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John Lande

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GREAT VALUE OF STUDENTS PLAYING CLIENTS IN MULTI-STAGE SIMULATIONS

MAY 14, 2015 | JOHN LANDE | 3 COMMENTS

If you are sick and tired of hearing me sing the praises of multi-stage simulations (MSS) and don't want to see any data about it, read no further.

Some Background

Before I start singing, let me provide some background. I started using MSSs when I began teaching negotiation several years ago. Related to my research on [lawyering with planned early negotiation](#), I realized that, in real life, lawyers don't "parachute" into a case just before a dramatic settlement event.

In fact, they [routinely negotiate with numerous people starting from the outset of the case](#). In particular, they negotiate with their clients from the get-go and throughout a case.

Until I started teaching negotiation, I used only single-stage simulations in which students did parachute into a case right before the ultimate negotiation. Sometimes, the lawyers and clients would meet just before the negotiation to prepare to negotiate with the other side, but that was about it.

To better simulate real life, I developed several MSSs, starting from the first client interview. I included various other stages, such as negotiating retainer agreements, identifying additional information needed, getting to know counterpart lawyers, researching and negotiating about the law, negotiating dispute resolution clauses, preparing for negotiation with clients and counterpart lawyers, and negotiating the ultimate issues.

Although there is some value in teaching interviewing and counseling in one course and negotiation in another, this can create the misimpression that these are distinct processes. Students' experiences in the MSSs demonstrated that lawyers engage in interviewing and counseling throughout a case as that they are integrated throughout the negotiation process, just like in real life.

I got great results with the MSSs from the start. Hence my praise singing.

I described my experiences in my articles, [Teaching Students to Negotiate Like a Lawyer](#) and the much anticipated sequel, [Lessons from “Teaching Students to Negotiate Like a Lawyer.”](#) I wrote a short document with [suggestions for using multi-stage simulations](#) in law school courses and I recruited colleagues to [describe their experiences and offer to share their materials](#).

To help students develop the habit of doing self-assessments, I give them one-page forms to complete after every stage. The forms are slightly different for clients and lawyers. Students do not submit these forms to me but they do write papers analyzing challenging issues they experienced in the simulation.

This semester, I taught two courses using the same general structure – [Negotiation](#) and [Family Law Dispute Resolution](#) (FLDR). In the first half of both courses, we do a lot of single-stage and fishbowl (or “improv[izational]”) simulations. The second half is devoted to two MSSs. Students switch roles so that those who play a lawyer in one MSS play a client in the other and vice versa.

In Negotiation, the first MSS involves a [probate dispute](#) between two siblings over their mother’s estate. The second one is a [transactional negotiation of a partnership agreement](#) to run a restaurant.

In FLDR, the first MSS involves a contentious custody dispute and the second one involves negotiation of [property division and child support by a more cooperative couple](#).

Incredible Learning from Role-Playing the Clients

At last, we get to the praises.

Students REALLY get into their roles, much more than in single-stage simulations. The simulations in my courses ran over six classes, so students had time to internalize their identities.

Most of the students are 3Ls, whose interest in law school generally is waning by the start of the semester and, for some, is virtually non-existent by the end of the semester. Even these weary 3Ls really get into the simulations because the dynamics are so compelling – especially for students playing clients.

Students’ papers provide useful data about what they found most challenging. They are required to focus on a single issue per paper and they are incentivized to pick really challenging issues because the papers are the main basis of their grades.

Students' papers addressed 66 issues, considering that there were 24 students in Negotiation, 9 students in FLDR, and each student wrote two papers. Students who played clients used their experiences to describe lawyers' problems in their cases.

The paper topics suggest that students playing lawyers had many more problems "behind the table" than "across the table." Two-thirds of the problems dealt with interactions with clients and one-third involved interactions with the other side or the process generally. There was nothing in the simulations or the assignment suggesting that students should focus on issues with clients rather than the other side.

Students playing clients often were surprised about the difficulty of being a client and the intensity of their frustration with their lawyers. Students playing lawyers got especially valuable experiences precisely because the clients identified so strongly with their roles.

I categorized the topics as follows, with the number of paper topics shown in parentheses.

Problems Dealing with Clients (44)

- helping clients express (and having lawyers understand) sensitive information, including their interests (11)
- tension between honoring clients' wishes to get an agreement and getting a "good" deal that protects the clients' interests and/or reduces risks of future problems (10)
- communication and coordination between clients and their lawyers, including developing realistic expectations (6)
- managing timing and quality of apology (or lack thereof) (6)
- managing client participation in negotiation (5)
- refusal of client to follow lawyer's advice / difficult clients (5)
- negotiating attorney's fees

Problems Dealing with the Other Side or Negotiation Generally (22)

- managing the negotiation process generally (5)
- protecting clients' interests while treating the other side respectfully and trying to preserve the parties' relationship (4)
- dealing with difficult party or lawyer on the other side (3)
- preparation (2)
- creating value (2)
- stimulating concessions (and progress generally) (2)
- dealing with a surprisingly good offer
- recovering from mistakes

- working with co-counsel
- dealing with financial calculations

In Their Own Words

You need to read students' papers to really understand their experiences. The following are excerpts (published with permission) with links to longer excerpts that they are part of. The longer excerpts are quite compelling and well worth reading.

One student wrote, "I entered the process of [playing a client with little knowledge of how to actually do that](#). I've never been a client in a lawsuit before. Being in law school has garnered in me a tendency to look at things from the perspective of an attorney, and rightfully so I think. However, this entire exercise allowed me to catch a glimpse of the vulnerability of a regular person with a problem they can't solve on their own, entering the office of someone they have never met, expecting them to be able to solve that problem for them."

He continued, "It was clear to me that everyone was taking this seriously, and were really doing their best to be the character that they were assigned to play. . . . As I began apologizing, I actually *was* Dan. Barbara [not her real name] actually *was* Jan. I can't recall everything that I said in the apology, but the room was emotional."

Another student wrote, "This was the first time I have played the client role in as extensive of a simulation as this. This lengthier simulation afforded me the opportunity to [really try to get the feel of the role](#) and the experience of interacting with the lawyer multiple times." He continued, "Before this scenario, I truly didn't understand how serious of a need it is for a client to feel understood, sympathized with or empathized with, or the need to feel justified in their reasoning. Even though I was just pretending to be a client, I felt these needs and felt that they weren't getting fulfilled."

Another student described clients' difficulties recognizing their interests and emotions, which makes it hard for lawyers to understand them. "I never quite stated this to my lawyer and I'm not sure I realized it until the negotiation was over, my primary interest was resolving the emotional issues I had with this case. [I'm not sure my lawyer ever completely understood that](#), and I don't blame him because I didn't understand it myself. It wasn't until Dana and I were letting out feelings out that I realized the emotional baggage was really what the negotiation was all about."

Along the same lines, another student wrote, "Playing a client was a new experience for me. Through this experience I learned that clients can often feel very uncomfortable and vulnerable going into an office and telling a person they have never met details about their per-

sonal life. I think my lawyer did a good job making me feel at ease talking to him and this led me to be very open. The good relationship we established at the initial meeting was crucial in my trusting his opinion and advice later on. This trust allowed me to feel comfortable in hearing him tell me the realities of my case and urging me to be reasonable in my positions.”

I could include lots more excerpts, but you get the idea.

If well done, MSSs provide great learning experiences for students. And you can enjoy reading about them – and even grading them.

You can do an MSS with virtually any number of stages and covering any subjects you think are appropriate. Here are [descriptions of a wide variety of MSSs](#).

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3 THOUGHTS ON “GREAT VALUE OF STUDENTS PLAYING CLIENTS IN MULTI-STAGE SIMULATIONS”

★ John Lande

MAY 26, 2015 AT 6:30 AM

Thanks for your comments.

The Dispute Resolution in Legal Education (DRLE) listserv for instructors provides opportunities for discussion about teaching DR. Here’s a [link](#) with more information.

Enduros Testo Boost

MAY 25, 2015 AT 11:13 PM

Superb site you have here but I was curious if you knew of any user discussion forums that cover the same topics discussed in this article?

I’d really love to be a part of online community where I can get opinions from other experienced individuals that share the same interest. If you have any suggestions, please let me know. Thanks!

Lanigan

MAY 18, 2015 AT 8:21 AM

MSS is an important technique for litigation lawyers. Best of luck with your students.

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