case like *World-Wide Volkswagen*, is to (1) omit the two northeastern defendants (*i.e.*, remove those attachments from the map), and (2) substitute a new distributorship that can still be centered in the Northeast (e.g., Maine) but whose distribution range extends to the Midwest up to the border eastern border of Oklahoma. If one wants to depict the radius of the new distributorship, blue painter's edging tape works well in outlining a radius on the map. Varying the radius is a useful way to see the different conclusions one can reach under the *World-Wide Volkswagen* test simply by varying the radius of the defendant's distribution.¹⁴⁴ The professor can ask, for instance, what if the radius of the dealership extends closer to – but does not reach – Oklahoma? The author has found that this variation, with a distributorship extending to the Midwest, helps many students better understand the stream-of-commerce analysis when we later dealing with cases like *Asahi Metal Industry Co. v. Superior Court of California*.¹⁴⁵ There, the Court's plurality opinion suggests that the areas in which a defendant may expect its product to be distributed, sold, or used will affect whether personal jurisdiction exists.¹⁴⁶ When one asks hypothetical questions about possible businesses and geographic ranges of distributorship, the map is a useful tool to illustrate the Court's analysis.

C. Venue

As with personal jurisdiction, a map provides a valuable tool for depicting a venue scenario. Unlike personal jurisdiction, however, venue speaks in terms of judicial districts rather than states. Although a few states have only one judicial district, most have at least two districts, and several have three or even four districts within the same state. Thus, to demonstrate a hypothetical related to venue, one would have to mark in the districts dividing a state. For instance, take the variation on the facts of *World-Wide Volkswagen* in which the defendant distributorship is located in Maine, distributes as far as the Midwest but no farther than the Eastern

144. Once the professor has covered the Supreme Court's decision in *Asahi Metal Industry Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 112 (1987), the professor can return to these same hypotheticals and ask how the factors in Justice O'Connor's plurality opinion affect the personal jurisdiction analysis. For instance, one could ask whether it would matter whether the defendant advertised in the forum state. Justice O'Connor's opinion suggests that this is "additional conduct" beyond placing a product in the stream of commerce that can establish the kind of purposeful conduct necessary to show minimum contacts. However, could one establish jurisdiction even without such marketing in Oklahoma when the distributor had reason to believe that Oklahomans would be buying from the dealers to which it distributed cars?

145. 480 U.S. 102 (1987).

146. *See id.*

District of Arkansas, and the accident happens in Oklahoma. To add a venue component, the professor could draw a line dividing the eastern and western halves of Arkansas, and then note that suit is filed in the Western District of Arkansas. Under a personal jurisdiction analysis, the Western District of Arkansas may well have personal jurisdiction because the defendant dealership could anticipate being sued in Arkansas over cars distributed in that state. However, venue forces the analysis into districts rather than states. Under the applicable venue provision, venue would be proper as to the corporate defendant only in judicial districts in which personal jurisdiction would be proper if that district were a state.¹⁴⁷ Because personal jurisdiction may not be proper in the Western District of Arkansas, the professor can raise the venue question and show that it is the *district* (not the entire state) on which one must focus in determining the venue of a corporate defendant.

The map posted at the official Federal Judiciary website also demonstrates the federal judicial districts.¹⁴⁸ This map displays the states that have more than one district with dotted lines. The professor could project this map on a screen and discuss a hypothetical involving different districts. The value of the visual aid should not be underestimated. Especially with the fiction of treating judicial districts as if they are “mini-states,” the visual demonstration of a fact pattern in a state or states involving more than one district helps students to see how the analysis works.

D. The Progress of a Civil Action

Unless the professor has taken the topics in an order different from that outlined here, the student will not have covered pleadings, Rule 12, or the like before studying jurisdiction and venue. Thus, they likely have little frame of reference for the usual process in which a case proceeds. The diagram attached as Addendum 1 is useful to show the progress of a typical civil action. The chart at Addendum 1, moreover, helps the student fit the assignments for a semester into a framework that relates to “real life” – the civil suits they have heard about, are now reading opinions about, and which many of them will ultimately be handling.

After choosing a location where subject matter jurisdiction, personal jurisdiction and venue are all valid, the suit then follows a predictable path that can be organized in a fashion so as to take the stages of the suit in chronological order. In other words, students can relate the subjects they are studying to the step-by-step progress of a case. The author begins with the due process requirement of notice and opportunity to be heard,

147. See 28 U.S.C. § 1391 (2000).

148. This map may be found at <http://www.uscourts.gov/images/CircuitMap.pdf> – part of the Federal Judiciary’s official website maintained by the Administrative Offices of United States Courts in Washington, D.C.

followed by service of process. (As already discussed above, a way to bring home this requirement is to put the students in the position of persons who have been subject to some “ruling” without the benefit of notice and an opportunity to be heard.¹⁴⁹) With due process setting the minimum requirements for notice, one can then emphasize that Federal Rule of Civil Procedure 4 (like most state’s service statutes) sets more demanding requirements than the constitutional minimum.

Most students, however, will not even know what “process” means. Seeing the summons that must accompany a complaint offers yet another opportunity to teach students by visual aids, rather than just have them see Rule 4’s reference to “process” and the “summons and complaint.” A summons form is available at the Federal Judiciary website.¹⁵⁰ The professor can show the form for a summons and explain how it is filled in, how a complaint is attached, and generally how process is then served. The professor can also advise that the ways a party can respond to a claim will be addressed in upcoming classes, but that in general the party has an opportunity not only to file opposing pleadings but also to perform discovery.

E. Rules and Procedures Promoting Fair Resolution of Claims

1. Pleadings, Motions, and Joinder

In many ways, topics such as pleadings, motions, and joinder are ones in which teaching methods that complement Socratic dialogue are more helpful than any other topics in Civil Procedure. Reading about the rules for pleadings, joinder, Rule 12 motions, and the like, offers a meager alternative to seeing the process work from a series of events. One way to provide students the opportunity to apply the rules is to use a small group exercise. Such an exercise, in the author’s experience, works best after covering the rules on pleading (Rules 7, 8, 9, and 10), Rule 12 motions, claims by parties other than the plaintiff (Rules 13 and 14), and joinder of claims and parties (Rules 18 and 20). The professor can explain that, now that students have studied the content of these rules – and have had the opportunity to explore the implications of the rules in a Socratic dialogue based on cases in the class’s text – the professor wants to see whether students can apply these rules to a set of facts. The professor can do so by presenting a factual scenario (such as the one the author has used, as described in the next paragraph) and then dividing the class into, say, groups of four. Half of the groups can be assigned the job of developing pleadings for the plaintiff by the next class session and exchanging them with a group on the defendant’s side (with a copy to the professor). The

149. See *supra* notes 37-40 and accompanying text.

150. The form for a summons (AO44) is available at <http://www.uscourts.gov/forms/AO440.pdf>.

student groups on defendant's side can prepare an answer and a counterclaim to the complaint and deliver them back to the group whose complaint they received (with a copy to the professor). The student groups assigned to plaintiff can provide a response to the defendant's counterclaim (with a copy to the professor). The professor need not spend time grading the pleadings. She can, however, have an assistant confirm that each group turned in a pleading. Instead of grading the pleadings, the professor can show samples of how she would approach preparing a complaint and, on the other side, how she would think through whether a Rule 12 motion should be filed and, if not, what her answer, counterclaim, and response to the counterclaim would look like. Thus, what may seem like a time-consuming exercise that would cut into "coverage" of other areas, actually turns out to be an exercise that (1) has much of the work done outside of class, although the author lets the groups take 20 minutes of class time to get going (the group drafting of respective pleadings can be finished out of class; students know how to collaborate by e-mail, "track changes" drafts, etc.); and (2) the author's experience is that students appreciate the opportunity to experience the process of pleading – something many of them will be called on to do in summer jobs.

For the small group pleading exercise, the professor can choose a hypothetical that is simple enough to make it manageable but which requires some joinder analysis and raises a counterclaim issue. One example is to take a car accident, preferably at an intersection near the school that the students will recognize. Here is one that the author has used more than once: A driver ("Plaintiff") negligently causes a collision and injures the other driver ("Defendant"), who is of diverse citizenship from Plaintiff. Plaintiff gets out of his or her car and yells at Defendant, with bystanders in the vicinity, some phrase that qualifies as defamation per se (*e.g.*, "You are a syphilis-ridden criminal"). Angered, Defendant walks over and punches Plaintiff. Plaintiff develops back problems from the accident and incurs continuing medical bills, such that Plaintiff can assert damages exceeding \$75,000 excluding interests and costs. Plaintiff admits only that there was a collision and that Plaintiff got out and made the alleged comment, but is without knowledge as to whether there were bystanders and thus denies that aspect of the Defendant's counterclaim allegation. Defendant admits that Defendant made physical contact with Plaintiff but only because Plaintiff got out of the car, yelled, and was moving toward Defendant such that Defendant thought she was being attacked. Defendant should raise contributory or comparative negligence as a defense if at all feasible.

This relatively simple example forces students to work through a number of rules. Those students assigned to Plaintiff will prepare a complaint. They will see how to set up a caption, pleading, title, numbered paragraphs, etc. (Rule 10). More importantly they will see that they need to include jurisdictional allegations: allegations of sufficient facts to assert

claim(s) and to request relief (Rule 8). Because Plaintiff may of course join as many claims as she has against a single defendant, students can here see how that means negligence and intentional tort claims thus can be joined. But the fun in using such a hypothetical to teach the way lawyers handle cases under the Rules does not stop there. The professor can demonstrate the analysis that practicing lawyers use every day. First, determining the date on which the 20-day deadline would fall, Defendant's lawyer would consider whether any Rule 12 defenses apply, particularly any of the four defenses that can be waived if not asserted in the defendant's first response (personal jurisdiction, venue, insufficiency of process, and insufficient service of process). The facts do not support a Rule 12 defense, but the professor can emphasize that good lawyers go through this thought process anyway. Then Defendant's lawyer would prepare an answer that will have to follow the format of pleadings required by Rule 10. Students will see that they must respond to every allegation in the complaint by admitting, denying, or stating that Defendant lacks sufficient information to form a belief as to the allegations. Then the professor can demonstrate that, beyond responding to the Plaintiff's allegations, the Defendant must also consider any affirmative defenses. Here, it is worth pointing to the list of defenses in Rule 8(c) but noting that the list is not exclusive, and the Defendant's lawyer has to consider whether other defenses may apply. Contributory negligence could apply if the events occurred in one of the few states in which this defense still represents a bar to Plaintiff's recovery for negligence. In other states, comparative negligence would be an appropriate defense to plead. Self-defense would be a defense, not listed in Rule 8(c), that could avoid liability for the assault and battery claim. Finally, Defendant's lawyer has to consider whether any counterclaims exist. Here, the defamatory statements come into play. Under Rule 13(a), Defendant has to plead along with the answer any counterclaim if it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim."¹⁵¹ The defamatory statements are likely part of the same transaction or occurrence because they follow closely in the sequence of events, even though the claim is very different from the claim arising out of the car accident. The illustration helps to expand the concept of transaction or occurrence from a narrow one to the more expansive one that courts often apply. Moreover, the professor can explain that a good lawyer does not take chances in these circumstances. If Defendant's claim will potentially be barred by Rule 13(a) unless brought in this suit, then Defendant should assert the counterclaim. Students assigned to the Defendant's side thus get the opportunity not only to prepare an answer, but also to prepare the equivalent of a complaint. They will see that the rules for a counterclaim

151. FED. R. CIV. P. 13(a).

essentially are the same for a complaint, though the jurisdictional statement is not required.¹⁵²

The professor can then explain that a good lawyer, in considering how to respond to a counterclaim, goes through the same thought process when considering how to respond to a complaint. Are there any Rule 12 defenses available? If not, how should Plaintiff respond to each and every allegation in the counterclaim? What affirmative defenses, if any, should Plaintiff raise in response to the counterclaim?

Every bit of the suggested way of further exploring the rules by using a hypothetical fact pattern is easily adapted to Socratic dialogue. The author himself will often say, for instance, “Okay, we now have a counterclaim filed. What steps under the rules must Plaintiff’s counsel follow? What must the lawyer’s thought process include to avoid missing something in responding?”

2. Joinder

The immediately preceding section discusses a valuable method for complementing Socratic dialogue that weaves together pleadings, motions, and joinder issues – just as they are interwoven in actual practice. As explained above,¹⁵³ joinder especially requires diagrams of claims and parties to keep the factual scenario straight.

3. Discovery

Discovery is another topic that could be handled in small groups in a fashion similar to the one suggested for pleadings, motions, and joinder. Alternatively, one can either supply samples from cases with which the professor is familiar or assign readings from a book such as Joseph Glannon’s *Civil Procedure: Examples & Explanations*.¹⁵⁴ Glannon’s book includes sample interrogatories and answers in a fact pattern woven into a number of chapters illustrating various stages of litigation.¹⁵⁵ By reviewing these, students can see a realistic example of discovery tools in operation.

Depositions are a discovery tool that many first-year students find peculiar. Television shows and movies depict plenty of courtroom scenes, but few if any depositions. Some find it odd that a witness would be testifying under oath without a judge present. Thus, a demonstration of a deposition provides a useful way to expose students to this discovery tool. A deposition scenario that creates as much or more anxiety for young lawyers is one someone might call the “Deposition Dilemma” (or, as the author sometimes refers to it, “The Deposition from Hell”) – a deposition

152. See FED. R. CIV. P. 8.

153. See *supra* notes 48-51 and accompanying text.

154. JOSEPH W. GLANNON, CIVIL PROCEDURE: EXAMPLES & EXPLANATIONS (6th ed. 2006).

155. *Id.* at 413-20.

where the opposing counsel interferes with the questioning in a manner prohibited by the rules. A demonstration that shows how the deposing attorney can simply call the judge to end such conduct offers students preparation that should be useful in practice. Ethically challenged lawyers may (and often do) test less experienced lawyers to see how they will respond. If the deposing attorney shows the misbehaving attorney that she knows the rules and will enforce them, the deposition will almost always run more smoothly. Attached as Addendum 2 is the script of a deposition vignette to illustrate the problem of “speaking objections” – objections by the deponent’s attorney that suggest answers. In addition, this script integrates issues related to privilege. A live performance enlisting volunteer students (not in the class) is one option to act out the scenario. Another is for the professor to read all parts in the script. Finally, students could be asked to read the script themselves and, in the next class, answer questions about the events related.

After the vignette, the professor can ask students to point out the steps that a counsel seeking to protect privileged information would have to take in a deposition to avoid waiver of the privilege. Aside from learning how to avoid inappropriate objections, the lesson that a client’s attorney-client privilege can and will be waived if the client’s attorney does not object and instruct the witness not to answer is a valuable lesson to students. For whatever reasons, seeing the process of a deposition seems to bring home this point more clearly than when students simply read a case or the Rules. The vignette adds a twist because, even though the defense counsel seeks to prevent questioning about his communications with his client, the privilege could be waived if the attorney and client discuss a pending question during a break. Again, the demonstration brings home to students the many ways in which they need to prepare for a deposition, the traps to watch for, and the proper way to conduct (or defend) a deposition.

4. *The Erie Doctrine*

The *Erie* doctrine involves a series of cases that not only are dense but at times speak from different premises. If one views the *Erie* doctrine as seeking to preserve balance between the federal judicial system and between state laws of decision, then a pendulum offers a visual metaphor that may helpfully explain the series of decisions. After getting far enough into the cases so that students appreciate how the federal and state interests are swinging one way and then the other, the professor can show a series of PowerPoint slides depicting the pendulum at different stages according to how the case resolved the question of federal-state balance. For about a century, federal courts followed *Swift v. Tyson*¹⁵⁶ and its notion that federal courts, in diversity cases, could develop their own rules of decision in arenas ordinarily reserved to the states, such as contracts, torts, property,

156. 41 U.S. 1 (1842).

and the like. A diagram showing the pendulum pointing far to the right, toward a textbox labeled “Federal System” illustrates how *Swift*’s decision had swung the pendulum so far in the direction of federal interests that it ignored the states’ interests. Attached as Addendum 3 are the series of PowerPoint slides that the author uses, and the first of these depicts *Swift*’s effect. This visual tool is another way of reinforcing how far the treatment of diversity cases had become unbalanced in favor of federal law.

*Erie Railroad Co. v. Tompkins*¹⁵⁷ returned balance to federal-state interests in diversity cases. Accordingly, the second slide in Addendum 3 offers a visual depiction of the effect of *Erie*’s overruling *Swift*. Following *Erie*, however, the more troublesome question arose of whether state or federal law should govern matters that were not clearly the underlying rule of decision—matters in the gray area between substantive rule of decision and procedure. *Guaranty Trust Co. of New York v. York*¹⁵⁸ held that state law must apply whenever federal law (procedural or otherwise) would affect the outcome of the decision. By this point, the professor will have in a previous class engaged in a dialogue about the effect of *Guaranty Trust* and how, in a variety of hypothetical situations, virtually anything will be outcome determinative and point to applying state law. Reminding the students of that dialogue, the professor may then ask the student to describe the pendulum as it would look after this case. Slide 3 in Addendum 3 could then be shown to represent the manner in which *Guaranty Trust* threw the federal-state balance off again, only this time too far in the direction of states’ interests. The twin cases of *Byrd v. Blue Ridge Rural Electric Cooperative, Inc.*¹⁵⁹ and *Hanna v. Plumer*¹⁶⁰ restored balance to this area of law. Again, a previous Socratic exchange can have set up the manner in which these two cases “correct” the effect of *Guaranty Trust* and return balance to federal-state interests in diversity cases. The last two slides in Addendum 3 depict how *Byrd* achieved a partial “correction,” and how *Hanna* finished the job.

Fear that visual aids will somehow limit students’ cognitive appreciation of the *Erie* analysis is unfounded. Note that, as the author handles this, his students must first wrestle with the cases, and seek to explain the decisions, their analysis, and policies in oral terms. As the author freely admits to students and here, teaching *Erie* by beginning with a visual depiction would be an oversimplification. Having done the spade work in several classes beforehand, however, the visual depiction of these series of slides included in Addendum 3, has helped many of the authors’ students solidify their understanding of the *Erie* doctrine.

157. 304 U.S. 64, 80 (1938).

158. 326 U.S. 99 (1945).

159. 356 U.S. 525 (1958).

160. 380 U.S. 460 (1965).

VI. WHY NEW LAW PROFESSORS ARE PECULIARLY EQUIPPED TO ASSIST IN CHANGING THE LEGAL ACADEMY FROM WITHIN

You do not have to be a dean to lead a law school. And you do not have to be a tenured professor to show law schools how to modify not only traditional ways of teaching, but even to rethink (and change) the prevailing approach to scholarship. New law professors are uniquely able to help law schools through this growth process.

New law professors are specially equipped to lead our law schools in this regard. As persons who attended recent American Association of Law Schools (AALS) conferences, new law faculty may be the professors in schools who have most likely been exposed to developing learning theory and educational methods.¹⁶¹ Most law schools, however, have Academic Support programs now, staffed with law professors who are knowledgeable about these techniques. My experience with Academic Support professors is that, often, they are among the best professors in the law school. At the least, they are an ally for the new law professor seeking to introduce educational approaches that are well-accepted in other educational disciplines but which often need justification in legal academia. In addition, new law professors have the benefit of not being expected to teach flawlessly. As has been the case with many of us who take chances and try out new methods that we believe will enhance the learning process, student evaluations will attest to the effectiveness of diverse teaching methods. Peer reviewers also can tell when a professor is teaching effectively, engaging a class, and doing her job at a high level of skill – even if that peer reviewer does not employ the same practices. Law students tend to be fair in their evaluations and, at some point, administrators and law faculty promotion and tenure committees have to reckon with success. If new law professors become, over a period of time, the professors who students acknowledge as effective teachers, someone will have to take notice. Even if a professor's teaching may depart from the Socratic-only mold yet remains rigorous, she ought to take the risk.

New law faculty can also challenge the entrenched views of how scholarship ought to be viewed in schools. Scholarship is, at its best, a means for having the legal academy monitor the law, call for changes in the law, and suggest innovation. Here, again, new law professors have advantages over their peers. First, many are as adept at technology as their Millennial Generation students. These professors can raise questions to Promotion and Tenure Committees such as: if a law professor creates an Internet blog, regularly promotes scholarly debate, and perhaps here and there sparks a change in the law (*e.g.*, a judge cites the blog, a Senator

161. The author attended the AALS Workshop for New Law Teachers in June 2003. That workshop addressed learning styles and encouraged diverse teaching methods. The author credits that Conference as the start to his process of developing his own teaching philosophy.

proposes legislation based on the professor's input), should not such a contribution "count" toward promotion and tenure?

Or, to return to the first subject of teaching, what if the professor publishes articles on the subjects of law school students' learning styles, teaching methods, and the like, will that professor receive credit for promotion and tenure purposes similar to an article on the split-in-the-circuits issue du jour? Are articles on learning and teaching considered less scholarly and, if so, why is that?

One can complicate this last point by observing two kinds of law-school-teaching articles. One kind is the one just mentioned, addressing law school learning styles and how variety in teaching helps reach a broader range of students. The other kind is the one that many may not have thought about. It is an article that addresses the philosophical underpinnings of a course subject, referring for instance to principles that are the ones underlying a particular subject. Such an article, however, should go on to explain how educational theory shows that students will learn a subject better if one engages them in a dialogue on why the subject is important. Is this an article on education theory, or is it closer to the traditional law review "scholarly" piece that promotion and tenure committees tend to like? Perhaps this policy-oriented article exploring why a subject is worth studying breaks the mold. If so, should not law schools welcome such innovative work?

Ultimately, why is it that new law professors have the unique ability to lead law schools? The author sees three main reasons supporting the view that new professors are uniquely situated to apply these complementary methods and create change. The first reason is that new professors are not as entrenched in their own teaching habits. The second reason is that new law professors are expected (at some level) to make mistakes in teaching and, thus, ought to feel free to experiment. The third reason is that new law professors are closer in age and experience to the Millennial Generation than other professors. Each of these three reasons will now be explored in a bit more detail.

Law professors are especially prone to becoming entrenched in their teaching style because there is little or no incentive to change teaching methods.¹⁶² Add to that the problem of professor autonomy. Individual law professors act autonomously to determine the content and method of teaching in their courses.¹⁶³ This is especially true after a professor receives tenure (typically in the sixth year of teaching) and there are very few incentives to engage in curricular and pedagogical development.¹⁶⁴

The new professor, however, is not so bound. The new professor is in a constant state of learning and change during her first few years as a

162. STUCKEY ET AL., *supra* note 2, at 211.

163. *Id.* at 210-11.

164. *Id.* at 211.

teacher. During that period it is easy to make changes in pedagogy because she is not particularly used to teaching in any particular way. Also, the new teacher is more reliant upon her colleagues in class preparation and better suited to learn from both good and bad characteristics of their teaching styles.

The second reason why new law professors are more equipped to make beneficial changes is that they have less to lose from mistakes. As young teachers, other faculty and administration do not expect a new professor to be as proficient as a seasoned veteran. The author attended an AALS Conference for New Law Professors and received some of his first training in learning theories, educational methods, and diverse methods for teaching law. After trying out some of the techniques suggested at the AALS Conference, the author enrolled in a summer course on educational theory – a crash course in learning theory, classroom instruction techniques, how to design test instruments, and the like. The author continued to apply what he learned and to develop his own teaching style.

During this time the author realized that his teaching did not have to be perfect. That recognition provided all the encouragement he needed to try out some of the methods he had heard about at the AALS conference and in his summer studies in educational methods. The author has come to view the attitude he had as a “What the heck?” approach. On hearing or reading about a teaching approach and intuitively believing it could help students, the author asked “What the heck?” If it falls flat on its face – or, more accurately, the author falls flat on his face – he could rest on the consolation that new law faculty are supposed to make mistakes anyway. The author admits having tried some alternative teaching methods that turned out to be ineffective. However, the “What the Heck?” attitude has more often encouraged the author to take risks that enhanced his teaching.

The third reason why new professors are more equipped to make beneficial advances in the classroom is that they are generally closer in age and experience to the Millennials than more senior professors. We know that the technological revolution – particularly the visual side of it – has changed us. We see the world differently. We learn differently. We have probably seen more movies than have read novels. Evidence is coming in from educational experts that a combination of all of this has left an imprint on our minds.¹⁶⁵ If we have a predisposition to learn by hearing, we still appreciate visual aids as a way of engaging the subject. Although the author cannot text-message on a cell phone yet, he is confident that he can learn the skill if he wanted to. The author has worked with PowerPoint and knows its limitations and strengths. Perhaps more rewarding than anything, the author has discovered in the past few years that we are never too old for toys. Civil Procedure is full of train cases – from the *Louisville*

165. See *supra* note 79 and accompanying text.

& *Nashville Railroad Co. v. Mottley*,¹⁶⁶ dealing with the well-pleaded complaint rule, to the *Erie* case, dealing with whether state or federal law should apply in a diversity case. It never fails: if the author brings in one of his kid's trains and demonstrates the accident at issue after a student has described it, the entire class gets a kick out of it. More than that, they seem to engage the materials more effectively. I sometimes wonder why simple things like that help. I suspect that the combination of visual presentation involving a case students have read helps the processes of memory and learning described throughout this article. In addition, the addition of some lightness or humor in the classroom may itself enhance the educational experience. But, alas, that idea is another article altogether. For now, I can say that I am simply glad that classroom learning and having fun are not mutually exclusive.

CONCLUSION

Legal education has fallen well behind other fields in responding to the increased awareness of how people learn and the best educational practices to respond to such discoveries. Law teaching is not terribly different today from law teaching decades (or even a century) ago. The *Best Practices in Legal Education* Report is an indictment of law teaching. The question now is whether law faculty will retrench and defend the old way – *i.e.*, the overemphasis on case-based, Socratic teaching – or will embrace the need to change. Even before the *Best Practices* Report, scholarship on law school teaching had been calling for such a change. This article not only supports that growing call for more diverse teaching methods, but offers the author's experience in using such methods in teaching Civil Procedure.

166. 211 U.S. 149 (1908).

ADDENDUM 1

TYPICAL STAGES OF A CIVIL ACTION

PHASE 1	<u>Cause of Action (Events Leading to Suit)</u>
	<u>Choosing Where Suit Can Be Filed</u> Jurisdiction and Venue Assignment: Subject Matter Jurisdiction, Removal, Personal Jurisdiction, Venue
PHASE 2	<u>Filing of Suit</u> How to Get the Suit started and Defendant(s) Served (Complaint, Service) Assignment: Drafting Complaint & Service; Notice & Opportunity to be heard
	<u>Pleadings Expanded</u> How to ensure all parties/claims joined; knowing options of defendants in response, claims that can be asserted by other parties, and satisfying supplemental jurisdiction. Assignment: Joinder of Claims and Parties, Rule 12 Options in Pleading in Response to Complaint; Counterclaims, Cross-Claims, Third-Party Claims; Supplemental Jurisdiction
PHASE 3	<u>Discovery</u> How to find out info/evidence from other parties, limitations on discovery including attorney-client and work product privilege; protective orders, Sanctions Assignment: Scope of Discovery, Initial Disclosures, Discovery Tools after Initial Disclosures; Attorney-Client Privilege and Work-Product Doctrine; Special Issues Re: Experts, Limitations on Discovery, Sanctions

PHASE 4	<p><u>Summary Judgment Motions</u> Adjudication, Part 1</p> <p>Assignment: Right to a Jury Trial; Summary Judgment Motions</p>
PHASE 5	<p><u>Trial</u> Adjudication, Part 2</p> <p>Assignment: Motions for Judgment as a Matter of Law During Trial</p>
PHASE 6	<p><u>Verdict & Judgment</u> Determining when motion (and appeal) deadlines begin running</p> <p>Assignment: Separate Document Rule, Fed. R. App. P. 4</p>
PHASE 7	<p><u>Post-Trial Motions</u> Adjudication, Part 3: Second-guessing or controlling the jury</p> <p>Assignment: Post-trial motions for judgment as a matter of law and motions for a new trial</p>
PHASE 8	<p><u>Appeal</u></p> <p>Assignment: Interlocutory appeals and final judgment rule; traps for unwary</p>
<p><u>Topics Outside Timeline</u></p> <p>NOTE: <u>Some topics, such as the Erie doctrine, for instance, may arise at various points in the stages identified above. In addition, others – such as Claim and Issue Preclusion – can arise only after judgment has become final in the first civil action.</u></p>	

ADDENDUM 2

Script for Deposition Dilemma

DESCRIBE CASE: Derived, with editorial license exercised liberally, from *Frazier v. Southeastern Pennsylvania Transp. Auth.*, 161 F.R.D. 309 (E. D. Pa. 1995).

ESSENTIAL BACKGROUND: Plaintiff was injured falling off steps of bus. She sued for negligence and lost Suit # 1. She then sued under state statute making it illegal to engage in surveillance of anyone by videotaping or recording events/conversations unless approved by an impartial judicial official. This is Suit # 2.

SCENE: Conference Room in the Office of Plaintiff's Attorney

THOSE PRESENT: Plaintiff (Ms. Frazier), Court Reporter, Plaintiff's Counsel, Defendant's Counsel.

COURT REPORTER: Ms. Frazier, please raise your hand. Do you swear or affirm that the testimony you are about to give is the truth?

PLAINTIFF: Yes, I do.

DEFENSE COUNSEL QUESTION: Good morning, Ms. Frazier. My name is _____. I represent Southeastern Pennsylvania Transportation Authority, the defendant in this suit. I will be asking you questions in this deposition. The court reporter will be taking down my questions and your responses. Please keep in mind that verbal responses are required, rather than gestures, so as to make certain your answers are clear on the record the court reporter types up. Do you understand?

PLAINTIFF: Yes.

DEFENSE COUNSEL QUESTION: What are the facts of which you are aware to support your claim that my client conducted illegal surveillance of you?

PLAINTIFF'S COUNSEL: Objection! The term "facts" is overly broad and vague. This witness can't possibly detail everything about every instance when the Bus Company videotaped her.

PLAINTIFF: I find your question confusing. I don't know how to answer it.

DEFENSE COUNSEL QUESTION: Please identify everything that you recall that led you to believe my client conducted surveillance of you.

PLAINTIFF'S COUNSEL: Objection! The term "everything" is overly broad and vague.

PLAINTIFF: Your question is worded in such a way that I don't understand it.

DEFENSE COUNSEL QUESTION: What don't you understand?

PLAINTIFF: I don't know.

DEFENSE COUNSEL QUESTION: You understand the words "please state" to mean verbally communicate, don't you?

PLAINTIFF'S COUNSEL: Objection! Harassing the witness.

PLAINTIFF: Yes.

DEFENSE COUNSEL QUESTION: Do you understand the phrase “everything that you recall” to mean all information that you have presently, as you sit here?

PLAINTIFF’S COUNSEL: Objection! Overly vague, broad, harassing. The plaintiff cannot possibly say everything. She can tell you about the event on Main Street where she saw a camcorder pointed in her direction and . . .

DEFENSE COUNSEL: . . . Counsel, please stop right there. Federal Rule Civil Procedure 30 provides that objections shall not be made in a manner suggesting an answer to the witness. Your objections are suggesting to the witness not only that she shouldn’t answer questions but also beyond that, you’re actually suggesting specific answers to the questions. That is totally inappropriate.

PLAINTIFF’S COUNSEL: Are you accusing me of coaching this witness?

DEFENSE COUNSEL: I am stating that your objections are in violation of Federal Rule Civil Procedure 30 for the reasons I have given.

PLAINTIFF’S COUNSEL: I am insulted that you would make such a suggestion. In 20 years of practicing law, I have never had such an allegation.

DEFENSE COUNSEL: The record will reflect these events and if necessary a judge will have to decide what is appropriate.

DEFENSE COUNSEL QUESTION: With your senses (sight, sound, smell, taste, touch) what observations can you point to supporting the claim that my client taped you?

PLAINTIFF’S COUNSEL: Objection! The phrase “observations” is overly broad and vague. The question also asks witness to know alleged conclusions by asking what “supports” the claim.”

PLAINTIFF: [Witness doesn’t say anything for 10-15 seconds and then asks, “Can I go to the restroom?”]

[Everyone reassembles]

DEFENSE COUNSEL QUESTION: Did you confer with anyone during the break?

PLAINTIFF: Yes, with my counsel.

DEFENSE COUNSEL QUESTION: Please describe this conversation.

PLAINTIFF’S COUNSEL: Objection – Privileged!

DEFENSE COUNSEL QUESTION: Are you instructing the witness not to answer?

PLAINTIFF’S COUNSEL: You bet! [Looking at witness] You shall not answer.

DEFENSE COUNSEL: I’m going to call the Court to move for an order (1) requiring Plaintiff’s Counsel to cease objecting in manner

suggesting answers; (2) compelling the witness to answer the pending question.

[Defense Counsel makes a telephone call to the court (placing the phone on speaker phone so that everyone can hear), speaks with the Clerk and asks for the judge who can handle disputes arising in a deposition. The Judge then comes on the phone]

JUDGE: Hello, this is Judge Justice. First, let me ask is there a court reporter present and are we on speaker phone so that the reporter can transcribe these proceedings?

DEFENSE COUNSEL: Yes, Your Honor.

JUDGE: Okay, then. What seems to be the problem?

[Defense counsel then summarizes the events related above.]

DEFENSE COUNSEL: . . . In light of what I have related, I move for two things: (1) that counsel be instructed not to make objections inconsistent with Federal Rule of Civil Procedure 30 and, specifically, no more than are necessary to preserve an objection that has to be preserved at the deposition; and (2) that the witness be instructed to answer questions regarding her conversations with plaintiff's counsel during the break while a question was pending.

JUDGE: Counsel for the plaintiff, what do you have to say?

[Plaintiff's counsel then makes the best argument he/she can that the objections were appropriate and that the conversations during the break are privileged under the attorney-client privilege]

JUDGE: Federal Rule 30(c) was amended to address the problem of objections such as plaintiff's counsel has been making here. Such objections are inappropriate because, among other things, they seek to alter the testimony of a witness. They will not be tolerated. I hereby instruct counsel for the plaintiff not to make objections other than those permitted by Rule 30 and necessary to preserve an objection that cannot otherwise be made at trial. Even though questions of vagueness may be matters of form, I find the questions here to be complete clear. The interposition of objections as to vagueness, followed by a witness' saying that the question is vague, smells of an attorney's influencing witness' testimony. Counsel, I will not stand for such behavior. Do you understand?

PLAINTIFF'S COUNSEL (Meekly): Yes, your honor.

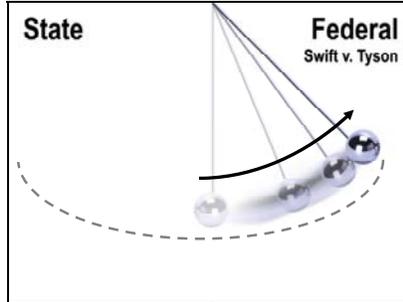
JUDGE: On the question of attorney-client privilege, I rule that the privilege will not apply if the attorney and client confer about a question asked in a deposition while that question is pending. Had the attorney and client been conferring about whether the privilege applied, that would be another matter. The question here – the one pending during the break was: “With your senses (sight, sound, smell, taste, touch) what observations can you point to supporting the claim that my client taped you?” I can see no way that a question asking about a witness' own observations that could in any way raise a question requiring the witness to confer about whether the attorney-client privilege applied. Therefore, I order the witness to answer

not only that question, but also all questions concerning the witness' discussions with her counsel during the break while the question is pending. Are there any other matters that I need to address?

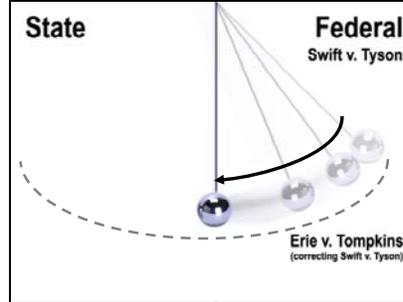
BOTH COUNSEL: No, Your Honor.

JUDGE: Well, then, good bye.

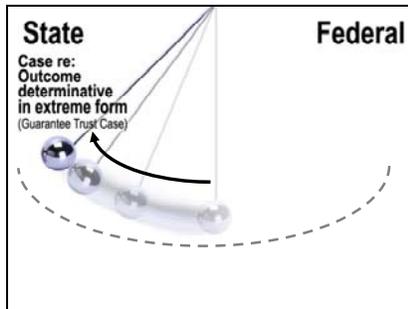
ADDENDUM 3



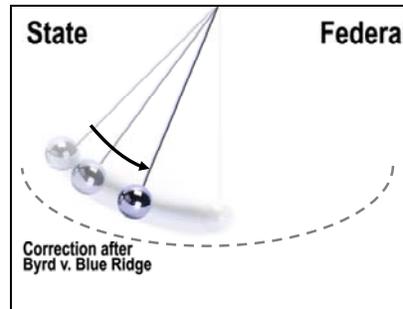
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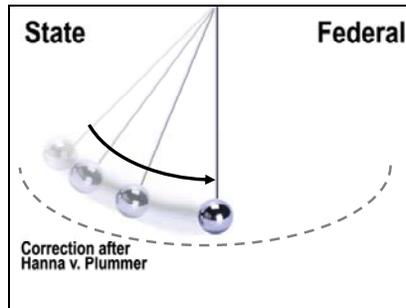
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