# Chapter 12

# 'You Are Here':
# Learning Law, Practice and
# Professionalism in the Academy

## Karen Barton, John Garvey and Paul Maharg

### Introduction

Text is one representation of meaning in the world. There are many others, involving senses other than sight, which is the predominant (though not the only) sense used in reading and writing. This chapter considers two approaches to legal education that use forms of awareness in simulations that extend beyond text to interactions with people, communication technologies and – looking to the future – maps and GIS technologies fused with arts education.

Simulation is an ancient form of learning used in military academies and rhetoric schools for millennia, and in many contemporary professions and occupations. It forms a fundamental heuristic in the learning of many arts – music, acting, sculpture and painting, to name only a few – and is used by a number of professions (notably civil airline pilot training, business, and medical education). In spite of this rich context, the discipline of law has relatively ignored it until recently. The simulations discussed briefly in this chapter are being developed and used in an international initiative involving the Universities of Strathclyde and Northumbria in the UK, and the University of New Hampshire (UNH) School of Law. We use two forms of simulation heuristic in order to enhance student learning of professionalism and legal practice, namely Standardized Clients (lay people taught to simulate clients), and a digital simulation environment called SIMulated Professional Learning Environment (SIMPLE). To our knowledge, only a few law schools in the USA have ever used Standardized Clients and no other law school uses SIMPLE, but it is the convergence of the two that makes this initiative unique and of interest to legal educators in any jurisdiction. The initiative takes place within an innovative capstone programme at UNH Law School called the Daniel Webster Scholar Honours Program, which we shall describe briefly before outlining the simulation initiatives.

## The Daniel Webster Scholar Honors Program (DWS)

The stated mission of DWS is 'Making law students client-ready'.[1] Although the programme does not presume to graduate new lawyers who are ready to take on all levels of complexity and recognizes that legal education is a continuing process, it does seek to provide a practice-based, client-oriented education, which prepares law students for the responsibility of representing others. As recommended by the MacCrate Report, the programme is a collaborative effort, which includes the New Hampshire Supreme Court, the New Hampshire Board of Bar Examiners, the New Hampshire Bar Association and UNH School of Law. Students apply to the programme in March of their first year of law school and are selected in the June following their first year. Selection is based upon overall ability to succeed in the programme, which includes evaluation of academic, professional and interpersonal skills.

Programme participants must meet all of the law school's requirements for graduation, as well as requirements that are specific to DWS. During each semester, in addition to electives, scholars must take specifically designed DWS courses, which generally involve substantial simulation, including: Pre-trial Advocacy; Trial Advocacy; Negotiations; a mini-series that exposes them to Family Law, Law Office Management, Commercial Paper (Articles 3 and 9) and Conflicts of Law; Business Transactions; and a capstone course that integrates and builds upon the skills they have already learned through the programme. Each student must also take four additional courses that ordinarily would be elective: Business Associations; Evidence; Wills, Trusts & Estates; and Personal Taxation. Moreover, each student must have at least six credit hours of clinical and/or externship experience. Following the mini-series exposure to Family Law, all students are trained to be DOVE (Domestic Violence Emergency) attorneys and they work with supervising attorneys and real clients during their 3L year. Students must obtain at least a B- in all DWS courses and at least a 3.0 cumulative school transcript grade point average on a 4.0 scale. Scholars who successfully complete the two-year programme and who pass the Multi-State Professional Responsibility Exam and the character and fitness check are then certified by the Board of Bar Examiners as having passed the New Hampshire Bar exam and are admitted to the New Hampshire Bar upon graduation (Garvey and Zinkin 2009; Garvey 2010).

---

1   For further information on the Program, see http://law.unh.edu/academics/jd-degree/daniel-webster-scholars [accessed 25 July 2012].

## Standardized Clients (SCs)

SCs are laypeople who are trained to act as if they are clients for the purposes of enabling students to learn legal communication and client-centred skills. SCs can also be used in high-stakes assessment of such skills and capabilities. The methodology creates powerful simulations of client contact that enable students to practise and improve a range of skills, values and attitudes, as well as their knowledge of substantive law. Deriving from medical education initially but now used in a wide range of disciplines and professions, the SC approach also introduces to the legal curriculum a unique client-centred assessment instrument.

Careful training of SCs is essential to the success of the method. In the Glasgow Graduate School of Law (GGSL) at Strathclyde, which piloted the introduction of the technique in law in the UK, a training programme was designed to train SCs in how to deliver a scenario in an interview. SCs were also trained to assess a lawyer's client-facing skills. In a statistical study of the method, we proved that SCs could assess students as accurately as staff tutors, and SCs are now used at Strathclyde in high-stakes assessment of student performance at interview (Barton et al. 2006).[2] A version of this programme was used with SCs in UNH School of Law.

It may appear that SCs are simply acting to a loosely defined script and that the technique is really a form of acting; however, the reality is more complex. The ability to inhabit a role is central, but a key element of the training of SCs concerns the ability to think on several levels simultaneously. SCs need to be able to monitor their affective performance, their cognitive performance (for example, what information can be released, what questions do I want to ask as a client), and their improvisatory skills (when to lead the interview, how to deal with puzzlement, etc.). They also need to practise their ability to switch fast from in-role thinking to assessment thinking, with students being assessed on an eight-point global Likert scale.[3] Finally, they need to be trained on giving feedback

---

2     This international pilot (involving Clark Cunningham and Greg Jones from the Georgia State College of Law, and Karen Barton and Paul Maharg from Strathclyde) was designed by an interdisciplinary team (Dr Jean Kerr, Clinical Skills Unit, Medical Faculty, University of Dundee, joined us to advise on the project), which was also internationally funded – the W. Lee Burge Fund, from the College of Law, Georgia State University, the GGSL and the College of Law in England and Wales contributed funds to the project. For further information on the medical context of standardized patients, see Wallace (1997), and for a related initiative in SCs, see Grosberg (2001).

3     Training on each of the points on the Likert scale (40 in total) minimized unreliability and bias (Tamblyn et al. 1991). Among the extensive research carried out by medical educationalists on the approach is a body of articles analysing SC experiences. In one study on inter-doctor variation on managing headaches, conducted in Germany, SCs were used with real GPs, unannounced. In post-consultation discussion of their experiences, the SCs were 'very dissatisfied with the majority of GPs visited' and their confidence in

out of role, while referring back to the experience of being in-role (Bokken et al. 2009).

## SIMPLE (SIMulated Professional Learning Environment)

SIMPLE is at the same time simulation software and a hitherto relatively unregarded method of simulating legal practice. Using the software tools, staff create in the software the simulation that they wish students to work upon. These sim tools are highly flexible, enabling staff to create quite open simulations of legal practice (for instance, where students may engage in extensive fact-gathering) or highly bounded or procedural transactions (for instance, the purchase and sale of real estate, or litigation). Such simulations enable students to focus upon client-centred skills and issues. Within them, students learn about the detail of legal practice and can begin to grasp the complexities of dealing with clients and practise ethical lawyering.

The software has been in use in a number of law schools throughout England, Scotland and Wales, and in the School of Architecture and the School of Management Science at the University of Strathclyde. They range in duration from one week to two semesters, from undergraduate first-year projects to postgraduate professional legal education transactions. The transactional method has, with the guidance of the GGSL at University of Strathclyde, been developed in different directions by others, most notably the RechtenOnline Foundation in the Netherlands, which was recently awarded a grant of 2.4 million euros to continue its work with a similar simulation system, Cyberdam. Transactional learning, based upon principles and approaches to learning, epistemology and social practice outlined by John Dewey and others, is a way of learning substantive law as well as the skills and values associated with its practice in society.[4] It is a heuristic that therefore involves students not just in knowledge application but also in knowledge formation. As many educationalists have pointed out, professional knowledge has a complex relationship with academic knowledge and we need to provide porous zones in both the academy and in practice where students can move between the two domains. SIMPLE enables students to do this.[5]

---

primary care was shaken by their experiences (Sielk et al. 2006). See also the meta-review of Rethans et al. (2007).

    4   For further information on transactional learning, see Barton, McKellar and Maharg 2007; Maharg 2007; Maharg and Owen 2007.

    5   The application itself has received several awards – in May 2009, SIMPLE was designated the best simulation toolkit in the IMS 2009 Global Learning Impact Awards and in September 2009, it received the Innovation in E-Assessment award at the Scottish E-Assessment Awards: http://www.e-assessment-scotland.org/?page_id=1109 [accessed 25 July 2012].

## Convergence

Perhaps what is most interesting about this initiative is the extent to which the two hitherto separate methods of simulating practice – SCs and SIMPLE – will be used in complex simulations on the DWS at UNH School of Law. Strathclyde and Northumbria (Karen Barton and Paul Maharg) have been working directly with staff to create simulations where SCs are the clients not just at first interview but also throughout a transaction, and Northumbria is also involved in a technical capacity. The Center for Computer-Assisted Legal Instruction in the USA (CALI) is funding the provision of technical support to the project through Northumbria University as well as funding the second iteration of the simulation toolset for SIMPLE.[6] The result is a form of experiential legal learning that is cost-effective and sustainable, resulting in increased learning of substantive law and increased learning of client-facing skills. Above all, we believe that the professionalism of the students at UNH School of Law will be deepened, as will their understanding of the ethical basis to legal practice.

## Progress to Date

### Standardized Clients

UNH Law School has six trained clients. They have been used for an empirical study comparing Webster scholars with newly admitted bar members. The Law School now uses them twice per year for SC interviews with the Webster scholars. SCs also serve as clients and witnesses in the pre-trial ad simulation. The School has a training review session lasting about four hours before each evaluative session. There are currently four review sessions, two empirical study interview sessions and two Webster scholar sessions per year. UNH is looking to expand the use of SCs, as they can easily handle more students. Presently, the Law School is considering a SC component for all third-year students – at least on a voluntary basis to start with.

We have begun a study of their use within the DWS, and while the statistics have yet to be fully analysed, there seems to be a strong correlation in the initial data between DWS client interview training with SCs and significant improvement in elicitation of factual information in the case fact patterns. Future plans could include the development of interprofessional use of SCs and law students along the lines described by Westberg et al. (2006).

---

6    We are currently working with CALI on further developing SIMPLE, largely the software tools (simulation toolset and the simulation platform) and the development of a community of practice. See http://simplecommunity.org for updates.

## SIMPLE

There are two SIMPLE sims under construction: one, with a significant amount of resources, will be used on the capstone project with SCs. The other, a fairly brief and lightweight sim, will be used to accustom staff and students to using the SIMPLE environment. Both simulations have been designed and implemented, and will be run with students in the next academic year. We are also currently planning the convergence of the SCs within the SIMPLE sims.

In the next sections we shall examine in more detail issues of cost, feasibility and impact on student learning.

*Cost*   It is a commonly held view that experiential learning – indeed, much interdisciplinary learning involving the arts – is expensive to design, run and maintain. We do not think that this is always the case: good learning design need not be expensive. We will show in some detail how high-quality experiences in simulation need not involve costly curriculum designs. High costs usually associated with this form of learning include:

1. high staff–student ratios;
2. the need for extensive teaching support materials;
3. the need to create multiple assessments for high-stakes assessment in order to prevent plagiarism;
4. the requirement to minimize assessor variation by standardizing assessor marking through the production of examples;
5. post-assessment scrutiny of assessor performance.

## Standardized Clients

The following table is a brief general response to these issues.

## Table 12.1 Costs of SC training and use

| | Costs | SCs |
|---|---|---|
| 1 | High staff–student ratios | Academic staff train SCs, administrators organize their use with academics. SCs can be used for formative as well as summative or high-stakes assessment. They are paid daily or half-day rates for training and for practise as an SC. Staff–student ratios can be substantially lowered by their use in a curriculum. |
| 2 | The need for extensive teaching support materials | Specialist SC training materials may need to be developed (though some of these can be used for students too). Already-existing materials can be used to support student learning outside of the encounter with the SC. No need for resources to be developed for the SC–student encounter itself, since this is dependent upon experiential learning. |
| 3 | The need to create multiple assessments for high-stakes assessment in order to prevent plagiarism | No need when developing SC scenarios. As long as there is a range of scenarios, which is cycled regularly, there is very little opportunity for cheating. |
| 4 | The requirement to minimize assessor variation by standardizing assessor marking through the production of examples | SC assessment is calibrated during training, with occasional refresher training. SCs are cheaper than full-time faculty and, as we have proven in our correlation study, are as good at assessing students as faculty. |
| 5 | Post-assessment scrutiny of variation in assessor performance | No need. We do, though, as a matter of Quality Assessment, double-assess all failed interviews. The quality of assessment, in our experience, tends to be very high: in the vast majority of cases, we agree SC assessment of student performances. |

The training of SCs is a cost factor – they are paid for the time they spend in training, and resources need to be collected that can be used in training – but we found in Scotland that the costs of training and refreshing this training were significantly lower than the costs of the conventional method of assessing student interviewing performance, namely videotaping students interviewing actors (the actors were paid, of course, for their time), requiring staff to assess the videotape and then sampling the results for variation, and standard-setting accordingly. Even using adjunct staff on a daily rate (often lower than higher-cost full-time academic faculty), the cost of using SCs in high-stakes assessment was lower than the costs associated with the conventional model.

SCs could also be used to give valuable formative feedback to students on their performance. In our experience in Scotland, students benefited significantly from the experience of interviewing a SC, then receiving immediate feedback on that

performance (which could of course be videotaped so that students could review their performance later in the light of the SC feedback).

All these cost points were replicated in the UNH study. The SCs interview about 30 newly admitted lawyers per session and they interview 20 Webster scholars per session. This is a total of about 90 interviews per year. SCs are paid $18.00 per hour. $18 x six people x four sessions x four hours = $1,728 per year. This works out at around $19.20 per interview, including the cost of SC training. UNH also spent a total of about $300 using them in the various simulation roles, including during depositions.

## Costs and SIMPLE

Once again, the following table is a brief response to the general issue of costs.

**Table 12.2    Costs of setting up and running a simulation in SIMPLE**

| | Costs | SIMPLE |
|---|---|---|
| 1 | High staff–student ratios | Properly designed, SIMPLE can reduce staff–student ratios substantially. |
| 2 | The need for extensive teaching support materials | Once created, they can support multiple transactions and other forms of learning and teaching. |
| 3 | The need to create multiple assessments for high-stakes assessment in order to prevent plagiarism | No need. Documents in the SIMPLE environment can be variablized so that each document set is unique in legally significant ways. |
| 4 | The requirement to minimize assessor variation by standardizing assessor marking through the production of examples | Useful, but generally not necessary – see point 5. |
| 5 | Post-assessment scrutiny of variation in assessor performance | Depends on form of assessment process. Generally speaking, the more detailed the assessment (e.g. specific drafting clauses), the easier it is to assess without significant variation. Larger assessment tasks, such as assessment of whole files, will require some form of variation control. |

As with most significant curricular reforms, the capital costs lie largely in the creation and set-up of new processes, new resources and training. Academics, administrators and technical staff need to plan the embedding of simulations within the curriculum and the effect this will have on other aspects of the legal curriculum. Simulation resources need to be created and set up within SIMPLE using the SIMPLE toolset. Staff and students need basic training on SIMPLE,

using what we call 'sandpit' sims (the equivalent of learning how to do things in online environments such as *World of Warcraft*). Much labour can be saved if staff within a law school and indeed law schools themselves collaborate on the production of resources. For example, there are sample sandpit sims posted up on the Simshare website (www.simshare.org.uk) that can be used and adapted for almost any academic or professional curriculum.

Once these costs have been met, simulations can be a surprisingly efficient form of teaching, learning and assessment. We can, for instance, compare the delivery of a conventional Personal Injury syllabus within the Diploma in Legal Practice to a simulated transaction delivered using SIMPLE.[7] In the conventional syllabus, there might be a mini-lecture series, supported by 10 x two-hour seminars, multiplied by the number of students in the cohort (for example, 264), each seminar with no more than 12 students per group – adjunct faculty costs per hour for teaching alone would work out, roughly, at £18–19,000. There would also be the costs of setting an examination and marking and second-marking the results of the examination. Costs could rise, in the Scottish model, to beyond £20,000 for adjunct staff costs alone. These costs recur each year, increasing according to levels of staff remuneration.

In the alternative simulation model, much of the initial costs are sunk into resource planning and creation. Once the syllabus resources are online to support learning (for example, project information, transactional flowcharts (who does what when why how), webcasts and set-up of discussion forums for students), these only need to be updated each year, according to changes in the law or on account of student feedback. The ongoing costs of this are fairly minimal. The design of the simulated transaction itself can be resource-heavy; however, it should be pointed out that the software, SIMPLE, is cost-free, being an OER (Open Education Resource), and there are many simulation resources that can be downloaded for free and adapted (under Creative Commons licenses) from the OER Simshare site.[8] Staff need to be trained, both academic or adjunct staff need to be involved directly in the simulation and administrators will need to be informed about their roles in administering this relatively new heuristic. Students need to be informed about the syllabus changes, the background to the innovation and what expectations will be of their performance.

In the first year of design and implementation, then, the costs of the alternative simulation syllabus may be as high as for a conventional syllabus. Thereafter, the costs drop dramatically. The Personal Injury transaction was run by one academic as part of his teaching allocation, along with a visiting adjunct professor. Students wrote letters, memos, formal legal documents and the like to fictional characters,

---

7   Clearly, costs would vary according to the practices required by regulators in a jurisdiction as well as the local curriculum design in a law school.

8   For more information on SIMPLE, see http://simplecommunity.org [accessed 25 July 2012]; for more information on Simshare, see http://www.simshare.org.uk [accessed 25 July 2012].

played by adjunct staff – normally postgraduates, trainees and newly qualified lawyers – who answered student mail in character, using template documents or freestyle letters (called 'PI mentors'). They also acted as staff supervisors for the transaction. If they encountered any problems they could not solve, they contacted either Paul Maharg or the Visiting Professor, via a passworded forum. After the first year of set-up (and stripping out the capital costs of the software, which were considerable, since the software is now free, and Paul Maharg's teaching allocation), the annual staff costs for the new syllabus were around £9–11,000 – a significant saving, slightly less than 50%, on the staff costs of the conventional model of learning, teaching and assessment. When the main simulation scenario is changed, costs will spike, but not as much as in the first transitional year of shifting from conventional to experiential curriculum, and thereafter will fall to around half again.

The resources can also be designed to build, year on year, so that they are used efficiently by students and staff. The discussion forums, for example, are a valuable resource for students. In the GGSL we ran two passworded forums (one for plaintiffs and one for defendants) and archived the forums at each year's end so that students could search the forums for answers to questions they might have had. Over the course of a decade, hundreds of questions and answers were available for students – a remarkable resource for them, answering precisely the type and level of issues that they found difficulty with on the transaction. The same design that students used was also used by our adjunct staff. The PI mentors' forum was layered, year on year, so that the mentors could search the archive for issues that had been raised in previous years.

We would expect that the cost issues discussed above would be resolvable in a broadly similar pattern in the UNH SIMPLE transactions. What is unique about simulation used in this way is that the learning zone is not separated from the assessment zone, which is the norm in academic assessment. The two can use the same environment, such that assessment of work arises from the learning that students evidence in their case files. Where an academic syllabus has two main cost columns – teaching and learning resourcing, and assessment resourcing – SIMPLE has only one: the transactional case file.

## Feasibility

### SCs and SIMPLE Convergence

Using resources available such as SIMPLE and Simshare, and the experience that has built up around the use of simulation, it is entirely feasible to build transactions that will enable us to dovetail the two methods of learning and assessment. The shape is flexible and adaptable to a degree that is difficult to appreciate unless one takes part in simulation learning and assessment. Take, for instance, the following narrative.

The client (the SC) is injured at work. The client visits the law student and is interviewed. The law student opens a file and proceeds to investigate the factual and legal background to the case. The law student keeps in touch with the client by mobile phone, also reporting through SIMPLE on case progress, possibly taking instruction in another interview. After pre-litigation negotiation, the law student settles the case according to the client's instructions and winds up the file.

In this convergence, the face-to-face reality of client communications is underpinned by the communications with virtual characters in SIMPLE. The file comes to life, uniquely and entirely, under the hand of the student firm. Students learn not just fact-finding but also how to integrate client communications with communications addressed to other professionals, witnesses and others – and they learn experientially not just how to conduct legal business efficiently but also ethically.[9] Use of SCs also adds another dimension to the assessment of student capability. To date, we have used SIMPLE to assess students on the basis of whole-file, part-file or single documents. With the addition of SCs, we can now factor in the client experience as a literal actor (that is, someone who acts within the drama of legal practice) and use SCs to assess student client-facing skills and attitudes.

*Flexibility*

The use of SCs is not just applicable to capstone projects: they can be used at any point in legal education and assessment. They are being used, as described above, on the Diploma in Legal Practice in Scotland. They are also used on a course called the Professional Competence Course (PCC) in Scotland, which is taken by trainees 6–18 months into a 24-month mandatory traineeship. At Strathclyde, the interviewing module begins with an initial interview with a client, at the end of which trainees are given feedback by the client on their performance. Trainees then investigate the case and research the possible options open to the client, discussing these with supervisory staff if required. They then meet the client for a second interview at which they outline the work they have undertaken on the client's behalf, and begin to seek instructions from their client. Again, trainees are given feedback on their performance.[10]

SCs are also used in Scotland, in a modified form, for specialty accreditation of qualified lawyers, in the WS Society, Edinburgh.[11] They are currently being adapted by the SRA (Solicitors Regulation Authority) for use as part of an OSCE (Objective Structured Clinical Examination) within the newly redesigned Qualifying Lawyers Transfer Scheme (QLTS) – an assessment scheme for lawyers from other jurisdictions outside the UK wishing to practise in England

---

9    For examples of this, see Maharg 2007: Chapter 7; and Maharg 2011.

10    It should be noted that this programme has been phased out by the Law Society of Scotland and replaced by PEAT 2 (Professional Education & Training, phase 2).

11    For information about the Signet Accreditation, see http://www.thewssociety.co.uk/accreditation/index.asp [accessed 25 July 2012].

and Wales.[12] The use of SCs is also being designed for third-level undergraduate students in the University of Northumbria Law School as a preparation for the mandatory clinic work that all undergraduate students undertake at level four. There are plans to use the heuristic in other jurisdictions as well.

If simulation (either SCs or SIMPLE) were to be used on its own to replace a conventional syllabus, it would be a poor substitute for the variety of learning forms in the conventional syllabus – lectures, seminars and individual study, for instance. It might be argued that simulation should be adapted to suit a conventional curriculum. We would argue the opposite: experiential learning's power is best leveraged where conventional curricula are modeled around the student experience of the simulation as the focus of the curriculum. An example of this from Strathclyde is our use of 'surgeries'. These are used in place of seminars or workshops, but they use very little of the conventional discourse of seminars. Based on the model of medical consultation, this voluntary form of learning is available for students who want more intensive learning than is available from either the supervisor, discussion forums or online information. Students sign up for a brief time slot, normally 15 minutes or so. They do so because they have a specific issue that they need to discuss and resolve. In the surgery they outline their issue and a tutor enables them to resolve it. The learning is focused, tightly organized, intensive and brief. It can be face-to-face or online (for example, using Skype video). On one level, learning happens from the ground-up within the transaction: tutors will facilitate students in coming to a resolution of the problem that is the core of the surgery and may take this further in the direction of either policy or theory discussion, but the focus is on the practical issue at stake. On another level, though, the surgery model is an example of the out-of-role discussion that happens in many forms of radical theatre – Augusto Boal's *Theatre of the Oppressed* is one instance (Boal 1998).

The SIMPLE environment, which has been redesigned in its second iteration, offers flexibility through customizable widgets. For example, calendars and communications forums can be added to the environment.

*Design and Set-up of Simulations*

This is one of the most problematic elements of the whole approach for staff. It is a difficulty that applies to both SCs and SIMPLE. Detailed scenarios need to be set up for SCs upon which they are trained, and the detail should be sufficient for them to be able to improvise in 'safe' areas (that is, areas of the narrative that do not significantly affect the legal validity of the scenario) – but not so detailed that they become lost and confused in the detail that they are expected to recall during the interview. Practice and rehearsal by SCs is essential of course, but so is good scenario design.

---

12   For information about QLTS, see http://www.sra.org.uk/solicitors/qlts.page [accessed 25 July 2012].
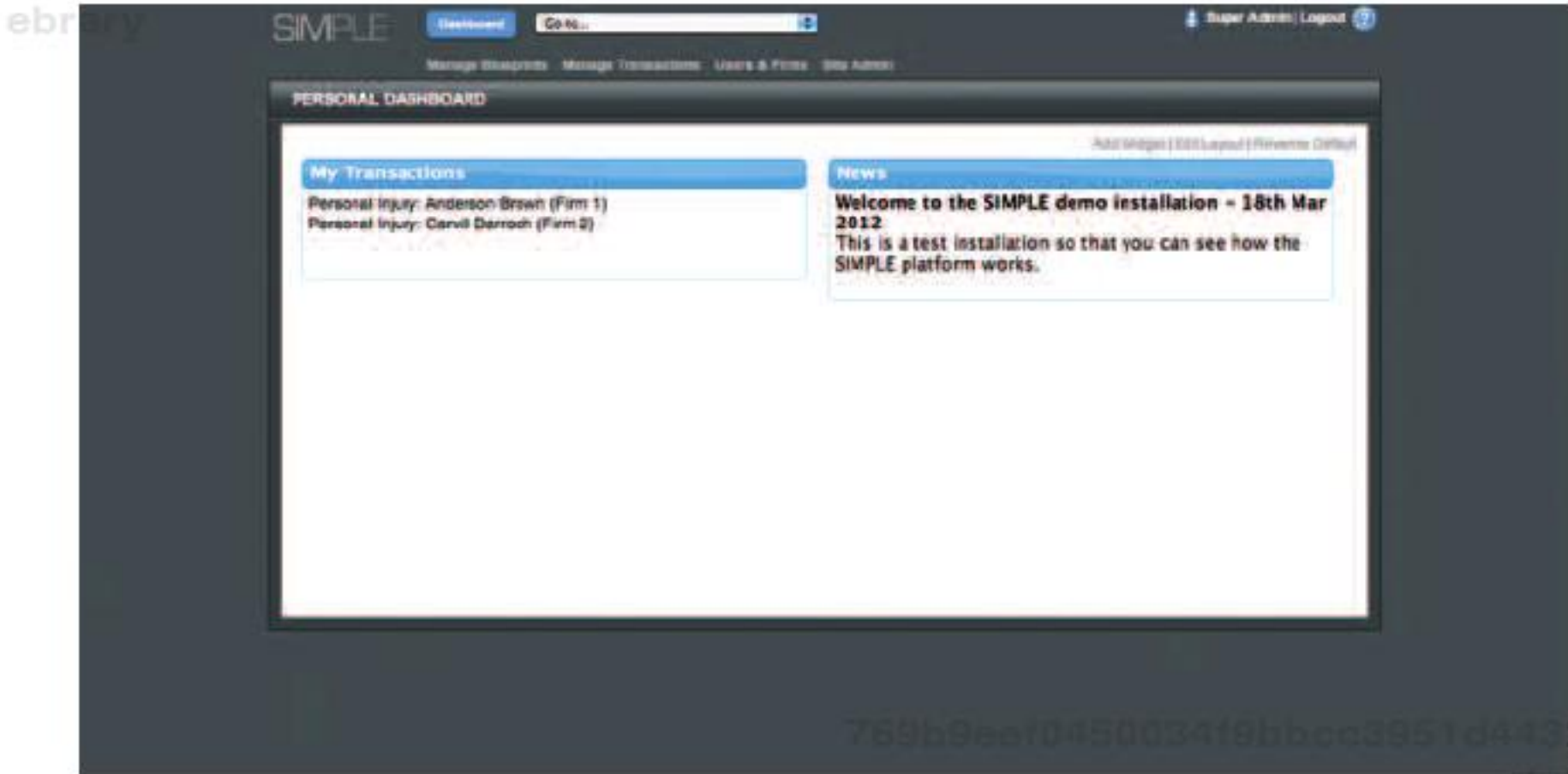
**Figure 12.1   Generic dashboard**

The same is true of SIMPLE. Often straightforward case designs are the most successful simulations, as they allow students the space to develop their own novice understandings of a case structure. Look at the following example of a Narrative Event Diagram (NED) for the Personal Injury sim.

The NED is shown in the Staff Tools view of the environment and illustrates the string of events that will happen in the simulated transaction. Documents can be 'triggered' or released by staff – here, the critical event that begins the narrative – and the narrative of the transaction proceeds from this. 'Player characters' are those who are actually playing the simulation, that is, students, unlike the virtual characters, who are 'Non-Player Characters'. The NED is a complex tool for creating sophisticated simulations, but much of the sophistication should remain in the background – for example, the variablizing of documents – while the scenario itself remains relatively straightforward. The skill that is required to create sophisticated yet straightforward simulations should not be underestimated. It is borne out of experience, but can be easily learned from others who have gone through the same process. It is entirely feasible that faculty can learn this design skill – experientially, of course.

**Figure 12.2   NED, Pursuer's sim**

## Possible Futures: Maps, Simulation and Legal Learning

There are many directions in which these implementations can be taken, and this final section of the chapter describes one where the digital arts can play a part. An element of the simulation functionality of SIMPLE is the creation of a simworld based not upon a multi-user virtual environment (MUVE) such as *Second Life*, but a map. In the GGSL, all transactions in the Diploma and the PCC took place in a typical Scottish west-coast provincial town, on the south bank of the River Clyde and to the west of Glasgow, called Ardcalloch. In 1999 the first sense of an online space given to students was a webpage consisting of a photo-montage, later developed as a rather crude schematic map with no interactive features (Figure 12.3). The following year (2000–2001), the map was redrawn so that it was graphically more sophisticated and included website links built into the map. Zoom links were added to the top-level district names, such as Alba Industrial Estate. These resources were gradually increased – in 2001–2002, a directory was added as the number of characters, businesses and institutions grew in size.
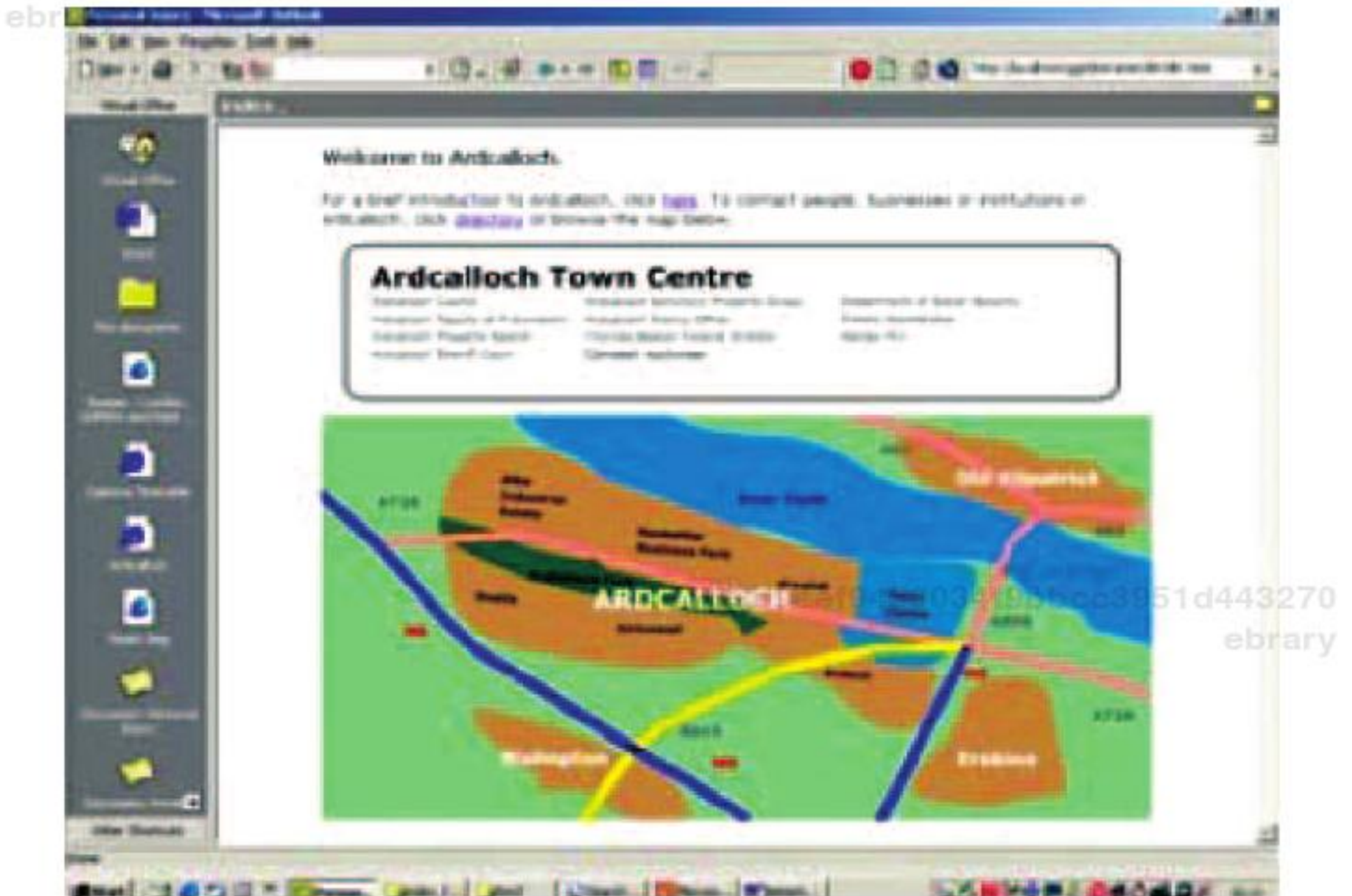
**Figure 12.3 Early map overview of Ardcalloch**

The map was redesigned as a Flash application, zoomable, with many small photographs attached to streets to give a sense of an actual place (Figure 12.4).[13]

The following graphic (Figure 12.5) shows the most recent iteration of the town. The photographs have been hidden, but the zoom is much more finely granular.

As the number of websites grew, it became important to manage their development as mini-projects and to consider the interface with users of the virtual environment. It was not possible for us to create a generic web template for our town sites. In reality, commercial and institutional website design is really only limited by the funds available, the creative flair and, it might be added, the bad taste of the designers. It was necessary for us to create sites that gave a presence of a business or an institution to the viewer, without importing into the site all the actual functionality of a real commercial site – and so many of our sites are 'brochure' sites. Some have more extensive and complex text than others – in part, this is due to the enthusiasm of particular designers, and we were happy to give them relatively free rein on this.

---

13    The photographs were taken of local urban centres in Refrewshire and Ayrshire that would approximate the look and feel of Ardcalloch. Care was taken to ensure that the photographs matched the street locale.
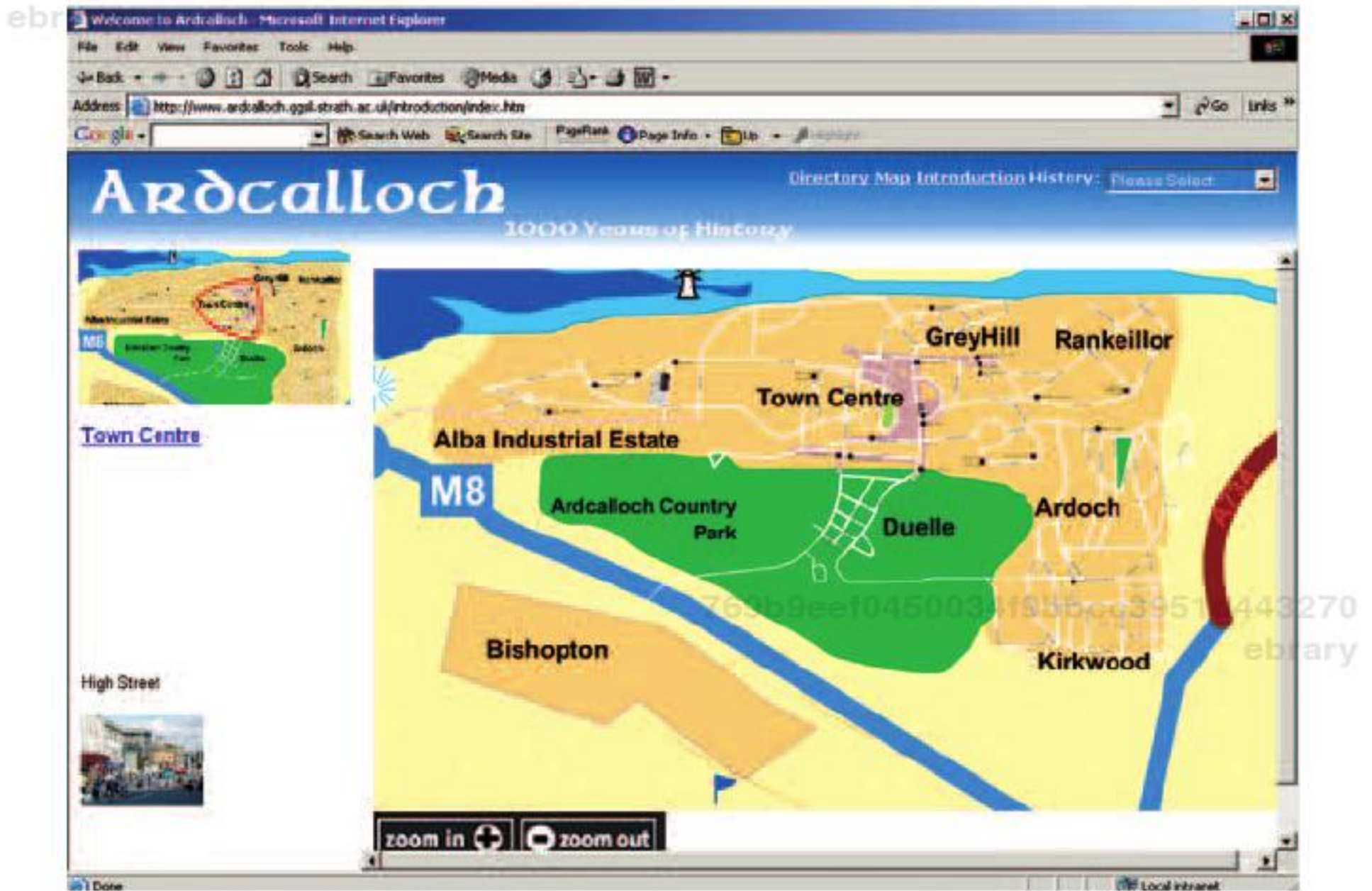
**Figure 12.4   Zoomable map of Ardcalloch, overview, showing town centre
by default. Note the street photographs at the bottom-left**

After all, if the websites in the town all had a similar look and feel or simply dealt
with matters relating to the projects, there would be no sense of realia, of the sheer
randomness of reality, about the town.

The town was the function of its creation, much as islands in *Second Life*
look less like real islands and are more the function of the creator. Alba Industrial
Estate, for instance, was used by the PCC at the GGSL. Sited there was a multi-
national company called Global. This company, with headquarters in California,
entered the Scottish economy in the wave of the NASDAQ Confidence in the
mid-1990s to produce products for the European market and to take advantage of
local research and development (R&D) expertise in the universities in Glasgow,
as well as government and EU grants. The global downturn has required them
to withdraw from Ardcalloch and this has created a range of legal problems,
which form the basis of many of the modules within the course – for example,
criminal law (a break-in at the warehouse), intellectual property (IP) rights (who
owns which rights when Global retrenches) and family law (a director wishes
to divorce his wife). Some of these problems are the focus of several modules,
so that trainees are able to work on the same legal problem from a variety of
different perspectives.
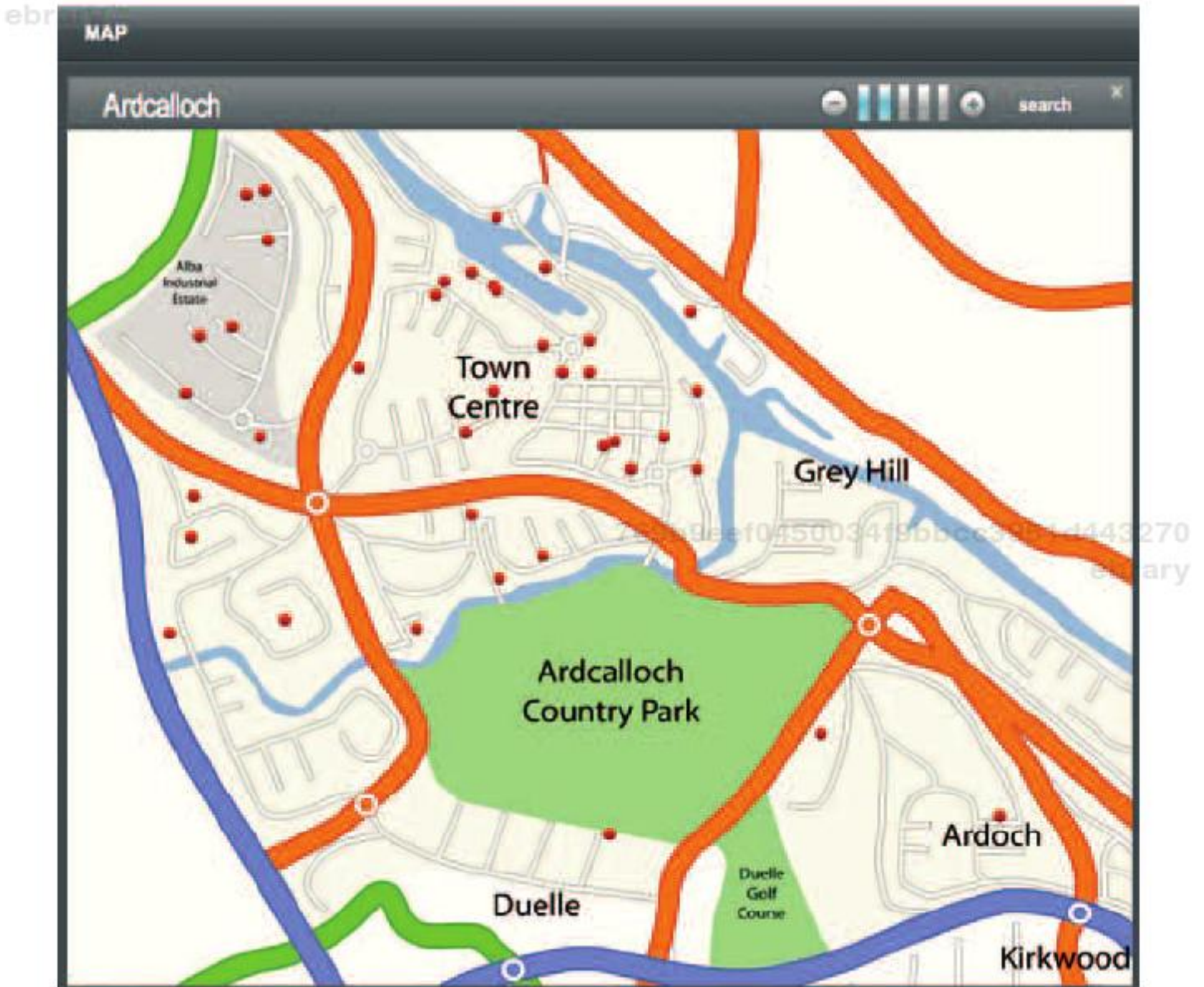
Figure 12.5    Latest iteration of Ardcalloch map

Though the first of its kind, our use of mapping in legal education had deficiencies, which had little to do with its fictionality and more to do with its interactivity, or lack of it. Our map was really a paper map on the web; it gave some contextual information but little else. Students would typically visit, be interested and then would use the Directory for the addresses that were required for their projects. Occasionally they would visit a company or institutional website to find a name or contact not in the Directory. The map itself was relatively ignored because it was irrelevant to most of their document-based work. There was almost no functionality that would be useful to their working lives. There is no reason why such data should not be useful, though – all that was lacking was imagination and analysis. Place, after all, is a contextual tool for work, as a number of online workflow and task managers point out.[14]

---

14    *Omnifocus*, for example, based closely on the popular work of David Allan, defines tasks partly in terms of context, and context is defined as closely related to tool,

At the same time as we were developing a map of Ardcalloch, of course, Internet commerce, and Google in particular, was mapping the real world, and the technologies of digital cartography were fast developing in the commercial and public spheres. In addition, bodies of theory and practice grew up around these technologies, focusing on the tendency for data to converge and become geospatial, where places and bodies intersect with technology and data to give an enhanced understanding not just of embodiment and topography but also of contextual culture, history, geography and much else (Abrams and Hall 2006). Harmon (2004) explored all this through a remarkable collection of personal and data maps, based upon the locative function of maps: they tell us where we are. She subverts this idea of maps by producing subversive maps that tell us quite different narratives about ourselves – approaches also developed in different domains by Turchi (2009) and Bhagat and Mogel (2008).

There are many practical examples of this in our everyday lives. Google Maps and Earth incorporate Wikipedia entries. Global positioning satellite (GPS) applications are major commercial enterprises (satnav and marine shipping, for instance); photographs uploaded to the web can be geotagged; and our journeys with GPS-aware devices in our possession can be tracked and recorded.

Can such technologies be used in legal education? They can, and the following are three examples:

1. *Visualizing conversations.* In Maharg (2011), I analyse a conversation fragment generated by a student firm on a firm-specific forum, where it is discussing its project. One of the points I make is that the rhetorical space of the forum is significantly different from any other form of dialogic or multi-logic communication, not least because the resulting discussion fed in from at least seven different media (landline phone, mobile phone, voicemail, phone text, Instant Messenger, email and forum text). One of the problems for students was to converge these media to ensure that no important communication was lost. If this is to be designed, then it could be argued that participants might want to see the temporal, locative, personal and semantic patterns created by their communications (Donath 2002). A map of tagged communications with a record of where in-firm communications are generated might also help students to understand work patterns.

2. *Synchronous updating.* This is described in detail in the Conclusion to Maharg (2007: 283–6). If a website is used in a simulation, it could be updated synchronously when an action is triggered or completed in a simulation, and this could include the insertion, deletion or emendation of data in a map.

---

person or location, for example, phone, work colleague or specific locale with which the task is associated.

3. *Participatory and annotative mapping* (Tripodi 2008; see also Eckardt 2008). This is an example of user cartography, where the detail of a map is added to not by the cartographer but by map users, often in peer production. Since the widespread introduction of geographic information systems (GIS), these mapping projects have been significant examples of peer productions (Benkler 2006). Recently Google announced that for users in the USA, it was launching a tool called *Map Maker* (http://www.google.com/mapmaker) that allowed users to correct (for example, place markers) and add data to Google's map of the USA. In addition, users could upload much more personal data, including favourite coffee houses, detailed maps of a campus, streetview photographs, etc.[15]

While Google is certainly not creating an open source resource, it is clear that it is leveraging the participative power underlying other initiatives such as Wikipedia. In truth, Google was only following in the footsteps of other, more radical projects – the *Urban Tapestries* project, for instance, in 2004–2007, which, by embedding narratives and data such as photographs, video and audio with GIS, created a contemporary form of Mass Observation archive based upon digital maps (http://urbantapestries.net/). A related project was *34n 118w* (http://34n118w.net/), set in a locale in Los Angeles called the Freight Depot that, through fictional first-person narratives and texts, explores the modalities of speed, time and the power of earlier technologies (specifically telegraph and railways). An annotative project such as this is not fictionally based as is Ardcalloch, but it uses fiction to retell a scripted narrative about the past of a specific locale – a past that inevitably involves law as well as technology.

Such annotative and participative projects have obvious applications in legal education. Law is part of the distributed system of regulation and is enacted within networks and local cultures (Castells 2004). Students could for instance become involved in historical data-mapping projects (the Holocaust Initiative, at http://www.ushmm.org/museum/exhibit/focus/maps/googleearth.php, is one example) or contemporary projects that track human rights abuses (such as Eyes on Darfur, http://www.eyesondarfur.org/), engage in multi-disciplinary socio-legal projects that map indices of socio-economic status against crime, or volunteer to help use GIS applications in global emergencies (the Hurricane Katrina map provides an excellent example of this).[16]

---

15    There is an extensive literature on the Internet. See, for example, blogs such as Frank Jacobs' *Strange Maps*: http://bigthink.com/blogs/strange-maps [accessed 25 July 2012].

16    http://gregstoll.dyndns.org/scipionus/katrina.html [accessed 25 July 2012]. For more information on the Darfur project, see Martin 2007.

## Impact on Student Learning

*Lawyer Feedback on SCs*

What do students tell us about the experience of learning experientially with these approaches? Their feedback is remarkably positive about the experience. On the GGSL Diploma, for instance, although formative feedback sessions with SCs were voluntary, we found that, annually, over 90% of the student cohort signed up for them. The PCC Interviewing module was consistently rated as one of the best on the course by trainees. When interviewed on whether they felt that the experience of working with and being assessed by SCs was useful for future practice experience, the newly qualified lawyers from the DWS gave similarly positive feedback:

'When I reflect on my law school tenure, the standardized client experience was the most educational aspect of my legal training. It set a foundation for me to begin the practice of law. As a new lawyer, I feel confident meeting with a client because I know I can rely on the interviewing and counseling skills I learned through the process.'

'Learning client interviewing skills by actually interviewing standardized clients was excellent preparation for practice. As a practicing attorney, I have found that interviewing and counseling clients are the most important tasks I perform. An attorney cannot satisfy clients unless she has a good understanding of client goals. To learn these goals, an attorney must build rapport with a client, ask probing questions, and convert legal knowledge into roadmaps that help clients understand their options. Such skills cannot be learned from textbooks, but only through practice. Interviewing standardized clients was an opportunity to develop these skills which are critical to my law practice.'

'I've been practicing now for almost a year and on a daily basis I receive a call from one of my clients, usually a school district superintendent, who has a legal problem and needs my advice. Because of my training using standardized clients in the Daniel Webster Scholars program, I am able to place myself in the right mindset and really listen to my client. I rarely feel intimidated or nervous; rather, I remain calm, ask questions, and elicit the information I need. The standardized client process taught me about the importance of building rapport with my clients, and as a result of my training, my clients trust my advice, feel confident in my abilities, and call me back frequently when they have a new legal question.'

*Student Feedback on SIMPLE Sims*

As described above, the SIMPLE sims are still in the process of being assembled and have yet to be implemented. In lieu of feedback from UNH students, here is feedback from students at the GGSL (extracted with permission from reflective reports):

'I felt that one of the things we could have improved on was the checking of our correspondence before sending. On at least two occasions we had to send letters apologising for previous inaccuracies, or for mistakes to people we had sent letters to. In practice this would suggest a lack of professionalism, and would be unforgivable. It also led to inefficiency in the long run, wasting time on extra letters.'

'If we had thought a little harder we could have minimized the number of letters we sent, by requesting all relevant information form a person in one go, rather than having to continually request further details. This was particularly true of our correspondence with [the client], and in real life I suspect that a client would get a bit impatient if he was constantly harassed for more evidence. I did feel that we all lacked a little bit of experience in such matters; knowing what to ask for and from whom, and I am confident that this exercise has helped us in that regard.'

'I found the whole experience to be extremely worthwhile. I believe it was a close as students will get to experiencing the 'real thing' before we commence our traineeships. It certainly taught us the importance of fact-gathering before jumping in and trying to find a solution.'

'The negotiation project certainly helped focus attention on letter writing skills and general IT skills … Furthermore, where most projects/essays in the undergraduate degree have concentrated on testing your legal research skills the negotiation project was probably the first assignment that I have done that has highlighted the importance of fact-gathering. Finally the negotiation project gave you the opportunity to participate in the whole transaction from start to finish and take pride in the final settlement that you helped to achieve.'[17]

---

17   For a discussion of how simulation in SIMPLE enhances ethical learning in conflict situations, see Maharg 2007: Chapter 7.

## Conclusion

Many features of simulation learning, whether face-to-face as with SCs or in virtual sims as with SIMPLE, actually derive from arts-based activities and often can be subversive in ways that we do not expect, precisely because they focus less on the acquisition of knowledge and more on how such knowledge changes social relations as it is applied in professional practice.[18] The theme is an ancient one in art, and simulation merely draws upon that power to engage and reveal situation, character, power relations and much else.

Many of the points raised by students in feedback here are supported by the literature on simulation and other forms of experiential learning. Above all, they show that simulation has an important role to play in how students learn professionalism. It is a role that deserves to have a much more prominent role in our law schools than it has had hitherto. From John Dewey onwards, there have been alternatives available to us that challenge current hegemonic forms of legal learning – the first step is to recognize that things can be different and better, and then follow up with action.

But knowing where we are is a necessary precondition to knowing how to get to where we want to go. 'You are here', states the pin-tag in many online maps – we need to orient ourselves to position, altitude and direction before we decide where and how to travel. Simulation and role play can give us that sense of where *we* are as teachers and can also give learners the opportunity to ask profound questions relating to social contexts and identity: am I really here? Is this who I am? Who thinks that of me? Simulation does more, though. Through practice, feedback and the opportunity to engage in practice thinking, it can also point us in directions that we had not considered we might want to go in: it is replete with future possibilities for change in social relations. In this sense, like many arts-based approaches to legal education of which it is one example, it can effect transformational change.

## References

Abrams, J. and Hall, P. 2006. *Else/where: Mapping New Cartographies of Networks and Territories*. Minnesota: University of Minnesota Design Institute.

Barton, K., Cunningham, C., Jones, G. and Maharg, P. 2006. 'Valuing what clients think: standardized clients and the assessment of communicative competence'. *Clinical Law Review*, 3, 1–60.

Barton, K., McKellar, P. and Maharg, P. 2007. 'Authentic fictions: simulation, professionalism and legal learning'. *Clinical Law Review*, 14(1), 143–93.

---

18    In our Ardcalloch maps and associated documents, for instance, we had students writing for the newspaper, and in one article they noted there were more lawyers than nurses in Ardcalloch, and wondered if this was good for the town.

Benkler, Y. 2006. *The Wealth of Networks.* New Haven, CT: Yale University Press.

Bhagat, A. and Mogel, L. 2008. *An Atlas of Radical Cartography.* New York: Journal of Aesthetics and Protest Press.

Boal, A. 1998. *Theatre of the Oppressed.* New York: TCG Publishers.

Bokken, L., Linssen, T., Scherpbier, A., van der Vleuten, C. and Rethans, J.J. 2009. 'Feedback by simulated patients in undergraduate medical education: a systematic review of the literature'. *Medical Education*, 43(3), 202–10.

Castells, M. 2004. *The Power of Identity, The Information Age: Economy, Society and Culture*, vol. II, 2nd edn. Cambridge, MA: Blackwell.

Donath, J. 2002. 'A semantic approach to visualizing online conversations'. *Communications of the ACM*, 45(4), 45–9.

Eckardt, F. (ed.). 2008. *Media and Urban Space: Understanding, Investigating and Approaching Mediacity.* Berlin: Frank & Timme GmbH.

Garvey, J.B. 2010. 'New Hampshire's performance-based variant of the Bar Examination: the Daniel Webster Scholar Honors Programme moves beyond the pilot phase'. *The Bar Examiner*, 14, 13–22.

Garvey, J.B. and Zinkin, A.F. 2009. 'Making law students client-ready: a new model in legal education'. *Duke Forum for Law & Social Change*, 1, 101–29.

Grosberg, L.M. 2001. 'Medical education again provides a model for law schools: the Standardized Patient becomes the Standardized Client'. *Journal of Legal Education*, 51, 212–34.

Harmon, K.A. 2004. *You Are Here: Personal Geographies and Other Maps of the Imagination.* Princeton: Princeton Architectural Press.

Maharg, P. 2007. *Transforming Legal Education. Learning and Teaching the Law in the Early Twenty-first Century.* Aldershot: Ashgate Publishing.

Maharg, P. 2011. 'Space, absence, silence: the intimate dimensions of legal learning', in P. Maharg and C. Maughan (eds), *Affect and Legal Education: Emotion in Learning and Teaching the Law.* Aldershot: Ashgate Publishing, 283–306.

Maharg, P. and Owen, M. 2007. 'Simulations, learning and the metaverse: changing cultures in legal education'. *Journal of Information, Law, Technology.* Special Issue on law, education, technology, 1. Available at: http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2007_1/maharg_owen [accessed 25 July 2012].

Martin, M. 2007. 'Satellite tracks human rights abuses'. *Tell Me More,* National Public Radio News, interview transcript, 11 June. Available at: http://www.npr.org/templates/story/story.php?storyId=10935094 [accessed 25 July 2012].

Rethans, J.J., Gorter, S., Bokken, L. and Morrison, L. 2007. 'Unannounced standardized patients in real practice: a systematic literature review'. *Medical Education*, 41(6), 537–49.

Sielk, M., Brockmann, S., Spannaus-Sakic, C. and Wilm, S. 2006. 'Do standardized patients lose their confidence in primary medical care? Personal experiences of standardized patients with GPs'. *British Journal of General Practice*, 56(531), 802–4.

Tamblyn, R.M., Klass, D.J., Schnabi, G. and Murray, L. 1991. 'Sources of unreliability and bias in standardized-patient rating'. *Teaching and Learning in Medicine*, 3(2), 74–85.

Tripodi, L. 2008. 'Cartografia resistente: an experience of participatory mapping implementing open source technology', in F. Eckardt, J. Geelhaar, L. Colini, K.S. Willis, K. Chorianopoulos and R. Hennig (eds), *Mediacity. Situations, Practices and Encounters*. Berlin: Frank & Timme GmbH.

Turchi, P. 2009. *Maps of the Imagination: The Writer as Cartographer*. San Antonio: Trinity University Press.

Wallace, P. 1997. 'Following the threads of an innovation: the history of standardized patients in medical education'. *Caduceus, A Humanities Journal for Medicine and the Health Sciences*, Southern Illinois University School of Medicine, 13(2), 5–28.

Westberg, S.M., Adams, J., Thiede, K., Stratton, T.P. and Bumgardner, M.A. 2006. 'An interprofessional activity using standardized patients'. *American Journal of Pharmaceutical Education*, 70(20), 34–41.