

Case of Dana and Jan Putnam - Overview

John Lande

University of Missouri School of Law

This is a multi-stage simulation of a negotiation of a simple probate dispute. The case involves two siblings in a dispute over the estate of their recently-deceased mother. The mother's will favors one sibling and the central legal issue is whether it was executed under undue influence. The dispute is colored by the relationships and events involving the parents and children.

Each instructor is likely to use the simulation differently, not necessarily using all the stages or assignments provided – and possibly adding new ones. If you want to get a set of files with role-play instructions, written assignments, teacher's notes for each stage, and self-assessment forms, email me at landej@missouri.edu.

Half the students play parties and half play lawyers throughout the simulation. There are various assignments for lawyers to submit documents. If you assign students to do most or all of these written assignments, you should consider using some other activity (such as a multi-stage simulation in which the clients in the present simulation play lawyers in the other simulation with comparable assignments) to equalize the workload. I did not grade these submissions, though you might want to grade them or include this as part of an overall course participation element of the course.

This simulation assumes that the case would be mediated, to give students a chance to experience negotiation as an advocate in mediation, though you can do this simulation as an unmediated negotiation. I recruited "mediators" who had previously taken the mediation and/or mediation clinic course and who were recommended by their instructors. If you do this simulation as an unmediated negotiation, you can convert stage 4 into a meeting between counterpart lawyers without a mediator and convert stage 6 into a negotiation instead of a mediation.

The chart below shows the sequence of stages I used, followed by a brief discussion of each stage. This schedule is based on 75-minute classes in which students generally do each stage in class for about 15-30 minutes. In my course, the classes begin with a discussion of the task for that day, including the lawyers' (and sometimes the clients') goals at that stage. After students do the simulation, they complete a brief self-assessment form and then the class debriefs the experience together.

The chart also shows reading assignments and possible written assignments for students to complete. The readings refer to John Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (2011).

Class	Task	Reading	Assignment
1	Initial Client Interview	Lande, ch. 2, appendixes A and B.	Lawyers request more information following interview
2	Developing Relationship with Counterpart	John Lande, Getting Good Results for Clients by Building Good Working Relationships with "Opposing Counsel," 33 U. La Verne L. Rev. 107 (2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1968619 .	
3	Legal Research and Argument		Lawyers write mediation memo or negotiation plan
4	Planning with Mediator (or Counterpart)	Lande, ch. 6, 8. Section of Dispute Resolution, ABA, Preparing for Mediation (2012) http://www.americanbar.org/groups/dispute_resolution/resources.html .	
5	Preparing Client		
6	Mediation (or Negotiation)		
7	Debrief & Drafting Agreement		(Lawyers draft agreement)

1. The instructions for the initial client interview are very similar to one-stage simulations where they negotiate or mediate the ultimate resolution. In this simulation, the goal of this stage is for the lawyers to develop good relationships with their clients, elicit the basic information (including the clients' interests), and decide what additional information they need. Following this stage, lawyers submit requests for additional information. I provided a single response to all students (i.e., on both sides and including both lawyers and clients) based on the requests submitted by the various lawyers. I did not give specific responses to each student's submission or grade them, though you may do so.

2. In this stage, the lawyers are assigned to “have lunch” and get to know each other personally. This is based on the assigned reading indicating that when lawyers have a good working relationship, it can make a big difference in the process and outcome of a case. While the lawyers are “having lunch,” the clients are paired with clients who are not in their dispute group (i.e., a student playing Dana in one group is paired with a student playing Jan in another group) and act as if they are lawyers getting to know each other. The goal of this stage is for students to experience the benefit of developing good working relationships. The effect of this experience should be evident throughout the simulation.
3. Lawyers have a conversation with each other about the law. In real life, this conversation would normally take place early in the negotiation / mediation. In the simulation, it is useful to have the conversation earlier than that because it colors the rest of the case. When I taught the course the first time, I assigned students to write a legal memo to the file to make sure that they did some legal research. The second time I taught the course, I didn’t require students to write a legal memo, but they wrote a mediation memo, which included a brief discussion of legal authorities. In the initial instructions for the lawyers, I told students that the issue was related to undue influence. I did not provide any legal authorities – they had to do their own legal research to find relevant authorities. The problem is designed so that there isn’t a single clear, correct legal answer given the facts, at least under Missouri law. In class, I had pairs of lawyers discuss the law in a fishbowl format. The goal of this stage is to have students learn how to argue the law in a negotiation as opposed to adjudication context. In general, their goal is to persuade the counterparts that the counterparts’ MLATNA (i.e., most likely court outcome) isn’t as favorable or certain as they think it is. You may have a brief period at the beginning of class for the lawyers for each side to discuss their legal arguments.
4. In this stage, the lawyers meet with the mediator to plan for the mediation. The purpose of this stage is to discuss procedures to use in mediation and help prepare the mediator about the substantive issues. Lawyers may be assigned to prepare mediation memos to provide to the mediators. (I plan to have students do unmediated negotiations in the future and prepare negotiation plans instead of mediation memos.) If you have students do this as a mediation, you may or may not want to assign students to write both the legal memo for stage 3 and a mediation memo for stage 4. If students have written the legal memo, they can use it to summarize the legal issues for the mediation memo. On the other hand, it may be too much to ask students to write both a legal memo and a mediation memo. If I were to choose to assign only one of them, I would assign the mediation memo, as this will probably be their only exposure to a mediation memo – and it is easier to write. While the lawyers and mediators are meeting, I met with all the parties as a group to help coach them about their roles and interests. This could be done in separate groups for each party.

5. In this stage, lawyers meet with their clients to prepare them for the mediation. Lawyers can report on their meeting with their counterpart (and the mediator, if applicable) and help strategize with the client about how to handle the mediation. The mediators do not attend this class.
6. The entire class is devoted to the mediation.
7. The entire class is devoted to debriefing the mediation. You might assign pairs of lawyers to write up a simple settlement agreement. This assignment prompts students to consider what is important in writing a good settlement agreement or release. Even if you don't require students to draft a settlement, you can discuss drafting issues as part of the debriefing.

Instructors are welcome to use or adapt the materials in this simulation. If you want to edit any of the materials, please add "adapted with permission" to the copyright notice.

You can see my [syllabus](#) and I would be happy to discuss designing a course. The rationale for including multi-stage simulations in a negotiation course is described in my article, [Teaching Students to Negotiate Like a Lawyer](#), 39 Washington University Journal of Law and Policy 109 (2012), which also provides other recommendations for planning a negotiation course.