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Reduce, Reuse, and Recycle: How Using "Recycled" Simulations in an LRW Course Benefits Students, LRW Professors, and the Relevant Global Community

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Cover Page Footnote

Author writes: I am grateful to Sue Liemer, Susan DeJamatt, Lori Roberts, Nancy Schultz, Carolyn Larmore, Linda Berger, Cathren Koeblert-Page, Kathleen Dillon Narko, and Heidi Brown for their encouragement and suggestions for this article.

REDUCE, REUSE, AND RECYCLE: HOW USING “RECYCLED” SIMULATIONS IN AN LRW COURSE BENEFITS STUDENTS, LRW PROFESSORS, AND THE RELEVANT GLOBAL COMMUNITY

Rita Barnett-Rose *

I. INTRODUCTION	2
II. STEPS TO RECYCLING SIMULATIONS.....	5
A. <i>Collection, Sorting, and Review of the Old Materials</i>	6
B. <i>Processing the Old Materials into Usable Raw New Materials</i> ...	6
C. <i>Manufacturing a New Product: Creative Repackaging</i>	7
D. <i>Purchase and Sale of the New Product</i>	8
III. THE LOCAL AND GLOBAL BENEFITS OF USING RECYCLED SIMULATIONS.....	8
A. <i>Benefits to the Student Consumers</i>	8
B. <i>Benefits to the Manufacturer Professor</i>	10
1. Recycling to Create Space for Scholarship.....	11
2. Recycling to Develop a Domain Area Expertise	15
C. <i>Benefits to the Global Community</i>	17
1. Student Learning Assessment.....	18
2. Using Recycled Simulations to Initiate a Formal LRW Assessment Plan.....	21
3. Four Steps of a Formal Assessment Plan.....	22
a. Step One: Identifying Learning Outcomes and Defining Competency Levels.....	22
b. Step Two: Considering Strategies of Instruction	24
c. Step Three: Evidence Gathering	25
d. Step Four: Assessment and Closing the Loop.....	26
IV. CONCERNS OVER RECYCLING	28
V. CONCLUSION	31

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I. INTRODUCTION

Drafting effective simulations¹ for a Legal Research and Writing (“LRW”) course is one of the most challenging aspects of an LRW professor’s job.² Early simulations must be interesting to students, but within their limited “domain area” knowledge,³ so that students are not overwhelmed with trying to learn complex substantive or procedural law while also trying to master the skills they are expected to learn in LRW.⁴ Subsequent simulations must become progressively more complex, in order to build upon the students’ growing sophistication.⁵

¹ This article refers to an LRW “simulation” to mean a major LRW assignment, whether objective memorandum or persuasive brief, which provides the students with a set of facts involving “real-world” legal issues to address on behalf of an imaginary client. Depending on the nature of the assignment, students would be required to consider various types of “real-world” documents that set forth the relevant facts (e.g., a Complaint, Answer, Deposition Transcripts, Affidavits, Business Records, etc.), research the relevant law, and provide a final written document that either predicts or advocates for a particular outcome. The title for this article is borrowed from the Environmental Protection Agency’s (“EPA’s”) slogan on recycling, which encourages consumers to reduce the amount they throw away, reuse as much as possible, and to use products with recycled content. U.S. Envtl. Prot. Agency, *Reduce, Reuse, Recycle*, Wastes – Resource Conservation – Reduce, Reuse, Recycle <http://www.epa.gov/waste/conserve/rrr/index.htm> (last updated July 24, 2012) [hereinafter EPA Website].

² See Ellie Margolis & Susan L. DeJarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93, 131 (2005) (“One of the biggest challenges of teaching LRW is problem design The problem must be challenging, involve issues that are both realistic and arguable, be culturally sensitive, and stretch the students’ analytical and research skills without overwhelming them.”); Lorraine Bannai et al., *Sailing Through Designing Memo Assignments*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 193, 194 (1999) (“Novice and even experienced legal writing faculty [professors] find that designing assignments is one of the more challenging parts of their jobs.”); Jan M. Levine, *Designing Assignments for Teaching Legal Analysis, Research and Writing*, 3 PERSP.: TEACHING LEGAL RES. & WRITING 58 (1995) (“The design of assignments is perhaps the most important pedagogical activity in teaching legal research and writing . . . the assignments provide the heart and soul”); see also E-mail from Ruth-Anne Robbins, Clinical Professor of Law, Dir. of Lawyering Programs, Rutgers Sch. of Law (Apr. 22, 2012) (on file with author) (“Creating balanced simulations that are within the students’ capacity to engage in the skills education is difficult, to say the least.”).

³ See generally Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Problem Solving*, 11 CLINICAL L. REV. 149, 153 (2004) (defining “domain knowledge” as explicit knowledge of the concepts, principles, and structures of thinking about the particular domain in which a particular problem arises). This article uses domain area to refer to a particular subject-matter area of the law. *Id.* at 189.

⁴ See generally Gail Anne Kintzer, *Rule Based Legal Writing Problems: A Pedagogical Approach*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 143, 154 (1997) (noting the difficulties in teaching a constitutional law problem in LRW when “students do not really understand the relationship between the state and federal governments at this point in their education”); James D. Dmitri, *Writing Engaging, Realistic, and Balanced Appellate Advocacy Problems*, 16 PERSP.: TEACHING LEGAL RES. AND WRITING 2 (2008) (noting that when designing brief problems for LRW students, “the procedural posture of the problem . . . should be one that the students have likely discussed in their first-year courses”). Indeed, due to the lack of domain-area knowledge of their first year students, most LRW professors restrict first semester assignments to basic issues arising under Torts, Property, Contracts, and Criminal Law—i.e., subjects the students are at least somewhat familiar with at that point, due to their first-year doctrinal course load, and real life experiences.

⁵ See generally Kintzer, *supra* note 4, at 151 (LRW assignments should “follow a progression from easy to complex, and utilize a variety of rule structures to both teach and test the students.”); Bannai, *supra* note 2, at 193 (describing this process of teaching the basic ideas first, and then revisiting them repeatedly, building on them until the student has grasped the full formal apparatus that goes with them, as a “spiral curriculum”). Many LRW professors and programs follow this “spiral curriculum” approach by beginning fall semester assignments with simple rule extraction and rule application writing exercises, then progress to short closed or open memoranda assignments, and finally end the fall semester with a longer and more complex open universe memorandum. Spring semesters also typically follow this easy

Creating these LRW simulations necessarily involves substantial time and effort,⁶ and while many doctrinal professors enjoy working on scholarship over their summer or semester breaks, many LRW professors report spending a good portion of their breaks creating or updating LRW simulations.⁷ Indeed, many LRW professors believe that creating new LRW simulations can be as time consuming as many scholarly projects, but does not receive the same institutional credit.⁸

Of course, creating the simulation is only the first step in the process. The next step is teaching it. Ideally, a simulation goes off without a hitch. The professor constructs an interesting and appropriate vehicle through which to teach students the relevant research, writing, and analytical skills—and the simulation keeps the students deeply engaged and involved throughout.⁹ Given such success, it is unlikely that the professor will want to file this simulation away forever.¹⁰

Yet, despite the significant effort expended in both creating and teaching new simulations, debate continues over whether or not “recycling” them is appropriate.¹¹ The potential for student cheating seems to lead the pack among the concerns advanced, with LRW professor stagnation or

to complex spiral approach, often beginning with simpler persuasive style writing assignments and progressing to a final, complex, open universe trial or appellate style persuasive brief.

⁶ See generally Bannai, *supra* note 2 (describing a ten-stage process for creating an effective simulation).

⁷ See, e.g., Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007, 1020 n.48 (2001) (noting that while “all good law professors do some updating and preparatory work over the summer[,] [f]ew doctrinal professors, however, have to do what LRW professors sometimes describe as the equivalent of researching and writing the textbook every year, and then teaching from it”) (citing Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 89 (1994)).

⁸ See, e.g., E-mail from Judith Fischer, Assoc. Professor of Law, Louis D. Brandeis Sch. of Law, Univ. of Louisville (Apr. 23, 2012) (on file with author) (“Writing and teaching a new problem may take close to the amount of effort that would go into a law review article. But one doesn’t get the same ‘credit’ with the faculty for writing new problems.”). Interestingly, the Association of Legal Writing Directors (“ALWD”) does seem to recognize the significant effort it takes to develop these types of LRW simulations, and has begun offering grants to LRW professors to develop teaching materials over the summer to “enable gifted [LRW] educators to spend their summers exploring scholarly [teaching] ideas of interest to them and to produce scholarship [teaching tools, materials, and curriculum that will assist others in the field].” See *2012 Legal Writing Scholarship Grants, Sponsored by LWI-ALWD-LexisNexis*, ASS’N OF LEGAL WRITING DIRS., http://www.alwd.org/awards/legal_writing_scholarship_grants_2012.html (last visited Sept. 9, 2012).

⁹ For example, in the past when I have used a particularly interesting simulation, I have seen students engaged in debates over the issues in the hallways—one simulation even prompted a class to start a Facebook page for the fictitious IIED plaintiff. Cf. Dimitri, *supra* note 4, at 95 (describing a scenario in which a simulation he chose that was interesting on the surface ended up being dull, both for the students and the judges participating in the oral advocacy competition in which the simulation was used).

¹⁰ See, e.g., E-mail from Sue Liemer, Professor of Law and Dir. of Lawyering Skills, S. Ill. Univ. Sch. of Law (Apr. 22, 2012) (on file with author) (“When I fine-tune a problem over the course of years, naturally I’m going to re-use it.”).

¹¹ See, e.g., Postings of various LRW professors, to LRWPROF-L@LISTSERV.JUPU.EDU (Aug. 13, 2009) (on file with author) [hereinafter LRW Listserv] (discussing “reusing memo problems”). The debate over whether or not to re-use or recycle LRW problems continues over various legal writing professional listservs from time to time. *Id.* Indeed, this Article was inspired by the thoughtful responses to this author’s April 22, 2012 query to the LRW Listserv over such simulation reuse. *Id.*

boredom—and the perception of laziness—coming in a distant second and third.¹² This article contends, however, that such concerns can be effectively addressed, and that the benefits of recycling far outweigh such concerns.

Ordinary “recycling” is generally understood to mean the process of turning materials that would otherwise become waste into valuable resources, generating a host of financial, environmental, and social returns for the consumer, manufacturer, and relevant local and global communities.¹³ Recycling simulations in an LRW course also turns old materials into valuable new resources, and can also generate a host of beneficial returns for the relevant consumer, manufacturer, and local and global communities.

First, using recycled simulations undoubtedly benefits the student “consumers” within the course. An LRW professor using a recycled simulation typically offers better simulation re-design, more confident and effective teaching, and more efficient distribution of scarce LRW professor resources—all of which lead to greater student learning, and ultimately, better student work-product.¹⁴

Second, using recycled simulations may also benefit the “manufacturer” of the recycled simulations—the LRW professor—whether by allowing the professor to use some of the scarce resources conserved through recycling to produce scholarship or by allowing the professor to intentionally develop or enlarge a particular domain-area expertise;

¹² See discussion *infra* Part IV.

¹³ See EPA Website, *supra* note 1.

¹⁴ See discussion *infra* Part III.A. I am clearly not the first to recognize these pedagogical benefits of recycling in an LRW course. Indeed, many well-respected LRW professors and highly-regarded LRW programs already “recycle” on a regular basis—with many of the same, and some additional, pedagogical reasons for doing so. See, e.g., E-mail from Susan DeJarnatt, Professor of Law, Beasley Sch. of Law of Temple Univ. (Apr. 22, 2012) (on file with author) (“At Temple, we regularly reuse the same problems year after year—Ellie Margolis and I wrote about the benefits in our article, Beyond Product to Process . . .”); E-mail from Anne Rector, Dir., LWRA & TIGER Programs, Emory Law Sch. (Apr. 22, 2012) (on file with author) (“At Emory Law, we have reused brief topics . . . on a regular basis for over a decade.”); E-mail from Ruth-Anne Robbins, Clinical Professor of Law and Dir. of Lawyering Programs, Rutgers Sch. of Law (Apr. 22, 2012) (on file with author) (“[W]e . . . regularly re-use legal issues Several of us, myself included, use the same set of problems each year, with variations on a theme.”); E-mail from Mary Beth Beazley, Assoc. Professor, Moritz Coll. of Law, Ohio State Univ. (Apr. 22, 2012) (on file with author) (“I have re-used problems back to back; sometimes with more changes, sometimes with fewer. I have used other problems on a 3 year cycle.”); E-mail from Beth Cohen, Assoc. Dean for Academic Affairs, Dir. of the Legal Research and Writing Program, W. New England Univ. Sch. of Law (Apr. 22, 2012) (on file with author) (“We have a unified curriculum and we discuss the benefits and drawbacks of re-using problems. I come down squarely on the side of re-using problems.”); E-mail from Maria Perez Crist, Assoc. Dean of Academic Affairs and Professor of Lawyering Skills, Univ. of Dayton Sch. of Law (Apr. 22, 2012) (on file with author) (“Everyone in our program recycles problems.”); E-mail from Sue Liemer, Professor of Law and Dir. of Lawyering Skills, S. Ill. Univ. Sch. of Law (Apr. 22, 2012) (on file with author) (“I’ve been . . . [recycling] for 22 years.”); E-mail from Amanda Peters, Assoc. Professor, S. Tex. Sch. of Law (Apr. 22, 2012) (on file with author) (“We have ten full-time tenure-track (five are tenured) LRW Profs. Some of us create our own problems some of the time, others create their own problems all of the time, and some borrow them all of the time. All of us, I think, recycle on occasion.”).

activities of benefit to the law school institution and its students as well.¹⁵

Finally, in light of recently proposed changes to the ABA law school accreditation standards,¹⁶ using recycled simulations in an LRW course may also benefit a more global community. Specifically, by using recycled simulations to formally assess whether students are attaining competency in certain learning outcomes necessary to the practice of law, an LRW professor may help her institution better ensure student attainment of such identified student learning outcomes by graduation, to the benefit of students, the institution, and the relevant legal community-at-large.¹⁷

Using the analogous concepts behind ordinary recycling, this article first describes the typical four-step process of recycling simulations in an LRW course. Next, this article discusses the potential benefits to be conferred by strategic recycling upon the three principal stakeholders: the student consumers, the LRW professor manufacturers, and the larger relevant global community of legal educators, legal employers, and those who seek legal services. Finally, this article considers the main concerns advanced over simulation recycling, and attempts to address these concerns.

II. STEPS TO RECYCLING SIMULATIONS

Reusing a simulation that worked well in the past undoubtedly relieves a lot of first-time simulation anxiety.¹⁸ However, just like ordinary recycling, you do not simply pull a simulation from the recycle bin, dust it off, and present it as new again. Instead, recycling simulations requires a four-step process similar to the typical recycling of any other product: collection, sorting, and review of the old materials; processing the old materials into usable raw new materials, manufacturing of the final “new” product, and purchase and sale of the recycled product.¹⁹

¹⁵ See discussion *infra* Part III.B.

¹⁶ See AM. BAR ASS'N LEARNING OUTCOMES SUBCOMM, SECTION OF LEGAL EDUC. AND ADMISSION TO THE BAR, DRAFT STANDARDS (May 5, 2010) [hereinafter ABA DRAFT STANDARDS]. At the time this article was written, the ABA DRAFT STANDARDS were still in the process of review by the Student Learning Outcomes Subcommittee and have been redrafted at least five times, thus making it difficult to include the precise language of the most recent proposed standards. For the current status of the review process, see http://www.americanbar.org/groups/legal_education/committees/standards_review.html (last visited June 24, 2012). To see the various redlined versions of the relevant ABA DRAFT STANDARDS to date, see *Student Learning Outcomes*, CENTER FOR EXCELLENCE IN LAW TEACHING, http://www.albanylaw.edu/sub.php?navigation_id=1845 (last visited June 24, 2012).

¹⁷ See discussion *infra* Part III.C.

¹⁸ See Margolis & DeJarnatt, *supra* note 2, at 132 (“The novice teacher constantly feels that she is only one step ahead of the students and that her carefully guarded appearance of expertise will be shattered. Creating and using a brand new set of LRW problems every year forces even the experienced LRW professor back into the novice role.”).

¹⁹ See, e.g., EPA Website, *supra* note 1 (“Recycling includes collecting recyclable materials that would otherwise be considered waste, sorting and processing recyclables into raw materials . . . [and] manufacturing raw materials into new products . . .”).

A. Collection, Sorting, and Review of the Old Materials

The first step in recycling a product generally involves the collection, sorting, and review of the old materials to be recycled.²⁰ With respect to recycling simulations, many LRW professors and programs report choosing the simulations they intend to recycle for the upcoming academic year over the summer break.²¹ While some LRW professors and programs have collected and sorted simulations with a pre-established rotation system in place,²² others may simply peruse their own “recycle bins” to see which simulations might be appropriate for each stage in their LRW spiral curriculum.²³ If the professor has sorted her simulation recycling bins appropriately, she will quickly know where to utilize any particular simulation.²⁴

Once a simulation is earmarked for recycling, the LRW professor must then thoroughly review the old materials, including the legal issues and sub-issues involved, and any complications or problems encountered the first time around. Since many LRW professors report recycling every three to four years,²⁵ which means a lot of simulations have happened in-between, this is a particularly important step.²⁶

B. Processing the Old Materials into Usable Raw New Materials

The second step in recycling a product generally involves

²⁰ *Id.*

²¹ See, e.g., Liemer, *supra* note 7, at 1020 (“[M]any LRW professors have to use the summer to research and write problems for their fall semester course.”). My own current practice is to choose and either create or recycle my major assignments over the summer. In addition, my LRW program as a whole decides upon the topic for the spring open brief simulation during the summer, though the co-coordinators (the LRW professors tasked with updating or creating the final spring simulation for that particular year) may not complete the simulation until sometime later in the fall.

²² For example, at Chapman University School of Law, we typically rotate circuit-split topics for the spring open brief simulation on a three-to-four year cycle, assuming that the topic has not become moot, or that we are not yet bored by the topic ourselves.

²³ See Bannai, *supra* note 2, at 193.

²⁴ For example, I try to sort my recycling bin of past simulations into several categories: by semester and year, then by type of simulation (e.g., an open or closed memo or brief), then by whether the simulation involves a statute or arises purely under the common law.

²⁵ See, e.g., E-mail from Maria Perez Crist, Assoc. Dean of Academic Affairs and Professor of Lawyering Skills, Univ. of Dayton Sch. of Law (Apr. 22, 2012) (on file with author) (“We typically wait two to three years and maintain a program assignment log so [we] know what problems everyone has used.”); E-mail from Anne Rector, Dir., LWRA & TIGER Programs, Emory Sch. of Law (Apr. 22, 2012) (on file with author) (“[W]e re-use memos and briefs all the time, usually waiting 3-4 years so the 1Ls are mostly graduated before we take up a topic taught in the past.”); E-mail from Beth Cohen, Assoc. Dean for Academic Affairs, Dir. of Legal Research and Writing Program, W. New England Sch. of Law (Apr. 22, 2012) (on file with author) (“We wait to re-use”); E-mail from Mary Beth Beazley, Assoc. Professor, Moritz Coll. of Law, Ohio State Univ. (Apr. 22, 2012) (on file with author) (indicating the use of some problems on a three-year cycle).

²⁶ Of course, some well-regarded LRW programs recycle the same problems year after year, changing only minor details. See, e.g., Margolis & DeJarnatt, *supra* note 2, at 132 (describing the re-use of simulations on a constant year-to-year basis at Temple). Constant recycling of a simulation, rather than rotational recycling, may not require such extensive review of the old materials since a professor’s familiarity with the topic likely remains sharp. However, it would still require an updating of the applicable law before re-use.

processing the old materials into usable raw new materials.²⁷ With respect to recycling simulations, this initially means that the LRW professor will need to update the law. If the professor makes any changes to the simulation that might entail additional legal issues or sub-issues, the professor will need to research those additional issues as well. But even if the legal issues remain the same, the professor will still need to update the law to make sure that it has not changed, or if it has, that such changes did not moot the issue or significantly imbalance the sides.²⁸ This is another critical step in the recycling process, and the professor cannot become too complacent in assuming that the law is still good—or that a cursory review will suffice.²⁹ The bottom line: the law tends to change over the years, which is why we teach our own students to update. We must follow these instructions ourselves.

C. *Manufacturing a New Product: Creative Repackaging*

The third step in recycling a product is the manufacturing of a “new” product from the old materials.³⁰ When recycling simulations, this generally entails a major or minor creative repackaging of the original simulation. Creative repackaging might involve changing the party names, dates, location, jurisdiction, and/or material facts to change the focus of the problem or the likely outcome. It may also involve changing the vehicles in which students must discover the legally significant facts. For example, while students may have had to cull the legally significant facts through various deposition transcripts in the original simulation, a creative repackaging of that simulation might ask students to gather those same facts through in-class client or witness interviews, affidavits, and/or police, business, or other relevant documents. Or, the creative repackaging might include additional litigation-style documents, such as a complaint or answer, when the original simulation did not use them. Such creative repackaging of the original simulation serves two important functions. First, it helps to keep the simulation fresh and interesting for the professor.³¹ Second, it may discourage—or at least uncover—cheating.³²

²⁷ See EPA Website, *supra* note 1.

²⁸ Generally, when crafting LRW simulations, particularly for persuasive writing assignments, the professor needs to ensure that the simulation is well-balanced: that is, that both sides have strong arguments to make. See, e.g., Dimitri, *supra* note 4, at 98 (discussing the need for professors to create well-balanced appellate simulations with strong arguments on both sides so that students do not feel, or are not actually, disadvantaged by having the perceived weaker side).

²⁹ This need for a thorough update of the law exists even when LRW professors engage in constant, rather than rotational, recycling. Telephone Interview with Susan DeJarnatt, Professor of Law, Beasley Sch. of Law, Temple Univ. (June 22, 2012).

³⁰ See EPA Website, *supra* note 1.

³¹ See discussion *infra* notes 158–62 and accompanying text.

³² See discussion *infra* Part IV (discussing the concern over student cheating when recycled simulations are used, along with various ways to address this concern).

D. Purchase and Sale of the New Product

The final step in recycling a product is to offer the new product for sale to the relevant community, and for the relevant consumers to purchase it.³³ With this final step, the recycling loop is complete.³⁴ With respect to recycling simulations, this means that the recycled simulation is put into play in the LRW course.

III. THE LOCAL AND GLOBAL BENEFITS OF USING RECYCLED SIMULATIONS

Just as ordinary recycling offers significant benefits for the consumer, manufacturer, and relevant local and/or global communities by—among other things—saving energy, conserving valuable natural resources, and sustaining the environment for future generations,³⁵ so too does recycling simulations in an LRW course.

A. Benefits to the Student Consumers

Consumers of ordinary recycled products often derive significant benefits due to better product design, lower manufacturing costs, and the conservation—or more efficient distribution—of valuable natural resources.³⁶ An LRW professor's use of recycled simulations likewise benefits the student consumers within her course.

First, recycled simulations typically offer students better product design. Because the LRW professor has already worked through the simulation before and knows what pitfalls, shortfalls, or complications to expect and avoid, the professor can craft a more effective simulation when she repackages it.³⁷ The professor can, for example, elect to eliminate or remedy any complications, pitfalls, or shortfalls in the repackaging, instruct students not to address certain issues if editing out these issues is not feasible or desirable, or deliberately allow students to encounter such complications in order to elicit interesting classroom discussion and to work through such complications together.³⁸

In addition, using recycled simulations also allows the professor to teach students much more effectively and confidently—resulting in greater

³³ See EPA Website, *supra* note 1.

³⁴ *Id.* (“[P]urchasing recycled products completes the recycling loop. By ‘buying recycled,’ governments, as well as businesses and individual consumers, each play an important role in making the recycling process a success.”).

³⁵ *Id.*

³⁶ *Id.*; see also BENEFITS OF RECYCLING, <http://www.benefits-of-recycling.com/recycling-process.html> (last visited Sept. 9, 2012).

³⁷ See discussion *supra* Part II.C.

³⁸ See also E-mail from Anne Rector, Dir., LWRA & TIGER Programs, Emory Sch. of Law (Apr. 22, 2012) (on file with author) (“[T]raps for the unwary are far less numerous when a topic has been taught, so we can re-tool the assignment either to bring that trap deliberately or to avoid it as not worth the angst and effort students spent on it last time.”).

student learning. LRW is typically the only first-year course where professors tend to move through a variety of disparate domain areas.³⁹ Consequently, unless a professor has prior practice experience in that particular domain area, a professor teaching a brand new simulation may sometimes feel anxious over her own level of understanding of that domain area.⁴⁰ In contrast, the professor using a recycled simulation has a much firmer grasp of the domain area in which the simulation is based, and has already worked out any originally unforeseen issues that arose with respect to that simulation. This greater familiarity then allows the LRW professor to answer questions and resolve student confusion much more confidently,⁴¹ just like doctrinal professors who have grown adept in the domain area(s) in which they repeatedly teach.⁴²

³⁹ For example, this past year I taught simulations involving: California workers' compensation law, negligent infliction of emotional distress, California's criminal burglary statute, Indiana's involuntary commitment laws, and employment discrimination under Title VII.

⁴⁰ See Margolis & DeJarnatt, *supra* note 2, at 132; see also Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L.J. 125, 128 (1982) (“It is an awesome undertaking to master an area of law to the point where you ‘profess’ to teach it to others. In the beginning this usually involves something of a sham . . .”). Indeed, because mastering a particular domain area is so awesome an undertaking, Professor Whaley advises doctrinal professors to:

[P]ut together a teaching package of related subjects. It is a much easier professional life to maintain competence in one field (e.g., commercial law) and teach its component courses (contracts, U.C.C. subjects, consumer law, and creditor's rights, all of which feed upon each other very nicely) than to have to keep up with the changes in three or four disparate areas . . .

Id. at 126.

⁴¹ See, e.g., E-mail from Abigail Patthoff, Instructor of Law, Univ. of Idaho Coll. of Law (Apr. 23, 2012) (on file with author) (“I can say that I feel like a better teacher when I am using those [recycled] problems. I can more easily anticipate student pitfalls and can better tailor lectures and samples to those areas of confusion.”); E-mail from Sue Liemer, Dir. of Lawyering Skills, S. Ill. Univ. Sch. of Law (Apr. 22, 2012) (on file with author) (“After the first time, I have a much better sense of what to anticipate, what the students will enjoy, [and] what they will struggle with etc., so I am much more effective teaching it.”); see also E-mail from Susan DeJarnatt, Professor of Law, Beasley Sch. of Law of Temple Univ. (June 22, 2012) (on file with author) (noting that constant recycling may allow for even more effective teaching than rotational recycling because the professor's knowledge and understanding of the simulation is even sharper).

⁴² See, e.g., Whaley, *supra* note 40, at 128–29 (assuring doctrinal professors that: “The second time through a course is a different experience from the first. Stripped of daily panic and fear of the unknown, the second outing permits you to explore the course's pedagogical possibilities with a surer sense of control. The things you tried the first time that didn't work—those awful moments when you stand in front of a class and watch helplessly as your ‘best’ ideas spin, crash, and burn—can be forgotten next time round [sic] or reworked and launched in a new, improved form.”); see also Lyrissa Lidsky, *Ten (Ok Seventeen) Tips for New Law Professors*, PRAWFSBLAWG (Aug. 4, 2011), <http://prawfsblawg.blogs.com/prawfsblawg/2011/08/ten-tips-for-new-law-teachers.htm> (stating in tip #17 that: “You will teach a class best the third time you teach it.”). I recently experienced this increase in domain-area confidence myself this past spring, when our LRW program recycled an issue we had done back in 2009 for our spring open brief simulation. The primary issue involved whether a transgendered individual would be protected against “sex” discrimination under Title VII of the Civil Rights Act. The first time I had taught the simulation back in 2009, I struggled, almost alongside my students, in trying to understand the contours and limitations of sex discrimination law under Title VII and how it would apply to a pre-operative transgender. Not wanting to seem confused myself (and also not wanting to steer my students in the wrong direction), I would often find myself doing additional Title VII research during my non-teaching time in order to answer various questions I had not anticipated when I had reviewed the original simulation myself. Although I was then able to answer student questions during the very next class, I was nevertheless always slightly anxious, feeling that I was barely one step ahead of my own students, despite my ten years of real-world legal experience (in intellectual property) and several years of full-

Beyond more effective in-class time, student consumers also typically benefit from the increase in outside time an LRW professor using a recycled simulation has to give. That is, because a professor is not burned out using her scarce resources to try to stay on top of a new simulation,⁴³ the professor can put some of those conserved resources into giving more efficient student conferences, more office hours, and more time to review and critique student drafts.⁴⁴ In addition, professors using recycled simulations will also have more materials to share with their teaching assistants (“TAs”) early on—and these TAs will then be able to provide much more effective assistance to their respective students.⁴⁵

Of course, the ultimate benefit to the student consumer when an LRW professor teaches using a recycled simulation is the student’s ability to write a more effective student paper. Here, because the professor has provided a better simulation design, knows the domain area more fully, and has already worked through the structure and organization of a similar final work product, the professor can much more easily guide her current students through the legal analysis, outlining, pre-drafting, and drafting phases of the particular writing assignment, making better student work-product not only possible, but probable.⁴⁶

B. Benefits to the Manufacturer Professor

In addition to the consumer benefits, manufacturers of ordinary recycled products also derive significant time-saving, cost-saving, and

time LRW teaching under my belt. In recycling this Title VII issue this past spring, however, I felt much more confident in my role as professor. I already knew most of the domain-area questions that might arise, had already done the ancillary research on such side issue questions, and had already worked through the entire simulation from beginning research assignment to final oral arguments with the earlier class. Interestingly, in comparing some final 2009 student briefs with the 2012 student briefs, I felt that the 2012 briefs were much better crafted. I believe this was due, in part, to my greater ease in guiding my students through the entire process this second time around.

⁴³ See Margolis & DeJarnatt, *supra* note 2, at 132.

⁴⁴ See generally E-mail from Ruth-Anne Robbins, Clinical Professor of Law and Dir. of Lawyering Programs, Rutgers Sch. of Law (Apr. 22, 2012) (on file with author) (“The better I know the simulation, the more useful I am to the students during conferences. It’s a better product in the end. Win-win.”); E-mail from Mary Beth Beazley, Assoc. Professor, Moritz Coll. of Law, Ohio State Univ. (Apr. 22, 2012) (on file with author) (“The hardest thing about teaching LRW is diagnosis of individual problems. When I reuse problems, I see common problems easily and can devote my energy to analyzing and diagnosing the unique problems that some students present.”); E-mail from Caroline Sheerin, Professor of Legal Analysis, Writing, and Research, Univ. of Iowa College of Law (Apr. 23, 2012) (on file with author) (“the more familiar I am with the issue, the more I can ‘stay out in front’ of where the students are”).

⁴⁵ Telephone Interview with Sue Liemer, Professor of Law and Dir. of Lawyering Skills, S. Ill. Univ. Sch. of Law (June 1, 2012).

⁴⁶ See Margolis & DeJarnatt, *supra* note 2, at 132 (“Students will write better papers each time we reuse an assignment because our deepening expertise allows us to teach it better.”); see also E-mail from Ruth-Anne Robbins, Clinical Professor of Law and Dir. of Lawyering Programs, Rutgers Sch. of Law (Apr. 22, 2012) (“[I]f the professor knows the simulation well enough, she has to spend a lot less time ‘managing it,’ and thus can spend more time on the actual skills that the course is designed to teach.”). This hypothesis of better student papers might even be formally measurable, if such recycled simulations are deliberately used for student learning outcome assessment. See discussion *infra* Part III.C.

environmental benefits from the efficient re-use of raw materials.⁴⁷ An LRW professor using recycled simulations similarly saves time, energy, and resources by the efficient re-use of existing raw materials. The professor can then funnel some of these significant savings into the further development and enhancement of her professional career, such as to produce scholarship or to develop a particular domain-area expertise.⁴⁸

1. Recycling to Create Space for Scholarship

Despite enormous strides within the legal academy over the last few decades, the majority of LRW professors are still not on par with their tenure-track doctrinal colleagues.⁴⁹ Most professors teaching LRW as their dedicated, chosen discipline are still subject to significantly less pay and significantly higher teaching workloads, and many still do not enjoy comparable institutional expectations—or sufficient time off—to produce scholarship.⁵⁰

Fortunately, many LRW professors who do not have the obligation to produce scholarship nevertheless have the desire.⁵¹ Without any institutionally-supported time off to write, however, the space created to do so must come from the determined LRW professor herself. To many LRW

⁴⁷ See, e.g., EPA Website, *supra* note 1; *Benefits of Recycling*, *supra* note 36.

⁴⁸ See Margolis & DeJarnatt, *supra* note 2, at 132 ("The torts professor spends her summers on scholarship or otherwise deepening her knowledge of her field or on other valued activities. LRW professors should give themselves the same advantage."); see also E-mail from Amanda Peters, Assoc. Professor, S. Tex. Sch. of Law (Apr. 23, 2012) (on file with author) ("There are several reasons why I don't use a new problem every semester or create my own. I have other work-related obligations (to publish law review articles, to serve on committees, and to meet with my students, etc.) . . .").

⁴⁹ See ASS'N OF LEGAL WRITING DIRS./LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY (2011), available at <http://www.lwionline.org/uploads/FileUpload/2011Survey.pdf> [hereinafter ALWD/LWI Survey] (stating that with 188 United States law schools responding, "LRW faculty in most programs are on short-term contracts (138 responses), but the number of 405(c), 405(c)-track, and tenured or tenure-track programs has increased: in 2010, the number of programs reporting tenure or 405(c) status was 107, while in 2011 the number increased to 117. More specifically, 61 programs reported having 1-year contracts in 2011, 17 programs reported having 2-year contracts, and 60 programs reported having contracts of three years or more. Forty-four programs reported having full-time faculty that were tenured or on the tenure track, 54 programs reported faculty with 405(c) status, and 19 reported faculty on the ABA Standard 405(c) track. The vast majority of those on contract are not limited in the number of years that they may teach at the law school; in other words, they have no 'cap' (144 out of 153 respondents to this question, or 94%).").

⁵⁰ See *id.* (according to the ALWD/LWI Survey, out of 163 responding law schools, only fifty-eight LRW Directors (35.58%) are obligated to produce written scholarship, while another sixty expect directors to produce scholarship, although they are not required to do so. For LRW faculty who are not directors, only forty-one programs out of 168 responding (24.4%) require LRW faculty to produce scholarship, while fifty-two more expect LRW faculty to produce scholarship but do not require it, and 111 do not require or expect it.).

⁵¹ See, e.g., Liemer, *supra* note 7, at 1031; Margolis & DeJarnatt, *supra* note 2, at 93 (noting the proliferation of LRW scholarship in recent years). This desire to produce scholarship was made even more apparent to me quite recently while attending the 15th Biennial Conference of the Legal Writing Institute, May 29 through June 1, 2012, in Palm Springs, California, where the scholarship presentations were overwhelmingly attended by non-tenure-track LRW professors, all keen to understand how to engage in scholarship without much—or any—institutional support. Conference Program, LWI, 15th Biennial Conference of the Legal Writing Institute (May 29–June 1, 2012) available at http://wiki.lwionline.org/index.php/Conference_Program [hereinafter 2012 LWI Biennial Conference].

professors, this must seem nearly impossible.⁵² Indeed, it is likely that many LRW professors have long-harbored the fantasy of a scholarship summer, where scholarship will finally take precedence over drafting and researching new LRW simulations or teaching summer overloads to make ends meet.⁵³ The professor may have a file of ideas, a rough outline, or even some preliminary research on the desired scholarly project complete. But before the final spring semester briefs are even graded, many LRW professors have pledged their summers to other ways of supplementing their lower LRW salaries, such as teaching summer courses, tutoring, or taking on contract-attorney work.⁵⁴ Summer ends quicker than the hopeful LRW scholar could have imagined back in early May, and so do her summer scholarship dreams.⁵⁵

The good news is that there seems to be significant movement among law schools to provide even non-tenure-track professors who want to produce scholarship with at least the financial ability to do so. For example, according to the 2011 ALWD/LWI Survey, sixty-one percent of schools responding to the Survey reported that their institution's Legal Writing professors were at least eligible for summer grants to produce scholarship.⁵⁶

⁵² See, e.g., Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 TEMP. L. REV. 117, 176 (1997) ("Law schools . . . structure the typical LRW job so that it consumes significant amounts of time and energy one could otherwise use for producing the type of in-depth analytical scholarship traditionally respected by the academy."); see also Ilhyung Lee, *The Rookie Season*, 39 SANTA CLARA L. REV. 473, 487-88 (1999) ("After designing research and writing assignments, holding individual conferences, and grading papers, there was little time for anything else . . . my own research and writing projects came to an abrupt halt when I became a legal research and writing instructor.").

⁵³ See generally Linda H. Edwards, *A Writing Life*, 61 MERCER L. REV. 867, 869-70 (2010). Although a few LRW scholars have been able to produce scholarship by carving out short periods of dedicated time throughout the year, due to the intense work load of LRW teaching, many LRW scholars have indicated that summer is the only time in which they can get any serious scholarship written. *Id.*

⁵⁴ See, e.g., Liemer, *supra* note 7, at 1014 (noting "many law schools allow LRW professors to teach summer courses to make up some of the difference between LRW salaries and those of the regular faculty"). I have personally spent a good portion of my own summer break for the last few years working as a bar prep essay grader for my institution's supplemental bar prep program, which is offered to graduating students taking the California Bar Exam. Like LRW grading, bar prep essay grading is intensive, hands-on work, and the (mostly LRW) professors working the program typically provide feedback on roughly fifteen-thirty student practice bar essays per day, for eight weeks straight. See E-mail from Professor Mario Mainero, Professor of Academic Achievement and Dir. of Bar Servs., Chapman Univ. Sch. of Law (on file with author) ("Last year, in the eight weeks, we critiqued 2551 essays and [performance tests] . . . [s]o as a group we graded about 320/week. . ."). By the time the course ends and the students depart to take the Bar, there are three weeks left until the semester begins in mid-August, and I have simulations to create, lecture notes to update, Teaching Assistants to hire, and a syllabus to revise.

⁵⁵ This summer, I elected to forego the supplemental stipend and not participate in the summer bar prep program in order to focus on writing this Article—my own "summer scholarship" dream.

⁵⁶ See ALWD/LWI Survey, *supra* note 49, at vii.

The number of schools reporting that their LRW faculty are eligible for summer grants dropped slightly in 2010-2011 (102 of 167 responding schools, or 61%, compared with 103 of 163, or 63%, in 2009-2010). The average grant amount was \$8,968, an increase over the 2009-2010 grant amount of \$8,586. Forty-three schools reported that LRW faculty are not eligible for summer grants, and at 8 schools summer grants generally are not provided to any faculty. For those schools reporting that their faculty are eligible, 60 reported that their LRW faculty

Providing the financial support is certainly an encouraging step in the right direction. However, an LRW professor without a sabbatical still has significantly less time than a tenure-track professor in which to truly immerse herself in producing such scholarship.⁵⁷ This, of course, is also without taking into consideration the substantial drafting time required to develop new simulations over their summer “breaks.”⁵⁸

In her essay, *A Writing Life*,⁵⁹ which encourages LRW professors to also become scholars, professor and scholar Linda Edwards acknowledges this threshold challenge of finding the time to write. She suggests, however:

If you find that preparation for the semester is taking more than eighty to one hundred hours of focused, productive work, give careful thought to strategies to reduce that time commitment. Almost always, you can find good strategies that will help you get that preparation time under better control.⁶⁰

Recycling simulations is one such strategy. By choosing to recycle a simulation over the summer rather than to spend the additional hours necessary to develop a brand new one, an LRW professor can likely cut her simulation preparation time by more than half.⁶¹ Although a partial summer

are just as likely to receive grants as doctrinal faculty (compared with 58 in 2009-2010), 17 reported that LRW faculty are less likely or much less likely to receive summer grants than doctrinal faculty (down from 18 in 2009-2010), and 3 reported that LRW faculty have never received summer grants (down from 5 in 2009-2010)

Id. at xi.

⁵⁷ See Liemer, *supra* note 7, at 1021 (estimating that even during non-sabbatical years, when compared to LRW professors, the typical doctrinal professor has the equivalent of two summers in which to write annually, due to the typically lower teaching loads, and lack of multiple graded assignments and individual student conferences).

⁵⁸ See discussion *supra* Part II.

⁵⁹ Linda H. Edwards, *A Writing Life*, 61 MERCER L. REV. 867, 867 (2010).

⁶⁰ *Id.* at n.1. Similarly, doctrinal professors have long been advised to lighten their teaching loads or limit new course preps so that they have the necessary time to focus on scholarship. See, e.g., Dean David Logan, *Advice for New Law Professors: Finding Balance*, DEAN LOGAN’S BLOG (Dec. 9, 2010, 12:00 AM), <http://law.rwu.edu/blog/advice-new-law-professors-finding-balance> (“If possible, try to develop a stable teaching load of 3-5 courses until tenure. New course preparations can be very time consuming, and they can take away from time to work on your scholarship”); Whaley, *supra* note 40, at 126 (“[I]f you have the bargaining power, try to get a light load—preferably only one course for your first session—and to put together a teaching package of related subjects.”); see also Nina W. Tarr, *In Support of a Unitary Tenure System for Law Faculty: An Essay*, 30 WM. MITCHELL L. REV. 57, 69 (noting that if clinical faculty members have employment conditions similar to doctrinal faculty members, they are as likely to be productive scholars as anyone else).

⁶¹ For example, when I have recycled a major simulation that I have used on a rotational basis (i.e., every three-to-four years), it generally takes me about twenty-thirty dedicated hours to review, update, and repackage that simulation. Creating a major simulation from scratch takes me more than twice that amount of time. Another LRW professor, who recycles on a year-to-year basis, also indicated that while recycling the simulation she uses every year might take a few dedicated days to update the law, review any new law review articles on the topic, and change the facts, drafting a new simulation typically takes her “the better part of a month” to research and draft and “another two good weeks to edit and finalize.” Telephone Conversation with Professor Susan DeJarnatt, Professor of Law, Beasley Sch. of Law of Temple Univ. (June 22, 2012).

certainly does not equate to a tenure-track sabbatical, it might create just enough space for an LRW professor to begin the scholarship journey.⁶²

There are many reasons for LRW professors to take this journey. First, as many LRW professors who already produce scholarship can attest, scholarship is literally the “coin of the realm” within the legal academy.⁶³ Indeed, “the ‘importance of scholarship to the careers of law teachers is difficult to overestimate.’ Intellectual satisfaction, prestige, promotions, increased salaries, and opportunities to move laterally all depend as much upon writing, and as little upon teaching, as does tenure.”⁶⁴ On a more personal level, producing scholarship allows an LRW professor to explore topics more deeply⁶⁵ and to enter the “scholarly conversation” more fully—even without a full invitation.⁶⁶

Finally, beyond these professional and personal benefits to the individual LRW professor, when LRW professors begin to produce scholarship, the institution and its students likely benefit as well. As scholar Sue Liemer posits:

Suppose that most law schools in the United States have, on average, four or five people on their faculties who are legal writing professionals, and so summer and other support for their scholarship could translate to four or five additional publications to the [law] school’s credit every year. A law school could have four or five additional entries every year for the glossy publication list it sends out to law professors across America in anticipation of the latest U.S. News & World Report law school rankings. The

⁶² See Edwards, *supra* note 59, at 869–71 (providing a helpful schedule for writing scholarship over an eight-week summer break); see generally Donald J. Weidner, *A Dean’s Letter to New Law Faculty About Scholarship*, 44 J. LEGAL EDUC. 440 (1994) (providing another inspiring article that discusses using summers productively to write scholarship, and the reasons for doing so).

⁶³ Kathryn M. Stanchi & Emily Zimmerman, *Scholarship: You Can Do It!*, Presentation at the 2012 LWI Biennial Conference (June 1, 2012). This point was made even more explicit by a recent presentation at the 2012 LWI Biennial Conference by LRW professors and scholars Kathryn M. Stanchi and Emily Zimmerman, where the professors literally handed out yellow paper “Coins of the Realm” in encouraging the LRW professor attendees to begin to produce scholarship. *Id.*

⁶⁴ Liemer, *supra* note 7, at 1023; see also Toni M. Fine, *Legal Writers Writing: Scholarship and the Demarginalization of Legal Writing Instructors*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 225, 228 (1999) (encouraging LRW professors to engage in scholarship because: “scholarly writing remains of singular importance to career advancement in legal academia”); Weidner, *supra* note 62, at 441 (“You will not be a complete person as an academic unless you produce, on a regular basis, scholarship that is read and relied on by people who work in your area.”).

⁶⁵ See Edwards, *supra* note 59, at 888 (interviewing LRW scholar Steve Johansen, who states: “I write out of a selfish desire to learn. That is, I will run across a topic that interests me that I do not know as much about as I would like. Writing about that topic satisfies my curiosity.”).

⁶⁶ *Id.* at 868 (“Write because you are serious about your academic role. Writing will provide you with a vibrant, dynamic life of the mind and with the chance to participate in interesting scholarly conversations.”). Professor Edwards, along with Professor Linda Berger and Professor Terrill Pollman, all eloquently continued this entreaty to budding LRW scholars to join the conversation in their presentation: “*Writing Scholarship and Driving After Dark: You Only Need to See Two to Three Feet Ahead.*” Presentation at the 2012 LWI Biennial Conference (May 30, 2012).

conventional wisdom is that higher rankings lead to increased prestige for the law school, which in turn leads to better applicant pool and more financial support from private donors.⁶⁷

By recycling simulations, non-tenure track LRW professors can utilize some of their conserved resources to enhance and sustain their own professor careers, while also contributing their fair share to increasing the academic reputation of their law school.⁶⁸

2. Recycling to Develop a Domain Area Expertise

Recycling simulations can also contribute to an LRW professor's professional development in another significant way. Specifically, just as doctrinal professors acquire increased domain-area knowledge and consequently become accepted “experts” in the domain areas in which they repeatedly teach and engage in scholarship (which in turn presumably allows them to teach and engage in scholarship more effectively), so too do LRW professors become more effective teachers—and perhaps eventual experts—when they can re-use and re-explore problems in a domain area in which they have spent some time and have an interest.⁶⁹

Undoubtedly, one of the “perks” of the LRW professor's job is the ability to continually move between domain areas in drafting and teaching simulations.⁷⁰ However, at least at times, the relatively superficial domain-area knowledge on the part of the LRW professor may actually impair her teaching.⁷¹ In contrast, when a professor understands or begins to understand a particular domain area well, and deliberately teaches

⁶⁷ Liemer, *supra* note 7, at 1028.

⁶⁸ *Id.*; see also Weidner, *supra* note 62, at 441 (“Involvement as a productive scholar will enable you to better serve your students, your colleagues, and the public.”). Interestingly, while many LRW professors who are also scholars do write about LRW pedagogy and related areas, the majority of LRW professor scholars write outside of this area. See Terrill Pollman & Linda H. Edwards, *Scholarship by Legal Writing Professors: New Voices in the Legal Academy*, 11 LEGAL WRITING: J. LEGAL WRITING INST. 3, 10 (2005) (noting that approximately 75% of the law review articles legal writing professors have published are about topics in areas other than legal writing, while only approximately 25% are about legal writing topics).

⁶⁹ See, e.g., Susan E. Thrower, *Teaching Legal Writing Through Subject Matter Specialties: A Reconception of Writing Across the Curriculum*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 3 (2007) (discussing the many benefits of teaching LRW using subject-specific areas of the law); Susan P. Liemer, *Many Birds, One Stone: Teaching the Law You Love, In Legal Writing Class*, 53 J. LEGAL EDUC. 284, 289 (2003) (discussing numerous benefits that come with acquiring an expertise in a subject-matter area beyond LRW).

⁷⁰ See Liemer, *supra* note 69, at 289 (“One of the best benefits of being an LRW teacher is that you can enjoy the stimulation of learning about new areas of the law throughout your career.”); see also *supra* note 39.

⁷¹ For example, during my first two years of full-time LRW teaching, I relied on the various criminal law-focused simulations developed by other LRW professors who had actually practiced criminal law. I had been a transactional IP associate. Despite having the materials developed by someone else to supposedly guide me, I recall going into the classroom each day dreading the inevitable student questions about real-world criminal procedure, questions I had not thought about since my own days as a first-year law student in my own criminal law class.

simulations in this domain area, her domain-area expertise expands, and with that expansion, simulations will be better crafted, answers to student questions become more confident and accurate, and the LRW professor's position is likely to be more respected.⁷²

However, unless a professor has practiced in a particular domain area before, an interest in cultivating a particular domain-area "expertise" might not make itself known to a new LRW professor right away. Recycling simulations may help a professor discover where her domain area interests lie. For example, if a professor finds herself excited by the thought of re-using a particular simulation, due to the issues involved and the particular domain area in which it is set, and further finds herself adding on additional issues or sub-issues during the creative repackaging process just to explore these issues herself, it might be an indication that the professor should explore this particular domain area even further.

Recycling simulations is one of the fastest ways to become more comfortable with, and more confident in, a particular domain area, but it is obviously only the beginning. Once a professor has identified a particular domain area of the law that she wants to explore, and has recycled simulations to further hone her understanding in this domain area, the professor can then build upon this growing expertise to develop related simulations. Or, the professor could use the resources conserved by thoughtful recycling to spend time further exploring the domain area, whether to further increase her expertise or to produce scholarship in this domain area.⁷³ Moreover, because the skill set to be taught in LRW is not a particular doctrine, but rather the ability to identify relevant legal authorities, synthesize legal rules from those relevant legal authorities, and apply those rules to the relevant facts,⁷⁴ LRW professors can make the deliberate individual choice to move between subject-matter areas continually, or pause to explore and develop knowledge in a particular domain area in much more depth.

⁷² See e.g., Thrower, *supra* note 69, at 38–47 (describing the first-year legal research and writing program at DePaul University School of Law, which involves teaching LRW in specialized areas, and noting the numerous benefits to such specialized LRW courses; including better student engagement and learning, more passionate teaching, and increased LRW professor respect and fulfillment); Liemer, *supra* note 69, at 290–92. Indeed, in my own experience, once I became confident in crafting my own simulations, rather than relying upon the criminal law simulations designed by others in my program, I began designing exercises and simulations involving issues of Intellectual Property, which I continue to periodically recycle. I stopped dreading student questions—and I actually looked forward to them. See also Susan J. Becker, *Advice for the New Law Professor: A View from the Trenches*, 42 J. LEGAL EDUC. 432, 434 (1992) (touting the benefits of focusing one's teaching in an area of familiarity: "Another cardinal benefit to teaching a familiar subject is that it substantially reduces your fear that a smoking gun may lie buried in the yet uncovered materials, a gun that will blast into oblivion most of the legal principles studied to date.").

⁷³ See discussion *supra* Part III.B.1.

⁷⁴ Mary Beth Beazley, "Riddikulus!" *Tenure-Track Legal-Writing Faculty and the Boggart in the Wardrobe*, 7 SCRIBES J. LEGAL WRITING 79, 81 (2000).

Developing a domain-area expertise offers a number of benefits to the professor and her students. As noted, better knowledge of, and greater interest in, a domain area ultimately leads to better crafted and more realistic simulations, more confident and passionate teaching, and consequently greater student learning.⁷⁵ In addition, an LRW professor who develops a domain-area expertise widens her professional opportunities, both inside her institution and beyond. The LRW professor with a domain-area expertise may, for example, be asked to teach upper-level writing or seminar courses in that specialty area, or speak on panels, or make presentations to the bench, bar, or judiciary in that area.⁷⁶ Students and faculty may also turn to this LRW professor for advice beyond the traditional LRW questions. The resultant "role enlargement"⁷⁷ that would come with a specialized expertise beyond LRW would likely not only increase student and faculty respect for the LRW professor/expert, but also contribute to the LRW professor's deeper connection to the institution and greater legal community.⁷⁸

Finally, when students believe they are being taught simulations by an expert in that expert's particular domain area of interest, students may also feel that they are getting additional value in their LRW courses beyond the value of learning the necessary LRW practical skills.⁷⁹

By strategically recycling to learn and further develop a domain-area expertise, an LRW professor can enhance her own professional career, without sacrificing any of the benefits to the students.⁸⁰

C. *Benefits to the Global Community*

In addition to the tangible benefits to consumers and manufacturers, proponents of ordinary recycling point out that, through the conservation of valuable natural resources, reduction of various costs, and the building of a more sustainable future, the ultimate beneficiary of ordinary recycling is the greater global community.⁸¹ Using recycled simulations in an LRW course may also ultimately benefit a more global community. Specifically, by using recycled simulations to more readily and reliably assess student

⁷⁵ Thrower, *supra* note 69, at 44–45; Liemer, *supra* note 69, at 290.

⁷⁶ Liemer, *supra* note 69, at 292.

⁷⁷ *Id.* (defining "role enlargement" as the process of developing one's career to create a sense of "belonging to a cohesive community that allows for multiple affiliations").

⁷⁸ Thrower, *supra* note 69, at 46 (noting that LRW professors teaching subject-matter specialty LRW courses were consequently seen through a broader lens by the larger law school community, helping such LRW professors feel more connected to their law schools and more like the professionals they are). Of course, LRW professors already have an expertise that should be valued and respected in and of itself. Unfortunately, some LRW professors, particularly those who are employed at law schools that do not offer LRW tenure-track positions, report feeling that such LRW expertise is not as valued as doctrinal expertise and that they often feel a sense of isolation from both the doctrinal faculty and the greater institutional community.

⁷⁹ Thrower, *supra* note 69, at 41.

⁸⁰ Liemer, *supra* note 69, at 285.

⁸¹ See generally EPA Website, *supra* note 1; *Benefits of Recycling*, *supra* note 36.

learning within an LRW course, an LRW professor can help her institution ensure student competency in certain identified student learning outcomes by graduation. Ensuring competency in core student learning outcomes necessary for the practice of law will not only benefit the students, but also the institution and the relevant community of those who will hire these students.

1. Student Learning Assessment

Assessment of student learning refers to a process of evaluating students' attainment of defined learning outcomes.⁸² And, assessment of student learning using prior work-product in an LRW course is nothing new. Undoubtedly, many LRW professors who recycle already conduct some informal assessment and benchmarking of their students by revisiting prior student materials to establish baseline expectations or to assess whether students' legal research and writing skills have improved or declined over the years.⁸³

However, in light of the recently proposed ABA Draft Amendments,⁸⁴ which may soon ask legal educators to not only assess student learning, but also themselves,⁸⁵ this informal process of benchmarking and student assessment using recycled simulations could become the foundation for "formal assessment."⁸⁶

Specifically, in response to the sea change in legal education, motivated in large part by the Carnegie Foundation for the Advancement of

⁸² See Victoria VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 313, 319–20 (2010) (defining "assessment" generally as setting educational goals, gathering evidence about whether the goals are being met, interpreting the evidence, and using the evidence to change the learning environment so that learning will be improved); see also Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need To Know About Learning Outcomes and Assessment*, 16 LEGAL WRITING: J. LEGAL WRITING INST. 605, 609 (2010) (indicating that outcome measures "shift[] the focus in legal education from teaching to learning"); Melissa H. Weresh, *Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track*, 37 GOLDEN GATE U. L. REV. 281, 297 (2007) (distinguishing "performance-based" assessment standards, which assess the performance of the professor, from "outcome-based" assessment standards, which measure and assess whether students are actually learning the requisite materials or skills as a result of the professor's teaching techniques).

⁸³ See, e.g., E-mail from Maria Perez Crist, Assoc. Dean of Academic Affairs and Professor of Lawyering Skills, Univ. of Dayton Sch. of Law (Apr. 22, 2012) (on file with author) ("Recycled problems also provide benchmarks for student capabilities over the years.").

⁸⁴ See ABA DRAFT STANDARDS, *supra* note 16.

⁸⁵ Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning By Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 457 (2011); see also Duncan, *supra* note 82, at 611.

⁸⁶ See Duncan, *supra* note 82, at 626 (quoting MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 4 (2004)) (noting that formal assessment is a "framework for focusing faculty attention on student learning and for provoking meaningful discussions of program objectives, curricular organization, pedagogy, and student development").

Teaching's *Educating Lawyers*⁸⁷ and Roy Stuckey's *Best Practices in Legal Education*⁸⁸ (both of which advocate for a radical move away from the traditional law school case-dialogue curriculum and towards more integrative student learning of the "three apprenticeships" of knowledge, skills, and values)⁸⁹ the ABA has proposed significant changes to its accreditation procedures.⁹⁰ These proposed ABA Draft Amendments "would require law schools to identify institutional learning outcomes, offer a curriculum to give students the opportunity to achieve those learning outcomes, assess its students' achievement in those areas, and assess itself as an institution by measuring the effectiveness of its programs in preparing students to become entry-level legal practitioners."⁹¹

While the ultimate goals of the ABA Draft Amendments are to have institutions identify *institutional* student learning outcomes and evaluate their respective curricula as a whole to determine if students are attaining such student learning outcomes by graduation,⁹² the building blocks with which to measure the attainment of the identified institutional student learning outcomes are, of course, the institution's individual courses. Thus, after identifying its desired institutional student learning outcomes, the institution would then need to examine each course in its curriculum and determine how such a course should be contributing to the overall institutional mission and the attainment of all, or some, of the identified student learning outcomes.⁹³

Each law school will necessarily have its own particular rendition of institutional student learning outcomes. However, it is likely that most law schools would identify: (1) students' ability to conduct appropriate and

⁸⁷ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

⁸⁸ ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

⁸⁹ See, e.g., WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 8* (2007), available at http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf ("Students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity.").

⁹⁰ See ABA DRAFT STANDARDS, *supra* note 16; see also Duncan, *supra* note 82, at 608.

⁹¹ Roberts, *supra* note 85, at 457–58; Duncan, *supra* note 82, at 611; see also ABA DRAFT STANDARDS, *supra* note 16, at Standard 305 (requiring that the dean and faculty of a law school: "(a) gather a variety of types of qualitative and/or quantitative evidence, as appropriate, to measure the degree to which its students, by the time of graduation, have attained competency in its learning outcomes; (b) periodically review whether its learning outcomes, curriculum and delivery, assessment methods and the rate of student attainment of competency in the learning outcomes are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly as entry level practitioners in the legal profession; and (c) use the results of the review in subsection (b) to improve its curriculum and its delivery with the goal that all students attain competency in the learning outcomes").

⁹² ABA DRAFT STANDARDS, *supra* note 16, at Standard 305; Roberts, *supra* note 85, at 468.

⁹³ See Roberts, *supra* note 85, at 474 (defining this necessary process of an institution's identification of which courses introduce students to what student learning outcomes as curriculum mapping); Duncan, *supra* note 82, at 619.

efficient legal research; and (2) students' ability to effectively communicate in writing in a legal context, as critical institutional student learning outcomes.⁹⁴ Further, assuming such an institution has a first-year LRW course that generally aligns its goals with the goals identified in the ABA's *Sourcebook on Legal Writing Programs*,⁹⁵ it is also likely that a law school engaged in institutional curriculum mapping will identify their first-year LRW course as the course that first introduces students to these two student learning outcomes.⁹⁶ Given this role in such critical student learning outcomes, it may soon become incumbent upon LRW professors to engage in their own formalized course-level assessments of student learning outcomes, in order to help the LRW professor and her respective institution determine: (1) the extent to which the identified institutional student learning outcomes are being attained in LRW; and (2) if students cannot realistically attain a level of competency in such identified student learning outcomes after only one introductory LRW course, how to best ensure attainment of such identified institutional student learning outcomes by graduation.⁹⁷

Ensuring that law schools not only teach—but that students actually *learn*—all of the skills necessary to practice law by graduation seems to be an infinitely reasonable requirement to impose on legal institutions seeking accreditation. However, in order for individual professors to embrace any formalized plan to assess the identified student learning outcomes within their own courses, the process of initiating, incorporating, and managing such a formalized assessment plan must not be overly burdensome.⁹⁸

Fortunately, with respect to LRW in particular, as several scholars have already noted, the tools the LRW professor typically uses to assess her students—her brief and memo simulations—could easily serve as ideal vehicles to contain “embedded assessments”⁹⁹ and to perform double duty for purposes of formal assessment.¹⁰⁰ Thus, “[o]ne can use the trial brief [or

⁹⁴ See also ABA DRAFT STANDARDS, *supra* note 16, at Standard 302 (stating that learning outcomes shall include, among other things, competency in the following skills: legal analysis and reasoning, critical thinking, legal research, problem solving, and written and oral communication in a legal context).

⁹⁵ SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 13–27 (Eric B. Easton ed., 2d ed. 2006).

⁹⁶ See VanZandt, *supra* note 82, at 328–30, 335–36 (noting that while students are first introduced to legal research and writing in the introductory LRW course, LRW faculty should work to clarify any institutional alignment so that unreasonable expectations are not placed upon an introductory LRW course to be responsible for all of the legal research and writing skills that a student must acquire before graduating from law school).

⁹⁷ See VanZandt, *supra* note 82, at 332 (opining that the highest level of competency should not be expected after an introductory LRW course); Roberts, *supra* note 85, at 475 (cautioning against assuming LRW can produce competency of identified student learning outcomes without additional upper level reinforcement and instruction on such identified student learning outcomes).

⁹⁸ See VanZandt, *supra* note 82, at 357.

⁹⁹ *Id.* at 341 (“Embedded assessment refers to assessment measures embedded into a course or other testing procedure within a course.”).

¹⁰⁰ *Id.*; see also Duncan, *supra* note 82, at 611 (noting that legal writing professors may experience less of a sea change than other professors when beginning formal assessment because many of the

memo] as a portion of the overall grade in the course and as a direct assessment method, assessing various different learning outcomes, such as citation, hierarchy of authority, written communication, or other more discrete skills."¹⁰¹

While, of course, any LRW simulation might serve as such an assessment tool, at least when initiating a formal assessment plan, a recycled simulation makes even more sense.

2. Using Recycled Simulations to Initiate a Formal LRW Assessment Plan

Using recycled simulations for assessing student learning outcomes within an LRW course offers three important advantages over the use of new simulations. First, using a recycled simulation to begin a formal assessment plan conserves considerable LRW professor resources by providing initial base-line data that will more readily allow the professor to choose particular student learning outcomes to assess and define, and to engage in intentional teaching from the start.¹⁰² Second, using recycled simulations allows an LRW professor to assess identified student learning outcomes at the end of the first assessment cycle, rather than waiting for the next assessment of those same identified student learning outcomes.¹⁰³ Finally, by using recycled simulations, an LRW professor increases the reliability of the assessment because she is able to assess comparable work-product, rather than using substantially different simulations to assess the same student learning outcomes.¹⁰⁴

To more specifically illustrate how recycled simulations might benefit an LRW professor and her institution when adopting a formal assessment plan, I will first consider the typical steps of a formal assessment plan,¹⁰⁵ then explain how a professor initiating and incorporating such an assessment plan into her LRW course using a recycled, rather than an untested,¹⁰⁶ simulation conserves valuable LRW resources at each step of the plan, and how the availability of base-line data and comparable work-product increases the reliability of the assessments as well.

underlying philosophies and practices associated with an outcomes-based approach are already accepted and are being utilized by legal writing professors).

¹⁰¹ VanZandt, *supra* note 82, at 342; *see also* Roberts, *supra* note 85, at 475 ("Assessment of students' learning of each skill may be accomplished through various graded memoranda, briefs, outlines, and professional letters throughout the semester . . .").

¹⁰² *See* discussion *infra* Part III.C.3.a–b.

¹⁰³ *See* discussion *infra* Part III.C.3.c–d.

¹⁰⁴ *Id.*

¹⁰⁵ *See, e.g.,* VanZandt, *supra* note 82, at 322 (describing the four steps of a typical assessment plan).

¹⁰⁶ This article uses the term "untested simulation," for purposes of illustration and comparison, to mean a simulation not yet used in the particular professor's LRW course, and which consequently has no pre-existing materials developed or retained by that LRW professor, including grading rubrics or sample prior student work-product.

3. Four Steps of a Formal Assessment Plan

The first step of a formal assessment plan involves identifying and defining learning outcomes and competency levels in order to assess the level of attainment of such student learning outcomes within the course.¹⁰⁷ The second step of a formal assessment plan requires the professor to consider various strategies and teaching methodologies, in order to ensure learning of such identified student learning outcomes.¹⁰⁸ The third step of a formal assessment plan requires a professor to gather the evidence of identified student learning outcomes, ideally utilizing a variety of assessment tools to ensure reliability of the assessment.¹⁰⁹ The final step of a formal assessment plan requires the professor to both analyze the data collected and to close the loop of assessment by making any necessary changes to the individual course or to the institutional curriculum, in order to better ensure attainment of the identified student learning outcomes by graduation.¹¹⁰

a. Step One: Identifying Learning Outcomes and Defining Competency Levels

The first step in developing a formal assessment plan requires the professor to first determine which particular student learning outcomes the professor wishes to assess in any given period. Then, the professor must clearly define the competency levels and any performance criteria for measuring the students' level of attainment of the identified student learning outcomes within the course.¹¹¹ While choosing particular learning outcomes and defining competency levels to initiate a formal assessment could be a very time-consuming process,¹¹² using a recycled simulation can significantly shorten the process.

First, with respect to choosing which particular student learning outcomes to assess in an initial LRW assessment project,¹¹³ the professor beginning an initial assessment plan using a recycled simulation already has helpful data to consult. That is, because the professor has the original

¹⁰⁷ VanZandt, *supra* note 82, at 322.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 322 (defining "competency levels" as levels of professional development for any given task, such as "novice, advanced beginner, competent, proficient, and expert" "Performance criteria" are created by tying the identified learning outcome to a specific act of performance, along with the necessary competency level that must be achieved. For example, the "writing of an open memorandum, with competence" could be one performance criterion for the student learning outcome of: "effective writing in a legal context.").

¹¹² *Id.* at 322 ("The first step in creating a plan to assess student learning is often the most difficult and time consuming.").

¹¹³ *Id.* at 333–34, 357 (opining that the number of outcomes to assess in any given assessment period should remain reasonable and manageable; including too many outcomes to assess makes an assessment plan unmanageable and cumbersome).

simulation and prior student work-product to consider beforehand, the professor can analyze both the original simulation and the best¹¹⁴ student work-product and make a number of deliberate decisions regarding which student learning outcomes to initially assess. Thus, for example, if a professor reviews the best student office memorandum retained from the original simulation and determines that even the best student seemed to struggle with the drafting and optimal organization of case explanations,¹¹⁵ which in turn affected the students' overall ability to communicate effectively in writing, the professor could then identify: "students will communicate effectively in writing in a legal context" as a student learning outcome to assess in her initial LRW assessment project, as well as "writing a clear, concise, and well-organized office memorandum, with competency" as a specific performance criterion.¹¹⁶ Then, using her grading rubric for the original simulation,¹¹⁷ the LRW professor could readily define what would constitute attainment of the various competency levels for the particular performance criterion, and all component parts thereof, such as what would be needed for writing clear and well-organized case explanations, with competence.¹¹⁸

¹¹⁴ Typically, LRW professors who recycle past simulations save the best or highest scoring student work-product. Some actually save representative student work-product from all grades. Now, with the advent and pervasive use of electronic course management/document uploading systems such as The West Education Network ("TWEN"), it is much easier to retain and archive all electronically submitted prior student work product.

¹¹⁵ By "case explanations," I mean the section of a memorandum or brief where the writer uses precedent case authority to explain how the relevant rules to be analyzed were applied in such precedent cases. "Case explanations" may be identified by different names, such as "case illustrations" or "rule explanations," depending on the LRW textbook referenced.

¹¹⁶ See VanZandt, *supra* note 82, at 353–354; see also SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS 13–27 (Eric B. Easton ed., 2d ed. 2006) (including students' ability to "communicate effectively in writing and orally" among the list of critical student learning outcomes for an LRW course).

¹¹⁷ See Legal Writing Institute Sample Grading Rubrics, available at http://www.lwionline.org/grading_rubrics.html. Individual LRW professors typically use grading rubrics to assess student work-product. These rubrics typically contain detailed descriptions or a list of items that are required in order to achieve the most points or best grade for each section of the particular work-product. *Id.* For example, my own grading rubric for a typical office memorandum has a detailed list of requirements under each discrete section of the memo, such as what I expect to see under the: Questions Presented, Brief Answer, Statement of Facts, and Argument sections, along with additional requirements for Writing/Professionalism, and Bluebook Citation. These LRW grading rubrics not only help the professor with her grading and curve requirements, but also help LRW students understand what is expected of them in order to get the best grade for each section. *Id.*

¹¹⁸ For example, in my own office memorandum grading rubric, under the Question Presented section, I include the expectations that the Question Presented will: (1) be in proper under/does/when or whether x when y format, (2) contain the overall law, the specific legal question, and the most appropriate legally significant facts to frame the question, and (3) be grammatically correct. In electing to use a particular simulation for the dual purpose of grading and as a performance criterion for formalized student learning outcome assessment, I would keep such component-specific criteria for assessing the competency levels attained for the performance criterion as well. Thus, for example, I would assess each component of the office memorandum for "excellence," "competency," "emerging competence," and "not competent," so that I might better understand where students are struggling in particular in their quest for achieving competency of the student learning outcome of effective communication in writing within the particular performance criterion. I would also not assess the overall

Starting an assessment project using a recycled simulation also allows the professor to assess the particular assessment tool itself and to remove any glitches that might interfere with valid assessment of the identified student learning outcome. For example, the professor may determine that even the best student memo seemed slim on the use of legally significant client facts in the case application section,¹¹⁹ which also resulted in less effective written communication. However, a review of the original simulation might indicate that the simulation itself did not provide enough legally significant facts for the students to use, and the professor is then able to make the necessary changes to the simulation in her creative repackaging¹²⁰ before beginning the formal assessment.

b. Step Two: Considering Strategies of Instruction

In step two of a formal assessment plan, the professor must consider various strategies to teach the identified student learning outcomes, in order to better ensure student learning of such identified student learning outcomes.¹²¹ Here, by using a recycled simulation, the professor can consider changes to the professor's teaching methodologies immediately, rather than waiting until the next cycle of assessment.¹²² Specifically, because the professor is able to consider prior student work-product, and identify the weak areas in such student work-product, the professor can consider her current strategies of instruction and decide upon certain changes to her teaching methodologies even before beginning the first formal assessment. For example, if the professor determines that even the best student paper failed to show student competence in crafting effective case explanations, which in turn affected the student's effective written communication, the professor may decide to place more emphasis on teaching students how to craft case explanations this time around, such as through additional in-class group case explanation writing exercises, PowerPoint presentations, and/or through the use of more real-life case explanation examples. Being able to assess the original simulation and prior student work-product before initiating a formal assessment plan allows the professor to make deliberate changes to the professor's teaching

performance criterion (the objective memo) as "competent" unless all component parts of the specific performance criterion were at least "competent."

¹¹⁹ By "case applications," I mean the section of a memorandum or brief where the writer compares or contrasts the facts of his or her client's case to the precedent cases explained in the "case explanation" section. Case applications may also be identified by other names, such as "rule applications," depending on the LRW textbook referenced.

¹²⁰ See discussion *supra* Part II.C.

¹²¹ VanZandt, *supra* note 82, at 336.

¹²² See *id.* at 352 ("[A]ssessment is a circular, organic process that is only successful if revisited and revised based upon the data available at the time.").

methodologies and engage in intentional teaching right from the start.¹²³

c. Step Three: Evidence Gathering

The third step of an assessment plan requires a professor to gather the evidence of identified student learning outcomes, using a variety of assessment measures or tools.¹²⁴ By using a variety of tools for assessment, a professor can triangulate several different measures and increase the validity and reliability of the assessment.¹²⁵

Without question, creating and utilizing additional assessment tools could easily become a significant drain on the LRW professor's already overtaxed resources.¹²⁶ However, a professor using a recycled simulation as her primary assessment vehicle is already conserving some of those resources. First, using a recycled simulation already conserves the LRW professor resources that would otherwise be spent in the crafting, drafting, and potential triaging of a brand new simulation.¹²⁷ Some of this conserved time could then be spent creating meaningful but manageable ancillary assessment tools arising from the same recycled simulation.¹²⁸ For example, a professor assessing "students' ability to conduct efficient and effective legal research," using a brief or memorandum as the primary assessment tool and performance criterion, could also create ancillary assessment tools related to the same recycled simulation, such as: (1) a detailed research report that requires students to describe their research process;¹²⁹ (2) short student research conferences, where students discuss their research results with the professor;¹³⁰ (3) quizzes on the primary and secondary sources relevant to the simulation;¹³¹ and/or (4) reflective essays on the students'

¹²³ See, e.g., Roberts, *supra* note 85, at 458 ("An initial assessment provides baseline information, enabling future comparative assessments to show whether curricular or pedagogical innovations are improving student learning."); VanZandt, *supra* note 82, at 336.

¹²⁴ See generally VanZandt, *supra* note 82, at 337–47.

¹²⁵ *Id.* at 339 ("Using one type of measurement may not provide accurate results; therefore, it is important to use multiple measures. The triangulation of several different measures validates one's conclusions as to whether learning outcomes are being obtained.").

¹²⁶ See generally discussion *supra* Part III.A; see also VanZandt, *supra* note 82, at 337 ("Aside from the creation of the learning outcomes, this step in the assessment process is the most time consuming . . .").

¹²⁷ See discussion *supra* Part III.A.

¹²⁸ See generally VanZandt, *supra* note 82, at 342–47 (describing various LRW assignments to assess the same student learning outcomes).

¹²⁹ For example, I assign students a three-part research report for every open universe simulation. The report requires: (1) a plan to be written before actual research begins, which indicates the intended path for research; (2) the report, which organizes the actual results of the research into primary, secondary, mandatory, and persuasive authority, and which discusses how the student plans to use each authority and why; and (3) a post-research critique, which requires students to self-assess their research efforts and indicate what they learned and what they might do differently the next time they begin a research assignment. I have been assigning this detailed research report for the past seven years, with special thanks to Professor Bobbie Thyfault at California Western School of Law, who first shared this assignment with me during my first year of LRW teaching.

¹³⁰ See VanZandt, *supra* note 82, at 343.

¹³¹ *Id.* at 342. Such objective assignments could easily be graded by a Teaching Assistant, conserving even more LRW professor resources.

research efforts.¹³² Using a recycled simulation as her primary assessment tool and performance criterion gives the LRW professor a time-saving advantage, allowing the professor to create meaningful additional assessment tools to increase the reliability of the assessment.¹³³

d. Step Four: Assessment and Closing the Loop

In the final step of an assessment plan, the professor will need to consider the results of the gathered evidence, and use such discoveries to adjust the learning environment, if warranted, so that student attainment of the identified learning outcomes might be improved.¹³⁴ This is also known as “closing the loop” of assessment.¹³⁵

Here, in using a recycled simulation during the initial assessment process, the professor already has base-line data from the start,¹³⁶ and can thus make value-added assessments immediately.¹³⁷ For example, carrying the case explanation example forward, if the professor made certain changes to her teaching methodologies in step two in light of her review of the prior student work-product before beginning her formal assessment of “effective written communication in a legal context,” the professor could now assess whether students’ ability to craft effective case explanations improved following the deliberate changes to her teaching methodologies, instead of waiting until the next cycle of assessment on the same student learning outcome.¹³⁸

In addition to the ability to assess an identified learning outcome earlier on, by comparing student work-product on substantially similar simulations, the professor may also more reliably make value-added assessments and/or determine whether it was the professor’s intentional modifications to the professor’s teaching methodologies that resulted in an increase (or decrease) in competency levels for that particular student

¹³² VanZandt, *supra* note 82, at 345.

¹³³ See *id.* at 339 (“Using one type of measurement may not provide accurate results . . .”).

¹³⁴ *Id.* at 349–52.

¹³⁵ *Id.* at 351; see also Roberts, *supra* note 85, at 472 (quoting MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 11 (2004)).

¹³⁶ VanZandt, *supra* note 82, at 340; Roberts, *supra* note 85, at 458.

¹³⁷ See VanZandt, *supra* note 82, at 339–40 (quoting MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 8–9 (2004)) (“Assessments can involve value-added or absolute judgments.’ The difference between the two is ‘whether the assessment is one of change or of absolute performance’ ‘Value-added assessment generally involves comparing two measurements that establish baseline and final performance”).

¹³⁸ Because a professor will only reasonably be able to formally assess a few student learning outcomes during each assessment period, it could be several “cycles” before the same student learning outcome were to be assessed again. See, e.g., VanZandt, *supra* note 82, at 349 (describing the typical circular process of assessment, where the LRW professor may choose to assess certain learning outcomes, such as citation, during year one, assess the data on that specific learning outcome in year two while starting a new assessment program on a new learning outcome, then come back to a second assessment of citation in year three, after changing certain teaching methodologies to “close the loop” using the data gleaned after year one).

learning outcome. That is, because a professor using recycled simulations is comparing substantially similar student work-product, a professor is able to more reliably determine whether students are, for example, writing better crafted case explanations, following the changes to the professor's teaching methodologies for teaching such case explanations. Such value-added assessments and causal links would be far more difficult using substantially different student work-product. As one scholar notes:

In order to make . . . assessment[s] valid, LRW faculty should look at past assignments on the same topic. Therefore, they would be comparing comparable student work product. If comparing student work product on different topics, the data may not be reliable as one subject area may have been more difficult or the facts may have been less developed.¹³⁹

For this reason alone, even after the initial assessment period, deliberate and continued use of substantially similar simulations to collect comparable data in order to re-assess the same student learning outcomes seems most likely to ensure reliable results.

Because the overall purpose of engaging in any formal assessment of student learning is to determine whether students are actually learning the core skills necessary to engage in the practice of law by graduation, reliability of any assessment is critical.¹⁴⁰ Clearly, changes to an LRW course or an institution's overall curriculum should be made only if the various assessments are reliable.¹⁴¹ By using recycled simulations, the LRW professor can not only assess comparable work-product, but she can more easily develop ancillary assessment tools and triangulate assessment data—all of which will help to ensure the reliability and validity of the assessment.¹⁴²

While the proposed ABA Draft Amendments are still in the process of vigorous review and debate,¹⁴³ significant changes to the way the ABA grants law school accreditation seem imminent, and will likely involve some form of formalized assessment of student learning outcomes on both an institutional and individual course level. Ensuring that law students are

¹³⁹ *Id.* at 345.

¹⁴⁰ Roberts, *supra* note 85, at 471.

¹⁴¹ *Id.*

¹⁴² VanZandt, *supra* note 82, at 339, 347.

¹⁴³ See *Comprehensive Review of the Standards*, ABA, http://www.americanbar.org/groups/legal_education/committees/standards_review.html (last visited June 24, 2012) (noting the ABA Standards Review Committee on Learning Outcomes continues to consider and revise the ABA DRAFT STANDARDS associated with Student Learning Outcomes, and that Committee meetings to discuss the current versions of the ABA DRAFT STANDARDS were scheduled for July and November 2012). For various redlined versions of the relevant ABA DRAFT STANDARDS, see ABA DRAFT STANDARDS, *supra* note 16.

competent in the core skills necessary to practice law is of obvious benefit to those students, the legal educators who educate them, and the relevant global community of legal employers and those who will receive legal services from such students.¹⁴⁴ Fortunately, the assessment tools many LRW professors already use provide a manageable way of incorporating formalized assessment of student learning outcomes into their LRW curriculum. Using recycled simulations to initiate and manage such formal assessment may make the process even less cumbersome and the assessment more reliable.

IV. CONCERNS OVER RECYCLING

Even with all of the clear benefits that might accrue to the relevant local, institutional, and global communities, there may be some remaining concerns over recycling in an LRW course. Without a doubt, the concern most often cited against the use of recycled simulations is the concern over student cheating.¹⁴⁵ However, while such a concern is legitimate, “it should not be dispositive” when deciding whether or not to recycle.¹⁴⁶

First, the possibility of students not doing their own work is present even when using new simulations. Students can copy from other students or impermissibly collaborate in violation of rules prohibiting such collaboration—and they can always seek illicit assistance from practitioners or others outside the law school, even if the simulation was never used before.¹⁴⁷

Moreover, an LRW professor fearful of student cheating can put a number of safeguards into place so that cheating is less attractive to attempt and easier to detect. For example, the LRW professor could deliberately rotate the use of recycled simulations so that the students who used substantially similar prior simulations have graduated (and so that any substantially similar prior work product has been long archived).¹⁴⁸ In addition, when engaged in creative repackaging, the professor could change facts, jurisdictions, or names, or add secondary issues not found in the previous rendition of the assignment so that cheaters are easily revealed.¹⁴⁹

¹⁴⁴ See WILLIAM M. SULLIVAN ET AL., *supra* note 89, at 4 (“The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens’ loyalty.”).

¹⁴⁵ See LRW Listserv, *supra* note 11.

¹⁴⁶ Levine, *supra* note 2, at 62.

¹⁴⁷ *Id.*; Margolis & DeJarnatt, *supra* note 2, at 132–33.

¹⁴⁸ See discussion *supra* Part II.A and note 25. While rotating simulations until the original students have graduated is certainly an option, LRW programs that constantly recycle indicate that tweaking minor details of the problem is usually sufficient to curb cheating. See Margolis & DeJarnatt, *supra* note 2, at 133.

¹⁴⁹ Margolis & DeJarnatt, *supra* note 2, at 133 (“The more changed details the student has to identify and revise, the less incentive she has to use someone else’s work.”); see also E-mail from Mary Beth Beazley, Assoc. Professor, Moritz Coll. of Law, Ohio State Univ. (Apr. 22, 2012) (on file with author).

LRW professors could also require explicit proof of individual student research efforts, such as research reports, pop quizzes, or individual conferences prior to submission of the final work-product.¹⁵⁰ There are also a number of commercial software programs that review student submissions for evidence of plagiarism.¹⁵¹ Any of these protective measures would make cheating far less attractive to students than simply doing their own work.¹⁵²

But, perhaps the best course of action might be to spend a little time telling students that cheating is wrong, that it violates the school’s honor code, that they would be severely punished if caught, that it would shortchange their own legal educations, and that if they fail to learn the skills they need to learn in LRW, they will not succeed or survive in the real world of law practice. As one seasoned LRW professor puts it:

[W]e are teaching law students--individuals who will be professionals with great power over others upon graduation. Therefore, I don’t think we do our students any favors by not making them accountable for their behavior as students because we try to protect them by taking measures to “prevent” their cheating. If the course rules state, as mine do, that students are not allowed to see the teacher’s materials from prior years or [student] work product of upper class students, then students are on notice [of] what is allowed and what is not. If they are found to have violated these rules, then students will face very serious sanctions--as real lawyers would do if they transgress professional ethical behavior. The argument that some students might cheat and not get caught is no more of a cogent argument here, in my opinion, than it would be in “real life” in terms of real lawyers.¹⁵³

Or, as Professor Mary Beth Beazley puts it more bluntly: “[Recycling] provides a good lesson in ethics. Students should not cheat. And the reason they should not cheat? It’s wrong. The rule should not be ‘I’ll cheat if I can get away with it.’”¹⁵⁴

Besides the possibility of student cheating, a few professors have

(“[M]ost of us using ‘recycled’ problems change the facts significantly enough so that we’ll be able to catch any cheaters.”).

¹⁵⁰ Levine, *supra* note 2, at 62; Margolis & DeJarnatt, *supra* note 2, at 133.

¹⁵¹ See, e.g., TURNITIN, <http://turnitin.com/> (last visited Sept. 1, 2012); SAFEASSIGN, <http://safeassign.com/> (last visited Sept. 1, 2012) (offering downloadable software programs that claim to detect student plagiarism).

¹⁵² Margolis & DeJarnatt, *supra* note 2, at 133; Levine, *supra* note 2, at 62.

¹⁵³ Posting of Professor Jane Kent Gionfriddo, gionfrid@BC.EDU, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 13, 2009) (on file with author).

¹⁵⁴ E-mail from Mary Beth Beazley, Assoc. Professor, Moritz Coll. of Law, Ohio State Univ. (Apr. 22, 2012) (on file with author).

expressed a concern over the perception of laziness in using the same or substantially similar simulations, whether year after year or even on a rotational basis, at least in the eyes of the uninitiated or uninformed.¹⁵⁵ However, it is unclear why recycling simulations that worked well in an LRW course would be any different than recycling in a doctrinal course, where professors teaching the same courses year after year routinely use the same syllabi, lecture notes, and essay and exam questions that also worked well for them in the past.¹⁵⁶ In fact, unless a doctrinal professor also engages in creative repackaging of the professor's original essay or exam questions, recycling in an LRW course likely involves more effort than that involved in re-using such essay or exam questions.¹⁵⁷ Thus, concerns over any perception of laziness should not be persuasive in deciding whether or not to recycle LRW simulations.

On the other hand, a more valid concern over using recycled simulations, at least too frequently, is the risk that such overuse may ultimately result in an LRW professor's intellectual stagnation, boredom, or burnout. In a typical LRW course, the LRW professor may need to review between 35–60 memoranda or briefs per assignment in any given semester.¹⁵⁸ The reviewing, critiquing, and grading process can be quite

¹⁵⁵ LRW Listserv, *supra* note 11. Indeed, this was also initially one of my own concerns, voiced over the LRW Listserv per my April 22, 2012 query on recycling. *Id.* By “uninitiated,” I am referring here to persons who are not—or have never been—LRW professors. This is because I presume that those who have ever taught LRW—the “initiated”—would not use “laziness” to describe the typical LRW professor or the work that he or she does. *See, e.g.,* Ilhyung Lee, *The Rookie Season*, 39 SANTA CLARA L. REV. 473, 486 (1999) (describing his “physically and mentally exhausting” year of teaching LRW before becoming a doctrinal professor); Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1081 n.50 (“Every single article about legal writing programs and faculty, regardless of any other point the authors make, reports on the overwhelming physical and mental demands of the teaching involved . . .”). Of course, even non-LRW faculty may understand and appreciate an LRW professor's work, and thus I use “uninformed” in this section to refer to persons who have not yet undertaken any effort to become so informed.

¹⁵⁶ *See* Margolis & DeJarnatt, *supra* note 2, at 132 (“[T]orts professors do not reinvent their syllabi using a new casebook every year to prevent students from relying on outlines developed by their predecessors.”); E-mail from Amanda Peters, Assoc. Professor, S. Tex. Sch. of Law (Apr. 22, 2012) (on file with author) (“[D]esigning a problem yourself or creating one each year is A LOT of work. I believe this is probably the reason why most doctrinal professors recycle their essay and exam questions . . .”); E-mail from Maria Perez Crist, Assoc. Dean of Academic Affairs and Professor of Lawyering Skills, Univ. of Dayton Sch. of Law (Apr. 22, 2012) (on file with author) (noting that many upper level simulation doctrinal courses recycle problems, especially NITA [National Institute of Trial Advocacy] problems, for all the same reasons LRW professors recycle); E-mail from Beth Cohen, Assoc. Dean for Academic Affairs, Dir. LRW Program, W. New England Univ. Sch. of Law (Apr. 22, 2012) (on file with author) (noting that recycling in LRW “is no different than other professors re-using notes, lectures, problems, exams, etc.”); *see also* Jeffrey R. Young, *When Web-Sites Post Test Answers Online, Professors Worry*, THE CHRONICLE OF HIGHER EDUCATION, July 10, 2008, available at <http://chronicle.com/article/When-Web-Sites-Post-Test/970/> (discussing professor concern over a student-run website that began posting prior law school and other subject-matter exams without consent, in light of the professors' own “re-use” of their prior exams).

¹⁵⁷ This article distinguishes “reusing,” which essentially would involve no transformation of the original raw materials, from recycling, which would involve a transformative process similar to that described in Part II. *See* discussion *supra* Part II.

¹⁵⁸ *See* ALWD/LWI Survey, *supra* note 49, at x (“In the fall, LRW faculty members each taught an average of 41.33 entry-level students . . . taught 3.83 in-class hours per week, used 3.29 major assignments and 3.5 minor assignments, read 1,556 pages of student work, and held 50.35 hours of

grueling.¹⁵⁹ It is no surprise, then, that some professors express reluctance to repeat this process using the same or a substantially similar simulation, even if a number of years have passed since the last use of the simulation.¹⁶⁰ And, some professors simply relish the challenge and intellectual satisfaction of continually exploring new topics, rather than revisiting old ones.¹⁶¹ However, using recycled simulations does not have to be an either/or decision. Indeed, a mix of both new and recycled simulations, as the individual professor's time and interest allow, would serve to stave off any simulation boredom and prevent LRW course preparation burnout.¹⁶²

Ultimately, the concerns periodically voiced over recycling LRW simulations are either unpersuasive or can be easily remedied. While the choice to recycle is, of course, for an individual LRW professor or program to make, for those who elect to recycle, the benefits to be gained unquestionably outweigh any concerns.

V. CONCLUSION

Recycling simulations in an LRW course is a local effort that, like ordinary recycling, may offer significant global returns. The LRW professor's use of recycled simulations generally provides the student consumers of such simulations better simulation design, more energized and effective teaching, and more efficient use of the LRW professor's scarce resources—all of which likely contribute to greater student learning and

required or strongly recommended conferences. With the exception of number of pages of student work read (1,565 pages), the spring semester workload was somewhat lower (40.17 students, 3.54 in-class hours per week, 2.66 major assignments and 2.7 minor assignments, 46.4 conference hours)."). Despite these stated averages, many LRW professors report teaching substantially higher student loads each semester. See e.g., Lee, *supra* note 155, at 486 (describing a teaching load of 75 students); Liemer, *supra* note 7, at 1015-16 (describing a teaching load that required her to grade 102 appellate briefs at the end of one semester). I have personally taught up to 90 students in one semester.

¹⁵⁹ See, e.g., Lee, *supra* note 155, at 485 (describing his first LRW memorandum grading experience: "Feelings of despair would set in after about the fiftieth memorandum, only to realize that I was but two-thirds of the way there.").

¹⁶⁰ See, e.g., E-mail from Amanda Peters, Assoc. Professor, S. Tex. Sch. of Law (Apr. 22, 2012) (on file with author) ("Sometimes I'm bored by reading 50 briefs or memos that I've already read before, even if it was years ago. I like reading something new or learning something new myself."); see also Posting of Professor Jeanne Kaiser LRW Listserv (Aug. 13 2009), *supra* note 11 ("[A]nother advantage [to changing up the simulation] is avoidance of the boredom problem—by the end of the first go-round with a problem I have developed a healthy dislike for at least one of the parties—after several rounds with the same characters, I'm sure that would morph into complete loathing."); see also Levine, *supra* note 2, at 62 (noting that "assignments should be reused unless the assignment no longer has utility as a teaching tool . . . the issue was mooted by a new development, or the teacher is tired of teaching the assignment").

¹⁶¹ See, e.g., E-mail response from Professor Sheila Simon on 2009 discussion thread on LRW Listserv (Aug. 13, 2009), *supra* note 11 ("Let me toss out one reason I create new problems when I have the chance. I like to explore new topics.").

¹⁶² See e.g., E-mail response from Professor Jeffrey Malkan on 2009 discussion thread on LRW Listserv (Aug. 14, 2009), *supra* note 11 ("I find that mixing new problems in, whenever I can, helps keep the course fresher for me."); Posting of Professor Jane Kent Gionfriddo, gionfrid@BC.EDU, to LRWPROF-L@LISTSERV.IUPUI.EDU (Aug. 13, 2009) (on file with author) ("I truly believe that reusing problems is one of the cornerstones of teaching students well and not burning out the teachers.").

better final student work-product. In addition, the significant time saved by recycling simulations, rather than constantly creating new ones to teach the same skill-set, may provide the LRW professor with the necessary space to develop scholarship or a domain-area expertise. Finally, by using recycled simulations to initiate and sustain formal assessment of critical student learning outcomes, an LRW professor may more easily and reliably assess what students actually *learn* in an LRW course and help her institution ensure that the students attain competency in these critical learning outcomes necessary for the practice of law by graduation. While concerns over student cheating should never be ignored, such concerns can be effectively addressed and the risks minimized. It is this author's hope that others will use this article as a valuable resource when considering whether to recycle simulations in an LRW course. To close the "recycling loop,"¹⁶³ *please recycle* this article.

¹⁶³ See discussion *supra* Part II.D ("closing the loop" is the last stage in the recycling process, where the recycled product is put into the stream of commerce and utilized).