

Case of Dana and Jan Putnam - Overview and Teaching Notes

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This is a multi-stage simulation of a negotiation of a simple probate dispute. Each instructor is likely to adapt the simulation differently, not necessarily using all the stages or assignments provided – and possibly adding new ones. This is written as a [negotiation course](#), but you can add a role for mediators.

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. Given the facts of the case, both parties have some law on their side (at least in Missouri). The dispute is colored by the relationships and events involving the parents and children. One of the siblings is homosexual, which lawyers encounter in practice. You might alert students in case this is troubling for any of them.

Half the students play parties and half play lawyers throughout the simulation. There are various assignments for lawyers to submit documents. In real life, lawyers are not "spoon fed" facts like in most simulations. To give students a feel for the process of collecting information, after the initial interview, the lawyers are assigned to identify the information they want. I did not grade these submissions, though you might want to do so. I also included a stage where lawyers argued the law, trying to persuade their counterparts, not a judge or jury.

The chart below shows a possible sequence of stages in the simulation, though you may wish to add, delete, or modify various stages. A brief discussion of each stage is included following the chart. We did all these stages during class time, though you may assign students to do some stages outside of class.

The following 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 began 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. (A generic self-assessment form is included in the simulation package.) For the ultimate negotiation stage, the entire class is devoted to the simulation, with a debriefing in the following class.

The chart shows reading assignments and written assignments. The readings are in John Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (2d ed. 2015).

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).	
3	Legal Research and Argument		Lawyers prepare negotiation plan (or mediation memo)
4	Planning with Counterpart (or Mediator)	Lande, ch. 6, 8. ABA Section of Dispute Resolution, Preparing for Mediation (2012).	
5	Preparing Client		
6	Negotiation (or Mediation)		
7	Debrief & Drafting Agreement		Lawyers draft agreement

1. The instructions for the initial client interview are very similar to those that students get in one-stage simulations where they are expected to 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. The simulation package includes some of the better information requests. After they submit this information, I provide a document with additional information to all students (i.e., on both sides and including both lawyers and clients). 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 Dana in one group is paired with a 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. This should be evident both in this stage and 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. Originally, I assigned the lawyers to research the law themselves, but predictably some students didn't do a good job of research. This version of the simulation provides blurbs of key cases to the lawyers at the outset. The goal of this stage is to have students learn how to argue the law in a negotiation or mediation as opposed to adjudication context. In general, their goal is to persuade the counterparts that the counterparts' most likely court outcome isn't as favorable as they think it is. The clients observe their lawyers to get the experience of passively watching their lawyers, which could produce varying client reactions depending on how well (they think) their lawyers did.
4. If you do this simulation as a mediation, 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. 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. It also was useful to ask how they felt about their lawyers' performance, which varied greatly.

If you do this simulation as a negotiation, the lawyers might meet to plan the negotiation or you might skip this stage.
5. In this stage, lawyers meet with their clients to prepare them for the negotiation or 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 or negotiation.
6. The entire class is devoted to the negotiation or mediation session.
7. The entire class is devoted to debriefing the simulation. 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.