

Navigating the Uncharted Waters of Teaching Law with Online Simulations

Ira Steven Nathenson

Follow this and additional works at: https://digitalcommons.onu.edu/onu_law_review



Part of the [Law Commons](#)

Recommended Citation

Nathenson, Ira Steven () "Navigating the Uncharted Waters of Teaching Law with Online Simulations," *Ohio Northern University Law Review*: Vol. 38: Iss. 2, Article 14.

Available at: https://digitalcommons.onu.edu/onu_law_review/vol38/iss2/14

This Article is brought to you for free and open access by the ONU Journals and Publications at DigitalCommons@ONU. It has been accepted for inclusion in Ohio Northern University Law Review by an authorized editor of DigitalCommons@ONU. For more information, please contact digitalcommons@onu.edu.

Ohio Northern University Law Review

Articles

Navigating the Uncharted Waters of Teaching Law with Online Simulations

IRA STEVEN NATHENSON*

ABSTRACT

The Internet is more than a place where the Millennial Generation communicates, plays, and shops. It is also a medium that raises issues central to nearly every existing field of legal doctrine, whether basic (such as Torts, Property, or Contracts) or advanced (such as Intellectual Property, Criminal Procedure, or Securities Regulation). This creates tremendous opportunities for legal educators interested in using the live Internet for experiential education. This Article examines how live websites can be used to create engaging and holistic simulations that tie together doctrine, theory, skills, and values in ways impossible to achieve with the case method. In this Article, the author discusses observations stemming from his experiences teaching law courses using live, online role-playing simulations that cast students in the role of attorneys. The Article concludes that such simulations have significant benefits for law students and can also

* Associate Professor of Law, St. Thomas University School of Law. Copyright 2012 Ira Steven Nathenson. This Article benefited greatly from the suggestions and encouragement of Dennis Corgill, Alfred Light, Robert E. Mensel, Patricia Hatamyar Moore, Leonard Pertnoy, and Amy Ronner. Portions have been or will be presented at the 2012 Annual Meeting of the Association of American Law Schools, 2012 Midyear Meeting of the Association of American Law Schools, 2012 Meeting of the Law and Society Association, 2011 Intellectual Property Scholars Conference, 2011 Internet Law WIP Conference, 2011 Institute for Law Teaching and Learning Conference, and 2010 SEALS conference. I am grateful for the helpful suggestions of Barbara Bressler, Leslie Cooney, Barbara Cox, Catherine Ross Dunham, Lauren Gelman, Eric Goldman, James Grimmelmann, Gerry Hess, Rob Heverly, David Johnson, Eric Johnson, David Levine, Jake Linford, Bill McGeveran, Paul McGreal, Paul Ohm, Michael Risch, Matthew Sag, and Sharon Sandeen. If I have omitted any names, the omission is unintentional. I owe additional thanks for the excellent research assistance of Bryn Williams and Bethany Ruiz.

benefit scholars who use simulations proactively to deepen the synergies between their teaching and scholarship. However, the resources required for simulations may also exacerbate long-standing systemic tensions in legal education, particularly regarding institutional resources as well as the sometimes conflicting roles of faculty as teacher-scholars. Because the American Bar Association will almost certainly, and appropriately, require law schools to expand their simulation offerings, the benefits and tradeoffs of simulations teaching must be addressed now.

TABLE OF CONTENTS

I. Introduction.....	536
II. Proposals for Reforms in Legal Education.....	541
A. Early criticisms of case method	542
B. 1992 MacCrate Report	544
C. 2007 Carnegie and Best Practices Reports.....	544
D. Proposed ABA Accreditation Standards.....	546
III. Learning Through Online Role-Playing Simulations.....	548
A. Impetus for Designing Role-Playing Simulations.....	548
B. Designing an Online Sandbox.....	550
1. Domain Names	551
2. Authoring Software.....	551
3. Service Providers	552
4. Characters and Imagination	553
C. “Lights, Camera, Action”	553
D. Assessment.....	557
E. Leveraging.....	559
IV. Tradeoffs	560
A. Students.....	561
B. Faculty.....	563
1. Teaching.....	564
2. Service	565
3. Scholarship.....	566
C. Institutions.....	571
V. Conclusion.....	578

I. INTRODUCTION

Although this Article explores the use of modern technology in simulations-based law teaching, please permit a glance some five hundred years into the past. In the middle ages, cartographers used images of

dragons, lions, and other fearsome creatures to indicate unexplored territories. The Latin phrase “Hc Svnt Dracones”—“Here Be Dragons”—appears on one of the world’s oldest known globes, the 16th-century Hunt-Lenox Globe now residing in the New York Public Library.¹ As legend goes, images of “[d]ragons and other monsters were commonly drawn in the distant and mysterious regions of maps and globes as warnings to sailors: Uncharted territory ahead.”²

This warning of uncharted territory may apply equally well to the current state of legal education. Like a medieval castle under siege, the ivory towers of legal education face multiple attacks. From “scam bloggers,”³ to legislators,⁴ to major newspapers,⁵ the value of a legal

1. See Treasures of the New York Public Library, <http://exhibitions.nypl.org/treasures/items/show/163> (last visited July 18, 2011). Despite popular belief that the phrase “Here be Dragons” appeared regularly on maps, the only known appearance of the phrase in cartography is not on a map, but on the Lenox Globe. See Annalee Newitz, *HC SVNT DRACONES*, WIRED.COM (Dec. 21, 2006, 3:48 PM), http://www.wired.com/table_of_malcontents/2006/12/hc_svnt_dracone/. The more common modern spelling of the phrase “Hic Sunt Dracones” does not appear on the globe because classical Latin lacked the letter “V.” See RICHARD M. KRILL, *GREEK AND LATIN IN ENGLISH TODAY* 77 (1990). Even then, the phrase on the globe might not even refer to dragons: B.F. de Costa suggested in 1879 that the appearance of the phrase referred not to dragons but to the “Dagroians,” alleged cannibals. B.F. de Costa, *The Lenox Globe*, 9 *MAG. OF AM. HIST.* 529, 536 (1879); see also Newitz, *supra*.

2. MARK S. BLUMBERG, *FREAKS OF NATURE: WHAT ANOMALIES TELL US ABOUT DEVELOPMENT AND EVOLUTION* 255-56 (2009); see also SIMON WINCHESTER, *ATLANTIC: GREAT SEA BATTLES, HEROIC DISCOVERIES, TITANIC STORMS, AND A VAST OCEAN OF A MILLION STORIES* 161 (2010) (noting that until the sixteenth century, most images of the Atlantic were “peppered with frightening sea creatures . . . and with dragons and monster fish”); Erin C. Blake, *Where Be “Here be Dragons”?*, MAPHIST, <http://www.maphist.nl/extra/herebedragons.html> (April 1999). In addition to images of dragons, medieval maps used other creatures as well as the phrase “hic sunt leones,” meaning “here be lions.” As one author states,

imagination use[d] the blank spaces of the map to write here be tygers or hic sunt leones, or stocks the distant, exotic regions of the world with Plinian races like people with no heads and their faces in their chests, people hopping around on one huge foot, or people with tails

Joep Leerssen, *Wildness, Wilderness, and Ireland: Medieval and Early-Modern Patterns in the Demarcation of Civility*, 56 *J. OF HIST. OF IDEAS* 25, 32 (1995) (emphasis omitted). Even Justice Holmes used the “Leones” phrase in a letter to Brandeis: “I always tremble a little as I approach these regions which seem like those where the old maps bore the inscriptions *hic sunt leones*—but the bold adventurer is likely to find more asses than lions.” HOLMES AND FRANKFURTER: *THEIR CORRESPONDENCE, 1912-1934*, at 212 (Robert M. Mennel & Christine L. Compston eds., 1996) (letter of May 14, 1927).

3. Lucille A. Jewel, *You’re Doing It Wrong: How the Anti-Law School Scam Blogging Movement Can Shape the Legal Profession*, 12 *MINN. J. L. SCI. & TECH.* 239 (2011).

4. In July 2011, “Senator Chuck Grassley posed more than two dozen questions to the ABA inquiring about the rigor of its accreditation standards.” Patrick G. Lee, *Law School Accreditation Standards Questioned by U.S. Senator*, WALL ST. J. L. BLOG (July 12, 2011, 3:31 PM), <http://blogs.wsj.com/law/2011/07/12/law-school-accreditation-standards-questioned-by-u-s-senator>.

5. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 16, 2011, at BU1, www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html; Ashby Jones, *How Legal Education Today is Like Sub-Prime Mortgage Market in 2006*, WALL ST. J. L.

education is under attack.⁶ Some critics suggest that there are too many law schools,⁷ some criticize the lack of transparency in the data used for law-school rankings,⁸ and some claim that law school is akin to the housing bubble of the early 21st century.⁹ Most pertinent to this Article, some critics claim that law schools fail to produce graduates capable of practicing at a competent level.¹⁰ This Article focuses on a potential response to that criticism by examining how live, online role-playing simulations can be used to provide a platform for the engaging and holistic learning of doctrine, theory, lawyering skills, and professional values.

Concerns over insufficient skills teaching are by no means new. In a 1921 report commissioned by the Carnegie Foundation, Alfred Reed bemoaned the lack of practical training in law schools.¹¹ In 1992, the *MacCrate Report* provided a detailed taxonomy of lawyering skills and professional values, and recommended they be better integrated into legal education.¹² In more recent years, numerous authors have criticized overreliance on the case method, which relies on textbook instruction with lesser emphasis paid to practical skills and professional values.¹³

Despite the “slings and arrows” aimed at law schools, legal educators need not fear the “undiscovered country” of reform.¹⁴ In 2007, two

BLOG (Apr. 19, 2010, 1:31 PM), <http://blogs.wsj.com/law/2010/04/19/how-legal-education-today-is-like-sub-prime-mortgage-market-in-2006/>.

6. In July 2011, the *New York Times* ran an online debate about whether law school is worth the trouble. See *The Case Against Law School*, N.Y. TIMES, July 21, 2011, <http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school>.

7. See Martha Neil, *Up to 10 New Law Schools Planned; How Many Are Too Many?*, ABA J. (June 3, 2008, 1:02 PM), http://www.abajournal.com/news/article/up_to_10_new_law_schools_planned_how_many_are_too_many/.

8. See Law School Transparency, <http://www.lawschooltransparency.com> (last visited July 19, 2011). As of this writing, the ABA is considering beefing up its accreditation standard regarding consumer information. See AM. BAR ASS'N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 509 (draft after Jan. 2012 meeting).

9. See Jones, *supra* note 5.

10. See Patrick G. Lee, *Law Schools Get Practical: With the Tight Job Market, Course Emphasis Shifts From Textbooks to Skill Sets*, WALL ST. J., July 11, 2011, <http://online.wsj.com/article/SB10001424052702304793504576434074172649718.html>.

11. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 281 (1921) (“The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.”).

12. AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT].

13. See, e.g., ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL—LEARNING TO “THINK LIKE A LAWYER” 26-28 (2007); DAVID I.C. THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE 59-72 (2009) (summarizing 20th- and 21st-century criticisms of case method and calls for reform).

14. In his famous soliloquy, Hamlet says:

The undiscover'd country from whose bourn
No traveler returns, puzzles the will,

significant reports, the *Carnegie Report* and *Best Practices for Legal Education*, advocated for curricular reform.¹⁵ The *Carnegie Report* argued that legal education should better integrate practical skills and professional values with the “signature pedagogy” of the case method.¹⁶ *Best Practices* recommended more specific reforms, including ways of providing a meaningful experiential course.¹⁷

Legal educators are finally beginning to heed these wakeup calls. So is the accreditor of law schools, the American Bar Association (“ABA”).¹⁸ As of this writing, the ABA is considering significant changes to its accreditation standards, shifting to “outcome-based” education.¹⁹ When effective, these standards will mandate that all upper-level law students engage in at least three credits of internship, externship, or simulations learning.²⁰ This Article focuses on simulations.²¹ As suggested in this Article, the proposed standards may represent a “tipping point” that brings to a head many years of systemic tensions inherent to legal education, greatly affecting students, faculty, and the institutions themselves.²²

For the past four years (since Fall 2008), the author has developed materials and techniques for teaching law through live, online simulations

And makes us rather bear those ills we have
Than fly to others that we know not of?
Thus conscience does make cowards of us all

WILLIAM SHAKESPEARE, *HAMLET, PRINCE OF DENMARK* act 3, sc. 1. Although Hamlet debates suicide, others have read the speech to speak “not of death . . . , but of an alternative future” Larry Kreitzer, *The Cultural Veneer of Star Trek*, 30 J. OF POPULAR CULTURE 1, 2 (1996); see also Moody E. Prior, *The Thought of Hamlet and the Modern Temper*, 15 ENG. LIT. HIST. 261, 267 n.5 (1948) (noting that “[t]he speech has also been interpreted as a statement concerning action and not death”) (citing CHARLTON M. LEWIS, *THE GENESIS OF HAMLET* 100-01 (1907)).

15. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007) [hereinafter *BEST PRACTICES*]; WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) [hereinafter *CARNEGIE REPORT*]. All citations for *Best Practices* are to the 2007 print edition; notably, the pagination of the online 2007 version is somewhat different. See *BEST PRACTICES*, *supra*, available at http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf (last visited Mar. 20, 2012).

16. *CARNEGIE REPORT*, *supra* note 15, at 23-24.

17. *BEST PRACTICES*, *supra* note 15, at 165-88 (discussing experiential instruction, including simulation-based education).

18. Am. Bar Ass’n, *About the ABA*, http://www.americanbar.org/utility/about_the_aba.html (noting that “the ABA provides law school accreditation”) (last visited Feb. 20, 2012).

19. See AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, *STANDARDS REV. COMM., PROPOSED STANDARD 302, 304* (draft after meeting of Nov. 2011).

20. See *id.* 304(a)(3).

21. See, e.g., Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469 (1995); Paul S. Ferber, *Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417 (2002).

22. See MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 9 (2002) (defining a “[t]ipping Point” as “that one dramatic moment . . . when everything can change all at once . . .”).

that cast students in the role of junior attorneys representing fictional clients.²³ Students must review staged but otherwise realistic online “misconduct,” document the sites, contact the “defendant,” attempt to negotiate a resolution, and build detailed case files including complaints and other relevant materials.²⁴ Although every element of the simulation is controlled by the professor and students, the simulations otherwise occur through the live Internet, permitting an unprecedented level of realism.²⁵ These simulations can be built easily using simple tools, many of which are free or inexpensive.²⁶ They have been used successfully in the author’s Cyberlaw, Intellectual Property, and Civil Procedure courses. Moreover, considering that Cyberlaw itself is arguably an amalgam of other doctrines (such as Torts, Contracts, Property, Constitutional Law, and more), such role-playing simulations may be useful for a wide variety of courses.

Online role-plays may provide an ideal tool for the legal education of today’s Internet-savvy Millennials. Although other experiential devices—such as clinics and moot courts—provide valuable tools for legal educators,²⁷ the author’s online simulations differ significantly in their levels of student engagement. Simply put, there is nothing more realistic or engaging for today’s law students than to send them out onto the live Internet and to use real communication tools to interact with opponents. Not only are online role-plays more realistic than moot courts or courses in Advocacy, but they permit an almost clinic-like level of immersion *without any risk of client harm or malpractice liability*.

But there are tradeoffs. Simulations can be incredibly time-consuming. The author’s four years of simulations teaching while an untenured faculty member provided valuable insights regarding the role of the law professor as teacher-scholar, and for the systemic tensions inherent to that role. This Article uses those experiences as a jumping-off point for a critical analysis of the “uncharted waters” of teaching through live, online simulations, and in particular, considers how an expansion of such teaching may trigger a number of unintended tradeoffs—both positive and negative—that ought to be examined by institutions seeking to implement outcome-based reforms.

23. For greater detail on the mechanics of online role-playing simulations, see Ira S. Nathenson, *Best Practices for the Law of the Horse: Teaching Cyberlaw and Illuminating Law Through Online Simulations*, 28 SANTA CLARA COMPUTER & HIGH TECH. L.J. (forthcoming 2012) [hereinafter Nathenson, *Law of the Horse*], available at <http://ssrn.com/abstract=1944663>.

24. See *infra* Part III.C.

25. See *infra* Part III.C.

26. See *infra* Part III.B.

27. See BEST PRACTICES, *supra* note 15, at 179-80 (providing examples of courses often taught using simulations).

Part II discusses proposals for curricular reform, particularly those stated in the *MacCrate Report*, *Carnegie Report*, and *Best Practices*. Part III addresses how live, online role-playing simulations can be used to tie together doctrine, theory, lawyering skills, and professional values. Part IV assesses the spillover effects of simulations teaching, considering the benefits and drawbacks from the vantage point of students, faculty, and institutions. The Article concludes that any tradeoffs are outweighed by the benefits of online role-plays.

II. PROPOSALS FOR REFORMS IN LEGAL EDUCATION

In the 1970s, *One L* author Scott Turow described the rigors, goals, and transformative nature of legal education:

In baseball it's the rookie year. In the navy it is boot camp. In many walks of life there is a similar time of trial and initiation, a period when newcomers are forced to be the victims of their own ineptness and when they must somehow master *the basic skills of the profession* in order to survive.²⁸

Turow's narrative highlights the importance of learning basic lawyering skills. But what are those skills? Legal scholars have debated for a hundred years about whether skills should be taught to law students, as well as the limitations of the case method.²⁹ As argued in such studies, the case method fails to provide students with the skills and values needed for law practice.³⁰ This Part therefore examines, in turn: early calls for teaching reform; the 1992 *MacCrate* litany of practice skills; the critical 2007 *Carnegie* and *Best Practices* reports; and proposed ABA accreditation standards that may mandate expansions in simulations teaching.

28. SCOTT TUROW, *ONE-L* 9 (1977) (emphasis added). As the *Carnegie Report* notes, law school has become part of the "popular imagination" through books like *One L* or *The Paper Chase* (the latter also a movie and television show). *CARNEGIE REPORT*, *supra* note 15, at 2. Much the same could be said of the film *Legally Blonde*, where the rigors of Harvard Law School transform a young woman's personal and professional life. See *LEGALLY BLONDE* (MGM 2001).

29. See, e.g., THOMSON, *supra* note 13, at 59-72 (summarizing 20th- and 21st-century criticisms of case method and calls for reform); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 *SAN DIEGO L. REV.* 347, 349-50, 358 (2001) (criticizing traditional methods and urging "a different, more systematic, and more reflective approach . . .").

30. See THOMSON, *supra* note 13, at 59-67 (summarizing history of criticisms of legal education).

A. *Early Criticisms of Case Method*

The first recorded victim of the case method was one Mr. Fox, a member of Dean Christopher Columbus Langdell's Contracts class in 1870:

"Mr. Fox, will you state the facts in the case of *Payne v. Cave*?"

Mr. Fox did his best with the facts of the case.

"Mr. Rawle, will you give the plaintiff's argument?"

Mr. Rawle gave what he could of the plaintiff's argument.

"Mr. Adams, do you agree with that?"

And the case-system of teaching law had begun.³¹

The reaction of the class to Langdell's methods was not positive. Viewing them as an "abomination," many students skipped class; however, Fox, Rawle, and other believers remained.³² Fox later wrote a warm remembrance of Langdell in the *Harvard Law Review*.³³

But the criticisms continued. Nearly a century before the 2007 *Carnegie Report*, the Carnegie Foundation issued an important report by Josef Redlich in 1914.³⁴ As stated by James Maxeiner, the report pointed to the danger of "over-reliance on the case method"³⁵ Although this observation parallels the 2007 *Carnegie Report*, the 1914 report still placed great faith in the case method.³⁶ In the 1920s, the Carnegie Foundation commissioned the Reed report, which recommended better incorporation of practical skills into law schools, but leaders at the ABA were more interested at the time in the Langdellian model of case-method teaching.³⁷

One well-known early critic of the case method is the legal realist Jerome Frank, who wrote a scathing attack in 1933 that dubbed it "hopelessly oversimplified," arguing those "trained under the Langdell

31. Samuel F. Batchelder, *Christopher C. Langdell*, 18 GREEN BAG 437, 440 (1906); see also HARVARD LAW SCHOOL ASS'N, THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL, 1817-1917, at 34-35 (1918); Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329, 329 (1979). For a recitation of the differences between Socrates' and Langdell's versions of the Socratic method, see BEST PRACTICES, *supra* note 15, at 207-11 (adapting Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997)).

32. Austen G. Fox later led the New York bar, and Francis Rawle became president of the ABA. See HARVARD LAW SCHOOL ASS'N, *supra* note 31, at 35.

33. Austen G. Fox, *Professor Langdell—His Personal Influence*, 20 HARV. L. REV. 7, 7-8 (1906).

34. See JOSEF REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING (1914).

35. James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT'L J. LEGAL INFO. 1, 1 (2007).

36. *Id.* at 2.

37. *Id.* at 6-8; see also REED, *supra* note 11, at 281-83.

system are like future horticulturists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else.”³⁸ Although not advocating for a return to the historic apprentice system, Frank suggested apprenticeship at a “more sophisticated level.”³⁹ The case method should become a true *case* system rather than one that focuses solely on post-hoc appellate opinions:

[T]he study of cases . . . should be based to a very marked extent on reading and analysis of *complete records of cases*—beginning with the filing of the first papers, through the trial in the trial court and to and through the upper courts. *Six months properly spent on one or two elaborate court records, including the briefs (and supplemented by reading of text-books as well as upper court opinions) will teach a student more than two years spent on going through twenty of the case-books now in use.*⁴⁰

Frank listed a variety of important skills that attorneys should learn, such as negotiations and draftsmanship.⁴¹ He also noted the importance of learning professional ethics in ways that go beyond a book, recommending “first-hand observation of the ways in which the ethical problems of the lawyer arise”⁴² Frank’s suggestions are prescient and foreshadow recommendations made some seventy years later.⁴³

Despite such attacks, the case method still reigned supreme. In contrast, medical schools had already acted in response to Abraham Flexner’s 1910 report to the Carnegie Foundation on medical education.⁴⁴ Flexner’s report spurred the development of clinical medical education.⁴⁵ It is ironic that until recently, many legal educators refused to accept the benefits of what medical schools recognized a century ago.⁴⁶

38. Jerome Frank, *Why Not a Clinical Lawyer School*, 81 U. PA. L. REV. 907, 912-13 (1933); see also Chase, *supra* note 31, at 330-31 (discussing Frank’s criticisms of Langdell). Frank’s polemic is in parts an unapologetic ad hominem against Langdell, describing his interest in books as “obsessive” and suggesting that “[a] great part of the realities of the life of the average lawyer was unreal to him.” Frank, *supra*, at 908.

39. Frank, *supra* note 38, at 913.

40. *Id.* at 916.

41. *Id.* at 918-19.

42. *Id.* at 922.

43. See generally *infra* Part ILC; see also BEST PRACTICES, *supra* note 15, at 132-41 (criticizing case method).

44. ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING (1910).

45. THOMSON, *supra* note 13, at 60.

46. In the late 1970s, Roger Cramton wrote a report for the ABA Section of Legal Education, including recommendations that more focus be placed on practice skills. *Id.* at 62; see also ABA TASK

B. 1992 MacCrate Report

In 1992, the ABA's *MacCrate Report* suggested that law schools had a "unique opportunity" to provide students with "the full range" of lawyering skills, "an opportunity that might not be readily available in actual practice."⁴⁷ Accordingly, the report provided a detailed taxonomy of professional skills and values "essential for competent representation."⁴⁸ These skills included, inter alia, typical fodder for law schools such as "problem solving" and "legal analysis," and other skills taught less directly or only in specialty courses, such as "factual investigation," "communication," "counseling," "negotiation," "organiz[ing] . . . legal work," and "resolving ethical dilemmas."⁴⁹ While acknowledging that its taxonomy might suffer from a degree of internal overlap due to "relationships between individual skills," the *MacCrate Report* nevertheless correctly emphasized the importance of seeking "clarity" in skills and values.⁵⁰ Moreover, noted the report, teaching skills via simulations or live clients "enables students to relate their later practice experience to concepts that they have learned in law school"⁵¹

C. 2007 Carnegie and Best Practices Reports

In 2007, two significant documents, the *Carnegie Report* and *Best Practices for Legal Education*, further advocated for curricular reform.⁵² The *Carnegie Report* argued that the second and third years of law school should better integrate practical skills and professional identity with the more traditional legal analysis taught through the case method.⁵³ Law school, said the *Carnegie Report*, should be treated as a combination of three apprenticeships through which a student "starts on the road toward

FORCE ON LAWYER COMPETENCY, REPORT AND RECOMMENDATIONS: THE ROLE OF LAW SCHOOLS 9 (1979).

47. MACCRATE REPORT, *supra* note 12, at 234.

48. *Id.* at 135, 138-41.

49. *Id.* at 135, 138-40.

50. *Id.* at 136. "The skills and values in this Statement are analyzed separately in order to promote clarity in examining the components of each one. However, the vision of legal practice underlying the Statement recognizes that individual skills and values cannot be neatly compartmentalized." *Id.* The *MacCrate Report* does not claim that its listing is canonical, MACCRATE REPORT, *supra* note 12, at 131, and numerous others have been proposed. See BEST PRACTICES, *supra* note 15, at 50-55, 78.

51. MACCRATE REPORT, *supra* note 12, at 234.

52. See BEST PRACTICES, *supra* note 15; CARNEGIE REPORT, *supra* note 15.

53. CARNEGIE REPORT, *supra* note 15, at 12-14 (discussing legal analysis, practical skills, and professional identity); *id.* at 75-78 (noting that students disconnect in their second and third years). *Best Practices* makes similar observations. See BEST PRACTICES, *supra* note 15, at 24.

assuming the identity of a competent and dedicated professional.”⁵⁴ The first apprenticeship is intellectual, focusing “on the knowledge and way of thinking of the profession.”⁵⁵ This apprenticeship is instantly familiar to anyone watching movies like *The Paper Chase* or *Legally Blonde*, where students are trained through Socratic interrogation to “think like a lawyer.” The second apprenticeship regards “the forms of expert practice shared by competent practitioners.”⁵⁶ Such learning can take place in case studies, clinics with real clients, or as discussed herein, via “simulated practice situations”⁵⁷ The third apprenticeship is one of “identity and purpose,” which goes much further than studying ethics codes.⁵⁸ Instead, it includes “individual and social justice, and . . . the virtues of integrity, consideration, civility, and other aspects of professionalism.”⁵⁹

The key, argues the *Carnegie Report*, is to teach with an eye towards “integrated practice” of all dimensions of the profession: “If professional education is to introduce students to the full range of professional demands, it has to initiate learners into all three apprenticeships.”⁶⁰ Unfortunately, the predominant case-dialogue method often treats the latter two apprenticeships—practical skills and the formation of values—as “shadow” and “tacit” pedagogies rather than an explicit focus.⁶¹ The report therefore recommends that legal educators “forg[e] strong connections” between the three apprenticeships.⁶² Of particular interest, the report suggests that simulated practice not only helps to teach professional skills but also provides useful settings for “the ethical demands of practice.”⁶³

Similar recommendations are made by the 2007 *Best Practices* study, commissioned by the Clinical Legal Education Association. It sets forth practices for reforming legal education, including recommendations for experiential courses.⁶⁴ Regarding simulations, students should be told objectives of the course up front, understand assessment criteria, and be

54. CARNEGIE REPORT, *supra* note 15, at 27-30. “Research suggests that learning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own.” *Id.* at 26.

55. *Id.* at 28.

56. *Id.*

57. *Id.* In other fields, simulations are widely used for teaching and learning. CARNEGIE REPORT, *supra* note 15, at 26.

58. *Id.* at 28.

59. *Id.* at 132.

60. *Id.* at 28.

61. *Id.* at 56-59.

62. CARNEGIE REPORT, *supra* note 15, at 58.

63. *Id.* at 158.

64. See BEST PRACTICES, *supra* note 15, at 165-88 (discussing experiential instruction, including simulation-based education).

debriefed during and afterwards.⁶⁵ Simulations should be appropriate for the knowledge base and size of the group.⁶⁶ Teachers should “[b]alance detail, complexity, and usefulness.”⁶⁷ Simulations should therefore seek a balance between realism and learning: too much realism can introduce too much complexity, frustrating learning.⁶⁸

D. Proposed ABA Accreditation Standards

These reforms are not merely theoretical. Law schools may soon face mandates by the ABA to adopt outcomes-oriented legal instruction, including an expansion of simulations courses. Proposals before the ABA’s Standards Review Committee would make express the importance of skills and values.⁶⁹ Proposed Standard 301 would expressly include “ethics” in the overall objectives of legal education, a term absent from the present standards.⁷⁰ The need for values teaching beyond one course in Professional Responsibility is also put forth in Proposed Standards 302 and 304.⁷¹ Similarly, Proposed Standard 302(b) would underscore the importance of expanded teaching of professional skills.⁷² Of particular significance to this Article is Proposed Standard 304, which would mandate that *all* upper-level

65. *Id.* at 168, 187.

66. *Id.* at 184-85.

67. *Id.* at 186.

68. *Id.*

69. *See Standards Review Committee*, AMERICAN BAR ASS’N, http://www.americanbar.org/groups/legal_education/committees/standards_review.html (last visited Jan. 19, 2012).

70. Current Standard 301(a) states “[a] law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.” AM. BAR ASS’N, 2011-2012 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 301(a). The main reference to ethics is current Standard 302(a)(5), which requires students to receive substantial instruction in “the history, goals, structure, values, rules and responsibilities of the legal profession and its members.” ABA STANDARD 302(a)(5). An interpretation indicates that such teaching shall include the law of lawyering and the ABA Model Rules of Professional Conduct. *See* ABA STANDARD 302, INTERPRETATION 302-9. In contrast, the Proposed Standards would expressly insert ethics into Standard 301, requiring “effective, *ethical* and responsible participation in the legal profession.” AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 301 (draft after meeting of Nov. 2011) (emphasis added).

71. *See* AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 302, 304 (draft after meeting of Nov. 2011). Scholars have criticized the poor teaching of legal ethics in law schools. *See, e.g.*, Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 73 (1992); Deborah L. Rhode, *Moral Counseling*, 75 FORDHAM L. REV. 1317, 1336-37 (2006); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 790-91 (1998). Under Proposed ABA Standard 302(b), students will need to attain the competence of an entry-level practitioner in a beefed-up set of ethics and values. *See* AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 302(b) (draft after meeting of Nov. 2011).

72. AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 302(b) (draft after meeting of Nov. 2011).

law students receive training through a clinic, field placement, or *simulation*:

(a) A law school shall offer a curriculum that . . . requires every student to complete satisfactorily at least[:]

. . . .

(3) one or more faculty-supervised, rigorous course(s) totaling at least three semester hours (or equivalent quarter hours) after the first year. The course or courses must integrate doctrine, theory, skills and legal ethics and engage students in performance of one or more professional skills identified in Standard 302(b)(3). The course or courses shall be: (i) *simulation course(s)*; (ii) live client clinic(s); or (iii) field placement(s)⁷³

Interpretation 304-2 would further indicate that such courses should ordinarily provide “development of concepts and theories underlying the skills being taught; multiple opportunities for students to perform tasks with appropriate feedback and self-evaluation; and evaluation of the students’ performance by a qualified faculty member.”⁷⁴

If put into effect, Proposed Standard 304 would represent an express recognition of the importance of simulations as a vehicle for teaching doctrine, theory, skills, and values.⁷⁵ This, along with other reforms to Chapter 3 of the Standards, may require many law schools to significantly retool their curricula.⁷⁶ At this time, the proposals continue towards possible—and perhaps likely—approval.⁷⁷ However, in light of the

73. AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 304(a)(3) (draft after meeting of Nov. 2011) (emphasis added).

74. AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 304, INTERPRETATION 304-2 (draft after meeting of Nov. 2011).

75. “The proposed standards allow law schools to use simulations, in addition to clinical and field placement experiences, to meet the requirement that every student complete one supervised ‘real case’ learning experience.” Steve Bahls, Chair of Subcommittee on Student Learning Outcomes, *Key Issues Considered by the Student Learning Outcomes Subcommittee*, at 5 (Dec. 15, 2009).

76. *But cf.* Jonathan Rose, *The MacCrate Report’s Restatement of Legal Education: The Need for Reflection and Horse Sense*, 44 J. LEG. EDUC. 548, 565 (1994) (regarding the *MacCrate Report*, arguing that “the ABA ought to terminate its efforts to use accreditation or other coercive means to force changes in legal education”).

77. As of this writing, the outcomes measures in Chapter 3 of the Proposed ABA Standards will be given initial consideration by the Standards Review Committee in April 2012 and final consideration in July 2012. See *2011-12 Tentative Meeting Agendas*, AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., <http://www.americanbar.org/content/dam/aba/migrated>

potential benefits of simulations teaching, along with the ABA’s planned—and in my opinion, appropriate—mandate of their expansion, it is imperative that institutions start considering ways to better incorporate skills and values into the classroom.⁷⁸

III. LEARNING THROUGH ONLINE ROLE-PLAYING SIMULATIONS

Because this Article is heavily rooted in my observations, some level of narrative is essential, and I will switch as needed to the first person. This Part will examine, in turn: my reasons for developing online simulations; a brief introduction to the online tools I used;⁷⁹ how the simulations fostered holistic and immersive learning of theory, doctrine, skills, and values; how online simulations can foster creative techniques for formative assessment that intertwine with additional learning; and how such simulations might be multi-purposed for other courses. The observations discussed in this Part also provide the needed backdrop for the critical analysis of the benefits and drawbacks of simulations teaching that follow in Part IV.

A. *Impetus for Designing Role-Playing Simulations*

The online simulations began in Fall 2008 when I first taught Cyberlaw as a three-hour “Cyberskills” course. At the time, I was a junior tenure-track faculty member at St. Thomas University School of Law where I also taught Intellectual Property and Civil Procedure. At the time, our faculty had begun discussions on how to implement some of the recommendations from *Best Practices* and the *Carnegie Report*. However, the real impetus for designing the Cyberskills course was functional: I had a new course to prepare and was uncertain how to approach it due to the nature of Cyberlaw. As argued by Judge Easterbrook in an early and influential article, Cyberlaw suffers from a lack of doctrinal cohesion.⁸⁰ As he noted, “[l]ots of cases deal with sales of horses; others deal with people kicked by horses; still more deal with the licensing and racing of horses, or with the care veterinarians give to horses, or with prizes at horse shows.”⁸¹ Easterbrook suggested a course about horses (or Cyberlaw) “is doomed to be shallow

/2011_build/legal_education/committees/standards_review_documents/2011_12_src_tentative_meeting_agendas.authcheckdam.pdf (last visited Mar. 19, 2012).

78. See BEST PRACTICES, *supra* note 15, at 100 (recommending that professionalism be taught “[p]ervasively” throughout law school).

79. See generally Nathenson, *Law of the Horse*, *supra* note 23 (providing further detail on the mechanics of the course).

80. See Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. CHI. LEGAL F. 207, 207 (1996).

81. *Id.*

and to miss unifying principles.”⁸² Instead, he argued, any new subject “should be limited to subjects that could illuminate the entire law.”⁸³

At the level of course development, Easterbrook’s attack has some force: Cyberlaw invariably includes a laundry list of subjects pulled from other courses: Contracts,⁸⁴ Torts,⁸⁵ Constitutional Law,⁸⁶ Intellectual Property,⁸⁷ Civil Procedure,⁸⁸ and so on.⁸⁹ Easterbrook’s criticisms bore especial weight when I sat down to design a syllabus: with so many

82. *Id.*

83. *Id.* Easterbrook’s attack on Cyberlaw is foundational to the literature, directly or indirectly prompting numerous scholars to respond with theoretical justifications for the study of Cyberlaw. See Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501, 501-03 (1999) [hereinafter Lessig, *Law of the Horse*]; see also, e.g., Eric Goldman, *Teaching Cyberlaw*, 52 ST. LOUIS U. L.J. 749, 750 (2008); Orin S. Kerr, *The Problem of Perspective in Internet Law*, 91 GEO. L.J. 357, 380 (2003); Jacqueline Lipton, *A Framework for Information Law and Policy*, 82 OR. L. REV. 695, 697-98 (2003); Renato Mariotti, *Cyberspace in Three Dimensions*, 55 SYR. L. REV. 251, 264 (2005); Viktor Mayer-Schönberger, *The Shape of Governance: Analyzing the World of Internet Regulation*, 43 VA. J. INT’L L. 605, 607-08 (2003). The theoretical debates stemming from responses to Easterbrook led to the famous “exceptionalist/unexceptionalist” debate in Cyberlaw:

Easterbrook’s critique and responses to it effectively divided early legal scholarship regarding online communication into two camps. On one side were the cyberspace ‘unexceptionalists’ who argued in various contexts that the online medium did not significantly alter the legal framework to be applied On the other, cyberspace ‘exceptionalists’ argued that the medium itself created radically new problems requiring new analytical work to be done

PAUL SCHIFF BERMAN, INTRODUCTORY CHAPTER, in LAW AND SOCIETY APPROACHES TO CYBERSPACE xiv (Paul S. Berman ed., 2007), available at http://lsr.nellco.org/cgi/viewcontent.cgi?article=1071&context=uconn_wps; see also, e.g., DAVID G. POST, IN SEARCH OF JEFFERSON’S MOOSE: NOTES ON THE STATE OF CYBERSPACE (2009). The discussion continues. See Eric Goldman, *The Third Wave of Internet Exceptionalism*, in THE NEXT DIGITAL DECADE: ESSAYS ON THE FUTURE OF THE INTERNET 165-67 (Berin Szoka & Adam Marcus eds., 2010); Tim Wu, *Is Internet Exceptionalism Dead?*, in THE NEXT DIGITAL DECADE, *supra*, at 179-88.

84. See, e.g., *Specht v. Netscape Commc’ns Corp.*, 306 F.3d 17, 33 (2d Cir. 2002) (making distinction between click-wrap and browse-wrap licensing agreements).

85. See, e.g., *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 328, 332 (4th Cir.1997) (holding that AOL is immune from defamation liability under Communications Decency Act).

86. See, e.g., *Reno v. ACLU*, 521 U.S. 844, 849 (1997) (holding parts of the Communications Decency Act of 1996 to be unconstitutional).

87. See, e.g., *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93, 103, 109 (2d Cir. 2010) (holding that eBay is not liable for trademark infringement), *cert. denied*, 131 S. Ct. 647 (2010).

88. See, e.g., *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1327 (9th Cir. 1998) (holding that remote defendant was subject to personal jurisdiction due to cybersquatting).

89. Although scholarly responses to Easterbrook have been theoretical, I believe that Easterbrook’s attack is primarily pedagogical. Easterbrook is superficially correct that Cyberlaw appears to lack consistency, but this is true only on the “surface” of black-letter doctrine. When one delves deeper into theory, as well as to how the study of Cyberlaw fosters the holistic study of doctrine, theory, skills, and values, it becomes clear that Cyberlaw is *ideal* for studies that “illuminate the entire law.” See CARNEGIE REPORT, *supra* note 15, at 23-24 (discussing roles of surface, deep, tacit, and shadow structures in legal education). The problem is not that Cyberlaw is “shallow,” but that Easterbrook’s attack is. See Nathenson, *Law of the Horse*, *supra* note 23.

potential topics to cover, I had no hope of covering them all in detail. Choosing breadth over depth, I decided to pick and choose.⁹⁰

I also decided to make the course primarily experiential. First, I had previously incorporated active-learning and experiential components into my Civil Procedure and Intellectual Property courses. Second, as noted, our faculty had discussed the *Carnegie Report* and *Best Practices*, so I was somewhat familiar at the time with calls for more experiential teaching. However, I was most heavily influenced by a course designed by my colleague Leonard Pertnoy, whose students worked on a fictional case throughout a term.⁹¹ I decided that I would do the same.

B. Designing an Online Sandbox

The next question was how to create a useful skills course. If “[a]ll the world’s a stage,” then we needed a virtual “Globe theatre” for role-playing.⁹² Because the course was *Cyberlaw*, an online simulation provided a natural fit. This section therefore briefly recounts some of the tools and methods used in creating the simulations.⁹³ Putting together such simulations is inexpensive and does not require great technical sophistication. Instead, one can use simple tools that permit the creation—and frequent updating—of online content. The primary goal should be ease

90. Anne Scully-Hill et al., *Beyond Role Playing: Using Drama in Legal Education*, 60 J. LEGAL EDUC. 147, 150 (2010) (noting “there may be a legitimate worry about the depth and breadth of coverage possible in a role-play situation”).

91. Professor Pertnoy has for many years—long before the recent *Carnegie* and *Best Practices* reports—been a proponent for experiential learning. See generally Leonard D. Pertnoy, *Skills is not a Dirty Word*, 59 MO. L. REV. 169 (1994).

92. WILLIAM SHAKESPEARE, AS YOU LIKE IT act 2, sc. 7. Since the simulation runs on the World Wide Web, the reference to the *Globe* theatre is especially serendipitous.

93. I make no claim to be the first to use the live Internet for simulations teaching, though I do believe my approach to be unique. The SIMPLE project—SIMulated Professional Learning Environment—was developed in the United Kingdom and provides another example of simulations based on the live Internet using an open-source simulation engine. See Karen Barton et al., *Authentic Fictions: Simulation, Professionalism and Legal Learning*, 14 CLINICAL L. REV. 143, 143, 187 (2007). University collaboration with such tools is increasing, with the Universities of Strathclyde and Northumbria, the Georgia State University College of Law, and the University of New Hampshire School of Law cooperating in a program that combines SIMPLE along with “Standardized Clients.” See Karen Barton et al., *Standardized Clients and SIMPLE (SIMulated Professional Learning Environment): Learning Professionalism Through Simulated Practice 1* (April 15-16, 2011), <http://dotank.nyls.edu/futureed/2011/proposals/05scas.pdf>; see also *Daniel Webster Scholar Honors Program*, UNIVERSITY OF NEW HAMPSHIRE, <http://law.unh.edu/websterscholar/> (last visited Jan. 20, 2012). Such tools may be well worth exploring for future iterations of my simulations. For now, however, I have found that using real website authoring tools and real service providers permits a great degree of realism, which in turn, promotes immersion.

of use for instructors so that their time is spent developing and using engaging simulations rather than struggling with technology.⁹⁴

1. Domain Names

Domain names may be obtained for simulations websites, through which the students (as well as the public) can access the simulations on the live Internet.⁹⁵ Domain names are inexpensive, costing around ten dollars or so per year.⁹⁶ Although one could run a simulation in a password-protected bubble through Lexis Blackboard⁹⁷ or Westlaw TWEN,⁹⁸ I chose to use live websites that are publicly viewable to the whole world. This had the effect of making the simulations much more realistic, and therefore much more immersive. Currently I use two domain names dedicated to the simulations: Iphattitudez.com and Iphattitudes.com. I intentionally chose domain names that I concluded had little risk of creating real-world liability. The domain names were also sufficiently vague in their meaning that I could repurpose them year after year, with a new “story” every year.⁹⁹ One of the domain names is used to host our “client’s” website, and the other is used for the opposing party.¹⁰⁰

2. Authoring Software

One need not be a computer programmer to create a website. Authoring tools are free or inexpensive. Anyone who has used Microsoft Word to edit documents and Adobe Photoshop to edit photos should be able to use those skills to create a basic website.¹⁰¹ One of the most powerful (and simple) ways to create a website is to use an established free, open-source blogging

94. See generally Nathenson, *Law of the Horse*, supra note 23 (providing further detail on how to build online role-playing simulations).

95. Ira S. Nathenson, Comment, *Showdown at the Domain Name Corral: Property Rights and Personal Jurisdiction over Squatters, Poachers, and Other Parasites*, 58 U. PITT. L. REV. 911, 918-23 (1997) (describing domain names).

96. See Domain Name Registration Price Comparison Chart, FREEWEBHOSTS.COM, <http://www.free-webhosts.com/domain-name-registration.php> (last visited Jan. 24, 2012).

97. LexisNexis, Blackboard Learn, <http://webcourses.lexisnexis.com/> (last visited Mar. 5, 2012).

98. Westlaw, TWEN Features and Updates, <http://lawschool.westlaw.com/twen/> (last visited Mar. 5, 2012).

99. See *Archive of Cyberskills Sites*, HOMEPAGE OF PROFESSOR IRA STEVEN NATHENSON, <http://nathenson.org/courses/cyberlawskills/cyberskills-archives/> (last visited Jan. 6, 2012) (providing archive of simulation websites).

100. For the past several years, the domain names Iphattitudes.com and Iphattitudez.com have been used for the opposing parties. Compare, e.g., I-P/H ATTITUDEZ: SHOOZ FOR GENERATION Z, <http://iphattitudez.com/2010> (last visited Jan. 6, 2012), with I.P.H. SUCKS DOT COM, <http://iphattitudes.com/2010> (last visited Jan. 6, 2012).

101. In fact, one can use Word to create basic webpages.

platform such as the WordPress content management system.¹⁰² Although initially designed as blogging software, WordPress is also a powerful content management system that can be used to create anything from a simple one-page website to complex sites.¹⁰³ As one learns more about web authoring, one might also experiment with basic HTML programming. HTML (Hypertext Markup Language) is the basic language of webpages.¹⁰⁴ It is not difficult to create basic webpages with HTML.¹⁰⁵

3. Service Providers

Online service providers are used to host the content of the website and to provide other needed services.¹⁰⁶ Faculty new at creating online simulations may wish to start with a free service, such as the WordPress.com site, which provides free hosting as well as offering built-in content management software.¹⁰⁷ More experienced faculty may prefer the flexibility of using a paid service provider, which can typically be obtained for fifteen dollars a month or less.¹⁰⁸ Other useful online services include free email providers (such as Gmail¹⁰⁹ or Yahoo Mail¹¹⁰) for the “defendant,” “opposing counsel,” and others.¹¹¹

102. See WORDPRESS, <http://wordpress.org> (last visited Jan. 6, 2012).

103. See *id.*

104. Yang Yang, *HTML Definition: What is HTML Defined – What does HTML Stand For?*, KAVOIR, June 16, 2009, <http://www.kavoir.com/2009/06/html-definition-what-is-html-defined-what-does-html-stand-for.html> (noting that “HTML is what websites are written in”). One can view the source code for websites by right-clicking on the webpage and selecting “View page source” or a similar instruction.

105. See *Archive of Cyberskills Sites*, *supra* note 99 (examples of HTML websites created for the simulations).

106. The Copyright Act’s definition of “service provider” includes “a provider of online services or network access, or the operator of facilities therefor.” 17 U.S.C. § 512(k)(1)(B); *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1100 (W.D. Wash. 2004) (holding that there is “no doubt” that Amazon is a service provider under section 512(k)(1)(B) of the Copyright Act). A somewhat similar term is used by the Communications Decency Act. See 47 U.S.C. § 230(f)(2) (defining “interactive computer service” as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server”); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 n.2 (11th Cir. 2006) (noting that the plaintiff did not argue that Amazon was not an interactive computer service).

107. See *Get a Free Blog Here*, WORDPRESS, <http://www.wordpress.com> (last visited Mar. 5, 2012).

108. The degree of technical sophistication is somewhat higher with such services, but a good online provider provides helpful customer service. I use HostGator and have found it to be inexpensive and to provide excellent customer service. See HOSTGATOR, <http://www.hostgator.com/> (last visited Feb. 14, 2012).

109. Gmail: Email from Google, <http://gmail.com> (last visited Mar. 5, 2012).

110. Yahoo! Mail, The Best Web-Based Email!, <http://mail.yahoo.com> (last visited Mar. 5, 2012).

111. In the full simulation, I used a number of other service providers. See, e.g., CAFEPRESS, <http://www.cafepress.com> (last visited Jan. 6, 2012) (permitting subscribers to freely create and sell custom-made merchandise); CHILLING EFFECTS, <http://www.chillingeffects.org> (last visited Jan. 6,

4. Characters and Imagination

Obtaining domain names, authoring software, and service providers is the easy part. The harder part of online simulations is simulation design and implementation. Although a full recitation of such considerations is beyond the scope of this Article, here are a few. First, one needs characters. The students were cast as junior associates in a fictional law firm. In class, I assumed the role of the firm's managing partner, and online, the roles of defendant and client. Second, one needs a story with a beginning and middle, but not necessarily an end.¹¹² Last but not least, because the simulations occur on the live Internet, faculty should take care to avoid creating real-world liabilities such as copyright infringement, trademark infringement, defamation, and the like. Faculty unfamiliar with such matters may wish to consult a practitioner with experience in any applicable field for guidance.¹¹³ Students engaged in simulations must also be cautioned not to make contact with any persons or entities in the real world, lest they inadvertently engage in the unlicensed practice of law.¹¹⁴

C. "Lights, Camera, Action"

The simulation unfolds over the course of many weeks, with website changes and new issues arising in rapid-fire succession. The approach permits integrated learning of theory, doctrine, skills, and values.¹¹⁵ We spend initial time on "baseline" reading to establish a common descriptive vocabulary and theoretical framework, such as forms of regulation as well as the relationship between Internet users, intermediaries, and third-party stakeholders.¹¹⁶ Thus, although we begin in a traditional fashion by reading

2012) (providing a free database of cease-and-desist letters); DOMAINS BY PROXY, <http://www.domainsbyproxy.com> (last visited Jan. 6, 2012) (providing an inexpensive domain-name anonymization service); see generally Nathenson, *Law of the Horse*, *supra* note 23 (providing further detail on benefits of service providers).

112. Since the result of the simulated legal dispute may be the prompting of a fictional lawsuit, the narrative would not necessarily have an "end." See CARNEGIE REPORT, *supra* note 15, at 42-43 (noting the role of narrative in the early, middle, and end phases of a simulation).

113. For example, a trusted alumnus with expertise in Intellectual Property may enjoy providing pro bono guidance on avoiding real-world infringement.

114. Cf. MODEL RULES OF PROF'L CONDUCT R. 5.5 (2010).

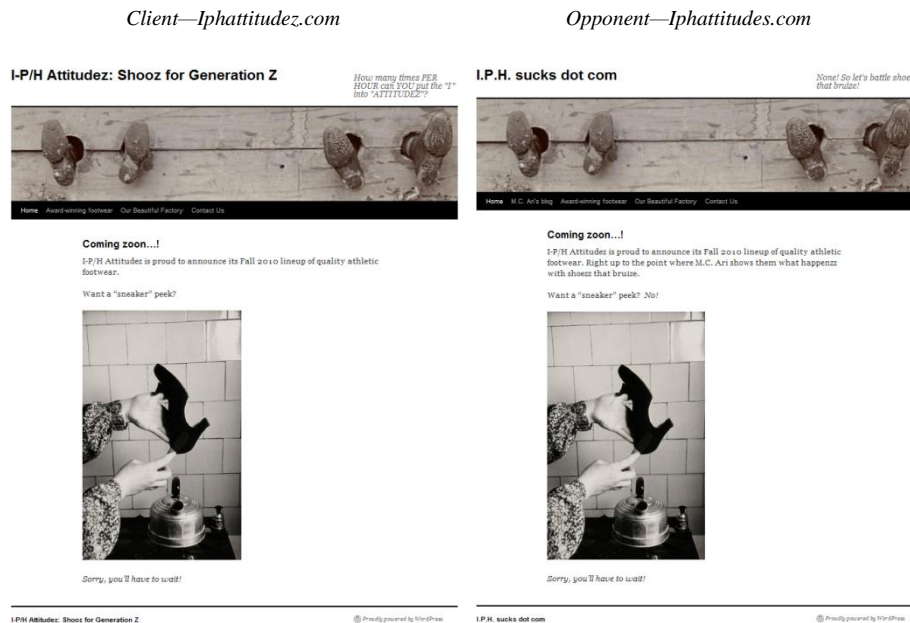
115. See BEST PRACTICES, *supra* note 15, at 97 (recommending integration of theory, doctrine, and practice).

116. See THOMSON, *supra* note 13, at 95 (noting "foundational material" needed before engaging in "non-lecture teaching activities"); John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 393 (2007); see also Lessig, *Law of the Horse*, *supra* note 83, at 506-09 (discussing modalities of regulation); Goldman, *supra* note 83, at 756 (noting that he spends the initial weeks of the semester "defining terms and explaining basic Internet technologies").

cases on free speech, defamation, and more, a crucial goal is to get students to start building a framework for everything that follows.

Soon after, the simulation starts. Our “client” requests the “firm” to investigate a troublesome website. Often, I will present students with a cybersquatting scenario—i.e., where the defendant is using a domain name containing our client’s trademark—*before* we have studied any trademark law. For example, in 2010, our client was a shoe manufacturer upset because a third party was using a domain name that differed from the client’s domain by only one letter.¹¹⁷ Below is an illustration of the final homepages of the client’s and opposing party’s sites:

TABLE 1—Final simulation sites (2010)



Because the goal is seeking mastery at the level of a junior associate, students should be pushed beyond their existing comfort zones. Thus, when the simulation begins, students should not yet know the relevant doctrine. They should not have yet studied sufficient law to solve the problems presented by the defendant’s website. This reminds students that problem-solving requires, *inter alia*, investigation, documentation, research, and

117. Compare I-P/H ATTITUDEZ: SHOOZ FOR GENERATION Z, <http://iphattitudez.com/2010> (last visited Jan. 6, 2012), with I.P.H. SUCKS DOT COM, <http://iphattitudes.com/2010> (last visited Jan. 6, 2012).

reflection, as well as consideration of their values as a legal professional.¹¹⁸ As they study the relevant cases and statutes, they start to build competence and confidence. However, just when students start to think they've "got it," I up the ante by changing the websites to add new issues. For example, although the 2010 defendant initially appeared to be a money-seeking troublemaker, later site updates suggested that he might instead be a disgruntled customer wanting to gripe online about our client.¹¹⁹

Keeping students out of their comfort zones in this manner permits "scaffolding," by which the students are continually challenged.¹²⁰ They start out in the dark and work towards ever-higher levels of competency. When they reach a new plateau, additional issues force them once again out of their comfort zone. Thus, the initially straightforward cybersquatting issue may soon add wrinkles regarding fair use, defamation, free speech, personal jurisdiction, copyright, hacking, civil and administrative procedures, and more. With respect to Judge Easterbrook, such simulations may be an ideal way to "illuminate the entire law."¹²¹

Online role-playing simulations also permit students to develop the entire litany of *MacCrate* skills factors.¹²² For example, investigation and documentation are critical skills to lawyers in any field. Thus, students must learn how to investigate online conduct (such as determining the owner of a domain name) and how to document relevant data (such as determining the formats in which to preserve electronic information). Surprisingly, today's students—typically web-gorged Millennials—do not know initially how to investigate website ownership.¹²³ They also struggle initially with documenting online conduct, because online activity exists in a myriad of interweaving forms such as text, graphics, video, sound, source code, and metadata.¹²⁴ The experiential learning teaches them how to do these and more, and to appreciate the importance of such skills.

118. See BEST PRACTICES, *supra* note 15, at 94 (recommending that knowledge, skills, and values be developed in progression).

119. Compare IPHATTITUDES.COM, http://iphattitudes.com/2010/pre-blog/index_2010-09-06.htm (archive, originally posted online on Sept. 6, 2010, last visited Jan. 6, 2012), with I.P.H. SUCKS DOT COM, <http://iphattitudes.com/2010> (final Fall 2010 blog version of defendant's site, last visited Jan. 6, 2012).

120. See BEST PRACTICES, *supra* note 15, at 184-85; see also CARNEGIE REPORT, *supra* note 15, at 26 (noting that "scaffolds" refer to a learner who "master[s] complex knowledge by small steps").

121. See Easterbrook, *supra* note 80, at 207; Nathenson, *Law of the Horse*, *supra* note 23; see also *supra* text accompanying notes 80-83.

122. See *supra* Part II.B.

123. Even though today's students may be "digital natives," not all are "digitally literate." THOMSON, *supra* note 13, at 28.

124. Students have to determine whether to do normal printouts, code printouts, or screen captures, all of which may have legal relevance to the dispute. Cf. FED. R. CIV. P. 26(b)(2)(B), 34(b)(2)(D), (E) (detailing discovery procedures concerning electronically stored information).

Later, each student is required to contact the “infringer” directly, drafting and then sending a cease-and-desist letter to an email account I use for the infringer. Responding in role as the infringer, I respond differently to each student, creating individualized learning experiences. This accomplishes several valuable goals. First, individualized responses permit the professor to introduce extra issues that can later be shared with the class. Second, individualized responses avoid the temptation for plagiarism: the individualized correspondence allows the students’ experiences to diverge significantly, requiring each to act, analyze, and draft accordingly.

After the initial exchanges, the negotiations between each student and the infringer proceed separately. The defendant’s (i.e., my) responses will be quick to point out any errors any student makes in law, facts, or tactics. This helps students to become deeply engaged in the role-plays: after all, they are not negotiating with the professor, they are instead negotiating with a defendant who can be obstinate, rude, or dishonest. This level of intellectual and emotional engagement can tremendously deepen the learning experience, in a way that is rare for a law-school classroom.¹²⁵ To make a legal demand—and to attempt recovery from any initial missteps—requires a deep immersion into the law and facts. This requires a far deeper level of engagement than what can be obtained by reading a case or statute.

Importantly, the simulation also incorporates issues of professional values: for example, the defendant will respond to some student demands by asking the student lawyer to provide him with legal advice.¹²⁶ Other students will receive a response from a “child.” Yet others will receive a response from an arrogant opposing counsel. Again, some students will err, permitting holistic learning of how ethical quandaries can arise easily. Students must also grapple with the sometimes unreasonable expectations of their own client, who may demand relief that is not feasible in terms of the facts, law, or the client’s own willingness to pay for attorney time.

After the students’ initial demands are left unmet (acting in role, I make sure the defendant never complies fully), students are instructed to prepare a draft complaint and to assemble all materials into a case file for the managing partner’s review. As one can imagine, the case files are individualized to each student’s divergent fact pattern and include draft complaints, correspondence, supporting documentation, and memos on compliance with ethical rules in light of their individualized ethics

125. See BEST PRACTICES, *supra* note 15, at 35 (noting that “[e]xperiential teaching,” in contrast with the Socratic method, “values feelings as much as thinking”).

126. See MODEL RULES OF PROF’L CONDUCT R. 1.7-1.10, 1.13 (2010) (conflicts of interest for current and former clients); *id.* R. 4.1-4.4 (2010) (transactions with persons other than clients).

scenario.¹²⁷ I even ask students to fill out time sheets—not to score them on time spent, but rather to make them reflect on whether they are using time productively. These files are often impressive, reflecting work product commensurate with what I have seen from new attorneys in private practice.

Importantly, all that is described above is only *part* of the term's assignment. Later, as the law and facts increase further in complexity—in other words, when it is again time to leave the comfort zone—students create a second case file. At this point, the simulation has expanded to embrace issues such as intermediary liability and service provider immunity, along with other issues. By this point, the simulation has become highly realistic and layered with numerous nuanced issues of law. At this point, even I may not know for certain the answers to all the questions posed. But the point is not obtaining the right answer: it is to problem-solve in a realistic context, to learn skills, values, and knowledge, and to create competent and reflective work product.¹²⁸

In sum, the simulations, in a short period of time, require students to learn underlying theories relevant to the subject, master a massive amount of relevant legal doctrine, engage the full set of *MacCrate* practice skills, and grapple hard with professional values. If student associates initially err during the simulation, so much the better: there is no substitute for lessons learned through mistakes.¹²⁹ Moreover, this learning is done holistically: the doctrine and theory fuel the needed skills, feeding back into better learning for all. The architecture of the Internet and the relationship of the players create unique opportunities for ethical quandaries. Thus, doctrine, theory, skills, and values are not separate, but inextricably interwoven. To say the least, it is my core thesis that such learning can be *far* superior to learning done solely through a casebook.

D. Assessment

Traditional law-school assessment is *summative*, provided at the end of the semester and consisting of a single examination.¹³⁰ The *Carnegie Report* thus evokes the “navigational” metaphor of this Article’s title when it notes that “[r]eliance on summative evaluation provides no navigational

127. See Ferber, *supra* note 21, at 427 (noting required contents of case file for simulations).

128. See BEST PRACTICES, *supra* note 15, at 141 (recommending contextual education that teaches theory, doctrine, and analytical skills; production of documents; resolving human problems; and cultivating practical wisdom).

129. See Ferber, *supra* note 21, at 424 (“The kind of learning that comes from disastrous consequences is in some ways the most profound.”).

130. See BEST PRACTICES, *supra* note 15, at 255.

assistance, as it were, until the voyage is over.”¹³¹ In stark contrast, online role-plays permit an unprecedented level of *formative*—in other words, ongoing—assessment.¹³² For example, class time is often devoted to “practice group” meetings, where class is conducted as a role-play. Student associates propose ideas on how to deal with the ongoing infringement and share their enforcement experiences. The baseline value of the class is that we all share and discuss—in a respectful and collaborative manner—associate successes as well as associate missteps.¹³³ Anything that happens is treated as a respectful, supportive, collaborative, and inclusive opportunity for feedback.¹³⁴ During practice group meetings, I oftentimes “switch hats,” acting not as the professor but as the managing partner. This permits us to experience some of the realities of law practice: just as supervising attorneys are sometimes unhelpful, the managing partner sometimes lacks sufficient knowledge or time to help the junior associates. As appropriate, I will then switch hats back to professor to reflect on the managing partner’s performance. Such in-class interactions permit students to get feedback from their peers *and* the professor in a supportive environment while they are still working on their projects. Learning and assessment are thus not separate, but one and the same.

Students also get ongoing feedback from the professor in another form: the defendant’s responses to the students’ cease-and-desist demand emails. The defendant’s responses are quick to point out any flaws in the law, facts, or tactics used by student counsel. This permits additional, individualized issues to be incorporated in the simulation. Because these issues are raised in response to each student’s cease-and-desist email, feedback is formative and individualized. However, this assessment need not remain balkanized: the individualized learning moments are later shared with the class via the practice group meetings. This means that key lessons are not limited to the students whose errors invited the learning moments: they are shared by all.

Students get additional formative feedback from “partner” meetings as the simulation unfolds. Just as a junior associate in a real firm is expected

131. CARNEGIE REPORT, *supra* note 15, at 164-65.

132. See BEST PRACTICES, *supra* note 15, at 255; CARNEGIE REPORT, *supra* note 15, at 164. The Proposed ABA Standards also emphasize formative assessment. See AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 305 (draft after meeting of Nov. 2011).

133. See BEST PRACTICES, *supra* note 15, at 1 (noting “negative effects” of current legal education on “emotional well-being of our students”); *id.* at 29-36 (discussing well-being).

134. Gerald F. Hess notes eight interrelated components of “an effective teaching and learning environment,” namely, “respect, expectation, support, collaboration, inclusion, engagement, delight, and feedback.” Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 87 (2002); see also BEST PRACTICES, *supra* note 15, at 110 (quoting Hess, *supra*, at 87).

to report findings to a supervisor, the students meet individually with the professor, permitting additional feedback. This also provides an opportunity to discuss issues that the student may not feel comfortable raising in class. Oftentimes, students come to these meetings in business attire, demonstrating their immersion in and commitment to the simulation.

Finally, students receive tremendous formative and summative feedback in their score sheets and case files.¹³⁵ Importantly, the score sheets are provided to students near the beginning of the semester, permitting them to know what is expected.¹³⁶ The score sheets address, inter alia, categories such as correspondence, partner meeting, draft complaint, documentation, and more.¹³⁷ They also expressly note every *MacCrate* factor applicable to each category.¹³⁸ The score sheet emphasizes the fact that students are expected to become engaged in each and every *MacCrate* factor.¹³⁹

E. Leveraging

Perhaps the best thing about online role-plays is that they are so flexible. A professor using them for one course may easily be able to leverage them for service in other courses. For example, I use the simulations sites in my Intellectual Property class for an abbreviated enforcement project. After we study trademarks and copyrights, we discuss the methodology and tactics of cease-and-desist work. Students are instructed to draft and transmit a letter to the “infringer” (i.e., me) via email. I then respond individually to each of their letters via email.¹⁴⁰ We later discuss their experiences in class. Surprisingly, I also use the simulations in my first-year Civil Procedure course as a way of teaching the basics of

135. See BEST PRACTICES, *supra* note 15, at 260 (noting that summative assessments should also be used formatively).

136. Advance notice of the score sheet, combined with contextual formative assessment, helps to reduce the danger of grades being given without an opportunity for formative assessment prior to a binding summative assessment. See *id.* at 238 (noting downsides of engaging in summative assessment without prior formative feedback).

137. For an example, see Ira S. Nathenson, *Teaching Law with Online Role-Playing Simulations*, at 9-10, available at <http://ssrn.com/abstract=1865880> (handout materials for 2011 summer conference of Institute for Law Teaching and Learning).

138. *Id.* For example, the scoring section for site documentation implicates *MacCrate* skills 1 (problem solving), 4 (factual investigation), and 9 (organization and management of legal work). *Id.* at 9. The score reflects, inter alia, whether the case file includes, in organized fashion, all relevant documentation of website ownership and of the defendant’s online conduct, in all relevant electronic forms. See *id.*

139. See *id.* at 9-10.

140. I instructed students to transmit the demand emails without informing them that I would reply in role as the defendant. To say the least, the students were surprised when replies started to show up in their inboxes. It also reminded them that just like in chess, they cannot lawyer in a vacuum. A lawyer who does not try to anticipate the potential responses of an opponent risks losing quickly and badly.

remedies. Rather than teaching remedies in a dry casebook fashion, I instruct the students to review the client and defendant websites as well as the Federal Rules and relevant remedies statutes, and to consider what remedies they might seek.¹⁴¹

It is no stretch to suggest that professors teaching other subjects may also benefit from using online role-plays. A Torts professor could create an online defamation scenario from simple to complex that implicates defamation doctrine, or—to up the ante—the First Amendment’s public figure protections,¹⁴² or—to make the stakes higher yet—the service-provider immunity provisions of the Communications Decency Act.¹⁴³ A professor teaching Constitutional Law could create a fictional student gripe site to consider the free-speech issues.¹⁴⁴ A professor teaching Property law could create fictional online advertisements for housing, giving rise to warranty and discrimination issues.¹⁴⁵

IV. TRADEOFFS

Although online simulations can greatly benefit students, they can also produce negative spillovers. This Part therefore examines the benefits and drawbacks of role-playing simulations for the key stakeholders in legal education: students, faculty, and the institutions themselves.¹⁴⁶ Although some observations are tied to my specific approach, others may inform different simulation techniques or other forms of experiential learning.

141. See, e.g., 17 U.S.C. §§ 502-05 (2006) (copyright remedies including injunctions, impounding items, actual damages, statutory damages, and attorney’s fees and costs); FED. R. CIV. P. 65 (procedure for temporary, preliminary, and permanent injunctive relief).

142. See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

143. See 47 U.S.C. § 230 (2006).

144. See, e.g., *Morse v. Frederick*, 551 U.S. 393 (2007); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

145. Cf., e.g., *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008).

146. See, e.g., Feinman, *supra* note 21, at 479 (noting that institutional issues include teacher time, student time, and money). Other stakeholders have crucial interests as well, such as accrediting organizations (the ABA and the AALS), as well as the justice system. Perhaps the most important stakeholder is the public served by the legal profession. See CARNEGIE REPORT, *supra* note 15, at 4 (noting that the “challenge of professional preparation for the law” is “linking the interests of educators with the needs of practitioners and the members of the public” served by lawyers). Although this Article does not directly address the interests of such stakeholders, it assumes that the public need would be far better served by greater integration of the cognitive, practical, and formative aspects of learning that are buttressed by simulations teaching. See BEST PRACTICES, *supra* note 15, at 1 (noting harm to consumers when new lawyers lack adequate preparation for legal practice); CARNEGIE REPORT, *supra* note 15, at 2 (noting “concerned public”).

A. Students

Online role-playing may provide an ideal learning tool for today's Internet-savvy Millennials. Although simulations are long-existing tools for educators, the author's simulations differ significantly in their immersiveness. There is nothing more realistic or engaging for today's law students than to send them out onto the live Internet to investigate online conduct and to use real communication tools to interact with opponents. Although moot courts and courses in Trial Advocacy and Negotiation provide some semblance of reality,¹⁴⁷ they pale in comparison. It is doubtlessly true that live-client clinics provide one ideal of realism; however, in clinics the concerns of real clients must come first and student errors must be prevented by the clinician lest the clients suffer.¹⁴⁸ In contrast, online simulations permit a clinic-like level of immersion *but without any risk of client harm or malpractice liability*. This permits students to “fly solo” to a much greater degree. When students err—and almost all do—the class benefits from learning moments that cannot be permitted in a clinical setting.

For the enrolled students, the simulations were a success. Presented with an opportunity to engage in somewhat realistic lawyering activity, students were eager to do what lawyers do. Teaching in this manner required coverage of far more than doctrine: it required study and implementation of practical skills and professional values. By going outside of the “safe” boundaries of the case method, students obtained a deep appreciation for the doctrinal and theoretical materials. The simulations also permitted students to develop lawyering skills and professional values, as well as to apply those skills and values to the subject itself.¹⁴⁹ Indeed, taught in such a manner, online simulations may enable professors to create innovative capstone courses that serve as a transition from classroom learning to practice.¹⁵⁰

147. See, e.g., Trial Advocacy, THE UNIVERSITY OF IOWA COLLEGE OF LAW, <http://www.law.uiowa.edu/journals-orgs/trial-advocacy.php> (last visited Feb. 14, 2012) (explaining that trial advocacy “provides opportunities for students to develop and refine skills used in the preparation and trial of civil and criminal cases”); About Moot Court, INDIANA UNIVERSITY, ROBERT H. MCKINNEY SCHOOL OF LAW, <http://indylaw.indiana.edu/mootcourt/> (last visited Feb. 14, 2012) (noting that Moot Court “develop[s] . . . skills in brief writing and oral advocacy and recognizes those students who excel in developing these skills”).

148. See CARNEGIE REPORT, *supra* note 15, at 119 (stating that simulations provide an opportunity to exaggerate and repeat “activities that could not take place” with real clients).

149. See *supra* Part III.C.

150. Regarding capstone, keystone, and other such courses, see Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69, 79-80 (2009) (distinguishing “keystone” and “capstone” courses); Sonsteng, *supra* note 116, at 450 & n.776 (preferring term “transition” course); Russell L. Weaver & David F. Partlett, *Remedies as a “Capstone” Course*, 27 REV. LITIG. 269, 271-72 (2008);

Nevertheless, the successes of the simulations came with some costs. First, for these simulations to be effective, enrollment or participation must be low.¹⁵¹ Like the TV show *Survivor*, a simulation is only engaging if the number of actors is limited.¹⁵² Otherwise, some people are certain to disengage. Others will try to dominate. Either would diminish the overall value of the simulations. More students would mean less instructor time for each, reducing both the quantity, and likely the quality, of assessment. Therefore, after the first year of the class, I obtained an enrollment cap of sixteen that I have strictly enforced. This cap helped to ensure better participation and assessment.

Second, compared to a traditional case-oriented course, a simulation course demands a substantial amount of instructor time. As one might expect, class preparation time—including simulation creation, simulation updating, student meetings, and student assessment—was significantly higher than in a case-based class. By occupying an inordinate amount of instructor time, online simulations can create negative spillover effects for students outside of the simulation class. For one thing, an enrollment cap limits the number of students able to take the class. For another, the time demands of the class may affect instructor willingness to take on other teaching-related responsibilities, such as mentoring a significant number of students wanting to do independent research.

These opportunity costs may dictate considering ways to permit increased enrollment and to free up professor time, such as using third-year “alumni” of the class to retake the class as seniors. They could act as mid-level associates, permitting some course responsibilities to be managed by experienced students.¹⁵³ Alternatively, it might be useful to enlist a practicing attorney to serve as a co-teaching adjunct, again permitting a larger number of students to participate. The full-time faculty member

see also Robert C. Illig, *Teaching Transactional Skills Through Simulations in Upper-Level Courses: Three Exemplars*, 2009 TRANSACTIONS: TENN. J. BUS. L. 15; Judith L. Maute, *Lawyering in the 21st Century: A Capstone Course on the Law and Ethics of Lawyering*, 51 ST. LOUIS UNIV. L.J. 1291 (2007). Regarding using Cyberlaw and Intellectual Property as a capstone or similar course, see Nathenson, *Law of the Horse*, *supra* note 23; see also Shubha Ghosh, *The Transactional Turn in Intellectual Property*, 35 U. DAYTON L. REV. 329, 341 (2010); Llewellyn Joseph Gibbons, *Teaching Intellectual Property Licensing Transactionally*, 34 U. TOL. L. REV. 717, 717 (2003); Goldman, *supra* note 83, at 750-51.

151. Cf. BEST PRACTICES, *supra* note 15, at 4 (noting desirability of lower student-faculty ratios). In another simulation project not discussed in this Article, I allow students to work with a partner. Permitting partners or groups of three to four might permit increased enrollment levels, but would limit the individualized experiences, risk student disengagement, and reduce assessment accuracy.

152. See *Survivor*, CBS, <http://www.cbs.com/shows/survivor> (last visited Feb. 14, 2012).

153. This is not unlike how many schools use students as legal writing teaching assistants, or at St. Thomas University School of Law, where second- and third-year students work as Active Learning Instructors to aid first-year students in learning basic skills. See Patricia W. Hatamyar & Todd P. Sullivan, *Active Learning and Law School Performance*, 3 J. MULTIDISC. RES. 67, 68 (2011).

could then take on a more supervisory role, focusing on simulations development and implementation. Of course, such solutions raise new problems: the more detached the supervising full-time professor, the greater the risk of inconsistent teaching and assessment.

Finally, simulations—by requiring time to be spent on role-playing, skills, and values—dictate sacrifices to doctrinal coverage. This makes it vital to “pick and choose” topics to emphasize, to limit, or to bypass.¹⁵⁴ Such tradeoffs are unavoidable; however, they can be well worth the cost, so long as outcomes justify the losses in coverage. Of course, instructors often make difficult coverage choices,¹⁵⁵ even when teaching traditional survey or seminar courses.¹⁵⁶ The key question is not whether tradeoffs can be avoided, but whether students obtain a worthwhile balance of theory, doctrine, skills, and values in exchange. But that does not mean that simulations are appropriate for every course. In contrast to my Cyberlaw course, I found it unhelpful to spend significant time on simulations projects in my three-hour Intellectual Property survey course. The time spent came at significant opportunity costs to core doctrinal coverage. Therefore, whereas simulations may be justifiable in some courses, the lost coverage in others may not justify the gains obtained via simulations.¹⁵⁷

B. Faculty

Despite my fears over spending too much time on simulations, I have found that simulations teaching can greatly benefit a faculty member’s overall professional development. This is a bold statement, because common wisdom suggests that junior faculty might place themselves at risk by engaging in activities that unduly divert them from research and publishing. As every tenure-track law professor knows, advancement

154. As Hess and Friedland correctly note, one of the dangers of simulations is that they can “diminish the amount of doctrine that can be covered.” GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 195 (1999).

155. These concerns are nothing new to law professors teaching at schools where traditional subjects such as Civil Procedure, Torts, Contracts, or Corporations/Agency have been combined or had their credit hours reduced. There are always hard coverage choices. Even in my six-hour Civil Procedure class, I cannot cover everything to the optimal extent.

156. In the Cyberlaw simulation, I partially solve the coverage problem by making the final project student-chosen. Each student chooses, subject to professor approval, a current topic. The students prepare short informational “client” alerts (again, with an eye toward relevant skills and values issues, such as avoiding the unintentional creation of an attorney-client relationship). Students also give presentations to the practice group, thus helping to develop yet another important lawyering skill. At the end of the term, students exchange their alerts, providing a hopefully valued memento of our time together.

157. Even in Intellectual Property, we often do some simulations learning. For example, students may write a cease-and-desist letter based on the simulations websites. However, I do not score the projects or provide individual feedback. Instead, we engage student volunteers to present for a group discussion. This permits some of the benefits of skills teaching without material loss in coverage.

depends on a combination of teaching, service, and scholarship.¹⁵⁸ Teaching is just one of the three. However, faculty who develop innovative experiential teaching methods may find that their efforts *enhance all three*.

1. Teaching

Simulations require teachers to develop a skill set that is different from what doctrinal courses may require. For example, simulations may require a much deeper level of doctrinal knowledge than what might be sufficient for teaching a traditional course. It is one thing to teach from a casebook and teacher's manual. It is quite another to teach via simulation, which requires detailed preparation for the numerous moving parts of a legal Rube Goldberg device.¹⁵⁹ The professor must have deep doctrinal and theoretical knowledge in the specific subject area in order to build a simulation that includes worthwhile subjects for exploration, while closing off topics that would unduly complicate matters.¹⁶⁰

In any specialized practice, generalist topics arise regularly. Accordingly, they will also arise in a simulation. The professor must therefore have a broad foundation of generalist legal knowledge, which depending on the simulation, likely needs to include Administrative Law, Corporate Law, Civil Procedure, and Professional Responsibility.¹⁶¹ In fact, generalist issues will arise in a simulation even if the instructor does not want them there. Perhaps the need for a broad base of generalized knowledge will deter some professors from simulations teaching. After all, a professor's explanation of another subject might be exceeded, or worse, properly rebutted by a well-studied second- or third-year student who has just spent an entire semester studying that subject in detail. However, these fears need not deter simulations teaching if the otherwise well-prepared professor otherwise serves the students as an effective mentor.

158. This is certainly the case at my institution, and is also codified in current ABA Standard 404(a), which requires that "A law school shall establish policies with respect to a full-time faculty member's responsibilities in teaching, scholarship, service to the law school community, and professional activities outside the law school." AM. BAR ASS'N, 2011-2012 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 404(a).

159. See Becky L. Jacobs, *Teaching and Learning Negotiation in a Simulated Environment*, 18 WIDENER L.J. 91, 95-97 (2008) (discussing challenges in selecting casebooks for simulations courses).

160. See BEST PRACTICES, *supra* note 15, at 186 (recommending the balancing of "detail, complexity, and usefulness").

161. The research for the course and for this Article have also helped my teaching by providing a deeper understanding of how students learn, and how this approach may permit a more humane way of teaching and modeling professional values. See MERTZ, *supra* note 13; Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247 (2008); Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235 (2008).

Thus, how should an instructor handle the risk of not being an expert in all areas of generalist legal knowledge? Through honesty. Although an instructor should prepare scrupulously, it is absurd to believe that he or she can master all legal subjects at an expert level.¹⁶² A meritorious but unanticipated issue should be treated as a serendipitous learning opportunity. This move into the unknown constitutes a quantum shift in the role of teachers and in the teacher-student relationship. But the time has come to retire the fiction of the professor-on-a-pedestal in exchange for a more honest and productive mentoring model.¹⁶³ Rather than teachers who portray themselves as all-knowing emperors of a Socratic coliseum, instructors should admit the limits of their expertise and enlist students in academic inquiry. Indeed, in real law practice, every lawyer brings a different knowledge set to the table. Junior associates working on a research task may end up knowing more about the topic of research than the assigning partner. This is the nature of legal practice. Embracing this reality in the classroom could be deeply empowering to student-apprentices.

2. Service

Simulations teaching may also provide unique opportunities for service.¹⁶⁴ New approaches to legal education demand significant and coordinated faculty efforts in developing new courses and materials. John O. Sonsteng suggests a seventeen-year plan for reform spanning intensive discussion, design, debate, adoption, implementation, and revision.¹⁶⁵ There is little doubt that education reform and course design will be a vital and long-continuing part of law school service for years to come. Indeed, the efforts of the faculty of St. Thomas University School Law to develop skills and values practica prompted an unprecedented level of meetings, proposals, reports, and course experiments. Professors who develop such

162. See Ferber, *supra* note 21, at 424 (noting that student “freedom comes at a price for the teacher: loss of control”).

163. See CARNEGIE REPORT, *supra* note 15, at 27-29; *id.* at 49-50 (noting that the instructor in a typical first-year class “is clearly the focal point”).

164. Despite the oft-repeated mantra of teaching, scholarship, and service, others have noted that “[s]ervice is the least important of the three criteria for promotion and tenure, far less than teaching and scholarship.” Robert R. Kuehn, *A Normative Analysis of The Rights and Duties of Law Professors to Speak Out*, 55 S.C. L. REV. 253, 300 (2003); see also Henry Gabriel, *Juggling Scholarship and Social Commitment: Service to the Community Through Representation of Indigent Criminal Defendants*, 20 N.C. CENT. L.J. 223, 225-26 (1992) (same). As a junior faculty member who values service, I both acknowledge the reality of this sentiment and note my profound distaste for it. Regardless of its perceived lack of value in the review process, service is a necessary component of being immersed in a community. Put differently, being a law professor is *ultimately* about service, and teaching and scholarship are simply two additional ways of providing it.

165. See Sonsteng, *supra* note 116, at 442-44.

materials can serve as models to instructors at their own and to other institutions to help advance the state of the art.

3. *Scholarship*

Finally, it is important that simulations teaching not come at undue costs to faculty scholarship.¹⁶⁶ It would be even better to find ways for simulations teaching to enhance scholarship. For its part, the *Best Practices* report wears rose-colored glasses, suggesting that teaching reforms will have few opportunity costs for faculty.¹⁶⁷

Considering the tuition-driven financial structure and scholarship-centric focus of many American law schools, this optimism is overstated. One earlier critic accused the *MacCrate Report* of “essentially ignor[ing]” tradeoffs, including that “skills instruction tends to displace research and scholarship more significantly than does other teaching.”¹⁶⁸ *Best Practices* thus admits that “[t]he demands of experiential teaching are different from non-experiential teaching, and schools should take care to ensure that student-faculty ratios, . . . and the overall obligations of experiential teachers are conducive to achieving the educational and programmatic goals of their courses.”¹⁶⁹ The report further suggests that law schools provide support for instructors’ scholarship, such as reduced course loads.¹⁷⁰ Thus, hoping to somehow resolve the tension between small courses, limited faculty, and publication obligations, *Best Practices* expresses an amorphous hope that new teaching will energize scholarship.¹⁷¹

Although it is often taken as an axiom that teaching and scholarship reinforce one another, this assumption is not always, or even necessarily,

166. See Mary Crossley & Lu-in Wang, *Learning by Doing: An Experience with Outcomes Assessment*, 41 U. TOL. L. REV. 269, 276 (2010) (noting faculty resistance to student learning outcomes based on, inter alia, a concern over an “unjustified drain” on scholarship).

167. BEST PRACTICES, *supra* note 15, at 4. The *Carnegie Report* similarly encourages “informed scholarship and imaginative dialogue” about teaching. CARNEGIE REPORT, *supra* note 15, at 19.

168. Rose, *supra* note 76, at 562-63; see also CARNEGIE REPORT, *supra* note 15, at 93 (noting that *MacCrate Report* did not consider the “fiscal implications of its recommendations”).

169. BEST PRACTICES, *supra* note 15, at 179. Philip Schrag suggests that simulations can be used in even large courses if design features are used to reduce instructor burdens. See Philip G. Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. LEGAL EDUC. 555, 569 (1989). Schrag used a simulation in a civil procedure course, but took steps to keep instructor demands reasonable—for example, on days simulations were assigned, he usually assigned no additional casebook materials, keeping his preparation time reasonable. *Id.* at 568. In addition, he scanned student submissions rather than taking the more detailed steps of correcting and grading them. *Id.* I agree that such approaches may help to make large-section simulations practicable; for purposes of my Cyberlaw course, however, the high level of immersion and feedback required a much more detailed level of instructor involvement. This in turn required a smaller enrollment to ensure a quality educational experience for the students, as well as a manageable workload for me.

170. BEST PRACTICES, *supra* note 15, at 179.

171. *Id.* at 5.

true. Marin Roger Scordato notes that “tension between the increasing specialization of legal scholarship and the generalist focus of law school instruction compromises severely the asserted synergy between teaching and scholarship.”¹⁷² He further notes the danger of this disconnect:

To the extent that there does not exist an active market for legal scholarship which deals with the majority of the substantive legal doctrine that must be presented to law students, and deals with it in a way that is appropriate for students encountering this legal doctrine for the first time, then it is difficult to see how encouraging faculty members to devote their personal resources to the production of legal scholarship can have a significantly positive effect on their instructional effectiveness.¹⁷³

I agree that the synergy between teaching and scholarship may not always be as strong as one would hope, and fear that a scholarship-teaching disconnect risks harm to students and professors alike. After all, too much time spent on teaching can reduce scholarship, and vice-versa.¹⁷⁴ Both are crucial. But perhaps new approaches to teaching will foster increased synergies between scholarship and teaching. I have already leveraged my experiences from simulations teaching into two traditional academic law review articles, one on the notice-and-takedown regime of the Copyright Act and the other on the interplay between procedure and substance in copyright law.¹⁷⁵ Both articles are traditional forms of scholarship.¹⁷⁶ Both were also heavily influenced by the deep immersion in doctrine and theory provided by the course. In addition, this Article—one of two additional

172. Marin Roger Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 AM. U. L. REV. 367, 377 (1990). Discussing what he terms the “dualist” model of teaching and scholarship, Scordato notes that the “majority of empirical studies investigating the question have found no significant relationship between teaching effectiveness and research productivity, and open challenges to the accuracy of the assumption abound.” *Id.* at 368-70.

173. *Id.* at 377-78. Michael Hunter Schwartz, in urging reforms to legal education, notes that the “criteria by which law schools hire new law teachers and measure law teachers’ performances for tenure purposes discourage innovation,” and that “[p]ublication is heavily weighted in tenure decisions.” Schwartz, *supra* note 29, at 360.

174. See Scordato, *supra* note 172, at 377-78 (demonstrating the tensions between simultaneous scholarship and teaching).

175. See Ira S. Nathenson, *Civil Procedures for a World of Shared and User-Generated Content*, 48 U. LOUISVILLE L. REV. 911, 916 (2010) (discussing the “substance-procedure-substance feedback loop” of copyright law) [hereinafter “Nathenson, *Civil Procedures*”]; Ira S. Nathenson, *Looking for Fair Use in the DMCA’s Safety Dance*, 3 AKRON I.P. J. 121, 170 (2009) (proposing a “fair-use friendly” reading of the notice-and-takedown provision of the Copyright Act) [hereinafter “Nathenson, *Safety Dance*”].

176. See Marin Roger Scordato, *Reflections on the Nature of Legal Scholarship in the Post-Realist Era*, 48 SANTA CLARA L. REV. 353, 367-68 (2008) (distinguishing types of traditional legal scholarship).

articles on pedagogy arising from the simulations—might serve as an example of the positive impact that simulations teaching can have on legal scholarship.¹⁷⁷ This conclusion, if correct, may be a critical component of modern reform. Although simulations-based teaching is incredibly time-consuming,¹⁷⁸ it paradoxically helped make my scholarly activities more focused. This suggests, at least anecdotally, that skills teaching need not interfere with traditional scholarship, and can even enhance scholarship. This result is suggested in *Best Practices*:

The changes we recommend should have a positive impact on legal scholarship. If law teachers begin giving more thought to how students learn as well as what lawyers do and how they do it, *new avenues of legal scholarship* will be opened beyond the traditional scholarship about doctrine and judging. These new directions in scholarship are more likely to involve interdisciplinary work than traditional legal scholarship and strengthen law schools' claims that they are worthy members of research universities.¹⁷⁹

Indeed, perhaps nothing is truer of legal scholars than the fact that they often write about the nature and relevance of legal scholarship.¹⁸⁰ As such, perhaps this Article is an example of one “new avenue[]” of scholarship.¹⁸¹

177. For the other, see Nathenson, *Law of the Horse*, *supra* note 23.

178. See HESS & FRIEDLAND, *supra* note 154, at 195-96.

179. BEST PRACTICES, *supra* note 15, at 5 (footnote omitted, emphasis added); see also THOMSON, *supra* note 13, at 131 (noting a “lack of books” to teach contextual practice skills, and recognizing that the reward structure of legal education provides little incentive for teachers to fill the gap).

180.

Legal scholarship . . . continually debates its methodology, with different groups of scholars advancing such divergent claims that there often seems to be no common ground. There is thus a serious question whether legal scholarship constitutes a discipline at all, or whether it is simply the body of work produced by university professors who teach in programs that prepare their students for careers in law.

Edward L. Rubin, *Legal Scholarship*, in DENNIS PATTERSON, A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY 562 (1996).

181. BEST PRACTICES, *supra* note 15, at 5. A gap in legal education can lead to a new legal theory. See CARNEGIE REPORT, *supra* note 15, at 113 (“This new body of theory serves to legitimate the construction of new forms of recognized competence.”); *id.* at 201 (“The scholarship of teaching and learning encourages faculty to devise methods for documenting their pedagogical practices publicly and for gathering and presenting evidence that will shed light on the concrete impact of these interventions on student learning.”). As Philip Kissam writes, “The diversity of modern scholarship invites us to engage in a more flexible and more reflective reading and evaluation process that appreciates multiple perspectives and gives explicit attention to the different values, purposes, methods, and contexts of each individual work.” Philip C. Kissam, *The Evaluation of Legal Scholarship*, 63 WASH. L. REV. 221, 222 (1988). Bernard J. Hibbitts’ 1996 prediction of the effects of the web on legal scholarship has been well demonstrated by shifting practices that include blogs, shorter articles, and self-publication via SSRN.

Thus, professors seeking a productive teaching-scholarship synergy ought to think about how to use simulations to fuel their research, so long as those benefits do not come at the students' expense. Professors can use a simulation as a sandbox for considering problems that may end up the topic of traditional articles. They can vary the focus of their simulations from year-to-year as needed to target areas of: (1) current instructor expertise; (2) desired future expertise; (3) current scholarly research; and (4) potential future research. Done properly, simulations teaching may be more useful in promoting faculty research than teaching a seminar. In Cyberlaw, a seminar class could lead to student papers on tremendously varied topics, none of which may be relevant to the professor's research agenda.¹⁸² Worse, to properly guide and evaluate student-written seminar papers, the professor may need to do significant ancillary research. It is true that such research may have serendipitous benefits for the instructor, but such benefits may be significantly outweighed by the costs of having to gain expertise in areas far outside of a research agenda.

For these reasons, simulations provide tremendous opportunities for synergy with scholarship. However, these observations come with important caveats. First, any simulations/scholarship synergy might be limited to certain types of research. Simulations could certainly encourage scholarship about teaching, such as this Article. They may also encourage doctrinally rooted scholarship, such as my article on DMCA takedowns.¹⁸³ One may wonder, however, whether simulations teaching may be beneficial to theoretical or social science-based scholarship. Perhaps yes, if one uses simulations as a "test tube" to consider the broader impacts of an array of hypothetical situations. Indeed, a recent article of mine examines the

See Bernard J. Hibbits, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 617 (1996); *see also* Kate Litvak, *Blog as a Bugged Water Cooler*, 84 WASH. U. L. REV. 1061, 1062 (2006) (suggesting that self-publishing has taken law reviews out of the loop, making articles shorter, less footnoted, more narrowly focused, and more qualitative). Others suggest that universities should consider alternative formats for scholarly work. One author notes that Mark Danielewski's 700-page book *House of Leaves*, which works in conjunction with a CD and website to create a broader work, sparked others to write doctoral dissertations; yet ironically, Danielewski's own work likely would not qualify as "scholarship." *See* MARK C. TAYLOR, *CRISIS ON CAMPUS: A BOLD PLAN FOR REFORMING OUR COLLEGES AND UNIVERSITIES* 196-97 (2010).

Interestingly, today's move towards experiential and outcomes-based learning may precipitate a quantum shift in legal scholarship similar to the shift to normative social-science that started in the 1970s. Although pre-1970s scholarship was heavily doctrinal, the push in the 1970s to integrate law schools into universities contributed to a disconnect between legal scholarship and legal practice, with scholars generally writing primarily for other scholars. JAMES R. MAXEINER, *EDUCATING LAWYERS NOW AND THEN: AN ESSAY COMPARING THE 2007 AND 1914 CARNEGIE FOUNDATION REPORTS ON LEGAL EDUCATION* vii-ix (2007). I would not be surprised if experiential teaching leads to a similar quantum shift in legal scholarship.

182. *See* Nathenson, *Law of the Horse*, *supra* note 23, at 9-10 & n.27.

183. *See, e.g.*, Nathenson, *Safety Dance*, *supra* note 175.

interplay between procedural justice and private copyright enforcement, and was heavily, albeit indirectly, influenced by the thinking that went into the simulations.¹⁸⁴ However, because no simulation can completely reflect reality, it might be more difficult to use simulations teaching as a springboard for empirical scholarship, unless the scholarship was expressly grounded in the assumptions of the simulations.¹⁸⁵

Second, any simulations/scholarship synergy might be limited by insurmountable coverage demands. For example, it may be more difficult for teachers to seek scholarly benefits from simulations in core courses such as Criminal Procedure or Business Organizations that appear on the bar exam and have a standardized set of materials that must be covered.¹⁸⁶ In such cases, coverage demands may rule out extensive simulations teaching. Even if instructors in such subjects choose to incorporate simulations, the limited time available would correspondingly reduce simulation complexity, thereby lessening their potential for research synergy. On the other hand, *advanced* courses in doctrinal areas may be better suited for innovative simulations teaching.¹⁸⁷

Third, to the extent that professors teach courses outside of their areas of research, simulations teaching may be a significant burden without a corresponding scholarly benefit.¹⁸⁸ There, the opportunity costs may be too great. Indeed, because simulations require a deep level of doctrinal knowledge, it may be foolhardy to ask professors to teach simulations-based courses outside of their areas of research. It is one thing for a novice instructor to teach Socratically out of a casebook and teacher's manual; it is quite another for the novice to develop a realistic simulation on an

184. See Nathenson, *Civil Procedures*, *supra* note 175. As its title suggests, that article was also heavily influenced by my teaching of Civil Procedure.

185. Empirical scholarship based directly on in-class simulations may also require clearance by university Institutional Review Boards ("IRBs"). See Scott DeVito, *Experimenting on Law Students: Why Imposing No Ethical Constraints on Educational Research Using Law Students is a Bad Idea and Proposed Ethical Guidelines*, 40 SW. U. L. REV. 285, 313-14 (2010).

186. See, e.g., *Rules of the Supreme Court Relating to Admissions to the Bar*, FLA. BD. OF BAR EXAM'RS, Rule 4-22 Part A, <http://www.floridabarexam.org/public/main.nsf/rules.html#4-22> (last visited Mar. 6, 2012); see also, e.g., *Bar Exam Resource Guide*, ARIZONA STATE UNIVERSITY, <http://www.law.asu.edu/library/RossBlakleyLawLibrary/LawStudents/BarExamResourceGuide.aspx> (last visited Jan. 26, 2012); *Outline of Subjects Tested on Essay Portion of Ohio Bar Examination*, THE SUPREME COURT OF OHIO, http://www.sconet.state.oh.us/AttySvcs/admissions/PDF/essay_subjects.pdf (last visited Feb. 28, 2012); The Multistate Bar Examination, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/multistate-tests/mbe/> (last visited Jan. 26, 2012).

187. See BEST PRACTICES, *supra* note 15, at 168 (noting that some subjects may be better-suited to experiential education).

188. It is also worth noting that some research faculty may feel ill-equipped to teach practice, or lack any practice experience whatsoever. Such faculty may be hesitant to implement simulations pedagogy. See THOMSON, *supra* note 13, at 58, 126 (suggesting that faculty steeped in theoretical scholarship may not be properly equipped to teach practice).

unfamiliar topic. Therefore, to the extent tenured and tenure-track faculty teach simulations, they should do so in areas of scholarly interest.

C. Institutions

The *Carnegie Report* compares legal and medical education, noting with great favor the heavy clinical bent of medical training.¹⁸⁹ Although experiential learning in law schools should be expanded, the medical model is no panacea because of the great dissimilarities between law and medical schools.¹⁹⁰ First, the two differ materially in duration. Whereas law school is three years, it takes a doctor up to ten years or more to become board certified.¹⁹¹ The longer duration of medical training makes experiential learning far more feasible.¹⁹²

Second, law and medical schools differ significantly in their financing. Medical schools have nine-figure budgets and are often heavily financed through patient care, affiliated hospital support, government grants and contracts, and appropriations on the state or local level.¹⁹³ Tuition is a small

189. See CARNEGIE REPORT, *supra* note 15, at 80-81; see also BEST PRACTICES, *supra* note 15, at 80-81, 192-93.

190. THOMSON, *supra* note 13, at 124-25.

191. See, e.g., WILLIAM THOMAS MALLON, THE HANDBOOK OF ACADEMIC MEDICINE: HOW MEDICAL SCHOOLS AND TEACHING HOSPITALS WORK 21-22 (Ass'n of Am. Med. Coll. 2008) [hereinafter MALLON 2008] (noting that medical school graduates seeking full certification in a specialty must complete a residency lasting three to five years, and sometimes up to 11 years).

192. One may also doubt whether any amount of school-focused experiential education would be enough. Whereas medical training can spend a decade teaching standard protocols for diagnosis and treatment, legal practice focuses on the "almost infinite" variations in "human interaction." THOMSON, *supra* note 13, at 124-25. This "make[s] it certain law schools will always fall short of the sort of mastery of a limited area that medical education is able to accomplish in the clinical setting." *Id.* at 125. Even the *Best Practices* report admits that "[i]t may not be possible to prepare students fully for the practice of law in three years," but urges law schools to "come much closer than they are doing today." BEST PRACTICES, *supra* note 15, at 7.

193. See Maxeiner, *supra* note 35, at 22, 24-25 (citing WILLIAM THOMAS MALLON, THE HANDBOOK OF ACADEMIC MEDICINE: HOW MEDICAL SCHOOLS AND TEACHING HOSPITALS WORK 3 (Ass'n of Am. Med. Coll. 2004) [hereinafter MALLON 2004]). In 2002-03, the average revenues received to support medical school operations was \$450 million per school. See MALLON 2004, *supra*, at 3; see also Michael Martinez, *Legal Education Reform: Adopting a Medical School Model*, 38 J.L. & EDUC. 705, 709 (2009); Maxeiner, *supra* note 35, at 22, 24-25 (citing MALLON 2004, *supra*). By 2006-07, the average per school increased to \$595 million. MALLON 2008, *supra* note 191, at 3. Harvard Medical School is apparently "one of the few US medical schools—and may be the only—that traditionally has not received significant financial support for its operations from its teaching hospitals and their physicians," instead being "particularly dependent on endowment income and government research funding . . ." Liz Kowalczyk, *Harvard Medical School Negotiates \$36 Million in Contributions*, BOSTON.COM, June 21, 2010, <http://timelines.boston.com/timelines/health-care-reform/2010/6/21/harvard-medical-school-negotiates-36-million-in-contributions>. As of June 2010, its budget was reported at \$580 million. *Id.*

component of medical school funding.¹⁹⁴ In contrast, law schools have smaller budgets,¹⁹⁵ and are often tuition-driven.¹⁹⁶

Third, law and medical schools differ tremendously in faculty-to-student ratios. Medical schools boast faculties—approximately 850 on average—that positively dwarf the faculty at any law school; medical schools also have an average graduating class size of 135.¹⁹⁷ In fact, medical schools employ approximately eighteen percent of all full-time faculty, even though they enroll only about one percent of full-time students.¹⁹⁸ In contrast, law faculties are much smaller, with close to double the graduates each year.¹⁹⁹ Such a ratio encourages law schools to use large Socratic lectures, and to discourage too much experiential education.

These differences underscore the implausibility of trying to recast law schools in the image of medical schools. With years to work with, generous budgets driven by patient care, and large faculties, medical schools can provide extensive clinical education.²⁰⁰ As James Maxeiner concludes, “to say that medical and law schools are comparable because both are professional schools, is rather like saying that elephants and mice are comparable because both species are mammals.”²⁰¹

It is crucial to confront these issues squarely. Skills teaching, and particularly simulations, have tremendous benefits for students, but they also consume tremendous faculty resources.²⁰² Such changes will entail

194. Student tuition for medical school has run at a “relatively stable” level of 3-4% of revenues since the 1960s. MALLON 2004, *supra* note 193, at 4; *see also* Maxeiner, *supra* note 35, at 25 (citing MALLON 2004, *supra* note 193, at 3).

195. Even Harvard Law School pales with a \$100 million budget, a quarter of the average medical school budget. *Battle Not Seen as Fierce in Hearings for Kagan*, DET. FREE PRESS, June 27, 2010, at A15. UC Davis has a mere quarter of *Harvard’s* budget, approximately \$25 million. Kathy Robertson, *UC Davis Law School Opens New Wing Friday*, SACRAMENTO BUS. J., Sept. 1, 2010.

196. “Law schools, like business schools, are profit centres for cash-strapped universities, and have always been more tuition-driven than, say, medical schools.” David Franklin, *Throw Socrates out of Law School: Teaching Style Big Waste of Time*, OTTAWA CITIZEN, Aug. 16, 1997.

197. Maxeiner, *supra* note 35, at 22 (extrapolating from MALLON 2004, *supra* note 193, at 3, 5). For example, the University of Pittsburgh School of Medicine boasts over 75 departments and divisions. *See* Departments & Divisions, UNIVERSITY OF PITTSBURGH SCHOOL OF MEDICINE, http://www.medschool.pitt.edu/departments_divisions/index.aspx (last visited Mar. 6, 2012). Just *one* of those departments, Emergency Medicine, boasts a faculty of over 75. *See* Faculty, UNIVERSITY OF PITTSBURGH, DEPT. OF EMERGENCY MEDICINE, <http://emergencymedicine.health.pitt.edu/faculty> (last visited Aug. 4, 2011).

198. *See* MALLON 2008, *supra* note 191, at 3.

199. Maxeiner, *supra* note 35, at 22.

200. *Id.* at 22-26.

201. *Id.* at 22.

202. “Simulations take time to prepare and plan. Because there are often several people playing roles and because there is often acting involved, simulations may ask a professor to take on a role equivalent to that of a director. This takes time and deliberative thought.” HESS & FRIEDLAND, *supra* note 154, at 195-96. It is “hard to see how serious efforts to integrate the skills of practice with legal knowledge can go forward without willingness to incur higher student-faculty ratios and, with these,

significant efforts in curriculum reform, and will likely reduce a school's ability to leverage its faculty to teach and to provide committee work. In addition, schools may need more instructors. For a moderate-sized law school of eight hundred students, implementing skills teaching may require more than sixteen new course offerings per year, requiring additional instructors.²⁰³ The budgetary and opportunity costs can mount quickly.

In addition, despite the potential for teaching-scholarship synergy for instructors who teach experientially in the right context, expanded skills teaching might affect overall scholarly output for some schools. Schools will therefore have to become more creative in finding ways to expand the teaching mission while still encouraging quantity and quality in faculty scholarship.²⁰⁴ In my opinion, quality is more important, and a major flaw in the legal academy is an overemphasis on a "one-size-fits-all model." In a 2009 essay, Erwin Chemerinsky questioned the traditional focus of Promotion & Tenure committees on law review articles, noting "perhaps it is best to avoid focusing on form and instead look at quality. In other words, any format might lend itself to writings that 'count'; it just depends on what is written."²⁰⁵ Alternatively, these tensions may lead to the development of separate tenure tracks for "scholar" professors and

higher unit costs." CARNEGIE REPORT, *supra* note 15, at 176. Thus, a move towards "intensive (and expensive) forms of instruction will pose major challenges to many law schools." *Id.*

203. The estimate is based on a maximum experiential class size of twenty, with each student taking one such course over the three years of law school. This would require approximately thirteen to fourteen experiential offerings per year, or approximately six to seven per semester. Assuming that twenty students per class are too many and that sixteen is a more feasible number, a school may need sixteen to seventeen offerings per year, or approximately eight per term. For schools assigning instructors two courses per semester, this would require four dedicated skills faculty. However, if existing faculty could reconfigure themselves to teach one or more skills courses instead of doctrinal or seminar courses—as I have—then fewer new faculty would need to be hired.

204. In a 1999 article, James Lindgren suggests various approaches to encourage scholarship, such as banking and reducing courses, expanding financial incentives, and encouraging a scholarly culture. James Lindgren, *Fifty Ways to Promote Scholarship*, 49 J. LEGAL EDUC. 126, 130, 133-36 (1999). The feasibility of these incentives, as Lindgren notes, will vary from school to school. *See id.* at 127. In an environment focused on the *Carnegie* approach, however, the feasibility of some of these approaches, particularly those for schools with limited staffing and financial resources, may become increasingly strained. Ultimately, the culture of an institution may face heavy challenges from skills teaching.

205. Erwin Chemerinsky, *Why Write*, 107 MICH. L. REV. 881, 892 (2009). Chemerinsky further questions bars on considering traditionally "taboo" forms such as treatises, casebooks, and even blogs. *See id.* at 890-92. Regarding blogs, he asks:

Why treat law review articles as scholarship, but not blogs? The answers are not intuitively obvious. They cannot be about the form of the publication, since increasingly there are journals that are entirely electronic in their form. Nor can they be about length; longer is not inherently better, and a collection of blog writings can be quite voluminous.

Id. at 892.

“teacher” professors,²⁰⁶ or even a reevaluation of the primacy of scholarship in the teaching-scholarship-service triumvirate.²⁰⁷

It is likely that widespread educational reforms focusing on skills will have many spillovers, such as redefining the roles and responsibilities of law faculty. Such shifts will not come without risks to those schools brave enough to risk any change to the traditional primacy of scholarship as a barometer of law-school quality.²⁰⁸ A substantial portion of a school’s *U.S. News & World Report* ranking rests upon its faculty reputation, which is primarily driven by its scholarly reputation.²⁰⁹ A school that deemphasizes scholarship for expanded skills teaching therefore faces the quandary of diluting its appeal to the very students it is trying to attract. Put differently, if a school spends too much time teaching and too little writing, it may be harder to attract the students it wants to reach. This suggests that “early-adopter” schools may risk education reforms at the cost of their reputations. Although such risks are remote for schools with high rankings (and thus able to withstand the change) or deep endowments (and thus able to afford additional faculty), they are far more concrete for tuition-driven schools in the so-called third and fourth tiers, particularly those servicing local areas or minority student groups. But it also suggests that schools adopting such reforms should do so publicly and vigorously so as to counteract any negative publicity.²¹⁰ Unfortunately, these risks also make it likely that many such schools will take the leap only when forced to.²¹¹

206. See Sonsteng, *supra* note 116, at 464-71. Judge Posner has long suggested a separate track for “doctrinalists” to join the existing set of tenure-track, clinical, and writing instructors. See Richard A. Posner, *The State of Legal Scholarship Today: A Comment on Schlag*, 97 GEO. L.J. 845, 854 (2009); Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1129 (1981).

207. See TAYLOR, *supra* note 181, at 181-82 (suggesting teaching-scholarship imbalance arose in the 1970s); see also BEST PRACTICES, *supra* note 15, at 107 (noting that although “[m]any law schools assert that they expect excellence in both teaching and scholarship, . . . the primary criterion for tenure and promotion is usually scholarship”); CARNEGIE REPORT, *supra* note 15, at 7 (noting that “the coin [of universities] is productivity in scholarship and research”).

208. Even the *MacCrate Report* admits that law-school status hinges largely on scholarly reputation, which in turn helps to “attract the best students” who then “have the best job opportunities . . .” MACCRATE REPORT, *supra* note 12, at 5.

209. Robert Morse, *The Law School Rankings Methodology*, U.S. NEWS & WORLD REPORT, Apr. 15, 2010, <http://www.usnews.com/articles/education/best-law-schools/2010/04/15/the-law-school-rankings-methodology.html>.

210. Washington and Lee University School of Law runs a widely publicized mandatory third year where students are moved “out of the classroom and into the real world of legal practice.” *Washington and Lee’s New Third Year Reform*, WASHINGTON AND LEE U. SCHOOL OF LAW, <http://law.wlu.edu/thirdyear/> (last visited Oct. 9, 2011).

211. As noted, the ABA is considering requiring skills teaching as part of law school accreditation standards. See *supra* Part II.D. The Association of American Law Schools (“AALS”) has expressed concern over proposed changes. See H. Reese Hansen & Susan Westerberg Prager, Letter from AALS to ABA Section on Legal Education and Admissions to the Bar, Standards Review Committee, Mar. 15,

To find a balance, John O. Sonsteng suggests a “combined teaching system,” distinguishing between tenure-track professors who write scholarship and teach up to eight credits per semester, from long-term non-research contract professors who teach up to twenty hours per semester.²¹² As he notes, such an approach could permit a vast increase in credit hours offered.²¹³ That, in turn, would make possible significantly smaller classes, as well as a broader array of doctrinal, seminar, simulation, writing, and clinical courses. Such reforms would permit the kind of immersive teaching and ongoing assessment essential to simulations. However, Sonsteng also recognizes that for this model to succeed, it would require that contract teachers be paid far less than tenure-track professors.²¹⁴ Such a model may have the benefit of being economically viable,²¹⁵ but it may also come at the cost of perpetuating faculty divides, devaluing teaching innovations by ambitious junior faculty, and discouraging scholarship by those in contract faculty roles.

Alternatively, perhaps a deeper systemic reform—by encouraging all educators to consider themselves teacher-scholars—may help to further break down “castes” separating legal educators, in turn further fueling scholarship by *all* groups: tenure-track faculty, deans, clinicians, librarians, writing instructors, and adjuncts.²¹⁶ Michael Hunter Schwartz argues that

2010, at 2 (noting legal education includes value of “advancing knowledge about law and legal institutions . . .”).

212. See Sonsteng, *supra* note 116, at 466. The contract professors would be supervised by a tenure-track professor. See *id.* This combined system would be incorporated over time as faculty retire or otherwise leave. *Id.* at 465. Sonsteng also proposes, but rejects, adding long-term contract faculty (too expensive), or adding a significant number of adjuncts (too difficult to support and supervise). *Id.* at 464-65.

213. *Id.* at 466.

214. *Id.* at 469. Sonsteng suggests that every departing tenure-track faculty member could be replaced with two contract teachers. *Id.* Economically, other ways of balancing budgets seem far less tenable: massive reductions in tenure-track salaries would lead to immediate and massive departures and mark the violative school as a pariah. Increasing student tuition, especially in bad economic times, is equally unavailing. In comparison, Mark C. Taylor proposes the creation of a “National Teaching Academy,” dedicated to supporting “outstanding faculty members,” with a primary goal of “elevat[ing] the status of teaching *within* universities and thereby begin to recalibrate the balance between teaching and research.” TAYLOR, *supra* note 181, at 190-91; see also BEST PRACTICES, *supra* note 15, at 5 (suggesting that law schools provide more recognition and rewards for good teaching); MACCRATE REPORT, *supra* note 12, at 245 (“Law schools should identify, retain and reward faculty who possess the requisite attributes to teach skills and values and who are able to contribute to the advancement of knowledge about them.”).

215. One must also factor in costs that would come from a vast increase in full-time faculty, such as the need for additional classrooms, office space, administrative support, as well as the opportunity costs for tenure-track faculty who would supervise contract faculty.

216. See Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIR. 12, 13 (2002). I use the positions in the order provided by Syverud to highlight the norms in place at many law schools. *Id.* at 14-16. Syverud notes that this system may deter tenure-track faculty from adopting practices used by a “lower caste, . . . for fear they will be viewed by The

barriers to legal education reform include rethinking how law schools and accreditation teams evaluate schools and faculty.²¹⁷ Schwartz is correct: if education reforms occur, then a spillover effect may lead to rethinking of our roles as scholars as well. Indeed, the faculty currently most versed in methods such as active learning, simulations, and the like, are writing instructors and clinical faculty, those most likely at the lower ends of the caste system.²¹⁸ My experiences suggest that teaching simulations and other practica have helped to break down some of the glass walls separating tenured/tenure-track faculty from legal writing instructors and others, making us realize that we are all trying to do the same important job from different perspectives. At the same time, I would like to think that this will expand the scholarly engagement and synergy for us all.

These concerns must be addressed now. As noted, the ABA will likely implement Proposed Standard 304, which will require all upper-level students to receive at least three credits of experiential learning, such as through a simulations course.²¹⁹ However, Proposed Standard 304 is somewhat vague. It requires that the course be “faculty-supervised.”²²⁰ Beyond an Interpretation noting that the faculty member should be “qualified,” no definition of appropriate simulations faculty is provided.²²¹ If this language refers to all “castes” of faculty including adjuncts, then schools may be able to better make the transition.²²² Indeed, because

Faculty as breaking caste.” *Id.* at 18. My school’s administration, along with its curriculum committee, has supported professors who create new approaches to teaching, such as by providing great latitude in approaches taken as well as through financial incentives. *See* THOMSON, *supra* note 13, at 135 (“The legal academy simply has to get over the old caste system in law faculties, because good skills teachers are vital to the developing future of legal education.”).

217. Schwartz, *supra* note 29, at 439.

218. Syverud, *supra* note 216, at 14-15; *see also* ANDREW HACKER & CLAUDIA DREIFUS, HIGHER EDUCATION?: HOW COLLEGES ARE WASTING OUR MONEY AND FAILING OUR KIDS—AND WHAT WE CAN DO ABOUT IT 15 (2010) (bemoaning caste system in American universities); *see also* CARNEGIE REPORT, *supra* note 15, at 87-88 (discussing caste system in legal academy).

219. *See supra* Part II.D.

220. AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 304(a)(3) (draft after meeting of Nov. 2011).

221.

The course(s) described in Standard 304(a)(3) should have the following characteristics: development of concepts and theories underlying the skills being taught; multiple opportunities for students to perform tasks with appropriate feedback and self-evaluation; and evaluation of the students’ performance by a qualified faculty member.

AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 304(a)(3), INTERPRETATION 304-2 (draft after meeting of Nov. 2011).

222. Notably, other parts of the Proposed Standards refer to “full-time faculty” or “part-time faculty” without reference to the “qualified faculty member” language of the Proposed Interpretation. *See, e.g.*, AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 108 (draft after meeting of Nov. 2011) (defining “[f]ull-time faculty member”);

adjuncts are often at the forefront of practice, a qualified, trained, and supervised adjunct may be useful for crafting or assisting in simulations that holistically incorporate doctrine, theory, skills, and values. However, if “qualified faculty member” is interpreted to include only internal full-time faculty—for example, tenured/tenure-track, writing instructors, and clinicians—then institutional resources may be significantly strained.²²³

For these reasons, the ABA ought to be deferential to good-faith attempts by law schools to comply with the new Standard. As all should agree, the goal should be for schools to develop new and creative pedagogies rather than to immediately coalesce into a “one-size-fits-all” model.²²⁴ For example, just as a school might have a dedicated supervisor of clinicians and externships, a law school might dedicate a tenured or tenure-track faculty member to serve as Associate Dean of Experiential Education to encourage and supervise experiential faculty.²²⁵ Alternatively, or additionally, just as many law schools employ upper-level students as teaching assistants, students might also be used as “mid-level” associates in simulations supervised by faculty, permitting bigger simulations classes.²²⁶ In any case, for schools to develop effective experiential learning techniques in general, and simulations techniques in particular, it is critical for the schools and the ABA—along with other critical stakeholders such as the AALS—to work together to foster innovation, creativity, and variety.

id. 308 (noting need for opportunities to take “courses taught by full-time faculty”); *id.* 402 (noting need for “sufficient number of faculty”); *id.* 403(b) (noting “full-time and part-time faculty”). The uniqueness of the term “qualified faculty member” suggests that simulations faculty need not be limited to full-time faculty. Further support is provided by Proposed Standard 401, which refers merely to “faculty,” stating that “[a] law school shall have a *faculty* whose qualifications and experience are appropriate to . . . carrying out a program of legal education consistent with the requirements of *Standards 301, 302 and 304.*” AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., PROPOSED STANDARD 401 (draft after meeting of Nov. 2011) (emphasis added).

223. Interestingly, an earlier draft required “one appropriately supervised learning experience” with feedback by a “qualified assessor” rather than a “qualified faculty member.” See AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., STUDENT LEARNING OUTCOMES SUBCOMMITTEE, PROPOSED STANDARD 303(a)(3), INTERPRETATION 303-2 (draft of May 5, 2010).

224. Significantly, the ABA Student Learning Outcomes Subcommittee “rejected a ‘one size fits all’ approach to student learning outcomes.” AM. BAR ASS’N, SECT. OF LEGAL EDUC. AND ADMISS. TO THE BAR, STANDARDS REV. COMM., STUDENT LEARNING OUTCOMES SUBCOMMITTEE, APPENDIX A TO DRAFT OF CHAPTER 3 OF PROPOSED STANDARDS, STUDENT LEARNING [sic] OUTCOMES, SUMMARY OF COMMENTS AND LIST OF ISSUES, at 6 (May 17, 2011).

225. Cf. Sonsteng, *supra* note 116, at 466 (suggesting that tenure-track faculty supervise contract instructors).

226. Cf. Hatamyar & Sullivan, *supra* note 153, at 68.

V. CONCLUSION

Despite any dragons lurking in the uncharted waters of education reform,²²⁷ simulations teaching offers great benefits. For students, online simulations provide effective ways of teaching so long as they are available to a significant number of interested learners. For professors, they may deepen the synergies between teaching and scholarship when used in appropriate contexts. For institutions, expanding simulations may require difficult choices regarding faculty composition, responsibilities, and compensation; however, resolving such issues should lead to many years of creative innovation. Such innovations should be pursued.²²⁸

227. Cf. IAN MORTIMER, *THE TIME TRAVELER'S GUIDE TO MEDIEVAL ENGLAND: A HANDBOOK FOR VISITORS TO THE FOURTEENTH CENTURY 73-74* (2008) (noting that some medieval English believed that dragons lived in Sri Lanka).

228. As noted in the *Best Practices* report,

Leadership from within law schools is essential, however, and there are signs that it may be emerging. There are growing numbers of talented people in law schools who care about the quality of their teaching and the success and satisfaction of their students. They are engaging in innovative and positive work that may eventually transform legal education. Perhaps something in this document will encourage more law teachers to reexamine their assumptions and traditions about legal education and become leaders for change, and perhaps law school deans will support and reward them for doing so.

BEST PRACTICES, *supra* note 15, at 286.