

Experience with Multi-Stage Simulations

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I have used two types of multi-stage simulations in my Negotiation course. The first involves a client interview followed by a negotiation. I have most often used the Monolith-SatLith negotiation created by Russell Korobkin. It is a dispute between former business partners in which there is the possibility for repairing the relationship and working together in the future. Students are assigned the roles of lawyers and clients on each side. In the first stage, the lawyers interview the clients. I debrief with each side separately and then they reconvene in their dyads to prepare for the negotiation. Then, in the second stage, they negotiate in lawyer-client pairs with the other side.

Forcing students to interview a “client” to learn the client’s interests prior to negotiation helps to teach students that facts do not come pre-packaged and that their initial assumptions about what the client wants are often mistaken. They learn that their ability to negotiate effectively on behalf of a client is only as good as their ability to learn what the client wants to get out of the negotiation. In the process, they gain a more nuanced understanding of interests, and, correspondingly, a less formulaic understanding of the negotiation process. Ideally, students should have the opportunity over the course to play the role of client being interviewed and the role of lawyer doing the interviewing, so that they experience both sides of the lawyer-client relationship.

The second multi-stage simulation involves the negotiation of an agreement followed by the drafting of a contract memorializing the agreement. I have used several different transactional negotiations for this simulation, including a partnership formation agreement and a negotiation over retransmission rights between a television network and cable provider.

This exercise brings home to the students the importance of contract drafting as a distinct phase of the negotiation process. Students invariably realize in the drafting stage that they left out or misunderstood key terms. In the real world the business people often negotiate the substance of the agreement and turn it over to the lawyers to “work out the details.” This exercise reinforces the point that the devil can be in the details and that for that reason lawyers should be involved in each stage, from the planning through the bargaining to the agreement drafting. As a caveat, I have found that students are too much at sea if they are given carte blanche to draft an agreement. The exercise works best if they are given a model agreement to work from and modify. That is also closer to the way things work in the real world.