

# All I Ever Needed to Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom

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As law teachers, we are constantly searching for effective ways to enhance our students' learning and improve their motivation. Some of us design problems, create role plays, or introduce material from other disciplines. But law teachers generally have not sought teaching techniques from educators outside of law schools.<sup>1</sup> It is time that we did.

I taught in a variety of settings before teaching in law school, and those experiences have strongly influenced my approach to law teaching. I began by teaching in preschool and kindergarten, where the integration of education and play contributed to the children's enjoyment and learning. One teaching method—gaming—seemed particularly effective in combining education and play.

I am defining *gaming* broadly: gaming has students actively taking on a role and, while in that role, effectuating changes in an artificial but realistic environment.<sup>2</sup> From early childhood, children learn by playing games. They

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1. See Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 *Geo. L.J.* 875, 895 (1985); cf. William Wesley Patton, *Opening Students' Eyes: Visual Learning Theory in the Socratic Classroom*, 15 *Law & Psychol. Rev.* 1, 1 & n.1 (1991).
2. There is disagreement in the educational psychology literature over the definition of "gaming." Distinctions among various definitions primarily concern the relationship between games and simulations. Some commentators interpret games and simulations as separate and distinct methods. See, e.g., Phillip H. Gillispie, *Learning Through Simulation Games 4* (New York, 1973); Joseph D. Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in *Guidelines for Clinical Legal Education* 191, 196 (Chicago, 1980); J. Thomas Butler, *Games and Simulations: Creative Educational Alternatives*, *Teaching Trends*, Sept. 1988, at 20, 20. Other commentators define a game as a subset

are exposed to games through their families and caregivers, their educators, and the media. The games include role plays and simulations; game shows like *Jeopardy*, *To Tell the Truth*, and *Hollywood Squares*; simulated talk shows such as *The Donahue Show*; and board and computer games.<sup>3</sup>

I had another opportunity to use gaming when I taught English as a second language to students from kindergarten to junior high. Because many of my students spoke no English when they entered my classroom (and most spoke languages that I did not know), traditional teaching methods were not initially available to me. So we played games. Gaming was familiar to the students, and unthreatening. And gaming was an effective way for them to learn a variety of language skills.

When I began teaching law school, I wondered whether any of the teaching methods I had employed with younger students could be applied to law school teaching. I quickly realized that certain core principles of good teaching and learning are universal. In particular, I realized that learning should be enjoyable and that students learn best through a variety of teaching methods. Much like Robert Fulghum, who concluded that life's essential lessons are learned in kindergarten,<sup>4</sup> I realized that I had acquired these core principles of teaching by teaching kindergarten (and other nonlaw) students.

So I began to integrate some gaming techniques into the law school classroom, to complement the Socratic discussion. I began conservatively by using brief role plays, with students assigned the roles of lawyers arguing to a court or advising a client. Because I felt a need to provide my Civil Procedure students with learning in context, the role plays became more formal and extensive, including firm meetings and legislative hearings. And I required greater preparation from the student participants.

Then I created the Buffalo Creek Family Feud game to teach certain discovery rules relating to depositions, interrogatories, and requests for pro-

of a simulation. See, e.g., Patricia A. Hollander, *The Simulated Law Firm and Other Contemporary Law Simulations*, 29 *J. Legal Educ.* 311, 313 & n.11 (1978).

Because defining simulations and games is troublesome, some commentators advocate a model known as "simulation gaming," which unites both concepts to provide an objective model and framework within which the participants can experience an exciting game mood. Gillispie, *supra*, at 4. Other scholars, however, consider any distinction between games and simulations ambiguous, and often use the terms interchangeably. See Dean S. Dorn, *Simulation Games: One More Tool on the Pedagogical Shelf*, 17 *Teaching Soc.* 2 (1989); see also Harbaugh, *supra*, at 196 n.19. My definition is a functional one that attempts to circumvent the seemingly technical distinctions between games and simulations.

3. See, e.g., Gillispie, *supra* note 2; Carolin S. Keutzer, *Jeopardy in Abnormal Psychology*, 20 *Teaching Psychol.* 445 (1993); Robert H. Hunter, *Will the Real Catherine the Great Please Stand Up? Audiovisual Instruction*, Feb. 1977, at 36; Patricia Westphal, "Hollywood Squares" Comes to the Physics Room, 29 *Physics Tchr.* 208 (1991); Joel Geske, *Overcoming the Drawbacks of the Large Lecture Class*, 40 *C. Teaching* 151, 151-52 (1992); Lisa M. Leonard & Dyanne M. Tracy, *Using Games to Meet the Standards for Middle School Students*, 40 *Arithmetic Tchr.* 499, 501-02 (1993); Charles C. Bonwell & James A. Eison, *Active Learning: Creating Excitement in the Classroom*, ASHE-ERIC Higher Educ. Rep. 1, 41-43 (1991); Wilbert J. McKeachie, *Teaching Tips: A Guidebook for the Beginning College Teacher*, 8th ed., 153-56 (Lexington, Mass., 1986).
4. *All I Really Need to Know I Learned in Kindergarten* (New York, 1988).

duction of documents. The discovery material I wanted to teach is rule-oriented and is not comprehensible without an understanding of the litigation context in which the rules are used. A game seemed the most appropriate way for the students to apply the rules in context. The following semester I created Class Action Jeopardy, adapting the format of the television game show to introduce students to the general characteristics of class actions.

One of the virtues of gaming is its flexibility. A game can be competitive or noncompetitive. It can be played for ten minutes, for thirty minutes, or over the course of a semester. Some games are as suitable for ninety-five students as for twenty-five.

I am not suggesting that we turn our backs on the traditional teaching methods. Nor am I suggesting that we pander to any notion that education should be less challenging or more entertaining. What I am suggesting is that if we transform the classroom into a courtroom or a game show a few times a semester, our students will be more likely to achieve our educational objectives.

### Why Play Games?

Various forms of play have been an integral part of the classroom for a long time.<sup>5</sup> A number of educational theorists, including John Dewey and Jean Piaget, have extolled play as a way of learning.<sup>6</sup> Its virtues include its experiential nature and the intrinsic rewards it provides to students.<sup>7</sup> Gaming is simply one form of play.

Several studies have underscored the benefits of gaming for students from elementary to graduate school. In the law school environment, gaming has been limited primarily to clinical legal education.<sup>8</sup> But the general benefits of gaming—increased motivation, more cooperation among students, and improved cognitive ability—justify its integration throughout the law school curriculum.

Educational research has shown that the primary benefit of gaming is the increased motivation that comes with an active learning experience.<sup>9</sup> Al-

5. Donald B. King, *Simulated Game Playing in Law School: An Experiment*, 26 *J. Legal Educ.* 580, 580 (1974); John Magney, *Game-Based Teaching*, *Educ. Dig.*, Jan. 1990, at 54, 54–55.
6. See John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* 190, 228–30, 237–42 (New York, 1916); Jean Piaget, *Science of Education and the Psychology of the Child*, trans. Derek Coltman, 155–57 (New York, 1970). Play enables students to achieve a “flow” experience, in which “action follows upon action according to an internal logic that seems to need no conscious intervention by the actor. He experiences it as a unified flowing from one moment to the next, in which he is in control of his actions, and in which there is little distinction between self and environment, between stimulus and response, or between past, present, and future.” Mihaly Csikszentmihalyi, *Beyond Boredom and Anxiety: The Experience of Play in Work and Games* 36 (San Francisco, 1975); see also *id.* at 182.
7. See Csikszentmihalyi, *supra* note 6, at 47, 191; Dewey, *supra* note 6, at 183; Piaget, *supra* note 6, at 155–57.
8. See, e.g., Paul Bergman et al., *Learning from Experience: Nonlegally-Specific Role Plays*, 37 *J. Legal Educ.* 535, 536 (1987); Harbaugh, *supra* note 2.
9. See, e.g., Mary E. Bredemeier & Cathy S. Greenblat, *The Educational Effectiveness of Simulation Games*, 12 *Simulation & Games* 307, 325–26 (1981); June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 *Wm. Mitchell L.*

though the Socratic method may be an active learning experience for those few students who are called on, the rest are usually left to observe the dialogue and take notes.<sup>10</sup> And even the students engaged in the dialogue may not perceive its relevance to the lawyering process.<sup>11</sup> Gaming, in contrast, requires students to act like lawyers.<sup>12</sup> It makes them want to perform well because they can see that the skills they are learning are relevant.<sup>13</sup> If the game allows “winning,” it provides an added incentive for achievement-oriented law students.<sup>14</sup>

Increased motivation may have ancillary benefits: the students gain confidence,<sup>15</sup> which is particularly important for future lawyers who will need to display confidence to clients, colleagues, and judges.<sup>16</sup> They also gain a more positive attitude toward the classroom experience: they attend more classes, pay attention and participate more frequently, and may even perform better on examinations.<sup>17</sup>

A second benefit is that games encourage cooperation. The law school classroom is characteristically a competitive rather than a cooperative learning environment.<sup>18</sup> The teacher ordinarily engages one student at a time, and often calls on other students if the first student fails to further the discussion

Rev. 1011, 1018–19 & n.34 (1989); James D. Klein & Eric Freitag, Effects of Using an Instruction Game on Motivation and Performance, 84 J. Educ. Res. 303, 306–07 (1991). But see Robert Hunter & Richard E. Clark, Simulation/Gaming Research, Educ. Tech., July 1977, at 44, 44–45 (motivation may be directed at the game itself rather than the subject matter).

10. See Cicero, *supra* note 9, at 1016; Andrew S. Watson, The Quest for Professional Competence: Psychological Aspects of Legal Education, 37 U. Cin. L. Rev. 91, 111 (1968).
11. See Steven I. Friedland, The Use of Appellate Case Report Analysis in Modern Legal Education: How Much Is Too Much? 10 Nova L.J. 495, 511 (1986); Myron Moskovitz, Beyond the Case Method: It's Time to Teach with Problems, 42 J. Legal Educ. 241, 244 (1992).
12. Cf. Harbaugh, *supra* note 2, at 204 (“simulations eliminate any ‘real world’ sanctions that accompany acting as a lawyer”).
13. See Robert P. Davidow, Teaching Constitutional Law and Related Courses Through Problem-Solving and Role-Playing, 34 J. Legal Educ. 527, 530–31 (1984).
14. See Csikszentmihalyi, *supra* note 6, at 41; Klein, *supra* note 9, at 306. But competitive simulations might not be effective for all students. See Bergman et al., *supra* note 8, at 541; Gilbert Highet, *The Art of Teaching* 146–49 (New York, 1950).
15. Cf. Klein, *supra* note 9, at 306.
16. Many aspects of the law school classroom undermine a student's confidence. See Cicero, *supra* note 9, at 1014–16; Steven A. Childress, The Baby and the Bathwater: Salvaging a Positive Socratic Method, 7 Okla. City U. L. Rev. 333, 333–34, 340–43 (1982); J. T. Dillon, The Paper Chase and the Socratic Method of Teaching Law, 30 J. Legal Educ. 529 (1980); Catharine W. Hantzis, Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching, 38 J. Legal Educ. 155, 156, 158 (1988). When students' confidence is eviscerated, it is unlikely that they will be motivated to learn.
17. See Jessica A. Somers & Margaret E. Holt, What's in a Game? A Study of Games as an Instructional Method in an Adult Education Class, 17 Innovative Higher Educ. 243, 251 (1993); Dorn, *supra* note 2, at 5, 8.
18. Theresa Glennon, Lawyers and Caring: Building an Ethic of Care into Professional Responsibility, 43 Hastings L.J. 1175, 1177 (1992); see also Cicero, *supra* note 9, at 1014; Hantzis, *supra* note 16, at 156.

constructively; one student's loss is another's gain.<sup>19</sup> But in a game, particularly one played with teams, the success of the individual depends on the success of the entire group.<sup>20</sup> This kind of cooperative learning reflects the nature of law practice, since lawyers often must work together toward a common goal.<sup>21</sup>

Third, introducing games may improve students' learning of doctrine and professional skills and values.<sup>22</sup> Although the results of studies have been mixed,<sup>23</sup> some have found that gaming improves the ability to retain knowledge, to make decisions, and to understand general principles.<sup>24</sup> Even if students do not learn more by playing games, they generally do not learn less.<sup>25</sup> By motivating students and retaining their attention for a longer period of time, gaming may extend their opportunities for learning<sup>26</sup> and enhance those opportunities by teaching law in a meaningful context.<sup>27</sup>

19. Hantzis, *supra* note 16, at 156.

20. See Elizabeth Grauerholz, *This Is Jeopardy! How to Make Preparation for Examinations Fun and Challenging*, 19 *Teaching Soc.* 495, 497 (1991); Dorn, *supra* note 2, at 5. Moreover, the degree of cooperation exhibited by the students may depend on the atmosphere of the classroom environment prior to game-playing. See Frank L. Ryan & Ronald Wheeler, *The Effects of Cooperative and Competitive Background Experiences of Students on the Play of a Simulation Game*, 70 *J. Educ. Res.* 295 (1977).

21. See Kenney Hegland, *Fun and Games in the First Year: Contracts by Roleplay*, 31 *J. Legal Educ.* 534, 535 (1981).

22. Although the MacCrate Report emphasizes the importance of clinical programs to develop these skills and values, it appears to encourage their integration even in traditional law school classes. See Curtis J. Berger, *Teaching "S&V" Beyond the Live Client Clinic: We Can Do Far More Without Spending Far More*, in *The MacCrate Report—Building the Educational Continuum*, eds. Joan S. Howland & William H. Lindberg, 69, 70–72 (St. Paul, 1994); Michael Traynor, *Where Do We Go from Here?* *in id.* at 125, 127.

The report itself recommends that "[l]aw schools should be encouraged to develop or expand instruction in such areas as 'problem solving,' 'factual investigation,' 'communication,' 'counseling,' 'negotiation' and 'litigation.'" American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development—An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 332 (Chicago, 1992) [hereinafter *MacCrate Report*]. It is my view that such development or expansion can and should occur throughout the curriculum, including traditional classes.

23. McKeachie, *supra* note 3, at 232–42; Bergman et al., *supra* note 8, at 539; Hollander, *supra* note 2, at 338–42; Hunter & Clark, *supra* note 9, at 44–45; Klein, *supra* note 9, at 303–04; Jane Lundy, *Cognitive Learning from Games: Student Approaches to Business Games*, 16 *Stud. Higher Educ.* 179 (1991).

24. Hollander, *supra* note 2, at 341–42; Harbaugh, *supra* note 2, at 208, 210.

25. See Bredemeier & Greenblat, *supra* note 9, at 320–22; Dorn, *supra* note 2, at 7; Klein, *supra* note 9, at 306–07; Charles C. Spraggins & Robert E. Rowsey, *The Effect of Simulation Games and Worksheets on Learning of Varying Ability Groups in a High School Biology Classroom*, 23 *J. Res. Sci. Teaching* 219, 219–20, 223–25 (1986). But see Lundy, *supra* note 23, at 185 (competitiveness can reduce effectiveness of games).

26. Grauerholz, *supra* note 20, at 496; Klein, *supra* note 9, at 307.

27. See Hegland, *supra* note 21, at 534–35; see also Dewey, *supra* note 6, at 189–92. Legal scholars have recently described the benefits of law students' learning in context, using methods such as problems and narratives. See Suzanne Kurtz et al., *Problem-Based Learning: An Alternative Approach to Legal Education*, 13 *Dalhousie L.J.* 797, 801–03 (1990); Sandra C. McKenzie, *Storytelling: A Different Voice for Legal Education*, 41 *U. Kan. L. Rev.* 251 (1992).

Finally, a variety of teaching methods assures *all* students the opportunity to learn. Law teachers must recognize that students have different learning styles which may be better suited to one teaching method than another.<sup>28</sup> Gaming provides an alternative way to help students learn, particularly students who learn better visually or experientially.

### Creating Your Own Game

Although gaming may seem a good idea in theory, creating a game may appear to be a daunting task to a teacher who has never tried it before. It requires an initial investment of a significant amount of time. But time invested now is class-preparation time saved in future years, and the benefits of gaming greatly exceed the initial efforts. This section suggests some ways to create a game for the law school classroom. I use my Buffalo Creek Family Feud, roughly modeled after the television game show *Family Feud*, as an example.<sup>29</sup>

The creation of a game like this one requires a number of discrete steps: defining educational objectives, and then designing, preparing, playing, and modifying the game.<sup>30</sup>

### Defining the Educational Objectives

The first (and most important) task is to define your educational objectives.<sup>31</sup> The objectives should be narrow, separately developed for each class or for part of a class. There are essentially two types of educational objectives. Those of subject matter relate to the body of legal knowledge that you want the students to learn—e.g., the elements of assault and battery, the policies underlying the attorney-client privilege. Those of process relate to skills and values that you want the students to develop—communication skills, close and critical reading of case law or rules.<sup>32</sup>

28. See, e.g., David W. Champagne, *Improving Your Teaching: How Do Students Learn?* 83 *Law Libr. J.* 85, 85 (1991); Patton, *supra* note 1, at 1–2, 3 n.13; Hollander, *supra* note 2, at 342 (citing C. S. Boocock, *Using Simulation Games in College Courses*, 1 *Simulation & Games* 1, 67 (1970)).

According to one commentator, there are three dimensions in which a student learns: the cognitive, the affective, and the active. A student exercises his cognitive dimension when he is learning how to “think like a lawyer.” When a student is taught to understand the *feelings* of others, his *affective* dimension is being modified. When the student *engages in tasks or roles* on behalf of himself and others, he is exercising his *active* dimension. Harbaugh, *supra* note 2, at 198. A teacher should attempt to ensure that students learn in all three dimensions, and that students who learn differently each receive comparable benefits from the classroom.

29. The subject of the game is loosely based on the Buffalo Creek litigation, which arose out of the collapse of a silt-retaining dam in West Virginia. This litigation is described in Gerald Stern, *The Buffalo Creek Disaster* (New York, 1976).

30. See Francis D. Atkinson, *Designing Simulation/Gaming Activities: A Systems Approach*, *Educ. Tech.*, Feb. 1977, at 38; see also Gillispie, *supra* note 2, at 226–29; Butler, *supra* note 2, at 21–23; Harbaugh, *supra* note 2, at 210–15. These steps can serve as a paradigm for planning any class.

31. Dorn, *supra* note 2, at 9.

32. See Elizabeth Fajans & Mary R. Falk, *Against the Tyranny of Paraphrase: Talking Back to Texts*, 78 *Cornell L. Rev.* 163, 190–201 (1993).

After you determine your objectives, you must consider whether a game will satisfy them. Different types of games satisfy different objectives. Role plays satisfy process objectives, such as building litigation and communication skills, by requiring the students to “be” lawyers and judges.<sup>33</sup> Game shows are better suited to review legal doctrine and to test the students’ comprehension of a large amount of discrete information in a problem-solving context.

I use the Buffalo Creek Family Feud game to test the students’ knowledge of the discovery rules and, in particular, how lawyers use the tools of depositions, interrogatories, and requests for production of documents. The game requires students to read the discovery rules carefully and critically, and to practice using the rules from an advocate’s perspective.

The game also improves necessary lawyering skills. The students learn pretrial litigation skills by acting in the role of a lawyer during the discovery phase of litigation. The game builds oral communication skills: students must concisely and precisely articulate their answers in front of the class. It also builds analytical skills by requiring the students to apply the various discovery rules in context.

#### *Designing the Game*

The design of the game should follow some basic principles: it should satisfy your educational objectives, be easy to play, and contain opportunities for positive reinforcement.<sup>34</sup> Designing a game is like writing a play—your game rules and questions are the script, and you and your students are the actors. The play should be entirely written before you walk into the classroom.

Using a format from an existing game is easier than developing your own because you and your students start with a basic understanding of how to play the game. You can get ideas for games from such sources as television shows, board games, and educational materials. Once you have created the game, you can use the same format for different subjects and in different courses by simply substituting different questions.

Even an existing game will require some modification, particularly for a large classroom. You will have to consider how the contestants will be chosen (by volunteering or being called on, before class or during); whether the contestants will play individually or in teams, and, if in teams, whether they will be permitted to confer with each other before answering a question; how long the students will have to answer a question; how many students will be permitted to participate; how many points (if any) will be given for correct

33. See MacCrate Report at 332.

34. In general, positive reinforcement should be used whenever possible. See Paul R. Baier, *What Is the Use of a Law Book Without Pictures or Conversations?* 34 *J. Legal Educ.* 619, 625 (1984); Harbaugh, *supra* note 2, at 209–10; see also Cicero, *supra* note 9, at 1019–20; Friedland, *supra* note 11, at 511.

answers and how partial credit will be allotted; and what rules will ensure that your educational objectives are achieved with the least amount of chaos.<sup>35</sup> Overall, the simpler the format the better.<sup>36</sup>

For the Buffalo Creek Family Feud, I decided to choose six contestants, three students for each team.<sup>37</sup> One team represents the Stern family (the plaintiffs), and the other the Staker family (the defendant). Dividing the contestants into teams enables the students to work cooperatively and decreases their anxiety over answering questions in front of the entire class. Although one team is declared the winner, both teams get praise from me and support from classmates. In this way, the game injects just the right amount of competition.

The contestants can be chosen in a previous class or at the beginning of the class period.<sup>38</sup> If the contestants are chosen in advance, they will be better prepared than if chosen during class, but they will also have more time to become anxious about the exercise. If the contestants are chosen on the day of the exercise, they will be less anxious,<sup>39</sup> and the entire class will be sufficiently prepared for the exercise because anyone may be called on as a contestant.

The questions that I prepared for the game were based on my objectives for it: careful and critical reading of the discovery rules, and application of this knowledge to situations that a lawyer might encounter. The questions relate to the discovery stage of the Buffalo Creek litigation, and the students must answer in the role of plaintiffs' or defendant's counsel. The students should come up with answers in a fairly short time; that encourages a feeling of accomplishment<sup>40</sup> and moves the game along. The questions are usually brief. The best questions have a correct answer, which allows little or no quibbling about the degree to which an answer is acceptable.

For example, one round of my questions addresses discovery of nonparty witnesses. To the Staker team (the defendant), I ask the following series of questions (worth a total of ten points):

35. Role plays and simulations require slightly different considerations. You still must determine your educational objectives and how a role play will satisfy them. These types of games are an excellent way to synthesize a large amount of material while also enhancing a variety of lawyering skills. You will have to determine the setting for the role play. And what roles will the students play? How much flexibility will you give the students to develop their roles? Will you require or allow them to use outside materials? Will the exercise be graded or ungraded? See Bergman et al., *supra* note 8, at 543; Atkinson, *supra* note 30, at 40–41.
36. Atkinson, *supra* note 30, at 40–41.
37. I try to choose students of varying abilities, to the extent I can make that determination.
38. I have tried it both ways and prefer to call on students at the beginning of the class in which the game is played. If they have read the material, they should be able to play the game competently.
39. I tell the class that we will be playing a game during the next class, and that they all should be prepared to participate.
40. Generally, if students are given tasks that are too difficult and cause anxiety, they will be unable to feel accomplished. Cf. Csikszentmihalyi, *supra* note 6, at 45–46, 49–50, 191–92.



- Is it proper for the plaintiffs to send Lloyd's (the insurance company that covered Pittston, the defendant in the Buffalo Creek case) a request for production of documents?
- What is the proper way to obtain documents from the insurance company?
- In addition to the subpoena for documents, does the lawyer need to depose an officer of the company?

To the Stern team (the plaintiffs), I ask these questions (also worth ten points):

- You serve a set of interrogatories on Mr. Weedfall, a meteorologist who is not a party in this case (and not an expert). If he does not answer, will you be able to obtain a motion from the court compelling discovery?
- Then how can you get information regarding causation/recklessness from him?

I pose these questions to a student individually, but that student is permitted to confer with teammates before answering. If the team answers all the questions correctly in three tries, it receives the total points allocated for the round.<sup>41</sup> The answer must include the authority relied on by the student. If the answers are incorrect or only partially correct—or if the team members take too long—the audience (i.e., the rest of the class) is given the opportunity to answer the question and gain full or partial credit. All the students have an incentive to work on the problem along with the contestants and actively participate in the game.

In the examples set forth above, if the Staker team correctly answers the first question for four points but is unable to answer the second after three tries, I ask for an answer from the audience and choose the first hand that I see. I call on audience members until I receive the right answer or until it appears that the class will be unable to give it.

I alternate questions between the teams until I complete the questions<sup>42</sup> or until the class has played the game for about fifty minutes (even if the class period is longer). At that point in this game, the students' attention tends to wane.

### *Pregame Preparation*

If the game is well designed, not much preparation should be required. But some preparation will ensure that the game runs smoothly. For example, questions should be reviewed for unnecessary ambiguity. Visual aids—handouts, scoreboards, overheads—should be prepared. If you plan to choose students ahead of time, you will need to tell them at least a class period before

41. I determine the total point value before the game begins, and tell the students what it is before I ask them the question.

42. I have prepared 16 questions (8 rounds) for the game, and the game usually takes 50 minutes to complete.

the game is played. The students will need even more warning if they must conduct any outside research or other extensive preparation.

### *Playing the Game*

Once the game begins, your role diminishes. You may act as a director, facilitator, master of ceremonies, or just passive listener. Regardless of the role, you probably will have less control of the class than you are accustomed to having. But you will retain sufficient control if the rules of the game are clear and are fairly enforced, and if the students perceive that points are allocated fairly.<sup>43</sup> The game should move at a brisk pace; the students should understand the questions and have enough (but not too much) time to answer them. And don't forget to enjoy yourself during the game. The students will appreciate your enthusiasm.

### *Modifying the Game*

Soon after playing the game, you should take time to evaluate its success and modify it for the next time you play. Even minor changes will improve the game for the following year.

You can base the evaluation on your own subjective assessment, on student feedback, or perhaps on the comments of a colleague invited to attend the class. You should consider how well the questions you posed satisfied the game's educational objectives, and unnecessary or ambiguous questions should be modified or discarded altogether. If the contestants did not seem well prepared, perhaps the questions were too difficult or the students did not know precisely what was expected of them. If the nonparticipants seemed inattentive, perhaps you need to provide more opportunities for their involvement. If the class seemed too chaotic, more rules or a different pace may be advisable.

Some educators have found that the best way to evaluate the game is to have a debriefing session afterwards and ask the class to discuss what happened during the game: what they learned, whether the game seemed to be an effective learning technique, and how they felt about playing it.<sup>44</sup> Unfortunately, I usually don't have enough class time for an effective debriefing.

### **More Games**

You may decide that a traditional game like the Buffalo Creek Family Feud does not satisfy your subject-matter and process objectives, or that it is simply not your style to play such a game. If so, other types of gaming that have been used effectively in various educational contexts are available for first-year and upper-class students.

43. It is helpful to appoint a student as scorekeeper so that you do not need to be distracted by that task.

44. Debriefing is well recognized as an effective pedagogical technique. See Somers & Holt, *supra* note 17, at 247; see also Bredemeier & Greenblat, *supra* note 9, at 310–11; Dorn, *supra* note 2, at 11. Some specific debriefing examples are set forth in Butler, *supra* note 2, at 23.

*Role Plays and Student Presentations*

Role plays and student presentations can be integrated into any class. Role plays are an integral part of my Civil Procedure and Family Law classes, and student presentations are an essential component of my Children and the Law class.

As many law teachers have discovered already, a role play is an effective way to teach doctrine, skills, and values within the traditional law school curriculum.<sup>45</sup> Instead of simply reciting a case, a student may be assigned a role: a lawyer making an oral argument or examining a witness; a judge deciding a case; a law clerk advising a judge; or a law professor testifying before a congressional committee.<sup>46</sup> A role play not only tests the students' legal analysis and reasoning, but also develops essential lawyering skills in context. Students get a sense of how lawyers gather facts and develop an argument, how judges decide cases, how lawyers advise clients. And requiring students to play different roles helps them appreciate different perspectives.<sup>47</sup>

These objectives are achieved more effectively through role plays than through hypotheticals or problems. Because role plays generally involve more facts and seem more realistic, students are motivated to play their part well and really hone their skills. For example, when the student's task is to advise a client in a context in which the law is uncertain, I have used a toy cellular phone and played the role of a client who inevitably becomes frustrated when her counsel (the law student) tells her the law is unclear or when her counsel simply cites cases.<sup>48</sup> Because I stay in character and control the development of the facts, the students also must stay in their roles. Most important, the exercise requires the students to synthesize difficult doctrine and to translate it into advice that is useful to a client. The exercise also may help students appreciate the difficulties of advising a client, particularly when the law is unclear. Students are even more likely to appreciate the difficulties when they spend time preparing for their roles in advance of class.

Role plays can be brief, or they can extend throughout the semester. Like many teachers of civil procedure, I use a simulated case and a series of role plays during the first semester to teach certain rules, doctrines, and lawyering

45. The virtues of role plays are well documented. See, e.g., Bergman, *supra* note 8, at 535; Davidow, *supra* note 13; David S. Day, Teaching Constitutional Law: Role-Playing the Supreme Court, 36 J. Legal Educ. 268 (1986); Joseph P. Tomain, Lawyering in First-Year Property, 33 J. Legal Educ. 111, 118-19 (1983).

46. See King, *supra* note 5, at 581-82. Legislative role plays are particularly suitable for subjects in which the decision-making depends on policy considerations. See Hegland, *supra* note 21, at 543.

47. See Dorn, *supra* note 2, at 7; cf. Gillispie, *supra* note 2, at 3 (simulation games create experiences that mirror the "psychological reality" of a situation).

48. I use this role play in the context of personal jurisdiction, with a stream-of-commerce manufacturer as the client. The law governing this context is indeterminate. See Jack H. Friedenthal et al., Civil Procedure, 2d ed., 135-38 (St. Paul, 1993).

skills.<sup>49</sup> My students interview the prospective client and elicit the relevant facts; conduct a firm meeting to determine whether the client should pursue alternative dispute resolution; draft complaints and interrogatories (in my seminar section); and argue a motion for summary judgment.

Within the confines of the classroom environment and my own need for control, I try to make the role plays as realistic as possible. For example, when arguing the motion for summary judgment, the student lawyers are given name cards for their desks and index cards that set forth their introductory remarks to the court. They read these introductory remarks aloud before beginning their formal presentations to help them get into their roles. The panel of judges consists of me and two former students who have been given a copy of the problem and a bench memorandum that I have prepared.<sup>50</sup> The judges dress in robes, and we question the students rigorously. This exercise has worked as well in a class of 32 as in a class of 100.

I have also used more advanced role plays or student presentations in an upper-level course of about thirty students. For upper-level students, role plays continue to be an effective learning method. But from these more experienced students, I require greater participation, preparation, and thoughtfulness. And because upper-level students generally do not have the same intrinsic motivation as first-year students, I provide more external reinforcement. At the beginning of the semester, in *Children and the Law*, I schedule a number of different class presentations on current legal issues.<sup>51</sup> Each student is assigned an issue, based on a preference list he submits to me. The presentations require the students to play roles in front of the entire class. The settings include oral arguments, legislative hearings, a community debate, an episode of the television drama *Law and Order*, the Phyllis (because I'm the moderator) Donahue talk show. I design each role play, including the characters that the students should play, the factual context, and the character's perspective. Current cases and familiar cultural images provide added motivation for the students.

For example, the episode of *Law and Order* raises the law and policy considerations relating to the denial of medical care for a terminally ill child. In the first half of the role play, the students—as state's attorneys—decide whether the state should pursue a criminal prosecution or neglect petition. In

49. The fact pattern involves the publication of a photograph and caption that allegedly gives rise to false light invasion of privacy and intentional infliction of emotional distress claims. Other civil procedure teachers effectively use role plays and simulations. See Lloyd C. Anderson & Charles E. Kirkwood, *Teaching Civil Procedure with the Aid of Local Tort Litigation*, 37 J. Legal Educ. 215 (1987); Lawrence M. Grosberg, *The Buffalo Creek Disaster: An Effective Supplement to a Conventional Civil Procedure Course*, 37 J. Legal Educ. 378 (1987); Elizabeth N. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. Legal Educ. 41 (1987); Philip G. Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. Legal Educ. 555 (1989).

50. Often the students are current members of the Moot Court Honor Society. These students are enthusiastic and well-prepared participants.

51. These issues include children's reproductive rights, child abuse, termination of parental rights, foster care, children's health care, and adoption. The number of presentations depends on the number of students in the class.

the second half, we hold a neglect hearing and the state's and parents' attorneys present oral arguments before the judge, who issues an opinion. All the roles are played by students; I am a passive member of the audience. Afterwards I guide further discussion of the issues presented in the role play.

The students' preparation for their roles includes the reading of additional source material.<sup>52</sup> Grades provide an external reinforcement: each student gets a grade based on the quality of the oral presentation and a writing assignment related to it.<sup>53</sup>

### *Dramatic Readings*

In a variation on the role play, I sometimes engage in a dramatic reading. When I want to get through the facts of a case expeditiously but want to make sure the students understand their relevance, I tell the story in my own words and style. For example, in Civil Procedure I tell the story of *Harris v. Balk*,<sup>54</sup> using students to act out the relevant chronology of events.

Dramatic readings can also provide needed context quickly. Instead of just handing out to students some deposition testimony typifying discovery abuse, I acted out the deposition using different hats for different roles.<sup>55</sup> With the hats as visual cues, the students could see clearly when I was changing character. In addition to finding the presentation interesting, they better understood the nature and extent of discovery abuse. This was particularly true for the visual learners, who benefited from the visual cues.

### *Game Shows and Computer Games*

In addition to Buffalo Creek Family Feud, my Civil Procedure students play Class Action Jeopardy at the beginning of our discussion of class actions. I have found it an effective way to help students comprehend this rule-oriented

52. I supply some of the source material, and the students conduct additional library research on their own.

53. When the class is not a seminar, the presentation and paper constitute 25 percent of their entire grade.

54. 198 U.S. 215 (1905). The Supreme Court in this case determined that the situs of an intangible debt could serve as the basis for establishing personal jurisdiction over an absent defendant.

Briefly, the story goes as follows. Harris and Balk were residents of North Carolina. Harris owed \$180 to Balk, who in turn owed \$344 to Epstein, a resident of Maryland. While visiting Maryland, Harris was successfully sued by Epstein, who sought payment from Harris as satisfaction of the absent Balk's debt to him. Balk later sued Harris in North Carolina, but Harris prevailed by arguing that he had already paid Epstein and that the Maryland judgment was entitled to full faith and credit in North Carolina.

Because the factual chronology of the case is confusing, I have students assume the roles of Harris, Balk, Epstein, and a process server. The students wear signs symbolizing the intangible debts, and move from "state" to "state." This illustration allows students to visualize the nature of quasi-in-rem jurisdiction, and the potential fairness issues raised when Balk, who has never physically moved from his seat (the state of North Carolina), may be subject to a court's jurisdiction in Maryland or in any of the states in which his debt travels.

55. See Bonwell & Eison, *supra* note 3, at 48–49 (professor "debates himself" using different hats).

material.<sup>56</sup> Without comprehending the class action rule and its application, the students have difficulty understanding the related constitutional and policy issues that I discuss later in a traditional Socratic dialogue.

Another method of gaming that requires much less work on the teacher's part is assigning a computer game that has already been developed. CALI (Computer-Assisted Legal Instruction) exercises in a number of subject areas allow students to learn actively at their own pace. To review the federal discovery rules, I have required all of my Civil Procedure students to complete the Buffalo Creek Discovery Game.<sup>57</sup> My limited role is to assign the teams, make sure the library's computers are available, and hand out an instruction sheet. Afterwards I collect a score sheet signed by each member of the team. The students enjoy working together on this interesting and challenging task, and they sometimes review the game on their own before the final exam.

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Gaming can be an effective way to accomplish your educational objectives. Any loss of course coverage is outweighed by the depth of understanding of the subject matter that the students will attain, and by their development of essential skills and values. Both subject-matter and process objectives are satisfied. Moreover, students enjoy gaming, and the enthusiasm generated in one class can affect the rest of your curriculum: more of your students will be actively involved in the learning process, and they will learn more. In short, gaming can help us fulfill our mission as teachers, whether we are teaching students in law school or in kindergarten.

56. Generally, the virtues of playing Jeopardy with adult learners include mastering course material through active learning, improving student interest, providing immediate feedback, and enhancing cooperation. See Grauerholz, *supra* note 20, at 497.

Board games may also be created for the classroom. See Patton, *supra* note 1, at 8–10. Although I have never created a board game for the law school classroom, this teaching method may be an effective way for achieving certain educational objectives, particularly in a small classroom.

57. Owen M. Fiss & Ronald F. Wright, Jr., Buffalo Creek I: A Game of Discovery, in *The Computer Assisted Legal Instruction Catalog* (Minneapolis, 1994).