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Learning by Doing: The Benefits of Experiential Learning in Animals and the Law

Peter Sankoff
University of Alberta

LEARNING BY DOING: THE BENEFITS OF EXPERIENTIAL LEARNING IN ANIMALS AND THE LAW

PETER SANKOFF*

I INTRODUCTION

Here is a question I enjoy posing to teachers and students participating in a course on animals and the law: what exactly do you do during the 12 (or so) weeks of your seminar?[1] If it resembles a traditional law course, the answer will undoubtedly refer to assigned readings that explore the relationship between animals and the law, some lectures – perhaps followed by questions from the professor to the students – and a healthy dollop of classroom discussion about policy issues. More traditional teachers might also include some Socratic questioning, while more adventurous lecturers will throw in video footage of animal treatment and a few guest speakers.

To state the obvious, there is nothing inherently wrong with this approach, but it does seem to be missing something, to wit, students getting to *experience* the difficulties faced by lawyers who confront real legal problems involving animals. In fairness, the animals and the law course described above is not much different from the majority of courses currently being taught in law faculties, though this *is* something that is starting to change. With increasing frequency, academics at law faculties around the world are being encouraged to think about new methods of teaching, and, more particularly, being encouraged to add "experiential" elements to their law courses.

While some academics will undoubtedly disagree, I believe this is a very positive development that faculty tasked with teaching courses in animals and the law should embrace. Properly executed, experiential learning techniques offer significant benefits for students. The obvious advantage comes from the way in which these techniques allow

* Professor, Faculty of Law, University of Alberta. Between 2005-2010, Professor Sankoff taught Animals and the Law at the University of Auckland. Thank you to the peer reviewers who offered a number of helpful comments and suggestions.

1 Many professors prefer to label their course 'Animal Law'. Like a small number of others, I prefer (and have always used) the title 'Animals and the Law', because it suggests more clearly what the course is about. Since animals have no actual power (or standing) to use the law, the primary objective of the course is to consider the relationship between animals and the legal system that governs their fate. For the purposes of this paper, nothing turns on the distinction, and all references to 'Animals and the Law' include courses on 'Animal Law'.

students to develop their legal skills in a safe environment, while obtaining feedback and the opportunity to self-reflect upon their performance. Less apparent is a second benefit I believe is even more important: experiential learning is a useful way of letting students realize some of the most obvious shortcomings of the law governing animal treatment first-hand. As a consequence, they can absorb lessons about difficult concepts in a way that will not resonate anywhere near as strongly if they are conveyed by lecture or discussion alone. To put it another way, the movement for experiential learning is not just about turning the classroom into a skills factory. On the contrary, I agree with Professor Jessica Erickson, who has suggested that 'the push for experiential education... is really a push for better teaching'.[2]

In this article, I will explain why experiential learning techniques are so beneficial in courses on animals and the law. I will begin by outlining the rationales for using experiential learning techniques in the classroom, and proceed to describe the methods I use in my own course. This will be supplemented by an exploration of the benefits – as well as a few of the purported and real drawbacks – of these techniques.

II EXPERIENTIAL EDUCATION IN THE LAW SCHOOL CLASSROOM

The use of experiential learning techniques in law faculties is both an old and new practice. Somewhat ironically, the current model of university education as a path for lawyers, which focuses heavily on legal knowledge and critical reasoning ability, was instituted to replace the apprenticeship model that concentrated almost exclusively on developing the skills required by lawyers to practice.[3] Notwithstanding this historical emphasis on training however, the fairly widespread return of experiential learning – the so-called 'experiential shift' that is beginning to challenge the existing model[4] – is a relatively recent development.[5]

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2 Jessica Erickson, 'Experiential Education in the Lecture Hall' (2013) 6 *Northeastern University Law Journal* 87, 89.

3 See Susannah Furnish, 'The Progression of Legal Education Models: Everything Old is New Again' (2013) 6 *Northeastern University Law Journal* 7, 7 and, in particular, the sources cited in fn 1 of Furnish's piece.

4 Lorne Sossin, 'Experience the Future of Legal Education' (2014) 51 *Alberta Law Review* 849, 852, uses this term, noting that 'experiential legal education is on the rise... [an] experiential shift [that] has been driven by the philosophical belief that law schools should do a better job of educating lawyers'. To be clear, I am not suggesting that until recently *no* law school classes made use of experiential techniques. I attended law school in the 1990s and took three classes that were completely or primarily experiential: legal research and writing, techniques in negotiation and trial advocacy. But these were outliers. The current 'shift' is far more widespread, and designed to include experiential learning in a large number of 'traditional' subjects.

5 The exception to this, at least in North America, is the presence of legal clinics - which provide the 'purest' form of experiential education. Clinics became ubiquitous throughout North America in the 1970s and 1980s, and are now a staple of most law programs. See Furnish, above n 3, 10-11; Sossin, ibid 852.

It is not easy to provide a universally accepted definition of experiential learning. Some approach the term narrowly, using it exclusively to define 'real' experiences in which a student acts on behalf of a client or in some form of externship capacity.[6] Others are more inclusive, referring to 'the involvement of learners in concrete activities that enable them to "experience" what they are learning and the opportunity to reflect on those activities'.[7] Perhaps the most comprehensive definition, and one I plan to adopt for this article, is provided by David Thomson, Professor at the University of Denver, Sturm College of Law, a law school that has embraced experiential learning. According to Thompson, the concept:

> [R]efers to methods of instruction that regularly or primarily place students in the role of attorneys whether through simulations, clinics or externships. Such forms of instruction integrate theory and practice by providing numerous opportunities for students to learn and apply lawyering skills as they are used in legal practice (or similar professional settings). These learning opportunities are also designed to encourage students to begin to form their professional identities as lawyers, through experience or role-playing with guided self-reflection, so that they can become skilled, ethical, and professional life-long learners of the law.[8]

The definition is a useful one, for it recognizes that experiential learning can take place both inside the classroom (through simulations) and outside it (clinics or externships). Where classroom experiential learning is concerned, three specific elements are normally present: (1) the regular placement of students in the role of attorneys through simulations; (2) the integration of theory and practice through the use of legal practice skills; and (3) the (early) formation of professional identities through the use of guided self-reflection.[9]

The attraction to experiential learning in legal education is the product of a number of different forces. Without question, a primary motivator is an increasing dissatisfaction from the profession about the capabilities of law students upon graduation,[10] and the extent to which the law school experience prepares students for the realities of legal

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6 David Thomson, 'Defining Experiential Legal Education' (2015) 1 *Touro Law Journal of Experiential Learning* 1, 16.

7 Melvin Silberman, *The Handbook of Experiential Learning* (Pfeiffer, 2007) 8.

8 Thomson, above n 6, 20.

9 Ibid; AD Mitchell et al, 'Education in the Field: A Case Study of Experiential Learning in International Law' (2012) 21 *Legal Education Review* 1, 4-7.

10 See, eg, William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* [The Carnegie Report] (2007); American Bar Association Section of Legal Education and Admissions to the Bar [The MacCrate Report], *Legal Education and Professional Development - An Educational Continuum* (1992). In the Australian context, see Madeleine Fraser et al, 'Transition from Legal Education to Practice: Extra Curricular Competitions Offer the Missing Link' (2013) 23 *Legal Education Review* 131, 131-34.

practice.[11] Perhaps as a response to these concerns,[12] many law faculties have begun to market their focus on experiential learning as a device to attract prospective students.[13]

Concerns about the extent to which the traditional approach to law adequately prepares students for practice also has to be regarded as criticism of the modes of teaching that still dominate most law faculty classrooms: Socratic method and lecture. Concerns about Socratic method are diverse and long-standing. The *Carnegie Report*, a large-scale review of American law schools, considered the 'case-dialogue' style of teaching too limited for contemporary law teaching.[14] A 2007 report on legal education pointed to research suggesting that the Socratic method 'leaves students confused, teachers often use it poorly, and it contributes to a hostile, competitive classroom environment that is psychologically harmful to a significant percentage of students.'[15]

Attacks on the lecture method – probably the most prevalent form of teaching style in law schools[16] – have been even more severe, with

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11 As Steven Friedland, 'The Rhetoric of Experiential Legal Education: Within the Context of Big Context' (2013) 6 *Northeastern University Law Journal* 253, 259-60, has suggested, with fierce competition increasing in the legal marketplace, 'it is harder for law firms to devote non-billable time to training entry-level associates. Law graduates are expected to arrive knowing more than how to just "think like a lawyer".'

12 Sossin, above n 4, 851, suggests that these forces are mutually reinforcing, pointing out that 'law schools will become more experiential because students and employers want them to'. We should evaluate these claims of adherence to experiential learning with some caution, however. Wes Porter, 'When Experiential Learning Takes Center Stage – Not Yet' (2015) 1 *Touro Law Journal of Experiential Learning* 79, 83-86, makes the valid point – which corresponds with my own personal experience – that insofar as the use of experiential learning is concerned, 'at many law schools... nothing has changed except the marketing and spin'.

13 See, eg, Melbourne Law School, *The Melbourne JD (Juris Doctor)* <http://law.unimelb.edu.au/study/jd#experience), which has a large focus on the experiential opportunities available for students in the JD program>.

14 Carnegie Report, above n 10. See similarly Benjamin V Madison III, 'The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students' [2008] 85 (3) *University of Detroit-Mercy Law Review* 293, 301.

15 Roy Stuckey et al, *Best Practices for Legal Education* (Clinical Legal Education Association, 2007) at 82: <http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf>. In fairness, these criticisms are not universally accepted. Many law professors defend the method and note that the problem is less with Socratic method than with bad teaching. See for example Gary Shaw, 'A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices' (2012) 28 *Touro Law Review* 1239.

16 When I speak of lecture method, I refer to any course that is primarily premised on lectures - with a professor speaking from the podium at the front of the room and students typing notes in response. There is considerable evidence to suggest that this method of teaching dominates law schools around the globe. See Fraser et al, above n 10, 132; Joanne Ingram & Robin Boyle, 'Generation X in Law School: How These Law Students are Different From Those Who Teach Them' (2006) 56 *Journal of Legal Education* 281 (predominant teaching method in law is Socratic method combined with straight lecture); Porter, ibid 85; Peter Sankoff, 'Taking the Instruction of Law Outside the Lecture Hall: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (for Professors and Students)' (2014) 51 (4) *Alberta Law Review* 891-893.

many now referring to it as an *inappropriate* way of teaching students in the modern era. The concerns are multifaceted. First, although both lecturing and the Socratic method may at one time have been an effective way of sharing knowledge or imparting it to students, there is growing evidence that the majority of today's students do not learn from these methods effectively, and that many struggle to absorb the professor's carefully crafted teachings. A contributing problem is student disengagement. In today's modern classroom, students have a multitude of techniques available for self-distraction at their fingertips, and make use of them frequently.[17] Finally, the methodological approach is premised on a fairly narrow philosophy focused on transmission, whereby lecturers send information to students, who presumably add it to their overall collection of knowledge.[18] There is considerable doubt about whether this method provides students with the deeper learning required to succeed in law.[19]

In addition, even if it does work in providing students with the basic knowledge they will need as lawyers, the lecture method does little else. Today, it is generally accepted that law schools have a role to play in giving future lawyers a chance to practice their skills and be more

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17 The 'Facebook' phenomenon has been heavily commented on in the academic literature, and is a consistent topic of discussion at every law faculty I have ever been a part of. See Eric A DeGroff, 'Training Tomorrow's Lawyers: What Empirical Research Can Tell Us About the Effect of Law School Pedagogy on Law Student Learning Styles' (2012) 36 *Southern Illinois University Law Journal* 251; Anne Matthew, 'Managing Distraction and Attention in Diverse Cohorts: 21st Century Challenges to Law Student Engagement' (2012) 12 *Queensland University of Technology Law and Justice Journal* 45. The response of some law professors has been to banish laptops from the classroom. See, eg, Nancy Maxwell, 'From Facebook to Folsom Prison Blues: How Banning Laptops in the Classroom Made Me a Better Law School Teacher' (2007) 14 *Richmond Journal of Law & Technology* 4.

18 Michael Prince and Richard Felder, 'Inductive Teaching and Learning Methods: Definitions, Comparisons, and Research Bases' (2006) 95 (2) *Journal of Engineering Education* 3, who have studied educational techniques closely describe it thusly: 'The teacher's job is to transmit this knowledge to the students—lecturing being the natural method for doing so—and the students' job is to absorb it.' This approach also increases the likelihood that students will see law classes as a sort of 'game'. If the object is simply to absorb information, students have an economic incentive to do the least amount possible to obtain the information they need to succeed, as there is really no benefit provided for doing work for its own intrinsic sake. Moreover, in the era where so much information is available on the internet, law schools have a vested interest in teaching differently. As Sossin, above n 4, 851, suggests, 'we are fast reaching the point when the overwhelming majority of technical and specialized knowledge in law, and much critical analysis as well, is available to all, for free, online... Therefore, if all law schools do is provide a space for faculty to disseminate information and opinion from their hard drive to the hard drive of their students' laptops, law schools will quickly find themselves no longer relevant.'

19 Ian Holloway, is even harsher than I am on this point, noting that 'this should not be a revolutionary point but lectures, coupled with a system of go-for-broke, 100 per-cent exams, is just about the worst way to teach law. It's a system in which most people don't learn very much. At least not very much that they retain after the exam is done.': Ian Holloway, 'Of Theory, Skills and False Dichotomies' *Canadian Lawyer Magazine*, December 14 2015 <http://www.canadianlawyermag.com/5847/Of-theory-skills-and-false-dichotomies.html>.

prepared to jump to the 'real world' with real clients.[20] The growing importance of clinical legal education in Australia and elsewhere is a sign of recognition that it is possible to obtain skills training and legal knowledge at the same time.[21] Experiential education is on the rise[22] in response to all of these concerns.[23] First and foremost, its use is supported by a growing body of evidence – coming from law schools and other disciplines – suggesting that experiential learning is not just more engaging as a technique, but actually more likely to achieve better student understanding of legal concepts over the long term, and encourage the development of critical thinking skills.[24]

The technique is based on a fairly simple idea: that people learn better by 'doing' than by 'listening'. As Jessica Erickson has described it:

> To have a deep understanding of the law, students must be able to use the law to craft legal arguments, draft legal arguments and shape legal strategy. A student who has memorized the rules but who cannot apply them does not know the law in any satisfactory way. Students do not acquire this deep understanding of the law through passive methods of instruction. Students learn by experiencing, and doctrine is no exception… When we ask students to apply course material in a problem or case study, we are really asking them to think about the material. This process of intellectual engagement is more likely to get the information into students' long-term memory.[25]

In a similar vein, Steven Friedland points out that:

> The use of different kinds of [experiential learning] has been shown to be pedagogically effective, promoting a deeper understanding of material and greater retention. It is not the teacher's coverage that matters so much, but what knowledge the students receive, retain and are able to transfer in confronting problems with differing facts.[26]

Used effectively, experiential techniques engage student attention and increase participation in a way that simple discussion or lecture

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20 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No. 89 (2000) 2.20.

21 On this point, see Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013) 9-14; Judith Dickson, '25 Years of Clinical Legal Education at La Trobe Uni' (2004), 29(1) *Alternative Law Journal* 41.

22 At some law schools, experiential learning is taking over large parts of the curriculum. See for example, Institute for the Advancement of the American Legal System, *Ahead of the Curve: Turning Law Students Into Lawyers* (Institute for the Advancement of the American Legal System, 2015) which describes the Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law, a program that is almost entirely experiential.

23 For an overview regarding the expansion of experiential learning in Australian law faculties as well as the impetus for the change, see Penelope Watson, 'Leading Change in Legal Education: Interesting Ideas for Interesting Times' (2012) 22 *Legal Education Review* 199.

24 To be clear, there is nothing close to universal acceptance to the utility of this form of teaching. Many view it as marketing hype rather than beneficial technique. See Porter, above n 12, 84.

25 Erickson, above n 2, 88, 91. See similarly Anne Hewitt, 'Producing Skilled Legal Graduates: Avoiding the Madness in a Situational Learning Methodology' (2008) 17 *Griffith Law Review* 87, 89.

26 Friedland, above n 11, 275.

cannot,[27] primarily because it is student oriented rather than professor oriented.[28] The Australian Council for Educational Research has concluded that experiential learning allows students to develop a better 'awareness of the workplace and how it relates to their academic learning'.[29] Early empirical studies on experiential learning in law appear to support the notion that this form of teaching offers valuable benefits over alternative options.[30]

In addition, experiential learning allows students to practice skills that they will need upon joining the legal profession.[31] It is becoming more accepted that 'legal skills instruction ... cannot be taught solely through traditional didactic teaching methods'.[32] Experiential opportunities put students in a position to obtain valuable 'work-related knowledge and participation in activities that contribute to professional experience and employability skills'.[33] Not surprisingly, studies have shown that participation in these sorts of activities during law school improves student performance in the chosen skills.[34] All of these are important benefits, but perhaps the most significant is that experiential learning succeeds as a teaching methodology in getting students to learn critical concepts more deeply than they can via lecture alone, by making them use active thinking processes and deal with difficult challenges in a way that stimulates learning.[35] As Erickson has suggested:

> If we want students to demonstrate higher-order thinking, we have to shape our classes around activities that require this type of thinking.... [I]f we want students to acquire a higher-order understanding of legal doctrine, we must give them plenty of opportunities to practice using the doctrine in these higher-order ways.[36]

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27 See Elizabeth Anne Kirley, 'Are We Ethically Bound to Use Student Engagement Technologies for Teaching Law' (2015) 49 *Law Teacher* 219, 224.

28 Kirley, ibid 221 (active learning, which includes, but is not limited to, experiential learning).

29 Australian Council for Educational Research, *Engaging Students for Success: Australasian Student Engagement Report Survey of Student Engagement* (2009) 35.

30 Eric DeGroff, above n 17, 251. See also the studies cited by DeGroff, ibid at 265.

31 NALP & the NALP Foundation, *2010 Survey of Law School Experiential Learning Opportunities and Benefits* (2011) <http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf>; Ira Steven Nathenson, 'Navigating the Uncharted Waters of Teaching Law with Online Simulations' (2012) 38 *Ohio Northern University Law Review* 1, 27;

32 Tammy Johnson and Francina Cantanore, 'Equipping Students for the Real World: Using a Scaffolded Experiential Approach to Teach the Skill of Legal Drafting' (2013) 23 *Legal Education Review* 113, 123.

33 Mitchell et al, above n 9, 79.

34 Joel Butler and Rachel Mansted, 'The Student as Apprentice: Bridging the Gap Between Education, Skills and Practice' (2008) 1 Journal of Australasian Law Teachers Association 287; Pam Watson and Jonathan Klarren, 'An Exploratory Investigation into the Impact of Learning in Moot Court in the Legal Education Curriculum (2002) 119 South African Law Journal 548.

35 D A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice Hall, 1984) 38, suggests that 'knowledge-creation involves active transactions between the student and the environment being studied'. See also De Groff, above n 17, 265.

36 Erickson, above n 2, 96.

The stimulation of higher-order thinking, characterized by a focus on getting students to be critical, self-reflective and creative,[37] is increasingly regarded as a key objective of a modern legal education,[38] and should be seen as an important part of a course on animals and the law as well. It is not enough to simply teach students about the rules that currently govern human/animal interaction; it is essential that they come to understand the biases and injustices that permeate this relationship, and begin to question underlying assumptions and perhaps even challenge the orthodox position under which human needs always dominate.[39] Ultimately, this is best accomplished through experience. If we want students to have a deeper understanding of the rules governing the human treatment of animals and the anthropocentric assumptions that underpin them, we need to give them opportunities to work directly with these rules.

As I shall attempt to demonstrate in the next section, courses on animals and the law are ideally suited for experiential learning. Utilizing techniques that place students in the position of lawyers or policy makers facing actual problems involving animals and the law helps them to absorb the relevant concepts, see the challenges of practicing in this area and develop important lawyering skills.[40]

II EXPERIENTIAL ELEMENTS IN ANIMALS AND THE LAW

In this section, I will explain the different experiential elements in my animals and the law course. This is not a comprehensive list. During the semester, I invariably include a few 'short' experiential elements to supplement the techniques I intend to discuss below. Nonetheless, the unassessed and assessed components discussed below comprise the major portion of experiential learning that take place in my animals and the law seminar.

A few points are worth noting at the outset. To begin with, my course is capped at 25 students, which is what makes many of the experiential learning techniques set out below possible. That said,

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37 David Krathwohl, 'A Revision of Bloom's Taxonomy: An Overview' (2002) 41(4) *Theory Into Practice* 212, 215; Lisa Tsui, 'Cultivating Critical Thinking: Insights From an Elite Liberal Arts College' (2008) 55(2) *Journal of General Education* 200, 201-02.

38 For the importance of 'higher order' thinking in legal studies, see Rosalie Jukier, 'Transcending Boundaries in Legal Education: A Vehicle for Teaching Students to Think Critically' (2013) 6 *Collected Essays on Learning and Teaching* 22.

39 See Nickolas James, Clair Hughes & Clare Cappa, 'Conceptualising, Developing and Assessing Critical Thinking in Law (2010) 15 *Teaching in Higher Education* 285, 287.

40 Though it is an unproven notion, the popularity of experiential learning techniques may have an additional benefit: an enhanced reputation amongst the student body that ensures the continued existence of the course. Students have a tendency to gravitate to courses that provide them with exciting experiential learning opportunities, even if they are not particularly drawn to the subject matter of the course. In my own course, three students indicated on the first day that they took the course because it was their only chance to complete an address to the jury in law school, and they felt the experience would be worthwhile.

although a smaller course size is unquestionably preferable for creating these opportunities, it is not essential. I have run the unassessed components discussed below in courses with as many as 65 students, and the legislative reform proposal could be run in a class of this size as well, albeit only through the use of teams.[41] All of these experiences are designed to achieve a number of key learning objectives. First, I want all students to think deeply about the existing legal paradigm and consider whether the law governing human/animal interactions is adequately calibrated, and perhaps consider why changes might be required.[42] Second, I want students to try their hand at certain lawyering activities to improve their abilities (and self-confidence) while thinking about how these skills can be developed to help animals achieve better legal outcomes. Finally, I hope for both objectives to be achieved in a guided, safe space, with the opportunity for self-reflection in order to promote a deep absorption of any lessons learned.[43]

A *Unassessed Components*

In the first half of the semester, during the part of the course that considers the legal implications of treating animals as pieces of property, I devote an entire class to a series of settlement negotiations. As discussed above, there are multiple objectives to using this sort of experiential learning exercise in the classroom. To begin with, students get practice in creating and implementing negotiation strategies and have the opportunity to consider what it means to negotiate in an ethical manner.[44] Many students also have to consider what it means to negotiate on behalf of a client who asks them to take a position that may conflict with their own personal view about animals and the intrinsic value these beings possess. Finally, after getting a chance to engage with these concepts as a lawyer would, students get to think critically about the benefits and drawbacks of treating animals as property and consider the implications of this designation.

The class asks the students to participate in three separate negotiations, and they are divided randomly into groups titled ‘Lawyer

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41 In a nutshell, the problem is the time required to run these sorts of exercises. With large student classes, it becomes difficult to have all of the experiential elements held during class time. Holding them outside of class time comes with its own challenges, and increases the time commitment for a lecturer quite dramatically.

42 This is useful both from an educational perspective, and also in terms of creating a generation of lawyers who see the need for legal change. See Peter Sankoff, 'Animal Law: A Subject in Search of Scholarship' in Peter Sankoff and Steven White eds, *Animal Law in Australasia: A New Dialogue* (Federation Press, 2009) 394-98; Megan Senatori and Pamela Frasch, 'The Future of Animal Law: Moving Beyond Preaching to the Choir' (2010) 60 *Journal of Legal Education* 209.

43 For a visual representation of some of the experiential elements I use in my course, see my Video Blog on the subject: Peter Sankoff, ‘Ten Minutes on Experiential Learning’ (December 3, 2015) <http://petersankoff.com/2015/12/03/ten-minutes-on-experiential-learning/>.

44 Some of the facts in the negotiations are a bit vague, and this year, we ended up having a robust discussion about a lawyer's ability to make assertions that could not be substantiated, and when this was appropriate.

A' and 'Lawyer B'.[45] Students have about ten to fifteen minutes for each negotiation, and I allot them an additional ten minutes to prepare for the negotiation with other students performing the same role. This allows students to think about strategies and develop arguments with their colleagues, learning from each other in the process. The first negotiation involves a case of admitted veterinary negligence, where the object of the negotiation is to resolve the damages the vet should pay for having negligently killed a rescued 'tabby' cat. The second negotiation focuses on a dog 'custody' dispute where a couple has split up, and the third involves a dog control prosecution where the city council lawyer is seeking to have the animal destroyed. I believe each has importance, though for the purposes of keeping this paper at a reasonable length, I will discuss the first two negotiations briefly, and focus in greater depth on negotiation #3.

The first negotiation is a nice way to introduce the way in which the property status of animals often makes it challenging to assign monetary value to their damage or loss.[46] In past years, students have made creative arguments in an attempt to demonstrate that a tabby cat whose life is lost by negligence is worth more than her market value of roughly $0. The negotiation shows students how easy it is for the law to abstract the animal to its market value, and how uncomfortable this can feel for animal advocates. Students commonly remark how 'powerless' they felt when they were acting for the animal's owner, though many make extremely creative arguments in an effort to move the law in a way that better recognises the importance of companion animals in our society. The discussion leads into difficult questions about the way in which this loss could be compensated, and whether orders of this sort are ultimately 'good' for animals.[47]

The second negotiation is equally fruitful. It centres on a couple that co-habitated for eight years, but recently decided to separate. Five years ago, the male partner purchased a puppy, though the two raised it together. Today, the male partner wants a 'clean split' to the relationship, while the female partner is asking for joint custody or at least visitation of her beloved pet. Again, very creative arguments get raised during this negotiation.[48] Students arguing for the male partner

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[45] Lawyer A represents the animal's owner twice, while Lawyer B does so on the remaining occasion.

[46] This is not true, of course, where the animal actually has a recognized market value, as would be the case, for example, if it were a racehorse or expensive purebred animal. For an analysis of this topic, see Sonia Waisman and Barbara Newell, 'Recovery of "Non-Economic" Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend' (2001) 7 *Animal Law* 45; Lesley Anne Petrie, 'Companion Animals: Valuation and Treatment in Human Society' in Sankoff and White (eds), above n 42 at 57.

[47] There are obviously pros and cons. Awards could help deter negligence, but would undoubtedly drive up the cost of pet care. This latter argument is hardly unassailable, however. See Waisman and Newell, ibid 67.

[48] Generally speaking, these attempts to obtain 'joint custody' have not succeeded in Canada. See *Warnica v Gering* (2004), CanLII 50065 (Ontario Supreme Court) affirmed (2005) CanLII 30838 (Ontario Court of Appeal); *Kitchen v McDonald* [2012] BCPC 9.

hold firm to a property division, offering financial compensation to buy out the 'joint property'.

Parties acting for the female partner try to discuss what is in the 'best interests of the dog', or even propound an equitable right to title. Again, the negotiation lets students experience the difficult road those wanting to argue for an outcome that is beneficial to the animal at the heart of the dispute can become, and how creative an animal advocate in these circumstances needs to be. The third negotiation is a slightly different 'animal'. Both parties' positions are set out below.

1 *Negotiation Activity*

Lawyer A

You work for Edmonton City Council, as a lawyer prosecuting violations of the *Alberta Dog Control Act*. You are currently prosecuting Sandy, whose dog Rex bit a local cat. The Act makes it clear that attacks against cats are prohibited.

The following two sections of the Act are relevant here:

> 57(2) The owner of a dog that makes an attack… commits an offence and is liable on summary conviction to a fine not exceeding $3000.
>
> (3) If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack… the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

You know from experience that fines for first offenders like Sandy are usually in the range of $200. Your primary goal, however, is to make sure that Rex is destroyed, as the City has made it clear that dogs who bite are a nuisance and cannot be tolerated. You have a very busy court docket this morning, and would prefer not to go to a full hearing, as these can take a fair bit of time. As is your usual practice, you are willing to withdraw the charge against Sandy if she will surrender Rex to be destroyed.

You have a meeting with Sandy's lawyer.

Lawyer B

You represent Sandy, who is being prosecuted for a violation of the *Alberta Dog Control Act* because her dog Rex, a German shepherd mix, bit a local cat. The Act makes it clear that attacks against cats are prohibited.

The following two sections of the Act are relevant here:

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> (3) If, in any proceedings under subsection (2), the court is satisfied that the dog has committed an attack… the court must make an order for the destruction of the dog unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog.

You know from experience that fines for first offenders like Sandy are usually in the range of $200. Sandy does not have a lot of money, and while she likes Rex, finds that caring for him is often a bit of a bother. Rex is not dangerous to humans, but hates cats! Sandy's #1 goal is to avoid a fine. She'd prefer to keep Rex, but this is not her primary concern.

You have a meeting with the City Council lawyer, who is responsible for dealing with this offence.

It should not take long for readers to figure out what every student who does this exercise comes to realise eventually – albeit not without some attempts at creative negotiation: Rex the (imaginary) dog is doomed. Of the three negotiations I set up, this one inevitably takes the shortest amount of time to complete. But it is also the exercise that provides the greatest insight. By engaging in this negotiation – which, in light of the practices of many municipal councils, is quite realistic of what occurs to 'dangerous' dogs[49] – students come face to face with some unpleasant truths about the way animals are treated by our legal system. First, they are able to experience the way in which the property status of animals can drive outcomes that fail to reflect any consideration of *what the animal needs*.[50] This has both procedural and substantive elements. The negotiation lays bare the fact that animals usually lack the legal standing to have their interests advanced in court – a critical concept to address in any animals and the law course.[51] The interest of the animal is peripheral to most of what occurs in the negotiation, and this tends to make students feel awkward about the result. After all, who is there to really advocate for the dog and is the absence of such an advocate problematic?

The exercise also raises substantive questions about the role of power and its ability to shape legal conclusions, by showing how designating animals as property often results in solutions that are legally defensible, but simultaneously problematic if one takes a broader view of an animal's intrinsic value. By demonstrating how laws of this type are focused on pursuing the objective of dog control by simply terminating animals that are viewed as 'problems', rather than promoting alternative measures that could stop dog attacks in more

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[49] See, eg, David Tong and Vernon Tava, 'Moral Panics and Flawed Laws: Dog Control in New Zealand', in Peter Sankoff et al (eds), *Animal Law in Australasia: Continuing the Dialogue* (Federation Press, 2013) 104. Tong and Tava, ibid 123, note however, that 'no Australian jurisdiction has a presumption of destruction'.

[50] It also provides a wonderful counterpoint to the notion that the liberal theory of ownership is a meaningful safeguard for animals, in that a person is naturally likely to treat its own property well and defend it, because it is in the person's interest to do so. See, generally, Bruce Ziff, *Principles of Property Law*, (Carswell, 6th ed, 2014) 29-30; Gary Francione, *Animals, Property and the Law* (Temple University Press, 1995) 44-46.

[51] For a discussion of the importance of this doctrine in this context, see Deborah Cao, *Animal Law in Australia and New Zealand* (Thomson Reuters, 2010) 78-79; Cass Sunstein, 'Can Animals Sue?' in Cass Sunstein and Martha Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press, 2000) 251.

positive ways,[52] it shows the power dynamic that advances human expediency and devalues animal life. Ultimately, by reflecting upon the procedural and substantive components of the problem, and discussing how any deficiencies might be improved upon, we are able to achieve a key benefit of experiential education, as defined by the *Best Practice Guidelines for Australian Clinical Legal Education*. The Guidelines note that 'studying law in context also means analysing the role of power in shaping the law and legal system; and analysing the role of lawyers and how they perpetuate, challenge and reform structures, institutions, systems and relationships'.[53]

Do students see the value of these exercises? In early 2016, I asked students in the class to participate in a voluntary, anonymous survey in order to gauge their reactions of how well the experiential benefits helped their learning. Given the class numbers, it was a small sample size,[54] and should be treated with caution, but the overwhelmingly positive reactions do point to real student interest in experiential learning. Two questions asked the students whether they learned something valuable about the 'animals as property' construct from the exercises that they had *not* picked up from lectures or discussion alone. Eleven of twelve students answered affirmatively, with four of those eleven answering that they learned 'much more' than they gained from the lecture or discussion alone.[55] Similarly, eleven of twelve students felt the exercises constituted a valuable or very valuable use of class time.[56] In response to a third question, ten of twelve students felt that more of these opportunities in other courses was needed, with one student neutral, and one student disagreeing.

In terms of learning the types of skills that they might use in practice, students unanimously thought the chance to negotiate was beneficial, regardless of whether they gained additional insight into animal law matters, with nine of twelve noting the highest category of agreement. In a comments section, students mentioned the types of lessons they had learned, including the value of advance preparation to stay focused during the negotiation, the importance of knowing legal boundaries and where to push them, and the difficulty of making compromises effectively. The feedback illustrated some of the drawbacks of an unassessed component. Students wished to have more time to prepare, and felt they were unclear about some of the legal boundaries before engaging on the negotiation. Some students would

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52 See Lynn Epstein, 'There Are No Bad Dogs, Only Bad Owners: Replacing Strict Liability with a Negligence Standard in Dog Bite Cases' (2006) 13 *Animal Law* 129; Tong and Tava, above n 49, 124-27.

53 Adrian Evans et al, *Best Practices: Australian Clinical Legal Education September 2012* (Office for Learning and Teaching, Department of Industry, Innovation, Science, Research and Tertiary Education, 2012) 15.

54 In addition, it was voluntary. I received 12 surveys from the 21 students who participated in the exercises.

55 The remaining seven felt they 'learned something additional that was valuable'. One student felt they had not learned anything valuable.

56 Seven of eleven felt it was 'very valuable'.

have wished to have prior instruction on how to negotiate in a legal setting, or at least materials geared to this.[57]

B *Assessed Components*

Though this has not always been the case in my course, today, every student *must* complete an experiential component in order to pass the course, though they are provided with two ways of achieving this: a) the jury submission exercise; or b) the legislative reform exercise, both of which are worth 25% of their overall mark in the course. In essence, they are choosing between an 'advocacy' stream and a 'policy' stream. I believe that giving students a choice in the type of experiential learning exercise they wish to participate in – as not every student will end up being a litigator – is an important part of promoting student 'buy-in' to the process.

As I will discuss below, students also have the option of a final experiential exercise for their final paper, worth 35% of their overall mark.[58] I shall describe each exercise in turn.

1 *Jury Submission Exercise*

The jury submission exercise is designed to simulate the end of a trial of an individual for an animal cruelty offence and give students the rare opportunity of making closing submissions to a twelve-person jury. The simulation is based on a real event that never resulted in a full-blown trial.[59] Participants and jurors are provided with a lengthy review of the evidence, in the form of admitted facts, as well as transcripts of testimony from a few key witnesses. After researching the law in question, students are given the chance to present closing arguments to a jury of their peers (fellow students),[60] trying to convince them of the perpetrator's guilt or lack thereof. Students who are not undertaking this component must watch at least one of the exercises or they will receive a deduction on their participation marks. The exercises substitute for one full week (2 classes) of class time.[61]

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57 As set out below, I do provide materials of this type for the assessed components of the course, but think that it is impractical for unassessed components.

58 The remaining 40% evaluation comes from participation (20%) and a short commentary written in the first half of the semester (20%).

59 See *CBC News*, 'Chicken Slaughtered in Cafeteria by Calgary Art Student' (18 April 2013) <http://www.cbc.ca/news/canada/calgary/chicken-slaughtered-in-cafeteria-by-calgary-art-student-1.1310148>.

60 Students are normally drawn from a first year class I teach in criminal law. This has the added benefit of getting these students excited about the potential of taking animals and the law the following year.

61 Because of the difficulty of arranging juries and inherent time constraints of setting up such an exercise, I advise my Animals and the Law students early in the year that only four of these exercises (with 8 participants) can be scheduled. This has never been a problem - as many students are terrified of conducting this exercise - but if more than 8 wish to participate, advocates will be chosen randomly, with the remainder doing the legislative reform exercise instead.

While the majority of a student's mark comes from their performance on the oral submissions, students must also provide a one page reflection after the exercise discussing how they felt the exercise went, what their strengths and weaknesses were, what they might do differently, and what they learned. The course website provides guidance about the value of reflective practice and its importance in helping students self-evaluate and improve both their critical thinking and their presentation skills. [62] The case focuses on an art project involving the killing of a chicken in front of an audience and whether this amounts to animal cruelty. The facts are not particularly complex. There is evidence from witnesses of the act, a veterinarian who testifies that the animal would have suffered from the accused's conduct, and an art teacher, who provides expert testimony about the importance of 'art' and whether this sort of performance qualifies as such. The difficult part for the students lies in exploring the issue at the heart of most animal cruelty cases: whether the purpose in harming the chicken outweighed the chicken's interest in being free from suffering; in short, whether the suffering should be regarded as unreasonable or unnecessary.[63]

The exercise proceeds just like the end of a jury trial, albeit with certain modifications. I play the role of trial judge, and greet the jurors with opening remarks about their task, and how the submissions will proceed. I remind them that only I can instruct them on the law. Submissions then proceed, with each party addressing the jury for no more than 20 minutes. The defence goes first, followed by the prosecutor.[64] I then charge the jury on the law, and, once this is complete, the jury retires to deliberate for a period of no longer than 30 minutes. At this point, I obtain a verdict - preferably unanimous, but majority verdicts are accepted. Students have the opportunity for reflection and critique at several points of the process. Immediately after the jury retires, I invite the participants to offer some initial self-reflection and comment upon things they felt were more and less effective. Class members in the audience are also asked to provide constructive critique. After a verdict is reached, jurors were asked how they felt about the exercise, and asked to comment upon submissions that were particularly effective and those that were less effective. Submissions are videotaped so that the students can review and self-critique their own performance, and I meet with each participant after the exercise to offer my own thoughts, along with a detailed written evaluation.

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62 Reflection is a critical element in experiential learning, as considerable research suggests that for these experiences to create positive learning outcomes, there must be the opportunity for personal reflection, and ideally some group reflection as well. See Thomson, above n 6, 23; Erickson, above n 2, 99-102.

63 See Peter Sankoff, 'The Protection Paradigm: Making the World a Better Place for Animals?' in Sankoff et al (eds), *Animal Law in Australasia: Continuing the Dialogue*, above n 49, 1.

64 In accordance with the requirements of the *Criminal Code*, RSC 1985, c C-2, s 651(3), which mandates this order when the defence offers evidence, as it did in the case being considered.

The exercise is usually the highlight of the seminar. Students are amazed at how the discussions we have in class become even more vibrant when put into practice, and it is fascinating to see how difficult the 'unnecessary suffering' paradigm actually is for 'jurors' who have not been initiated on animal law. To listen to them describe the struggle of deciding whether this single chicken's suffering - which was probably less than it would have endured on a commercial farm - warrants a criminal conviction is invariably a wonderful learning experience for everyone involved.

2 *Legislative Reform Exercise*

The legislative reform exercise requires students to present a reform initiative to a group of lawyers and policy makers (the rest of the class) including myself (the Minister of Justice or other relevant department), as they might have to do in government. For this task, students can choose any legislative instrument (including a regulatory provision) relating to the treatment of animals, and suggest one section (or group of closely related sections) to reform. This can be a municipal, federal or provincial enactment. Students are then given 15 minutes to: (1) introduce the existing law; (2) explain its deficiencies; (3) suggest a better statutory proposal; and (4) justify why the proposal is appropriate. Students are encouraged to circulate a one-page document previewing their presentation (setting out the legislation they wish to reform, any needed context, and suggested changes) at least one week before the presentation. As with the jury submissions, students must reflect upon the oral part of the assignment in a one-page paper.

The legislative reform exercise offers students the chance to address difficulties with animal related laws in a head-on manner, while being cognisant of the 'art of the possible'. Students are encouraged to recognize the practicality of the changes being proposed, and assess the ramifications of what they are suggesting. Once again, the exercise offers plenty of opportunity for feedback. After the presentation, students receive immediate feedback from their peers, and are asked to consider whether they should have approached the matter differently. Presentations are recorded, and students are invited to review the presentation with me after class.

For this exercise, students are provided with basic material on legislative drafting to assist them in the task, and encouraged to meet with me in advance to ensure that the proposed changes are appropriate. Invariably, students do an incredibly professional job, and suggest all sorts of useful modifications to the law governing animal care.

3 *Final Paper*

While students are under no obligation to perform additional experiential components in the course, they are encouraged to do so. Instead of writing an academic essay on an animal law topic – though students may do this if they wish – students are encouraged to use the

exercise they have chosen as a jumping off point for written work. Students in the advocacy stream are given the option of writing a factum on appeal from the case they have argued. Students in the legislative reform stream have the option of providing a written justification for the change they are recommending, with supporting research. This is worth 35% of their mark for the course. To make the most of this experience, and allow for dissemination of some potentially useful and innovative reform options, this year I summarised them in a series of 'video blogs' that were published on my web site.[65]

4 *Summary*

Experiential exercises in a course on animals and the law are an exciting way to achieve multiple learning objectives, and there is good reason to believe that the experiential components utilised in my course are beneficial for participants and observers alike. The jury submissions exercise forces participants to consider the animal protection paradigm and what it truly meant to harm an animal 'unnecessarily', with the litigation format providing a good way for students to test the definition from both sides of the adversarial spectrum. Observers are equally engaged by the arguments, and discussions about whether the format adequately punishes those who inflict animal suffering dominates the feedback session and a number of subsequent classes. The legislative reform exercise was equally fruitful. Students expose legislative deficiencies in a number of different topic areas, each of which helps us all see how far animals have to go in terms of having their interests recognized adequately, and the reasons why the journey remains such a long one.

Students also were able to develop a number of important legal skills. Those who made jury submissions raved about the utility of the process, as it forced them to try something completely new: making legal submissions to a group of laypersons, as opposed to a trio of appellate judges.[66] Legislative reform participants, faced with tough time limits, learned how to make key points succinctly and effectively, while trying to persuade those involved in decision making in the need and practicality of a given measure. Finally, the reflective portions of the exercise helped students entrench these lessons more fully.

Reading the reflections was eye-opening for me as an educator. It was wonderful to see students so candidly reflect upon their own strengths and weaknesses, and describe the lessons they had learned about the substantive law in an effective way. The opportunity for reflection seemed to stimulate student performance and understanding in a way that led to high quality final papers. In my first year of using these techniques, the grades for final papers were collectively the highest I have ever awarded in this course. As Dewey recognized long

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65 Peter Sankoff <www.petersankoff.com/vblog.html>.

66 Students at just about every law school participate in at least one 'moot court', which requires them to make an argument to an appellate tribunal.

ago, the combination of experience and reflection creates meaning from the experience and fosters continued learning.[67]

Not surprisingly, there are certain drawbacks to any decision to integrate this type of experiential learning into the classroom. For one thing, the creation of experiential exercises is incredibly time-consuming, and using them during class time reduces the amount of time that can be spent on lecture or open discussion.[68] At most institutions, including my own, there is little to no support for endeavours of this sort, and there is good reason to believe that the creation of these kinds of learning experiences are undervalued by academic institutions generally.[69]

Even students can have negative reactions to these types of learning exercises, especially when professors are trying them out for the first time. Many law students are extremely conservative about the law school process of learning, and when experiential exercises are first introduced, students may not react positively to techniques that are noticeably different from what they are used to in other classes.[70] In my first year teaching this course at a new institution, one student responded by posting a scathing online review that stated how I was 'totally into new-fangled "teaching methods" which take up a lot of student time and patience but produce no results. I wish he would go back to the good old lecturing method and leave out the funky "exercises".'[71] This was not the universally held position, of course, as other students were more supportive,[72] but it is the kind of vitriolic comment that can shake a professor's confidence, especially when such feedback gets tied into an official annual review by the faculty or university more generally.

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67 John Dewey, *Experience and Education* (Collier-MacMillan Books, 1938) 45.

68 See similarly Nathenson, above n 31, 29. Needless to say, while I recognize this as a concern, it does not bother me in the least. I can no longer cover every issue in animal law, but the advantages brought by experiential learning, in my mind, far outweigh any loss of coverage.

69 See also Nathenson, ibid 6. My own experience confirms this. During annual reviews by the administration, the focus is almost exclusively on student evaluation numbers. While experiential learning may drive these numbers higher - though this is not always the case - I have yet to receive any kind of praise for trying to change the *way* we teach law.

70 Every time I have increased the amount of experiential learning in my classes, my ratings, as provided by student evaluations, have dropped - even though there was a subsequent recovery as students got more used to the idea, and I got better at making use of the simulations. This experience matches others who have tried similar methods: Melinda Hermanns et al, 'Faculty Experience of Flipping the Classroom: Lessons Learned' (2015) 5 *Journal of Nursing Education and Practice* 79, 84; Tanya Marcum and Sandra Perry, 'Flips and Flops: A New Approach to a Traditional Law Course' (2015) 32 *Journal of Legal Studies Education* 255, 276 ('instructors should anticipate lower student evaluations the first time a course is flipped').

71 Peter Sankoff, *Rate My Professors, Peter Sankoff* <http://www.ratemyprofessors .com/ShowRatings.jsp?tid=1802399>. ee similarly Marcum and Perry, ibid 276 where some students complained that 'the instructor should just teach the class'.

72 One student from the same class commented that 'the combination of teaching methods he used was definitely helpful not only in maintaining my interest in the subject, but [in] encouraging me to be fully committed to the course' [Evaluation in Author's file].

Unassessed components have their own advantages and drawbacks. Because they are not formally evaluated, students are unlikely to approach them with the same rigour and attention as they would for something upon which they are going to be marked. Delivering feedback to groups of students who are dealing with a problem simultaneously is challenging, if not impossible, though general feedback can be provided. Students are unlikely to improve their negotiation skills significantly in this type of exercise, because their results are not really tracked, and no meaningful feedback is provided.[73] Finally, given the time constraints, it is difficult to allow for any type of in-depth self-reflection.

Insofar as unassessed components are concerned however, I believe the advantages outweigh the drawbacks. Such components still provide an opportunity to try out something in a safe space that almost every lawyer will have to do at some stage of their career. The informal nature of the process reduces the stress of the exercise, making it more enjoyable in its own right. And, most importantly, in contrast to the assessed elements, the lessons can be appreciated by everyone in the class, as there is no restriction on participation. Insofar as the drawbacks are concerned, it is simply worth noting that an 'imperfect' experiential exercise can still be a meaningful one.

The assessed components unquestionably are the most difficult for me as a professor, though they also tend to be the most rewarding. I must organize jury panels, communicate with potential jurors, set up video-taping facilities, provide lengthy evaluations and complete a host of sundry tasks to make it all come off. In addition, students must be provided with a host of additional preparatory materials that I had to locate and make available in order for them to prepare adequately. After all, students do not instinctively know how to make a jury submission, so it is necessary to provide them with the tools to succeed.[74]

Yet I do this without complaint, for I have little doubt that the exercise is as effective a teaching exercise as I have ever conducted. For many future litigators, it is the only time they will get to address a 'mock' jury, and they commonly describe the experience as being one of the highlights of their law career. Everyone present leaves with a deeper understanding of some of the real difficulties with animal cruelty law, and I leave with a sense of respect for the hard work students have put into the endeavour.

III CONCLUSION

In this paper, I have attempted to show the benefits of using experiential learning techniques for the purpose of helping students gain a better appreciation of how the law governing animal treatment causes difficulty for animals, while simultaneously developing some important

[73] To state the obvious, though I have taken a course on the subject, I am no expert in negotiation.

[74] I post three articles on how to make closing arguments on line, culled from various advocacy books and journals.

skills they are likely to need in practice. I have never been disappointed by these exercises. Watching students engage with the material they are trying to understand always makes me wish to include *more* experiential learning, perhaps crafting an entire class of this type.[75]

To put it bluntly, this is not about distraction, bells and whistles or departing from theoretical inquiry. On the contrary, I firmly believe that experiential learning is simply one of the very best ways to supercharge an animals and the law course - or just about any course, for that matter.

[75] Indeed, it was this love of active learning that led me to the 'flipped classroom' model that I now use in my Evidence course. See Sankoff, above n 16.