



## Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

### Workshop

### 6D

## Making Simulations Real: Using Simulations to Teach Doctrine, Skills and Professionalism Across the Curriculum

### *Julie Goldscheid – CUNY School of Law*

Julie Goldscheid is an associate professor of law at CUNY School of Law, where she teaches subjects including contracts, civil procedure, lawyering, equality, and gender, psychology and law. She has taught at both Penn State-Dickinson Law School and Brooklyn Law School, and taught sex discrimination law at NYU School of Law. Before joining the CUNY faculty, she was on the legal staff of Legal Momentum (formerly NOW Legal Defense and Education Fund); her last position there was Acting Legal Director. She spearheaded the organization's legal work to end violence against women, which included defending the constitutionality of the civil rights remedy of the 1994 Violence Against Women Act in numerous courts nationwide, and before the U.S. Supreme Court in *United States v. Morrison*.

She subsequently served as General Counsel of Safe Horizon, a leading victim assistance, advocacy, and violence prevention organization, where she oversaw its domestic violence and immigration law projects, as well as the organization's policy and governance matters. She has written widely about violence against women and women's equality and has been active in organizations, including the ABA Commission on Domestic Violence and various committees of the Association of the Bar of the City of New York. She is a former member of the board of directors of the Stonewall Community Foundation, the Hetrick Martin Institute and the NYC Lesbian, Gay, Bisexual & Transgender Community Center, and continues to serve on several related advisory committees. Prof. Goldscheid clerked for Justice Gary Stein of the Supreme Court of New Jersey, and was an associate at Sonnenschein, Nath & Rosenthal before joining NOW LDEF). She received her J.D. from NYU School of Law, where she was honored by the Law Alumni Association, her M.S.W. from Hunter College School of Social Work, and her B.S. from Cornell University.

### *Jenny Rivera – CUNY School of Law*

Professor Rivera is a professor of law at the City University of New York School of Law and the director of the law school's Center on Latino and Latina Rights and Equality. She teaches Administrative Law, Civil Procedure, Property, Antidiscrimination Theory, and Latinos and Latinas and the Law, and has published several articles on civil and women's rights. Before joining the CUNY faculty, Professor Rivera practiced law as a civil rights lawyer in New York. Professor Rivera recently served as special deputy attorney general for civil rights for the New York State Attorney General. In this position she assisted in the development and implementation of the Attorney General's civil rights agenda, supervised the Civil Rights Bureau and organized and held statewide outreach sessions on civil rights issues.

Professor Rivera received her A.B. in history from Princeton University, her J.D. from New York University School of Law, and her LL.M. from Columbia University School of Law, where she concentrated on Constitutional and Feminist Theory. Professor Rivera has served as a *Pro Se* law clerk in the Second Circuit Court of Appeals and clerked for Judge Sotomayor in the Southern District of New York. She has also worked for the Homeless Family Rights Project of the Legal Aid Society, and the Puerto Rican Legal Defense and Education Fund, a national civil rights organization. Professor Rivera's legal practice work has included education and employment discrimination, equity and testing issues, gender equality and language rights discrimination, and housing rights.

**MAKING SIMULATIONS REAL:  
USING SIMULATIONS TO TEACH DOCTRINE, SKILLS AND  
PROFESSIONALISM ACROSS THE CURRICULUM**

**2009 Summer Conference of the Institute for Law Teaching and Learning  
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**The following materials summarize two approaches to simulations used in conjunction with first-year lawyering seminars and civil procedure classes at CUNY Law School. The final document is a sample planning template that can be used as a tool for developing simulations in other courses. We welcome your feedback.**

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**Summary of Professor Rivera's Simulation Materials**

**Simulation**

The simulations used in the civil procedure class rely on problems related to a substantive area of law and the procedural steps in developing a case. The simulation is timed to run parallel to a linked Civil Procedure class that I teach which reinforces the procedural issues raised by the simulation. During the simulation the students are assigned reading materials in the lawyering class that provides the information necessary to handle the various requirements of the simulation. At different times during the simulation the students are given written instructions and documents that lead them through the case. These materials include instructions for role-playing during negotiations and conference appearances, as well as a fact sheet and a judicial opinion. The different components of the simulation change but the main components are described below. The students have other exercises during the semester that are graded in addition to the actual simulation.

- A. Interview Exercise: The students begin the simulation with an interview exercise in which all of the students play the role of attorney or prospective client. None of the students know what the problem will be until we meet in class and I provide a brief verbal description to the students who will role play the prospective client. The problem involves an employment discrimination case, under Title VII, based on an English-only workplace rule and alleging national origin discrimination. This exercise is not graded.
- B. Client Letter Exercise: The students discuss as a group the interviews and the type of information they believe they still need to determine how best to proceed. They draft a letter to the client requesting additional information. I provide written feedback on the letter. This exercise is not graded.
- C. Law Office Exercises: The students are provided with a closed universe of research materials and then proceed to meet for the next

few classes in role as attorneys for a legal services office who are meeting to discuss whether to take the case. We go through two meetings in which the students discuss the interview, the research, and additional information they would need to reach a decision. These exercises are not graded.

- D. Legal Discussion Exercise: The students are then provided with a draft complaint which their office has filed on behalf of the client. The students then closely read the cases and materials provided and work individually or in groups (this is their choice), but during class sessions meet in role as attorneys in a law office to discuss the statutes, cases, rules and its application to the plaintiff. During the last session the students are provided with an instruction sheet for a status conference with the judge. This exercise is not graded.
- E. Status Conference Exercise: The students are randomly paired up for a status conference meeting with the judge. I play the judge and during the conference ask the students what the case is about and what they think are their best arguments. The conference closes with me stating I expect a motion to dismiss and ask the students for a brief description of the potential arguments. This exercise is not graded.
- F. Negotiation Exercise: The students receive an instruction sheet stating that the motion to dismiss has been filed and is pending. It also states that the parties have decided to meet for the first time to discuss settlement. The students are randomly paired off into teams of plaintiffs and defendants counsel. They are taped during a 30 minute negotiation session which we then immediately discuss using the tape to highlight the strengths and weaknesses of the negotiation approaches. This exercise is graded and is worth 5 pts.
- G. Research Exercise: The students are provided with an opinion deciding the motion to dismiss. They are then told to prepare a brief in support of an appeal for the court's decision on the motion. They then spend several classes in role as counsel doing additional research, which they may do individually or in teams. When we meet in the class we discuss the cases and potential arguments for both sides. The court opinion is written in a way to raise procedural questions about the standard applied by the district court to the motion to dismiss. The students must also research the proper standard of review for the Circuit Court on the appeal. This exercise is not graded.
- H. Brief Writing Exercise I: The students write a draft of the brief, representing plaintiff or defendant. Again they are randomly assigned to either side. I review the draft and provide extensive written and verbal feedback. This exercise is graded and is worth 30 pts.
- I. Brief Writing Exercise II: The students meet to discuss as a group the substantive area and writing issues that come up based on their

submission. The students then do a redraft of the brief. This exercise is graded and is worth 10 pts.

- J. Oral Argument: The students are randomly assigned to an oral argument slot, but represent the side they represented on the draft of the brief. The students appear before two judges who are members of the faculty. This exercise is graded and is worth 10 pts.

**SAMPLE INSTRUCTIONS:**

**TO: SEMINAR B**

**FROM: PROFESSOR JENNY RIVERA**

**RE: SAMUELS V. HAIR DESIGNERS CO. MOTION TO DISMISS**

**DATE: JANUARY 27, 2006**

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The Defendant's memorandum of law in support and the Plaintiff's memorandum of law in opposition to a motion to dismiss the complaint in Samuels v. Hair Designers Co. are due Friday, February 17, 2006, at 12:00 noon, at the beginning of the day's Lawyering Seminar session.

Each person will be randomly assigned to represent the Plaintiff or the Defendant. Each side must argue the following issues on behalf of their client:

1. the proper standard for a motion to dismiss under F.R.C.P. 12(b);
2. whether Title VII's fifteen employee requirement is jurisdictional; and
3. whether the complaint sets out claims for relief in compliance with the law and the Federal Rules of Civil Procedure pleading requirements

This articulation of the issues is not necessarily the proper articulation for your questions presented. Rather, these are the issues that must be addressed in the memorandum of law on the motion to dismiss.

Your assignment packet and the Civil Procedure course textbook and supplement provide your entire research universe. You may not do additional research. You may work together or independently, and you may ask questions in Seminar and of me during and outside of class. Each student must write their own memorandum of law and may not seek assistance in the writing of any section of the memorandum of law, other than through discussions in class, or with me outside of class.

You are encouraged to draft an outline and a first draft of the memorandum of law for your own use, before submitting your final draft on February 17<sup>th</sup>.

**IF YOU ARE UNCLEAR ABOUT ANY INSTRUCTIONS RELATED TO THIS ASSIGNMENT, PLEASE ASK ME.**

**Simulation Summary**  
**Julie Goldscheid, CUNY Law School**  
**Simulation used in a “linked” lawyering and civil procedure class**

**Simulation overview:** This simulation is based on a linked civil procedure and first-year lawyering seminar in which the lawyering seminar is focused on advocacy. The linking of civil procedure with a lawyering seminar leverages the synergies between these two courses: the lawyering seminar focuses on the skills involved in representing a client in a civil litigation, and civil procedure teaches the doctrinal rules that govern that same process. The lawyering seminar simulation tracks the topics covered in civil procedure and focuses on case development through exercises including a simulated client interview; strategy sessions focused on the building blocks of a lawsuit; brief-writing on dispositive (FRCP 12(b)(6) and summary judgment) motions; and an oral argument. This simulation is not specific to any particular doctrinal issue, but I have used a hypothetical case in which a high school student alleges she was sexually harassed by a teacher. The class is divided into two groups, one representing the student and one representing the school. The students represent one party on one of the motions drafted, and switch teams to represent their former adversary on the next motion drafted. The simulation provides the foundation for discussion of a range of issues surrounding the development of professional identity, including the meaning and limits of advocacy, each individual’s relationship to potential tensions between personal values and client interests, and the importance of self-knowledge in assuming the role of advocate. Students discuss the range and distinctions between various lawyering roles through reflection on their experience of the role of advocate and the contrasting role of lawyer as counselor.

**Summary of materials:** Students are divided into law firms and are given a skeletal summary of the factual basis of a civil claim, after which they engage in a brief simulated interview and conduct an exercise in which they chart the potential elements of a civil action. They are then provided with a complaint and are required to write a brief on a 12(b)(6) motion to dismiss. They initially receive ungraded feedback on their brief, after which they submit a revised version that is graded. Students then are given additional information positing that the court denied the motion to dismiss. They are asked to assume that discovery has been conducted and are given information about salient facts revealed through discovery. They are told that the trial court granted a motion for summary judgment filed by the defendant and are given a copy of the simulated trial court decision. Students then switch the party they are representing, conduct research on one of the points on appeal, write a brief on appeal of the summary judgment decision, and present oral argument in support of their position. Students receive extensive feedback on their research, on each version of their brief, and on their oral argument. The lawyering seminar class also works on practice problems based on the case files in the Subrin, Minow civil procedure casebook, to complement students’ learning of the rule-based advocacy skills addressed in both classes. In this way, the two classes coordinate their coverage of the same material, although from different perspectives. I am attaching a chart showing how the classes are coordinated.

Sample planning chart: (note that “PE” refers to practice exercises in the Subrin, Minow casebook (“CB”))

<b>Class #</b>	<b>Lawyering class/ exercise</b>	<b>Civ Pro</b>	
1	Intro; review CRRACC (IRAC) -PE 1 (CB 50 – dispute system) – in class	Intro & values of process	
2	Writing, interviewing, advocacy -PE 6 (CB 175 (strategy memo due) - Discuss interviewing (small grp)	Cost of process/ access to lawyers	
3	Interviewing – discuss & practice	Pre-judgment relief	
4	Intro to advocacy	Final relief & atty fees	
5	Persuasive writing; organization; fact statements	Contempt	
6	Point headings, rules, thesis statements	Complaint – doctrine & strategy	
7	Argument: format; PE 7 due (motions)	Answers, motions affirmative defenses	
8	Writing style; editing	Amending complaint; FRCP 11	
9	Drafting; citations; bluebooking	Adding parties; 3 <sup>rd</sup> party practice	
10	Advocacy, continued; PE 10 due (arguing motion to amend)	Review	
11	[conferences]	Discovery	
12	[conferences]	Right to jury in civil cases	
13	Use of facts; PE 17 due (discovery planning)	Summary judgment	
14	Advocacy & strategy; PE 21 (summary judgment motion due)	Dismissals; directed verdict; JNOV	Trial brief due (3/10)
15	Appellate advocacy	Practice Question; appeals; questioning system	
16	Research	Personal Jurisdiction (“PJ”)	
17	Appellate briefing	PJ (con’t.- purposeful avail; commerce; k)	
18	More appellate briefing	PJ (con’t. – personal service; general jurisdiction; consent)	
19	Revising and editing	Notice, venue, FNC	
20	Oral advocacy – prof resp	Subject Matter Jurisdiction (“SMJ”) – fed Q and diversity	1 <sup>st</sup> dft app brf due
21	Atty as judge	Supp. jurisdiction & removal	
22	Moot arguments	Erie	
23	Oral arguments	Claim preclusion/ issue preclusion	
24	Oral arguments	Complex litigation/ class	

		actions	
25	Debrief oral arguments	Questioning the system	Final dft app brf due
26	Advocacy in the everyday	Review	

## **Initial memos to lawyering teams**

### **Memo to plaintiff's lawyers**

Memo from: Senior lawyer

Re: New matter

Date: January 28, 2008

We have just received a call from Patricia Miles, the mother of Tammy Murphy, a student attending school in the Hanover Central School District during the 2004-2--2005 school year. At that time, Murphy was fourteen years old and in the ninth grade. Among other classes, Murphy was taking a Social Studies class from Nelson Peters, a teacher in the Hanover district high school. Mrs. Miles called because she is upset about how her daughter was treated in that class.

Our intake worker took a few notes from his phone call with Mrs. Miles. Mrs. Miles said that Mr. Peters exercised little control over the Social Studies class and made inappropriate comments about her daughter and other female students. After complaining to the teacher, and then to the school superintendent, Murphy and other female students who complained were taken out of Mr. Peters' class. Mrs. Miles did not think that that was a satisfactory resolution and wonders whether she has any legal claims.

We are scheduled to meet with Mrs. Miles next week. Please prepare an interview plan that includes your goals for the interview and a list of questions. We will discuss this at our next meeting. Thank you.

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### **Memo to school's lawyers**

Memo from: Senior lawyer

Re: Inquiry from Hancock Central School District

Date: January 28, 2008

We have just received a call from Dylan Richards, the superintendent of the Hanover Central School District, who was concerned about complaints by the mother of one of their high school students. Richards said that Mrs. Miles' daughter, Tammy Murphy, was a ninth grader in Nelson Peters' social studies class. Apparently, Murphy didn't like some of the things Peters did in class, and complained to him about them. Mrs. Miles then complained to Richards, who commenced an investigation and consequently removed Murphy and her friends from Peters' class. Mrs. Miles apparently is not satisfied with this resolution, and Richards is worried that she might file a legal complaint against him and the school.

In preparation for the meeting we have scheduled with him, please prepare an interview plan that includes your goals for the interview and a list of questions. We will discuss this at our next meeting. Thank you.

## **Simulation Planning Template**

Identify topic focus

Identify learning goals

- Doctrinal
  
- Professionalism
  
- Social justice

Identify/ describe case (vehicle for simulation)

- Exercises:
  
  
- To do:
  - o Identify research issues
  - o In-role instructions