

# **Memorandum on Preliminary Thoughts: Workshop on the Future of the Legal Course Book**

---

**Gene Koo**

Berkman Center for Internet & Society at Harvard University  
and Center for Computer-Assisted Legal Instruction  
*September, 2008*

Networked computing provides new capabilities to law teachers that remain largely unrealized. I categorize these into three broad areas:

1. Experience, as opposed to knowledge
2. Collaboration, as opposed to exclusivity
3. Relationships, as opposed to information

## **1. Experiential learning**

Computers are doing for **systems** what the printing-press did for **information**: provide a scalable method of distribution. The upshot for educators is that while books convey information to enable students to develop **knowledge**, computer-driven simulations convey systems to enable students to have **experiences**. And experiential learning has become an emerging best practice in today's pedagogy.

Books, and the information they convey, will remain critical for establishing a baseline of knowledge and the ways of "thinking like a lawyer" that we cherish. Our challenge as educators is to enable our students to take the next step and integrate that knowledge into the professional strategies, behaviors, habits, and values that constitute modern legal practice.

Until recently, legal educators who wanted to provide students with learning experiences were obligated to do the work by hand: write the materials, play the roles, and most burdensome of all, manage the logistics. Like monks transcribing texts, their work was valuable but never scalable.

Video games demonstrate the power of computers to convey first-person experiences rather than third-person stories or disconnected facts. Computer-managed simulations will allow law professors to offer students legal practice experiences that were previously inaccessible:

- Clinical practice is irreplaceable in its authenticity and reality, but it can also be expensive and highly variable. Simulations can provide a uniform set of experiences, especially in practice areas that law students would rarely have the chance to touch (e.g. complex corporate transactions).
- Many law professors lack significant practice experience and are reluctant to portray something with which they are unfamiliar. A professionally-authored simulation can capture the wisdom of practice in a way that offloads that responsibility from the professor.

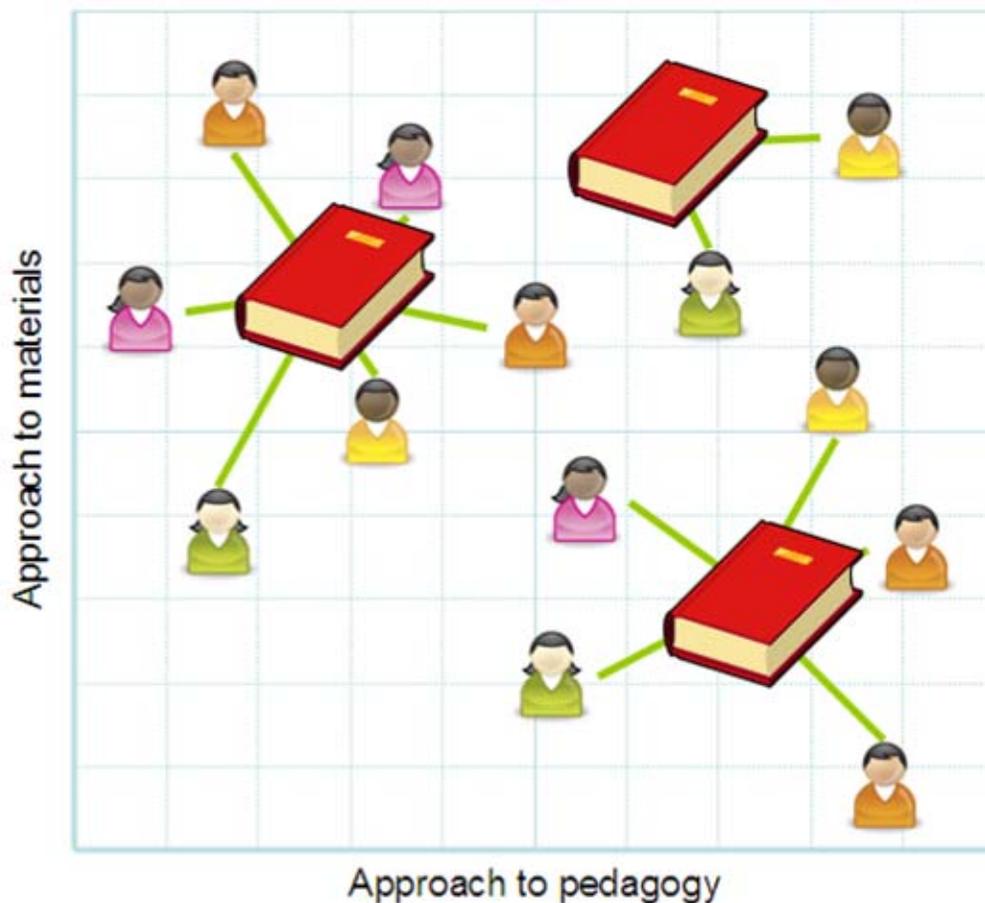
- Likewise, many educators lack experience and know-how with running a simulation at all, which entails architecting a space for movement rather than directing learners along a linear path. A computerized system can offload much of that from the instructor.

By “computer simulation” I don’t necessarily mean fully-rendered 3D virtual worlds. When you consider the virtual world of a typical law firm, much of it exists within the boundaries of email, the Web, and EDGAR/Lexis/Westlaw. The kind of virtual reality required for this type of simulation would entail those worlds, not necessarily a 3D “World of Warcraft” knockoff. Of course, the technology required for any given simulation depends on the kind of experience desired.

## 2. Collaborative authorship

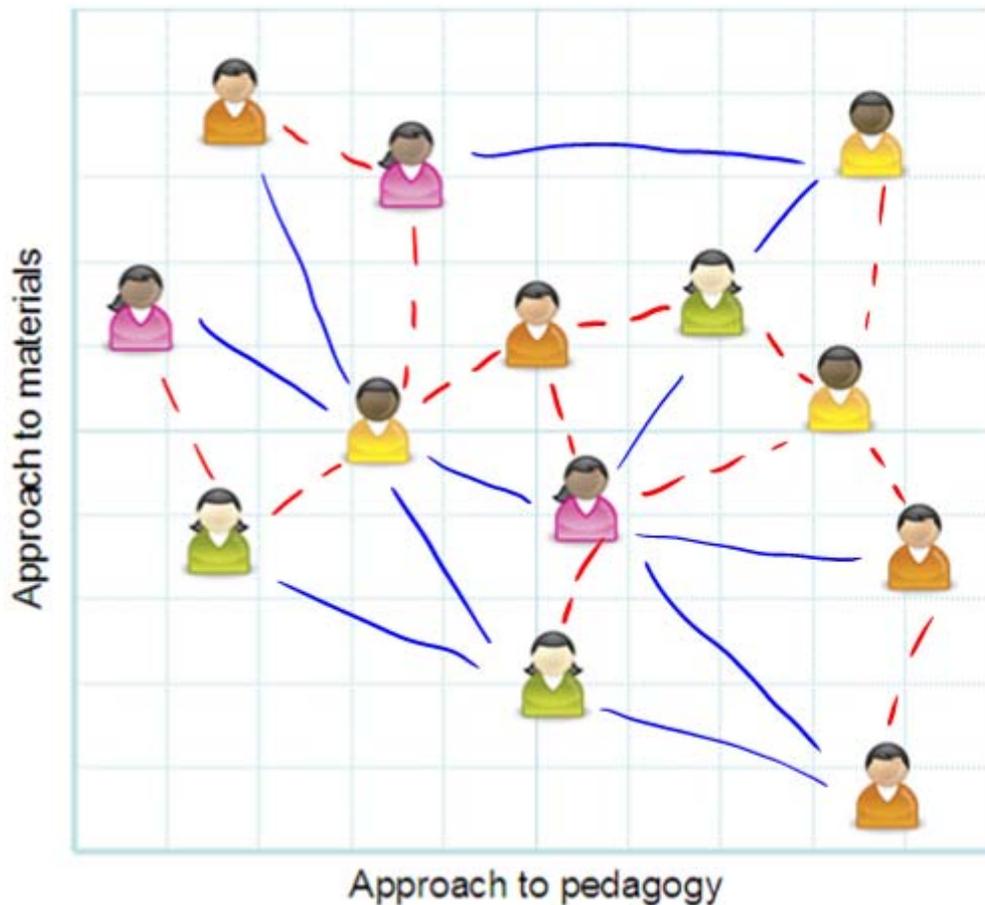
Digital media have exposed the core limitations of paper-bound books. We begin to realize that casebooks are arbitrary dips out of the larger pool of knowledge. That larger pool has eluded us because the costs of distributing the entirety of the pool in using paper have been too high.

It is more accurate to imagine existing paper casebooks as professors scattered on at least two axes – how they approach the law and how they teach – and clustered around casebooks:



Conversations with casebook adopters reveal that this clustering is often arbitrary and rarely efficient. Most admit, even the authors themselves, admit that every casebook winds up being a massive compromise across different constituents.

Instead it seems more accurate to describe the set of professors teaching any given subject as a community, networked through personal and professional relationships:



And while a small subset of the community have taken it upon themselves to author casebooks – sometimes for the money, but most of the time for other motives, not least of which is altruism – most professors are “micro-authoring” every semester whenever they create coursepacks to supplement those books when they are incomplete, inadequate, or outdated. Indeed, some have simply abandoned casebooks for coursepacks altogether.

Before the Internet, it was prohibitively expensive to share coursepacks, leading to much wheel-reinvention. Some professors now use listservs as an *ad hoc* solution. What’s desperately needed is a **platform** with the following features:

- A means to share materials with colleagues
- A means to find and remix materials to create custom coursepacks, including export to digital and paper formats

- A system to authenticate authors and their reputations
- A system to evaluate and credential materials and collections of materials
- A business model to keep this system sustainable both for the entire system and the individual authors within it.

### **3. Relational learning**

Peer learning is critical to most law students' success. Study groups play a storied role in the law school experience, yet law schools provide little support for them. E-casebooks present new potential spaces for these groups – less because they are *digital* than because they are *networked*.

Whereas e-books and e-book device readers like the Kindle present certain physical capabilities, such as instant downloading/updating, lighter-weight packages, and almost infinitely scalable distribution, they currently lack a key property that made the Web so robust: networking. Rather, the existing Kindle functions more like television: a one-to-many broadcast. This stifles the greatest possibility of digital texts for learning: that they might become platforms for students to learn with each other.

Imagine if a study group could outline a case together, share notes, and answer each others' questions within the text itself. Imagine if the casebook was as much about the whitespace between words as the words themselves – whitespace for students to do their own teaching and learning.

There is an enormous disjunction between learning materials that are in textbook format (whether paper or digital) and the learning tools that students increasingly rely upon, whether they are “official” tools offered by the school (e.g. Blackboard) or cobbled together *ad hoc* (e.g. Google Docs, wikis). It may not be that the e-casebook platform itself offers these new capacities – the beauty of Web 2.0 is allowing content to “exist” in different “places” – so long as they are open and permeable, preferably to as much experimentation as possible.

Many students *want* to learn in community together – study groups are mostly voluntary. We need learning materials flexible enough to bend to unforeseen uses that today's students will inevitably invent if given the chance.