Promoting Good Faith in Court-Ordered Mediation Simulation - Overview
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This is a multi-stage dispute system design simulation of a committee tasked with addressing concerns about bad faith in mediation. It focuses on a dispute over whether a court-connected mediation program should retain a good-faith requirement under local court rules. It includes roles for one or more judge, plaintiff attorney, defense attorney, facilitative mediator, evaluative mediator, business executive, social scientist, and system design consultant.

The facts of the simulation are adapted from an actual case[1] and I wrote an article that provides useful background about dispute system design and good-faith requirements.[2]

The simulation instructions indicate that a controversy arose after the court adopted rules requiring mediators to indicate in their routine reports whether any participants did not participate in good faith. The mediators objected to having to report on bad faith and the court appointed a committee to study the matter and make recommendations.

I first used this as a single-stage simulation and found that students, not surprisingly, wanted to advocate their characters' positions without much data. (Sound familiar?) Indeed, the simulation instructions did not provide much information for them to analyze.

I created a preliminary stage for this simulation in which committee members identify their interests and the kind of information that would help the committee evaluate how well the program satisfies particular interests. I instruct them that the committee will not consider possible recommendations until a second meeting, by which time they will have some data to analyze.

I play the system design consultant and in the first stage, I create a document that is projected onto a screen and lists the various interests and the types of information the committee might want to collect. This is very useful to help students notice where their interests overlap or not. I reframe their statements into general, non-biased statements to maximize the greatest degree of agreement on the interests without trying to suggest that people agree when they do not. Indeed, this is helpful in identifying those interests where the parties differ and which merit further exploration.

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[1]*See* Nick v. Morgan's Foods, 99 F.Supp. 2d 1056 (E.D. Mo. 2000), *aff'd* 270 F.3d 590 (8th Cir. 2001).

[2]*See* John Lande, *Using Dispute System Design Methods to Promote Good-Faith Participation in Court-Connected Mediation Programs*, 50 UCLA L. Rᴇᴠ. 69 (2002).

After the first stage, I circulate a memo to the entire class summarizing hypothetical (but very plausible) data collected from interviews with judges, focus groups with mediators, and surveys of lawyers and parties.

When we meet the second time, we review the list of interests and start with interests about which there is general agreement. Then we brainstorm possible policies that might satisfy those interests and can usually agree easily on many ideas. We then focus on some issues about which there are differing interests and use the data to try to develop recommendations that the entire committee can agree on. There are too many interests to develop a comprehensive set of recommendations, but this gives students a feel for how a dispute system design team might work on policy issues.

When students start the simulation, they usually focus solely on whether they want to retain or repeal the good-faith rule, making very positional arguments and without considering various options that might satisfy their interests. As you can see, I run this simulation by demonstrating how there are multiple interests and options for satisfying the interests.

I usually have about 12-15 students in my class and I run the simulation with the entire class together. It is difficult for students to facilitate the committee discussion, so having students do this in multiple groups would be problematic (unless you have skilled facilitators for each group). Since there are more students than roles, I assign two or three students to each role and give them time to confer before convening the full "committee."

The simulation includes several pages of teaching notes.

If you want copies of the simulation materials or advice about this simulation, email me at landej@missouri.edu.