The Serpent Strikes: Simulation In a Large First-Year Course

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Philip G. Schrag

Simulation in legal education has come of age. Once confined to moot court exercises and trial practice offerings, simulation is now accepted, in principle, as a legitimate method of instruction in many types of courses. Every recent volume of the Journal of Legal Education has included at least one article on simulation, and in the past few years published works have offered the community of law teachers advice on using simulation to teach administrative law,1 contracts,2 constitutional law,3 bankruptcy,4 civil procedure,5 pretrial litigation,6 legislation,7 the "lawyering" process,8 and, of course, negotiation.9 These writings have helped to make simulation an

Philip G. Schrag is Professor of Law and Director of the Center for Applied Legal Studies, Georgetown University. Parts of this article were presented at the June 1987 meeting of the ABA Task Force on Training the Advocate and the June 1988 AALS conference on Civil Procedure. In 1990, Little, Brown and Company will publish Civil Procedure: A Simulation Supplement, a manual that will enable civil procedure instructors to replicate the entire set of exercises described in this article. The manual includes detailed instructions for managing each event, copies of all the handouts to students, and suggestions for modifying them to set the simulation in any region of the United States. A 35-minute videotape showing students participating in several of the exercises described in the article is available from the Law Division of Little, Brown.

accessible alternative to a steady diet of Langdell's case method. Other, more theoretical publications have explored the pedagogical advantages of including a substantial simulation component in a student's legal education. Nevertheless, simulation remains at the fringes of legal education. Only one school, the experimental City University of New York Law School at Queens College, makes simulation throughout the curriculum a centerpiece of its educational philosophy. For most students at most law schools, simulations comprise just a small component of a small number of courses.

In part, the use of simulation has been constrained by concern on the part of many faculty members that constructing and administering a substantial simulation, particularly for a course with 60 to 130 students, would demand too much time and energy. The literature suggests that these fears are far from irrational, because instructors must know a good deal about what happens during the simulation if they are to provide feedback to students. To obtain the information the instructor must play a role or at least watch much of the play, live or on tape. If part of the goal of the simulation is to teach advocacy skills (as opposed to using the simulation to help students to understand a process or social system), even more instructor time is needed, because the instructor will have to critique individual or small-group performances or written products. Michael Botein reports that because of the demands on his time, he was relieved when twenty of the fifty-five enrollees dropped his administrative law simulation, and he recommends limiting the enrollment in such offerings.

Simulations can also be costly in student time. Many instructors in dynamic fields already despair of fitting an ever-expanding body of law into a reasonable number of credit hours and would have trouble including one or more time-intensive simulations. Students increasingly need to work part time to finance their legal education and are likely to resist what they may see as additional work piled on top of casebook readings.

Several years ago, I decided to construct a substantial simulation that could supplement a law school course without overloading the teacher or the students. I designed the simulation to meet the following criteria:

- Offer students an experience in which they would identify with a legal role and see a problem through the perspective of that role.


11. See Bulletin of CUNY Law School, Queens College 10 (1986-87).

12. Botein, supra note 1, at 236. Michael Melsner and I found that one of the main costs of teaching a course that was entirely based on a simulation was "the enormous burden on our time . . . reviewing hours of tape and editing it for classroom use; meeting with individual students regularly for tutorial sessions; . . . and reviewing student group work done for assignments and for student-generated litigation." Michael Melsner & Philip G. Schrag, Report from a CLEPR Colony, 76 Colum. L. Rev. 581, 605 (1976).
Simulation in First-Year Course

- Enrich a traditional course by enabling students to perceive, more deeply than they could by spending the additional time in the study of more appellate cases, how legal doctrine affects people and events.
- Motivate students, prompting them to want to learn in order to solve a practical problem.
- Entertain students enough to make the simulation a refreshing alternative to a steady diet of the case method.
- Comprise a substantial part of a course. A simulation lasting only a few hours is unlikely to be weighty enough to cause students to assume a legal role and begin to perceive legal rules through the lens of that role.
- Accommodate a very large class. (Georgetown's first-year sections include 125 to 140 students.)
- Adapt to administration by a single instructor, because many schools do not make teaching assistants available for this purpose.\[13\]
- Require only as much preparation time for the instructor, after the initial development phase, as a traditional course.
- Offer no more than an introduction to such arts as interviewing, counseling, and negotiating. Developing competencies in these skills in a class with a student-teacher ratio of 125:1 is not practicable.\[14\]

From these criteria the *Lockett* case emerged. *Lockett* is a year-long simulation that can be used in a class with any number of first-year civil procedure students.\[15\] It comprises about twenty percent of the homework and twenty percent of the class time of a five-credit course, although some of its twelve classroom exercises could be dispensed with if an instructor wanted to reduce its scope.

**The Context of the Simulation**

The *Lockett* simulation is a supplement to a fairly traditional civil procedure course, not a replacement.\[16\] My offering at Georgetown involves four simultaneous perspectives on civil procedure. Students use a traditional casebook in a relatively traditional way to gain an overview of doctrine as developed by legislatures, rulemakers, and appellate courts. They read Gerald Stern's *The Buffalo Creek Disaster*\[17\] and study the key litigation documents of the Buffalo Creek case to see how litigators use the

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13. Some instructors have used advanced students to critique written work that students produce in simulations. See, e.g., Paul Spiegelman, Civil Procedure and Alternative Dispute Resolution: The Lawyer's Role and the Opportunity for Change, 37 J. Legal Educ. 26, 30 n.16 (1987).
14. About half of Georgetown's students eventually take a clinic in which the student-teacher ratio is between 4:1 and 8:1.
15. I have offered the simulation for four years to classes of between 125 and 140 students. Although it can be administered by a single instructor without any teaching assistants, it does require two actors to make one class appearance each and a third actor to make two appearances.
16. Contrast the more elaborate Myers simulation of pretrial litigation, in which the simulation is the course. Meltsner & Schrag, supra note 6.
rules strategically and to grapple with ethical issues that the case presents.\textsuperscript{18} The \textit{Lockett} case offers a third perspective. After reading about what other lawyers did for the victims of the Buffalo Creek flood, the students represent their own tort victim through all of the stages of pretrial maneuvering. Finally, a considerable portion of the classroom component of the course is used for discussion of legislative policy issues that the exposure to the procedural system raises, such as whether the discovery or class-action rules are in need of reform.\textsuperscript{19}

The components of the course are carefully sequenced to correspond to the order in which litigators must confront problems in typical cases. The course starts with a unit on lawyer-client relations (including brief introductions to interviewing and counseling). Then, after a study of jurisdiction, we consider strategic planning, the preparation (including drafting) of pleadings, discovery, and preparation for trial. In each instance, the students' overview comes from the text. Immediately thereafter, we look at what the attorneys did in the Buffalo Creek case; then the students must perform the relevant tasks themselves in order to represent their client.

Although policy analysis is probably the most important aspect of civil procedure to which students can be exposed,\textsuperscript{20} most students cannot begin to develop a critical stance toward policy issues without first understanding, in a fairly deep way, how the adversary system works and how its implicit ethical messages motivate lawyers. They have to be litigators before they can be good legislators, and a worm's-eye view of civil procedure (offered by Buffalo Creek and \textit{Lockett}) is perhaps the most efficient way to give first-year students exposure to how litigators (as opposed to judges) approach cases. A secondary purpose of including a simulation component in the course is to introduce first-year students to some elements of practice that they may otherwise never encounter in law school. If they do not take a clinic—and at most law schools, most students do not—they may never have even the most rudimentary contact with interviewing, case planning, motions practice, or negotiation. Although some schools now offer these subjects to all first-year students through lawyering process courses, in more traditional curricula introducing students to these skills may best be achieved in the context of civil or criminal procedure courses.

\textsuperscript{18} Many law teachers now include study of Stern's book in civil procedure classes, and many articles have alluded to novel ways of teaching from it. See, e.g., Lawrence M. Grosberg, The Buffalo Creek Disaster: An Effective Supplement to a Conventional Civil Procedure Course, 37 J. Legal Educ. 378 (1987); Elizabeth N. Schneider, Rethinking the Teaching of Civil Procedure, 37 J. Legal Educ. 41, 43 (1987); Marc Galanter, Worlds of Deals: Using Negotiation to Teach About Legal Process, 54 J. Legal Educ. 268, 271 (1984). At Boston College Law School, Robert Bloom, Mark Brodin, and their colleagues have collected (and made available to others) a large group of litigation papers from the case, and Lawrence Grosberg has made several videotapes of simulated interviews and depositions from it.

\textsuperscript{19} In some years I have added a fifth perspective. Students, in small groups, observe District of Columbia Superior Court motions and write papers about how their observations compare with the impressions of civil courts they may have gleaned from their culture, casebook, or class.

Overview of the Case

To connect the simulation with what students are doing in another course, the Lockett case presents facts that could have appeared in a torts examination. The case is modeled on the facts of a real case, and the first event—the emergency telephone call—is based on a call I received myself. Although I did not handle the case, I did find a lawyer for the real plaintiff.21

Lucy Lockett is a young woman who had been working part time for a local pet store, Tropics North, Inc. Though laid off, she continued to work in the store as a volunteer for a few weeks, in the hope of being rehired if business improved. One Saturday afternoon (the Saturday before classes began), she was bitten by a supposedly nonvenomous snake while showing it to a customer. An hour later, when her arm began to swell, she was driven to the emergency room of the local hospital. As a result of the bite, she eventually required three operations. The store claims that the supplier of the snake, a Miami importing company, had assured it that the snake was harmless to humans.

The simple facts of Lockett emerge fairly early in the year, largely through the second exercise, an in-class interview with Lucy, who is played by a law professor from another law school.22 The case becomes legally and factually more complex, however, as an invisible research assistant to the students' firm distributes a series of memoranda about the applicable law23 and the fruits of investigation. For example, when the students—after studying personal jurisdiction—are ready to prepare a case strategy, they receive legal memoranda about possibly applicable regulatory statutes, substantive tort law (negligence and several theories of strict liability), and the long-arm statute; they also receive a long but indecisive set of scientific papers about the possibly venomous secretions of certain opisthoglyphs, the series of colubrids that includes philodryas viridissimus (the species of snake that attacked Lucy).

With a few exceptions, noted below, all of the students represent the victim throughout the year. Although students in some legal simulations are divided permanently into opposing camps, it is quite difficult for an instructor to provide feedback to students on each side in the presence of their opponents. Separate meetings with the opposing camps—and additional instructors—become necessary when students represent two or more

21. The actual case was eventually settled, so there is no reported decision that might contaminate the simulation.
22. The students know that the case is a simulation based on a real case, and many of them guess that the actress playing Lucy was the real victim of the bite. All of the actors are credited on the final day of class; meanwhile, the mystery of their identities helps the students to believe in the reality of the case. The three performers do not need to be lawyers; indeed, the ability to act well and to learn fairly substantial role descriptions is much more important.
23. This is not a library research exercise, so students are given all the law they need to know, although they must distill what is really relevant from a much larger mass of material.
parties. In *Lockett*, the instructor generates most of the adversaries' moves and distributes the adversaries' documents to Lockett's lawyers at the end of class periods.

The Major Exercises

Most of the action in *Lockett* revolves around twelve major exercises, six of which include written assignments. Several devices make it possible for one instructor to give six written assignments to as many as 140 students. First, students are encouraged to do the assignments in groups of three or four. Although some of them insist on working alone, group work cuts down the number of submissions to about forty per assignment. Second, although I do read all of the submissions (quickly), I explain in advance that my review is necessarily limited to three functions: ascertaining (for grading purposes) that each submission represents a good-faith effort, which is enough to earn credit for the group's submission; drawing on some of the submissions to develop composite pleadings or interrogatories that become the class's work product in the case; and obtaining a sense of what mistakes, if any, the class is making. After each set of submissions, I give the class written or oral feedback on the submissions as a whole.

1. Counseling. The students are introduced to the *Lockett* problem in their first procedure class. The first exercise is more like a "problem method" case than a true simulation. The students are told that they work for a firm, and that one evening, during dinner at home, they receive a call from Carl Lockett, an old friend. He is distraught because his daughter is in the hospital, facing surgery, as a result of a snake bite in the pet store in which she was working. Before she developed any symptoms, the snake that bit her was purchased by the customer to whom she had been displaying it. The customer has just been told that it is dangerous, and police officers are on their way to his house to destroy it. Meanwhile, the store has offered Lockett's daughter a few thousand dollars to defray her hospital expenses.

These facts present the students with several counseling problems, including deciding who their client is; how much they can discuss or plan with Carl before having any contact with Lucy, who is likely to become their client; what, if anything, to do about the imminent destruction of the snake, which they are likely to need for investigation or evidence; and what to do about the cash offer. When they discuss these issues, the students inevitably

25. Sometimes a small number of students temporarily become the adversary lawyers for "on stage" simulations of motions, depositions, and jury selection, and many students switch sides for the final negotiation exercise.
26. I had expected that the class would resent my decision not to hand back individually corrected papers. To my surprise, students do not object to this practice. They understand the practical constraints under which I am operating, and, because they do virtually no writing in their other classes (except the legal writing course), my composite feedback, however inadequate, gives more attention to their writing than all of their other large courses combined.
27. Carl is unaware that his daughter had been laid off; that information will probably emerge during the interview of Lucy. But because the information elicited during the interview depends on the questions asked, it may not come out until still later in the case.
discover their need for a legal theory as a framework for analysis. They also discover the connections between theories, facts, and evidence; the importance of beginning a planning process at the very outset of a conflict; and that even before they have begun the formal study of the law, they know a lot about possible legal theories.28

The most important aspect of the first class is that students learn that they have some good ideas about how to approach these problems, even on the first day of law school.29 Within just two or three weeks, they will start to feel as though their whole world is being turned upside down and that their education is just beginning. Reminding them of their ability to handle this exercise can help to convince them that their experience in the world is relevant to their professional tasks, and that going to law school does not require them to park their common sense and knowledge of the world at the door.

2. Interviewing. The first truly simulated experience is the interview with Lucy Lockett a few weeks later. Although it is impossible to give every member of a large class a personal interviewing experience, several members can participate in this and other "live" exercises, while a consultation component helps to involve the others. Ten volunteers are selected about two weeks in advance to conduct the interview itself, in five teams of two, each of which will have ten minutes with Lucy in front of the rest of the class. About thirty minutes are devoted in the class before the interview to a discussion, led by the ten volunteers,30 of areas to cover with Lucy, noninformational goals, and interviewing techniques. The discussion tends to be very animated, with a high degree of class participation.

Lucy prepares for her interview by studying a forty-page role description that anticipates every question (so far at least) the students might ask her. The role description includes a considerable amount of information harmful to her case, which the interviewers, desiring to keep everything pleasant, typically overlook until just before or during Lucy's second-semester deposition by adverse counsel. At the end of the interview, Lucy is excused, and the instructor leads the class in a twenty-minute critique of the interviewers' work.31

3. Strategic planning. After the interview, the case is laid aside for several weeks while the class studies jurisdiction and remedies. During the hiatus, a transcript of the interview is distributed; it becomes the first document in an extensive case file that the students compile. Late in October, they

28. For example, students frequently suggest that Lucy might have some right to compensation based on her employment contract, or because it might be illegal for stores to sell poisonous snakes. Sometimes students suggest that the store might have been "negligent."

29. We usually have a good discussion, for example, of the need to preserve the snake, alive or dead, to show to an expert and display to a jury. The students are also quite ingenious when it comes to suggesting ways to kill the snake so as not to destroy evidence (e.g., by putting it in the buyer's freezer).

30. Because this is their case, the volunteers replace the instructor on the podium for the discussion.

31. Typically, the students are eager to start planning a strategy at this point, and the instructor must work hard to keep them focused on learning from the interview rather than jumping to the next exercise.
receive the first batch of memoranda from the research assistant, and they are asked to develop written strategies for a suit by Lucy. As part of the assignment, they must decide who the plaintiff(s) should be, what defendants to sue, in what court to bring suit, what legal theories to rely on, what relief to seek, and what additional factual and legal investigation is necessary.

We spend an entire class period simulating a meeting of a law firm task force, during which the students compare their strategic plans and develop a composite plan for handling the case. After discussion, issues on which there are divisions are decided by voting. The vote binds the firm for purposes of the complaint drafting assignment that follows.32

4. Complaint drafting. After a study of pleading, which includes both a study of appellate decisions and of the actual pleadings in the Buffalo Creek case, the students draft a complaint on behalf of Lucy. The entire class begins to develop a composite complaint, using the computer projection technique suggested by Kelso and Kelso.33 I sit at the front of the room at a computer console. Above my head, the computer output is projected onto a screen that the entire class can see. Someone reads a proposed first sentence for a complaint; I type it onto the screen; and someone else makes an editorial suggestion. Using a word processing program, I keep posting and changing each paragraph until most people like the result; again, disagreements are resolved by quick votes. Drafting in a committee of 140 has some circus qualities, but the students enjoy it. We do complete about a quarter of a reasonably well-drafted complaint during the class period and also learn something about drafting and about the relationship between wording and theory. After class, I complete the complaint by using sections drawn from written submissions, and the final version becomes part of the students' case files.

5. Motion practice: an evidentiary hearing. The students then study responses to a complaint and receive a response to theirs. After the snake importing company makes a motion to dismiss based on evidentiary facts, the court schedules an evidentiary hearing and an oral argument for the last two days of the fall semester. The hearing, like all the court sessions, is held in the law school's moot court room; I serve as judge, and two volunteers represent each side on each of the two days. The four volunteers representing the importer meet in advance with the actor who plays one of the importer's officers. They then present his direct testimony, and the volunteer lawyers for Lockett cross-examine the witness. An official videotaped transcript is put on reserve in the library.

The challenge for a simulation designer is keeping the rest of the students fully involved while a small number of their representatives conduct the action at the front of the room. Several devices help. First, all

32. Students can reasonably disagree, for example, about whether to sue the store owner as well as the store; whether Lockett's parents should be parties; and whether the case should include a claim on behalf of a class of all consumers who have bought the same kind of snake, seeking to warn them of the danger and obtain refund offers.

students are assigned to write cross-examination questions. They give a copy to me for purposes of credit and another copy to their representatives who will actually do the cross-examination. The assignment ensures that everyone has thought about the theory of the motion and about the facts Lockett needs to adduce on cross in order to defeat it. Second, the courtroom setting and the glare of the video lights serve to heighten the excitement. Most important, however, is the use of a recess. All the students are told in advance that the court will recess for ten minutes halfway through the cross-examination. During the recess, the importer's witness and lawyers leave the room, and the judge leaves the courtroom stage. The representative lawyers for Lockett then consult with all of Lockett's other lawyers about how to proceed during the second half of their examination. Members of the class usually have many suggestions, and, through the recess device, they are able to have their representatives act on at least some of them. The class ends with an instructor-led critique of the hearing.

6. Motion practice: oral argument. At the next class, the other two volunteers for each side make a legal argument to the court. They can use, as facts, any evidence that was adduced in the oral hearing and can draw on any law outlined in the research memoranda previously supplied to them. Any facts that the importer's lawyers may have learned from their witness but that did not come out at the hearing are simply not in the case; in this way, students are introduced to the idea that facts do not come in neat packages but have to be discovered and then turned into evidence.

This hearing also includes a consultative recess: halfway through the respondent's argument, the movant's lawyers leave the room, and Lockett's lawyers consult everyone else in the class about how best to complete the oral argument. This device keeps most students involved in following the theoretical turns of the argument.

7. Replying to a counterclaim. After the argument, the judge rules on the motion. In the final moments of the semester, however, the students are confronted with a surprise development: one of the defendants serves an answer containing a counterclaim, and unless their interview with Lucy brought out the weaknesses as well as the strengths of their case, the facts underlying the counterclaim are new to them. They receive a memorandum from the research assistant summarizing Lucy's reactions to the new allegations, and their first Lockett assignment of the second semester is to draft a reply. The instructor provides feedback on the draft replies and distributes a composite.

8. Class-action certification. Whether or not the class actually does the eighth exercise—argument in court of a class-action certification motion—depends on whether they choose to denominate their suit as a class action. If they do, they write a short paper anticipating the most serious

34. This device gives students some experience with drafting a defensive as well as an offensive pleading; they have an opportunity to think about affirmative defenses as well as admissions and denials.

35. Lucy very much wants to do something for everyone else who has purchased a philodryas snake imported by one of the defendants, but on the facts of this case, it is unlikely that class-action certification could be obtained. If the suit is not denominate a class action
legal problems they will confront. Volunteers argue the motion, with a recess for class participation.36

9. Interrogatories. At the end of a long unit in which we study discovery rules and cases and the discovery requests and motions in the Buffalo Creek case, the students draft ten interrogatories. Again we use the computer projection equipment to draft composite interrogatories in class. Typically we complete only two or three interrogatories in most of a class period, but this helps to make the point that many important drafting choices underlie well-drafted questions. After the class, the instructor completes a set of twenty interrogatories, beginning with the group-drafted questions and drawing the rest from the actual written submissions of the students. A few days later the interrogatories are answered by the defendant to which they were directed. Poorly drafted interrogatories are, of course, answered with noninformative responses.

10. Depositions. The two depositions, taking two full class sessions, make up the most dramatic exercise. Students prepare by writing (and giving to their representatives) questions to be asked of the importer. Volunteers conduct the questioning and defense of Lucy in her second class appearance, and then of the importer’s vice president.37 Lucy meets with her lawyers in front of the class, out of the hearing of the other side’s lawyers, before her deposition. In this preparatory session, she reveals some new damaging information that requires the class to help its representatives decide (during two recesses) how to minimize the loss. Her role description also includes some damaging information that she will reveal in the preparatory session if she is asked relevant questions, but which may come out for the first time during the deposition itself if the opposing lawyers are a step ahead of her own counsel.

The importer’s vice president has a role description that includes a considerable amount of information that is very damaging to his firm’s side of the case. The settlement value of the case now turns to a large extent, as in real litigation, on the relative abilities of his lawyers to prevent this information from being elicited in detail and of Lucy’s lawyers to drag it out of him. This is a fast, highly electric exercise, with a recess for class advice. In both depositions, the volunteer lawyers are likely to have a tendency to behave in ways that bring them close to—if not over—ethical lines.

in the complaint, I ask the class, after our study of class actions, to analyze what would have happened if it had attempted to achieve class-action treatment.

36. In the 1986–87 simulation, the case was brought as a class action. During the argument of the certification motion, however, the lawyers worked out an agreement that provided that the motion would be dropped and that the importer would send out warnings to known customers if Lucy won at trial. This spontaneous development is a good illustration of the ever-present possibility of resolving litigation in whole or part through negotiation.

37. For the importer’s vice president, I have used a Washington lawyer who plays villains in local theatrical performances; he shows up in sunglasses and gold chains for the private interview with his lawyers and for his deposition.
Videotape excerpts from these sessions are very helpful during a later class on the ethics of discovery.\textsuperscript{38}

11. \textit{Jury selection.} About a month before the end of the year, the class picks a jury to hear the Lockett case. Six volunteers represent the parties, and ten other volunteers serve as members of a panel from which six jurors will be selected. The jury panel members are encouraged to develop and assume roles based on those of nonlawyers whom they know. They can make up attitudes about lawsuits, animals, lawyers, insurance, doctors, and all the other elements of the case. The lawyers are permitted to conduct the voir dire themselves, questioning the panel as a whole or any individuals on it. Everyone in the class selects jurors for peremptory challenge, and in the subsequent discussion period the representatives compare their actual challenges with those that others in the class would have made.\textsuperscript{39}

12. \textit{Negotiation.} Like most civil cases, \textit{Lockett} ends with settlement negotiations rather than a trial. The negotiation exercise, which lasts for a week, requires more intensive work than the others because it is not conducted by representative volunteers but by everyone in the class.\textsuperscript{40} The class divides into groups of three. Within each group, one member represents Lockett, one is the attorney for the store, and one acts on behalf of the importer. Each has secret instructions, but the instructions for those representing the same party are identical. As in a large duplicate bridge game, more than forty sets of competitors start with the same cards—in this case, the facts and the law—and end up with quite different results, not only with respect to money damages but also changes in practices by the two defendant companies. In class, a chart is distributed to display the results, and the group discusses the many factors that account for the differences.\textsuperscript{41}

The list of twelve exercises\textsuperscript{42} omits one very important way in which both \textit{Lockett} and the Buffalo Creek case are used throughout the year. Virtually all classroom hypotheticals are based on variants of the two cases rather than on cases in which “A” or “Andy” sues “B” or “Barbara.” Students know the facts of the two cases very well, so they do not have to master a new fact

\textsuperscript{38} In 1989, for example, the class discussed videotape excerpts that showed Lucy asking her lawyers how to treat some potentially damaging information and her lawyers guiding her to the misleading answer that she gave when the question was put to her in her deposition.

\textsuperscript{39} The jurors at this point also reveal any biases that the lawyers failed to unearth during the voir dire.

\textsuperscript{40} Before I assigned this lengthy exercise, I was fearful that students would object to it strenuously, particularly because it came when they were studying for final exams. In fact, before they began to work on it there was considerable grumbling. But afterwards they reported that they were very glad to have done it and that students from other sections of civil procedure, seeing them negotiating furiously in the hallways, were envious of their opportunity to simulate a negotiation.

\textsuperscript{41} For some of the interpersonal dynamic factors likely to influence the outcome of negotiations, see the list in Schrag, \textit{supra} note 9, at 759–61.

\textsuperscript{42} Recently, I have added a thirteenth exercise, “Lockett Revisited,” in which students review the entire case to decide what they would do differently the next time they represent a client. We go over omissions in the interview and witness examinations, the strategy of the case, and drafting errors. The students who represented the importer’s officers finally reveal to the rest of the class the secrets that they learned from their client that were not forced into the open through the evidentiary hearing or the discovery process.
pattern for each hypothetical. In this way, students work with the Buffalo Creek and Lockett problems even for aspects of the course (e.g., third-party practice, voluntary and involuntary dismissals, res judicata) not simulated in one of the formal exercises.

**Evaluation**

Ideally, educational innovations should be tested through scientifically valid, methodical investigation, probably including long-term studies of experimental and control groups. For example, the long-term value of the Lockett simulation might be tested by examining its graduates, after a period of years, for their knowledge of civil procedure, and comparing them with a different class of civil procedure alumni who had been taught by the same instructor without simulation. Lacking time and money for scientific evaluation, educational innovators must generally settle for their own impressions and their students' reactions as reported on evaluation questionnaires.43

My own impression is that the simulation succeeds well in enabling students to understand the civil procedure system in a deeper way than can be conveyed through a reading of appellate cases alone. By serving as attorneys, even in a simulated environment, students must deal with human clients, plan strategies, draft papers, propound oral and written questions, negotiate with an adversary, and perform many other tasks that litigators do daily. Their experience equips them better to critique the workings of the adversary system. In addition, I think that they enjoy working on the simulation and that it helps to keep up their interest in learning civil procedure.44

The students seem to support these impressions. In the spring of 1988 and 1989, I administered identical evaluation questionnaires on an anonymous basis. Approximately 100 of the students in the class (125 in 1988, 129 in 1989) responded.45 The first question asked them to compare their experience working on Lockett with what their experience might have been in a more traditional class (without a simulation) in which more time would have been available to read and discuss cases from the casebook.46 Specif-

43. See, e.g., Burg, supra note 1, at 243–47; Fry, supra note 4, at 259–60.
44. The simulation may help to bridge an "engagement gap" between civil procedure and other first-year courses. As first-year student Liza Palmer put it to me, "The other first-year courses are inherently less boring, because they touch on aspects of our own lives. We all have some ongoing experience with property and contracts because we all rent houses or apartments and we sign contracts all the time. But most of us have never had any direct contact with litigation. The simulation makes civil procedure interesting by providing a personal connection with the subject. Because the litigants come into our class and we get to know them as the year goes on, we feel much more involved in their story and in the other stories that become procedural controversies."
45. I am unable to explain why there were only about 100 responses to a questionnaire administered in class; in both years, attendance was much higher than that on the day the questionnaire was given. Perhaps refusal to respond represents some sort of disaffection with the simulation, or perhaps some students simply object to questionnaires.
46. In a course in which twenty percent of the work involves a simulation exercise, something must be cut. Every instructor will make different decisions on what to omit.
ically, the students were asked whether they “learned more about procedure in civil litigation because we used part of our time for the Lockett exercise” or whether they “would have learned more about procedure in civil litigation if we had devoted all of our time to the study of cases.” They were also asked whether they enjoyed the course more because of the exercise (as compared with the reading and discussion of more cases). The results are displayed in Table 1.

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<td>Learned more with exercise</td>
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<td>93</td>
</tr>
<tr>
<td>Would have learned more without it</td>
<td>12</td>
<td>1</td>
</tr>
<tr>
<td>Don’t know</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>Enjoyed course more because of exercise</td>
<td>76</td>
<td>96</td>
</tr>
<tr>
<td>Would have enjoyed course more without it</td>
<td>11</td>
<td>0</td>
</tr>
<tr>
<td>Don’t know</td>
<td>10</td>
<td>4</td>
</tr>
</tbody>
</table>

I was particularly interested in learning whether the written assignments and the recesses succeeded in keeping most of the students involved even when they were not participating in an exercise on stage. The questionnaire asked them to select the statement that best described their involvement when they observed volunteers rather than served as volunteers themselves. Sixty-seven of the 1987–88 respondents said that they “remained involved in the event because of the preparation [they] did and the opportunities for the class to advise during recesses,” while twenty-eight said that they “felt removed from the action and disengaged from it.”

Although these numbers seem acceptable, it is troubling that more than a quarter of the students did feel disengaged during major simulation events. Additional devices may be necessary to hold their attention.

The students were also asked, “If you could have had your way, in how many of your five substantive large, first-year classes would you have wanted a substantial simulation component (fill in a number from 0 to 5)?” The distribution of responses suggests that although some students find simulation so useful that they would like it in every course, a plurality of first-year students believe it appropriate in one or two large first-year

I make time for the simulation by not including the common-law history of civil procedure, by holding the discussion of Erie and its progeny to three classes, by covering appeals in fifteen minutes, and by giving res judicata and collateral estoppel only one class each.

47. The 1988–89 numbers were virtually identical: 69 and 30.
48. Unfortunately, I did not ask whether these students also felt disengaged during “Socratic” dialogue in classes of 130. Curiously, a somewhat higher percentage of those who had participated as volunteers in an exercise felt disengaged as observers. Once a student has been on stage, perhaps merely watching pales by comparison.
A few mentioned on their questionnaires that simulation seemed particularly well suited to "process" courses such as civil procedure.

The evaluation form also included an open-ended question to which students could respond by saying what (if anything) they got out of working on the simulation. Some representative student responses follow:

Helped to understand how a case proceeds through the civil litigation system and all of the options available to a plaintiff during the course of a suit.

*  It gave a reality and practicality to the rules we learned. I liked the idea of having one case to work on the whole year.

*  Not much, because there were too many memos and handouts and I never had the time to read them and really devote myself to the case.

*  It complemented our reading very well and enhanced my understanding of the topics as we went along.

*  Satisfaction in knowing I have been able to draft a complaint, reply, and interrogatories. Feeling more actively involved in my own learning process.

Whatever its impact on students' learning, I can report that the simulation did succeed in its goal of not swamp the instructor. Because I was willing to scan written submissions rather than correct and grade them and did not aspire to build individual students' competency in presentational skills, I could keep demands on my own time within reasonable bounds. A very small number of simulation events do require more than a typical amount of class preparation time, but for most of the dozen or so classes involving simulation activity, no more than about three hours of preparatory work was necessary. On days when simulation exercises take place, usually no casebook material is assigned, and the amount of preparation time is not significantly greater than the time that I spend preparing to teach more traditional classes.

It would be possible, of course, for a faculty member to reduce still further the amount of preparatory work—including the design work—necessary for an extensive simulation. In some schools, teaching assistants or legal writing instructors may be available to assist. In others, clinical

50. Such tasks include proofreading and correcting the transcript of the interview with Lucy; completing the students' composite complaints and interrogatories by drawing from their drafts (and answering the interrogatories as well); and, especially, preparing a chart summarizing the results of more than forty negotiations.
teachers may be eager to bring their skills into traditional classrooms by designing and administering relevant simulations.51

Conclusion

It is probably not desirable to replace the case and problem methods of instruction by redesigning law school curricula entirely around simulation exercises. It might be useful, however, to give simulation a considerably larger role in law school than it presently plays. The concern that simulation is impracticable in large classes because it demands too much of the instructor's time or because it cannot be administered without teaching assistants may be overstated. Certain design features can reduce the burdens on instructors without significantly undercutting the richness or excitement of educational simulations.

51. I am grateful to Catherine Klein of Catholic University Law School for this suggestion. Cooperation between clinical and nonclinical teachers in simulation exercises may also help to bridge what some have called "the gulf separating clinic and classroom." See Burg, supra note 1, at 233.