

Fall 2021

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Directed Questions: A Non-Socratic Dialogue About Non-Socratic Teaching

KRIS FRANKLIN & RORY BAHADUR*

INTRODUCTION

There are some very good reasons why the case method has long been the signature pedagogy¹ in legal education.

No, wait—the problem method has real advantages over Socratic questioning for teaching law students to think like lawyers.² Or maybe case files and simulations.³

Law classes should be flipped⁴ to maximize student learning.⁵

* Many thanks to all students who have helped refine the Directed Questions teaching method. We are particularly indebted to Paige Britton and Nichole Smith, who generously gave their time and insights in interviews.

1. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, 2–3, 23–24 (2007).

2. See some of many proponents of problem-method legal instruction, including Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992); Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1 (2009). But see, Shirley Lung, *The Problem Method: No Simple Solution*, 45 WILLAMETTE L. REV. 723 (2009) (outlining both strengths of problem-based instruction in law school and potential pitfalls that can be avoided); see also James Eagar, *The Right Tool for the Job: The Effective Use of Pedagogical Methods in Legal Education*, 32 GONZ. L. REV. 389 (1996–97) (including problem-method teaching as one of many viable approaches to legal instruction, and urging law faculty to select the teaching method that best suits the particular educational goals for each course).

3. Again, many have argued for more simulation and client-driven law teaching, including one of the authors. For a brief yet trenchant summary of the rationales underlying these pedagogical methods, see Kristen Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 353 (2012).

4. At its core, flipped teaching is designed to present information to students at home, often in the form of video-recorded lectures, and to devote significant class time to applying the information learned. The method has been used in primary and secondary education for years, and more recently adapted to law teaching. For but one description aimed at non law teachers, see Michael B. Horn, *The Transformational Potential of Flipped Classrooms*, EDUC. NEXT, at 78 (Summer 2013), <https://www.educationnext.org/the-transformational-potential-of-flipped-classrooms/>.

5. See, e.g., William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. LEGAL EDUC. 93 (2014) (detailing his revision of his own teaching to try flipped methodology and his commitment to continuing with the method).

With all of this (conflicting? potentially complementary?) advice about classroom methodology for law teaching, is there really a need to introduce yet a different method of instruction? We think the answer is yes. This Article is our exploration of why.

Both authors are fairly conventional law professors in the sense of teaching a range of common law school subjects⁶ while employing common law school classroom techniques like randomly calling upon various students to initiate a discussion meant to elucidate material. We are both strong proponents of updating conventional law teaching to include more active learning,⁷ regular assessment,⁸ inclusion of technological tools where helpful,⁹ and so forth. Nevertheless, Christopher Columbus Langdell¹⁰ would probably recognize much of what we have commonly done in our classrooms.

In recent years, though, Rory Bahadur has reconstructed his courses to take a sharp turn away from even the more modern means of deploying the case method. He still expects students to read and understand judicial opinions, of course, but conceives of his classes as not structured by them. Instead, cases and statutes are read as necessary tools in his students' efforts to respond to a series of questions they must answer before class, and which will be considered together when the class convenes. We have dubbed this the "Directed Questions" method of law teaching.

The authors began a series of conversations seeking to unpack the Directed Questions methodology to identify the educational work it was doing.

6. Collectively, we have taught Contracts, Torts, Civil Procedure, and Family Law, as well as a variety of more specialized courses.

7. Active learning techniques are experiential and constructed to engage learners in building their understanding through their comprehension of the processes they have engaged in. For an early critique of the relative passivity of traditional legal education, see Michael L. Richmond, *Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education*, 26 CUMB. L. REV. 943 (1996). For further examination of active learning in legal education see, e.g., Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 87 (2013); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1 (2003).

8. Not simply as required by ABA Standard 314, but as a fruitful means of teaching and enhancing learning. See Julie Ross & Diana Donahoe, *Lighting the Fires of Learning in Law School: Implementing ABA Standard 314 by Incorporating Effective Formative Assessment Techniques Across the Curriculum*, 81 U. PITT. L. REV. 657 (2020).

9. E.g., PowerPoint slides, clickers and electronic polling, asynchronous recordings, etc.

10. Credited as the founder of the case method in legal education. See, generally, JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* (1978). It is worth noting, however, that most modern law school textbooks bear little resemblance to the pure case method Langdell introduced. Explanatory information is now routinely included, as are statutes and Restatement sections, excerpts from secondary sources, and questions or problems meant to elucidate the material.

It is worth noting, too, that in addition to introducing the case method Langdell should probably also be credited with instituting the first summative assessments in Harvard Law classes, which undoubtedly had significant impact on legal education more broadly. See Franklin G. Fessenden, *Rebirth of Harvard Law School*, 33 HARV. L. REV. 493 (1919–20).

We quickly came to believe that our exchanges were leading both of us toward a deeper understanding of our own thoughts about learning in law school, and that there was something tangible in the discussion that neither of us were likely to have been able to generate alone. Much of our initial conversation was framed as Kris asking Rory about what he was doing and then reflecting upon it, but also probing with her own notions about what was working in his teaching and why. In short, we came to realize that we were in some senses having a directed question dialogue about...Directed Question method.

What follows, then, is a partial reconstruction of those conversations. We do this to provide an exegesis about this teaching method while simultaneously offering a partial simulacrum of the method itself.¹¹

We are inspired by *A Dialogue About Socratic Teaching*,¹² in which Peggy Cooper Davis and Elizabeth Ehrenfest Steinglass construct their worn version of Socratic repartee as part of their exploration of the purpose and value of Socratic engagement in law teaching. (Though we note that those authors fairly quickly found the very Socraticness of their own Socratic dialogue tedious,¹³ which caused them shortly to turn to more natural forms of conversing.) But while much of that article remains instructive for the current thinking about legal pedagogy, we find it less committed to more active learning pedagogies than we believe is optimal in the contemporary legal classroom.¹⁴ It also takes for granted the centrality of basing law students' learning in exploration of the meaning and potential interpretations of the cases assigned, which we find ourselves questioning.

We want to reconsider that predicate presumption about the very centrality of cases in legal education. We are becoming increasingly convinced that case-based dialogue is not the only—and may not be the best—purpose of questioning and discussion in the law classroom. We also observe that some parts of traditional law teaching can implicitly advantage those who are more comfortable in them, to the detriment of students who do not quickly grasp how to operate optimally within those modes.¹⁵

We believe the Directed Questions (“DQ”) method can build fruitfully on the important legal reading skills law students develop in reading cases

11. Though not perfectly so. The question of whether the dialogue in this Article truly replicates Directed Questions methodology is considered in the Conclusion. See *infra* Conclusion.

12. 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997).

13. *Id.* at 278.

14. Not that Davis & Steinglass resisted active teaching methods. For example, see *id.* at 250. But in this particular work they show more fealty to the merits and engagement of law school Socratic questioning than we are inclined toward today.

15. And we note with real concern that there is significant overlap with greater ability to thrive in traditional legal education and greater privilege overall. That is not a primary focus of this Article, but it is an inescapable concern to both of us that we believe deserves real attention in the legal academy.

and statutes. We believe they can be designed thoughtfully to lead students toward meaningful comprehension that they themselves construct. That is precisely because we believe they provide the kinds of active learning experiences that lead law students to deep self-revealed insight about the law they are learning.

I. THE METHOD

A. *What Happens in Class*

1. *Overture*¹⁶

KRIS: I have observed some DQ class sessions and found them engaging, and even exhilarating. But let's start at the beginning and have you describe how a typical class is conducted.

RORY: Okay, well, I'll just randomly call on one student with: 'what is your response to Question 1?' and I will encourage the student not to read from their prepared answer, but rather to paraphrase it more conversationally....

KRIS: Sorry, hold on. Does this mean that all students have the questions you will be asking in advance, and that they need to have prepared initial answers to them before coming to class?¹⁷

RORY: Absolutely. Yes.

KRIS: Got it.

RORY: So I will have called on a student to provide an opening response to the first question. No matter what I hear, I will probably push back in a way that's designed to get the students to think about the question more rigorously.

KRIS: Okay, but what does "more rigorously" mean here? I doubt you just mean more correct, and I am assuming you are looking for something deeper than that, but what exactly?

RORY: I want them to develop a cognitive schema¹⁸ that helps them understand the material in a richer way. Inevitably that will help them avoid

16. A musical preamble which often previews snippets of melodic themes to be expanded upon as the work unfolds.

17. Students' expected class preparation is considered in Part B. See *infra* Part B, Section 1.

18. Cognitive schema originated in the constructivist approach to education described by Jean Piaget, but has been adopted and elaborated upon by scholars of legal pedagogy. See Sharon J. Derry, *Cognitive Schema Theory in the Constructivist Debate*, 31 EDUC. PSYCH. 163 (1996). See also, Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 72-74 (2010) (describing schemas as "data structures" enabling new information to be encoded in context); Louis N. Schulze Jr., *Using Science to Build Better Learners: One School's Successful Efforts to Raise Its Bar Passage Rates in an Era of Decline*, 68 J. LEGAL EDUC. 230, 248 (2019) (observing that cognitive schema theory "focuses on the active construction of knowledge by creating cognitive structures

giving *wrong* answers in the future. More importantly, though, it will help them understand more about the realm of possible correct answers because they develop a hook for what they are learning.

KRIS: That needs a lot of unpacking. To begin with, let's talk about what you mean by cognitive schema. I understand the phrase to mean a kind of framework for organizing and understanding information. Is that what you are getting at?¹⁹

RORY: Yes!

KRIS: So what you are trying to do is work with your students to develop big-picture comprehension of the material you are covering? And you are doing this in the way you create the Directed Questions, but also in the way you consider them in class? Can you say more about how or why?

RORY: The metaphor I use is that with the Directed Questions I am not asking them to just sort of walk gently along. I am asking the students to jump off a cliff. There are questions in there that will leave almost all of them feeling like they are out of their depth, if that makes sense. I am doing that because the most challenging (and interesting!) parts of any body of law should probably make beginners feel like they are out of their depths. At least until they develop a more sophisticated grasp of how and why the body of law we are learning fits together the way it does.

KRIS: It sounds to me as if you are describing a particular way of managing the paradox of the legal hermeneutic circle:²⁰ conceptualizing the body of law as a whole requires a firm grasp of its constitutive components, while thorough understanding of each rule or case depends on getting each of the parts.²¹ Is that right?

If I may invent a term for you, is what you are really doing in your discussion of the questions with your students a form of 'scaffolding the

around which information can be assimilated and stored in long-term memory. A cognitive schema is a heuristic that promotes the encoding and retrieval of knowledge. In essence, organizational frameworks or mental structures aid the learner both in putting together the arrangement of a topic and in recalling that information.”).

19. See Rebecca R. Flanagan, *Anthrogogy: Towards Inclusive Law School Learning*, 19 CT. PUB. INT. L.J. 93, 118 (2019) (concurring that cognitive schemas are vital to learning in law school: “[s]tudents without a schema, or framework to build connections between existing knowledge and new learning, cannot understand the doctrine or apply new skills.”).

20. All of human understanding it is said occurs via a hermeneutic circle or spiral, in which knowledge of the whole is informed by understanding of the parts, and back again, extending indefinitely. For further examination of hermeneutics in legal interpretation see Francis J. Mootz III, *The Ontological Basis of Legal Hermeneutics: A Proposed Model of Inquiry Based on the Work of Gadamer, Habermas, and Ricoeur*, 68 B.U. L. REV. 523 (1988).

21. Applying Jungian archetypes and Myers-Briggs typology to learners of law, theorists Martha M. Peters and Don Peters posit that this cycle can be entered equally well by students drawn either toward big-picture thinking which they subsequently enrich with details, or by bottom-up thinkers who tend to form their broad conceptions by first considering constitutive parts. See MARTHA M. PETERS & DON PETERS, JURIS TYPES: LEARNING LAW THROUGH SELF-UNDERSTANDING 3, 15–16 (2007).

meta'²² so that students have assistance in building the kinds of well-developed schema you want them to have?

RORY: I probably would not have put it that way, but yes, I think that's apt.

KRIS: Many law professors would say that's what they are trying to do in Socratic questions about cases, though. We are going to have to be clearer about why the Directed Questions work differently.

2. *Schema-building*

RORY: One of the of the things I am trying to do is to make students work hard, but productively. I want to reduce the inefficiency or spinning of wheels that law students sometimes engage in. I think that wastes time and contributes to students feeling like we are hiding the ball, simply because they cannot see tangible results from their efforts. I want them to know what they are learning—that they are learning—and for that to motivate them to work even harder.

KRIS: But I am going to need you to be more specific about what is going on in this method that achieves that.²³ So far, after all, your description of a DQ class session does not diverge all that much from most other current law classes.

RORY: The difference is that the students have had a level of reflection and engagement with the material coming into a directed question class that they do not typically have in the traditional class. The questions are designed to help students create *their own* deeper and more tangible contexts for the material than they could without these questions. My hope is to build more complex cognitive schema formation by using the questions to facilitate their initial entry into the material such that there is less of a knowledge hierarchy between me and them when the actual class begins.

I am essentially trying to give them three bites at an apple. (The apple being a deep understanding of the material we are covering.) The students get one bite at the apple on their own before class, and then in class we can

22. Scaffolding in legal education is based on Vygotsky's theory of the zone of proximal development, which can be explained as:

the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem-solving under adult guidance, or in collaboration with more capable peers.

Saul McLeod, *The Zone of Proximal Development and Scaffolding*, SIMPLE PSYCH. (2019), <https://www.simplypsychology.org/Zone-of-Proximal-Development.html>. ("Vygotsky believed that when a student is in the zone of proximal development for a particular task, providing the appropriate assistance will give the student enough of a 'boost' to" accomplish the learning objective."). *Id.* Scaffolding activities provided support students as they are led through the zone of proximal development. They are eventually tapered off, so that students increasingly learn independently without the earlier assistance.

23. We observe with some chagrin that this sort of "nice, but can you please pin it down more" inquiry is precisely what many law professors do in class, Socratic, DQ, or otherwise. Apparently we cannot help ourselves from deploying it in other conversational settings.

spend the time thinking about making apple pie rather than asking them if they know what an apple looks like and what an apple is. Then they leave class empowered to make the apple pie on their own. And in case it isn't clear, the journey I'm describing from seeing apples for the first time to making apple pie is the journey from novice to comfort and competency.

KRIS: I don't know whether you knew this, but when I spoke with some of your students they actually described that this was their experience in the class.²⁴ A student noted that:

Class felt as though we were thinking about how the questions we had answered at home and learning what we missed and why. [Prof. Bahadur] added the material in class in such a way that you obtained a foundation built for the next class. It was obvious that to learn and progress in the class you had to do the questions thoroughly in the way he expected before class.

RORY: It is so gratifying that they could see this! Related to what the students said about foundations is a technique that I call contextual hooking, which hopefully makes organizing and synthesizing new knowledge seamless.

For some of the complex new topics we are encountering, the directed reading questions will force a student to explain this new concept in terms of a concept that we already covered and learned. In other words, what we are frequently doing with the questions is situating new knowledge within the scheme of things already known. This enables (requires?) ***students' creation of their own*** cognitive schema for the new information by providing context in the form of a 'hook' to previous topics.²⁵ In other words, it's active learning in that they are really doing it for themselves.

24. Interviews were conducted by Kris with a focus group of students from different law schools who had taken different DQ courses with Rory. The students had not met one another before the interview. Recording and transcript of the interview are on file with the authors.

25. See Beth A. Brennan, *Explicit Instruction in Legal Education: Boon or Spoon?* 52 U. MEM. L. REV. 5 (forthcoming 2022). Explaining:

Making explicit connections between new concepts and old ensures that students are learning what you want them to learn. Giving them opportunities to retrieve those connections from their brains strengthens their learning and makes their understanding (or misunderstanding) visible to you for immediate correction. This combination of initial explicit instruction and retrieval practice is a concrete, evidence-supported approach to ensuring that students are learning that which you are teaching them. *Id.* at 32.

The contextual hooking used in DQ methodology goes one step further than what Brennan describes, because the questions are designed to facilitate the ***"students' creation of their own"*** contextual hooks via active learning. The DQ teacher is not precisely "making the explicit connections between new concepts and old," but the questions facilitate the student actively creating their own initial hooks which are then reinforced in the classroom. The importance of student-created context rather than faculty creating context for the students is illustrated, for example by invoking "If the glove doesn't fit, you must acquit!" from the O.J. Simpson trial to help develop comprehension of the reasonable doubt standard. Even though well intentioned, this kind of context may be ineffective for law students who were born well after that trial was televised.

KRIS: I agree that this kind of self-construction of meaning is powerful and hugely important to learning. So then, isn't what you are talking about an additional form of scaffolding? Earlier I introduced the phrase "scaffolding the meta" to refer to your ambitions to build an architecture to allow students to develop a broad overview of what they are learning and why they are learning it. Here, you seem to be taking a similar approach but on a more granular level. Your "contextual hooks" would probably feel quite familiar to Jean Piaget.²⁶

RORY: Yes. Absolutely. The aim of this is to guide/direct/signal the fact that there is an opportunity to categorize the new knowledge in the context of something they already know. That way I am not imposing my context on them, but letting them sort of construct or discover their own. The technique forces students to draw parallels between the new material they are learning and material they have previously learned, and to explain the new material in the context of the previously learned material for which they have presumably created a schema or scaffold. Revisiting previously learned principles in the context of the new material elucidates both contexts and provides a hook to the new material from what was already learned.

KRIS: This is giving us a lot to chew on. I want to think much more about its implications for context, active learning, and conceptualization in learning law.²⁷ But before we move on to consider these larger questions, I'm thinking it would be helpful first to delve further into a few particulars that underlie our discussion.

3. *Clarifying Terminology*

RORY: Before we do anything else we should probably disentangle some of the language around law teaching that we in the profession are not always as precise about as we should be.

KRIS: If I understand what you're getting at then absolutely, yes, I agree. I often hear people conflating Socratic dialogue with the case method and mixing both up with cold-calling upon their students. In law teaching these may be interrelated and often correlated, but they are hardly interchangeable.

RORY: Exactly. And it is frustrating enough when law students treat these as synonyms, but they are certainly not the only ones in legal education to do so.²⁸

26. See *supra* note 18.

27. See discussion *infra* Part I.A.4–5.

28. See, e.g., Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267, 271 (2007) (pointing out that despite legal academia's use of the term Socratic, the method used by Langdell and used in legal education differ significantly from the method Socrates used, in that the latter was primarily dialectical and the former rarely so because the Professor tends to have an answer in mind to guide the student toward).

KRIS: Can we just agree off the bat that calling on students at random to speak is a particular means of classroom engagement that some (but by no means all) law teachers use? And that law professors can engage in the “signature pedagogy”²⁹ of legal education both with or without it? It seems to me that the real issues about cold-calling have more to do with thorny questions about spontaneous public speaking,³⁰ inclusion,³¹ and tone than they have to do with actual pedagogical design.

29. The “signature pedagogy” trope is by now so established in legal education that it is frequently referenced in non-Socratic contexts. See, e.g., Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240 (2009) (referencing the Carnegie Report to define quasi-Socratic discourse as the signature pedagogy of casebook-based law teaching, while proffering externship placement as a similarly signature pedagogy for professional identity formation).

30. Which some writers suggest has a particularly negative impact based on gender. See, e.g., Tanisha Makeba Bailey, *The Master’s Tools: Deconstructing the Socratic Method and Its Disparate Impact on Women Through the Prism of the Equal Protection Doctrine*, 3 MARGINS, 125 (2003), and has long been criticized as troublingly re-instantiating existing hierarchies, see, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982).

31. Though premised on objectivity, case-dialogue pedagogy can create a classroom environment steeped in an unconsciousness of whiteness. This in turn subordinates minority law students and preserves white privilege. See Rob Trousdale, *White Privilege and the Case-Dialogue Method*, 1 WM. MITCHELL LA RAZA J. 28, 39–42 (2010):

This academic environment places minority law students in compromising positions. Kimberle Williams Crenshaw, a law professor and critical race theorist, examined the minority law student experience in her article, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*. Crenshaw began with the assumption that minority law students often have different values, beliefs, and experiences than their classmates and professors. Crenshaw found that these differences are rarely discussed in a law school classroom because of the dominant assumption that legal analysis should be objective. As described by Crenshaw, the objectivity of legal analysis is presumed to posit “an analytical stance that has no specific cultural, political, or class characteristics.” Crenshaw coins this mode of analysis “perspectivelessness.”

Crenshaw explains how the analysis of legal issues through the mode of perspectivelessness effects minority law students. Crenshaw begins with a discussion of perspectivelessness itself: “While it seems relatively straightforward that objects, issues, and other phenomena are interpreted from the vantage point of the observer, many law classes are conducted as though it is possible to create, weigh, and evaluate rules and arguments in ways that neither reflect nor privilege any particular perspective or world view. Thus, law school discourse proceeds with the expectation that students will learn to perform the standard mode of legal reasoning and embrace its presumption of perspectivelessness.”

Crenshaw argues that this dichotomy places minority students in a compromising position. Operating within the case-dialogue method leaves minority law students with one of two options. They may choose to deny their identity and analyze issues “objectively” within the Langdellian framework. Or they may accept and assert their identity and risk being ostracized for failing to think like a lawyer. Thus, if a minority student wants to participate in the “objective” discussion of a court’s reasoning she must leave her racial identity at the door and put on the hat of a

RORY: Agreed. So let's move on to the case method. I think some of my own qualms about its efficacy stem from its origins in the 19th century as a means of distilling "scientific" principles of law.³² We need to remember that the original purpose of the case method was to discern meaning by reading myriad judicial opinions, traditionally with little to no additional commentary.³³ Obviously modern law school textbooks include far more

supposedly colorless legal analyst. Crenshaw describes the consequences of such an analysis:

"The consequence of adopting this colorless mode is that when the discussion involves racial minorities, minority students are expected to stand apart from their history, their identity, and sometimes their own immediate circumstances and discuss issues without making reference to the reality that the 'they' or 'them' being discussed is from their perspective 'we' or 'us.'"

The result is a classroom environment that actively encourages the silencing of minority students. Forced to stand apart from their own self, minorities are generally more reluctant than their white counterparts to speak in the classroom.

The silencing of minority law students supports both the private, everyday forms of white privilege discussed by Peggy McIntosh and the public, more systemic forms of white privilege discussed by Cheryl Harris. In reference to the everyday privilege discussed by McIntosh, the white law student can complete the assigned reading and answer a professor's questions in class, assured that the legal reasoning asked of them will affirm their racial identity and history. This privilege is as much an asset as the property hornbook sitting inside the white student's backpack. The white student, while sitting in class, unhindered by thoughts of identity, remains oblivious to the systemic forms of racial subordination embedded within the law.

In reference to the systemic forms of white privilege discussed by Harris, discussions of whiteness as property never occur, as the voices that have the power to reveal the law's endorsement of racial subordination are silenced. In the cruelest of ironies, the minority law student works within a legal educational system that produces "students who are dedicated to the maintenance of the status quo, even though that status quo is oppressive to them."

32. Davis & Steinglass, *supra* note 12, at 263 (noting of Langdell that "[b]elieving the law to be a science, [he] concluded that it should be studied as a science. Just as students of natural science derive the laws of nature from real-world phenomena, so should students of law derive legal doctrine from cases.").

33. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 526–28 (1991) (reporting that "Langdell asked students to read decisions and decide for themselves what the decisions meant" and further explaining that Langdell considered law to be a science, which necessitated that law students examine "original sources" in the form of the printed reports of cases. From these, students were expected to uncover fundamental rules of law). See also, Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 598 (2019):

As Langdell explained it, the law school case method arose from two circumstances. First, the case method arose from his own experience as a learner that the way to learn the law was "by means of cases in some form." Second, the case method arose from the task he then faced as a teacher, to wit: "I was expected to take a large class of pupils, meet them regularly from day to day, and give them systematic instruction in such branches of law as had been assigned to me." To do the second in light of the first, he had to choose cases for students to read. But on what basis could he choose from "the great and rapidly increasing number of reported cases in every department of law"? The answer to this question lay in the fact that "law, considered

material than just full or excerpted cases.³⁴ And it is not clear that many 21st century legal scholars believe in such a thing as “scientific principles” of law anymore. Is it even fair to say that they are still using the case method?

KRIS: I’m not sure, but in any case, let’s take people at their word and assume most law professors still deploy a more current version of the case method, at least insofar as the bulk of their teaching in common law courses is grounded in gaining insight generated from reading, understanding, interpreting, and applying a series of assigned appellate opinions. Yes?

RORY: Yes. But then that means that Socratic questioning, as traditionally understood in American law schools, is simply a dialectical tool for learning from the case method. Is that correct?

KRIS: I believe so. And I think that is the source of much of the confusion in language about law teaching. In theory it should be possible to adopt a case method of instruction for law teaching while using non-Socratic techniques in the classroom. And Socrates himself³⁵ amply demonstrated that Socratic exploration need not be limited to enquiries in the legal realm.³⁶ These terms are so frequently merged in the legal academy because they are generally used together, then, rather than because they are necessarily inseparably interwoven.

So, just to confirm: you use cold-calling in your DQ classes, yes?

RORY: Right.

KRIS: And do you believe you are *not* truly using the traditional law school case method, even though you certainly assign cases?

RORY: Correct.

KRIS: Then let’s set aside the question of exactly how Socratic your Directed Questions dialogue may be, since that seems to be an unhelpfully semantic inquiry when most Q&A in law classes does not precisely replicate Socrates. Suffice it to say that the use of questions and responses in the DQ classroom might be formalistically similar to what law professors commonly call Socratic teaching, but that there are some key differences in emphasis and purpose.

as a science, consists of certain principles or doctrines”; that “the number of fundamental legal doctrines is much less than is commonly supposed”; and that it was therefore possible to take a subject like Contracts; and “without exceeding comparatively moderate limits, to select, classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines.” (According to Langdell, “the vast majority” of actual cases were “useless and worse than useless for any purpose of systematic study.”) Once the cases were selected, students would be able to learn a doctrine “by studying the cases in which it is embodied.”).

34. E.g., most include a significant amount of introductory text, questions, problems, and excerpts of relevant statutes. In fact, the modern casebook essentially obviates the need for the hornbooks that were so common for earlier generations of law studiers.

35. Or, really, Plato’s depiction of Socrates. Plato, *Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo* (G.M.A. Grube trans., 2d ed. 2002).

36. See, e.g., the classic *Meno* dialogue explores basic principles of geometry. *Id.* at 58.

RORY: Yes, and I think those differences may be subtle, but important. And the students can absolutely discern them.

4. *Active Learning and Flipping*

KRIS: Another predicate question I have is how actively the students are learning when they are instructed using the DQ method. You mentioned earlier that you thought the learning in DQ classes was more active than in classes using more traditional Socratic examination of cases. I have a feeling that might be right, but I want to think more about whether that's true and if so, why.

Can we begin first by considering whether the DQ method produces a flipped class experience?³⁷ I'm not sure proponents of flipped law teaching would recognize it as such, because the primary activity for much of the class session consists of the professorial inquisition of a single student at a time.³⁸ But I'm wondering whether it feels to you like the class time is somehow "flipped."

RORY: Maybe. I'm sure the answer once again depends on how we define the term.

KRIS: I often think that after we get past the jargon and the specific materials some law teachers rely upon,³⁹ a flipped classroom is really just about using class time not to initiate the process of learning but to reinforce what has already been covered but may not yet be fully understood or absorbed.⁴⁰

RORY: In that sense, then yes, I believe DQ classes are flipped to the extent that the bulk of class time is devoted to means of solidifying and increasing students' mastery of the material, rather than initially imparting it. The design and sequencing of the directed questions should ensure that students who are prepared for class have been introduced to the material—and have thoroughly engaged with it—before class. They then necessarily come into class with a more sophisticated understanding of the material than they would if they had prepared for class more traditionally and without the directed questions. The class session is more about applying and exploring the complexity of the doctrine.

37. As advocated by some leading legal pedagogy thinkers, including Steven I. Friedland. See Steven I. Friedland, *Adaptive Strategies for the Future of Legal Education*, 61 LOY. L. REV. 211, 229–30 (2015).

38. Not that this is always all that takes place in the class, of course. The DQ class certainly can, and often does, take advantage of other classroom techniques like individual free-writing, group discussion, problem-solving, or short polls or quizzes.

39. See Debora L. Threedy & Aaron Dewald, *Re-conceptualizing Doctrinal Teaching: Blending Online Videos with In-Class Problem-Solving*, 64 J. LEGAL EDUC. 605, 614–19 (2015) (describing their work creating a series of well-regarded videos for instruction in contracts, to permit class time to be devoted to problem solving work).

40. See JONATHAN BERGMANN & AARON SAMS, *FLIP YOUR CLASSROOM: REACH EVERY STUDENT IN EVERY CLASS EVERY DAY*, 14–16 (2012).

KRIS: You are therefore positing that it doesn't matter how, exactly, the students reach that higher-than-typical level of understanding and comfort with the doctrine before class, all that matters is that they do. If they can do that through recorded videos or other common hallmarks of flipped classes, fine, but you think careful responses to the directed questions gets law students to the same place.

RORY: That's probably right.

KRIS: In that case, I think I agree with you that well-crafted questions can provide a way to achieve this higher level of discourse in the classroom. Recorded lectures that capture what the professor might otherwise have said in class might be useful to prepare students to apply the law and develop a richer understanding of it within the class setting,⁴¹ but they do not strike me as an essential prerequisite.

RORY: What concerns me, too, about some videos or other material meant to impart information in preparation for flipped class sessions is that they are typically using material that *the professor* finds interesting or clever or effective regarding the material. In fact, many of my students have expressed gratitude that in DQ classes they don't have to do the "busywork" of watching videos as they are sometimes assigned to do in other courses. I'm not sure what videos they are watching or what their quality is, but I am pretty confident that if the students are deriding the time spent watching them then they are not being experienced as contributing valuably to the student's learning.

KRIS: Maybe this is a side point, then. I am beginning to think that whether we think DQ classes as flipping the class or not may not be an important distinction. What does seem significant to me is that the methodology shares a common goal with flipped law teaching, at least in the shared objective to use class time efficiently and effectively to reinforce students' comprehension and ability to use what they are learning.

RORY: Right! That's why I want the learning in my classes to be as active as possible. We know that when students actively engage in working with the material⁴² they are struggling to master—in contrast to passively hearing more about it—they will develop a deeper comprehension and retain more.⁴³

KRIS: Plenty of commentators on legal education have applauded Socratic dialogue for being more active than, for example, a professorial

41. As seems to be the method most commonly ascribed to flipped teaching. See Alex Berrio Matamoros, *Answering the Call: Flipping the Classroom to Prepare Practice-Ready Attorneys*, 43 CAP. U. L. REV. 113, 118–19 (2015).

42. Essentially the definition of active learning techniques. For a definition of active learning and a broad set of examples of active-learning practices, see Kate E. Bloch, *Cognition and Star Trek™: Learning and Legal Education*, 42 J. MARSHALL L. REV. 959, 968–70 (2010).

43. See Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999).

lecture.⁴⁴ And I agree that it is. But it isn't *very* active, at least not for the bulk of the students who are not involved in the questioning at any given moment. It seems to me that even though the structure of professor question, followed by student response, followed by professor follow-up question (and so on) is quite similar in DQ classes and more traditional ones, the learning is nonetheless more active. Is that because the students' prepared responses to the questions motivate them to actively evaluate the answers their classmates give?

RORY: Well, I would describe the traditional law school teaching methodology as being *interactive*,⁴⁵ but I do not conceive of it as genuinely *active* in the way that learning theorists describe.⁴⁶ But to answer what you've asked, yes, I think there is something about preparing answers to the questions in advance and then reconsidering and revising those responses in light of class discourse that motivates student learning in a different way from more traditional class dialogue.

KRIS: Student commentary seems to support that. When I asked your students what, specifically, they were doing while class was in session, one told me:

*I'm pretty sure that everybody in class was really paying attention and they had their notes or their answers in front of them. They were scribbling down the parts they didn't know before, or hadn't been sure about.*⁴⁷

Another student had a different approach:

*During class time I would open up my Word document that had my questions in it and turn on 'track changes.' Or I would swap out the colors of the text [to differentiate the new notes]. Then I would go through and answer the questions as if I had not done the directed reading questions ahead of time, so that I could look back and compare my [notes] before and after at the end of class.*⁴⁸

Although their methods differ, it sounds to me as if these students are reporting that the directed questions prompted a very active kind of work, both in and outside of the classroom. If by "active learning" we mean learner-directed engagement with the material being covered,⁴⁹ that certainly seems like what they are describing.

44. As just one example, see Derek Luke, *From Filling Buckets to Lighting Fires: the ABA Standards and the effects of Teaching Methods, Assessments, and Feedback on Student Learning Outcomes*, 81 UNIV. PITT. L. REV. 209, 230 (2019) (observing of the classic law school inquiry: "[t]his interaction is usually rather active, and the case method, if used with Socratic dialogue, would fall towards constructivism, or active learning.").

45. Meaning, that there is an interchange between at least one student and the professor.

46. Meaning, that all students, save the one in the exchange, are learning more passively than would be true under more broadly active learning techniques.

47. Student interviews, *supra* note 24. Note that comments are lightly edited.

48. *Id.*

49. See Joni Larson, *To Develop Critical Thinking Skills and Allow Students to be Practice-Ready, We Must Move Well Beyond the Lecture Format*, 8 ELON L. REV. 443, 448–50

5. *Progression of the Directed Questions*

KRIS: Switching back now to our earlier conversations about context and hooks, let's spell out more explicitly how the directed questions operate. From my observations, they are not the same as the kinds of reading comprehension questions primary or secondary educators might provide for their students. Instead, they strike me as carefully sequenced for very intentional goals. Without getting too exhaustively into how the questions are created, can you say a bit more about how they unfold within a given class?

RORY: One of my DQ Torts students, who was an experienced teacher in her pre-law school career, told me after a month or so of class: *I see what you are doing here. The first few questions seem to be fundamental, but every time I answer one of them it leads me toward a slightly more nuanced and complex understanding of the doctrine, and by the end of class I can argue that duty and proximate cause are different elements in the tort of negligence. I can also argue that they are the same because I understand that the difference in the elements is simply where and by whom the foreseeability analysis is being done.*

KRIS: In effect, then, directed questions deploy backwards design education principles,⁵⁰ in that you start by picturing the end goals of comprehension, and then construct learning activities—here, responding to directed questions—to transport students through carefully-sequenced steps to get there.

RORY: Definitely. I think of the sequencing of directed reading questions for each topic or class as akin to walking into a very dark room and incrementally increasing the wattage of the light bulbs. To extend the metaphor—if a perfectly lit room is mastery, then I think of each question (really one small learning goal) as one bulb. Taken together, the questions collect incremental learning goals that each necessarily build on the question before, until we are at the point where we need sunglasses by the end of the class because the room is so bright.

KRIS: I want to make sure I understand what you are trying to say, so let me restate it. You are suggesting something very different from a binary model of learning in which the students either **have** or they **have not** learned. You imagine learning as more like a room with a dimmer switch, in which we can gradually increase the lighting because it is rarely absolute, but rather occurs by accretion. Your directed questions are calculated to incrementally lead to the kinds of deep comprehension that you would hope all law students would acquire, though our own experiences with law teaching suggest that some may very well not.

(2016) (arguing that active learning requires students to create their own meaning from material studied and turn information given into knowledge acquired).

50. For a helpful summary of backwards design principles for educators, see GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN 13–34 (2d ed. 2005) (Chapter 1: *Backward Design*).

RORY: That's it exactly. And that last sentence there has vitally important implications for the role of privilege in legal education, which I think somewhat predetermines who is more or less likely to develop that deep comprehension. I really believe the directed questions democratize the learning experience in ways that help to put students on a more equal footing in these DQ classes.

KRIS: To my mind, the privilege issue, and who does and does not perform optimally in the traditional law classroom, is hugely consequential. We should consider it in more depth.⁵¹ But to finish our current train of thought first: I have seen that the emphasis of the directed questions shifts subtly over the course of a semester. Can you describe exactly how?

RORY: Sure. In the early part of the semester, more of the questions are generally "easier." They are designed to teach students how to learn law and improve their critical thinking about legal texts. But as the semester progresses, the questions assume they have sharpened these skills and are ready to engage with the material on a more sophisticated level.

KRIS: That's helpful, but it would be clearer to have some examples of what you mean.

RORY: Okay. Some of the early civil procedure questions that cover amendments and relation back ask specifically what happened on this particular date, and this other particular date. Through answering these questions, students discover that lawyers only ever think about relation back when dates/statutes of limitations are impediments to an amended complaint.

But later when we cover the collateral order appellate doctrine, the questions (and their expected answers) become far more complicated and challenging. Here is a two-question sequence from that class, along with sample answers to the questions, that may show you what I mean:⁵²

QUESTION 20

Quite apart from the answer to the previous question, the Supreme Court in *Mohawk* found another reason which independently reinforced the idea that collaterally appealable orders are a very narrow class of orders. That reason is contained in the following excerpt from *Mohawk*,

This admonition has acquired special force in recent years with the enactment of legislation designating rulemaking, "not expansion by court decision," as the preferred means for determining whether and when prejudgment orders should be immediately appealable. Specifically, Congress in 1990 amended the Rules Enabling Act to authorize this Court to adopt rules "defin[ing] when a ruling of a district court is final for the purposes of appeal under section 1291."

51. See *infra* Part II.C.2.

52. Materials drawn from RORY D. BAHADUR, CIVIL PROCEDURE: AN ACTIVE LEARNING APPROACH (rev. 1st ed. 2021).

§ 2072(c). Shortly thereafter, and along similar lines, Congress empowered this Court to “prescribe rules, in accordance with [§ 2072], to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under [§ 1292].” § 1292(e). These provisions, we have recognized, “warrant[t] the Judiciary’s full respect.”

Indeed, the rulemaking process has important virtues. It draws on the collective experience of bench and bar, see 28 U.S.C. § 2073, and it facilitates the adoption of measured, practical solutions. We expect that the combination of standard postjudgment appeals, § 1292(b) appeals, mandamus, and contempt appeals will continue to provide adequate protection to litigants ordered to disclose materials purportedly subject to the attorney-client privilege. Any further avenue for immediate appeal of such rulings should be furnished, if at all, through rulemaking, with the opportunity for full airing it provides.

Mohawk, 558 U.S. 609.

Please explain what this language means in your own words.

ANSWER

Congress has plenary power over the inferior federal courts. In the context of subject matter jurisdiction, for example, even though the Constitution provides for arising under and diversity jurisdiction, Congress must legislate to permit the courts to have jurisdiction over these classes of cases, hence, § 1331 and § 1332 respectively. Additionally, as *Sheldon v. Sill* taught us early in the class, Congress can give as much or as little of the jurisdiction provided for in the Constitution. For example, the Constitution requires only minimal diversity, but Congress in enacting 28 U.S.C. § 1332 required complete diversity.

It was only in 1938 with the Rules Enabling Act that Congress delegated this authority to the judicial branch, thereby allowing the judicial branch to enact rules governing the procedure and practice in the trial and appellate courts. The Rules Enabling Act, currently codified at 28 U.S.C. § 2072 et. al., contains strict procedural requirements, which the judicial branch must abide by when they are creating rules governing the appellate and trial courts.

Hence this (the Rules Enabling Act) is the preferred mechanism for courts to create exceptions to appellate rules and not common law pronouncements.

As the *Mohawk* excerpt states,

Specifically, Congress in 1990 amended the Rules Enabling Act to authorize this Court to adopt rules “defin[ing] when a ruling of a district court is final for the purposes of appeal under section 1291.” § 2072(c).

Shortly thereafter, and along similar lines, Congress empowered this Court to “prescribe rules, in accordance with [§ 2072], to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under [§ 1292].” § 1292(e). These provisions, we have recognized, “warrant[t] the Judiciary’s full respect.

In other words, if the court wants to create exceptions to the finality requirement for appeals, they should do so via the Rules Enabling Act and not via the common law.

QUESTION 21

Consider this: (1) *Mohawk* explains that the “virtues” of the rulemaking process limit the common law development of the collateral order doctrine; and (2) the REA’s impact in *Hanna* is such that a court can refuse to apply the federal rules, “only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions.” What about the rulemaking process is illustrated?

ANSWER

Students have trouble in *Hanna* conceptualizing the huge impact and presumptive validity of the Federal Rules of Civil Procedure, simply because they are products of the Rules Enabling Act. Even though the context of the *Hanna* opinion and the collateral order doctrine are completely different, *Mohawk* also provides an example where the “virtues” of the rulemaking process make it the preferred method of expanding the nature of what is considered an appealable decision. *Mohawk*, therefore, in a way reinforces the virtue or validity of the products of the Rules Enabling Act, such as the Federal Rules of Civil Procedure.

That virtue, in a way is similar to the presumptive validity or preference for the products of the Rules Enabling Act over other federal law. This is the essence of what *Hanna* talks about. So, the purpose of the question is to have students draw a parallel, which hopefully makes them more comfortable with the bludgeon-like power of the Federal Rules of Civil Procedure as products of the Rules Enabling Act in the context of an *Erie* analysis.

KRIS: My goodness, that’s certainly a lot to take in for someone new to civil procedure.

RORY: It should be. Law is frequently intricate and demanding, and we have to help our students embrace that. To prepare them to thrive in the profession we have to both expect that students are capable of that level of work and show them what it entails.

KRIS: Having high expectations for students while making it possible for them to meet them is certainly a hallmark of excellent teaching.⁵³ There's no question it promotes learning.⁵⁴ It should also help equalize the classroom experience for all students.⁵⁵

RORY: I'm noticing, too, that this is consistent with your concept of directed questions as "scaffolding the meta." The students gradually learn *how* to learn the law by being exposed to this model. The questions help demystify what learning law really entails, and they learn not only to learn doctrine by incremental steps, but they are able to intuit what it takes to learn law in general.

KRIS: The DQ students I interviewed manifestly recognized that they had simultaneously acquired knowledge of substantive law and learned methods of law study. One said:

*I felt like with the directed reading questions, I still knew that there were a lot of things that I didn't know, but I could start to categorize the things that I didn't know. And I understand what I needed to do to be able to grasp those concepts.*⁵⁶

Another explained:

*Even in the first semester, I realized that doing the directed reading questions in his class made me so much more efficient in the other classes. I was able to hone in on the important and unimportant stuff in the other classes because [answering] directed reading taught me how to read cases effectively. I trained myself to read for the other classes by using the way I learned to read in this class.*⁵⁷

RORY: I think as law teachers—especially, but not only, in the first year—we have a responsibility to facilitate learning and learning how to learn. I believe in being explicit about that, and in providing very clear and incremental entry points into the learning process for law students, especially because they are adult learners.⁵⁸ The ultimate goal of these directed

53. MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE SPARROW, WHAT THE BEST LAW TEACHERS DO 123–36 (2013).

54. Though there is some danger that experts' failure to recognize their own *unrealistically* high expectations can undermine learning. SUSAN AMBROSE ET AL., HOW LEARNING WORKS 105 (2010). Law professors must be carefully attuned to our own usually extensive knowledge, and calibrate our expectations based on students' status as beginners in the legal profession.

55. See Geoffrey L. Cohen, Claude M. Steele & Lee D. Ross, *The Mentor's Dilemma: Providing Critical Feedback Across the Racial Divide*, 25 PERSONALITY SOC. PSYCH. BULL. 1302 (1999) (finding that the negative performance effects due to stereotype threat invoked by critical feedback could be virtually eliminated by invoking high standards and credibly conveying that the student was capable of meeting them with further effort).

56. Student interviews, *supra* note 24.

57. *Id.*

58. Rory Bahadur & Liyun Zhang, *Socratic Teaching and Learning Styles: Exposing the Pervasiveness of Implicit Bias and White Privilege in Legal Pedagogy*, 18 HASTINGS RACE & POVERTY L.J. 114, 144 (2021).

questions is to ensure that a student's inability to learn how to learn in law school should not be the reason they don't do well.⁵⁹

B. What Happens Before Class

1. Students' Preparation

KRIS: Do students prepare for DQ classes the same way they would for others, but with the added guidance of the questions provided?

RORY: Not really, no. I tell my students *not* to brief the cases that are assigned in my classes. For example, my class instructions are:

Every topic contains reading material exactly like most casebooks; however, all the reading material is followed by directed reading questions on the readings.

As far as you are concerned, the major difference in the way this book should be used is as follows: you should not brief any of the cases. Instead, you should read the cases etc. with the aim of the reading being to answer the directed reading questions which follow the reading material, and you should answer those questions BEFORE coming to class.

You should begin class with a typed/written answer to every directed reading question assigned for that class. You will not be able to fully answer all the questions, but you should type or write the answer that you attempted. It makes no difference if the answer is correct or not before class,⁶⁰ but you must answer each question for the assigned reading before coming to class.

The questions are carefully designed to help you focus on the important elements of the reading and to make you more prepared for class than you normally would be, absent the directed reading approach. Your teacher will be teaching the material as if you have read the material and answered the assigned questions.⁶¹

KRIS: Ok, so the focus of the students' class preparation should be on thinking through the directed questions. Doing that will involve reading

59. Which in no way should diminish the also-crucial task of learning the substance of the law. One of the authors recalls hearing a conference presentation in which Erwin Chemerinsky archly responded to the notion that legal education consists solely of thinking like a lawyer by asking: "Imagine you are about to undergo neurosurgery and just as the anesthesia is kicking in, your surgeon walks in introducing herself as the top medical student in her class. And then tells you that she has never done an actual surgery surgery before, but she was thoroughly taught how to think like a doctor."

60. Perhaps saying that it makes **no** difference is a bit of an overstatement. It simply has to be true that students getting a significant portion of the material they read down the first time they review it on their own are positioned differently from the majority of students who will need more time to fully assimilate what they are learning. However, this language is meant to convey that they are not really expected to be "right" about everything on their first pass through it, and that learning can occur whether they were initially correct or got there upon subsequent review.

61. BAHADUR, *supra* note 52, at III.

cases and statutes. Might the students end up kind of half-briefing the cases in order to answer the questions, though?

RORY: I don't really care what form of notes the students take when they read cases. But I absolutely do not want them to spend time on parts of the cases that they will not need to use in class or afterwards.

KRIS: The case preparation issue seems important to me, so let's return to that point.⁶² But for now, can we agree that your "don't brief" messaging serves, at the very least, to alert students to approach preparing for a DQ class differently from the ways they may have thought they should prepare for other law classes?

RORY: Sure.

KRIS: Do the students believe that successful preparation should mean that they get all of the answers to the questions "right?"

RORY: I certainly hope not! In fact, my whole point is that they probably won't, and should not expect to. But they will be ready for a much more sophisticated understanding of the issues for having prepared their answers whether they were "correct" or not. Besides, not every question has a right answer anyway.

KRIS: Right. I think one of the hardest things to convey to law students, especially in their first year, is that for some matters there simply *are* accurate and inaccurate responses that they must work hard to discern.⁶³ But that many of the most complicated (and important!) questions in law are "authentic" ones, in which there is not a single unequivocal answer.⁶⁴ And that nonetheless, even for those kinds of questions, there can certainly be *wrong* answers.

Wow, just in spelling that out I can see why this is so complicated for students...

RORY: Yes it is. In some ways, I think being able to distinguish between those kinds of questions and provide the best answers, or range of possible answers, could be at the heart of what it means to "think like a lawyer."

62. See *infra* Part II.A.

63. E.g., "Based on the testamentary language, does Jaime inherit?" usually has a definitive answer. "Is X case distinguishable from our facts?" often does not.

64. Davis & Steinglass consider the role of authentic inquiries (in which the interlocutor genuinely does not have a set of possible responses in mind) vs. inauthentic questioning (goal-oriented inquiries in which the questioner has an answer in mind) in Socratic dialogue. Davis & Steinglass, *supra* note 12, at 270–73. They, and most skilled practitioners, seem to believe that a mixture of both kinds of questions are needed to generate deep inquiry. Indeed, Socrates' own dialogues evince a mix of the two. But for a powerful argument that law professors should aspire to seek more authenticity in their teaching discourses, see Peter M. Cicchino, *Love and the Socratic Method*, 50 AM. U. L. REV. 533 (2001) (urging the law professoriate to model Socrates' more authentic *Gorgias* dialogue rather than the more directive and inauthentic *Meno*) (incomplete manuscript published posthumously).

But the students we teach are relative beginners at legal thinking, and they are always beginners in the particular subjects we are teaching, and law is awfully complex. I don't really expect my students to get everything right—or to avoid everything wrong—when they are encountering it on their own for the first time.

KRIS: The DQ method seems to be illustrating that to students pretty clearly. One told me that her DQ class “created a space where ‘okay, I’m safe to be wrong.’”⁶⁵ And another added: “[T]hat’s because everybody was wrong.... From, like, the high achievers to the low achievers, they were all wrong. But they were also right some of the time. [The class structure] would allow anyone to sometimes show up the right answers and feel good about it.”⁶⁶

Even more importantly, when I asked the students whether they began to generate theories about *why* they might have been wrong when they were, they had incredibly thoughtful insights about developing their own expertise in reading cases and rules, or about why they missed something because they did not yet have the knowledge required to catch its significance. In other words, they were consciously self-regulating,⁶⁷ and they were employing exactly the kinds of metacognition about their own learning that we want all students to bring to law study.⁶⁸

RORY: I’ve always felt like I could sense that in my DQ classrooms, but I have never been able to fully articulate it. And I am profoundly moved to hear it from students.

2. Professor’s Preparation

KRIS: If the directed questions are already prepared, what does the professor have to do to get ready for class?

RORY: Not much in terms of class notes, because that’s essentially what the questions are.

But I like to use that time I’ve saved to tailor my class sessions to meet the students where they are. I assign them to submit written answers to the directed questions on a learning management system⁶⁹ before coming to class.⁷⁰ Skimming quickly through their answers before class allows me to

65. Student interviews, *supra* note 24.

66. *Id.*

67. For further background on self-regulated learning in law teaching, see Elizabeth M. Bloom, *Teaching Law Students to Teach Themselves: Using Lessons from Educational Psychology to Shape Self-Regulated Learners*, 59 WAYNE L. REV. 311 (2013). For student-directed materials aimed squarely at teaching self-regulation to law students, see MICHAEL HUNTER SCHWARTZ & PAULA J. MANNING, *EXPERT LEARNING FOR LAW STUDENTS* (3d ed. 2018).

68. See discussion *infra* text accompanying notes 91–97.

69. E.g., Blackboard, Canvas, or TWEN.

70. Often these are due at midnight of the evening before the class session, but times can vary depending on when the class meets.

know what material was generally understood and which wasn't. I can then adjust the class presentation to spend time on the less well-understood material. An additional enjoyable benefit of this practice is that I note the unusually strong student answers and can occasionally give a shout out to acknowledge their work. I might say something like, "X your answer to question thirteen was spectacular. Could you please share what it was with the class?"

KRIS: Students must be thrilled when that happens. Do you also review their daily work more generally, or would that be too time-consuming?

RORY: Yes, an added benefit of the DQ method is how much opportunity it can create for assessment and feedback. Let me be clear that I do not think this kind of review of student work is required for successful DQ teaching, but it is possible, and it is undeniably helpful when it takes place.

For my own classes, I skim through these answers looking for benchmarks of effort. For example, some of the questions ask for answers I know that a student who read at a level of basic competence would get the answer correct to. When I see a student getting these questions incorrect it sets off an alarm for me to look at the rest of the student's work a little more carefully.

KRIS: And most people do not fully appreciate how little labor it takes for a professor to examine student answers and give just brief feedback commentary through these online learning management systems.

RORY: Exactly! I do not spend a terribly long time on this. I am simply skimming student answers and giving them a tiny grade for each of their submissions, which might equate cumulatively to a component of their final grade for the course. I might put short comments on work that is far north or south of what I consider the appropriate student effort. That way, the students who are already working very hard in the class can know that I see and appreciate what they are accomplishing,⁷¹ and the lower-effort students should come to realize that they need to do more.

C. What Happens After Class

KRIS: I am wondering whether the post-class effort needed for optimal learning is similar in DQ classes and more traditionally taught law courses. For my own classes, I often try to convince students that the most important part of their law study is what happens after they attend a class session. After all, pretty much no student's class preparation will be sufficient for them to fully comprehend all of the material studied; if it were, there would be little point to conducting class at all. Yet even assuming the class meeting

71. Having your effort recognized—an important form of being “seen”—substantially increases motivation for continued work. See Dan Ariely, Emir Kamenica & Drazen Prelec, *Man's Search for Meaning: The Case of Legos*, 67 J. OF ECON. BEHAV. & ORG. 671 (2008) (finding increased effort from test subjects whose work appeared to be noticed and appreciated compared to those whose labor was unacknowledged).

solidifies understanding of the material, it tends not to do so in a linear way. Consequently, the students' notetaking may necessarily be messy or even confused. It is only by pulling together the class preparation (successful or not) with important insights from the class discussion, and helpfully framing it for future consultation, that students will maximize the effort they put in.

Is the same true in DQ courses?

RORY: Probably somewhat, but less so. It is always going to be true that students need to regularly review and consolidate to solidify their learning. But since the DQ questions provide a palpable (and predictable!) framework for the class discussions, I suspect students find it much more straightforward to organize their work product within each class meeting. Their job is to annotate the questions as we go through them one by one. After class, then, they should not have to start at square one to figure out what they have learned. Instead, they can streamline their initial responses to the questions together with any updated answers that emerged from the class discussion.

KRIS: In both cases the students will still have to do the challenging work of fitting together the various topics in a course into a big picture. And of ensuring that they fully grasp all the intricacies of each component of that big picture. That's the chief goal, and the most intellectually *active* part, of active learning.

RORY: Definitely. I do believe the DQ process makes that more straightforward, though.

KRIS: Students seem to believe so, too:

It was more of a front-loaded class than when I think about others. I mean I would spend 30% more time preparing for his class than in other classes because the questions were forcing me to engage with the material so thoroughly. But on the flipside, when I went to make my outlines and I went to study for the midterm and the final, I had to spend half as much time on his classes as I did the others. I felt like I had retained it more as we went through, and so it really was at that point, a review, rather than trying to reteach myself the things from the beginning of the semester that I felt like I often did with a lot of my other classes.⁷²

RORY: DQ methodology also provides relatively simple ways for teachers to assess whether the students are learning what they intend. In my own DQ classes I will occasionally ask students to submit a post-class answer to a particularly difficult or troublesome topic that they struggled with pre-class. By comparing their pre- and post- class answers, I am easily able to ascertain whether they eventually got it. If not, we can revisit the topic again later, perhaps in connection with a subsequent related subject that will help shed light on both.

72. Student interviews, *supra* note 24.

KRIS: That suggests you believe the post-class review is important and primarily your students' own responsibility, but you do think law professors have some role to play in guiding it.

RORY: If it is indeed the most important component of students' ultimate learning in our classes, how could we not?

*D. Recitative*⁷³

Some topics evoked by our dialogue warrant further exploration. Whether intentionally constructed or arrived at intuitively,⁷⁴ we believe the Directed Questions methodology helps to resolve some important concerns in contemporary law teaching that are less easily addressed with more traditional instruction. We consider several of them here.

1. Contextualization and Higher-Order Thinking

The sense that "contextual hooking" can increase comprehension and insight is borne out in the academic literature on learning.

Connections between newly encountered concepts and prior knowledge⁷⁵ inform the learning of adult students.

Legal theorists understand that law is interpretable⁷⁶ and requires high levels of abstraction and theorizing.⁷⁷ It frequently consists of complex categorization,⁷⁸ and the construction of coherent narratives and counter

73. A musical declamation presented in the rhythms of ordinary speech.

74. Rory would contend that he developed the DQ method by feel and intuition rather than through consciously articulated rationales. But of course, those impulses were informed by years of both learning and teaching, as well as a deep empathy for student experience.

75. A full discourse on the interaction between prior knowledge and new learning is beyond the scope of this Article, but it is important to note that adult learners almost always bring some form of prior knowledge to their education. Prior knowledge can be incredibly helpful in permitting learners to quickly assimilate and make sense of new information, but it can also be an impediment to learning if students mistakenly make unhelpful or misleading connections. For foundational thinking about the role of prior knowledge in learning, see JOHN DEWEY, *EXPERIENCE AND EDUCATION* (1938). For a helpful summary of more contemporary research on the topic, see AMBROSE, *supra* note 54, at 10–39.

76. For one prominent exploration of law and interpretation, see ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012).

77. See Kris Franklin, *Theory Saved My Life*, 8 N.Y.C. L. REV. 599 (2005).

78. See ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW*, 19–109 (2000).

narratives.⁷⁹ Simultaneously, legal analysis requires exquisite attention to detail⁸⁰ and the ability to carefully parse wording and the meaning of dense text.⁸¹ In other words, lawyers must constantly move back and forth between the mile-high overview of important legal and social matters, and a microscopic examination of their specifics.⁸²

Understanding this, the thoughtful law professor inevitably has a comprehensive perception of the field and how practicing attorneys operate within it. She wants to move students toward that broad understanding while at the same time ensuring that they learn each constitutive part, all while also trying to show the students something about what they will do with this law in practice and some of how the law works in the real world.

Directed Questions help students make those moves even while they are novices to the material they engage with. Since the questions help manage the students' learning experience by essentially containing it⁸³ within the small but sophisticated mini-project that answering each question represents, they paradoxically permit expansion into more complex modes of thinking about the work. The questions overlappingly hit varying levels of Bloom's Taxonomy,⁸⁴ which enables the kinds of seamless shifting from the close view to the horizon feel possible, even inevitable.

79. There is a flourishing field dedicated to exploring narrative theory and legal storytelling. For an early and influential collection of essays on the topic, see PETER BROOKS & PAUL GEWIRTZ, *LAW'S STORIES NARRATIVE AND RHETORIC IN THE LAW* (1996). See also, CAROLYN GROSE & MARGARET E. JOHNSON, *LAWYERS, CLIENTS & NARRATIVE: A FRAMEWORK FOR LAW STUDENTS AND PRACTITIONERS* (2017) (usefully applying narrative theory in a practitioner-oriented compendium); Stephen Paskey, *Law is Made of Stories: Erasing the False Dichotomy Between Stories and Legal Rules*, 11 L.J. ALWD 51, 54 (2014) (contending that stories are not simply persuasive tools but rather are "embedded in the structure of law itself"); Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 L.J. ALWD 149 (2012) (arguing that many forms of legal reasoning depend on narrative techniques); AMSTERDAM & BRUNER, *supra* note 78, at 110–64.

80. See, e.g., *Attention to Detail*, 4 THE PRACTICE (2017), <https://thepractice.law.harvard.edu/article/attention-to-detail/>.

81. As well as anticipating the deployment of multiple competing interpretive strategies in interpreting that very language. See generally, William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 UNIV. PA. L. REV. 1478 (1994).

82. E.g., a text dedicated to defining the essence of legal reasoning includes an entire chapter devoted to exploring how legal problems may be approached with varying levels of abstraction, from the finely detailed fact-specific to the broadly conceptual planes, and urges legal thinkers to move comfortably anywhere in between. MICHAEL EVAN GOLD, *A PRIMER ON LEGAL REASONING* 35–64 (2018).

83. Psychological and therapeutic literature includes extensive discourse on the importance of containment and boundaries for meaningful growth, and scholars of education and learning have taken note. See, e.g., Lynn Stammers & Anthony Williams, *Recognising the Role of Emotion in the Classroom; an Examination of How the Psychoanalytic Theory of Containment Influences Learning Capacity*, 25 PSYCHODYNAMIC PRACT. 33 (2019).

84. Listing six levels of increasingly abstract and sophisticated thinking. See TAXONOMY OF EDUCATIONAL OBJECTIVES: HANDBOOK 1, THE COGNITIVE DOMAIN (Benjamin S. Bloom et al. eds., 1956). The DQ questions amply review the basic levels of *Remembering*

2. *Effects of Pre-testing and Self-assessment*

The DQ method also bolsters learning by pretesting. The pretesting effect is a technique in which students are tested on material before it is taught to them.⁸⁵ Even when learners are encountering entirely unfamiliar subjects—and even when learners do not perform well in the initial testing on unstudied material—pretesting has been shown to improve retention and learning.⁸⁶ Tests can serve as learning prompts,⁸⁷ and they signal to students what to focus their attention on when information is subsequently presented.⁸⁸ They can also “gamify”⁸⁹ the experience of learning, and consequently increase interest and motivation.

Happily, the very nature of the DQ method automatically propels learners to gain the advantages of pretesting. In preparing their initial responses to the directed questions DQ students provide initial answers that may or may not be correct, but that will be reviewed and corrected in the immediately upcoming class.⁹⁰

The DQ form of pretesting is not entirely naïve,⁹¹ in that the students will have completed some assigned reading on the “tested” topics before coming to class. But few who have experience teaching law classes would expect their students to have ascertained all of what they needed from the reading itself. Thus, when the material is examined with greater clarity in the classroom the pretesting priming effect can have the effect of prompting more sophisticated learning.

Directed Questions methodology also routinely and continuously builds assessment into every single lesson. Students can compare their pre-classroom answers to the directed reading questions with their post-classroom

and *Understanding* toward the domains of most legal analysis: *Applying* and *Analyzing*. In reaching for conceptual overview, they even aim to touch on the highest orders of *Evaluating* and *Creating*.

85. Warren Binford, *How to be the World's Best Law Professor*, 64 J. LEGAL EDUC. 542, 544 (2015).

86. Faria San et al., *Improving Conceptual Learning Via Pretests*, 21 J. EX. PSYCH. APPL. 228 (2021).

87. See Lindsay E. Richland, Nate Kornell & Liche Sean Kao, *The Pretesting Effect: Do Unsuccessful Retrieval Attempts Enhance Learning?*, 15 J. EX. PSYCH. APPL. 243 (2009) (answering: yes).

88. BENEDICT CAREY, *HOW WE LEARN: THE SURPRISING TRUTH ABOUT WHEN, WHERE AND WHY IT HAPPENS*, 97 (2014).

89. Gamification can be defined as introducing game-like elements in non-game settings to increase motivation. For a good introductory summary of gamification in educational settings, see Joey J. Lee & Jessica Hammer, *Gamification in Education, What, Where, Why Bother?*, 15 ACAD. EXCH. Q. 1 (2011).

90. And optimal timing probably matters a great deal in pretesting. CAREY, *supra* note 88, at 100.

91. Which has been the case in some studies where students were encountering material they had not yet read about at all. See *id.* at 97–99 (detailing the studies of pretesting conducted by psychological researcher Elizabeth Ligon Bjork and her colleagues).

answers, and determine where gaps in their understanding of the material exist. Those in the law school who are charged with confirming compliance with ABA Standard 314⁹² will be delighted to discover that in effect, DQ students receive formative assessment in every class session.

Importantly, much of the assessment the DQ method provides is *self*-assessment. Not only is faculty workload thereby reduced, but students' autonomy and command of their own learning is more fully supported.⁹³ DQ students are encouraged to ask themselves not only what they did not understand before coming to class (and to correct it during and afterward) but also to consider *why* they did not fully see it the first time through the assignment. That promotes the kinds of self-efficacy and self-directedness that we know improves confidence⁹⁴ and learning overall.⁹⁵

These kinds of regularized assessments have the additional advantage of tangibly modeling a positive mindset. They normalize the experience of struggling with difficult concepts, engender an expectation of growth with

92. "A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students." AMERICAN BAR ASSOCIATION, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 24 (2020), https://www.americanbar.org/groups/legal_education/resources/standards/.

93. Encouraging and supporting the autonomy of law students can improve both learning and student well-being. See Carol L. Wallinger, *Autonomy Support 101: How Using Proven Autonomy Support Techniques Can Increase Law Student Autonomy, Engender Hope, and Improve Outcomes*, 48 DUQ. L. REV. 285 (2010).

94. The confidence issue is not simply a concern with making students feel good. It has profound implications for feelings of belonging and inclusiveness that may in turn improve the academic performance of students whose identities are traditionally underrepresented in law schools and into the legal profession. For an excellent text seeking to promote belonging by building academic confidence, see RUSSELL A. MCCLAIN, *THE GUIDE TO BELONGING IN LAW SCHOOL* (2020). Building appropriate (not inflated) confidence may also be part of humanizing the learning experience in ways that promote grit and help to counter the known depressive and dependency-inducing effects of legal education. See Emily Zimmerman & Leah Brogan, *Grit and Legal Education*, 36 PACE L. REV. 114, 153 (2015); Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASH. L.J. 313, 320 (2008).

95. See Louis N. Schulze & A. Adam Ding, *Alternative Justifications for Academic Support III: An Empirical Analysis of the Impact of Academic Support on Perceived Autonomy Support and Humanizing Law School*, 38 OHIO N.U. L. REV. 999 (2012) (finding statistically significant data showing that robust academic support programming improved student outcomes in part because of its support for students' feeling of control over their own learning).

sustained effort over time,⁹⁶ and concretize the message that knowing what you don't know improves learning.⁹⁷

Another crucial point is that these kinds of assessments also influence faculty members to become much more definitive in identifying their own learning goals. "Before faculty can assess how well their students are learning, they must identify and clarify what they are trying to teach."⁹⁸ If the objective for each class session is unarticulated, or is only loosely formulated in broad strokes like "understand this case" or "learn how to think like a lawyer," pretesting and assessment are almost impossible to implement. Some studies suggest that "the most serious impediment to improving education was not the quality of either instruction or assessment, but rather the failure of instructors to identify clearly what were the most important objectives for learning,"⁹⁹ so finding ways to influence the setting of concrete and achievable learning goals can only improve legal education."¹⁰⁰

And finally, assessment is not unidirectional. The pretesting function of directed questions also permits the professor to assess the effectiveness of the assigned reading, the class's general level of comprehension and preparation, and the value of the questions themselves. If the initial responses are stronger than expected, the class might skim more rapidly through the content. If it is weaker than predicted, then the instructor will know to slow down or in some other way to adjust.

II. COMPARISON WITH TRADITIONAL LAW CLASSES

A. Case Briefing

KRIS: If we want to consider whether Directed Questions are a genuinely new method of legal instruction or, instead, simply a variation on what law professors have traditionally done, I think we need to start by looking

96. Observing both themselves and their classmates struggle initially with the questions but eventually arrive at a richer and more complete comprehension makes growth visible, which in turn can make growth mindset almost inevitable. For foundational work on the importance of growth mindset in learning see CAROL DWECK, *MINDSET THE NEW PSYCHOLOGY OF SUCCESS* (2008); for commentary on fostering growth mindset in legal education, see Megan Bass, *Grit, Growth Mindset, and the Path to Successful Lawyering*, 89 UMKC L. REV. 493, 507–11 (2021).

97. Whether or not it is apocryphal, Confucius is often attributed with the adage translated into English as: *True wisdom is knowing what you don't know*.

98. THOMAS A. ANGELO & K. PATRICIA CROSS, *CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS*, 8 (2d ed. 1993).

99. *Id.*

100. Identifying concrete learning goals and then structuring instruction with an aim toward meeting them is a core component of backward design. See WIGGINS & MCTIGHE *supra* note 50, at 17; L. DEE FINK, *CREATING SIGNIFICANT LEARNING EXPERIENCES* 63 (2013). See also, James A. Bernauer, *Teaching for Measurable Outcomes*, 9 J. EXCELLENCE IN COLL. TEACHING 25, 26 (1998) (observing that to escape the trap of striving only to "cover the material" he needed to step back to first identify critical learning goals).

back to the purposes of class preparation. I understand that your students are told not to brief their assigned cases. You want them to focus instead on carefully preparing thoughtful answers to the specific questions posed. But to do so, of course, they will need to carefully read and thoroughly understand the cases included in their materials. So then does it really matter whether they got there by briefing or not?

RORY: I am increasingly feeling like case briefing is an archaic, inefficient, and particularly useless tool for modern legal analysis. It harkens back to a time when Langdell walked into a dark room with a lantern and there were case opinions all over the place and he had to pick each opinion and begin to figure out what it was about. A time before Westlaw and Lexis, and a time before casebooks with explanations and headings like Battery, Intent etc., that make it obvious what the case is about and why it is being read. As I noted in the earlier parts of our conversation, no lawyer preparing for an argument or hearing or needing a case walks into a dark room with no structure or organizing of cases by topic. I don't know whether they ever did, but they certainly do not have to do so any longer.¹⁰¹ I suppose in a post-apocalyptic dystopia we could return to that, but it is certainly not how legal research is conducted.

KRIS: Whoa, don't hold back, Rory. Say what you really think!

RORY: Okay, my description may seem strident, but I just do not see a direct line between briefing appellate opinions and preparing to be a 21st century lawyer. To become effective attorneys, students will need to learn how to use facts to structure legal arguments, how changed facts can affect outcomes.

In today's information-accessible environment, what we should be teaching our students is how to extract a tangible principle of law from a case they read with the ability to apply that principle in a new factual situation unrelated to the factual situation the rule was extracted from. I don't think that means that students have to read a case and pretend, as though there isn't a subheading like "offer" or a sub-subheading in the casebook like "required specificity." And then try to pretend to be amazed when for that class the issue in the case is, remarkably, the required specificity of an offer.

KRIS: I am uncomfortable with what you are suggesting is the purpose of the case brief. I do think the signposting of contemporary casebooks is helpful to students, which I hope makes it easier for them to read and comprehend the included cases. Which means that yes, in that way there's little mystery to what the purpose of a particular opinion is given where and when it is assigned in a course.

But so what? Most law teachers would contend that a case brief is nevertheless a valuable instrument for learning to digest judicial opinions.

101. Earlier generations did not have today's West Key Number classification system, digests, KeyCite and other automated Shepardizing systems, let alone the advances of Boolean and natural language searching in legal databases.

RORY: Is it, though?

I think it is an incredibly inefficient form of teaching people how to read rigorously. Case briefing may have been the best way to learn the skills that rendered an early 1900s lawyer effective. As legal educators, we have been hypnotized into believing this is the way to learn to think like a lawyer. Briefing survives now because we are all simply replicating what we have been taught. Or maybe it lingers as some sort of unjustifiable hazing mechanism.

KRIS: No fair just getting mad at the entire aggregation of law faculty! I think most people in the legal academy are doing their best to thoughtfully guide students through an incredibly dense and interlayered set of intellectual tasks in a wholly unfamiliar setting.

Maybe we are getting too hung up on language anyway. Could it be true that case briefing and directed questions both try to emphasize that reading cases is very different from even the most careful kinds of reading they may have done before coming to law school? It requires a rigorous attention to the kinds of things usually included in case briefs. Even though many of those details may not, in the end, matter for the purpose of using the case. No, wait—*because* they might not matter. The only way for a lawyer to get to the important parts of a case and use its law and facts favorably for a client is to thoroughly understand the opinion and sort for significance, while setting aside the parts that only matter to the specific litigants in a now-resolved matter.

Don't well-designed directed questions guide them to do exactly that? Essentially you are doing the same thing briefing does. As students strive to answer directed questions, aren't you effectively teaching how to extract the important information from a case, just in a different format?

RORY: Under that description, briefing in the end is nothing more than a sorting instrument that we *hope* is helping students understand how to organize, rank, and prioritize information from a case, take what they need, and disregard the rest. It is a pretty blunt instrument for that. And it asks students to write out things that we want them to eventually determine are not useful for their purposes, which seems... confusing and potentially contradictory.

KRIS: I want to interrupt with an important aside: I am noticing that we are here debating the value of law students' "writing down" superfluous case information in a brief as if that is what law students actually do. But we also have to acknowledge that may not be what many of them are doing at all. There's a bounty of commercial supplements and briefing services tied to just about every popular legal casebook on the market.¹⁰² Even students who conscientiously craft case briefs entirely on their own as they are advised

102. *E.g.*, Quimbee.

to,¹⁰³ may nonetheless rely on comparing them to commercial briefs to, in essence, check their own work.

RORY: All the more reason not to lose our own credibility by telling students to do a thing that some may not be doing, just to replicate a resource they can buy in the marketplace. Yet suppose they did buy a brief for every case ever assigned in law school. I would certainly contend that they would still hardly be situated to excel in their learning.

KRIS: True, but most scholars of learning would say that was because reading a case brief was simply a pale substitute for constructing one.¹⁰⁴ It's not active, and it's rarely engaging. But I think your focus on efficiency is masking a deeper concern. Isn't the problem you have with case briefing deeper than just how much time it takes?

RORY: Probably. The time devoted to fully briefing cases also distracts from the most important substance students need to learn. I fear that the messaging professors unintentionally deliver to their students—that I know *I've* delivered to students in the past—is that being able to brief is *the* important skill, rather than just a way to teach students how to read cases effectively. Which leads to a bigger point about our learning goals for students. If a professor's objective for class is: "my students should understand the cases," then briefing is great preparation. But we want so much more for our students than that. Those same professors who expect students to spend hours briefing cases may end up pretty frustrated if their broader learning goals don't materialize on final exams. But I think they are unintentionally contributing to exactly that likely outcome.

KRIS: Now there's where I think I agree with the thrust of your critique, even though I find your dismissal of case briefing preemptory.

It strikes me that what you are trying to capture is that a problem with heavy emphasis case-briefing and a central mode of law study is that it causes students to fetishize the case they read. It makes it seem that mastery of the brief—and cases—is *in and of itself* indicative of mastery of the law. When we know that in actuality it is simply an entry point to begin a consideration of the law under discussion.

103. Most law professors would find their students' overreliance on commercial case summaries troubling because it eliminates the educational value of their own efforts to comprehend the assigned reading. Alex Ruskell's advice to entering law students that they must "brief each case" in part because otherwise "it is too easy to sit in class, listen to the lecture, and feel like you 'got' the case when you really didn't" typifies the law professors' common proclamation that the work itself is a necessary part of mastering legal material. ALEX RUSKELL, *A WEEKLY GUIDE TO BEING A MODEL LAW STUDENT*, 24–25 (2015).

104. "By going through the process of drafting a case brief, students free up their short-term memory which allows them to think about what the case actually means." Leah M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, 29 CAMPBELL L. REV. 5, 13 (2006). See also, *id.* at 16 (quoting with approval a student's observation that she did not truly learn a case until she briefed it herself).

RORY: In fact, we have both been teaching some of the same cases for years, but I'll bet you have the same experience I do of occasionally finding yourself talking with students who familiarly reference case names and factual or procedural details that you simply do not remember.

KRIS: Absolutely. Happens all the time, and I am always just a little bit embarrassed when it does. But I don't really think I should be. I try to use that opportunity to remind myself (and to tell my students) that chances are I am not retaining minutia which simply does not matter.¹⁰⁵ Which may in turn signal to them what I think does matter.

RORY: Then here's my problem with assigning students to brief cases for class: even if we tell students that mastering briefing itself is not the objective, but instead it's just an important step toward the ultimate objective, the process is so time consuming for students that I think they end up believing that there is more value to the process than there is.

KRIS: Alright, I think this is helping me see where the disconnect is. There can be a quality of most common bait-and-switch to the first year of law school. Most diligent law students spend hours reading and preparing for their classes, then when they get to class they frequently get quizzed about the cases they were assigned. Little wonder, then, that they feel like those cases are enormously important. And then... bam! We give them a final exam in which we expect them to apply the legal rules from those cases to new facts but rarely test them on the cases themselves.¹⁰⁶ No wonder they feel like we've hidden the ball.

RORY: That's exactly what I was getting at! And I do not think that telling students to treat case briefing as just a step in the journey to learning the law is sufficient to overcome the powerful signaling effect of the time commitment it requires.

KRIS: So what I'm drawing from this conversation may be that there is a fundamental problem in messaging when we emphasize case briefing as a primary means of preparation for law classes. There is the eternal truism that actions speak louder than words. Whatever we say, some of our students will draw still the most powerful messages from what we have them do.

105. Setting aside unimportant details may be an important part of learning. As William James observed more than a century ago: *If we remembered everything, we should on most occasions be as ill off as if we remembered nothing.* WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY: VOLUME I* 680 (1890). Contemporary researchers agree, positing that we consciously or unconsciously sort for meaning in the process of remembering some information while forgetting others, which is an important part of both recall and overall learning. See Robert A. Bjork & Elizabeth Ligon Bjork, *A New Theory of Disuse and an Old Theory of Stimulus Fluctuation*, in *FROM LEARNING PROCESSES TO COGNITIVE PROCESSES* 35 (Alice F. Healy et al. eds., 1992).

106. With the likely exception of classes in Constitutional law and related topics, since in comparison to other subjects, in these courses the cases are far more likely to be important for their own sake.

RORY: Right, and when we spend so much time having students write out facts, procedural posture, issue, etc., we can't really expect them to glean that that stuff isn't important on its own; rather it's important only to learning the authentically important stuff, which we end up deemphasizing in lieu of the less significant brief structure, and... on and on.

KRIS: [Heavy sigh.] This is now making me unsettled and worried about something else that's potentially disturbing.

RORY: Really? Do tell.

KRIS: Well, what if this is reproducing some parts of automatic privilege that (we hope) the legal academy is actively working to reduce?

RORY: Huh. I have this sort of tickling feeling that you might be on to something with that, but I'm not sure why, exactly. Say more about what you mean.

KRIS: One part of privilege is having a kind of ownership and confidence that may be less available to those with fewer advantages.¹⁰⁷ That could manifest as being less literal about instructions and feeling more entitled to disregard the parts of (what feels like) assigned labor that are less productive. Which is pretty much what most law professors do, in fact, want law students to do when they brief, but still....

What if that part is less visible to students who are uncertain of their belonging in law school or the legal profession, so they work all the harder at what they think we want them to do? When we focus so much on briefing, even to the extent that we have workshops and parallel curriculums just to teach case briefing, we are implicitly *screaming and exclaiming* that it is important. Yet law professors usually encourage students to brief precisely because they want students to sort for themselves which parts matter and for what purposes, and which parts really are not important to anyone besides the litigants whose case is now resolved.

RORY: That feels real and important to me. Beth A. Brennan points out that implicit rather than explicit instruction favors the privileged.¹⁰⁸ It takes a certain amount of security and, as you said, entitlement—in both its positive and more pejorative connotations—to treat instructions from law professors as malleable.

KRIS: I am really not sure what to do with this hypothesis/insight, because it has potentially far-reaching implications for how we teach. That feels like a larger topic than we can resolve in this current project. But we do seem to concur that there is something potentially troubling about

107. And consequently, seeking too hard to try to discern what is expected in the educational environment to the detriment of developing an internal voice and self-directed understanding. For a moving description of the narrowing effect the absence of privilege can have in education, see Ibram X. Kendi's recounting of his own self-limited educational ambitions, and his early adoption of racist rhetoric to achieve academic success. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST*, 3–8 (2019).

108. Brennan, *supra* note 25, at 4.

common instructions around case briefing, and whatever is problematic can have differential effects on different cohorts of students.

RORY: I want to think more about this, but my instinct is to say yes. Probably even more forcefully than that, because it is usually true that unreflective recapitulation of what we have done in the past tends to result in perpetuating the systems of advantage and disadvantage they emerged from.¹⁰⁹ Which likely means that's also true of the tremendous commitment we have in legal education to a briefing process.

Meanwhile, we do seem unequivocally to agree that the more direct and explicit our teaching is, the better.¹¹⁰

KRIS: Absolutely. In the DQ method you are deliberately incorporating an enormous amount of what thoughtful law professors want their students to get out of the briefing the cases they read, but you are reducing the impact of privilege on success at the same time. And by telling your students not to brief cases for your DQ classes you are, consciously or not, erecting a big neon sign with a glowing arrow that points to "approach learning law differently."

RORY: I am really perturbed by this privilege and inclusion issue. But we have not fully developed it in this conversation, and it wasn't the primary focus of our consideration of the DQ method. I do not want to diminish its importance when the topic deserves more thinking and probably needs its own article. Let's come back to it,¹¹¹ but move on for now.

As far as neon signs go, yes, I think we want to maximize opportunities to excel for all students in law school, and need to change any traditional instruction that that does not help to do that. The questions are designed so that students are incrementally increasing knowledge as they work through them. There are clear and carefully defined goals and learning outcomes for each section and subsection of class. The DQ professor should be tangibly aware of the precise learning goals each question is supposed to achieve.

From the professor, then, successful use of the method requires a much more precise anticipation of the learning that you want to happen, and it forces you to ensure that it is in reality happening in the sequence and scaffold you intended. Rather than rely on diffuse unfocused discussion and hope that the students can pull those goals out of the ether of unfocused Socratic.

109. See, e.g., Jeremiah A. Ho, *Function, Form, and Strawberries: Subverting Langdell*, 64 J. LEGAL EDUC. 656 (2015) (arguing that the Langdellian tradition in legal education unproductively hierarchizes knowledge over the skills necessary for law study and legal practice).

110. This effect is related Sophie Sparrow's influential argument that being explicit in grading will enhance students' learning. See Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1 (2004).

111. See discussion *infra* Part II.C.2.

KRIS: It sounds like what you are getting at is that the directed questions are constructed so as to point students toward gleaning what they need from the material, so the bulk of their emphasis will be on seeking to truly master the parts that they actually need from it. Is that right, or am I misunderstanding what you are trying to say?

RORY: That's it exactly. That's why I think it is a more active form of learning from the same reading. In addition to having students not brief, I am setting up a model that illustrates for them what the purpose of case reading is. In other words, *showing* instead of *telling*¹¹² my students about the role case reading plays in them becoming lawyers. Making sure they know the case is only a tool and being able to understand the case is just a small part of what they will do with the knowledge when they encounter a different factual scenario. I like to think of it as demystifying the unimportant crap which seems SO important until you truly grasp the big picture, which happens far sooner for some students than for others.¹¹³

KRIS: That raises another set of questions about whether the directed questions somehow (over)simplifies student work.¹¹⁴

RORY: It's so interesting that you raise that as an issue. It had never occurred to me that this was a possible objection to the DQ method, but when I have talked about it with some law professors there was a concern that either I—or they, if they taught this way—would be “spoonfeeding” the law to the students.

KRIS: Even though I'm the one who raised it, I do not think that is what DQ questions do at all! Quite the opposite, really. They function almost as a ladder that users can climb to reach some of the highest levels of rigor and complexity in interpreting the opinions.

RORY: Yes, and you and I aren't the only ones who think so. Aren't the directed questions serving as a form of the “explicit” instruction that Beth A. Brennan has called for in introductory legal education to reduce the

112. Sometimes called “the golden rule of writing.” The *show, don't tell* adage is often credited to Anton Chekov as a distillation of the writing process expressed in a letter to his brother. See THE UNKNOWN CHEKHOV: STORIES AND OTHER WRITINGS HITHERTO UNTRANSLATED BY ANTON CHEKHOV, 14 (Avrahm Yarmolinsky, trans., 1954) (writing “[i]n descriptions of Nature one must seize on small details, grouping them so that when the reader closes his eyes he gets a picture.”).

113. Which in turn simply has to intersect with privilege and feelings of belonging in law school.

114. Any intervention that causes law students to spend less time unproductively spinning their wheels should benefit all students. But those benefits may be especially important for students who feel obliged to put considerable effort into navigating the law classroom not only for themselves, but as pathbreaking symbols for future students from the underrepresented groups they represent. See video of Black law students at UCLA expressing the “disturbing emotional toll” of being so vastly underrepresented in their legal education. Recordto-Capture, 33, YOUTUBE (Feb. 10, 2014), <https://www.youtube.com/watch?v=5y3C5KBcCPI> (describing immense time and attention devoted to seeking support to manage the burdens of representation at moments 7:07-8:02).

advantage that privileged students have when all we use is implicit instruction or what you call the bait and switch?¹¹⁵

KRIS: From what I have observed, yes. Moreover, all of the learning theory that I'm familiar with points to the notion that explicitly teaching something as inchoate as law can be a pathway toward learners developing the ever-increasing levels of abstracted thinking about the subject that legal training requires.¹¹⁶

RORY: The fear of spoonfeeding also feels like it comes from people who have not really seen the DQ method in action. I really do not coddle my own students, for example.¹¹⁷ But I do *trust* them. Which to my mind means trusting them to learn and focus on the most challenging parts of their work, assuming I have done my job in getting them there.

KRIS: In terms of sheer workload, students acknowledge that even with the structure provided by responding to directed questions this method required far more work from them to prepare for class than the more common instructions in law courses.¹¹⁸ They were clearly getting rewarded in terms of increased learning for the extra effort they put in. They reported being eager to put in the extra work.¹¹⁹ I believe that is because compared to other classes they felt their learning was more patent and palpable to them. In other words, they were motivated to work harder because they felt they were learning more, or at least that they could more immediately see the results of their class prep work.

RORY: Students have told me that DQ classes changed the way they read cases in other classes, and they became more efficient at case reading in a way they would not have without this method.

115. Brennan, *supra* note 25, at 35.

116. Much of current learning theory grows out of a rejection of earlier "fixed" models of intellect, and relies on a conception of multiple intelligences, any of which can inform others. Robert Sternberg's triarchic theory of intelligence, for example, identifies the work of the mind as consisting of process metacomponents, performance components, and knowledge-acquisition components. Each of these can support the others, so that strengths in one area may prod growth even in areas of weakness. Sternberg's work developing and exploring these theories comprises an extensive body of work, but see generally, *THE ESSENTIAL STERNBERG: ESSAYS ON INTELLIGENCE, PSYCHOLOGY, AND EDUCATION*, (James C. Kaufman & Elena L. Grigorenko eds., 2008). Sternberg consequently urges more direct instruction in place of unhelpfully abstruse inquiry. ROBERT J. STERNBERG & ELENA L. GRIGORENKO, *TEACHING FOR SUCCESSFUL INTELLIGENCE: TO INCREASE STUDENT LEARNING AND ACHIEVEMENT* 137–40 (2d ed. 2016).

117. Having watched Rory teach DQ class sessions, Kris agrees that no one—least of all the students—would describe them as simple or easy.

118. "I would say that I spent probably 20% to 30% more time preparing for [my DQ] classes...." Student interviews, *supra* note 24.

119. "...When I went to make my outlines and I went to student for the midterm and final [in my DQ class] I had to spend half as much time ... as I did [for] others. I felt like I had grasped and retained it more as we went through." *Id.*

KRIS: One student even decided to try to write and answer her own directed reading questions for her other classes, which strikes me as an astonishingly insightful way to learn.¹²⁰ Most professors are happy to admit that we never learn anything so well as when we begin to teach it.¹²¹ That seems to me to be what your student was intuitively replicating in trying to create her own directed questions about reading she was assigned.

RORY: Hmmn. Now that's making me wonder whether it would be a useful assignment later in the semester to have one day of not providing directed questions and having students work alone or in groups to craft some and post for their colleagues....

KRIS: To wind up, though, I do understand your concern about assigning students to brief cases. But I question the need to be doctrinaire about it. Our students have to navigate legal education as it exists currently, and one of the most consistent things they are told is to brief the cases they read so they will have a structure for organizing the text and will be fully prepared for class. Why disrupt that message so thoroughly? Wouldn't it be more helpful instead to try to show the commonality of the core objectives in briefing and directed reading questions?

RORY: Not to my mind. I think briefing is so harmful in so many other ways that we need to get rid of it entirely.

KRIS: Slow your roll there. Alright, we may never agree on exactly what we would each say to our own students about this. Indeed, we don't have to. Yet I would like to delve further into the reasons for describing it as time-wasting and harmful. I suspect much of this is coming from what we would do with the cases in class. Can we turn to considering that in more depth because maybe it will clarify what kinds of preparation would be most useful?

B. Case Dialogue

RORY: The DQ method is leading me to question so many things that I once thought of as "best practices" in legal education. Including the primacy of the cases themselves. Since we teach a bit differently, maybe you can help me consider parts of that question by thinking about what the cases are actually used for in class.

To start with: how much difference would there be in one of your classes if you called on a student who had studiously briefed the case under consideration, as opposed to one who had not?

120. *Id.* (reporting being motivated by "just that subjective feeling that I understand something. I have content in my head that I didn't used to have [and] I can identify what that is.").

121. This has been dubbed the protégé effect by psychological researchers, and has been found to be both valid and reproduceable. For just one example, see Krista R. Muis, et al., *Learning by Preparing to Teach: Fostering Self-Regulatory Processes and Achievement During Complex Mathematics Problem Solving*, 108 J. ED. PSYCH. 474 (2015).

KRIS: That's a good question. Even though I remain somewhat agnostic about whether students must formally brief the cases they read, I should acknowledge that having prepared the standard case brief form would not be especially helpful for participation in my classes. I rarely, if ever, conduct the classic "student X please state the facts of *Leonard v. PepsiCo*"¹²² kind of inquiry. Instead, I want to use as much of my class time as possible to show students what to do with the cases they were assigned.

RORY: How do you go about doing that?

KRIS: For *Leonard* that means moving them away from the sort of mechanistic pedantry that laypeople (and the media) often naively stereotype law as requiring,¹²³ and getting them to see that legal reasoning is far more nuanced and emotionally intelligent than they might have expected.¹²⁴

RORY: Right, but what does that conversation actually consist of in that particular class?

KRIS [laughing]: You realize you're getting a little bit classically Socratic here, right? Just by continually asking for further explanation until I see the point you are trying to make?¹²⁵

I will grant you that I see what you're getting at. When I review my class notes for the material surrounding *Leonard* I see that I use polling software to determine whether it is consistent with or distinguishable from the previous case they had read.¹²⁶ I then have a couple of slides with hypothetical facts that I ask them to apply the case to, and together we work through those. All this is in the shadow of the slide I opened the class with, which

122. Though those are some particularly fun facts. The case addresses whether a plaintiff can require Pepsi to buy him a Harrier Jet as a contractual obligation for its alleged promises in a satirical advertisement. *Leonard v. Pepsico*, 88 F. Supp. 2d 116 (S.D.N.Y. 1999).

123. For an enjoyable take on whether law requires excessive reliance on unimportant minutia, see Richard Rubenstein, Comment to *Do Lawyers Tend to be Pedantic in Their Line of Work?*, QUORA (2018), <https://www.quora.com/Do-lawyers-tend-to-be-pedantic-in-their-line-of-work>.

124. Students reading the case should see that the case reinforces the rule they may have already encountered in contract law that intention to make an offer should be evaluated by objective standards. 88 F. Supp. at 127. But they should also come to see that those objective standards are not to be rigidly attached to wording as to obscure meaning, and that readers of law can (should!) draw contextual cues from intonation, juxtaposition, and in the case of the advertisement at issue, constructions that may be exaggerated for humor. *Id.* at 128–29.

125. A favorite instructional technique of one of us consists of repeatedly asking "Why?" to students' comments—repeatedly, and for quite some time. This approach usually prompts students to become increasingly specific in their responses until they either answer their own questions or conclude for themselves that their initial response should be changed. The technique also has the advantage of demonstrating that law students are fully capable of having rich and deep thoughts about what they study if they push themselves to think hard enough about the material. But it has the disadvantage of being tedious and potentially frustrating for students and therefore, like so many good things, is nonetheless best used sparingly.

126. Another casebook staple in Contracts: *Lucy v. Zehmer*, 84 S.E.2d 516 (Va. Ct. App. 1954) (binding a party to a contract he made in jest because his actions gave no objective indication of a lack of intent to be bound by the deal).

reads: "Question to ponder: Why do courts work so hard in contracts cases to try to figure out what each of the parties meant and understood?" Naturally, after we run through the hypotheticals applying *Leonard* we have the ammunition we need to begin thinking through that big-picture question. So I see that I am foregrounding the larger point I want to make about the field, then using the case discussion to prepare students to engage with it.

RORY: In other words, a student in your class might not find a case brief especially helpful if you called on her?

KRIS: Yes. I am trying to move away from too much meditation on the text itself, and toward employing it. I do try to be transparent with my students about that. When my first-year students hesitate if I jump directly into asking a demanding question applying a case they have read, I will often pause and remind them just how many layers I am asking them to think through simultaneously to get to the place where they can confidently do the kinds of analysis I am asking for. Understanding the case is a necessary beginning point for that, but only an imperative preliminary step.

RORY: Then you are far afield of the FARF analysis, which is what Davis & Steinglass suggest classic Socratic professors use to conduct case discussions.¹²⁷

They explain that FARFing a case¹²⁸ (Fact-And-Rule-Fit) necessitates students' culling from each opinion the facts before the court and the rule of law applied. Then, the colloquy between law student and law professor would seek to articulate the rule of law in such a way as to justify the outcome of the case at hand when applied to its facts.¹²⁹ Only after that part of the discussion was complete would Davis & Steinglass's Professor Classic move on to the closed hypothetical—meant to illustrate legal deduction in applying the just-articulated rule of law to new but unambiguous facts—and then to the open hypothetical that does the far weightier work of seeking to understand and interpret the rule.¹³⁰

It sounds like you are saying you just leap right into that very last step! Is that really fair?

KRIS: Maybe not. I should confess I have long had a little bit of hesitation about what I was doing for exactly that reason.

But I do help my students get to where we are going (and I try to be both rigorous and kind about what I expect them to be able to do). Furthermore—and this part is important—I 100% agree with the implication of your

127. Davis & Steinglass, *supra* note 12, at 265.

128. Attributed by Davis & Steinglass to Anthony Amsterdam & Nancy Morawetz, *id.* at 265 n.67.

129. *Id.* at 266.

130. *Id.* The meaning of the terms "open" and "closed" hypotheticals are undefined in the Article, but it appears that, albeit an imperfect correlation, the authors presume closed hypotheticals will apply rules to the kinds of factual settings that would have knowable results, in contrast to open hypotheticals that very well might not.

comments that structure suggests significance. Students will take more seriously what we spend the most time on, which is precisely why I don't want to spend inordinate class time on "please state the case" kinds of questions¹³¹ in lieu of using those precious minutes to explore how the legal rules operate. Often, I will start with an application question and that will lead inevitably to circling back to some key reasoning in the opinion, to help us understand why the court ruled as it did, and whether that holding does or does not work for a new scenario.¹³²

RORY: If that's the key conversation you want to have, why not just... do that?

KRIS: Maybe I am just replicating what I have been taught. Nevertheless, I do think there are benefits to disassembling the case into its legal components. Breaking it down into those constitutive parts can render it more fully understood, so the students who have completed that deconstruction and close reading of an opinion¹³³ should be ready to engage in the kinds of intellectual work of testing interpretations of common law rules that good law classes demand. I agree that much of that work will not be especially important for some cases.

RORY: Explain more about what you mean about different kinds of cases. Is there something about their purpose that distinguishes them?

KRIS: I guess so. Hmmn... yes! It's because a key insight my students tend not to see (and that law professors rarely explain) is that in most of the foundational common law classes we teach, the cases are just provided as *examples*. They may have been selected because they are timeworn,¹³⁴ or they have especially compelling facts,¹³⁵ or they are unusually well-written (or poorly written). Consequently, any of the "example" cases in a textbook could realistically be replaced with any other judicial opinion applying the

131. Which is exactly what Professor Classic does in Davis and Steinglass's scenario. *Id.* at 265.

132. Which probably accelerates at least some students' move to "book briefing," rather than writing out separate brief documents.

133. We sometimes hear legal scholars refer to "close reading" of judicial opinions when they want to reference the kinds of careful, attentive scrutiny of the text that law study requires. But that overlooks the fact that the phrase has a very specific meaning in literary criticism, where in its American incarnation it emerged from the work of the New Critics in the 1930s. For a summary of the relationship between close reading and other forms of literary criticism and an examination of efforts to teach close reading to law students, see Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of the Paraphrase: Talking Back to Texts*, 78 CORNELL L. REV. 163 (1993). For a recent re-examination of the merits and techniques of close reading, see Jonathan Culler, *The Closeness of Close Reading*, 152 A.D.E. BULL. 20 (2012).

134. *E.g.*, *Garrett v. Dailey*, 279 P.2d 1091 (Wash. 1955) (classic case of a child moving chair as his aunt was in the process of sitting, used *inter alia* to teach the concept of intentionality in tort, and frequently the first case entering law students read).

135. *See, e.g.*, *Frigalment Importing Co. v. B.N.S. Int'l Sales Corp.*, 190 F. Supp. 116 (S.D.N.Y. 1960) (exploring in depth the various potential meanings of English and German words for "chicken" to interpret a contract for bulk sale).

same rule. Don't love this particular foray into the frolic vs. detour inquiry for employers' vicarious tort liability? There are dozens of different cases employing the same principles that you could teach instead.

In my own thinking, I distinguish between these essentially interchangeable example opinions and *leading cases*, which the students need to know because they originate important legal doctrine. Or to phrase it differently, I'm thinking about those instances when referring to a legal principle is almost interchangeable with referring to a particular case.

I implicitly assume leading cases will continue to matter for their own sake, which means law students really need to know them and my class discussion should necessarily be about delving into them. But example cases only matter for what can be learned from them, and the student can safely move away from them as soon as they learn what they need to.

RORY: Under that description, aren't there whole subjects in law school in which none of the cases fall into what you are calling "leading?" Such that they should not be the central axis of class conversations?

KRIS: To a surprising degree, yes. Even though there are some pretty important classics included in my Contracts textbook that I would miss terribly if I weren't able to use them, I cannot think of a single opinion in that course that is so central to learning the subject that I would be unable to teach the class without it.

RORY: So with what you call "leading cases" your learning objective in class would be to lean into grappling deeply with the opinion itself,¹³⁶ whereas with "example cases" you are trying to move as quickly as you can into determining exactly what it is that they are examples of?

KRIS: Precisely. Which is why I do so much less of the case FARFing that Davis & Steinglass posit as an entry point, and so much more of what they describe as the third step in law school dialogue: making choices about what to highlight in terms of how expansively or narrowly its rule should be understood,¹³⁷ how to use the case to construct important categories in law,¹³⁸ and so on.

RORY: That sounds like a really valuable way to use judicial opinions. Both to teach basic legal rules and to teach students how lawyers apply them. To my mind that's what foundational law classes should be caring a lot about. I think it is a real departure from some of the more traditional law

136. And any dissents or concurrences, which if included are probably in a casebook for important reasons, and may well be as or more central to read thoughtfully as the decision of the court.

137. Davis & Steinglass, *supra* note 12, at 267–70; For an example of advice aimed at helping law students learn to recognize both broad and narrow interpretations of legal opinions, see BRETT A. BROSEIT, ELIZABETH M. MORTENSON & SARAH D. MURPHY, *APPLIED CRITICAL THINKING & LEGAL ANALYSIS: PERFORMANCE OPTIMIZATION FOR LAW STUDENTS AND PROFESSIONALS*, 39–45 (2017).

138. *Id.* See also, AMSTERDAM & BRUNER, *supra* note 78, at 19–37 (exploring the significance and purpose of categorization in law).

classes though. Your learning goal is not mastery of the cases per se, and your method is not to have a student state the case and then move methodically, slowly, outside of it. You are treating the assigned cases as instruments rather than as objectives.

KRIS: That's right. You are pointing out that my class sessions are usually about developing sophisticated comprehension of legal rules and learning to use them to analyze new problems or to build compelling legal arguments. Returning to case briefing then, I may be doing my students a disservice by asking them to spend significant time on something with limited utility. I do it in part because I do want to support—even amplify—the messages they get from the rest of the legal academy rather than suggest I am doing something wildly different.

On the other hand, since the objective is to understand cases so we can consider how to use them, I find I give my students somewhat different instructions about what kinds of notes to include in their case preparation. For example: law students are commonly advised in case briefing instructions to have one section for a case's "holding" and another for its "reasoning." For the learning goals in my classes I think that can do real harm. It reduces the holding to simply the outcome of the case, for one thing.¹³⁹ For another, if we are going to use cases to extract a rule of law that we can test to boundaries of, I do not want my students to atomize an opinion past the point of increased comprehension. More concerning still, I really do not want them to construct some sort of objective, *static* depiction of the case's reasoning, when the whole point of an extended case dialogue is to apply that rule. And also, to test out its malleability when applied to potentially analogizable or distinguishable facts.¹⁴⁰

RORY: Those are good points, and not really ones I had thought about in that way before. So, wow, does this mean I've convinced you that extended case dialogue, and the accordant case briefing to prepare for it, are not themselves a great learning goal for most law classes?

KRIS: You've somewhat convinced me, and I was somewhat already there. Our discussions have clarified for me why I have always been a little uneasy about putting too much emphasis on case briefing. Far more valuably, I think, what this discussion shows me most pointedly has more to do with the supposed centrality of cases themselves.

RORY: Go on.

139. Which is often far less significant for readers than *why* the party prevailed. Which is why Georgetown law professor Orin S. Kerr in *How to Read a Judicial Opinion: A Guide for New Law Students*, advises students to note in their briefs a case's disposition, but subsequently to consider in depth the reasoning and scope of that outcome. ORIN S. KERR, HOW TO READ A JUDICIAL OPINION: A GUIDE FOR NEW LAW STUDENTS 4, 6 (2005), <http://euro.ecom.cmu.edu/program/law/08-732/Courts/howtoreadv2.pdf>.

140. Which is how law practitioners must read favorable or potentially harmful precedent, and therefore an important part of what law schools are seeking to train law students to do well.

KRIS: I think we are both articulating (albeit in very different voices) that to really learn law, reading cases may be a crucial skill, but the cases *qua* cases are rarely as important as we have traditionally presumed in law teaching. We want burgeoning lawyers to know how to read opinions well, of course. But the whole reason for that is that we want them to know to build arguments interpreting rules, to be able to compare or distinguish cases when encountering new facts, and on and on.

RORY: Law casebooks today are far removed from the unadorned assemblage of judicial opinions that Langdell put together.¹⁴¹ To the extent that we are no longer expecting students to draw all of their comprehension of legal doctrine solely from reading opinions, we are not truly using the case method to impart knowledge of the law. Let's be honest about that, and help the students know what we *are* using cases for. Then we can structure our classroom conversations, and our students' preparation for those exchanges, around *that*.

C. *Fugue*¹⁴²

Once more, we return to prose to more fully consider the implications of some issues raised in our dialogue. Together we may not be in complete agreement about how much to reject some of the most common instructional tools in legal education, but we share equally in a belief that the Directed Questions method has several important advantages over more conventional forms of teaching from common law.

1. *Transparency and Accessibility*

It remains imperative to use cases in the practice of law, and it is therefore important that they be central to legal education. Hence, it is essential to teach law students how to read and use them well.

DQ methodology does that. It certainly incorporates plenty of judicial opinions, considers them in depth, and shows students how to read them carefully and critically. But the emphasis on answering key questions *drawn from* the cases signals more precisely to students what they actually need to learn which is to read, understand, interpret, apply, and sometimes challenge the opinions,¹⁴³ rather than to cherish them as precious objects behind glass.

The connections between the cases assigned and the DQ questions they are used to answer should be more perceptible to beginning law students than the looser relationship among case reading, traditional Socratic inquiry, and

141. See CAROLYN NYGREN, *STARTING OFF RIGHT IN LAW SCHOOL*, 117–18 (2d ed. 2011) (describing changes in casebook design since the era of Langdell).

142. A contrapuntal musical composition in which themes introduced in one part are repeated while being interwoven with newer parts and variants.

143. Which, not coincidentally, falls within the very highest orders of thinking according to Bloom's Taxonomy.

ultimate application of legal rules to novel facts.¹⁴⁴ This inevitably has to render the purpose in reading assigned material more visible to students.

Law students are adult learners. They deserve esteem as equals and future colleagues despite being not-yet experienced in our profession. Thus, transparency in what we are asking them to do, and why, matters rather a lot. There is a significant body of educational literature supporting the idea that when we teach adult learners it is enormously important to respect their ability to understand why they are being taught in a particular way.¹⁴⁵ Law students are often acutely aware of what works for them,¹⁴⁶ and they can be unforgiving in their evaluations of things they think are not productive uses of their time. DQ students can see immediate and demonstrable results from the work they put in, which in turn motivates further effort and spurs deeper learning.

Directed questions can also promote accessibility¹⁴⁷ in learning. Handling one question at a time feels attainable to most students, particularly when they quickly discover that they must do their very best to prepare complete and accurate responses, but that they are in no way expected to have all the answers just from having done the reading. More traditional classroom experiences may have the same expectations of students' developing expertise, of course.¹⁴⁸ But the standards are usually less visible to students and therefore potentially more alienating, which is why so many law students end up concluding that law teachers are deliberately hiding the ball.¹⁴⁹

144. Which, of course, is the entire point of most law school exams.

145. See MALCOLM KNOWLES ET AL., *THE ADULT LEARNER: THE DEFINITIVE CLASSIC IN ADULT EDUCATION AND HUMAN RESOURCE DEVELOPMENT* 64 (6th ed. 2005) (asserting that adult learners need to know the reasons why they are learning what and how they are taught). See also Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 29 (2008) (describing the current generation of law students' need for transparency and relevancy in their learning).

146. Though we do have to acknowledge that they are likely to be imperfectly so. Researchers know that some of the most effective learning strategies may be counterintuitive, and often do not "feel" like they are working even when they produce verifiable results. See Elizabeth M. Bloom, *Creating Desirable Difficulties: Strategies for Reshaping Teaching and Learning in the Law School Classroom*, 95 U. DET. MERCY L. REV. 115, 119, 121–22 (2018) (considering the conflict between what students believe is good learning and the techniques that produce better results).

147. Here, we mean "accessible" in the sense of making it discernable and reachable by all learners. Although, it may also be true that its alternate connotation of being designed to reduce barriers based upon differences among learners is also implicated.

148. Few law teachers probably do full-on Kingsfieldian hazing of their students anymore. There has been significant progression in recent decades toward a more humane yet still rigorous classroom. See Justine A. Dunlap, *"I'd Just as Soon Flunk You as Look at You?" The Evolution to Humanizing in a Large Classroom*, 47 WASHBURN L.J. 389 (2008) (detailing the author's own tonal shifts in teaching and situating them within a larger movement). Nonetheless, the image still looms.

149. See Pierre Schlag, *Hiding the Ball*, 71 N.Y.U. L. REV. 1681, 1684 (1996) (explaining: "The problem, as law students see it, is that the Socratic teacher never stops the interrogation long enough to allow the students to get a good look at the ball. And given that the

Transparency and accessibility matter for all students' learning. They also contribute to creating more inclusive class experiences that have the potential to permit a larger pool of law students to thrive.

2. *Privilege and Belonging in the Law Classroom*

We noted earlier that it is probably part of a different project to ruminate deeply on ways that the modern case method, and concomitant case briefing, may reinforce the kinds of privilege that allow some students to attack their studying with more consciousness of their own agency than others. Issues of privilege, classroom inclusiveness, and the kinds of healthy entitlement to "argue" with legal text¹⁵⁰ pervaded our discussions, however, so we cannot completely avoid the topic, either.

Understanding what they are doing and why they are doing it promotes autonomy in adult students and a sense of confidence about the eventual success of their efforts.¹⁵¹ In turn, feelings of confidence in the classroom—that is, having sense of being able to learn there—are critical to increasing inclusivity and a sense of belonging.¹⁵²

Everyone struggles with learning law. *Everyone*. We tell entering students to expect that law school will not simply be difficult, but that it will challenge them in ways few previous educational experiences have.¹⁵³ Unavoidably, then, all law students will experience both moments of success and moments of failure as they study and learn. But they may not all experience those moments in the same way.

students have no idea what the ball looks like, it is not surprising that they have difficulty grasping it as they try to play the game.”).

150. “To read judicial opinions closely and critically is to talk back to power.” Fajans & Falk, *supra* note 133, at 65. Experts on legal reading view evaluating cases and “talking back” to the text as an important part of reading them well. See Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE UNIV. L. REV. 603, 625 (2007) (finding that higher-performing law students used more “problematizing” reading strategies as opposed to “default” strategies than their lower-performing peers). See also advice on reading cases critically in the two preeminent texts on reading in law school: JANE BLOOM GRISÉ, *CRITICAL READING FOR SUCCESS IN LAW SCHOOL AND BEYOND*, 11–13, 183–85 (2017); RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LIKE AN EXPERT LAWYER*, 161 (2005).

151. See Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 567 (2015) (finding traditional legal education “demoralizing” for many, due at least in part to the students’ unmet needs for autonomy and a sense of competence).

152. Bahadur & Zhang, *supra* note 58.

153. Virtually every guide aimed at entering law students that we have ever reviewed makes this point. For just a few recent examples, see KATHRYNE M. YOUNG, *HOW TO BE (SORT OF) HAPPY IN LAW SCHOOL* 9–10 (2018); HERBERT N. RAMY, *SUCCESS IN LAW SCHOOL* xv (3d ed. 2020); LEAH M. CHRISTENSEN, “ONE L OF A YEAR” 3–9 (2018).

Some in the legal academy have in recent years placed increased emphasis on helping law students develop growth mindsets¹⁵⁴ in which errors are seen as simply inescapable and temporary diversions along a path toward mastery. We see this movement as salutary. Yet we nonetheless note that the lack of perception of their own clear progress, coupled with the inevitable mistakes they will make as they learn, can have a profoundly negative impact on students who are already uncertain whether they “belong”¹⁵⁵ in law at all. Unsurprisingly, students experiencing that uncertainty are likely to be those from less traditional legal backgrounds.¹⁵⁶

By providing more explicit scaffolding in law classes, DQ methodology helps make the experience of not being immediately and fully correct feel natural and commonplace. That’s beneficial to all students, but specifically and more fundamentally so to those students who might otherwise believe that their own struggles with the material were unique to them, or in some way indicated that they simply did not possess an aptitude for law. Students with significant privilege can certainly experience these kinds of ordinary yet detrimental self-doubts. But they cause particularized harm and may be more pervasive among law students from economically disadvantaged backgrounds, first generation professionals, and/or students of color attending majority-white legal institutions.¹⁵⁷

Students in DQ classes see themselves and their classmates increase their own knowledge, in the tangible form being able to answer the questions, developing daily. They learn that “getting it right” at first try is not nearly as important as getting it right eventually. They can in some senses touch and feel their own learning. That shows everyone, student and teacher alike, that the growing expertise is generated by the students’ own efforts, not simply imparted by the omniscience of the professor. If everyone in the room is clear about what the learning goals are, then it feels more achievable to eventually meet them.

Too, conducting a class by considering a series of directed questions can permit faculty to more easily pivot from student to student over the

154. E.g., Cassie Martin Christopher, *Normalizing Struggle*, 73 ARK. L. REV. 27 (2019); Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959 (2018); Sarah J. Adams-Schoen, *Of Old Dogs and New Tricks: Can Law Schools Really Fix Law Students’ Fixed Mindsets?* 19 J. LEG. WRIT. INSTIT. 3 (2014).

155. See Russell A. McClain, *Bottled at the Source: Recapturing the Essence of Academic Support as a Primary Tool of Education Equity for Minority Law Students*, 18 U. MD. L.J. RACE, RELIGION, GENDER, AND CLASS, 139, 161–73 (2018) (describing barriers to minority-race law students’ sensation of belonging in law school and the potential concomitant effects on these students’ performance).

156. *Id.* at 172.

157. For one examination of methods to boost the performance of traditionally underrepresented students in law school in part through addressing growth mindset and motivation, see E. Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School*, 1 TEX. A&M L. REV. 83, 88–102 (2013).

course of a single class.¹⁵⁸ A common critique of women law students and law students of color of all genders is feeling that some of their professors did not call on them in class,¹⁵⁹ or questioned them less rigorously than their peers.¹⁶⁰ No teaching method can correct for perceived and actual bias in the classroom, of course. Because we know that speaking—and speaking well—in law classes is highly performative and sends important signals to law students, though, it can be helpful to adopt practices that easily permit ping-ponging around the room fairly frequently, and treat as usual the students’ experiences both of being incomplete or triumphant.

We note finally, and with a degree of bemusement, that a complaint of some of the more consistently high-achieving students taking DQ classes was that the method “minimized the advantage” they had over their classmates exactly *because* it was clearer what was expected, which made it possible for greater numbers of students to figure out exactly what was needed to excel. That’s probably an unfortunate consequence for those students who would otherwise best their classmates simply because methods of learning law came more intuitively to them, or who happened to have external contexts that made law study feel less enigmatic.

Legal educators, on the other hand, can hardly be expected to mourn the loss of advantage some students might experience within more equalizing teaching methodologies.

III. CONVERTING TO DIRECTED QUESTIONS METHODOLOGY

KRIS: Assuming readers agree with us about reducing the emphasis on cases for their own sake in most law classes, and they would like to switch to a version of the DQ method, what will they have to do? Will they need to start from a special casebook, for instance?

RORY: They certainly don’t *need* a new casebook. I’ve written one for Civil Procedure,¹⁶¹ so I use it when I teach that subject. But I also use directed reading in Torts and I don’t have a Directed Reading casebook for that one.

158. One of the things interviewed students noted forcefully was how frequently everyone spoke in their DQ classes. “Every single student spoke ... almost every single class ... including the ones who don’t volunteer.” Student interviews, *supra* note 24.

159. *E.g.*, when the first few women were first admitted to Harvard Law School they were often called on only in designated “ladies’ days.” See JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS: THE WOMEN OF THE HARVARD LAW CLASS OF ‘64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS* 96–103 (2003).

160. If, as many law professors believe, “speaking in class—and being put on the spot—...is an essential part of preparing students for careers in which they will be required to speak and reason in real time,” then *not* calling on some students or handling them delicately is doing those students a disservice. Jeannie Suk Gerson, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2346 (2017). Irrespective of any actual effect on law students’ eventual professional performance, disparate rigor is patronizing and therefore disrespectful, and usually palpable to fellow students.

161. BAHADUR, *supra* note 52.

To adapt a standard casebook, I had to go through a preliminary syllabus to deeply consider the learning goals for each class. Then I generated a series of directed reading questions that achieved those goals. That took considerable effort, however. Not really in writing the questions themselves, but in articulating my learning goals. I could no longer think of my objectives intangibly like “learning the law.”

For example, when I teach *Palsgraf* the directed reading questions are designed to make the students think intensely about the function and meaning of foreseeability doctrine. This includes:

1. The policy reasons we may want a judge doing the foreseeability analysis in duty as opposed to a jury doing the bulk of the foreseeability analysis in proximate cause.
2. The difference between duty and proximate cause, and the fact that there may be little to no discernable separation between duty and proximate cause.
3. The limitations of law and its inability to rectify all the harm caused by the complex interactions in a complex society.
4. Reducing all civil law to the questions of: Was there harm? And if yes, should there be compensation? And if yes, what should that compensation look like?
5. Demonstrating bias, or asking students “How could Cardozo not find a duty when Mrs. Palsgraf was the paying customer of a common carrier on its own premises?”
6. Incorporating legal realism by asking students what their view of Cardozo’s opinion would be if they knew he was involved in the drafting of the first Restatement of Torts? And that his friend Francis H. Bohlen was one of the authors of the Restatement, and Bohlen felt the case’s resolution should sound in duty rather than proximate cause?¹⁶² Or that none of the parties had mentioned duty as a decisive matter in either their briefs or oral arguments?¹⁶³

With real effort at conceptualizing their teaching, any law professor is probably capable of doing the same thing. Doing so for yourself automatically confers the built-in advantage of being able to personally tailor how the questions are expressed. On the other hand, if you have a directed reading

162. William L. Prosser, *Palsgraf Revisited*, 52 MICH. L. REV. 1, 4 (1953).

163. Instead, the parties focused on whether the defendant railroad had met the duty of care it owed to the injured plaintiff, which was the determinative matter at the intermediate level. See *Palsgraf v. Long Island R.R. Co.*, 225 N.Y.S. 412, 414 (App. Div. 1927).

casebook like my civil procedure case book (*shameless plug*) then it does make first-time preparation for DQ teaching easier.

KRIS: You do so love to begin from specifics. If I could respond more broadly for a minute, some of what you just described could be very challenging for a novice law teacher, or for anyone just beginning to teach a new subject. To connect the doctrine using contextual hooking, and to be aware of how each case and topic fits into the larger course, you need to be thinking about incremental learning goals for the whole course and how they form part of the larger picture for each question asked in each course right? Put more directly—you're required to already have the kind of cognitive schema you want your students to build. For most of us that is not fully developed the first time we teach a given class.

I think you mentioned to me that you were only able to teach with directed reading questions after you were teaching the same subjects for a long time.

RORY: Yes. But now that I know what I am doing in designing directed questions and why, the process of getting there should be speedier. And maybe there will be more casebooks designed around Directed Questions in coming years. If so, they should also come with a teacher's manual that provides detailed and supported answers to each of the DQ questions, while informing the teacher about the pedagogy techniques being employed for each question.

KRIS: Of course, every law teacher can do their own form of DQ design if they want to spend the time and effort identifying both the micro and macro goals of each lesson. That is a worthwhile project for any kind of law teaching, actually, yet not nearly as universal as it ought to be.

RORY: Sure, and if that exists in more subjects then people won't have to reinvent the wheel, which makes it less likely that law professors will be content with overgeneralized or underarticulated objectives for student learning. The truth is, there's no longer a sustainable argument that having diffuse goals in the classroom is optimal law teaching.¹⁶⁴ That's refuted by 150 years of developments in legal education and in our understanding of the science of learning. Law professors can either opt to continue to reproduce what legal education has always done, or alternatively we can embrace an obligation to think carefully to articulate tangible and assessable learning goals for our classrooms.

KRIS: Honestly, that would simply *have to* makes us better teachers, and thus improve our students' learning, whether we have convinced anyone to adopt the precise DQ methodology or not.

164. See Susan Hanley Duncan, *They're Back! The New Accreditation Standards Coming to a Law School Near You—A 2018 Update, Guide to Compliance, and Dean's Role in Implementing*, 65 J. LEGAL EDUC. 462 (2018) (explaining that law schools' establishing learning outcomes for their students and means of assessing whether they are being met is not optional, and outlining ways for law school deans to make the process productive and palatable).

CONCLUSION

We began with an observation that the texture of our conversations might themselves exemplify directed question methodology. So... have they?

To a significant degree yes. But in the end, not quite.

Our dialogues explicated a great deal of the thinking and learning Rory intended to provide for students when he fabricated directed questions for his courses. Kris's genuine curiosity about the DQ method, combined with probing inquiries based both on her exterior perspective and foundation in learning theory, served to push our conversations toward articulating considerations Rory had not previously been fully conscious of.

Thus, if DQ methodology is meant to utilize the structure of multiply-reconsidered responses to specific questions, with an ultimate goal of prompting deep comprehension of both the details and conceptual overview of the subject under consideration, then we believe this Article replicates that part of the process.

But we are also struck by the degree to which our discussions revealed to us concerns we shared about law teaching which neither of us had fully identified or reflected on before coming together.¹⁶⁵ Points that it is very unlikely we would ever have considered in the same way on our own. There is a synergy in mutual exploration of the deepest most "authentic" questions in law. It is joyously generative. That is exactly the advantage of collaborative questioning by peers, both of whom are (as, effectively, are all law professors) experts in legal education. Between professors discussing their teaching, there simply isn't much of a knowledge gap.

At their very core, however, law classes are *not* meetings of equal experts.

In many ways, the greatest insight of DQ teaching is acknowledging the responsibility inherent in possessing advanced knowledge. And being guided by the obligation of all educators to level the field between themselves and the people they teach. Directed reading is designed to bridge the gap between an expert and a novice by slowly and incrementally leading the novice through a series of answers that increases their cognitive schema formation incrementally as they move towards mastery. It is explicit instruction, but it does not tell students precisely what to think: it creates active learning experiences for self-revelation.

Thus, we do not think the directed reading would work in the absence of a knowledge hierarchy between the person asking the questions and the person answering them. Directed reading questions work by gradually and intentionally making the message clearer, which requires that there be a

165. *E.g.*, the intractable way that law teaching, including ours, inevitably replicates legal and social advantages. And our strong desires to find ways to teach that, at very least, do that less so.

carefully developed plan to achieve specific learning.¹⁶⁶ We would therefore happily employ the method if we wanted Rory to teach Kris how to tell the difference between a stellar sea lion and other pinnipeds, or Kris to teach Rory how to design furniture (based on his early life as a marine biologist or her expertise as an amateur woodworker). But we would not be able to create truly effective directed reading questions for one another on a topic that neither of us were familiar enough with to identify concrete learning goals.

We have come to realize that the directed reading questions teach students effectively because the method operates out of a clear and predetermined plan. It makes its message more comprehensible because of its very explicitness. It takes ownership over our own sense of responsibility as educators to enable our students to reach higher and further, *through their own insight and (evolving) mastery*.

By answering directed questions, the students learn the law in digestible increments. But as Kris observed,¹⁶⁷ the larger points about the law, knowable and irresolvable—the meta—is supported in ways that help make even the very complex richness of the law more accessible for all students.

166. Might that also be true of more traditional case-based Socratic dialogue? Possibly. Davis & Steinglass certainly think so, as do the authors of the Carnegie Report. We ourselves have conflicting and diverging opinions on that question. Yet we remain confident that we do not need to resolve that question for the entirety of the legal academy simply to posit that Directed Questions do so more deliberately and more effectively.

167. See *supra* text accompanying note 20.