Suggestions for Using Multi-Stage Simulations in Law School Courses[1]

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In General

This provides suggestions for using multi-stage simulations, primarily in negotiation and other dispute resolution courses though the principles can be applied in single-stage simulations and other law school courses as well. These suggestions are based on my experiences in several courses.[2]

Value of Simulations. Simulations can be useful elements in teaching students about important aspects of lawyers' work. In contrast to lectures and class discussion, simulations require students to enact the role of a lawyer (or someone working with a lawyer, such as a client). Simulations require students to "get into" an important role and apply relevant knowledge and skills. One of the major benefits of simulations is that they create dynamic interactions that are not predictable simply based on the facts and law in a matter because students must also cope with the moves of independent actors. In doctrinal courses, this provides opportunities for students to practice legal skills while absorbing lessons about legal doctrine.

Simulations do not provide all the benefits of dealing with real clients and cases (such as in clinic and externship courses), but they simulate that experience under controlled conditions. In simulations, there is no risk of harming actual clients and thus simulations provide a safer environment to make mistakes. Indeed, making "mistakes" in

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[1]Copyright 2013 John Lande. Permission to copy is granted if the copyright notice is retained. Thanks, with the usual disclaimers, to Noam Ebner, Yael Efron, and Jim Hilbert for helpful comments.

[2]My experiences are described in John Lande, *Teaching Students to Negotiate Like a Lawyer*, 39 WASH. U. J.L. & POL'Y 109, 124-36 (2012); John Lande, *Lessons from* Teaching Students to Negotiate Like a Lawyer, 15 CARDOZO J. CONFLICT RESOL. (forthcoming Fall 2013).

This document provides only a brief discussion of the challenges in using simulations. For an exchange about the challenges and potential benefits of simulations, see Nadja Alexander & Michelle LeBaron, *Death of the Role-Play, in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 179 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009); Noam Ebner & Kimberlee K. Kovach, *Simulation 2.0: The Resurrection, in* VENTURING BEYOND THE CLASSROOM 245 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2010). These chapters, as well as many other excellent writings on negotiation instruction, are available from the Hamline University School of Law Dispute Resolution Institute, http://law.hamline.edu/dri/projects/press.html#Rethinking. *See also* Daniel Druckman & Noam Ebner, *Games, Claims, and New Frames: Rethinking the Use of Simulation in Negotiation Education*, 29 NEG. J. 61 (2013).

simulations can lead to some of the best learning experiences because students can experiment with techniques and gain insights about approaches they may not want to use when working on real cases.

Thus simulations can be very valuable elements in particular courses and an overall curriculum. Indeed, most law school curricula include simulations of litigation activities such as interviewing and counseling clients, conducting depositions, trying cases, and making appellate arguments. Simulations are a staple in "alternative" dispute resolution courses, where students regularly participate in simulated negotiations, mediations, and arbitrations.

Single-Stage and Multi-Stage Simulations. Many simulations require students to enact a single stage of a process and some courses use simulations of multiple stages in the same matter, including "general practice" courses where students simulate participation in a law firm handling various matters over the course of a semester. There are complementary advantages and disadvantages of single-stage and multi-stage simulations and thus faculty may wish use a combination of both types.

Faculty can use a large number of single-stage simulations in a course, providing multiple opportunities for students to enact different roles and focus on different issues. A disadvantage is that these simulations often are fairly brief and thus students may have a hard time getting into their roles and simulating realistic dynamics. Single-stage negotiation simulations typically involve only the final negotiation and often do not provide a realistic feel of how the matter reached that point and how the relationships between the individuals affect the negotiation.

Multi-stage simulations make it easier for students to get into their roles, enable them to deal with more complex situations, focus on specific stages in a process, see the connections between various stages, and generally have a more realistic experience. Of course, multi-stage simulations take more time and may involve more complex logistics. In particular, using multi-stage simulations may reduce the total amount of material covered. This may be of particular concern to faculty teaching doctrinal courses, though faculty teaching skills courses may have similar concerns.[3]

Faculty considering using simulations should consider their teaching objectives and the mix of methods most likely to achieve the objectives given the time available. In

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[3]Comparing single-stage and multi-stage simulations is somewhat analogous to watching the climactic scenes in a movie or the entire movie. Watching only scenes, one can see a greater number and variety of movies but not see the full character or plot development of a whole movie. Of course, in simulations, students are active participants, not passive observers.

general, there is a value to providing a mix of teaching methods because this may increase students' learning as there may be diminishing returns from using a single method. Using simulations at the end of a unit or an entire course may be effective in conveying critical lessons. Faculty should consider using simulations when the likely benefits would outweigh the reduction in learning due to reduced coverage. Of course, just because material is covered does not mean that students necessarily learn it.

Possible Stages in Multi-Stage Simulations

In planning simulations, faculty should start by considering their teaching objectives. Multi-stage simulations can be particularly helpful in focusing students' attention on particular aspects of the process. For example, in a negotiation course, some stages might include:

- conducting an initial client interview
- negotiating (and drafting of) a retainer agreement
- developing a good professional relationship with the counterpart lawyer
- working with the counterpart to plan the negotiation process
- conducting discovery and/or other factual investigation
- resolving discovery disputes
- conducting legal research
- preparing the client for negotiation
- conducting the final negotiation
- engaging a mediator
- mediating the matter
- drafting a settlement agreement

Most negotiation faculty would not include all these stages. In my courses, I used only six stages[4] and many faculty would use fewer than that. Faculty teaching courses

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[4]For descriptions of multi-stage simulations in my Negotiation course, see Resources for Legal Education, Univ. of Missouri School of Law Center for the Study of Dispute Resolution, Multi-Stage Probate Dispute Simulation and Multi-Stage Partnership Negotiation Simulation. I would be happy to provide copies of these materials for other faculty to use or adapt. I also developed two multi-stage simulations for a Family Law Dispute Resolution course. To request zip files of the documents used in these simulations, email me at landej@missouri.edu.

dealing with litigation, transactional, or doctrinal subjects would use different stages reflecting the topics that they want to focus on.

Initial Client Interview. In almost any simulation, it can be particularly valuable for students to conduct an initial client interview. Law school courses typically rely on appellate case reports that provide only terse summaries of the facts, often implying that the facts were obvious and undisputed. Of course, in real life, learning the facts is a major part of lawyers' work and the facts often are hotly disputed. When lawyers start working on a matter, rather than being given a simple uncontested account by their clients, lawyers must start to learn the facts from the clients and plan to conduct an investigation to obtain additional facts. In addition, the lawyer-client relationship is the center of lawyers' work and it is important for students to practice developing that relationship. In doctrinal courses, students can focus on eliciting legally relevant facts while developing the relationship (or perhaps deciding whether to take a case).

Relationship with Counterpart Lawyer. Developing a relationship with counterpart lawyers in a case is an important aspect of lawyers' work that is rarely discussed in law school.[5] In addition to simulating the process of developing relationships (for example, by simulating a lunch conversation), simulations can involve lawyers working together to exchange information and plan how to manage the matter.

Drafting Legal Documents. Faculty can include stages in which students draft relevant legal documents. In most law schools, students can graduate without ever having seen basic legal documents (such as complaints, motions, contracts, wills, mediation memos, and settlement agreements) let alone having drafted them. Requiring students to draft documents can crystallize students' learning of a topic. Of course, this requires additional time by students and faculty, so faculty need to decide if they can afford the time and if the likely benefits would outweigh the time costs.

General Suggestions for Planning Multi-Stage Simulations

The following suggestions for planning multi-stage simulations are similar to principles for most simulations. The key additional task for multi-stage simulations is helping students see the connection between the stages of the entire simulation. At the outset, faculty should explain the sequence of the stages and what students will do at

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[5]For a short article discussing the significance of good relationships, see John Lande, *Getting Good Results for Clients by Building Good Working Relationships with "Opposing Counsel,"* 33 U. La Verne L. Rev. 107 (2011).

each stage. As the simulation progresses, faculty should explain how each stage builds on prior stages and leads to future stages.

Be As Realistic As Possible. To maximize the benefit, the scenarios should be as realistic as possible. Normally, faculty should choose facts and issues that are typical in practice. Students' learning depends on their taking the simulations seriously, which is more likely if they believe that the scenarios are similar to what they will encounter in practice. Some faculty use silly names of parties to inject some humor, though this risks undermining the quality of the learning experience.

Give Appropriate Amount of Instructions. Students' instructions should provide an appropriate amount of material – not too much or too little. Some simulations provide more information than students can absorb or retain. In these situations, students may spend too much time trying to remember the facts (which can distract their attention from the simulation) or they may miss key facts that are buried in too-detailed instructions. It can be tempting to include detailed simulated source documents to give students a realistic feel of the documents that they will encounter in practice. The value of this experience should be balanced with the risk that students will not read or retain all the detail. Of course, if the instructions do not provide enough detail, students will feel unable to perform realistically. Since it is usually impossible to provide all the details students might need, it can help to provide a general description of characters' perspectives and interests.

Help Students Play Client Role. Students can learn a lot about lawyering by playing a client and getting the experience of being handled by a lawyer. Students playing clients are likely to need extra help to play their characters realistically. Law students generally are so focused on getting into lawyers' role that they often have a hard time getting out of that mindset. Multi-stage simulations are more likely to help students get into client roles, though even in these simulations, it can help to focus on the clients' perspectives ahead of time. You might tell students to close their eyes for 30-60 seconds and imagine what the world looks like through the eyes of their characters.

Give Instructions Before Starting the Simulation. At the beginning of each simulation (or stage of a simulation), it is important that students understand the goals for the simulation. This includes both the general goals of the characters as well as the learning goals. It is almost always a good use of time to discuss this with students before they start a simulation. Sometimes it is helpful for all students playing the same character to discuss how to handle their role.

Be Careful About Timing. Timing is very important. If students feel that they do not have enough time to complete the simulation, they may rush through the exercise merely to reach the "finish line," draining the exercise of much of its educational value. To avoid this, faculty should instruct students that the goal is to have a realistic experience and not necessarily to reach agreement. Faculty can identify certain tasks students must perform (such as developing an agenda or identifying disputed issues) to help manage the time. Faculty should not devote too much time to a simulation as this may cause students to devalue the experience.

Don't Skimp on Debriefing. Debriefing simulations is critically important because some of the most important learning – especially of "mistakes" – comes only through careful reflection and discussion. Indeed, without effective debriefing, students can easily learn the wrong lessons, such as making overgeneralizations from a single experience.[6] Although it can be tempting (especially for students) to skip or skimp on debriefing, that usually is a mistake. Students often want to get the satisfaction of completing a stage (especially reaching agreement in negotiation) but this added satisfaction generally does not outweigh the loss of learning from a missed or abbreviated debriefing.

Think Carefully About Evaluation and Grading. Faculty must decide how to evaluate students' performances in simulations, including deciding if and how to assign grades for them. Methods include class discussion, student "journals" (or self-assessment papers), and reviews of videotaped performance.[7] In negotiation simulations, some faculty base part of the grade depending on the favorability of the outcome. This is designed to simulate the reality that lawyers are rewarded for favorable outcomes and to motivate students to negotiate harder. Some faculty do not consider simulation results in the grading because of concerns about focusing too much attention on "winning" (as compared with other aspects of the simulation) and doubts about whether this is a valid indicator of negotiation skill, considering that many variables affect the outcomes of students' negotiations.

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[6]For an excellent discussion of debriefing simulations, see Ellen Deason et al, *Debriefing the Debrief, in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES (Noam Ebner et al. eds., forthcoming 2013).

[7]For an overview of evaluation in negotiation courses, see Noam Ebner, Yael Efron, & Kimberlee K. Kovach, *Evaluating Our Evaluation: Rethinking Student Assessment in Negotiation Courses, in* ASSESSING OUR STUDENTS, ASSESSING OURSELVES 19 (Noam Ebner et al. eds., 2012).

Conclusion

Using multi-stage simulations, when well planned and implemented, can make a significant contribution to legal education. The quality of student learning in multi-stage simulations in my courses seemed exponentially higher than in single-stage simulations because students were more in their roles and had more realistic lawyering experiences.

Based on my experience, I encourage faculty to include multi-stage simulations in their courses whenever it might be appropriate. In particular, I suggest that negotiation faculty include at least one multi-stage simulation unless the decrease in learning due to reduced use of other approaches clearly outweighs the benefits of multi-stage simulations. Of course, faculty using multi-stage simulations should tailor the number, length, and content of these simulations to fit their teaching goals, considering the range of teaching methods that they want to use in a course.

While it is easy to propose innovations such as using multi-stage simulations, actually implementing them can be very hard. Faculty who have taught courses a number of times may feel comfortable with their approaches and see little need for change. Changing a course is likely to require additional time and effort, competing with other claims on faculty time. In particular, faculty often feel strong pressures to make scholarship a top priority throughout their careers, leaving less time to focus on teaching. The Legal Education, ADR, and Problem-Solving (LEAPS) Project of the ABA Section of Dispute Resolution identified many reasons why faculty teaching doctrinal courses may be reluctant to include more practical problem-solving in their courses.[8] Faculty teaching dispute resolution courses may have comparable concerns. The LEAPS Project recommends strategies for faculty teaching doctrinal courses to address these concerns, many of which are relevant to faculty teaching dispute resolution courses as well.

The time is ripe for legal educational reform due to demands from legal employers that law schools train "practice-ready" graduates and prospective students that they get more practical training in high-priced legal educations. In response to these pressures, many schools are making changes to improve their graduates' ability to practice law soon after graduation. As dispute resolution has become increasingly institutionalized in law school curricula, faculty teaching dispute resolution have the opportunity to make important contributions to the larger project of preparing law students to serve their clients most effectively. The use of multi-stage simulations can help advance that goal.

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[8] *See* LEAPS Project, A.B.A., Overcoming Barriers to Teaching "Practical Problem-Solving".