

# TEACHING LEGISLATIVE PROCESS THROUGH AN INTENSIVE SIMULATION\*

by Philip G. Schrag\*\*

## *Introduction*

Courtroom simulations, generally termed “moot courts,” have long been embedded in law school curricula. During the past ten years, law school instructors, anxious to expose students to a broader view of legal processes than exclusive reliance on the case method permits, have increasingly supplemented that traditional method with simulations. Simulations often aid the legal instructor who is seeking an innovative means to motivate students weary of the case method.

In the early 1970s, the author helped to develop a series of “mini-simulations” which were used to supplement field experience in a clinical offering at Columbia University.<sup>1</sup> In 1973, Michael Botein attempted a more ambitious endeavor at the University of Georgia Law School.<sup>2</sup> Having discovered that using a traditional casebook to teach administrative law was a “federal disaster area,”<sup>3</sup> he structured nearly all of his administrative law class around a simulation of the Federal Communications Commission’s decision-making process.<sup>4</sup> The following year, two other major efforts were mounted which used simulations as a primary teaching tool. At the State University of New York at Buffalo Law School, second year students were organized into simulated law firms with managing

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<sup>1</sup> Meltzer & Schrag, *Report From a CLEPR Colony*, 76 COLUM. L. REV. 581 (1976). One such exercise, *The Bins Mini-Simulation Assignment*, has been published in its entirety for use at other institutions. *Id.* at 628 app.

<sup>2</sup> Botein, *Simulation and Roleplaying in Administrative Law*, 26 J. LEGAL EDUC. 234 (1974).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 235-36. The simulation concerned “seven aspects of the administrative process—a negotiation and pre-trial conference, an evidentiary hearing, full Commission review, judicial review, a rulemaking proceeding and judicial review of rulemaking.” *Id.* at 236.

partners (faculty), senior partners (practicing attorneys), and associates (students).<sup>5</sup> Each firm handled three cases over the course of a year.<sup>6</sup> In a similar endeavor at the Columbia School of Law, students in two classes spent twelve weeks participating in simulated law firms on opposite sides of complex federal litigation involving employment discrimination.<sup>7</sup>

The simulations described in these writings share a significant practical drawback. In every case, they are designed for classes with low student/faculty ratios, making their administration somewhat more costly than seminars, and much more costly than large discussion courses.<sup>8</sup> This drawback tends to preclude the offering of rich simulation experiences to large numbers of students,<sup>9</sup> and causes further problems when using the method to augment large, traditional discussion courses.

I addressed this problem at Georgetown University Law Center in 1981 and 1982, by offering an intensive simulation as part of a course for more than one hundred and twenty students. The key ingredients for this effort were (1) finding a suitable, well-designed simulation that was both relevant to the course and administratively manageable, and (2) unlike prior complex law school simulations in which gaming was a part-time activity over the course of several weeks, conducting the simulation as a full-time activity in a concentrated time frame of fifty-one consecutive hours.

This article describes the Georgetown simulation in general terms, its purposes, structure, and methods, and the students' experience with it. For instructors who wish to replicate the simulation, either in a law school or some other institutional setting, this general article is followed by an instructor's manual,<sup>10</sup> and also by the simulation materials which are given to students.<sup>11</sup> The student materials

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<sup>5</sup> Hollander, *The Simulated Law Firm and Other Contemporary Law Simulations*, 29 J. LEGAL EDUC. 311 (1978).

<sup>6</sup> *Id.* at 314.

<sup>7</sup> M. MELTSNER & P. SCHRAG, TOWARD SIMULATION IN LEGAL EDUCATION (2d ed. 1979); see also Meltner & Schrag, *supra* note 1, at 597-608.

<sup>8</sup> In terms of the allocation of teachers to students, simulation courses are comparable in cost to seminars, but are actually more expensive because they take up a greater amount of the instructor's time.

<sup>9</sup> Michael Botein was relieved when 20 of his 55 enrollees dropped the course, and he recommends limited enrollment in such offerings. Botein, *supra* note 2, at 236.

<sup>10</sup> See *Instructor's Manual*, *infra* p. 117.

<sup>11</sup> See *House of Representatives: An Educational Simulation*, *infra* p. 37. The student packet is complete except for a few pages of "case materials" (newspaper and magazine clip-

are available for purchase as a reprint from this Journal at a cost of \$1.70 per reprint.

### *The Simulation in the Context of the Course*

Simulations may be used to teach substantive doctrine, but they are particularly well suited to teaching process courses such as civil and criminal procedure, administrative law, legislation, and more specialized process courses such as interviewing and counseling, negotiation, and the processes of particular institutions. Simulations have even been used in courses dealing with arms control and national security.<sup>12</sup> I included the simulation in what was otherwise a fairly traditional course in legislative process, a standard feature of the Georgetown curriculum for many years.<sup>13</sup>

The course is focused around the role of Congress as policymaker. It begins with three and one-half weeks on the development of a "scientific" model of policymaking. The students are acquainted with modern techniques of policy analysis,<sup>14</sup> particularly cost-benefit analysis.<sup>15</sup> They read and discuss, for example, the Council on Wage and Price Stability's critique of the Consumer Product Safety Commission's cost-benefit analysis of the need for its own safety standards for power mowers.<sup>16</sup> The students also discuss such classic issues as how economists attempt to place a value on human life. The purpose of this introduction is to develop a rational model of decision-making, with the specific disclaimer that this is not necessarily the model used by legislators. The students then turn to the federal legislative process. In the overview, they read a long case study of the enactment of a bill,<sup>17</sup> and Walter Oleszek's excellent pri-

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plings) which may be varied at the instructor's discretion. Citations to suggested case materials are included in the *Instructor's Manual*.

<sup>12</sup> At Georgetown, Professor David Koplow currently uses a complex simulation where students serve as policymakers and negotiators for the United States (U.S.) and the Union of Soviet Socialist Republics (U.S.S.R.) in a simulated negotiation of a treaty to control anti-satellite weapons.

<sup>13</sup> Until 1983, the course was a required offering in the first semester of the first year of law school. It is now an upperclass elective.

<sup>14</sup> See E. STOKEY & R. ZECKHAUSER, *A PRIMER FOR POLICY ANALYSIS* (1978), for a thorough discussion of the various methods of policy analysis.

<sup>15</sup> *Id.* at 134-76.

<sup>16</sup> Lenard, *Lawn Mower Safety*, in *BENEFIT-COST ANALYSIS OF SOCIAL REGULATION* 61 (J. Miller & B. Yandle eds. 1979).

<sup>17</sup> E. REDMAN, *THE DANCE OF LEGISLATION* (1973).

mer on Congressional Procedure.<sup>18</sup> In class, the students use several hundred pages of additional case materials<sup>19</sup> to study the various stages of the Congressional decision-making process in detail. The stages which are examined are (1) the nature and functions of legislative hearings, (2) the role of the executive branch in the legislative process, (3) the structure of committees and other organizational aspects of Congress, (4) the procedures for mark-up and floor debate, (5) the influence of procedure on outcome, and (6) the interaction among Congress, the enforcing agencies, and the courts in the years after a statute is enacted.

This work takes ten weeks, and it sets the stage for the simulation. The simulation is the fulcrum of the course, because students are encouraged to formulate hypotheses which can be tested experientially, when they assume roles as legislators. For example, as policy analysis is studied, students could argue over whether legislators really have a significant incentive to use scientific policy analysis in their decision-making process. The effectiveness of the hearing process as a useful tool in the development and sharpening of factual disputes relating to legislation could also be contested. After reading relevant material, students might ponder the relative strengths of the loyalties which legislators feel toward other officials, such as legislative leaders, members of their own party, the President, supportive interest groups, or sympathetic agency personnel. Views concerning the extent to which legislative drafting is a political tool and a technical art may be developed. Moreover, students may venture some tentative judgments concerning the accuracy with which courts are able to discern the actual intent of the legislators who passed a particular law. This, of course, is of great practical value to any practicing attorney.

The course continues for a period of four weeks after the simulation takes place. During these weeks, a look is taken at how, if at all, this experiential learning has confirmed or altered the students' hypotheses. On the central issue of legislative intent, for example, I constantly ask the students, "What was your intent when you wrote the bill? What was your committee's intent? What is the meaning of the concept of intent as you personally have experienced it?"

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<sup>18</sup> W. OLESZEK, CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS (1978).

<sup>19</sup> R. SCHOTLAND, MATERIALS ON LEGISLATION (1982) (unpublished course materials).

### *Objectives of the Simulation*

In addition to giving students an opportunity personally to test their hypotheses regarding the legislative process, there are several independent reasons for using a simulation in a course of this type. The first objective is to help students better understand the Congress as an institution, and particularly the nature of the complex multi-party bargaining which takes place daily on virtually every issue. The written case studies are somewhat helpful, but length limitations prevent even the most comprehensive of them from sufficiently detailing the pervasive bargaining that affects even such minor, interstitial issues as the scheduling of debate.<sup>20</sup>

The second objective is to give students an intensive experience in operating over a period of time within the framework of a very detailed and complicated set of procedural rules. It seems likely that this experience is at least partially transferable to working within other sets of procedural rules, such as those in the areas of civil, administrative, or criminal procedure.

A third objective is to demonstrate the importance of individual personality and will-power in the struggle over policy judgments. It is difficult to appreciate the significance of personality factors by only reading statutes and the cases construing them.<sup>21</sup>

Fourth, the simulation attempts to emphasize the effect of roles on legislative attitudes. It may help students realize that any particular person is likely to have a preexisting attitude toward any given policy, but might find this attitude sharply changed after being thrust into a specific role within the legislature, such as the role of chairman of a committee or the role of Speaker of the House. It is surprising to note the extent to which student opposition or indifference toward legislation can become enthusiastic support once the responsibility for achieving results is assumed.

Fifth, a legislative simulation may aid students in understanding the influence of constituents on the legislative process, and the extent

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<sup>20</sup> A good adjunct to written case histories is the Public Television film, *Act of Congress*. A Study of House consideration of the Clean Air Amendments of 1977, the film shows the many forums within the house (e.g., the party policy committees, the Rules Committee) in which the interstitial battles are fought.

<sup>21</sup> For two perspectives on a legislative process (in this case, a constitutional convention), in which alternate chapters include and exclude the interpersonal by-play, see Schrag, *By the People: The Political Dynamics of a Constitutional Convention*, 72 GEO. L.J. 819 (1984).

to which ideology can be modified by economic and regional constituent pressures.<sup>22</sup>

Sixth, the simulation may enable students to better empathize with members of Congress. Law students, in general, harbor a great deal of cynicism regarding the Congress and its members. The simulation may temper that cynicism to some extent in that it makes students feel the intense pressures inherent in being a member of Congress.

A seventh objective is to give students some direct experience in resolving ambiguity by interpretation of a text. In this case the text is not a substantive statute; it is, instead, the Rules of Procedure of the House of Representatives.<sup>23</sup> The fact that the Code being construed is procedural rather than substantive is of little importance; the simulation becomes an elaborate exercise in the independent resolution of textual ambiguity.<sup>24</sup>

Finally, the simulation provides an opportunity for a great deal of enjoyment and creativity in the middle of an otherwise straightforward course. Aside from its intellectual value, the simulation may have an important role in breaking up an otherwise monotonous portion of study.<sup>25</sup>

In addition to these major objectives, the simulation aids students in understanding the functions of some of the more subtle arrangements that Congress has established; for example, the seating patterns in committee and on the floor, the forms of address, the rotational order of committee questioning, or the opening of mark-ups to the public. One student who completed the simulation noted that the legislative process would grind to a halt if, instead of utilizing established protocol, members were permitted to address each other

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<sup>22</sup> D. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION (1974) is a very useful book to remind students of legislators' awareness of re-election needs, but personal learning may be more effective, and there are limits on how many books law students will read for a course. On the other hand, constituent pressures are very difficult to simulate, and the exercise therefore probably achieves this objective least well.

<sup>23</sup> *House of Representatives: An Educational Simulation*, *infra* pp. 47-55 (Rules Applicable to the Committee and Rules Applicable to Floor Debate).

<sup>24</sup> The abridged House Rules which the participants work with contain no *deliberate* ambiguity; to the contrary, they have been edited many times. Of course it is not possible to eliminate all ambiguity in the several pages of text that will have to be applied to dozens of unforeseen circumstances.

<sup>25</sup> See Margolick, *The Trouble With American Law Schools*, N.Y. Times, May 22, 1983, § 6 (Magazine), at 20, for a criticism of the traditional law school curriculum.

according to their feelings of the moment.<sup>26</sup> Another student who participated as a junior legislator learned the desirability of obtaining seniority when she was unable to command any attention.<sup>27</sup>

### *Structure of the Simulation*

I was fortunate in not having to develop a legislative simulation from scratch. An excellent exercise had been designed by Mark Talisman, a former administrative aide to Rep. Charles Vanik. Mr. Talisman gives the biennial course for newly elected members of Congress at Harvard's Kennedy School. At the time that I learned of his exercise, it had already been administered more than seventy times, principally to federal officials who participate in it as part of their routine training upon becoming candidates for the Senior Executive Service.

Talisman's simulation had not been designed with law students in mind, and some adaptation was necessary; for example, establishing an Office of Management and Budget, making the rules of procedure more thorough and complex, and requiring the production of bills rather than mere concept papers. The version reproduced in this Journal<sup>28</sup> is the one adapted for law student use, and is equally suitable for other college graduates or undergraduates.

A week before the simulation begins, every student receives the bulk of the materials, *i.e.* the kit containing the instructions, rules, and roles.<sup>29</sup> Two hours before the simulation begins, a short set of case materials is also distributed. The case materials are deliberately distributed only two hours before the beginning of the event so that the students do not use them as starting points for library research on substantive problems; the simulation is designed as a self-contained exercise.

I use two types of cases. The first deals with mass transportation legislation, and the second, revenue-sharing legislation. In each case

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<sup>26</sup> As he put it, "If we weren't required to address an opponent as the distinguished member from Florida, but were permitted to say what we were thinking, namely, 'you s.o.b.,' we'd tear each other apart, and the process would grind to a halt."

<sup>27</sup> She said, "I was nothing way down at my end of the committee table. All the questions had been asked before my turn came, and the press had already left before I was able to ask my questions. All I could think of was how much I wanted some more seniority, and what I was willing to do to get it."

<sup>28</sup> See *supra* note 11.

<sup>29</sup> *Id.*

it is assumed that existing legislation is expiring under a sunset provision, and that the task facing Congress is whether to replace it, and if so, with what. Students in the role of legislators are not required to enact a statute. Indeed, the probable objective for several of the legislative roles is to prevent the passage of legislation. Nor is the actual passage of a bill educationally important. The important objective is that students develop the ability to both grapple with the issues and learn about the process. The exercise takes two and one-half days. It starts with announcements and role selection the first morning, and ends with an evaluative discussion during the early afternoon of the third day. Both intervening evenings are also devoted to the simulation.

No formal events are scheduled during the entire first day. What happens during this critical period is entirely a result of the interaction among the students. For example, the Administration witnesses can prepare their testimony and negotiate over drafts of bills that the Administration might introduce. Congressional party caucuses may take place to prepare bills, to agree on positions, to schedule hearings, and to decide which witnesses the Committee is willing to hear.<sup>30</sup> Coalition-building can take place among the lobbyists, and this may or may not include members of the Administration and of the Congress. Journalists can begin to develop their stories, and may conduct interviews with any of the other participants. This organizational activity begins early the first afternoon, and it usually continues until late in the evening.<sup>31</sup>

The second day opens with the release of major stories and columns by journalists, and with a legislative hearing, the design of which should have been determined by the students during caucuses

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<sup>30</sup> Typically, an early issue for those students who are members of Congress is the question of whether the majority party will meet initially with members of the minority, or whether the majority will use the Committee room or some other room for a caucus, excluding the minority and creating, at the onset, a realistic initial division among the members. If, as often happens, the majority party does exercise control over the room and excludes the minority, its action may come as something of a shock to those who are excluded. Their exclusion may provide the first actual experience of legislative fractionation, and of psychological forces that drive members of a minority together.

<sup>31</sup> The simulation materials include a map of restaurants and bars in the area, and a table of their hours. It should be noted that the Georgetown University Law Center did not have enough classrooms to use for this exercise (it requires about 8 rooms for 120-130 students, and the rooms must be constantly available); other institutions desiring to mount the exercise may need to do as we did and rent rooms in a school, hotel, church or conference center.



the previous afternoon or evening. In the main arena, witnesses testify and are questioned by committee members, but around the fringes of the simulation many other events are likely to be taking place. These will include continued bargaining within the Administration over the position of the Executive Branch, particularly as it is forced to react to developments within the House; additional coalition-building by lobbyists, and between lobbyists and the Administration; interviewing by journalists; and the drafting of bills. Significant parliamentary squabbling within the committee may occur as members test their power to work within the procedural rules. In addition, the second half of the morning hearing offers the instructor a prime opportunity to confront the participants with a real surprise, such as a scandal involving a committee member, or a major change in the President's position on the bill. An intervention at this time will interfere with the legislative work less than at any other time during the exercise.

On the afternoon of the second day, the committee must decide which of the bills that have been drafted and introduced will be marked up, if any. The Committee then proceeds to amend the draft or drafts on a section-by-section basis. This phase of the work is likely to be punctuated by parliamentary maneuvering, recesses for caucusing, and large amounts of corridor negotiation. The lobbyists, including those working for the Administration, are encouraged by the instructions not to end their work once they are through testifying. They may continue to attempt to influence committee members during the mark-up session, and there is no rule prohibiting them from approaching the table where committee members sit.

The instructions place a deadline on the committee for the reporting of bill(s). If the committee has approved one or more of the bills, they are circulated for consideration on the floor the next morning. Members, including members of the House who were not members of the Committee, spend the second evening drafting floor amendments and building support for their adoption. Meanwhile, the instructor convenes the group briefly for two administrative tasks. Students who played the role of lobbyists and administration officials during the committee phase of the exercise are now assigned new roles as members of the House. This feature of the simulation enables almost every student to serve as a legislator for at least part of the exercise. The instructor then announces the rule for the bill as if it had been handed down by the Rules Committee. It will nearly

always be an open rule, permitting any amendments to be introduced. If a large number of bills had been passed by the Committee, however, the instructor might announce a modified closed rule, allowing certain bills to be amended in specific ways.

The final morning is devoted to floor debate, which tends to move extremely quickly through many amendments as is usual in the real House. Students quickly gain an appreciation of the difficulties of engaging in a deliberative process after a bill has left the committee. The instructions impose a strict deadline for the end of the floor session so that the time laid aside for analysis is not eroded. The exercise ends with a two-hour class during which all of the participants share their experiences, and attempt to draw generalizations about the legislative process based on those experiences.

### *Pedagogical Choices Implicit in the Simulation Design*

In an earlier writing,<sup>32</sup> it has been argued that designers of an educational simulation are necessarily forced to make pedagogical choices among a number of different axes. They must, in particular, choose between complexity and simplicity, between emphasis on strategic aspects of learning and interpersonal aspects of learning, and between strict control over student behavior and greater student freedom.<sup>33</sup>

With respect to the first of these distinctions, this simulation leans strongly in the direction of a complex exercise. This choice is dictated by two factors. First, the legislative system being replicated, the House of Representatives, is indeed very complex. The legislative process has many steps, each of which involves lengthy coalition-building, negotiation, and drafting. One of the purposes of the simulation is to impress upon the participants the very richness of the process, and the many different points at which individual choices make a difference. Second, the need to involve all of the students in a meaningful way, to offer all of them significant learning experiences, means that many different points of potential conflict had to be written into the rules and roles, although conflict piled onto conflict necessarily increases the intensity of the work.

A price must, of course, be paid. The simulation is so complex that none of the participants can observe all of the events, many of

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<sup>32</sup> M. MELTSNER & P. SCHRAG, *supra* note 7, at 68-102.

<sup>33</sup> *Id.*

which take place simultaneously in separate rooms or areas. Nor can enough review time be reserved at the end to analyze more than a fraction of the developments that occurred during the preceding forty-eight hours, much less probe the depths of all the hidden agendas that evolved. The instructor may leave the exercise wishing that another full day had been set aside for review, and with a sense of unease that even then many side events would have remained unexposed. The trade-off is that a simulation less rich in conflict or action might leave some of the students with only supporting roles.

Instructors may nevertheless want to simplify the exercise. The most obvious way to do this, without reducing the number of students, would be to shorten it by a day, simulating only committee preparation, hearing, and mark-up, and omitting floor activity. A second way in which the exercise could be simplified is to reduce the number of roles by eliminating some of the advocates and a few of the committee members. Although fewer students would participate, each of them would be able to observe and discuss a larger fraction of the activity. Finally, an instructor might simplify the exercise by changing the rules, but care must be taken to avoid gaps in the rules of procedure. Such gaps might lead to more, rather than less, argument by the students as to how to function.

A second choice involves the conflict between emphasis upon strategic versus interpersonal aspects of learning. In any simulation, students act differently than they do in the standard classroom. In this simulation, for example, the participants engage in bargaining and in oral advocacy, among other forms of interpersonal work. The simulation can be designed to take advantage of the opportunity to provide students with feedback on their exercise of those skills. For example, it might be possible to include some periods toward the end of the exercise during which instructors or other students could offer individual critiques of bargaining tactics, styles, or behavior.<sup>34</sup> Videotape could be used as an adjunct to this process.<sup>35</sup> Additionally, students might be encouraged to reflect on the personal feelings that they encountered as certain roles were played, often for the first

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<sup>34</sup> Such feedback is, of course, the hallmark of clinical legal education. See, e.g., Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 80, 87 (1979).

<sup>35</sup> *Id.* at 109-10. Videotapes aid students by providing them with opportunities to study pre-recorded materials and later analyze their own performance.

time. Two days in the role of an advocate often generate surprisingly strong feelings of competitiveness or aggression.

As presently designed, however, this simulation provides little opportunity for either feedback on interpersonal advocacy skills or an extended discussion of personal feelings. The reason for this is not that these matters cannot be or should not be included in the educational curriculum,<sup>36</sup> but simply that time would not permit such events without either sacrificing other important goals or lengthening the simulation. An instructor who wants to include these elements might consider lengthening the exercise by one day, and providing two substantial sessions (one after the mark-up and one between the floor debate and the plenary review) in which these elements would be the principal agenda. If the exercise is run as set forth in these materials, with one instructor for sixty or more students, it will not be possible for the instructor to provide individual review or conversation with each student during those sessions, so students might be matched with one or two other students with whom they have had significant interactions. The instructor might provide sample questions to help initiate a process of self-criticism or peer feedback.

A third significant issue is that of freedom versus control. The designer of a simulation must decide the extent to which students should be encouraged to perform tasks in the way the designer or the instructor believes to be correct,<sup>37</sup> and, conversely, the extent to which students should be free to make "mistakes" which can be discovered only after their actions have had adverse consequences, or when the exercise is reviewed at its close. For example, the rules of the simulated House, like those of the actual House, provide that a committee does not have a quorum unless at least one member of the minority party is present. It may happen that the members of the minority overlook this rule, and although frustrated by actions of the majority, they may not realize that it is possible to bring the proceedings to a halt by organizing a walkout and arranging for an ideologically compatible member of the majority to suggest the absence of a quorum. The designer of a simulation must decide whether to highlight this or other rules by suggesting that they be discussed before

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<sup>36</sup> See Meltsner & Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978) for a discussion of an educational design that includes significant amounts of time devoted to these interpersonal matters.

<sup>37</sup> This encouragement would be channelled through the use of the rules of the simulation, by the internal rules of procedure, and by the instructor's intervention.

the simulation begins, or by encouraging instructors to call the rule to the attention of the players if and when they overlook it during play. Highlighting in either manner would increase the likelihood that all students would behave like real legislators and would therefore increase the verisimilitude of the simulation.

The design of this simulation leans strongly in the opposite direction, constraining the instructor to a very limited type of intervention, and encouraging him or her to limit the number of such interventions. Underlying this restraint is the notion that students will learn best if the consequences of their actions are revealed to them by the course of events, rather than as messages from "on high," even if the result is somewhat painful or delayed. In most cases, the failure to adopt a good strategy will be taken advantage of by other players, and the student who misses an opportunity, or who makes a false move, will learn significantly from the mistake. In the simulation, errors tend to be self-correcting.<sup>38</sup>

This aspect of the simulation, however, does not always work. Sometimes an entire group of students will, for a substantial period of time, ignore a major rule or event. For example, all of the liberals on the committee may forget their roles in the excitement of reaching an agreement, or the entire committee may downplay unrealistically the significance of an emerging scandal in order to avoid diversion from legislative business. For this reason, the instructor is given the opportunity, described more fully below, to intervene in the interest of injecting a limited number of surprises, or of pressing the students to act more realistically.

### *The Roles of the Instructor*

An instructor who believes in the value of students learning by observing the consequences of their own actions (particularly in a simulation where the real world consequences of error are minimized) must play a very different role during the simulation than he or she is used to playing in the classroom. The instructor must hold

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<sup>38</sup> An important aspect of student freedom from manipulation is the explicit understanding that they are not required to pass a bill. This presents no problem in the case of legislation defeated on the floor, for the exercise is over at that point anyway. Failure to report any legislation from committee to the floor would be a more serious problem as it could prevent the participants from having anything to work on the next day. The rules, however, provide for a discharge petition, enabling players to resolve such a problem within the context of the game, without intervention by an instructor.

back, avoiding the impulse to dash forward and tell the students how to act to achieve their goals. This is incredibly difficult, for an instructor often has a much clearer understanding than do the students of how to achieve a particular goal. The instructor may also regard passive observation for most of a two-day period as an abdication of faculty responsibility for education.

Keeping in mind a few principles and tasks may help an instructor avoid feeling frustrated by the constrained role that the simulation imposes. First, it may be helpful to think of administering a simulation as akin to making a fine clock keep time. The real work is setting up the mechanism, and since success is measured by how infrequently a repair is needed, the instructor who is not called upon to intervene can take pride in having put together a learning project where much self-teaching is being accomplished. Second, the instructor does not remain passive during the operation of the simulation. The instructor performs all of the necessary administrative tasks, such as refilling the copying machines and replacing typewriter ribbons. Trivial as these may seem, they are most essential to the smooth running of the exercise. If the instructor did not do them, students would occasionally be diverted from the much more important task of learning in order to attend to the equipment.

Third, the instructor observes carefully, taking copious notes that will be used for feedback during the classroom analysis session that ends the exercise. Fourth, the instructor intervenes occasionally in specified roles by sending notes to one or more participants in the exercise. Finally, the instructor presides at the analytic classroom session, one that is likely to be as lively and exciting as any he or she has ever taught.

### *Evaluation of the Exercise*

This user's impressionistic judgment suggests that the exercise can succeed in achieving most of its goals. Students vary in the degree to which they accept immediately the concept of role-playing. By the middle of the second day, however, nearly all students take the exercise very seriously, so that it becomes totally involving. This high level of motivation leads them to study the issues and the rules, and to learn to manipulate the legislative process with far greater intensity than that with which they approach traditional cases and other legal materials.

Student responses on an anonymous evaluation questionnaire confirmed these impressions. The questionnaire included opportunities for students to give the exercise an overall rating and to offer any commentary they wished to provide. The rating was phrased as follows: "Overall, how valuable was the simulation as an educational experience?" The results suggest a strongly favorable reaction:

| <u>Response</u>   | <u>Number</u> <sup>39</sup> |
|-------------------|-----------------------------|
| Very valuable     | 65                          |
| Valuable          | 50                          |
| Unsure            | 7                           |
| Not valuable      | 6                           |
| Counterproductive | 1                           |

The narrative comments also reinforced the subjective view that the exercise offered more than the students might have gotten from exclusive reliance on readings. This is a sample of the reaction:<sup>40</sup>

I began the simulation with the idea that I probably wasn't going to learn anything I didn't already know because of my poly. sci. background and experience as a state senate intern. However, it was much different to be the person on the hot seat! And I learned emotionally what I had only known intellectually before.

I feel this simulation was one of the most enlightening and valuable learning experiences I have had. . . . Although [the course readings] were informative, actual participation is ten times more valuable a learning experience.

I went to the simulation with many reservations. I thought people would be ill-prepared and uninvolved. The reverse, fortunately, was true. I loved the simulation—it was a lot of fun and tied many elements of the class together as did [the] Oleszek [book]. It also brought me closer to my classmates. I think you could easily call it a great success.

The simulation provides in three days a real appreciation for what the Congressperson encounters in attempting to pass legislation. You experience first hand the numerous considerations the Congressperson must balance in legislating and the pressures the Congressperson feels from constituents, the current administration, other party members, etc. In short, an invaluable experience.

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<sup>39</sup> This column combines survey results for 1981 and 1982. The rate of response was slightly above fifty percent.

<sup>40</sup> The question here was, "Please use this space to make any comments you want to about the simulation."

Student enthusiasm notwithstanding, the simulation can be criticized from several different perspectives. First, like most intensive simulations, it demands a substantial amount of faculty time. In this case, it requires a modest amount of attention to preparation of materials, and full attention of a faculty member for two and one-half days.<sup>41</sup> Similarly, it demands a substantial time commitment from students, for although the students' time is concentrated, most of them must rule out other classes and activities during the exercise.

A second problem is that the simulation is not a full replication of the Congress, or even of the House of Representatives. Trying to fit the action within a two and one-half day time frame requires limiting the simulation to one House (eliminating the possibility of conferences to reconcile conflicting bills), and eliminating such aspects of House structure and procedure as a multi-member Committee on Rules, elected party leaders and disciplinary machinery,<sup>42</sup> and overlapping bill calendars. The time limits also preclude dealing with legislation concerning more than one subject, which would create opportunities for logrolling involving both subjects. An instructor could, however, modify the simulation by adding half a day to the floor debate and feeding bills from two committees, each dealing with a different subject, to the same floor.<sup>43</sup>

Finally, it is reasonable to ask whether the simulation accurately reflects the nature of the political process in the House, or only its designers' particular perception of that process. For example, it is evident from the roles that the designers believe that members of the House are motivated largely by a desire to ingratiate themselves with constituents in their particular districts, and very few members act primarily to serve either ideological interests, or particular industries or firms. The case materials, which emphasize conflict among different kinds of geographically based interests, such as cities and states, reinforce this model. To the extent that the designers' view as reflected in the materials is inaccurate or oversimplified, the simulation may be a well-executed lesson in an erroneous view of Congress. Assigning students to read alternative

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<sup>41</sup> More precisely, while the simulation is running it requires the attention of one faculty member for each 60 students.

<sup>42</sup> The Committee chairperson and other party leaders in the simulation have less power than they do in the real House because legislators and executive branch officials do not have to keep coming to them for favors on other matters.

<sup>43</sup> This modification would mean that half of the members on the floor would be totally unfamiliar with the legislation on which they would have to vote almost at once, a not inaccurate simulation of the reality of the House.



models of Congressional behavior could reduce this bias, but if, as students report, the simulation is a more powerful learning device than most books, reading about alternate models might supply only a partial corrective.

### ***Conclusion***

The simulation and instructor's manual printed on the following pages are materials through which Congressional process can be taught to many students in a short time frame. Experience with these materials, first in connection with the training of members of the Senior Executive Service of the federal government, and then in the teaching of first year law students, suggests that they are well received by those who use them and that they induce high levels of motivation and learning. The materials were not designed, however, to be a student's exclusive source of information regarding the Congress, and are best used in conjunction with readings, lectures, or other exercises that will fit this exercise into a larger framework for analysis of the legislative process.