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Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation's Educating Lawyers: Preparation for the Legal Profession

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Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation’s *Educating Lawyers*¹

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I. INTRODUCTION

In the spring of 2007 The Carnegie Foundation for the Advancement of Teaching published *Educating Lawyers: Preparation for the Profession of Law* by William Sullivan, Anne Colby, Lloyd Bond and Lee Shulman. This volume is the second in a series of comparative studies of professional education in medicine, nursing, law, engineering and preparation of the clergy that examines how the members of different professions are educated for their responsibilities in the communities they serve. The dust jacket of the first edition further describes the book as one that: “presents a richly detailed picture of how law school goes about its great work of transforming students into professionals and probes the gaps and the unintended consequences of key aspects of the law school experience.” In their introduction the authors state that professional education “is a complex educational process, and that its value depends, in large part, on how well the several aspects of professional training are understood and woven into a whole.”² They then assert that the challenge of professional preparation for the law is just that: “linking the interests of educators with the needs of practitioners and the members of the public the profession is pledged to serve – in other words, participating in

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² Professor of Law, Franklin Pierce Law Center. I am most grateful for the invaluable editorial assistance of Frederick Millett, FPLC class of 2008.

² *Carnegie*, supra note 1, at 4.
civic professionalism.” The authors then write that it is the aim of their book to contribute to the understanding of civic professionalism.

It was essential in pursuing this understanding that *Educating Lawyers* give serious effort to describing and comprehending the process of academic training of lawyers. In this pursuit the authors could not avoid becoming enmeshed in the controversy within the legal profession and within academic legal education between those who decry the perceived lack of skills based training in legal education and those for whom the tradition of classroom socratic pedagogy is compelling. Perhaps because the Authors sought to bring another perspective to the controversy or because they wished not to find themselves identified as partisans of either view the perspective of *Educating Lawyers* on the controversy is descriptive only and thus unilluminating.

I read the Carnegie Foundation’s *Educating Lawyers: Preparation for the Profession of Law* with great disappointment. I am disappointed that its authors chose to buttress their call for reform by joining the common chorus of complaint about academic legal training through facilitated classroom discourse. They unquestioningly take up a view of facilitated classroom discourse caricatured in John Osborn’s *Paper Chase* and pejoratively identified by contemporary culture as the Socratic Method. The law school classroom discourse the authors describe and later label the “case dialogue method” may be simply described as a process of questioning of a student respondent by his/her teacher directed at challenging imperfectly defined or justified beliefs and intuitions that must be eliminated on the way to the elucidation of a tested solution to a legal problem. The

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3 *Id.*
implicit acceptance of the popular⁴ and professional⁵ critique of the inefficacy—if not destructiveness—of the method of training persons to be lawyers exclusively by the process of facilitated and professionally-modeled legal discourse is troubling. It is especially troubling because the authors’ critique, based, they write, on their observation and experience, posits that law school classroom teaching takes place in a lecture theater they describe as a situation of “intense and public competition with fellow students”⁶ and a place where students are “expected to engage in intense verbal duels and competitions with the teacher.”⁷

*Educating Lawyers* then identifies the creation of this environment and the pedagogical strategy supported by that environment as the “case dialogue method” and declares the case dialogue thus described as legal education’s signature pedagogy.⁸ By this declaration the authors suggest a denigration of all dialogue-based pedagogy. Accepting the call for skills training implicitly in substitution for training via the “case dialogue method,” *Educating Lawyers* wrongly denies that dialogue-based pedagogy teaches skills that proficient members of the legal profession must be able to exploit.

Dialogue-based law school pedagogy is a sound strategy for training lawyers. By pursuing the dialectic exposition of the law by the pedagogical strategy of facilitated dialogue between teacher and student and student and student, law professors are preparing their students for the practice of law. This dialogue that students practice in

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⁶ CARNEGIE, *supra* note 1, at 2.
⁷ Id. at 24.
⁸ Id. at 50.
class is the discourse of the law. To learn to be able to participate constructively in the
conversation that is the law is essential to the practice of law.

*Educating Lawyers* proceeds to its critical description of dialogue-based pedagogy in American legal education by way of two mischaracterizations by over breadth. *Educating Lawyers* treats all dialogue-based pedagogy employed by law teachers as a single strategy with universal attributes. It conglomerates all dialogue-based pedagogy employed by law teachers. Secondly, *Educating Lawyers* characterizes the teaching strategy of dialogue as if it were the classroom environment the authors observed to exist where dialogue pedagogy was being pursued. They conflated the pedagogical strategy of dialogue with the environment in which they observed dialogue being facilitated.

By acquiescing in this undisciplined conglomeration of all dialogue-based law school classroom pedagogy, *Educating Lawyers’* critique of academic training for the legal profession sweeps too broadly. In joining the chorus of Socratic Method critics, *Educating Lawyers* has chosen to stand with those critics for whom the Socratic Method has become a shibboleth of all that is wrong with legal education. The gravamen of that dissatisfaction is that contemporary legal education does not prepare students to be client ready. By conglomerating all dialogue-based pedagogy into the negatively described “case dialogue method” and casting that conglomerated pedagogy as the “signature pedagogy” of American legal education, *Educating Lawyers* implicitly denies that dialogue-based pedagogy develops attributes necessary to the practice of law. When exploited by a practicing lawyer, these are attributes that may properly be referred to as skills—skills necessary to client representation.
II. THE SOCRATIC METHOD

Perhaps an etymologist can explain how it is that the dialogue form of classroom legal education has come to be labeled the Socratic Method and then how all law school classroom pedagogy except the occasional lecture has come to be so identified. The proper appellation for the dialogue based pedagogical strategy identified by *Educating Lawyers* as the “case dialogue method” then cast by them as legal education’s signature pedagogy, is a matter of dispute. The dispute is more about the method’s efficacy than about how it is labeled.

In his erudite analysis of the proper appellation for the standard law school classroom pedagogy observed and practiced by him, William Heffernan concludes that the dialogue process law school teachers generally pursue in the lecture theater is not Socratic but Protagorian and that it is a product of law teacher conceit that that process is labeled Socratic. With less charity in his observations, Professor Leiter perceives not only conceit but presumptuousness in legal education’s choice to label its pedagogy Socratic. Leiter observes that it is a fact that professors of philosophy do not employ Socratic dialogue in their teaching of philosophy. For this reason he declaims that the use of dialogue, purportedly Socratic or otherwise is a scandal both for its presumptuousness and its manifest inefficacy. Heffernan’s disciplined analysis demonstrates that the best descriptor of traditional law school teaching is that the process of “teacher question then student answer” is properly called dialectical as well as eristical, though the term dialectic was later refined from its looser meaning in the time of Protagoras and Socrates and as a technical matter for that reason may no longer be a proper descriptor.

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10 Mangan, *supra* note 5.
There is a large body of formal comment on the singular use and efficacy of the “case method” and Socratic Method in American legal education dating from J. Redlich’s *The Common Law and The Case Method in American University Law Schools: A Report to the Carnegie Foundation for the Advancement of Teaching* in 1914.\(^{11}\) More contemporary comment appears in the context of the post *Paper Chase* dispute as to the Socratic Method’s place in legal education.\(^{12}\) Professor Guinier’s judgment that the Socratic Method is used in law schools to perpetuate hierarchy by intimidation is elaborated further in *Becoming Gentlemen: Women, Law School, and Institutional Change*.\(^{13}\) Haltom opines that, from his perspective as a practitioner, nothing conveyed by the method he experienced in law school has proved useful.\(^{14}\) Not all commentary pursues the current negative vogue. There is positive regard expressed by many. Third year law student Ann Marie Pederson lauds her Socratic training and its “good grillin’” in the *National Law Journal*:

[W]hen it’s done well, the Socratic experience can be challenging, motivating and even fun. And no, I'm not a masochist.

So far I have had a few doctrinal professors who have made law school worth every penny. They employ this method of pedagogy and do it well. These professors motivated me to work hard and to get it right. As a result, I’ve developed the confidence and analytical abilities to rise beyond my first-semester grades.

I came to law school to become a lawyer, not just to learn the law. To do that, one must think like a lawyer. Thinking like a lawyer means having a strong grasp of analytical reasoning and the ability to make and

\(^{11}\) Heffernan, *supra* note 9 (specifying an extensive sample of comment on the Socratic Method published between 1914 and 1975).

\(^{12}\) Mangan reports the conflicting views within the University of Pennsylvania’s law school faculty juxtaposing the assertion that the Socratic teaching style perpetuates hierarchy by intimidation against the traditional claim that that pedagogy is best for leading students to thinking like lawyers. Mangan, *supra* note 3.


\(^{14}\) Haltom, *supra* note 5, at 42.
defend an argument aloud and in public. To learn to think like a lawyer I need the Socratic method.\textsuperscript{15}

I found no law school specific empirical research. However, Roger G. Tweed and Darrin R. Lehman employed a Confucian-Socratic framework to analyze culture’s influence on academic learning in general. Following a critical analysis of the teaching process described as Socratic, Tweed and Lehman argue that “some of what passes for instruction in critical thinking is not in fact modeling a superior or even Socratic approach to thinking. Rather it is modeling an extreme Western and somewhat distorted Socratic value system in which criticism receives more emphasis than thinking.”\textsuperscript{16}

Two thoughtful practitioners of the art have made the case that principled pursuit of genuine dialogue—where the teacher and student are simultaneously teachers and students—is a sound if not essential pedagogical means to the professional development of law students to meet the varying demands of professional life and practice. Professor Elizabeth Garrett makes a cogent case for the efficacy of the Socratic Method for the development of skills essential to being prepared to meet the varying roles lawyers are called upon to fulfill in their professional lives in her review of \textit{Becoming Gentlemen: Women, Law School, and Institutional Change} (1997).\textsuperscript{17} In \textit{Becoming Gentlemen} Professor Lani Guiner and her co-authors accept the stereotype harsh and demeaning Socratic method practiced around them as the norm and call for its elimination from law school pedagogy as a first step to reform. Professor Garrett’s case against elimination is coupled with recognition that some of the criticism of the law school


\textsuperscript{16} Roger G. Tweed & Darrin R. Lehman, \textit{Learning Within a Cultural Context; Confucian and Socratic Approaches}, 57 AM. PSYCHOLOGIST 89-99 (2002).

Socratic Method is due to its use in the hands of bad teachers. The latter point brings Professor Garrett to call for law faculty peer and student evaluation, followed by discussion of legal pedagogy within the faculty directed to how faculty might refine their skills.

Emeritus Professor Donald Marshall, in his inaugural lecture on taking the position of Law Alumni Distinguished Teacher at the University of Minnesota Law School, posited that the quintessential mode of evocative teaching, properly used, is the dialogue and that the phrase “Socratic Method” used in describing law school teaching is a synonym for dialogue. His position is that principled exploitation of the pedagogy of dialogue is the irreducible core of legal education.

Neither of these established law schoolteachers describe the dialogue they facilitate as combat or verbal duels where students engage in intense competition with the teacher and each other. Rather Professor Marshall declares that his teaching through dialogue is disciplined by the principle that “genuine dialogue is based on respect for the promise of the students’ minds and a determination to help them realize that promise by providing intellectual challenge.” To this end, Professor Marshall asserts that the teacher must manifest the professional and personal characteristics that follow from the ultimate purpose of the dialogue. That purpose he declares is to “maximize learning by encouraging participation in the process of discovery; including, most significantly,
discovery of the dialogue as a means of autonomous learning. This means that the teacher must have an attitude of genuine respect for classroom space and time, for the dialogue process, and for all potential participants. This respect must be evident by the teacher’s preparation. It is further evidenced by a sense of compassion manifest in recognition “that while dialogue imaginatively used is the most effective pedagogical vehicle for learning the irreducible core, it can be, when misused, destructive.”

The teacher must be aware that while lawyers may often be required to speak their views in public, knowing those views will be subject to critique and criticism, new students are likely not practiced in that skill and they are in a law school class to acquire and practice that skill. Public denigration of a student proposition the first time that student responds cannot be sound. Compassion requires coaching not denigration.

Coaching and practice are the means to prepare for entry into the legal profession. Dialogue pursued as Professor Marshall counsels is how the lawyering skills and attributes are acquired through the process of active learning at the direction of active coaching. This preparation for entry into the legal profession must be adequate for any of the roles lawyers may be asked or choose to assume. Both Professors Garrett and Marshall posit that the irreducible attribute of the lawyers we law professors seek to train is that they will be problem solvers. While some of our students may never enter a courtroom as advocates, “they will counsel clients, devise strategies for legal challenges both to and facing social institutions like schools or prisons, draft legislation and advise state and local lawmakers, or run businesses.”

23 Id. at 13.
24 Id. at 13-15.
25 Garrett, supra note 18, at 207.
Professor Garrett employs the teaching strategy of dialogue to “inculcate in the students the habit of rigorous and critical analysis of the arguments that they hear as well as the practice of assessing and revising their own ideas and approaches in light of new information or different reasoning.”26 “The goal is to learn how to analyze legal problems, to reason by analogy, to think critically about one’s own arguments and those put forth by others, and to understand the effect of the law on those subject to it.”27 The goal is thus to help students “develop reasoning skills that they can apply, regardless of the legal question,”28 because the purpose of law schools is “to train students to be good and thoughtful lawyers in whatever job they choose.”29

Professor Marshall describes the dialogue pedagogical method he pursues directly: “teacher and student, by studying together, develop that constellation of cognitive and moral capacities necessary to understand the nature of law”30 and metaphorically: “Ideally, the dialogue involves two people—teacher and student. That’s what President Garfield meant when he was asked for his definition of the ideal university, and responded: ‘Mark Hopkins at one end of a log and a student at the other.’”31

The method of genuine dialogue is straight-forward. Whether the method is properly labeled Socratic, Protagorian, dialectic, or simply dialogue, what the law teacher does first is formulate a question that requires a response from the student. That first question is calculated to direct the discourse resulting to a tested solution to the legal

26 Id. at 202.
27 Id. at 201.
28 Id.
29 Id. at 207.
30 Marshall, supra note 21, at 5.
31 Id. at 8.
problem under investigation and the rational elimination of imperfectly defined and unjustified intuitions. This direction is achieved by the teacher responding to the student response (often predictable in the teacher’s experience) directly, when direction is required, or with a question testing the foundation of the student response when the basis of that response is unsound or requires illumination. The method is a means of participatory learning that coaches students to the development of the abilities to think critically and to present ideas effectively. It is successful at this because the method requires student participants whether active or vicarious to articulate, develop, and defend positions that illuminate the law under investigation. Where the subject matter of the discourse is the analysis of judicial opinions, “students have to learn what counts, in light of the received rhetorical tradition, as persuasive justifications for judicial answers to particular legal problems. Concomitantly, they develop a sense of which arguments of counsel are likely to be regarded as convincing, which provocative, and which acceptable.”

Dialogue pedagogy delivers more than the thinking skills and disposition specified by Professors Garrett and Marshall. Dialogue pedagogy demands that students develop, articulate, and defend ideas concerning legal problems and the solution of those problems. Professor Garrett takes the position that speaking in public, whether to client groups, a meeting of lawmakers, corporate boards, or in courtrooms or administrative proceedings, is integral to becoming a lawyer. The demand of dialogue pedagogy teaches students, by the process of their doing it in an atmosphere of relatively low stakes, to “present ideas to groups, to defend those ideas, and to propose solutions to legal

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32 Id. at 6.
33 Garrett, supra note 18, at 204.
problems.” Phillip E. Areeda made the same point. In dialogue based on eristic analysis of judicial opinions students learn what is material and what is relevant in understanding a legal problem or its solution. Students also develop through the dialogue process the keen regard for the facts essential to sound lawyering. All of this is accomplished through the teacher’s challenge to unjustified assumptions, untested beliefs, and unquestioned habits, and direction toward sound solutions. The process of the dialogue conversation also teaches the vocabulary of the law under study through its use. The form of professional legal discourse is practiced as the teacher models it. One need only negotiate the resolution of a controversy over the telephone or before a planning board or a board of directors to know the centrality of the skills practiced and acquired through participation in the dialogue process.

_Educating Lawyers_ acknowledges, albeit only once and then with a telling lack of emphasis, the skills development resulting from dialogue pedagogy: “on the surface question and answer—has a deeper structure, the teaching of legal reasoning. Gradually, case-by-case students discover that reading with understanding means being able to talk about human conflicts in a distinctively legal voice.” The ability to think like a lawyer emerges as the ability to translate messy situations into the clarity and precision of legal procedure and then to take strategic action through legal argument in order to advance a client’s cause.” Dialogue pedagogy promotes learning this ‘translation of human conflicts into legal language’ by repetition much as weightlifters build through exercise. With Marshall and Garrett, the Carnegie authors believe that “the case-dialogue method

34 Id.
36 CARNEGIE, supra note 1, at 53.
37 Id. at 54.
is a potent form of learning by doing. As such it necessarily shapes the minds and dispositions of those who apprentice through it.”  

II. THE ATTACK ON THE SOCRATIC METHOD

_Educating Lawyers_ may be read, as above, to support the stance of Areeda, Garrett, and Marshall that important professional skills are taught by means of dialogue pedagogy even though it may also be read to have accepted the lament of the critics of that pedagogy that the pedagogy does not produce client-ready graduates. Regrettably, _Educating Lawyers_ conflates the process of dialogue with the environment its authors observed surrounding it. The work describes that environment to be a “situation of intense and public competition with fellow students” and a place where “students are expected to engage in intense verbal duels and competitions with the teacher as they struggle to discern facts and principles of interpretation within a case.”  

This picture is hardly consistent with that drawn by Professor Marshall of the teacher on one end of a log in conversation with the student on the other before an engaged class of eighty; teacher and student together seeking in dialogue to find principle and to abandon misconception. Nor is it consistent with his principles of genuine dialogue (respect, sound preparation, and compassion). It is belied in the observation of both Professors Areeda and Garrett that “the modern Socratic Method differs dramatically from the stereotype and that the relentless questioner who never utters a declarative sentence is extinct.”  

A teacher can hardly coach or mentor a student to the acquisition of a professional skill while engaged in intense competition with that student for some kind of ascendancy.

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38 Id. at 74.
39 Id. at 2, 24.
40 Garrett, _supra_ note 18, at 201.
Educating Lawyers describes this competition as ubiquitous (thus vindicating Professor Gurnier’s perception of the prevalence and destructiveness of the harsh stereotype Socratic Method). It explains the presence of the phenomenon of this competitive non-supportive environment in the classes observed by describing two related phenomena. First, it notes that in faculties at the standard model law schools where faculty are selected from the graduates of leading law schools “the contest for distinction and influence is relentless and consuming,” in part because faculty are themselves products of an apprenticeship that maximizes the value of competitive success by rewarding it as the primary value served by the educational process pursued by the case dialogue pedagogical method the authors observed.\footnote{Carnegie, supra note 1, at 90.} And second, it observes that at elite law schools the case dialogue method buttressed by the practice of grading on the curve and sorting by class rank, is practiced for the purpose of sorting out (from those already sorted by admissions) those students qualified for distinction and thus careers as scholars, professors, jurists, and practice at paradigm law firms with the rewards of the “power track.”\footnote{Id. at 137.} The implication is that having succeeded through the competitive process that sorted them, law teachers selected by this process at elite law schools will necessarily teach (compete) through the process by which they were competitively successful.

The competitive atmosphere they observed led the Carnegie authors to some expression of concern as they lamented that this “atmosphere militates against a cooperative learning environment”\footnote{Id. at 166.} and further:

\footnotesize{\textsuperscript{41} Carnegie, supra note 1, at 90.\textsuperscript{42} Id. at 137.\textsuperscript{43} Id. at 166.}
there is evidence that law school typically blares a set of salient, if unintentional, messages that undercut the likely success of efforts to make students more attentive to ethical matters. The competitive atmosphere of most law schools generates a widespread perception that students have entered a high-stakes, zero-sum game. The competitive classroom climate is reinforced by the peculiarities of assessment of first year courses. The ubiquitous practice of grading on the curve ensures that, no matter how talented or hard working the students are, only a predetermined number will receive A’s. Such a context is unlikely to suggest solidarity with one’s fellow students or much straying from a single-minded focus on competitive achievement.44

Perhaps the Carnegie authors meant to advance their agenda of reform in legal education by casting the Socratic case dialogue as they did. But the position that all dialogue-based legal education, or even discourse, must take place in an environment of combat between teacher and student, a “situation of intense competition” engendered by the teacher who must pursue victory, is not sound. By his principles of genuine dialogue, it is clear that Professor Marshall does not seek to create that environment and that he believes it is not necessary to do so. By her description, Professor Garrett’s teaching goals are not her competitive ascendancy.

IV. MY EXPERIENCES WITH SOCRATIC METHOD

I came to law school teaching convinced by my high school and collegiate educational experience that the negative educational experience I had in law school in the non-supportive competitive environment observed by Educating Lawyers did not have to be replicated for the successful professional training of aspiring lawyers.

My goal entering a classroom—where my task is to facilitate the discourse—is that my students and I learn something together, not that my students fall at my feet. I can honor the teachers in my past in no better way. I had a number of very good teacher mentors before law school. These teachers used dialogue. They sat at either end of a

44 Id. at 31.
Harkness table with the resulting circle of students around the table. These teachers propounded carefully considered questions to the group. Following up these questions, the teacher constructed conversations inclusive of all. All students contributed to the conversation through responses building upon responses. These conversations were energized not by competitive zeal. They were energized by our excitement at following the path to the understanding our teacher conceived with us. I have tried to teach as the good teachers I experienced in my life taught, through disciplined question and answer pursued not as verbal tag but as a test of assumption, intuition, reason, and belief that honors student participants for their courage in speaking their ideas before a group, knowing those ideas are to be tested.

I think good dialogue teaching is a product more of attitude than of technique. That attitude must be that informed by Professor Marshall’s principles of genuine dialogue. It must be an attitude that aims at the goal of creating an environment where teacher and student are both simultaneously teachers and students. This means that when a law teacher recognizes the palpably reticent student (who saw the movie before starting law school) trembling in anticipation of the performance demand of being called to respond without prior notice—the “cold call”\(^{45}\)—and then calls on that student for a response before his or her classmates, the teacher must respond to that student’s response with gentleness and an attitude of finding in it a thing of value to the discussion. This situation is not one calling for the teacher to use the response to prove how smart he or she is relative to the student. If the valuable response is not the student’s first response, coaching a valuable response from the first response with follow up questions is the right course because it honors the student’s achievement in overcoming reticence and confirms

\(^{45}\)CARNEGIE, supra note 1, at 75.
his or her capacity to contribute. At a minimum, that student and all the others in the room who empathize, as most do, with their classmate will have learned that they can respond and no untoward thing necessarily results. If one gives pre-class notice to a student who will be called upon, that student will prepare, respond, and maybe even respond with excellence. Thus, that student and the empathetic class have had a compelling lesson in the lawyering skill of sound preparation and the satisfaction in its exercise. I have been advantaged in my pursuit of genuine dialogue pedagogy not only by having had great mentor teachers as a student but also because I have been free of the competitive pressure and its ideology not by Educating Lawyers to be ubiquitous at the standard law school. I teach at a law school begun in 1973 consciously founded to not replicate the standard law school characterized by Educating Lawyers. I have not been required to confront or exploit the effects of the stimuli to competition there noted. The school where I teach successfully resisted employers’ demands for class rank until 1993 and the mandatory curve until we sectioned our first year required courses in 2001.

Pursued with the knowledge that a teacher cannot expect one’s students to accept the gifts the teacher is offering them unless the teacher will appreciate and accept the gifts those students offer in return, participation in dialogue pedagogy teaches more than the thinking and problem solving skills noted by Professor Garrett. My experience as a teacher has convinced me that Professor Marshall’s thesis that the dialogue process is the process of the law\textsuperscript{46} is sound and important. Dialogue is at least the process of the common law by which judges (or legislatures in reaction) in the United States legal system apply, create, and implement law. Through dialogue, judges and legislators test a proposed principle of decision for a challenging legal question by argument and counter

\textsuperscript{46} Marshall, supra note 21, at 5-6, 13.
argument. In the face of changing facts over time and experience, testing in this crucible of argument and counter argument is the law’s path to coherent and replicable solutions. This mode of testing is mirrored by the dialogue process and has been defended as the true source of law by the legal profession with tenacity and pride against codifiers as well as proponents of the jurisprudence of common sense among other challengers of the legal profession’s possession of the law.47

Participation in the process of dialogue by question and answer teaches a student how to function in the process the dialogue mirrors. Students learn the lawyer’s role by doing it. In this way, students exercise the skills necessary to perform that role. In this way, the student builds an understanding of the law.48

The power of this process of inclusive dialogue on the law has been demonstrated to me in law school classrooms where the students’ prior experience of teaching was neither interactive nor participatory. Students in classes in Russia, Bulgaria, and the People’s Republic of China, where I have facilitated classes in law, have a common educational experience. The teacher-scholar has had access to the library where the stacks are closed to all but those of his or her status and has read all there is on the subject of his or her study. By informed intuition, that teacher has conceived an efficient organization of that study that can be articulated in words. This teacher’s purpose in going to the classroom is to download that organization and the knowledge it imports. Students are presumed to come to the classroom as empty vessels. The role of these vessels in the educational process is to open themselves up to receiving the words of the

48 Marshall, supra note 21, at 5-6.
teacher as he or she pours them into the students’ passively receiving minds waiting to be filled.

In all three instances, when given the privilege of a classroom filled with students with this experience of university education, I have chosen to resist the demand to follow the form of downloading acquired knowledge in favor of pursuing the process of dialogue I know. Shock is not the right word to describe the students’ collective response the moment I left the podium to ask the class: “What do you think?” In each instance the students were not shocked—they were nonplussed. Nonplussed, I think, because the idea that a person with the role and status of a teacher could be concerned with what they thought, or act as if it mattered, was beyond their classroom experiences.

My favorite such moment was in a Russian classroom where I was presenting through a contemporaneous translator who was so good the conversation went on seamlessly, as if the translator were in my frontal lobe. It was seamless until I turned to the class and for the first time asked: “What do you think?” The translator choked. In her surprise and distaste she could not bring herself to find the Russian words until a student with some English skill prompted her past the impasse. Two more classes where my behavior became familiar were required before seamlessness was again achieved. The students got it long before the translator. Our conversation moved on past the translator’s hesitation until a student stood and demanded that the male students, as well as the professor of criminal law then sitting in, stop interrupting her comments and cutting off her contribution. Her fellow students felt the rebuke as I honored her request by continuing the conversation of her idea with her. Thereafter they responded with courtesy. These students left behind the experience of being nonplussed as they found in
the conversation their power to identify and know the beginning of the truth. As they accepted, by practicing, the process of guided inquiry, they knew the law’s origin need not only be central authority but is discernable through their own reasoning together. They knew they had a role in the process of the conversation of the law.

V. CONCLUSION

My experience as a law teacher has brought me to the conclusion that Professors Areeda, Garrett, and Marshall are right. They are correct that Socratic dialogue pursued as they describe and not the “case dialogue method” described by Educating Lawyers, is a compelling pedagogy necessary to the sound preparation of students for the practice of law. The dialogue process effectively teaches the method of the law as well as the skills and attitudes essential to the sound implementation and exploitation of that method. By conglomerating all dialogue based law school pedagogy in its critique, then conflating the dialogue process with the intense competitive environment the authors observed, Educating Lawyers has done a disservice to those committed practitioners of the art of genuine dialogue.

The hallmark of genuine dialogue is “respect for the promise of the students’ minds and a determination to help them realize that promise by providing intellectual challenge.” The hallmark is not intense verbal dueling and competition with the teacher. A teacher motivated to “prevail” in the classroom cannot illicit student understanding that genuine dialogue is a means of autonomous learning. Educating Lawyers’ call for reform asking that law schools focus specifically on teaching MacCrate skills should not be advanced by the sacrifice of genuine dialogue pedagogy, a pedagogy that in my
experience and that of noted law teachers instills essential professional qualities and skills in those law students who participate in its process.