A. *Learning Plans and Major Projects*

In general, I think that law schools train students to be too reactive to graduation and course requirements. As a result, many students simply pick courses that comply with course requirements and do not take much responsibility for planning their overall legal education.[53] Students in my Spring courses were prompted to take more responsibility for directing their own learning by developing one-page learning plans. The plans specified what students wanted to learn in the course and identified a project that would help them achieve their goals. The instructions for the assignment included long lists of types of knowledge and skills related to negotiation. These lists illustrated possible goals for students to focus on, though students were invited to propose goals that were not on the lists. The instructions also suggested types of possible projects, though students were free to propose other projects that were not specifically identified in the instructions. In any case, the assignment required students to analyze how the projects would help achieve their goals. Students were also required to submit overall self-assessments at the end of the semester describing what they learned through the simulations and their individual projects and how well the students achieved their course goals.

Students undertook various types of projects, which seemed mostly unrelated to their stated learning goals. Most students seemed to treat the assignment as just another course requirement, which they would hopefully find interesting and lead to a good grade.[54] In fact, I have doubts about how much the projects added to the students' learning about negotiation or lawyering generally. The quality of the projects and overall course self-assessments va-

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[53] Law schools can encourage students to take more responsibility for planning their educations by using a system of portfolios, starting during a student's first year, to develop individualized learning plans based on each student's career goals. *See generally* Deborah Jones Merritt, *Pedagogy, Progress, and Portfolios*, 25 OHIO ST. J. ON DISP. RESOL. 7 (2010). For discussion of portfolios in negotiation courses, *see* Michelle LeBaron, *Portfolio Evaluation: Kaleidoscopic Insights Into Learning Effectiveness and Change, in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES 283, 283 (Noam Ebner et al. eds., 2012).

[54] The most common type of project was writing simulations, which dealt with a personal injury case, plea bargaining, contract negotiation, sustainable development, and real estate disputes. Some students interviewed lawyers about using negotiation tactics, cultivating professional reputations, and managing client expectations. One student analyzed three actual negotiations that he observed in his job. Students wrote research papers on developing a negotiation strategy for salary negotiation and the use of humor in negotiation. One student developed interview and survey instruments for getting input from clients before and after representing them. Another student developed a website design for a law office.

ried greatly. Many students said that they did not understand what they were expected to do. Considering that the instructions were quite detailed and I answered students' questions, I interpreted students' confusion as a reflection that the expectations for this course were very different from the expectations in other courses. Many of the students in my course were in their last semester of law school and I suspect that some had little motivation to do anything unusual at that point in their law school careers. Indeed, some students said that they would have preferred a single standard assignment, perhaps so that they would have more confidence in the fairness of the grading. If law school culture generally promoted more student initiative, my students might have responded differently. Part of these students' responses may be related to the fact that many students felt frustrated by the total amount of assignments and they might have invested more care as if they were not so frustrated.

I have come to believe that one of the most important things law schools should do is to teach students to "learn to learn."[55] It is impossible to teach students all the knowledge and skills they will need in practice and so it is important to prepare them to continue to learn throughout their careers. This seems particularly important in developing skills, which requires careful self-reflection. Promoting the process of learning to learn became my highest priority goal for this course.

In the Fall semester, I did not require students to submit learning plans or to specify learning goals or individualized projects. Nor were the students required to submit an overall assessment of what they learned in the course. Instead, the major assignments were assessments of simulation interactions.[56] During the third week of class, each student submitted a four- to five-page assessment of a single-stage simulation, and at the end of the semester, each student submitted a twelve- to fifteen-page assessment based on one of the multi-stage simulations. The first assessment was

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55 *See* Melissa L. Nelken et al., *Negotiating Learning Environments, in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 199, 223–26 (Christopher Honeyman et al. eds., 2009) (emphasizing the importance of "learning to reflect on one's own *learning processes* (or "metacognition")").

56 These assignments are sometimes called "journals," a term I avoid because it suggests that students write a stream-of-consciousness diary rather than the structured analysis that I prefer. For an overview of using these assignments in negotiation courses, *see* Bobbi McAdoo, *Reflective Journal Assignments in Teaching Negotiation, in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES 65 (Noam Ebner et al. eds., 2012). *See also* Charles R. Craver, *The Benefits to be Derived from Post-Negotiation Assessments*, 14 CARDOZO J. CONFLICT RESOL. 1 (2012).

worth 20% of the grade, and the final assessment was worth 60% of the grade (with the remaining 20% based on course participation). The purpose of the assignments was for students to practice self-analysis by reflecting on what they learned from a simulation about negotiation and/or themselves as negotiators. I provided instructions emphasizing that students should focus on a small number of challenging and important issues in depth rather than providing superficial description of a larger number of issues. Challenging issues were defined as those with more than one plausible way to handle the issue. The instructions encouraged students to candidly analyze the interactions, informing them that they would receive better grades for a candid and insightful analysis of problems than for a superficial presentation that avoided real analysis of problems. The instructions also required students to relate their analysis to some material from the negotiation literature.

Although some students had questions about what was expected and expressed some uncertainty about the assignment, they generally figured out what was required. Indeed, the papers were some of the best I have ever received, ranging from pretty good to outstanding. This was probably due to the relative clarity of the assignment and the fact that students were very engaged in the simulations and readily found interesting issues to discuss. The papers focused on challenging experiences such as maintaining appropriate relationships with clients and counterpart lawyers, managing client expectations, dealing with difficult emotions, developing trust, managing an exchange of apologies, managing client participation in negotiation, and choosing a negotiation approach. I was very impressed by the quality of students' introspection and was pleased to read several papers describing students' surprise that they learned more than they expected at the beginning of the semester. This was a sharp contrast from my assessment of the learning generated by the major projects in the Spring semester.

Some students in the focus group said that they had a hard time filling twelve to fifteen pages for the final self-assessment. Although some students did an excellent job without seeming to "pad" their papers, the focus group reaction may reflect a general discomfort with writing papers of this length. Students in the focus group liked the idea of dividing a single large paper assignment into two shorter papers, which has the added benefit of providing additional feedback during the semester (though this obviously requires more faculty time). Students liked the idea of posting a

good sample paper to give them a model for how to write their papers.

In the Fall semester, I also offered students the opportunity to write optional extra-credit papers to provide incentives for students who wanted to learn more about negotiation. If students wanted to write an extra-credit paper, they needed to submit a proposal by a certain date in the middle of the semester. By submitting a proposal, students did not commit to writing a paper, but they were precluded from submitting one if they did not submit a proposal. Four students submitted proposals and one student submitted an extra-credit paper.

B. *Course Rules, Reputation Goals, and Reputation Survey*

I have participated in discussions with colleagues around the country about promoting ethical behavior in negotiation classes and heard how some faculty use reputation surveys to simulate the effects of social norms on lawyers' behavior. Some faculty conduct surveys of students at the end of the semester about the trustworthiness of their classmates, and some faculty use the survey results in assigning a small part of the students' grades.[57] In my Spring semester courses, I wanted to develop social norms from the outset of the course and use those norms in a survey at the end of the semester. At the beginning of those courses, students were assigned to write short paragraphs about (1) how they wanted other lawyers to think of them; (2) how their reputations would affect their interactions with lawyers; and (3) what they might do to generate their desired reputations. Students gave excellent responses, with the most common items including variations of being perceived as professional, competent, hard-working, well-prepared, reliable, timely, effective, firm, fair, reasonable, cooperative, dedicated to their clients' interests, respectful, respected, honest, and pragmatic. We had a very good class discussion about the importance of lawyers' reputations.

At the end of the semester, each student was required to confidentially nominate the two classmates who they believed excelled in each of the following three categories: (1) acting professional; (2) acting appropriately firm; and (3) acting fair, reasonable, and

[57] For discussion of the use of reputation indexes, *see* Nancy A. Welsh, *Making Reputation Salient: Using the Reputation Index with Law Students*, *in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES 173 (Noam Ebner et al. eds., 2012).

cooperative.[58] They were required to write one or two sentences explaining specifically what the student did that prompted the nomination. Students gave very thoughtful comments and I think that the exercise was useful for all the students as it led them to reflect on their classmates' performances. I created a spreadsheet of their responses and tallied the number of nominations of each student in each category. Although I collected only positive information, I did not want to provide the information to students who did not want it. So I told students that I would be happy to provide it if requested. No one requested it, perhaps because they were focused on other things at the end of the semester.

Considering that I had invested a lot of time compiling the responses with little student interest, I decided not to repeat the survey in the Fall semester. The lack of responses suggested that students did not value getting such information and it was not worth my time to collect and distribute it. It turned out that the students in my focus group from the Fall semester wished that they had received both positive and critical feedback from their classmates. They said that they had gotten such feedback in a trial practice course and found it to be extremely valuable—especially feedback pointing out their behaviors that they were not aware of.

I developed a set of course rules for the Spring courses that were adapted from the Model Rules of Professional Conduct. I planned to have students do some of the simulations outside of class and I focused the rules on diligently performing the simulations. A secondary purpose was to remind students about obligations of truthfulness in the simulations, to supplement the reputational pressure. On the first day of class, I reviewed the rules, took an oath to administer them fairly, and had the students stand and take an oath to follow the rules. Although I think that this is an intriguing idea, I suspect that it did not have much of an effect on students' behavior as typical student concerns may have taken precedence in their minds, if they remembered the oath at all. In a mid-semester feedback survey, most students said that they did not think that the course rules or emphasis on professionalism was helpful. In the Fall class, I omitted the course rules in an

[58] I did not ask students to indicate students who they thought acted problematically as I did not get the sense that students acted unethically or inappropriately. So I think that students were not primed to act unethically. Students in the focus group said that they did not think that any students in their class acted unethically, though this may have been partially due to the fact that so many of the students knew each other before the course.

effort to streamline the course, especially since I decided to do all the simulations during regular class periods.

C. *Letter to Clients and Law Firm Webpages*

For lawyers to negotiate effectively, it is very important that they have good relationships with their clients. Of course, lawyers differ in their approaches, and I wanted students to develop approaches fitting their own personalities and philosophies. In the Spring semester, students were required to write approximately two double-spaced pages of material for a website or a general letter to clients explaining their philosophy of practice. I thought that this was a valuable exercise because it prompted students to think seriously about how they might communicate effectively with prospective clients to set appropriate expectations of the attorney-client relationship. The instructions noted that this relationship depends on negotiation, since lawyers need clients who are willing to hire them and continue to retain them if they go through difficult times together in their cases. The assignment therefore prompted students to think about what they could say that would make potential clients want to hire them and work together successfully. For example, lawyers might want to highlight legal knowledge, competence, integrity, or other qualities. The instructions pointed to examples in the reading assignment to stimulate their thinking. In the Fall semester, I did not require students to do this assignment because I was limiting the requirements and this was not a high enough priority for me. But I think it is a good exercise, and if I were to do it again, I would require students to write a law firm website homepage after looking at actual law firm websites.

D. *Simulation and Assessment Procedures*

Students did exercises in almost all of the classes and I developed certain routines related to them.[59] Typically, class would be-

[59] In one of the only classes in which we did not do simulations, we discussed legal ethics by focusing on the "DONS" case, in which a client asks his lawyer to take various actions to misrepresent the facts during a negotiation. The fact pattern is based on a popular simulation and was the basis of a study by Professors Art Hinshaw and Jess Alberts. *See* Art Hinshaw & Jess K. Alberts, *Doing the Right Thing: An Empirical Study of Attorney Negotiation Ethics*, 16 HARV.

gin with a discussion of theoretical issues and then the students' goals in the simulation. In the middle of the Fall semester, I started instructing students to close their eyes for thirty to sixty seconds before we started the simulation and think about the task they were about to perform. I did this to help students get into their roles, especially when they were playing people with very different experiences than theirs, and especially when playing clients (as opposed to lawyers). For example, one simulation that illustrated cultural differences involves a Chinese-American senior partner in a Seattle law firm negotiating a high-tech licensing deal with a hotshot senior associate at a Texas law firm. As one might expect, many students had problems imagining the perspective of the senior Chinese-American lawyer. I wanted students to develop a habit of mental preparation and I took time for this reflection before most of the simulations. Toward the end of the semester, I asked if students found this to be helpful. Although many students did not feel strongly that it helped, when I asked whether to continue the practice, almost all indicated that I should do so. Students in the focus group suggested that, before starting the period of silent reflection, it would help to give a specific suggestion for students to try to get into their assigned roles.

To help students cultivate a habit of learning to learn, I had students complete one-page assessment forms after virtually every simulation so that they would develop a habit of reflection. The forms varied somewhat depending on the simulation, but they generally asked students: (1) if they reached agreement; (2) what factors were especially important in leading to or preventing agreement; (3) what they might have done to overcome barriers to agreement; (4) how satisfied they were with the result; (5) how satisfied they were with the negotiation process; (6) how well they performed overall; (7) what they did particularly well in the negotiation; and (8) what they might do differently in the future. I would generally give them several minutes to complete the forms and then debrief the simulation in a class discussion, focusing on some of these issues. Students kept these debriefing forms for their own records and did not submit them to me. I encouraged them to use these forms when writing the assessments that they submitted as their final paper, described above in Part V.A. Although I got mixed reactions from students about the usefulness of these brief self-assessments, I think they are worthwhile and plan to continue

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NEGOT. L. REV. 95 (2011). I asked students what they would do in the situations and we discussed the results of the Hinshaw and Alberts survey. This class worked very well.

using them. I will remind students that many students have found this practice to be valuable, and that the amount of value they receive depends on how much effort they invest.

E. *Documents Prepared for Multi-Stage Simulations*

In most U.S. law schools, students can graduate without ever seeing basic legal documents (such as complaints, motions, contracts, wills, mediation memos, and settlement agreements), let alone having drafted them. This is a significant shortcoming in legal education and I wanted to address it in my courses. In the multi-stage simulations during the Spring semester, students were assigned to prepare a number of legal documents. In the Fall semester, I substantially reduced the number of documents students were assigned to prepare, as described below.

In all the multi-stage simulations, the lawyers prepared a list of information they wanted to get following their initial client interviews. I wanted students to get into a fact-gathering mindset from the outset of the simulation. Students did not prepare formal discovery documents because I did not want to instruct students on discovery procedure or require students to spend too much time on this activity. Instead, they prepared lists of desired information that were generally a half a page to a full page long. Some of the lists were pretty basic, and others reflected more thought about an information-gathering strategy. Although students in the focus group thought that this assignment was not particularly valuable, I still think that it was. In the future, I will probably spend more time in class before the assignment "priming the pump" by talking about the facts lawyers might want to gather, having the students prepare the lists, and then discussing these issues afterwards.

In the Spring semester, the lawyers in the probate dispute prepared five-page legal memos analyzing the legal issues in the case, which were designed to prepare them to discuss the law with their counterparts in an improv simulation. Students took this assignment seriously and generally did a good job. To reduce students' workloads, I did not assign them to prepare legal memos in the Fall semester, though I felt this assignment was valuable and ideally would keep it in the course.

In both the Spring and Fall semesters, the lawyers in the probate dispute prepared mediation memos for the mediators and their clients. I think that this is an important assignment because

these documents can be important elements of mediation advocacy in real life, and students are not likely to see them elsewhere in law school. It was also an important mechanism for informing the mediators about the case. The mediators were student volunteers and this provided a useful educational experience for them. I think that the memos helped students analyze the case and generally were pretty well done. In the future, however, I plan to have the students engage in unmediated negotiation of the probate dispute.[60] The lawyers will prepare negotiation plans instead of mediation memos for these unmediated negotiations, though the content of the plans and memos will be very similar.

During both semesters, the lawyers in the partnership agreement simulation were assigned to prepare a memo for their files analyzing options for handling disputes in the partnership. The memos were designed to prepare students to have a discussion with their counterpart lawyers during an improv simulation. I found that the memos discussed the dispute resolution options pretty generally and did not consider the clients' interests as much as I had hoped they would. However, the class discussions of dispute resolution options were pretty good and I expect that these discussions alone will work well in future classes, even if students do not write these memos. Instead, I plan to assign the lawyers in this simulation to develop negotiation plans because of the importance of the planning process. This would provide lawyers in both the probate and partnership multi-stage simulations the opportunity to prepare a negotiation plan.

In the Spring semester, pairs of counterpart lawyers drafted settlement agreements in the probate case and partnership agreements in the restaurant case. I gave them citations to forms in online formbooks that they could adapt to create their settlement agreements. The instructions told students to plug in the relevant provisions, use relevant boilerplate language, and delete irrelevant boilerplate. I told them not to worry too much about crafting the language as my goal was primarily for them to have some experience working with these documents. Indeed, it appeared that they did not generally invest much time in preparing these documents. I did not include these assignments in the Fall semester, as part of my effort to streamline students' workload. I feel ambivalent about this. On one hand, I think it would be very appropriate in a

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60 As described above, the experience using student mediators reflected the difficulty in controlling the mediators' performance and providing a good experience for the Negotiation students. *See supra* note 44.

Negotiation course for students to have some experience drafting agreements. On the other hand, I am not sure how much students learned from this experience and whether it is a high enough priority to include the course.

F. *Readings and Quizzes*

I tried to minimize the amount of reading assignments as I wanted to focus primarily on developing skills and it was a much lower priority for students to gain a deeper understanding of negotiation theory. The readings for the first half of the course focused on a series of discrete topics including theories of negotiation; ethics and law of negotiation; identity, emotions, and culture; trust and persuasion; power; justice; apologies; and handling problems in negotiation. Many of the readings I assigned were short articles from an excellent symposium issue of the *Marquette Law Review* on the canon of negotiation.[61] Most of the reading assignments for the second half of the course, when we did the multi-stage simulations, were from my book, *Lawyering with Planned Early Negotiation*.[62] For almost half of the classes, there was no reading assignment at all.

In law student culture, many students do not do reading assignments if they feel that they can get away with it. Obviously, students do not learn as much if they do not do the assigned readings. If it becomes apparent that a substantial number of students do not do the reading, it sends a signal to the other students that they are foolish to read the assigned readings, possibly discouraging them from continuing to do so. Some faculty call on students without warning to create an incentive for students to do the required reading and avoid embarrassment. I generally feel uncomfortable with that approach and think it is not effective when students can provide some plausible response without doing the readings, as was often the case in my Negotiation courses. As the Spring semester proceeded, it appeared that a declining proportion of students completed the reading assignment. One day in class, I gave a one-question ungraded quiz that anyone who did the reading could have answered easily. Slightly more than half the class could not answer the question.

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[61] *See generally* Christopher Honeyman & Andrea K. Schneider, *Catching Up with the Major-General: The Need for a "Canon" of Negotiation*, 87 MARQ. L. REV. 637 (2004).

[62] LANDE, *supra* note 6.

For the Fall semester, I decided to regularly use ungraded quizzes on reading assignments. The syllabus described the quizzes, stating that the purposes were to help identify what they learned from the readings, prepare them to discuss issues in class, and motivate them to do the readings.[63] The syllabus stated that students' performance generally would not affect their grades, though repeated unusually good answers or inability to answer appropriately could affect their grades. This system worked very well. I gave about eight quizzes, which usually consisted of a single question that could be answered easily in one or two sentences if the students had done the reading. Typical quiz questions asked what in the reading assignment would be most helpful in a negotiation, or requested the definition of the central concept in the reading. In the future, I may write quiz questions that ask students to describe how they could apply concepts from the reading to situations in practice. This question may prompt them to appreciate the value of the readings since several students questioned the value of some readings. Immediately after I collected students' answers, we generally had very good discussions in class. I read the answers after class, which gave me a good feel for what students learned from the readings.

In the second and third quizzes in the Fall semester, a quarter or a third of the students had not done the readings. I emphasized the importance of the readings and that students' grades could be affected if they repeatedly could not answer the questions on the quizzes. In some classes, I alerted students that there might be a quiz coming up. This may have prompted them to do the readings. After I gave these alerts, virtually all of the students were able to answer the questions on the remaining the quizzes, which led to better class discussions. So I think that this system of quizzes worked very well.

To my surprise, students in the focus group said that they liked the quizzes, as they prompted them to do the reading. This suggests that students valued the readings but would not have done as much of the reading without the quizzes. Students reported that their satisfaction was related to the fact that the questions were reasonable—not specific "gotcha" questions—and that students were not penalized if they did not do the readings once or twice.

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63 For a general discussion of quizzes in negotiation courses, *see* Noam Ebner & Yael Efron, *Pop Quiz: Do You Use This Evaluation Method?, in* Assessing Our Students, Assessing Ourselves 43 (Noam Ebner et al. eds., 2012) (focusing on quizzes designed to test objective knowledge).

They also appreciated my warnings that a quiz might be coming soon.

G. *Grading*

Like many other faculty, grading is one of my least favorite tasks in teaching. It is very hard to validly reduce an evaluation of complex performance into a single score.[64] In law school culture, grades take on huge significance. Sometimes, minute differences in grade point averages can make a big difference in students' employment opportunities. Although grades in a particular course generally do not have such an effect, they can have a huge emotional power over law students' self-esteem. So I try to be as fair as I can, which puts emotional pressure on me as well.

In negotiation courses, faculty can base grades on several types of elements, including negotiation knowledge, outcomes, skill, and learning. I have focused on measuring students' learning, primarily through end-of-semester papers, as described in Part VI.A. Although assigning students to choose their own learning goals and activities made sense in theory, it did not seem to work well in practice in the Spring semester. By contrast, students did much better in the Fall semester by writing assessments of their negotiation experiences using a somewhat standard set of directions. In particular, this assignment called on students to reflect on their own learning, advancing my primary goal of teaching students to learn to learn about negotiation. Fortunately, this approach seemed to work well, as the other approaches are problematic for me.

Although I would love for students to learn a lot about negotiation theory and practice from academic literature on negotiation, this is a low priority for me in a law school negotiation course. I think that students need as much practical training as possible given the current structure of the curriculum, which is heavily weighted toward acquisition of knowledge with relatively little emphasis on developing skills.

Some faculty base a portion of a student's grade on the outcome of simulations, so that students who negotiate more

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64 For an overview of evaluation in negotiation courses, *see* Noam Ebner, Yael Efron, & Kimberlee K. Kovach, *Evaluating Our Evaluation: Rethinking Student Assessment in Negotiation Courses, in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES 19 (Noam Ebner et al. eds., 2012).

favorable agreements get higher grades. A variation of this approach is that some faculty base part of a grade on students' reputations with their classmates, as reflected by a survey conducted at the end of the semester.[65] These approaches are intended to simulate the importance of outcomes in real life and create incentives for students to improve their performance. Although I appreciate the goals of these approaches, I would not feel comfortable using them. Students' performances in negotiation would be affected by their classmates' actions, which may vary from one group to another, and thus may not produce valid measures of students' performances. Similarly, students' reports in reputation surveys may have validity problems, which is especially serious when incorporating the results in grades. Indeed, it seems as if it partially delegates an important faculty function to students, which feels very uncomfortable for me. I think it creates incentive for students to focus too much on negotiation outcomes and classmates' assessments of them instead of on important elements of their performance.

In theory, I am much more comfortable evaluating students' skills and techniques than having students evaluate each other. Indeed, much of the class discussion is centered on my evaluations of the simulations, and I think that students learn a lot about the likely effects of various negotiation tactics through classroom discussion. I am wary, however, about basing students' grades on their demonstrated skill because I have doubts that I can provide valid and fair assessments. For one thing, there are many different skills involved in negotiation. These include, but are not limited to, listening, questioning, counseling, developing rapport and trust with clients and counterpart lawyers, getting others to agree to negotiate, analyzing negotiation issues, developing and implementing effective negotiation strategies, overcoming barriers to agreement, avoiding common errors in negotiation, and dealing with cultural and other differences. Assessing these skills involves a great deal of subjective judgment and there are significant differences in philosophy within the field. I normally see only brief interactions in negotiation simulations, without getting the full context of any negotiation. Some instructors have students videotape their performance, which is an improvement, though it can lack context and also vary greatly depending on the actions of the other students in the simulation.

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[65] For description of reputation indexes, *see supra* Part VI.B.

I compare the process of evaluating students' negotiation performances with the system used by university voice teachers, like my wife, Ann Harrell. At the end of the semester, music students give performances that are evaluated by a "jury" consisting of a panel of faculty. During the semester, students prepare specifically for these performances, which are not affected by the vagaries of other students' actions. Although I am told that this grading process has its imperfections, I think that it is much closer to an appropriate grading process than observations of student negotiations, even by video. Watching videos is very time-consuming and, considering my lack of confidence in the resulting grades, does not seem worth the time.[66]

I did not grade the documents that students produced for the multi-stage simulations[67] and I feel somewhat ambivalent about this. I did not grade these documents for several reasons. First, I wanted to take the pressure off students from having too many graded performances. Second, I wanted to give the students a taste of certain tasks without going into excessive depth on every one. Third, I wanted to replicate the fact of life that students will have to do many tasks in practice that are part of their work but do not get particular evaluation. Fourth, because I had not provided specific training or evaluation criteria for the tasks, it would have been unfair to grade students on them. I have gotten mixed reactions from students about not grading these assignments. Some students appreciated the relief from having to do additional graded performances, whereas others felt disappointed that they did not get "compensation" for their hard work or that they did not get individual feedback.

VII. Conclusion

Several years ago, at the Legal Educators' Colloquium in the ABA Section of Dispute Resolution's annual conference, I was on a panel with Professors Michael Moffitt and Nancy Welsh. I

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66 For a discussion of use of videotapes in negotiation courses, *see* Melissa Manwaring & Kimberlee K. Kovach, *Using Video Recordings: A Mirror and a Window on Student Negotiation, in* Assessing Our Students, Assessing Ourselves 95 (Noam Ebner et al. eds., 2012).

67 The course syllabus addresses this as follows: "You will be required to submit some material that is not specifically graded, though unusually good or poor submissions may affect your grade. You will sometimes receive feedback about students' performance as a group. I will be happy to provide individual feedback on your work on request." For a description of the documents produced during the multi-stage simulations, *see supra* Part VI.E.

presented the argument from the article I co-authored with Professor Jean Sternlight recommending that faculty who specialize in dispute resolution should help colleagues teaching doctrinal courses to incorporate more practical problem-solving instruction in their courses.[68] Michael and Nancy spoke after I did, noting that most people in that audience probably agreed that faculty teaching doctrinal courses should change their instruction. They challenged the audience by asking whether dispute resolution faculty should incorporate more doctrinal material in *our* courses, which sparked a spirited discussion with sharply differing views.

The ideas that Michael, Nancy, Jean, and I proposed are designed to advance this same goal—to better prepare law students for the real world of legal practice—but coming from different directions. Traditional doctrinal courses would incorporate more practical problem-solving instruction, and dispute resolution courses would incorporate more elements from traditional legal practice.

Students are likely to learn a lot about actual legal practice in dispute resolution courses by incorporating various legal tasks such as interviewing, counseling, conducting factual investigation, and planning procedures in managing their cases. These tasks involve generic skills that are readily transferable from one practice area to another.[69] They provide opportunities for students to work closely with clients and counterpart lawyers, to get a more realistic feel of what it is like to act like a lawyer, as well as to feel what it is like to be on the receiving end of legal services. This was the primary focus of the multi-stage simulations in my courses, which worked extremely well.

While it is easy to imagine innovations in legal education, actually implementing change can be very hard, even on the course level where faculty have great discretion (let alone making general

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[68] *See* Lande & Sternlight, *supra* note 5. The LEAPS Project was organized to promote these ideas. *Id*.

[69] Another option is for faculty teaching dispute resolution courses to include legal doctrine in particular areas such as family law, commercial law, probate, or virtually any other subject. This would enable students to incorporate more legal analysis while practicing dispute resolution skills. The benefit of this approach may be limited if the course does not generally focus on that particular area. For example, if a general negotiation course requires students to work with, say, family law doctrine, including a substantial amount of family law doctrine into the simulations is likely to have limited value for students with little background or interest in family law. Of course, some of the learning about using legal doctrine would be transferable to other areas of the law, though the benefit may be limited.

changes to a law school's curriculum).[70] Faculty who have taught particular courses a number of times may feel comfortable with their approaches and see little need for change. Changing a course is likely to require additional time and effort and may compete with other claims on faculty's time. In particular, faculty generally feel strong pressures to prioritize scholarship throughout their careers, which leaves less time to focus on their teaching. The Legal Education, ADR, and Problem-Solving ("LEAPS") Project identified many reasons why faculty teaching doctrinal courses may be reluctant to incorporate more practical problem-solving in their courses.[71] Faculty who teach dispute resolution courses may have comparable concerns about incorporating more legal tasks in their courses. The LEAPS Project recommended various strategies for faculty teaching doctrinal courses to address these concerns, many of which are relevant to faculty teaching dispute resolution courses as well. These include starting by making small changes, getting help from colleagues at their own schools or other schools, taking advantage of materials produced by others, seeking support from their dean to develop new materials, and developing appropriate assessment methods, among others.[72]

The time is ripe for legal educational reform, in part because of demands from legal employers that law schools train "practice-ready" graduates as well as law schools' competition to attract students who demand increased practical training.[73] In response to these pressures, many schools are adopting changes to improve their graduates' ability to practice law soon after graduation. As dispute resolution has become increasingly institutionalized in law school curricula, faculty teaching dispute resolution have the opportunity to make important contributions to the larger project of

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70 For discussion of barriers to curricular reform, see Lande & Sternlight, *supra* note 5, at 269–75.

71 *See Overcoming Barriers to Teaching "Practical Problem-Solving,"* LEAPS PROJECT, AMERICAN BAR ASSOCIATION, http://leaps.uoregon.edu/content/overcoming-barriers-teaching-%E2%80%9Cpractical-problem-solving%E2%80%9D (last visited July 20, 2013).

72 *See id.*

73 Professor A. Benjamin Spencer summarizes a widespread view that the American system of legal education is facing a "perfect storm" of challenges:

> Legal education is under attack. The value of a law degree is being questioned given the deterioration of the traditional legal job market and the substantial and growing size of the student loan debt of recent graduates. Further, law schools are being charged with failing to prepare their graduates adequately for practice. Thus, we have what appears to be a perfect storm in legal education: Law school graduates are under-employed, over-indebted, and under-prepared for practice.

A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1951–53 (2012) (footnotes omitted).

preparing law students to serve their clients most effectively. The experiments in teaching my negotiation courses described in this article were designed to advance that goal. I hope that other faculty will find value in these efforts and build upon them.