

Multi-stage Environmental Simulations

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I began using a simulation-based approach to Environmental Law back in the early-1990s, believing that there is no better way to force the students to come to grips with the volume of statutes, regs, guidance and policy documents that environmental lawyers have to deal with. In addition, they can build their interviewing, counseling, advocacy and negotiation skills while mastering the substantive material.

I use the *Environmental Law Practice* (Carolina Academic Press, 3d ed. 2010) book, which I co-authored with Professor Dennis Hirsch. The entire book is simulation-based, and is intended to take the student through the four types of environmental law practice they will encounter (counseling, enforcement, litigation, and policy). Here are some examples of multi-stage simulations in the book:

- **Enforcement:** In the enforcement chapters, half the class represents EPA and half the class represents the regulated entity, Agra Enterprises, Inc., in a case involving compliance with the Emergency Planning and Community Right to Know Act (EPCRA).
 - In the first exercise, the students interview the plant manager concerning compliance issues. In real life, no one gives you the facts of the case, and the students are forced to consider what facts they need to determine whether the law was violated and how to ask the right questions to elicit the information they need.
 - In the second exercise, the students draft an administrative complaint and answer based on the information they have gathered. This gives them practice in drafting administrative documents and requires them to consider what violations the evidence will support (professional judgment).
 - In the third exercise, the students attempt to negotiate the administrative penalty. This requires them to apply the statutes, regulations, and agency penalty policy to the evidence.
- **Litigation:** The students represent various responsible parties (10-12 parties) and the EPA in a Superfund case.
 - In the first exercise, the students take the deposition of a fact witness in order to bolster a possible summary judgment motion. Even though lawyers participate in depositions far more often than trials, law students hardly ever practice this skill. I hire court reporters to transcribe the depositions, so they can get a transcript back. Again, they have to carefully consider what evidence they need, because the depositions will be the main source for their summary judgment motions.
 - In the second exercise, the students brief and argue the summary judgment motions.
 - In the third exercise, the students attempt to settle the multi-party case. This requires not only a knowledge of the law, but also a knowledge of the EPA's settlement policies, which affect the outcome. The multi-party settlement context is much different, of course, than the two-party settlements, and we typically bring in a mediator to attempt to reach an agreement. The students are given secret information about their client's position so that they have some boundaries within which to work.

The students uniformly value their experience. The biggest issue I have, however, is in evaluation. For the summary judgment exercises, I have a template that scores the thoroughness of the research and the clarity of the argument, which I feel confident to evaluate. However, for the settlement negotiations, I do not feel that I can adequately judge either technique or substance. There are so many possible arguments that could be made and so many reasons either use a particular argument or not, that I usually give them full marks if it looks like they made an adequate effort to prepare.

Real-life simulation: In 2012, I did a different sort of environmental simulation. We partnered with the Environmental Science department and did a case study of water pollution in the Raccoon River. We had a real client, the Raccoon River Watershed Association, who came in the first week of class for an interview. We then “hired” the environmental science students as consultants and directed them to gather some information about the pollution that we could use in potential citizen suit litigation. The science students did some water testing and some GPS mapping, etc., and the law students then deposed the “expert witnesses” on their findings. We eventually did summary judgment motions and client advice letters based on these facts.

- Many lawyers work with expert consultants, both as testifying or non-testifying experts. The law students considered how to pick the right expert, how to direct them with a proper scope of work, and how to keep the findings confidential, if possible. They also learned about qualifying an expert and deposing an expert.
- The law students also learned that in the real world, facts are “murky” (much like the Raccoon River!) and that evaluation of whether we can make a case is a judgment call.

This was an exciting class, but it was also scary, because you never know if the science students are going to give you enough to work with. I have to say that the experience was great for the science students, too, because they learned how to explain their findings to non-scientists and had to defend their techniques and results during cross-examination.

I would be happy to discuss these exercises and to hear ideas about how to improve them or improve my evaluation of them.