Simulating the Litigation Experience: How Mentoring Law Students in Local Cases Can Enrich Training for the Twenty-First Century Lawyer

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Simulating the Litigation Experience: How Mentoring Law Students in Local Cases Can Enrich Training for the Twenty-First Century Lawyer

José Felipé Anderson*

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I. THE TRAGEDY OF DEANNA GREEN

It was an unthinkable event. On May 6, 2006, fourteen-year-old Deanna Camille Green was killed when 237 volts of electricity surged through her body.1 On that warm Friday night,

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1. The Amended Complaint filed in the 2006 case described the incident as follows:

8. . . . [C]ity officials reported that Deanna’s death was the result of one of the ball field metal fences coming in contact with an underground power line . . .

9. The City admitted in . . . that the faulty construction of the fence over the power line and the faulty construction and repair of the electrical system contributed to the incident. . . .
she was playing softball in her church league as she had done on many other occasions. This particular evening, however, would be very different. While Deanna stretched, an unusual thing happened to her that almost went unnoticed. Deanna, a tall, strong, athletic girl, lost consciousness and fell into her mother Nancy’s arms. Nancy, who often played softball with her daughter, called to her child to determine what was wrong. Despite Nancy’s best efforts, Deanna did not respond to her mother’s voice. An ambulance was called to the scene.

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10. The area near the fence where Deanna Green was electrocuted was subject to flooding and numerous ballgames needed to be cancelled because of this flooding.

11. A Baltimore City police officer who responded reported that he was advised by a BGE service operator, William Webber, ‘that the metal fence where the victim was, had a voltage of 237 volts going through it.’

12. After Homicide Detective Mark Luther Hughes responded to the scene and the crime lab was notified to process the scene, ‘B.G.E. service operator Webber, cut off the power’ to the field.

13. The power traveling through the electrical system was supplied by BGE, who was compensated by the City for providing electrical power to the system.

14. The electricity was supplied by a transformer . . . as part of an . . . electrical system operating throughout Druid Hill Park which also contains the Maryland Zoo in Baltimore.

15. The electricity that was sent from the transformer to the field where it killed Deanna Green was from ‘a regulated distributor . . . Baltimore Gas and Electric . . . utility in Central Maryland . . .’

16. BGE delivers natural gas and electricity to homes, businesses and other facilities in Baltimore and surrounding areas in Central Maryland.

17. Electricity was metered at the field . . . for the purpose of BGE being able to bill its customer and receive[] payment from its customer, the City of Baltimore.

18. The meter box is located right next to the ball field on the first base side, less than 50 feet from where Deanna Green was electrocuted.


2. Id. at 2.


4. Id. at 67.
After a period of uncertainty and confusion, Deanna was pronounced dead at a local hospital later that evening. Prior to her collapse, Deanna had been stretching on the fences that were near the baseball diamond. She was unaware that the fences were constructed on top of underground power lines that provided electricity for the lights that illuminated the field. It would ultimately be determined that stray voltage electricity, surging from the power line, electrified the fence. The power line installation had worn down over the years and had come in contact with the bottom of the fence post, which became exposed through the concrete footer that held the fencing in place. When Deanna held both fences while stretching, she became grounded and a deadly charge of electricity completed the circuit through her body.

The case received a great deal of attention in the local press. Not only did the bizarre nature of Deanna’s death catch the attention of news media, but Deanna’s father, Anthony “Bubba” Green, who played professional football with the Baltimore Colts, was also a reason that so many became interested in the case. Deanna was a

5. See id. at 67–71 (recounting the chain of events that occurred in the time between Deanna’s collapse and the doctor stating, “I’m sorry. We did all we could do.”).
6. Amended Complaint, supra note 1, at 2.
7. Id. at 3.
8. The media attention prompted one defendant in the litigation to move for removal because of what it argued was unfair press coverage due to the location of the trial. See Memorandum of Law in Support of Defendant Douglas Electric & Lighting, Inc., t/a Del Electric’s Motion for Removal at 7, Arrington-Green v. Mayor of Balt., No. 24-C-09-003004, 2009 WL 8103918 (Md. Cir. Ct. 2009) (“In order for DEL Electric to receive a fair and impartial trial, the trial must be removed to a county that is not contiguous to Baltimore City due to the extraordinary media attention that is adverse to DEL Electric and the local prejudice in the community from which the jury is selected.”).
noted lyric soprano singer who had been recently accepted to the prestigious Carver Academy for Music and the Arts in Baltimore County, Maryland.  

Her music teacher called Deanna her "shining star."12

All of these factors fueled interest in the tragedy. The news media was also interested in the legal ramifications of the incident.13 Baltimore city officials were concerned about the future safety of the park as they investigated the issue.14 Although the family sought legal counsel soon after the incident, it would be several years before legal proceedings would begin.15


12. Deanna Green (14) Was Electrocuted While Stretching Against a Fence Before a Church Softball Game, MYDEATHSPACE.COM (May 15, 2007, 2:00 AM), http://mydeathspace.com/article/2007/05/15/Deanna_Green_(14)_was_electrocuted while_stretching_against_a_fence_before_a_church_softball_game.


15. The first legal document filed in the case was a Bill for Equitable Discovery, which was filed a few weeks before the statute of limitations expired as a "last ditch" effort to obtain information about the underground electrical system at the park. The filing requested that the court order the potential defendants to turn over information to the plaintiff on the grounds that:

The Estate has no other remedy to properly investigate and prepare a lawsuit without access to the very information that properly details what took place with the electrical system on the day of this tragic event. The issuance of an Equitable Bill of Discovery is the only adequate means of obtaining discovery of the essential information sought by the Plaintiffs. There is no other discovery method that will grant Plaintiffs access to this information that is so convenient, effective, and complete.

These proceedings produced one of the most unique training opportunities imaginable for any law school simulation class. This Article attempts to describe that experience, and how it enriched the education of the students who participated in it over the several years that the litigation played out in the local courts. Whatever one thinks of this teaching technique, it is clear that these activities changed the students, lawyers, and teachers who participated in this organic learning experience.

II. WHY SHOULD WE CARE HOW LITIGATION PRACTICE IS TAUGHT?

Legal education has changed drastically in recent years. These changes have largely been brought about by the economic crisis of 2008.16 Described by some as the greatest financial downturn since the Great Depression,17 the legal profession, law schools, and other affected institutions have had to rethink the way they do business. The financial downturn has been particularly devastating for recent graduates from law school.18 Firms have drastically slowed their hiring since the financial crisis.19

Furthermore, law firms have responded to the economic challenges by reducing their own training budgets.20 Firms have also devalued junior associates with little experience by making the

18. Cox, supra note 16, at 513 ("[L]arge firms imposed pay freezes and salary cuts, deferred start dates for incoming associates, rescinded offers to graduates, [and] curtailed or cancelled summer associate programs . . . .").
20. Alison McKinnell King & Daniel Boglioli, Getting Ahead by Gaining Experience, N.Y. L.J., Oct. 1, 2004, at 17 (discussing how hands-on training and young attorney development in major firms has been reduced in recent years due to financial considerations).
argument that clients do not want to pay for their training and instead "want work-ready lawyers and have little to no patience for learning curves." 21

One of the results of the financial downturn has been for law schools, in particular, to re-examine the way they train students. 22 Much has been written about the debt incurred by law students and the expense of schools, particularly private or freestanding law schools. 23 Some of these issues are not new. Indeed, just before the financial crisis hit the United States, an influential study by the Carnegie Foundation for the Advancement of Teaching concluded that law schools should use an integrative approach to teaching and "that the common core of legal education needs to be expanded in qualitative terms to encompass substantial experience with practice." 24

The Carnegie report on legal education has suggested law schools should move from legal analysis training toward more practical training. 25 Offerings such as clinics and other experiential internships have been suggested. 26 One law school has taken the


26. The concept of practical legal training is part of the tradition of the English legal system from which our profession developed. Susan Katcher, Legal Training in the United States: A Brief History, 24 WIS. INT'L L.J. 335, 339 (2006)
entire third year of its curriculum for an experiential learning opportunity and other such models have also been tried across the country.\textsuperscript{27} There are always serious financial considerations when adjusting the law school teaching model.\textsuperscript{28} Some institutions are unwilling to engage in drastic changes.\textsuperscript{29} Some are unable to engage in drastic changes that expand experiential learning because of the financial costs involved.\textsuperscript{30} The decline in law school applications and related issues will force law schools to decide how much change they will offer and how fast this change will come.\textsuperscript{31}

III. TRADITIONAL LAW SCHOOL TEACHING V. OTHER LEARNING MODELS

A primary learning model in law school teaching is the Socratic method.\textsuperscript{32} Named for the ancient philosopher that is said to have developed learning through question and answer, it has been lauded as a one of the best ways to develop critical thinking skills. It


\textsuperscript{28} Live-client law clinics are expensive because they must be staffed with the resources of a law office and they have many supervisory limitations.

\textsuperscript{29} See Sloan, supra note 27 (discussing that "progress [in law school reform] is piecemeal and not comprehensive").


\textsuperscript{31} See Patricia Mell, \textit{Crossing the Bar: The Column of The Legal Education Committee-Law Schools and Their Disciples}, 79 MICH. B.J. 1392, 1395 (2000) [hereinafter Mell, \textit{Crossing the Bar}] (discussing that it appears law schools, slowly but surely, are "taking steps to narrow the gap between the academy and the rest of the profession").

was adopted for law school teaching in the 1870s by Christopher Columbus Langdell at Harvard University. It has been simultaneously praised and criticized from its inception, but the model remains a mainstay in legal education—it has been subject to modifications, of course, but it still is one of the primary tools in the law-teaching arsenal. However, in the 1870s, not all lawyers attended law school for legal training. Direct mentoring via apprenticeships was the primary way to enter the profession for many decades after Langdell began his Socratic experiment. Even Abraham Lincoln was the subject of apprenticeship lawyering as part of his training. He was also known as an outstanding courtroom lawyer.

The move to standardize professional education resulted in the American Bar Association (ABA) establishing its first standards to approve law schools in the early 1900s. At that time, "[the

33. Id.
34. Mell, Crossing the Bar, supra note 31, at 1392–93 (discussing the continued divergence between the practical and the intellectual fostered by the Socratic method, and how the intellectual side has prevailed).
35. Susan Katcher, Legal Training in the United States: A Brief History, 24 Wis. Int'l L.J. 335, 339 ("During the colonial period, an apprenticeship or clerkship was essential for being admitted to the bar.").
36. See id. at 347 ("In the nineteenth century, 'apprenticeship continued to be the standard means of legal education and was defended vigorously even after formal law schools were available.'") (quoting SUSAN K. BOYD, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR 1 (1993)).
37. Abraham Lincoln did not attend law school but "read law" and served under an apprenticeship with other practicing attorneys, as was typical in the early 1800s. STEPHEN B. OATES, WITH MALICE TOWARD NONE: THE LIFE OF ABRAHAM LINCOLN 28 (1977). While continuing his activities as a local politician he prepared to practice law:

[H]e crammed hard for his bar exams, an oral grilling in which practicing attorneys would interrogate him or technical points of the law and legal history. At last he got up his courage and took the exams, sailed through without mishap, then treated his examiners to dinner according to the custom of the day. On September 9, 1836, he received his law license and went right to work on his first case . . . .

Id. at 32.
38. Id. at 52.
ABA] rejected a clinical (apprenticeship) component for law school approval and mandated a three-year law school without an apprenticeship.” 40 The ABA’s approach was criticized not long after its standards were issued. 41 Attempts to revise law school teaching came much later during the late 1960s. 42 Despite calls for modifications to the law school residency and duration requirements, the 1973 revisions to the ABA’s standards maintained both. 43 During the 1970s there also was a call for an increase in practical, clinical education for law schools. 44 Although there was some increase in activity regarding law clinics, change was very slow. However, while law schools were slow to change, the legal profession was not. 45 Because of the changing model in the legal profession towards larger law firms that could not, or would not, devote time to train new lawyers, law schools were forced to respond by adding practical training to their curricula. 46 The profession “was moving away from service toward the practice of law as a business,” 47 and “law firms in the 1980s began to explode in size.” 48 Firms were becoming less of a “place where a new lawyer could be trained on the job.” 49

40. Id.
41. Id.
42. Id.
43. Id.
44. Id. (“For some observers of the academy, however, the pendulum swung too far away from the practical. The intellectual distance of the academy from the practice actually reduced the influence of the academy on society.”).
45. Id. at 1393.
46. At Howard University, Charles Hamilton Houston would take students to the Federal Bureau of Investigation’s (FBI) headquarters to see autopsies performed in order to enrich the practical education of his students. Julius A. Young, Jr., Charles Hamilton Houston as the Father of the Civil Rights Movement 37 (Jan. 2013) (unpublished M.A. thesis, Clark Atlanta University), available at http://digitalcommons.auctr.edu/cgi/viewcontent.cgi?article=2265&context=dissertations (citing RAWN JAMES, JR., ROOT AND BRANCH: CHARLES HAMILTON HOUSTON, THURGOOD MARSHALL AND THE STRUGGLE TO END SEGREGATION 48 (2010)).
47. Mell, Crossing the Bar, supra note 31, at 1393.
48. Id.
49. Id.
One of the sources of that pressure came from the 1992 ABA report known as the "MacCrate Report."\(^{50}\) The Report's goal was to "look at public and professional expectations of what lawyers are and ought to be, and what skills and values they need to fulfill those expectations, and how they go about acquiring the skills during and after law school."\(^{51}\) The skills identified by the Report were problem solving, counseling, negotiation, advising clients about problem resolution options, law office administration skills, and skills involved in recognizing and resolving ethical dilemmas.\(^{52}\) While the Report failed to directly attack the Socratic method, "it did encourage law schools to actively provide courses that would teach fundamental skills and values to those who plan to go into a 'relatively unsupervised practice setting.'"\(^{53}\)

It was shortly after the MacCrate Report was issued that I went from a part-time adjunct law professor to a full-time law professor. Indeed, at that time I was specifically recruited to legal instruction because of my experience practicing prior to joining the academy full-time. One of the first classes I taught as a full-time teacher (and continue to teach today) is what the University of Baltimore calls "Litigation Process."\(^{54}\) The course, best described as


52. See MACCRATE REPORT, supra note 50, at 135 (listing the "fundamental lawyering skills essential for competent representation").

53. Mell, Crossing the Bar, supra note 31, at 1394.

54. Our law school catalogue describes the Litigation Process course:

This is an introduction to the roles lawyers play in litigation. Investigation, counseling, drafting, negotiation, and written and oral advocacy will be explored. The course will take students through the stages of a lawsuit, from initial client interview through pleading, discovery, and pretrial into trial, in such a way as to emphasize the dynamic role an attorney has in developing and implementing a theory of the case and in exploring the relationship between law and fact. The medium of instruction will be primarily simulation of a real case in which
a civil procedure practicum, gives students an opportunity to engage in civil litigation as if they were actual lawyers making the decisions and judgments about a simulated case.

I have used a variety of materials to convey the message of what a litigator should do to properly prepare and handle a litigation matter.55 I have also reviewed a host of textbooks for similar content. At one point, I centered the course on a litigation matter in federal court; another time, I used a products liability case.56 I also spent time dealing with ethical issues utilizing medical malpractice material57 and clips from the 1982 Paul Newman movie The Verdict, which show the antics of a lawyer with a sympathetic case and very unethical advocacy techniques.58 Almost every decision on what to teach students in the course was guided by the goals of the 1992 MacCrate Report.

While I largely agree with most of the Report’s conclusions, I was disappointed in the way it explained some of its findings. Although I respected the position that law schools must do a better job of providing practical training to students, I also was concerned that law firms cast too much of their own professional responsibility on law schools. Although legal training in a law school is an important three or four years of a student’s life, newly minted lawyers are likely to spend many decades in a practice setting where the students will be required to perform as attorneys for one or another party.

55. The flexibility in such a course is an important part of its strength. I believe teachers who teach the course should feel free to use the materials they feel they can present well.


57. Medical malpractice cases present interesting subject matter for students because these cases raise a range of substantive and procedural issues.

58. THE VERDICT (Twentieth Century Fox 1982). This movie was selected as one of the twenty-five greatest legal movies of all time. Richard Burst, 25 Greatest Legal Movies, A.B.A. J., Aug. 1, 2008.
they are responsible for making professional judgments in client matters.\textsuperscript{59} I believe the legal profession and law schools are in a partnership to elevate the profession, and both entities have equal responsibility for providing professional training, enrichment, and development.\textsuperscript{60}

One pillar of the law school curriculum is the "simulation course" which is taught at most law schools. These courses usually include a heavy dose of moot court appellate argument.\textsuperscript{61} More

\textsuperscript{59} I make this point clearly in my syllabus. José Felipé Anderson, Litigation Process Course Syllabus 2 (Fall 2013) (on file with author) ("This course in Litigation Process is designed through simulation and discussion to provide a lawyer in training with a basic understanding of the pretrial preparation involved in trial litigation. The primary format is the use of group decision making with special emphasis on ethical and practical consequences of the decision making process. Although the course focuses on civil litigation, many of the skills learned will be equally transferable to criminal proceedings as well. The objectives of the course are to provide the lawyer in training with a sense of the importance that complete preparation, precision of written documents, and clarity of oral presentation bring to advancing an advocate toward the best possible result in litigation. Special attention will be directed to interviewing, client relationships, ethical matters, and risk assessment. Role playing and colleague critique will be an important feature of developing the skills needed to become a confident and effective advocate. Since this is a simulation course, there will be a requirement that students do more independent thinking than in most law school courses. Guidance from the professors will often be intentionally withheld in the student decision making process so that professional judgment can be developed.").

\textsuperscript{60} Mandatory continuing legal education is an important part of attorney professional development. All states require at least some form of mandatory CLE. See MCLE Information by Jurisdiction, A.B.A., www.americanbar.org/cle/mandatory_cle/mcle_states.html (last accessed Apr. 18, 2014) (listing mandatory CLE requirements of all American legal jurisdictions).

\textsuperscript{61} All do not agree about the value of some age old law school practices. As former Supreme Court Justice Abe Fortas once said about moot court almost four decades ago: "In the nature of things, activities of this sort are too limited, too superficial to act either as an imitation of life or as training for the performance of the job in real life, or to justify the allocation of time that they involve." Abe Fortas, The Training of the Practitioner, in THE LAW SCHOOL OF TOMORROW: THE PROJECTION OF AN IDEAL 179, 187 (David Haber & Julius Cohen eds. 1968).

For Justice Fortas, the real key to training lawyers involves the sharpening of one's intellectual ability. He further explained: "[s]o I think that, for the law school, teaching 'the law' is not the objective, the end purpose, because teaching 'the law' does not produce a lawyer. The essence of craftsmanship in the law is not knowledge, but skill. The quality of the lawyer's mind depends, I suggest, not
recently, some law school clinicians have proposed an increase to 15 credit hours of experiential learning in the ABA accreditation standards. 62 Simulation courses, however, are not comparable experiences to in-house clinics and other experiential learning activities. 63 They do tend to be, from a financial perspective, a favorite of law schools because they are inexpensive compared to other learning models. They can be taught as a small section of a full-time faculty member’s course load. Alternatively, an adjunct professor can teach the course for less money than a full-time faculty member, or an in-house clinic’s financial needs.

A key goal in strengthening the practical training in law school curricula is to build a better simulation course so that students may gain insight and understanding as if they were engaged in an actual case. Some schools have gone to yearlong capstone curriculum courses in advocacy. Others include advanced trial advocacy master classes that bring in experienced lawyers to provide examples of first-rate lawyering through demonstrations. I was once involved in developing a training pilot program to prepare Baltimore City Police Academy cadets for in-court testimony by using law students to engage in direct questioning and cross-examination of the officers in training. 64 Law book publishers now have developed

primarily upon its contents as a storehouse, but upon its competence as an instrument.” 62 Id. at 184.


63. See Paul Radvany, Preparing Law Students to Become Litigators in the New Legal Landscape, 33 REV. LITIG. 881 (2014) (discussing drawbacks to simulation classes—including the lack of live-client interactions).

64. From 2006 to 2008, the University of Baltimore School of Law was involved in a collaborative effort with the Baltimore City Police Academy. The two organizations developed a pilot program to bring together future colleagues—law students, who will become prosecutors or defense attorneys, and police officer trainees—to learn what to expect when both parties appear in court to carry out their professional duties. The Baltimore City Police Academy provided a professional videography team to record every session, a valuable asset in experiential learning and improving upon past performance. Litigation Week Program, Stephen L. Snyder Center for Litigation Skills (Spring 2007) (on file with author).
practitioner and simulation course materials so that they could be adapted to simulation courses.\textsuperscript{65}

My view is that a key to a great simulation course experience is to have the students replicate the components of handling a case so that they might develop professional judgment. This is no easy task in a fourteen-week teaching format. Not only does it require the proper learning material, but it also requires students to "buy into" the simulation and create their own vision of how to go about solving the problems presented in the class. Furthermore, the traditional first-year curriculum overwhelmingly encourages the student to believe that the professor has a vision of what he expects the student to achieve, both in class and on the examination. Training for trial work requires that the student not guess the professor's desired response, but rather learn how to solve the problem that is placed before them.

IV. APPROACH TO THE SIMULATION CLASS OF DEANNA GREEN

I had many concerns after Anthony and Nancy Green asked me if I would be interested in using Deanna's case to teach students to be better lawyers. For the purpose of this Article, I will discuss only three issues that arose during our course planning.

First, I had to explain to them that I was not their lawyer and that all matters needed to be discussed with their legal counsel of record.\textsuperscript{66} After some discussion, the group concluded that only

\begin{footnotesize}
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\item {65. See, e.g., DIANE PEVAR, THE LAW SIMULATION SERIES: CIVIL LITIGATION (2013); W&L Professor's New Book Takes Students Inside the Litigation Department, WASH. & LEE UNIV. SCH. OF LAW (June 16, 2011), http://law.wlu.edu/news/storydetail.asp?id=961.}
\item {66. My role in the Deanna Green Litigation had been described as "adviser." Explaining to the students the authority for how decisions were made in the Deanna Green case was a useful occasion to review Rule 1.2 of the Model Rules of Professional Conduct. The Rule makes clear that a lawyer shall consult with the client as to the means by which the goals of the client are to be pursued. MODEL RULES OF PROF'L CONDUCT R. 1.2 (2013) ("A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation."). Even a lawyer in the role of advisor has certain ethical obligations that are useful for a student to know very early in litigation training. MODEL RULES OF PROF'L CONDUCT R. 2.1 (2013) ("In representing a client, a lawyer shall exercise
\end{itemize}
\end{footnotesize}
public documents and a few non-confidential letters would be used in the class. It was important for them to know that when Deanna passed away, I was intimately involved with the family and there was no way I could serve as an impartial counsel. I used these circumstances to underscore the importance of a lawyer remaining objective and not allowing emotional issues to sway their judgment. Third, I was very concerned about the emotional toll that revisiting the circumstances of Deanna’s death would have on Nancy and Anthony Green if they decided to participate in the class. I explained my concerns and they promised that if they were unable to participate they would back away from the exercise. Indeed, Anthony Green said that the participation was very therapeutic for him, as talking about the case with students helped in a way that no other conversation could.

67. It should be remembered that a lawyer has a duty of confidentiality regarding his client. Model Rule 1.6 states, “A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation.” MODEL RULES OF PROF’L CONDUCT R. 1.6 (2013). Furthermore, Rule 1.18 requires that a lawyer, “[e]ven when no client-lawyer relationship ensues, . . . who has learned information from a prospective client shall not use or reveal that information.” MODEL RULES OF PROF’L CONDUCT R. 1.18 (2013).

68. Deanna and my daughter were best friends and our families attended church and many social activities together. We lived in the same neighborhood and regularly watched each other’s children. During the course, it was often difficult for me to separate my emotions as I described various points. Although I tried my best and gave continuous caveats about my lack of objectivity, it would still occasionally seep into lecture. One student commented in an evaluation form that, “Prof. Anderson has a zeal for teaching and a wonderful concept here, but his relationship to the case . . . made for a plaintiff-friendly learning atmosphere and it was clear that there was a conflict of interest.” Litigation Process Student Guest Feedback Form to author (Fall 2013) (on file with author).

69. Often I would have to tell students that I was about to make a statement that was not intended to be objective.
Nancy Green's public presentations were less frequent than her husband's, but they were extremely moving.\(^70\)

\(^70\) The power of Nancy Green can best be found in her deposition testimony during pre-trial discovery:

Q.  [Defendant's Counsel] Can you describe for us what you saw, your observations, from the time that you come to the bench and Deanna, I assume, comes to that side, you know, your team's side, up until you discovered something was wrong?

A.  We came off the field -- Deanna and I pretty much came off the field together because she was right behind me, and I told her get ready because she was second at bat, and she said she wanted to stretch her leg because she had a little cramp.

And so I sat down, took my glove off, and she took her glove off and she proceeded to stretch. And she touched the fence in front of me and her -- with her right hand, and she put her foot on the fence behind me with her left foot.

And I turned around and I said: 'Don't rip my pants.' And then I turned around, and she was just falling -- she wasn't really falling. It was like a slow lean. And I said: 'Deanna.' And she didn't respond to me. And I said: 'Deanna.' And she kept leaning.

I said: 'Deanna.' And then she started falling and I asked somebody to help me, and I caught her before she fell. And they came over and -- they were paramedics, and she had a leaf in her hair and her eyes looked funny.

And I said: 'She's got contacts in her eyes.' And I kept saying: 'Deanna, wake up.' And they moved me away, and I didn't want to move.

Deposition of Nancy Arrington-Green at 57–58, Arrington-Green v. Mayor of Balt., No. 24-C-09-0030040T, (Md. Cir. Ct. Mar. 26, 2010). During the class when Ms. Green was not present, I had a student research assistant review the entire deposition testimony and then questioned the student as if she were Nancy Green with the consent of the family. This exercise was useful to help students fashion issues in the case such as damages and arguments about pain and suffering. Anthony Green's testimony at deposition was also useful for purposes of exploring issues about damages for Deanna's loss:

Q.  What were the sorts of things that you liked to do with Deanna?

A.  Oh, God, there's so many things. I took her to school every day from the time that she was in Head Start. I took her to school. We had our dates that we would have. We'd go once a week, whatever chance we had when I wasn't working, it was the therapy that she was talking about. It was more or less --
V. CLASS FORMAT

My Litigation Process class is a typical small section with fewer than twenty students. The rationale for smaller classes is to teach legal skills that give students an opportunity for direct, "on their feet" participation. Prior to using Deanna Green's case to teach Litigation Process, I followed a standard format of laying the foundation of basic civil procedure in the early classes, leading to the class drafting a complaint in a civil case. I provided a set of materials for the students to work through and provide some guidance about legal theories and causes of action. Occasionally, I provided a legal framework for drafting the complaint. After the students completed the first drafts of the complaints, the class (under my guidance) critiqued the drafts, which undoubtedly had many structural and technical flaws due to the students' lack of experience.

One of the most successful approaches was taking the complaints that the students had turned in and compiling examples of different sections so that students could compare the merits and failings of each. In this sense, student work remained anonymous and a variety of approaches were examined. I also used examples from prior classes to ensure that students did not feel their work was being unfairly exposed to others. Using this approach, the class would collectively construct a complaint superior to the individual complaints. The Greens' case required some modifications to this approach.

Q. I was going to ask.
A. I would go to the dollar store when I wasn't working, so I only had a few bucks and we'd go there and shop and we would go to the thrift stores. That was therapy.

We would come home during the time that I wasn't working, I was able to take her to school every day and pick her up or be home when she got there.

We watched movies after she came home and spent a lot of time together within the last six months.


Since an amended complaint already existed,72 I had to find a way to let the students learn without relying too heavily on that finished product. I provided the students with newspaper clips about the electrocution.73 I gave them a scenario that had them prepare for a meeting with the Greens, who called their law office and wanted an appointment to talk about their options regarding their daughter’s death. Everyone in the class served as plaintiffs’ counsel during an early class session.

The students not only had to try their hand at drafting a complaint, but also had to prepare interview questions for the Greens so that they could gain missing information, tell the Greens how their case might not yet be ready for filing, and explain the contingency fee process to them.74 The purpose of this exercise was to demonstrate to the students that not all cases that might seem to be attractive to the lay public are necessarily ready for filing or even ready to be accepted by a plaintiff’s lawyer for representation.75 At this point in the course, a guest lawyer came and spoke to the class about the financial realities of running a plaintiff’s law office. The lawyer discussed how plaintiff work is financed and how law-office

72. For the full text of the amended complaint see Amended Complaint, supra note 1.


74. The preparation for the client meeting with Mr. Green provided an opportunity for the class to discuss the Maryland Rules of Professional Conduct regarding the requirement that a contingency fee arrangement be set forth in writing. MD. R. PROF’L CONDUCT 1.5(c). The importance of clear communication with the client about what work would be performed and the responsibility for expenses for the case after the case concluded became a rich learning experience for the students.

75. See MD. R. CIV. P. § 1-341 (West 2014) (discussing sanctions for “the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification”).
economics, including the risks of accepting unfavorable cases, inform decisions about which cases to accept. 76

Students needed to determine if there is a defendant that can pay a judgment, if the defendant has insurance, and if a defendant might benefit from governmental immunity. 77 These all became important issues early in the “law firm’s” internal discussions prior to the meeting with the Green family during the class exercise. Students often went away feeling that they had far more questions than answers, and were often discouraged after preparing for the first meeting because of all the uncertainties the case presented. Their uncertainty is the most important part of the learning exercise. I have always been concerned that students have a view that lawyers are just tricksters who know how to plug in magical formulas to make cases win or lose. I do not blame the students for this view: television, the media, and the press reinforce such attitudes. Students may well have left the first year of law school believing that the tricks of passing exams or the tricks of succeeding in first-year memos are the goal of legal education. Legendary UCLA basketball coach John Wooden was quoted as saying, “[i]f you spend too much time learning the tricks of the trade, you may not learn the trade.” 78

With the students feeling both unprepared and uncomfortable, Mr. Green came into class so they could meet with him. The students would often sit quietly at first, looking at the enormous man (6’6” and about 330 pounds) who had lost his daughter while trying to decide how they should speak with him about his legal issues. 79 There always seemed to be a great deal of

76. MAUET, supra note 71, at 97.

77. Even from the early 1900s, the “...outpouring of concern over contingent fees accompanied the development of stricter standards of corporate liability for activities resulting in injury or death. Once the social costs of corporate immunity were perceived as exorbitant, corporations were assessed damages with greater frequency.” JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 48 (1976).


79. One student commented that Mr. Green’s appearance in the course and the candor he brought to the exercise transformed the class: “Here was a real client/party in a case (and a tragic one at that) that we were studying, who lived through all the reports and facts we had read. Eye-opening.” Litigation Process Student Guest Feedback Form to author (Fall 2013) (on file with author). Another
caution when they asked questions. While this part of the exercise cannot necessarily duplicate a clinical experience of interviewing a new client, it comes very close. It should be remembered that by the time my first class of students began working on this case, Mr. Green had undergone the real initial client interview almost three years earlier. By the third year I taught the class using this format, Mr. Green had become especially skilled in patiently asking questions and waiting for answers from the team of future lawyers assembled in front of him. He would remain remarkably calm as he recounted the details of the night he lost his daughter. He would demonstrate remarkable patience while the students would question him regarding the most basic points of the case.

After we concluded the initial client interview and the team of lawyers for the plaintiff made their recommendations as to next steps, Mr. Green stayed to talk with the students about whether they had accomplished the goal of the first meeting. He would also be present while I covered technical issues, like whether an estate had to be open for the filing of the lawsuit, or whether we had to provide special notices to government entities that might be sued, like the City of Baltimore, so that the lawsuit could proceed. The class then discussed the informal fact investigation that would need to take

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student commented that Mr. Green gives a first-hand perspective that students do not always get to see: "His overall knowledge of the case ... makes a student want to push that much harder for to work for him and Deanna." Id. Students also benefited from the opportunity to interact personally with Mr. Green during and after class sessions, with one one student commenting that "interact[ing] ... and talk[ing] with him ... truly made the case real in comparison to just working ... in a case book. Since he was a plaintiff and had to experience such a long lawsuit ... , he will definitely leave an imprint in my mind.” Id.

When asked for additional optional comments on the evaluation form, one student said he or she “learned more ... practical lawyering in this class than any class law school” and praised the practical approach course: “I think making decisions and having to figure out how to approach a little problem really taught me a lot about how to step back, look at the facts given, and do the best you can with what you have.” Id.

80. See MAUET, supra note 71, at 63 (discussing capacity to sue by guardians and minors).

81. See Barbre v. Pope, 402 Md. 157 (2007) (discussing the Maryland tort claims act requirement of giving a local government notice within 180 days of an accident in order to file a lawsuit).
place so that the material in the complaint could be bolstered if the case was going to go forward.

After the meeting with Mr. Green, the class would take an opportunity to engage in more legal investigation, in an attempt to refine the claims that might be filed in the complaint. This was an opportunity to explore and apply the lessons of first-year courses to the lawsuit, as students attempted to develop a theory of negligence. 82

For example, determining who had notice of the defect that caused Deanna's death was a key issue in the discussion. It was obvious to almost all of the students that the construction of a fence on top of a power line was a potential negligence claim. It was also clear that the contractor who built the fence was never discovered. Research on alternative theories would have to be pursued. Most students would first focus their efforts on the utility company who provided the electricity to the field. The utility company was perceived to have deep pockets, so students explored strict liability claims for providing a dangerous product under the Uniform Commercial Code. 83 The students then examined case law to determine whether the utility company would have had an independent duty to inspect some of the transmission wires of its customers. 84

The legal issues discussed were ultimately wide-ranging. Some students noted that since utility companies often cleared trees on property that they did not own, there could be an independent duty to do something regarding antiquated underground power

82. One interesting discussion in class centered on whether this case could be similar to one where contamination has escaped from one location to another and strict liability was found. That discussion harkened back to the famous first-year torts case known as Rylands v. Fletcher, L.R. 3 H.L. 330 (1868), where strict liability was imposed when water escaped from a dam made of rotten wood, known by the owner to be rotten, and injury occurred to another's property.

83. See U.C.C. § 2-105 (1977) (defining "goods"); see also Christopher J. Petri, Don't Be Shocked if Missouri Applies Strict Products Liability to Electricity, but Should It?, 62 Mo. L. Rev. 611 (1997) (discussing one state's position on strict liability in electrocution cases).

84. I always thought that the negligent inspection claim was the most logical of the likely inferences from the facts.
They discussed lawsuits involving livestock that have been harmed by electricity from overhead power lines. Even the exotic tort theory of res ipsa loquitur was a subject of class consideration.

VI. TEAMWORK COMPONENT OF THE SIMULATION

After the class completed the painstaking work of building the plaintiff's case, the class was divided into teams. As in the

85. The underground power line which was determined to be owned by the City ran under the baseball field where Deanna was killed. Lynn Anderson, *Park's Underground Cables to Be Checked*, BALT. SUN, May 12, 2006, at 3B. A city official provided a statement that suggested that field number eight was constructed in about 1973 or 1974, and that the underground cable was laid at the same time. *Id.* Further,

[a] contractor replaced one of the fences in the mid-1980s, and it was erected close to where the old one had been . . . . the original fence was erected near the cable and that the new one was placed directly over it.

The new fence also had longer posts, one of which eventually came in contact with the cable.

*Id.*

Additionally, one issue raised by the City's installation of an underground power system is the duty of care for the maintenance and management of such a project. Some courts have gone so far as to hold that the installation of high voltage lighting systems is an inherently dangerous activity particularly when done in a public place. See, e.g., *Saiz v. Belen Sch. Dist.*, 827 P.2d 102, 113 (N.M. 1992) ("Locating a high-voltage electrical supply line in an area of public accommodation creates a peculiar risk of physical harm."); see also *Cantu v. Util. Dynamics Corp.*, 387 N.E.2d. 990, 993–94 (Ill. App. Ct. 1979) (noting the installation of electrical lines is an inherently dangerous activity and "[p]ersons handling electricity must protect the public against danger by the proper installation of its wires where the public is likely to come in contact with them") (quoting *Merlo v. Pub. Serv. Co.*, 45 N.E.2d 665, 673 (Ill. 1942)); *Lancaster v. Potomac Edison Co.*, 192 S.E.2d 234, 224 (W. Va. 1972) (holding that once a power company maintains electrical lines of high-voltage where it knows people may come into contact with them, it should take appropriate safety precautions for installation).

original litigation, there would initially be three defendants after the filing of the lawsuit. The suit was filed against an electric utility company, 87 an electrical repair company, 88 and the City of Baltimore as a result of information acquired from informal fact investigation through the work of newspaper investigative journalists. 89

The teams were selected at random, and each was asked to submit the name of one of its members to be lead counsel. I explained that lead counsel is the administrative point of communication for the group, and that they should select someone who would be well-suited to serve in that role. After the amended complaint was filed, the defendants were required to file an answer and begin the legal investigation that ended up being the substance for their defense on the electrocution matter. When the class was divided into teams, I explained to the students my honest view that if the case were to go to before a jury, 90 there are grounds both for the plaintiff to succeed against each of the defendants, but also that the defendants might each prevail no matter how well we developed the case.

Professors who may follow this approach should be very careful to identify cases that have the same possibilities for success and failure for each of those playing a role in the matter. Just because a case receives a great deal of publicity does not mean that it will automatically be a success for the plaintiffs. That said, simply

87. See Amended Complaint, supra note 1, at 8–12 (naming “BGE and Del Electric” in the plea for damages).
88. An attorney for Douglas Electric and Lighting confirmed the settlement but said the amount was confidential. The lawyer for the company, Thomas V. McCarron, said executives decided to negotiate after a judge granted the City immunity but allowed the family to pursue the electrical company in court.
McCarron said the settlement was not an admission that the company did anything wrong to cause the death of Deanna Green. McCarron said executives settled with the family to avoid the risk and cost of a civil trial and the potential for a large jury award. Peter Hermann, Settlement in Girl’s Electrocuton, BALT. SUN, Sept. 29, 2010, at 2A.
89. Id.
because a case provides ample lines of defense does not mean that the case will not settle in favor of a plaintiff.

The teams are further informed that it is not my job to guide them in their discussions of how to represent their client. It is in the team approach that the students learn how to exercise independent judgment. After the teams begin their work, I present guest lawyers who have served in the various roles that the teams are currently serving.\textsuperscript{91} In the past, actual lawyers who participated in the case agreed to be guest speakers. In almost all of the classes, the actual lawyer that drafted the amended complaint on behalf of the Greens discussed his litigation strategy with the students.\textsuperscript{92} Another member of the plaintiffs' legal team has visited to offer his own perspective, including wanting the firm to reject the case for economic reasons.\textsuperscript{93}

As for guests that facilitate insight for the defense teams, I have presented lawyers who have represented major electric utilities,\textsuperscript{94} insurance defense lawyers who primarily represent

\textsuperscript{91} This practice is not new. Lawyers like Clarence Darrow, for example, would give guest lectures at Howard University and other schools to help train students in the handling of jury trials. \textit{See} GENNA RAE MCNEIL, \textsc{Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights} 77 (1984) ("Charles Houston 'secured the services of . . . great lecturers such as Roscoe Pound, Clarence Darrow, Arthur Garfield Hayes [sic] and others.'") (quoting GERALDINE SEGAL, \textit{In Any Fight Some Fall} 33–34 (1975)).

\textsuperscript{92} Students appreciated having the drafter of the original complaint in the lawsuit available to talk with the class. One student commented that hearing from the Greens' attorney "help[ed] to fill in blanks about the case . . . [and] brought great insight to our learning objectives . . . . [H]is knowledge, flaws and competence about the issues help[ed] me learn . . . what I would do or could do in similar circumstances . . . ." Litigation Process Student Guest Feedback Form to author (Fall 2013) (on file with author).

\textsuperscript{93} Andrew Slutkin, a partner with the firm that began Deanna Green's case, talked to the class about the reasoning he used to vote against his firm accepting representation in the case. He pointed to factors including the limited time of pain and suffering and liability caps for key defendants as his reasons for the decision. His firm decided to proceed with investigation of the case but later referred it to a firm with prior success suing utility companies. Slutkin's firm referred the case without requesting reimbursement of expenses it had paid or without any request for a portion of any future fee for settlement.

\textsuperscript{94} A lawyer for a major utility company would tell the class "that his job is to use the courts to protect his client from being responsible for all risk and all injury." Corporate lawyer guests would provide a reminder "all that is required is
companies that might be part of multi-defendant suits,\textsuperscript{95} and lawyers that have served in the role of counsel for state or local government.\textsuperscript{96} By this time in the course, students are engaging in strategies to develop approaches to discovery, and most of the defendants are contemplating the filing of motions to dismiss.\textsuperscript{97} During most semesters I have at least two lawyers come to class for the sole purpose of discussing the cost and use of expert witnesses to provide the class with some practical advice about representing their client.\textsuperscript{98}

I often prepare a specific question for each guest that is known to the class, or anticipated by the guest lawyer. The purpose of this question is to have the lawyer discuss a matter in front of the students and work through a problem so that the students can see the

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that Defendant in the exercise of the reasonable care of an ordinarily prudent company," should have been able to foresee that some injury would result from his negligence, or that consequences of a generally injurious nature should have been expected. \textit{See, e.g.}, Hamilton v. McCash, 127 S.E.2d 214, 219 (N.C. 1962) (discussing concept of negligence in the context of an automobile accident case).

95. Deanna Green's case presented interesting challenges about how insurance might be used in order to deal with risks like the one presented by her facts. As one author explained, "Regulation by litigation has the potential to generate suits against entire industries, resulting in damages for unforeseeable events and massive loss liabilities." Kenneth S. Abraham, \textit{The Insurance Effects of Regulation by Litigation, in Regulation Through Litigation} 212, 241 (W. Kip Viscusi ed. 2002). Additionally, "[s]uch suits are difficult to handle in insurance markets because they violate the underlying theory of insurance, which relies on the large numbers and statistical independence across insured exposure units to enable the insurer to estimate premiums and diversify risk." \textit{Id.}

96. In a recent class, former counsel to Governor Parris Glendening discussed her approach to determining what constitutes public information. Her insights were helpful to the students because she offered many reasons for shielding the Governor's decision-making process on important issues behind the scenes. She shared perspective only one who held her position could explain.

97. MAUET, \textit{supra} note 71, at 148 (discussing motions to dismiss in civil litigation).

98. Often guest speakers will come to class to discuss the expense and type of expert witnesses used to both prove and defend a case. I also assign a legal malpractice case in which I served as a plaintiff's expert witness so that I can prepare them for the basic language and approach to expert testimony. For more information about the case I assign, see \textit{Jeffery Dow v. Jones Benny Jones}, 311 F. Supp. 2d 461 (D. Md. 2004) (involving a malpractice claim filed by a former criminal defendant against his former attorneys).
process of the lawyer’s thinking. I call this approach “mentoring the classroom.” 99 By working on an issue in front of their classmates, akin to a “cold call,” 100 students gain great insight into how an experienced lawyer processes a problem and forms a solution. The students watch the lawyer struggle with the question, ask several scenarios about how this question might be resolved, and ultimately reach a succinct process of taking action on the matter. 101

Of course such legal thinking and analysis is the very heart of what lawyers do and what we should be teaching our students. When experienced lawyers play this out in front of a class, students draw confidence from the experience that they too should engage in the

99. Mentoring by classroom is my description of a technique I have used for over twenty years, where I invite lawyers to present to a class. On at least one issue presented by the guest speaker, I will request the class speaker to perform on the spot to solve a legal problem without warning, preparation or notice of the subject matter. The goal is to get them to think out loud in front of the students.

100. The occasionally horrific experience of the cold call in class is the greatest benefit of the Socratic method, since it requires students to prepare and present with a great sense of accountability to themselves and their classmates. When one is presenting, the classroom learning is highly dependent upon the quality of the preparation of the student called on.

101. In the amended complaint actually filed in the case allegations were made that:

Each of the Defendants, individually and/or through their actual and/or apparent agents servants, and/or employees, breached the aforesaid duties owed by Deanna Green by:

(a) failing to properly plan, construct, build, maintain, repair, and inspect the electrical system;
(b) failing to warn of the risks and dangers of the electrical system;
(c) failing to warn of the risks associated with a metal pole being located directed over an unmarked power line;
(d) failing to mark the location of underline power lines;
(e) failing to discover the defects in the electrical system, including the defect in the underground power line;
(f) continue to allow electricity to be supplied to, and transmitted through, a defective and dangerous electrical system;

... As the direct and proximate result of the Defendants’ negligence, Deanna Green was electrocuted and died.

Amended Complaint, supra note 1, at 8.
decisions and judgments that will lead to satisfying the client’s needs.

This exercise also gives students perspective about the roles different lawyers play when representing different types of clients. I found utilizing a variety of legal practitioners was very effective. For example, a former chief city solicitor might discuss how politics plays into decisions about whether to settle cases that are in litigation.102 Alternatively, a government lawyer may offer how an

102. Ultimately, the Greens settled with the City of Baltimore in Fall 2013. A local newspaper reported about the conclusion of the case as follows:

‘The Greens have taken this beyond their grief over their daughter,’ said the couple’s attorney, William H. ‘Billy’ Murphy Jr. ‘They have made this a national cause.’

The settlement ends a protracted court fight with the city of Baltimore over the girl’s death. . . .

Anthony Green said he met with Mayor Stephanie Rawlings-Blake in January and had a heart-to-heart talk about his daughter.

‘This is something that [Rawlings-Blake] inherited,’ Green said. ‘This was a very sensitive case for everyone.’

The city’s Board of Estimates, which is controlled by Rawlings-Blake, is expected to approve the settlement . . . .

‘There are lots of sympathetic reasons for settling the case,’ said City Solicitor George A. Nilson. ‘Certainly, the young lady did nothing to bring this about.’


Following their daughter’s death, the Greens ‘took up the cause’ of working to prevent stray voltage wires taking the lives of others in Baltimore and other cities, City Solicitor George A. Nilson said in a telephone interview on Monday.

Online records indicate that the settlement was reached in late February, pending the approval of the city’s spending panel.

Neither Nilson nor Murphy would discuss the timing of the settlement, which comes more than 2 1/2 years after the last docket entries in the case.

Beth Moszkowicz, City to Settle Suit over Teen’s Electrocution, DAILY REC., Mar. 18, 2013, http://thedailyrecord.com/2013/03/18/city-to-settle-suit-over-teen-electrocution/. The Greens’ settlement represented the maximum settlement in
elected official’s future plans might play a role in the discussion of which cases will be part of the settlement strategy for a city. They will often discuss public perception, budget implications, and the political repercussions that might come from settling a particular case. For example, is settling the case of the injury of a little girl more favorable than settling a case involving police brutality of officers in a local community? It is useful for the students to see these are judgments that are taken seriously and must be resolved in a case-by-case manner. However, above all else, an individual case’s merits play the ultimate role in determining how an attorney approaches that particular case. Another government lawyer might discuss how the use of public information laws might factor into fact investigation and possible discovery. For example, the work product doctrine could be used to protect a public client from sharing some information and analysis of the case.

Getting the defense side before the class is important as well. A lawyer for a major public utility may discuss how she must defend dozens of death and injury cases in a given year, such that the need to defend such emotional cases becomes part of her expected work. The same attorney may need to tell people who have had a light of the City’s liability cap. Liability caps and their role in the assessment of the value and recourses required in litigation were major parts of the strategic discussions in all sessions of the class.

103. A major issue erupted during the Deanna Green electrocution case regarding attorney work product. While the City released a major repair plan for parks, so that they could address how to “bring them up to code,” the City, through its officials, also noted that they had prepared three reports that they would not release to the public because they considered them attorney work product. The Baltimore Sun newspaper had requested the reports under Maryland’s freedom of information act and their request was denied. One lawyer from the City said “the reports were prepared for the city in anticipation of potential litigation and were therefore protected under state law.” Lynn Anderson, Death Leads to Park Repairs, BALT. SUN, July 20, 2006, at 1. The City’s chief solicitor, defending the stance taken by one of his lawyers, said, “he could not even talk about the contents of the documents with a reporter over the telephone.” Id. He further explained, “[w]hat I believe is that there may be litigation . . . I am not going to discuss what the reports are about.” Id. Among the reasons the Chief Solicitor gave for his action was that “he could keep the report out of public view for up to three years in anticipation of legal action by Green’s family.” Id.

104. Utility companies are involved in the deaths of many people each year including the deaths of their own employees. See Workers Killed After Being
great personal tragedy that this kind of loss may not be compensated by the company due to the legal rules that protect the company. Such entities are sued frequently because they are perceived to have the economic ability to pay and therefore the defense of such companies has to be rigorous and well financed as part of the cost of doing business.105

A lawyer for a utility repair company could present to the class a sympathetic view of his company that employs dozens of people and has done safe and responsible work in the community for years. The prospect of a high-publicity lawsuit involving a tragic death might threaten the very existence of a company that needs a rigorous defense for its survival. Such a lawyer could also offer many important insights between the relationship of the company to its insurance carrier and the role the lawyer plays representing the client, notwithstanding the insurance company’s relationship with its insured.

VII. CLASS PROJECTS AND EVALUATIONS

One of the most difficult parts of any class involving skills and application is how to assess the course and its students. With limited time during the semester, I have taken the approach that fewer, higher-quality assignments are better learning tools than multiple, shorter and less-involved assignments. All students have

105. An important issue the class discussed during one of its brainstorming sessions is whether a utility company has a duty over power lines that it does not own, since some cases hold that, even if one of its own employees is harmed while working on an electrical system, the company may not be responsible. See Butler v. City of Peru, 733 N.E.2d 912, 916 (Ind. 2000) (noting that, generally, electric utilities have no duty to insulate even those lines that they own if the general public is not exposed to the lines and they have no knowledge of a particular segment of the population that is regularly exposed to the non-insulated lines).
two individual assignments that they must complete for a grade. Those assignments are usually an early memorandum on a discovery issue like the work product doctrine. I also assign a final project that, for example, might be a memorandum on the motion to dismiss filed by the electric utility company. These two assignments ensure that students feel their individual work is evaluated independently from the group responsibilities that they share for a large part of the course. Sometimes students are given short letter-length assignments that help me see if the class has internalized the major points of the lesson. These assignments generally do not result in a grade, but completion of the assignment counts towards a student’s class participation.

About 60% of the course grade is attributed to the group work that each litigation team is assigned. These projects vary from client memoranda to discovery wish lists of expert witness deposition questions. Sometimes students are asked to do a comprehensive settlement memorandum as if the case were going to a judge for settlement or arbitration. I ask students to resolve their own questions within their group, where I only serve as a last resort for consultation. During the group session, we would have mock

106. Groups sometimes draft settlement agreements pursuant to the negotiations they conduct. One portion of such an agreement drafted during a mock settlement negotiation with the utility defendant in the case reads as follows:

As a result of the injuries sustained by Deanna Green, Plaintiffs have brought suit against DEL for damages. DEL has denied both liability and the claimed extent of damages. This release serves as a compromise settlement between Plaintiffs, NANCY ARRINGTON-GREEN, et al., and Defendant, DEL.

It is expressly agreed that this Agreement is not an admission of liability or fault, but that this Agreement and payment is made as a compromise to settle all claims arising out of this occurrence. The parties declare that they have voluntarily entered into this Agreement in good faith, have read and understand it, and consider it to be a fair and reasonable settlement.

The parties shall maintain the terms and conditions and facts causing and/or contributing to the production of this Agreement as confidential.

Settlement Agreement and Release of All Claims (DEL), Litigation Process (Fall 2010) (on file with author).
deposition questioning of witnesses, arguments on motions to dismiss, or settlement conferences with a judge presiding in the class if required to actually resolve the parties’ dispute.

Since students have to make the actual lawyering judgments by this time, they are often worried about the quality of the work product, rather than their respective grades. It is refreshing to see them worried about whether they actually have a solid case, rather than simply if they have done enough to receive an “A.” Ultimately, each student has a fulfilling experience because of the real warriors

107. When submitting its final trial notebook, each group is asked to submit potential deposition questions for those witnesses each group determined are essential to its argument. One prominent “mock” witness, selected for interview by the students, was one of the city contractors hired to test the field for safety after Deanna’s electrocution. Some of the questions formed by the group for this particular witness were:

1. Were you aware of any repairs or work done on Field #8 prior to your investigation? If yes, who completed the work and what did they do?
2. Were you aware of any electrical problems at the park before the city asked you to do a consultation there?
3. Have you worked for the City of Baltimore or State of Maryland in the past? If yes, what were you contracted to do?
4. During your consultation and investigation of the electrical system in place, were there problems with the system? If yes, should these problems have been known to a reasonable electrician doing work in the area?
5. What is a secondary ground grid system and what are the correct tolerances and acceptable industry standards for this system? Is it standard practice to have a secondary ground grid system installed?
6. How often would you check light fixture and the continuity of their circuits and grounds on a public outdoor field?
7. Does your company use thermal imaging technology or equivalent inspection technology? If so, how long have you been using such technology and how long has this technology been in existence?
8. Is use of such technology (thermal imaging technology) an industry standard?
9. If the electrical system were defective, would there be an abnormal or fluctuating level that would be detectable from the meter? What is the difference between branch circuit breakers and ground fault type? Is it common usage to ground all circuit breakers in a publicly used park?

Plaintiff’s Deposition Questions, Litigation Process (Fall 2010) (on file with author).
in each particular trial setting: the actual people that they come in contact with during the course.  

VIII. ATTENDANCE AT COURT HEARINGS

I taught this class over several years that coincided with court hearings regarding the Deanna Green litigation, where students who were working on the case in class also attended the court hearings. Among these hearings was a hearing on whether the plaintiffs would be permitted to amend the complaint the day prior to a motion to dismiss. Later hearings involved the motion to dismiss that was filed by all defendants in the case, and several hearings on motions for summary judgment prior to the jury trial. The final motion was filed to leave open the case against the City of Baltimore, based upon information received in discovery from one of the defendants.

After each of these various hearings, my students had an opportunity to speak with the participating lawyers. When such discussion was impossible, the court activity during the hearing was discussed in the subsequent class. One cannot measure the learning value the students get from hearing the arguments that they pursued themselves in a group setting.

IX. LEGISLATIVE REFORMS

During the pendency of the litigation, Mr. Green asked me about how the law could be changed regarding stray voltage electricity. I explained to him that in the normal process of legal reform, litigation was required to go through the court system until the court system was finished. After the litigation process has concluded, if the judicial resolution of the matter was unsatisfactory, then legal reform through legislation is a possible avenue.

When Mr. Green then asked me how long the case might take to wander through the appellate process, I explained to him that after a jury verdict or after a dismissal we could expect another one to three years before the case was completed in the appellate courts.

108. Litigation Process Student Guest Feedback Form to author (Fall 2013) (on file with author).
He then asked whether there was any law that prohibited him from trying to get the law changed before the case was completed. After some reflection, I advised Mr. Green that there was no formal prohibition to reforming the law before the case was finished.

Throughout the litigation, Mr. Green pursued a strategy to have a bill introduced in the Maryland legislature that would change the standard of care for electric utility companies.109 During the pendency of the litigation, the Greens pursued legislative reform before the Maryland Public Service Commission110 and the Maryland General Assembly.111 Students were allowed to attend these public hearings and observe the legislative side of law reform. This was clearly an unexpected consequence of teaching the Greens' case in a litigation process course. After attending the court hearings, students would often want to talk about the case immediately following the lawyers' courtroom performances. The students would talk to the plaintiffs' lawyers outside of the courtroom and ask questions about the choices that were made during the hearing. Sometimes I would ask students from a prior semester's class to come talk with the students who were currently taking the course in hopes that they might offer insights from the prior hearings they attended. Surprisingly, students would often follow the case months and even years after they worked on the matter in class. Several even informed me that they had discussed the case during job interviews when employers had asked them what interesting work they did in law school. These examples suggest that the students were energized by the realistic aspects of the course material. Surprisingly, the Greens were able to do what is almost impossible—have a law passed before any appellate decision was announced in the course of their lawsuit. The Deanna Camille Green Act of 2012 was signed into law by Governor O'Malley on January


110. Tricia Bishop, PSC Adopts Regulations to Prevent Electrocutons, BALT. SUN, Oct. 29, 2011, at 1A (detailing how the Greens sought regulations to detect stray voltage electricity).

111. CBS BALT., supra note 109.
22, 2012. The Greens did not stop at Maryland; instead they traveled to other states and argued before other legislative organizations to adopt such laws for protecting public parks. Their efforts made national headlines on the CBS Evening News with Scott Pelley, which did a major segment on stray voltage electricity discussing Deanna’s death.

X. CONCLUSION

Using the electrocution case of Deanna Camille Green, I have determined that simulation teaching can become easier and more successful with some planning. Every law school is located close enough to a court system that contains controversies and legal issues that are pertinent to the communities in which they are located. I was fortunate, through unfortunate circumstances, to obtain the permission of litigants who were actively involved in a case that had continued for years, produced new documents, and had hearings taking place during many of the semesters in which the case was primarily taught. I recognize that duplicating the circumstances in my classroom may not be possible, but they need not be exactly the same as those I used in order to enrich the simulation course.

In the end, the key elements for learning are determined not by the facts of a given case, but by the range of perspectives and

112. The Deanna Camille Green Act of 2012, MD. CODE ANN., PUB. UTILS. § 7-214 (West 2012). Before the Act passed, the Maryland House of Delegates amended the Act and removed much of its substance. Parents of Deanna Green Decry Maryland House of Delegates’ Actions Regarding Bill Named After Their Late Daughter, YAHOO! FINANCE (Mar. 26, 2012, 10:18 AM), http://finance.yahoo.com/news/parents-deanna-green-decry-maryland-141800830.html. While the Greens were disappointed that the Act no longer had the strength of the earlier version, the Greens wanted the first law of this type to be passed in Deanna’s name so that they could continue to advocate for reform across the country. Telephone Interview with Anthony Green (June 5, 2014).


judgments made by the students. Allowing the use of actual case
documents, client letters, and local newspaper accounts to test the
students’ thoughtfulness about important considerations in the case
can help enrich the learning experience. Another benefit to
simulation classes like that of Deanna’s case is that when actual
defendants or plaintiffs are willing to speak to the class, students
gain additional practical exposure. Confidentiality and other
professional responsibility concerns might be raised by such
conversations, but a practical alternative implemented by my class
was to bring in lawyers who were not involved in the case at issue
but those who practice in the same area or who had to make similar
decisions. Having those lawyers articulate their thought processes
while the students observe and question them about elements of the
case provides an opportunity for students to see that even
experienced lawyers are not always absolutely certain about the
judgments they make.

I think it is a great tragedy in teaching the law that students
take away the idea that there is always a perfect answer. One of the
greatest preparations we can give to students entering the profession
is to demystify the practice in a way that assures them that the
perfect answer is the best answer under the circumstances through
thoughtful preparation and analysis. In some ways, we should not
forget that our job is to teach the students to grade their own papers
for the rest of their lives.

Taking great care in creating elements in a simulation class
that best duplicate professional judgments in litigation—including
considerations of cost, client desire, and time—will help students
develop a comfort level with what they can expect once actually
handling a case on behalf of a client in the real world. I have always
been concerned that simulation courses are viewed as all being
equal. Canned problems from a book taught by someone who has
spent some time in the courtroom might be a tempting option for law
schools already under financial strain. Simulation courses should
never be viewed as an adequate replacement for an in-house clinic or
other experiential learning models. Nevertheless, simulation
teachers do have a responsibility to continually improve their courses
while still providing the professional skills that are needed to
respond to an ever-changing legal landscape.
Students should also understand that simulation courses require much more time and energy than the typical law school offering. Group meetings will often be necessary to conduct additional research and discussion of the merits of various points of view for each document required to be filed in the course. I often tell my students that litigation always operates in a group setting, whether they think so or not. The group that always exists is the lawyer, the lawyer’s client, the opponent, the opponent’s lawyer, and the judge who must make the decision. The uncertainties brought about by the adversarial system are why they should be trained for judgment and uncertainty.

There are many rewards gained from taking the time to develop simulation courses in the way that will deliver more of what the profession needs for the lawyers in the twenty-first century. Obviously, the most important benefit is that better-trained lawyers enter the profession with the chance to exercise judgment on hard issues before being thrown to the wolves. The lesson to be learned is that preparation is the difference in the amount of time that is required to get the question answered, as opposed to the amount of time required to complete a paper with an artificial or arbitrary page limit.

Additionally, the design of the course enhances connections with the legal community in a way that is intimate and personal. It is one thing for a lawyer to come to the law school during an alumni or “meet and greet event;” it is quite another to watch the lawyer exercise professional judgment when students are struggling through difficult material that requires them to make decisions about a client’s outcome.

The lawyer who exercises professional judgment before the students try to solve a difficult problem in the case, gets an opportunity to give back to the students while at the same time observing the seriousness of those he or she is trying to help train. Some of the nation’s top business schools use this case study model to develop future business leaders in the country. Law teachers have only scratched the surface of the potential for such simulations and learning experiences in the law school classroom. Because of the pronounced demand for more practical lawyering from all stakeholders in the legal community, now may be the time to engage more seriously in designing simulation courses that meet the
rigorous demands of the future of our profession, while at the same time allowing students to gain valuable skills as part of the law school curriculum. In the long run, it is worth the effort and will pay future dividends for both the profession and those who serve it.