

# NEGOTIATING POLICE REFORM

*Cynthia Alkon\**

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## INTRODUCTION

In the summer of 2020, after the murder of George Floyd, the national conversation around police reform intensified and was

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\* Professor of Law, Director of the Criminal Law, Justice, & Policy Program, Texas A&M University School of Law. Thank you to Russell Weaver and the participants at the 2023 Criminal Procedure Discussion Forum at the University of Louisville, Louis D. Brandeis School of Law for their useful discussion on this paper. Thank you also to Noam Ebner, Andrea Kupfer Schneider, and Nancy Welsh.

part of a conversation with students at Texas A&M University School of Law. Students wanted more discussion and teaching about police, police misconduct, police reform, and defunding the police.<sup>1</sup> Following those discussions, I created a simulation on local level police reform that, as of this writing, I have used twice in my negotiation class. Simulations are helpful teaching tools in a variety of settings, including law schools.<sup>2</sup> Simulations can be particularly useful to help students discuss difficult topics in different ways by putting students in roles that demand that they go beyond their own views and that they put themselves in the shoes of others.<sup>3</sup> I wanted an exercise that would help students to discuss police reform, police funding, and the issues of race that are

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<sup>1</sup> Students also wanted more intentional conversations and teaching around race and systemic racism in the criminal legal system. All of us who teach criminal law made efforts to include more of these discussions in the class (although all of us already were including these topics in a variety of ways).

<sup>2</sup> See, e.g., Daniel Druckman & Noam Ebner, *Enhancing Concept Learning: The Simulation Design Experience*, in VENTURING BEYOND THE CLASSROOM: VOLUME 2 IN THE RETHINKING NEGOTIATION TEACHING SERIES 269-72 (Christopher Honeyman et al. eds., 2010) (reviewing the value of simulations as teaching tools, finding that students who learned through simulation retained the material longer than student learning through other teaching methods and that students are more motivated when doing simulations); Noam Ebner & Daniel Druckman, *Simulation Design for Learning and Assessment*, in ASSESSING OUR STUDENTS, ASSESSING OURSELVES: VOLUME 3 IN THE RETHINKING NEGOTIATION TEACHING SERIES 139 (Noam Ebner et al. eds., 2012) (discussing the value of students creating simulation exercises to further enhance learning); David Matz & Noam Ebner, *Using Role-Play in Online Negotiation Teaching*, in VENTURING BEYOND THE CLASSROOM: VOLUME 2 IN THE RETHINKING NEGOTIATION TEACHING SERIES 293 (Christopher Honeyman et al. eds., 2010) (discussing using simulations in online negotiations). But see Daniel Druckman & Noam Ebner, *Games, Claims, and New Frames: Rethinking the Use of Simulation in Negotiation Education*, 29 NEGOT. J. 61 (2013) (discussing criticism that simulations are overused in negotiation training and courses).

<sup>3</sup> Andrea Kupfer Schneider, *How Does DSD Help Us Teach about Community Conflict (and How Can Community Conflict Help Illustrate DSD?)*, 13 U. ST. THOMAS L.J. 370 (2017) (for a longer discussion on the value of using simulations to discuss difficult topics, including the killing of Michael Brown in Ferguson, Missouri); see also Noam Ebner & Yael Efron, *Using Tomorrow's Headlines for Today's Training: Creating Pseudo-Reality in Conflict Resolution Simulation-Games*, 21 NEGOT. J. 377 (2005) (discussing the opportunities and challenges posed by using simulation to teach hot-topic, controversial issues about which people hold sharp viewpoints, discussing methods for facilitating constructive participation and perspective-taking, and introducing the pseudo-reality approach to such simulations, in which teachers adapt reality to ensure a successful learning experience).

wrapped up in these topics in a different way.<sup>4</sup> In this short essay, I will explain the simulation, how I have used it in class, how it can be used to stimulate discussion around police reform, and some of the lessons I have learned in terms of how to conduct and organize this simulation.<sup>5</sup>

## I. THE SIMULATION

### A. *The Basics*

This is a multi-party simulation where students are assigned to play a role in a community meeting on police reform. There are a total of twelve roles intended to represent the various groups and individuals who may be involved in local level discussions about police reform. The elected or governmental roles are the Mayor, the District Attorney, the Police Chief, and the Public Defender. One student is assigned to be the Police Union President. There are five community groups that can each have multiple students assigned. Three of these groups are community organizers dedicated individually to police defunding, to improving mental health services, and to better public safety. There is a fourth group that consists of community leaders from a wealthy neighborhood and a fifth group consisting of concerned parents. There is also a role for faith leaders. Finally, two or three students are assigned to the role of facilitators, the neutrals who are responsible for leading the meeting.

### B. *Roles Assignments and Preparation:*

Students are assigned their roles at least one week in advance of the simulation and are instructed to be prepared to begin the

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<sup>4</sup> The general information for the simulation that is distributed to all participants is included as Appendix A. I am happy to share the individual roles with anyone who is interested in using this simulation in a training or classroom environment. Please send me an email at Texas A&M University School of Law (my email address is on the website).

<sup>5</sup> I am including student observations about this simulation drawn from the assigned written Exercise Summaries (see Section ID for additional information about the written assignment). To preserve anonymity, I have combined the exercise summaries from both classes, over a two-year period, and randomly assigned each simulation a letter designation (ex, "Student A"). I have also removed any identifying information in the statements that I am quoting in this article.

simulation at the beginning of the class when it will be conducted. I have done this negotiation towards the end of the semester in my negotiation class. This means that students already have had multiple negotiations where they have had to assume a particular role so they are familiar with this kind of simulation exercise. If this simulation is planned in a class that has not already done simulations, it is useful to explain to students how simulations work. This explanation should include that students should stay in their role during the simulation itself and that they should be as true to the role they are given as possible.

In addition, students may need instructions on how to prepare for the negotiation. They should be instructed that the information they have about their specific role should not be given to anyone else, but they are welcome to share any information contained in the role in the process of the simulation and in preparation with other students. If this exercise is being done in classes that have not already discussed preparing for negotiation, it might be useful to include negotiation preparation forms and reading about negotiation preparation.<sup>6</sup> Students will need to spend time doing the assigned reading and additional time preparing for the negotiation/simulation itself. Students who are in a group playing the same role (such as community members focused on improving mental health care, or religious leaders) should meet with each other in advance of the class. They do not need to agree on how to play their roles, but they should know what the others in their role are intending to do. Some students have decided that they are in broad agreement and that they will have a designated spokesperson for their group for the negotiation.

The students who, arguably, have the toughest job of preparation, are those assigned to the role of facilitators. The facilitators are responsible for setting the agenda, setting ground rules (or leading a discussion to set ground rules), and determining the physical set-up for the meeting, including the location. Facilitators often conduct meetings with parties in advance of the

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<sup>6</sup> See, e.g., CARRIE MENKEL-MEADOW ET AL., *NEGOTIATION: PROCESSES FOR PROBLEM SOLVING* 91, 91-113 (3d ed. 2021) (the Teacher's Manual section of this book contains examples of negotiation preparation sheets); LEONARD RISKIN ET AL., *DISPUTE RESOLUTION AND LAWYERS: A CONTEMPORARY APPROACH* 137-70, 175-85 (6th ed. 2019) (discussing fundamental concepts and preparation, respectively).

joint meeting to learn what the issues are and as part of the process of preparing for the multi-party negotiation or community meeting, and the student facilitators are instructed that they can also do these pre-negotiation meetings. The students that I assign to this role have not had previous experience as facilitators, and I offer to meet with them in advance of the class to discuss any questions they have and to assist them in their planning for the meeting.

### *C. Logistics:*

This simulation is a large multi-party negotiation where an entire class of approximately twenty students conducts the simulation together as one group. If it is a large class, with more than thirty students, students will not be able to participate unless it is divided into smaller groups (of fifteen or more). I allow the facilitators to decide where they want to conduct the negotiation. One group did this negotiation as part of an online class, so they were constrained and needed to do the simulation online as well. The facilitators for the second class requested to use our conference center. The advantage of moving out of a classroom, unless it is a classroom with fully flexible seating, is that it allows the facilitators to put everyone in a circle or around a large conference table (both have been done by my students in various multi-party negotiations). We also discuss the decisions facilitators need to make in advance of this kind of meeting. These decisions, beyond the seating, include the relative advantages of different possible locations; deciding what processes might be most useful; and who should, ideally, be at the table.<sup>7</sup> I have not asked students to come to class dressed for their individual roles, but that could be an interesting additional element to help the simulation feel more “real.”

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<sup>7</sup> See, e.g., Lawrence E. Susskind, *Consensus Building and ADR: They Are Not the Same Thing*, in THE HANDBOOK OF DISPUTE RESOLUTION 358 (Moffitt & Bordone eds., 2005); Jayne Seminare Docherty, *Negotiation, One Tool Among Many*, in THE NEGOTIATOR'S FIELDBOOK 565 (Schneider & Honeyman eds., 2006). Other processes of this type include conciliation (consultation, coaching), conflict assessment, confrontation, focus groups, media campaigns, monitoring, evaluation and implementation committees, practical cooperation projects, shuttle diplomacy, back-channel negotiation, and visioning processes.

I have not given students the option of deciding to go online or to do the negotiation in-person, or doing a hybrid (on-line and in-person process). The first time I used this simulation, as noted above, the class was an online class and meeting in-person was not an option. However, one of the students in that class appreciated meeting on zoom as each person changed their on-screen name to their role and it “allowed me to immediately refer to one’s name and identify their party when they spoke, which I find difficult in person since I have very poor facial recognition abilities.”<sup>8</sup> Another student was disappointed with the zoom setting as “we did not have an opportunity to schmooze the other parties...but we have hopes that in a future negotiation, we will be able to break off into smaller groups and build relationships there.”<sup>9</sup> Whichever format is used, the debrief should include a discussion of the relative advantages and disadvantages of other formats and why one might be chosen over another depending on the goals and the local conditions. For example, having an online meeting, or a hybrid meeting with an online option, may make better sense in a rural area where transportation is more difficult, although there may also be digital divide issues such as access to Wi-Fi.

I give students an hour and a half to do the simulation during class. This is not enough time for them to come to any clear conclusion. As I will discuss later, this is one of the take-away points from this simulation. I prefer to do the simulation in class (and not as an out-of-class assignment) so that I am able to observe it from beginning to end and bring up examples from the simulation during the debrief.

After the simulation, we spend an hour and a half in class debriefing the exercise.<sup>10</sup> During the debriefing, we discuss both substantive issues of police reform and negotiation in the context of a multi-party community meeting. This discussion is as important for the learning as the simulation itself. In a class that is focused

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<sup>8</sup> Student E Exercise Summary, pg. 1, on file with the author. **[will need you to provide this document]**

<sup>9</sup> Student K Exercise Summary, pg. 5, on file with the author. **[will need you to provide this document]**

<sup>10</sup> See, e.g., Ellen E. Deason et al., *Debriefing the Debrief*, in EDUCATING NEGOTIATORS FOR A CONNECTED WORLD: VOLUME 4 IN THE RETHINKING NEGOTIATION TEACHING SERIES 301 (Christopher Honeyman et al. eds., 2013) (discussing the value of debriefing negotiation simulations and better approaches to the debrief).

on criminal issues, the debrief would likely go deeper into the issues surrounding police reform.

#### *D. Written Assignment*

I require that students complete a written exercise summary that is due one week after the simulation and class discussion.<sup>11</sup> The purpose of the written summary is to give students an opportunity to reflect on the reading, the exercise, their negotiation skills, and what they have learned for the future, including what they would do differently if they had it to do over again. Because I have conducted this simulation late in the semester in a negotiation class, I ask students to focus their reflection on their negotiation skills and to do so with the framework of skills described by Andrea Schneider in *Teaching a New Negotiation Skills Paradigm*.<sup>12</sup> Schneider identifies five negotiation skills: assertiveness, empathy, flexibility, social intuition, and ethicality.<sup>13</sup> Students are required to analyze what skill level they have reached with each and how they might improve in the future. In a course that is not focused on negotiation, students could be asked for a more general analysis.<sup>14</sup> This simulation could also form the basis for a more in-depth written analysis of the issues of police reform and specific proposals of how to approach those issues in the context of a multi-party negotiation that would extend over multiple meetings.

## II. WHAT TYPES OF CLASSES COULD USE THIS SIMULATION?

As I said, I have used this simulation in my negotiation class. It could also be used in classes that discuss police reform and/or policing policies including criminal procedure and seminars. I have also discussed issues of police reform in teaching about Dispute System Design, and this kind of exercise could be included in any Dispute Resolution course that covers Dispute System Design.<sup>15</sup>

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<sup>11</sup> The format that I use is included as Appendix C.

<sup>12</sup> Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 WASH. U. J. L. & POL'Y 13 (2012).

<sup>13</sup> *Id.* at 24-35.

<sup>14</sup> Appendix D is an example of a more general format.

<sup>15</sup> *See, e.g.*, Schneider, *supra* note 4 at 371-377. In 2021, I taught a seminar titled "Dispute System Design Seminar: Hot Topics in Criminal Legal Reform" and included police reform as one of the topics. I did not use this simulation in that class because I

The advantage of using this simulation in a course like negotiation is that it illustrates that policing issues should and do concern the community as a whole, not just criminal law specialists. I also have students who do not intend to go into criminal practice who are deeply interested in this topic and appreciate the ability to discuss the larger policy issues through this simulation.

### III. BACKGROUND INFORMATION

Appendix B includes the additional materials that I assign specific to policing and police reform. One challenge with using this simulation in a standard negotiation class is that there are students with both less interest in and knowledge about our criminal legal system and policing. The background materials are intended to give everyone in the class the same basic information about these issues. The challenge with the background materials is that there are so many things that could be assigned. This is a vibrant area, and each time I have used this simulation, I have changed the reading and materials that I have assigned. Appendix B should, therefore, be considered a starting point that gives examples of the kinds of material that could be assigned to students on this broad topic. I also assign reading on multi-party negotiations and facilitation skills.<sup>16</sup>

### IV. HOW HAS IT WORKED?

Overall, this simulation has sparked good classroom discussions about a variety of police reform issues, including issues of race, defunding or restructuring the police, and prosecutorial power. Students bring up examples from the assigned reading and some from their own experiences. Students have appreciated this alternate approach to the topic, contrasting it with discussions in other classes that are based on case law. A number of students remarked, as this student did, that “this negotiation was one of my favorites . . . I thought the topic was very interesting and

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had several students in the seminar who were also in my Negotiation class where I did use the simulation.

<sup>16</sup> MENKEL-MEADOW, *supra* note 7, at 407-47; ROGER SCHWARZ, *THE SKILLED FACILITATOR: A COMPREHENSIVE RESOURCE FOR CONSULTANTS, FACILITATORS, MANAGERS, TRAINERS, AND COACHES* (3d ed. 2017) (I assign three chapters from this book).



relevant.”<sup>17</sup> This simulation also makes it clear that while there may be simple changes to make (such as banning no-knock warrants), police reform is complex and requires more than one “fix.” Discussing police reform through a simulation format helps students to see, and to some degree experience, the underlying interests and goals that different players may have and why this can be such a challenging area for reform and change. There are four basic takeaways from my experience using this simulation.

*A. Multi-Party Negotiations are Complex Negotiations*

Students are regularly frustrated by how little they accomplish during this simulation. They are also often frustrated that they did not have the opportunity to speak very much because there are so many other parties, and the time is limited. This is a challenge with multi-party negotiations on any topic. They are complex and require more time and can be frustrating to individual participants. In the debrief, we talk about this and about how this is how these processes work in real life. There are rarely one-meeting resolutions, and the participants may leave frustrated that they have not been able to speak as much as they want and that the solutions they wanted are not what happened in the meeting.

In the classroom context, unless it is a class that is devoted to multi-party negotiations, it is rare that the students will have the necessary time to see the negotiation through to some sort of conclusion. As with other multi-party negotiation simulations that I have done, it is rare that there is agreement on much of anything other than future topics for discussion. Doing this simulation gives an opportunity to discuss what are realistic expectations for a community meeting as compared to a negotiation to settle a case.

In a class more focused on policing or police issues, this could be a simulation that could be adapted to be a longer and ongoing negotiation/discussion throughout the semester. Whether it is done once or carries through the semester, this simulation helps students to experience for themselves how complex it can be to discuss the various issues in police reform and why change is not easy and does not happen quickly.

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<sup>17</sup> Student P Exercise Summary, pg. 4, on file with the author. **[will need you to provide this document]**

### *B. The Advantage of Role Playing*

The advantage of role-playing is that it gives students the opportunity to step into the shoes of those whom they may not naturally agree with. It also gives all the students an opportunity, through the simulation process, to listen to those that they may not have otherwise wanted to listen to and views they might have been quick to disregard. This can help students to have conversations that they may not otherwise have in a classroom setting where students who hold unpopular views (by whatever definition) may be hesitant to voice those views. In a simulation, students generally understand that they are supposed to voice the views of their character and that may allow for conversations that may not otherwise happen as they are not having the conversations as themselves, but rather while role-playing. However, as will be discussed below, some students may still not be comfortable sharing what they perceive to be unpopular views or views on political topics when they prefer to be seen as more neutral or not political.

### *C. The Challenge of Role-Playing*

There are two basic challenges with role-playing in this simulation. The first is that students are not professional actors and do not fully get into their roles.<sup>18</sup> I do this negotiation at the end of the semester, and by this point, students tend to approach negotiations as detached professionals, not as emotional parties. The two times I have used this simulation (and during other multi-party simulations) students have not had emotional outbursts or even interrupted each other. As one student commented in their analysis, “[f]or such a hot-button topic, I feel people did not react as defensively as I thought they would.”<sup>19</sup> Another student thought the lack of emotion was helpful as “playing roles allowed my

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<sup>18</sup> See, e.g., Druckman & Ebner, *supra* note 3, at 68. This is one critique of using simulations more generally.

<sup>19</sup> Student G Exercise Summary, pg. 3, on file with the author. **[will need you to provide this document]**

classmates to take a step back and examine the issues in a slightly detached manner.”<sup>20</sup> But as one student commented,

Everyone was being so pleasant and overly cooperative, careful not to step on anyone’s toes. Nobody lost their cool, which as discussed in class would not be reality with the highly emotionally charged issues. I do think that other people . . . should have showed more empathy and in my opinion outrage for the horrific events that had previously occurred around the country. In the modern era, people are divided and extreme and outspoken, at our table everyone was a politically correct moderate that didn’t want to offend anyone else.<sup>21</sup>

During the debrief, I discuss how unrealistic this aspect of their simulation was and ask who might have actually been more emotional or forceful during the meeting if it were real. In the past year when I raised this question, students quickly identified that the concerned parent group would likely be much more forceful and emotional and talked about how parents who would take the step to get involved in such a community group (or just attend a community meeting) likely feel that their own children are at serious risk of death or injury at the hands of the police and what that means to so many in our communities, particularly to so many people of color. This discussion allowed us to dive a little deeper and to discuss the importance of recognizing the strong and deep feelings this topic raises and why this, and other groups, would be particularly frustrated by the process and by a meeting that did not come to any meaningful conclusions. It also gives an opportunity to discuss the importance of a process that allows these groups to express their concerns and feel heard.<sup>22</sup> In the debrief I ask students to consider if there was anything about how the negotiation was conducted that interfered with them expressing themselves in a more realistic way and what the facilitators might

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<sup>20</sup> Student B Exercise Summary, pg. 3, on file with the author. **[will need you to provide this document]**

<sup>21</sup> Student GG Exercise Summary, pg.3.on file with the author. **[will need you to provide this document]**

<sup>22</sup> See, e.g., Nancy A. Welsh, *Making Deals in Court-Connected Mediation: What’s Justice Got to Do with It?*, 79 WASH. U. L. Q. 787, 820 (2001) (explaining that being heard is one element of procedural justice).

do in real life to make sure that participants understood that they could fully participate.

The second challenge in role playing is asking students to step into roles they may not agree with and express opinions that are not their own. I regularly assign students to roles that they do not relate to. I try to do that throughout the semester in a variety of negotiations, not just this simulation.<sup>23</sup> In this simulation, I often intentionally assign defense minded students to the role of police chief or police union president. Students sometimes exercise creative liberty in altering the roles to make them what they want them to be. This gives us an opportunity to talk about the changes and why they played the role differently from how it was written. More often, students are good about keeping to the role and then discuss how frustrating it was or how much they hated it. One student expressed concern that their “bias in favor of defunding the police groups and against police” would show in ways that weren’t appropriate for their role.”<sup>24</sup> One student decided that the role of a concerned parent cut too close to home. This student was a parent of a young child and decided to play the role as a parent with a child who had been abused and not killed by the police as “it would not make me comfortable to pretend to have a dead son, it is just too close for comfort.”<sup>25</sup> That student went on to say that it was probably easier for the other student to play a parent of a dead child because “they do not have children.”<sup>26</sup> Another student in one of the more pro-police community groups did “not like our facts and position of solely backing the blue and not wanting to change the status quo.”<sup>27</sup> That student commented that “I personally do not agree with the position in my fact sheet . . . as I find that police

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<sup>23</sup> Assigning students to roles they may not naturally identify with can build empathy skills and perspective taking. See, e.g., Adam D. Galinsky et al., *Why It Pays To Get Inside the Head of Your Opponent: The Differential Effects of Perspective Taking and Empathy in Negotiations*, 19(4) PSYCH. SCI. 378, 378–84 (2008), for more about the value of this skill.

<sup>24</sup> Student N Exercise Summary, pg. 4, on file with the author. **[will need you to provide this document]**

<sup>25</sup> Student D Exercise Summary, pg. 2, on file with the author. **[will need you to provide this document]**

<sup>26</sup> Student D Exercise Summary, pg. 2, on file with the author. **[will need you to provide this document]**

<sup>27</sup> Student LL Exercise Summary, pg. 1, on file with the author. **[will need you to provide this document]**

reform is a necessity.”<sup>28</sup> That student decided with the others in their group to “be more laid back and sort of let the conversation happen and chime in . . . where we could speak about our position without becoming hostile with some of the other groups.”<sup>29</sup> During the debrief we discussed whether that is how this particular group would likely behave in a real meeting. We also discussed what the facilitators might do if particular groups were uncomfortable expressing their views to help make sure those viewpoints were part of the discussion. One student did not like their role and after the exercise reflected that if they had shared their concerns it “may lead to an unexpected but meaningful conversation. If I could redo the exercise, I would definitely share my concerns with others . . .”<sup>30</sup>

A student who was a community leader from a wealthy neighborhood was not comfortable speaking up and kept their comments to a minimum as “even though my peers know that I don’t talk politics and keep all my opinions to myself no matter what side I am on, I still felt scared that someone might take what I was saying in my role as something that I actually believed.”<sup>31</sup>

Through the debrief I encourage students to think from the perspective of the role they were playing. This has led to discussions about how taking on a role that they do not agree with can help them, at times, to better understand those perspectives.<sup>32</sup>

In a more emotionally or politically charged simulation there are different approaches to assigning participants to roles they don’t agree with.<sup>33</sup> Noam Ebner and Yael Efron describe different

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<sup>28</sup> Student LL Exercise Summary, pg. 2, on file with the author. **[will need you to provide this document]**

<sup>29</sup> Student LL Exercise Summary, pg. 1, on file with the author. **[will need you to provide this document]**

<sup>30</sup> Student Y, Exercise Summary, pg 5, on file with the author. **[will need you to provide this document]**

<sup>31</sup> Student O Exercise Summary, pg. 4, on file with the author. **[will need you to provide this document]**

<sup>32</sup> See, e.g., Randall L. Kiser et al., *Let’s Not Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiation*, 5 J. EMPIRICAL LEGAL STUD. 551 (2008) (discussing an apparent debiasing effect of being a mediator, a role that requires listening.).

<sup>33</sup> See, generally e.g., Ebner & Efron, *supra* note 4 (describing different approaches to using a simulation based on real scenarios).

approaches in the context of more real life negotiations.<sup>34</sup> One is “role adaptation” where participants are allowed to play a role that they feel comfortable playing.<sup>35</sup> Ebner and Efron criticize this approach as one that “often deteriorates into argumentativeness: participants often cannot take the necessary step back, remember their training, and practice their skills.”<sup>36</sup> Another approach is role reversal where participants are purposely put into roles with views they do not agree with.<sup>37</sup> This can lead participants to go overboard and play the role to an extreme, which Ebner and Efron posit could be due to an unconscious desire to sabotage the particular role.<sup>38</sup> Another option is to allow participants to choose their role. In practice, I have not used any of these approaches in full. I have intentionally assigned some students to roles that they may be less comfortable with, but because I have not had full conversations with students in advance of assigning the roles, I am often unaware of what their views are on the subject of police reform, including whether they have any views at all. For a single negotiation that is intended to raise these issues and encourage students to think beyond the headlines, I have found that my general approach to assigning roles works well. But, as some of the students’ statements above indicate, not all students are comfortable with the roles they are given and this does have an impact on how they engage in the simulation. In practice I have found that these student reactions provide rich discussion points for the class as students are comfortable talking, after the simulation, about what they did not like or what was more difficult.

#### *D. It Matters Who You Assign to Specific Roles*

It is helpful to assign students who have a stronger interest and background in criminal practice to some of the roles. For example, one year I assigned a student to be the District Attorney who had no experience in criminal practice and that student didn’t fully grasp all the power they had in that role. This was a point of frustration to students who had more background and understood

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<sup>34</sup> *Id.* at 380-81.

<sup>35</sup> *Id.* at 380.

<sup>36</sup> *Id.* at 381.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

the power that prosecutors can wield and felt that the student playing the prosecutor was being disingenuous when they said they couldn't make certain changes. Moving forward, I will make sure to assign the prosecutor role to a student with more experience in the criminal legal system.

The decision of who to assign to the role of facilitators can impact the entire simulation. I choose facilitators who have been active participants in the class and who invariably come to class fully prepared. Diversity also matters, which includes gender and ethnic diversity, and also diversity in their stated interest in criminal law. It can be helpful to have at least one facilitator be someone who is more of a neutral in that they are not as focused on issues of policing as a student who intends to go into criminal practice might be. It is possible to assign two or three students to the role of facilitator. Because it is such an important role in the simulation, I have not assigned fewer than two students to the job. This is also more realistic as a negotiation like this would likely have co-facilitators.

#### CONCLUSION

Simulations can help students to think differently about topics and to expand their understanding of why certain disputes may be harder to resolve. Police reform is a complex topic that continues to be at the forefront of discussions about our criminal legal system and is a topic that students want to discuss in meaningful ways. Simulations can be one way to expand the way our students discuss and learn about this topic.

## APPENDIX A: NEGOTIATION SIMULATION

**Policing in the City of Ernest: Defund, Restructure,  
Discipline, or Reform?<sup>39</sup>  
Community Meeting****General Information**

Like many cities in the United States, the City of Ernest has been in discussions about the future of their police force. Over the last decade there have been high profile cases of police abuse of African American citizens of Ernest. A few years ago, a young African American man was killed by the police during a simple traffic stop. Police officers have been disciplined due to these cases, but none have been criminally prosecuted or fired from their jobs. Over the last ten years there have been a number of civil suits filed and these cases have settled. The most recent case had a multi-million dollar settlement against the city of Ernest, for the family of the young man who was killed.

When Black Lives Matters protests spread across the county in the summer of 2020, following the murder of George Floyd by a Minneapolis Police Officer, a diverse cross-section of Ernest residents organized protests and for several weeks there were daily protests downtown. This renewed calls by community leaders for changes in how the police force is run and how policing is done in the City of Ernest. However, no real changes were made.

Ernest is a mid-sized city, with a typical crime rate. As in most cities in the United States, policing is more frequent, and arrests are higher, in minority and poorer neighborhoods. The murder and violent crime rate tracks the national averages. Ernest has thriving businesses, but many suffered due to the pandemic and only in the last year have businesses started to revive. The District Attorney is elected, but it is a nonpartisan position (they do not run under political party affiliations). The city is run by a Mayor and City Council who also do not run under party affiliations. All of the elected officials are up for re-election in two years. The current

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<sup>39</sup> Written by Cynthia Alkon, Professor of Law and Director of the Criminal Law, Justice, & Policy Program, Texas A&M University School of Law.



police chief was hired just a few months ago, after the last one retired. He was hired for a six-year term. There is a public defender's office and the head of that office is appointed and hired by the City Council. She was just hired for a third six-year term.

Ernest has an active civil society. There are a variety of non-profit organizations; some are non-partisan, others affiliated with the political left and right, and there are many active faith communities, and an active business community. Ernest's residents have prided themselves on being moderate and being a community that works well together. But, the pandemic, the politics of the last many years in the United States, and the concerns that ignited the Black Lives Matter movement have all affected these dynamics.

Some of the local non-profits and faith communities have joined forces to call for defunding the police in Ernest. Some City Council members have joined in these calls. The governor of the state is opposed to police defunding and has threatened to withhold state policing funding to any community that defunds their police force. The pressure is on for the City Council and Mayor to take some kind of action. The Mayor is active in the National Council of Mayors, and through this organization she has learned that other communities have held community meetings to talk about policing and to try to reach consensus on how to move forward on issues of police reform. The Mayor decided to try such an approach in Ernest to see if it might help to make the conversation less contentious and to see if consensus of some kind can be reached. The Mayor would also like to do something tangible since so many citizens have expressed concerns that nothing is happening on police reform. The City Council agreed to do community meetings and allocated some funding for these meetings, including paying for facilitators. The meeting that you will participate in will be the first of what will likely be a series of meetings. You have been asked to come to the meeting with a willingness to talk, to listen, and to learn what other citizens of Ernest think about the future of policing in Ernest.

Activists and some City Council members have called for these immediate changes in the City of Ernest:

1. The Police Department should ban choke holds in all circumstances.
2. The Police Department should ban no-knock warrants in all circumstances.
3. The Police Department should end “broken windows policing”—a practice of active enforcement of low-level crimes which had been thought to decrease crimes rates but activists point to studies that show that now what it is a way to pull more people of color into the criminal legal system.
4. Stop arrests and prosecution for possession of marijuana.
5. The police should wear body cameras that are on at all times and the footage from those cameras should be made public after any incident of police-involved violence.
6. Police should no longer have qualified immunity for acts of violence.
7. The City of Ernest should start a program so mental health professionals respond to calls involving mental health crises, such as the CAHOOTS program.

#### APPENDIX B

##### **Additional Required reading/background materials**

**Watch:**

<https://www.pbs.org/wgbh/frontline/film/policing-the-police-2020/>

(54 minutes)

Please be aware that some scenes and audio are difficult to watch/listen to in this Frontline episode. If you have concerns about watching this, please let me know, and I can assign an alternative.

**Listen:**

Julian Castro Podcast, Our America, Families Ripped Apart: <https://www.lemonadamedia.com/podcast/families-ripped-apart/> (35 minutes).

**Read or Listen:**

<https://www.npr.org/2020/06/10/874339977/cahoots-how-social-workers-and-police-share-responsibilities-in-eugene-oregon>

**Read:**

[https://www.washingtonpost.com/opinions/interactive/2021/reimagine-safety/?fbclid=IwAR2R96I4LiuLGTEb0ziPEhexJ6MpDwFwNdCBT\\_3pFmMM-pbmMUhHvl5aqM](https://www.washingtonpost.com/opinions/interactive/2021/reimagine-safety/?fbclid=IwAR2R96I4LiuLGTEb0ziPEhexJ6MpDwFwNdCBT_3pFmMM-pbmMUhHvl5aqM)

This article has seven parts—please read all of these parts. The embedded video is optional.

<https://www.brookings.edu/articles/what-does-defund-the-police-mean-and-does-it-have-merit/>

<https://www.seattletimes.com/opinion/the-movement-to-defund-the-police-is-wrong-and-heres-why/>

<https://www.procon.org/headlines/defund-the-police-top-3-pros-and-cons/>

## APPENDIX C

### Exercise Summary Required Format

**Name:**

**Date of Exercise:**

**I. Summary:** Describe what happened including the outcomes, if any (**2 points**).

**II. Describe how what you did was influenced by the readings.** If the readings did not influence or change how you acted

during the exercise, explain why. **Please cite to specific parts of the assigned reading for the week. (4 points)**

**III. Describe what skill level you reached (from the New Negotiation Paradigm) including what you would do differently if you had it to do over again and why.** This section is asking you to do a self-assessment about how well you negotiated during this simulation and to reflect on how you would improve in the future. **(4 points):**

- **Your analysis should include each of the five skills: assertiveness, empathy, flexibility, social intuition, and ethicality.**

#### APPENDIX D

##### **Exercise Summary Required format**

**Name:**

**Date of Exercise:**

**I. Summary:** Describe what happened including the outcomes, if any **(2 points)**.

**II. Describe how what you did was influenced by the readings.** If the readings did not influence or change how you acted during the exercise, explain why. **Please cite to specific parts of the assigned reading for the week. (4 points)**

**III. Describe what you would do differently if you had it to do over again and why.** This section is asking you to do a self-assessment about how well you negotiated during this simulation and to reflect on how you would improve in the future. **(4 points)**