Guidance for Faculty in Developing Stone Soup Course Assignments

Stone Soup Dispute Resolution Knowledge Project
hosted by the University of Missouri School of Law
Center for the Study of Dispute Resolution

In General

Thank you for considering participating in the "Stone Soup" Dispute Resolution Knowledge Project hosted by the University of Missouri Center for the Study of Dispute Resolution. This document provides information to help you design course assignments that achieve your instructional goals and, if you want, also produce data for research.

You are free to adapt assignments to fit your needs. This project has been developed by American law professors but faculty in other countries and disciplines should adapt the assignments to fit your situations.

We originally planned to create a centralized database for reports of actual cases but we decided to hold off and, instead, to pursue the same goals in a decentralized Stone Soup project.

So we still encourage faculty to assign students to collect qualitative data about actual dispute resolution practice. Since we won't collect case reports to include in a central database, faculty have flexibility to use a range of assignments or activities such as the following:

- Reports of entire cases, which was the original assignment contemplated for the database. This is an excellent assignment that can produce very valuable

insights. It creates greater concerns about protecting confidentiality than some other options, as described below, though these concerns can be managed.

- Reports about smaller aspects of cases instead of entire cases. For example, students might interview people about cases where specific issues arose – e.g., intense emotions, problems of distrust, cultural differences – and then ask for descriptions of parts of real cases that featured those issues.

- Use of a class period like a focus group, asking selected practitioners about a certain set of issues.

- Reports of observations of actual cases in clinical or externship courses, addressing specified issues.

- Combinations of activities. For example, you might have students conduct individual interviews and then have a class discussion with invited practitioners to discuss the results.

You may want to collaborate with practitioner organizations to examine issues of mutual interest. For example, at the ABA conference this year, we conducted a session identifying some issues that would be helpful for practitioners to learn about.

This document generally focuses on interviews about entire cases. If you use a different assignment or activity, you should adapt your assignment accordingly.

For any assignment, students are likely to benefit most by focusing on events and perspectives about **actual cases** rather than subjects' generalized views. If students ask about general issues (such as dealing with emotions), it would be useful to ask subjects to discuss actual cases illustrating the issues in some detail.

In general, students should adopt the mindset of investigators tactfully trying to get the most accurate possible understanding of a situation. So they should ask questions probing for other perspectives about the events rather than simply accepting statements at face value. For example, if a subject describes something that seems puzzling or there might have been other possible ways to handle or interpret a situation, students should ask follow-up questions, possibly asking subjects to describe how they think others perceived the situation.

Regardless of whether you plan to use the assignment solely for teaching or if you also plan to use students' reports for your research, you and your students should use good research procedures. In particular, interview subjects should be given information about the interview in advance so that they know what to expect and can make informed decisions about whether to be interviewed. Students should also be careful to protect the confidentiality of the data in their reports. These considerations are especially important if you do plan to use the reports for your research.

There is a small risk that students who interview people about entire cases would be subpoenaed to testify about what they learned in the interviews. This situation seems unlikely to arise for several reasons. First, the interviews would have to involve situations that end up in litigation in the future. Second, it will be unlikely that other parties would know about the interviews and, even if they did, they probably wouldn't learn significant relevant information from the students and it wouldn't be worth the expense to pursue this. Even so, we think that faculty should acknowledge this risk to students and potential interview subjects. The risk is greater for interviews about accounts of entire cases than about particular issues (e.g., dealing with emotions), but the benefits for learning about entire cases may be greater as well.

To address these concerns, after consulting with staff at our institutional review board (IRB), we revised the model solicitation form for interview subjects to note the risk and to caution them about disclosing information that might be relevant in litigation. Students should also be informed of the risk and given options to do other assignments with less risk. The disclosures may not be necessary if subjects discuss only small parts of cases.

If you plan to use data from a Stone Soup assignment for research, you certainly will need to get your project approved by the IRB at your school, as described below. We provide model documents that you can adapt for that process.

If you plan to use the assignment solely for teaching, you should not have to have your assignment reviewed and approved by the IRB at your school, though schools have different policies and you should check with your IRB.

If you have any questions, please contact John Lande or Rafael Gely.

Planning Your Assignment

Selecting Dispute Resolution Processes, Cases, and Data Sources

You may choose the types of dispute resolution processes, cases, and data sources for your assignment to focus on. For example, in a negotiation course, you might limit the cases to negotiations, whereas in a survey course, you might permit students to focus on a wider range of processes. You can limit the type of decision to disputes or transactions or you could give students the option to choose. Similarly, you can choose the issues the cases focus on (e.g., family, business, public policy) or give students certain discretion about this.

You can consider a range of other variables to define the parameters of cases for your assignment. Among others, these include whether the process was court-ordered or established by a pre-dispute agreement, the number of parties involved, the past or expected future relationship between the parties, whether there were significant stakeholders not "at the table," whether parties were represented by lawyers, whether

litigation was pending during the process, whether the parties used a mediator, and whether they reached an agreement.

You may restrict the category of interview subjects (e.g., lawyers in law school courses or business executives in business school courses) or give students latitude to select from other types of interview subjects.

Ideally, analyses of cases would include data from all of the key individuals involved because this would provide the fullest account of events and perspectives. This can be very difficult logistically given the problems of scheduling multiple interviews and possible unwillingness of subjects to be interviewed if they know that others in the case would be interviewed. It also would involve some additional ethical concerns about inadvertently disclosing information to subjects derived from prior interviews. Considering these complexities, you should generally have students use multiple sources only if they have sufficient time and competence to do this properly. This might be appropriate for independent study courses, theses, or dissertations. Another option for using multiple sources would be to assign teams of students to gather data about the same case, though this would present similar challenges.

In most courses, you will probably require students to get data from only one source per case. Logistically, this is much easier than using multiple sources but it produces less complete accounts with greater risk of bias due to limited memory and self-serving perceptions. If your assignment involves students getting data from only a single source, you should instruct students about the risks of bias and encourage them to tactfully probe for others' perspectives during their interviews. For example, students might ask why the subject thinks that the other side took the position that it did or how that side viewed the situation. Gaining a broader perspective is an important skill for lawyers and other professionals who regularly interview people where they must assess the veracity of the information they obtain. So we suggest that you require students to describe possible alternative explanations as described below.

You may have students find interview subjects themselves and/or you may help them do so. Some students may identify interview subjects from friends, relatives, and employers. A student who is interested in practicing in a certain area of law or other profession could request an interview by an experienced practitioner in that field. To help recruit subjects, you might ask the alumni office in your school to solicit volunteers to be interviewed. This would be a great way to engage alumni as a concrete and satisfying way to help their schools. Over time, you might develop your own roster of practitioners who would be happy to contribute as little as one hour a year to be interviewed by students. You might also reach out to national, state, local, and specialty professional associations to recruit practitioners to participate.

You can specify characteristics of the case for the report. For example, it may be particularly useful to assign students to interview subjects about the most recent case that meets certain criteria (e.g., business negotiation that did not result in an agreement). Using the most recent case has advantages that the subjects are more

likely to remember details than for older cases and it may reduce some selection bias from having subjects choose particularly dramatic cases rather than more routine cases. You may, however, want students to conduct interviews about particularly challenging or surprising cases, “successful” or “unsuccessful” cases, etc.

Detailed Accounts of the Facts

Having students interview subjects about entire cases helps them understand how dispute resolution works in real life, considering a range of contextual factors. Students can also gain this understanding by focusing on how particular issues manifest in real cases, especially if students ask about the issue in the case in detail. The following guidance is oriented to reports about entire cases and can be adapted for reports about parts of cases.

Papers should prominently include a legend like the following: "Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data." This is important in case people other than you obtain the papers.

Narratives should begin with a brief description of the interview subjects including information that would help readers assess the reports, such as the subject’s prior experience dealing with similar cases. The papers should not, however, include specific information that could identify the subjects.

Narratives should be objectively descriptive, use plain English (not dispute resolution terminology), and generally avoid expressing judgments about the parties, actions, decisions, etc. This is really important. Dispute resolution terminology should be avoided in the narratives because it is very ambiguous. Students can use dispute resolution concepts later in the papers, when analyzing the cases.

Narratives should be detailed chronological accounts of the significant relevant interactions in the case. Ideally, the narratives would include all such interactions in the case but students may not be able to elicit all of them and/or some interactions may be only marginally significant.

In general, narratives should describe the relationships between the parties (e.g., whether there were pre-existing relationships, the level of cooperation or hostility), the parties’ apparent interests, any preparation for the process, key issues discussed, the outcome, and the subjects’ assessment about why the process turned out as it did. A model assignment illustrates other issues that you may want students to address in their reports.

You may want to limit the segment of the cases covered by the reports. For example, some reports may focus only on the final settlement events at mediation without detailed accounts of events leading up to the final mediation session. Even in this situation, it would help to include a brief description of the preceding events.

Even if you plan to use this assignment solely for teaching and don't need IRB approval, we believe that it is very important for students to take careful steps to protect the confidentiality of information they obtain. Many professionals have a duty to protect confidentiality and this assignment provides an opportunity for students to practice this skill.

The reports should include brief descriptions of the key people and entities in the negotiation, but they **should not include any details that could reasonably identify any individuals or entities. The reports should use pseudonyms referring to the people and entities in the case. The pseudonyms should be sufficiently different from the real names that it would be impossible to identify them**. In keeping with the serious nature of this assignment, the reports should use plausible names, not silly ones.

The reports should not include specific dates. The chronology should begin with the first relevant event and refer to subsequent events in relation to other events in the chronology. For example, a narrative might identify the timing and sequence by saying "two months later."

The report should avoid using specific dollar amounts and should instead use general descriptions. For example, reports might use language such as "more than $10,000" or "in the low five figures." When there is an exchange of offers, the reports should include information indicating how the figures compare with each other without using specific figures. For example, a report might state that a plaintiff demanded $X and the defendant offered $X - $100,000. Or a defendant offered $Y and plaintiff demanded $5Y (i.e., five times Y).

Possible Alternative Explanations

Recognizing that no one can provide a complete account of events, students should carefully analyze subjects' statements and consider alternative possible explanations of events. People sometimes do not provide accurate accounts due to the limitation of any single person's perspective, limitations of subjects' memory, subjects' role in the dispute, subjects' desire to present a positive image, etc.

When interviewing subjects, students can ask follow-up questions about things that seem puzzling and ask the subjects to describe others' perspectives. Sometimes, subjects can report others' statements and sometimes subjects can speculate, describing the reasons for their beliefs.

This is similar to lawyers' interviews of clients (and others), where the lawyers interpret the statements and give more or less credit to statements considering such things as plausibility, other possible explanations, and other evidence.

You may assign students to write a separate section of their reports analyzing other possible explanations or you may want students to integrate this analysis in the narratives themselves.

Analysis and Insights

This discussion should focus on any issues you want students to address. You may give students complete discretion to discuss anything that seems significant to them or you might direct them to discuss particular issues (e.g., use of power, cultural differences, etc.). For examples of issues you might want students to discuss, see the model assignment.

The purpose of collecting factual narratives is to help students understand and apply dispute resolution concepts and theory. So you presumably will want students to discuss this in their papers. Students may be tempted to simply write that the case illustrates ideas covered in your course. They would learn more by carefully analyzing the extent to which the theories apply to their case.

Length of Reports

You may set lower and/or upper page limits for these reports if you want. Obviously, the reports should be long enough for students to gain significant benefit and for you to make an appropriate evaluation. Presumably, the proportion of the grade in the course will be related to the length of the papers.

Deciding Whether Institutional Review Board Review is Needed and Getting Approval if Needed

In the US, every higher educational institution receiving federal funds that conducts human subject research must have an "institutional review boards" (IRB) to review and approve such research. Under Federal Regulation 45 CFR 46.102(d), research is defined as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." **So if you use a Stone Soup assignment solely for teaching, you should not be required to have your assignment reviewed and approved by the IRB at your school, though schools differ in their policies about projects like this as course assignments and you should consult your school's IRB.**

At this stage of the Stone Soup project, we assume that most faculty will use the assignment solely for teaching. If you plan to use students' reports as data for research, you certainly would need to get approval from the IRB at your school. IRBs are responsible for ensuring that the research meets ethical requirements. The main concerns for this project are that interview subjects give informed consent and that researchers protect the confidentiality of the data. To help you complete the IRB process at your school, we have developed model forms that you can adapt for your assignments. These include interview solicitation / informed consent documents, model

interview assignment, guidance for students in conducting interviews, information about confidentiality, and model papers. Writing reports of cases should be required course assignments but students should have the option of not having their papers used for your research.

Each school's rules and procedures are different, so you should consult your school's IRB to find out what it requires. Some people have had difficult times working with their IRBs. Sometimes IRBs ask for revisions or clarifications, so you should expect that you may have to respond to several such requests before IRBs will approve your project. If you have any questions, we suggest that you call IRB staff (rather than email them). In our experience, IRB staff have been very helpful trying to figure out how to do what we wanted. IRB staff sometimes deal with people who do not treat them with understanding, patience, and respect. So treating them with understanding, patience, and respect is appropriate and can really help you.

If you do need IRB approval of your assignment, you may be required to take some training on research ethics, which may be available online. **Note that the IRB process can take several weeks or sometimes longer, so don't put this off until the last minute.**

Faculty outside the US should comply with applicable rules in their countries

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