

# United States Supreme Court Confirmation Simulation: Learning through the Process of Experience

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**ABSTRACT** The traditional process of educating undergraduates is often relegated to the passive lecturing format. One means of engaging students in active learning is through the use of simulations. Students were asked to take on the roles of United States senators and a Supreme Court nominee during a United States Supreme Court confirmation hearing simulation. Each student participated by researching a sitting senator and the nominee selected and engaged in a question-and-answer session as is done in the Senate Judiciary Committee. Students came away from this valuable experience by not only learning a great deal about the operation of the confirmation hearing as well as the substantive material learned but participating in a process that few people will ever actually experience.

**T**raditional pedagogical methods for teaching at the collegiate level often involve a lecture format with students taking a passive role in the process. However, over time, college students and colleges themselves have demanded more from their professors to enhance the student experience. Only fairly recently have college educators recognized the value of simulations and role play as a mainstay pedagogical tool for teaching a variety of subjects, ranging from psychology to political science (Mitchell 2000). “Active learning theory holds that students internalize information best when they are directly involved in their own learning” (Greek 1995; Kunselman and Johnson 2004, 87). For this reason, this instructor chose to include a simulation in a course on the politics of the United States Supreme Court. This article discusses the use of a Senate Judiciary Committee simulation, how it was constructed, its successes and shortcomings as it related to the exercise, and possible improvements to the simulation. In the end, the students gained valuable experience that only a very few people ever have, participating in a Supreme Court confirmation hearing.

## SIMULATIONS AS A PEDAGOGICAL TOOL

The longtime goal of active learning in the classroom is “to make students more engaged and inquisitive learners, more powerful thinkers, and better arguers” (Bean 2001, 181). A substantial body of research on teaching strategies and techniques suggests that

the traditional lecture format alone does not maximize student knowledge or retention of such information (Astin 1985; Baloche 1998; van Assendelft 2006). However, simulations have proven to be useful tools in increasing interest, greater participation in class, knowledge, and connection to course material (Josefson and Casey 2000; van Assendelft 2006). Simulations offer students an opportunity to engage in a variety of student learning styles and experience the subject matter in a dynamic way (Asal 2005; Hertel and Millis 2002; Lantis, Kuzma, and Boehrer 2000; Michael 2006; van Ments 1999; Wedig 2010, 547–48).

Simulations offer students the opportunity to apply course content in an active learning environment, provide a laboratory aspect that is generally missing from political science classrooms, and incorporate opportunities to succeed with a variety of student learning styles. Simulations can often provide motivation for students by offering competitive stakes beyond grades, such as peer recognition and collaborative work environments, while clarifying difficult concepts through active participation (Wedig 2010, 547).

Furthermore, simulations often create a setting for complex, dynamic political processes in the classroom, allowing students to analyze motivations, behavioral constraints, resources, and interactions among institutional actors (Smith and Boyer 1996, 690; Wakelee and Itkonen 2013, 237). However, as noted by Wedig, although classroom simulations can be useful pedagogical tools, they can lose much of their effectiveness if they are not linked to the content and goals of the course. To maximize learning outcomes from a simulation exercise, instructors must carefully

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consider the framework that an exercise be placed to ensure its full integration into the course. Simulations that are not well-integrated into a course risk becoming distractions by breaking the course's momentum rather than reinforcing learning objectives (Wedig 2010, 547).

In political science, a variety of simulations have been used over the years, such as legislative settings (Baranowski 2006; Frederick 2005; Rackaway and Goertzen 2008; Wakelee and Itkonen 2013), elections (Caruson 2005; Mariani 2007), and budgeting (Wakelee and Itkonen 2013). Within the context of international relations, simulations often involve participation in Model United Nations or in simulated European Council negotiations, representing the interests of various countries (Sanders 1996). In the legal context, students who study constitutional law often participate in a simulated mock trial with students taking on roles of the prosecutor, defense counsel, judge, witnesses, and jurors. Likewise, students studying the law may be asked to role play in a moot court scenario with students again taking on legal roles but in an appellate context (see Kravetz 2001). Interactive simulations have also involved having students participate as United States Supreme Court justices and conduct in-depth research on a particular justice. The students/justices are then presented with a docket of cases and are required to decide each case as that particular justice would in light of the substance of the cases and the relevant constitutional principles, provisions, and case law (Hardy, Rackaway, and Sonnier 2005, 441).

Although the legal-oriented simulations clearly add value to the classroom, the exercises noted solely focus on the judiciary and lack a level of integration between the other American political institutions, each of which plays a role in the realm of judicial behavior. Therefore, a simulation was created that specifically

that senators' view as legitimate concerns when confirming or rejecting a nominee to the Supreme Court as well as the nominees themselves. The simulation takes place at the end of the semester after the students have read and discussed various theories of judicial influence. In this way, students take what they have learned in the abstract and apply it to a tangible experience.

The construction of the simulation was fairly straightforward with the goal that the confirmation simulation needed to follow the process used by the Senate Judiciary Committee. However, unlike the real confirmation hearings, the hearing for our class took place on the final two days of the 15-week semester with half the class participating on the first day and the other half of the class on the second day. Each hearing day lasted two hours. Because the size of the class was 38 students, 36 students participated (18 per day) as senators on the committee along with two students acting as the nominee (one per day).

In preparation for the hearing days, a great deal of organization was required on several fronts. One of the first major hurdles to be addressed was the location of the hearing. Our class met in a relatively small room on campus. Although the room could have been used for this purpose, more appropriate options were explored and ultimately the USC Gould Law School Moot Courtroom was secured for the confirmation sessions.<sup>2</sup> The room was large and easily accommodated all 38 students in the class. A table for the nominee was positioned in front of two long tables with nine senators sitting at each. Name placards were created for both the nominee and the senators, which were arranged in advance to help organize each day.

Perhaps the most important aspect of the confirmation hearing was selecting the student leadership for the simulation. Rather than merely assigning out roles, volunteers were taken. A brief

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#### **GOAL AND ORGANIZATION OF THE SIMULATION**

The Senate Judiciary Committee simulation was incorporated into a political science class dealing with judicial behavior.<sup>1</sup> In particular, the course focuses on various influences that affect justices on the United States Supreme Court. The first half of the course discusses the concept of law (pre-positivism, positivism, post-positive theories) along with the role that the Supreme Court plays in policy-making. Students then delve into the various theories of judicial behavior, including legal model, attitudinal model, strategic model, and historical-institutional model. The second half of the semester deals with the politics of Supreme Court appointments, the court's agenda-setting power, the impact of Supreme Court decisions, extra-judicial influences (amicus curiae and public opinion), and concludes by examining whether the Supreme Court is capable of making any significant social change in society.

With this structure in mind the simulation was integrated into the course to give students a real-life sense of the type of factors

questionnaire was placed on the back to the midterm exam that asked students (1) would you be willing to be the nominee during the simulation and (2) would you be willing to be either the majority leader or ranking minority member. Students were informed ahead of time that taking a leadership position required additional time on their part in terms of research as the nominee or organization of the senators. Numerous student volunteers came forward, and their selection was based on the students' active involvement in the class up to that time.<sup>3</sup>

The goal of organizing the students' roles was to maximize the opportunity for producing an actual confirmation atmosphere. First, the real-life person for our nominee had to be selected. It was crucial that the nominee be a well-known public personality so that the students who played the role could easily obtain the necessary research on the person and gain a complete understanding of that individual's positions on various policy issues. Likewise, it was equally important that the senators could complete the necessary research on the nominee to craft productive questions. Hillary Rodham Clinton was selected for this purpose. A tremendous amount of information has been published on Ms. Clinton as well as material written by her. Additionally, Ms.

Clinton is a rather controversial personality in politics, which added a level of interest to the hearing.

In addition to selecting the two nominees, four senators were selected to assist in organizing the simulation (two majority leaders and two ranking members). These individuals took the roles of the actual majority leader and ranking member on the Senate Judiciary Committee. Likewise, all of the participating senators were assigned a particular senator on the committee.<sup>4</sup> The four senate leaders were entrusted with organizing and working with the senators so that each senator understood the policy issues to be discussed and the specific sub-areas for discussion. Six policy issues were identified for discussion on each hearing day. Three senators were assigned to each policy issue. Key to this endeavor was avoiding repetition of questions by the senators. During a series of meetings, the majority leader and the ranking member for each day worked together with each group of senators to split the issues to be addressed.<sup>5</sup> Although the instructor selected the six broad policy issues to be discussed each day, the senate leadership was responsible to work with each group of senators so that the senators knew their specific area of questioning. Beyond the organizational meetings with Senate leadership, each group of senators was required to hold at least one meeting to coordinate questioning.

The senators were not only responsible for researching the particular policy area that they were going to question the nomi-

nee, but they also had to research their own senator so that they understood the actual senator's stance on the issues being discussed. The hope was that senators would embody their senator in questioning Ms. Clinton during the hearings. Likewise, the student nominee was to take on the stance and personality of Ms. Clinton during the hearing. Three days prior to the hearing, each senator was required to submit a list of 10 questions that they could draw on for the hearing. For grading this exercise, the written questions were worth 5% of the students' overall grade and their oral presentation was also worth 5%.<sup>6</sup>

time to bring greater continuity to the hearing. After all three senators for a particular policy issue finished their questioning, the majority leader moved to the next group of three student senators on a different issue. Each senator was allotted five minutes to question Ms. Clinton. Throughout the simulation, the senators and the nominee engaged in a free dialogue about various issues. Most of the time, the senators were cordial to the nominee within degrees, often depending on whether the senator was a Democrat or a Republican. However, on a couple of occasions, some of the senators clearly were not supportive of Ms. Clinton and actively pressured her to make certain admonitions. The majority leaders were instructed that the senators were not to break character during the hearing. Likewise, the instructor would not interrupt the hearing. Any unruly behavior would have to be controlled through the committee chair. As it turned out, only one of the majority leaders had to gavel the committee into order on a single occasion. During the hearings, a nonparticipant for each day was in charge of managing the time and used a yellow card (1-minute remaining) and red card (0-time remaining) to regulate the timing of the question-and-answer session.

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At the conclusion of the two days of testimony, a formal vote was taken to determine whether to send the nominee to the full Senate with the recommendation of the committee, rejection of the committee, or no recommendation at all. In reality, each of the senators would have been given the opportunity to make a statement in support for or against the nominee before the vote takes place, but because of time restraints these statements were not possible. At that point, the day-one majority leader of the hearing polled the day-one senators by voice vote with 13 student senators voting to support Ms. Clinton and four votes against.<sup>7</sup> The day-two majority leader did the same, and those senators voted 15 in favor of recommending confirmation with four votes against. Following the vote, the class came together for a debriefing so that the students could reflect on the process and the usefulness of the exercise. Clearly, participating in a Supreme Court confirmation hearing was a useful experience for the students who had previously only read about the process. The instructor likewise learned a great deal from both the experience and the student comments, which will help improve the experience in future years.

#### CONDUCTING OF THE SIMULATION

To lend authenticity to the hearing, both student nominees and Senate leadership watched portions of real confirmation hearings on-line so that the proper procedures would be followed during the simulation. The majority leader opened the hearing, as is done in the actual hearing, with the swearing-in of Ms. Clinton. Thereafter, the majority leader offered a brief five-minute introduction of the nominee followed by a five-minute opening statement by Ms. Clinton. Similarly, on day two of the hearing, the nominee was given time to make a five-minute closing statement followed by closing remarks from the majority leader. Obviously, the time for these statements was limited because of time restraints for the simulation.

The majority leader for each day organized the order of questioning by the senators. Because three senators were assigned to each of the policy issues, the policy areas were discussed one at

#### BENEFITS AND SHORTCOMINGS OF THE SIMULATION

A number of benefits resulted from this exercise. As noted earlier, after the simulation was completed, a debriefing was held. After taking oral comments, students completed an anonymous questionnaire about the effectiveness of the simulation. Of the 38 responses, not a single student suggested the simulation was not a productive experience. In particular, the vast majority of the comments indicated that they enjoyed the process of both preparing for and conducting the questioning of the nominee. Likewise, many students commented on their newly found appreciation for

the amount of time and effort that is needed to organize and prepare for conducting such a hearing. Students had to contemplate ways to question the nominee to elicit the type of information they were interested in gaining. Students also experienced a concept that was studied during the semester known as “stone-walling.” Stone-walling refers to nominees that avoid answering certain questions by offering vague answers or simply refusing to answer certain questions altogether (see Minor 2013). Stone-walling has become common in confirmation proceedings so it was interesting to see how students dealt with that practice.

Although the stimulation was overall viewed as successful, some shortcomings were identified. Because of the structure of the class and the amount of substantive material that must be covered throughout the semester, the simulation took place in the final two class periods of the semester, thus time was a constraint. The actual senate judiciary hearings are conducted over a much longer period. Likewise, students were constrained by only questioning the nominee for five minutes. It was not uncommon during the stimulation for students to enter into a dialogue with the nominee only to have the discussion cut due to time. This experience frustrated some students, as they could not cover many questions in five minutes.

An additional limitation of the simulation was that students were not experts on various policy issues and had to learn a great deal of information in a short time. At first blush, this sounds like a benefit of the entire experience, however, students dealt with

allowed for the senators to ask their questions. Five minutes was simply not sufficient to allow students to not only ask all their questions but also to allow the senators and nominee to engage in dialogue during the hearing. That being said, it is not feasible to allow each senator more than a 10-minute maximum with a class size of 38.

Finally, the instructor and each policy group must hold mandatory meetings outside of class to better prepare the students on the various policy issues. During the semester, the instructor was accessible to the students for any questions, but only a few students took advantage of this opportunity. By scheduling at least two mandatory meetings between the instructor and each policy group, the senators can quickly learn more about the issues that will be discussed and how best to breakout the question areas among the senators. By giving the senators an overview of the issue, the senators will be able to quickly conduct the necessary research that will result in a more effective question-and-answer session.

## CONCLUSION

English preacher and writer John Bunyan wrote, “Nothing teaches like experience.” Truer words have never been spoken. In a day and time when information is at the fingertips of every student, educators must do more than simply follow traditional pedagogical methods. It is time to engage our students in real-life experiences, and simulations are one means of achieving that goal. By having students place their feet in the shoes of our countries most

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legal concepts that were beyond their knowledge. In the end, the students’ lack of depth on many issues hampered some of the questioning and effectiveness of the responses. Lastly, a significant burden was placed on the nominees to learn a great deal of information as opposed to the individual senators. Each of the senators learned a finite amount of information about the nominee and their particular senator on one specific policy issue. The nominees, in contrast, conducted a great deal of research to not only understand six policy areas but also Ms. Clinton’s position on each of those policy areas. Fortunately for this class, both nominees were up to the challenge and worked diligently to gain the information necessary to allow for a productive hearing. That said, the burden was clearly taxing on the nominees, some of which must be alleviated in future simulations.

## IMPROVING THE SIMULATION

On the whole, the Supreme Court confirmation simulation clearly achieved a great deal, but further refinement must be considered. One possibility would be to allow each nominee to have a team of two students to assist in the preparation of the research for the hearing. Allowing a small group of students to conduct the research would clearly assist in lowering the burden on the nominee. Presumably, the two students assisting the nominee with the research would not take on a role as a senator. Second, more time must

powerful people in Congress, students gain an entirely new appreciation for the process of selecting judges to the highest court in the land. In doing so, they not only learn valuable information that they will retain for a time but an experience that they will remember forever. ■

## NOTES

1. Although the simulation was used in a course dealing with judicial behavior, instructors might find this simulation equally applicable in other law-related courses, such as constitutional law, to the extent those courses deal with extra-judicial influences on judicial decision-making.
2. The USC Gould School of Law has been extremely generous with allowing my classes to use their facilities.
3. The class was informed that any student who participated in being either a nominee or senate leadership would automatically be given full credit for the simulation.
4. At the time of the simulation, there were a disproportionate number of male senators to female senators on the actual Senate Judiciary Committee (16 males, 2 females). The instructor opted to substitute in a number of female senators onto the committee to avoid female student senators taking on the role of a male senator.
5. The policy issues were set out as follows:

Day 1: Experience of the nominee, power of Congress to regulate healthcare, presidential power (war), freedom of speech, gun control, death penalty.  
Day 2: Establishment of religion, free exercise of religion, same-sex marriage, right to abortion, states rights to regulate immigration, affirmative action.



6. The students were required to incorporate the research they conducted on their senator as well as nominee into their final research paper for the class (10 to 12 pages in length).
7. On day one of the simulation, one of the students was sick so she was moved to the day two of the hearing.

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