

Assessment of Stone Soup Course Experience

This questionnaire is for faculty who have used a “Stone Soup” Project assignment or activity to describe and assess their experience with it. Your response will be posted on the Indisputably blog and may be disseminated in other ways as well. It would help if you would describe specifics of your experience, but do not include information that could identify any student or subject of a Stone Soup assignment or activity.

1. Faculty name: Charity Scott
2. School: Georgia State University - College of Law
3. Course: Mediation (2 credits)
4. Semester: Summer 2017
5. Number of students in the course: 12
6. Briefly describe the Stone Soup assignment or activity (e.g., interview or focus group class). If you assigned students to conduct an interview, summarize the type of subjects and focus of the interview. If you conducted a focus group class, describe the speakers and issues discussed.

This pass-fail course consisted of one-week (28-hour) intensive training approved by the Georgia Office of Dispute Resolution (GODR), which allows our students if they desire to become registered neutrals in Georgia after they undertake five qualifying observations of actual mediations. Whether or not they wished to become registered neutrals, I required students in order to get credit for the course after the one-week intensive training to observe two mediations and write a 3-5 page reflection essay, comparing and contrasting what they observed with what they were taught during the course, reflecting on their observations, and asking questions and discussing their observations with the mediators themselves (if the mediators were so inclined and had time).

7. What did students learn that they wouldn't have learned without the Stone Soup assignment or activity?
 - a. Humility – many observed that in real life, mediation is a lot harder than it looks (and harder than doing role plays with known-quantity peer students, which they had found already challenging enough). They appreciated the mediators' tremendous communication and interpersonal skills that kept the parties on track and the conversations constructive, even when tensions and emotions began to emerge. The students realized that these skills take a lot of practice and thoughtfulness – and how early in their learning curves the students actually are.

- b. The role of emotions in mediation – both positive and negative roles. On the constructive side, students could see that sometimes the parties' emotions just had to come out before productive conversations could take place; on the negative side, students could see how emotions can derail the whole process if not handled well by the mediator. Law students tend to think that emotions are not what lawyers need to be concerned about. However, through the observations, the students learned (and felt) how emotions are part of the underpinnings of most disputes, how important it is for mediators to develop adept skills both for allowing them to be vented and for keeping them from spiraling out of control, and by extension, that emotions are going to pervade professional practice beyond the mediation setting – e.g., in interactions with opposing counsel, clients, and colleagues.
- c. One size does not fit all – the students learned how much depends on the style, judgment, and personality of the individual mediator. Some mediators have higher tolerance and comfort levels with joint sessions versus caucuses, for example, or different time constraints that impacted the course of the mediation. While the mediations generally followed the conceptual frameworks that are taught in the classroom, the students could experience during their observations how mediations aren't pre-scripted and how the mediator must be flexible and adaptable to the context and the parties before him or her. Although the students could easily identify the main mediation guideposts along the way from what they learned in the classroom, they could begin to appreciate through the observations how much skill the individual mediator must bring to navigating through the specific troubled waters of an individual mediation. As they say, if you've seen one mediation, you've seen one mediation. Talent in this field is developed over time and with considerable experience – see humility paragraph above.
- d. The truth and practicality of the mediation canons – students were surprised by the extent to which mediators actually stuck to the "ideals" – to being neutral, would not give legal or other advice, allowed the parties to self-determine their outcomes, kept confidences they learned in caucus, etc. The observations gave students the opportunity to see how an interest-based approach to solving problems and resolving conflicts can actually work and can provide better outcomes than a right-based approach (which is the predominant perspective that the rest of law school provides them). This realization was a surprise for many students, since I can only ask them mostly to take it "on faith" in the classroom (or in experimenting in role plays) that it can be more constructive to discern underlying interests rather than to focus on what the law may suggest as the winner or loser in the dispute (usually framed in litigation terms). As one student observed, "I learned that when the parties honestly attempt and trust the process of mediation the parties can create a better or more appropriate resolution than the law may allow." This is such an eye-opener for students. The reinforcement of these various conceptual canons in the real-life mediations was very helpful in deepening

the students' learning. [My course offers the typical facilitative, problem-solving approach to mediation (this is mandated for GODR approval and for all court-annexed mediations in Georgia), so that's what the students were primarily observing. Some students did have the opportunity to observe more evaluative styles in private mediations – which also gave them much to reflect on.]

- e. Issues of ethics, professionalism, and social justice – some students were troubled by the realities of the unequal playing field in mediations for the landlord-tenant court, which pushed them to reflect more deeply on the costs and challenges of mediation in real-life settings of inherent inequality and unequal bargaining strength. Some students were alert to any taint of lack of impartiality on the mediator's part, which could arise in landlord-tenant court where the attorneys representing the landlords are often repeat players with whom the mediators interact frequently. These students were troubled by the familiar nature of the relationships between plaintiff's counsel and mediators, and the potential impact that familiarity could have on the perceived or actual fairness of the process. Other students commented on the lack of professionalism of some attorneys representing clients during mediations – for example, texting or making phone calls while in joint session. Any opportunity for students to reflect on issues of ethics, professionalism, and social justice more broadly is a worthwhile opportunity to provide – which a Stone Soup assignment offers.

8. What worked well with the assignment or activity?

The students need plenty of time and space to plan their observations, secure permission, and attend the mediations. I taught the course in the summer term (as a one-week intensive training), and since students are also working during the summer, I gave them a month and a half to complete their observations (which was still before grades were due).

The assignment helped me to appreciate how important it is to continually reinforce the structural and conceptual concepts in mediation while I have the students in the classroom. I used a textbook that was both very reader-accessible and could be read each evening during the week without my fearing I was overwhelming the students (classes ran from 8:30 am – 4:00 pm every day, with evening assignments of role play preparation, text readings, and some other exercises – these all reinforced lessons throughout the week). The more clearly the students can grasp and internalize the classroom material as we go along, the more informed they are as observers of real-life mediations. [The text for the one-week intensive training was Beer & Packard, *The Mediator's Handbook* (4th ed. 2012). When I teach the course as a three-credit course, with additional classes after the one-week training, we use another, more “academic” text.] So, I would say that what works well is for the instructor to have the confidence that the students are internalizing the canonical mediation frameworks, structures,

concepts, and tools during the classroom time before they go off to observe real-life mediations.

9. What would you do differently if you do it again?

I would be more explicit about what exactly I wanted the students to reflect on regarding their observations. I undertook this assignment before I realized it was, in effect, a Stone Soup assignment, so my instructions were general. (Happily, most of the students wrote anyway about what I should have been more explicit about; nonetheless I'd be more explicit for the other kinds of students in the future.) Without more explicit instructions, some students will fall back on mostly describing "what happened" during the observations without much reflection or analysis in any depth on the "lessons learned" from the observations. Still, since I emphasize in classroom de-briefings what are the "lessons they learned" from the role plays they engaged in (within the frameworks of the readings and classroom didactics), most students picked up this theme implicitly for their observation reflection papers.

I would also consult in advance with some of the mediation firms in town to ensure that students would be welcome to contact them for these observations. We are fortunate to collaborate with the director of the landlord-tenant mediation program in a local Magistrate's Court where our students can gain clinical mediation experience during the academic year, and the director graciously allowed my students to observe mediations in that setting. Other students had access to private mediations and private mediation firms, and next time I would make a more pro-active effort to make these opportunities available to the students.

10. What would you advise other faculty considering using a Stone Soup assignment or activity?

Go for it! The assignment provides many fantastic benefits, and I'll highlight two here as encouragement to undertake this kind of assignment:

- a. The assignment reinforces the classroom learning and makes it personal by allowing the students to compare and contrast what they learn in the classroom with what they see in real life and consider how they would handle a real-life situation that is facing the mediator. Happily, most of what they see confirms for them the importance and relevance of what they are learning in the classroom (e.g., frameworks, conceptual models, good communication tools and techniques). Where the classroom and real life diverge, the assignment also gives students the opportunity for deeper appreciation of the differences and become better able to decide what they thought about these differences in relation to how they wanted to practice as mediators (or represent clients in mediation). As one student reflected: "I could definitely follow along in the mediation process and its different parts. The things we

learned in class were falling into place. I tried to imagine myself in the mediator's position and think about what I would have done."

- b. The assignment connects the law school to the world of professional practice, and exposes our students to practitioners who can enlighten and teach them, as well as be resources as they launch in their professional careers. It boosts the law school's visibility among professional practitioners, who in my experience are very happy to give of their time and talent to our students, and are just waiting to be asked. (It also adds a potential reservoir of expert coaches that I can use for the role plays – coaches are required in Georgia for any training approved by GODR.)

Please provide a copy of your assignment or other materials that would be helpful for other faculty considering participating in the Stone Soup Project.

NOTE: I'll be able to provide this the next time through, when I actually craft the reflection paper assignment as a Stone Soup assignment.