

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: Negotiation
4. Semester: Spring 2017
5. Number of students in the course: 16
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.

Students were required to interview one or two negotiators with at least five years' experience about their philosophy and worldview about negotiation. This assignment was adapted from one from Ken Fox.

7. What did students learn that they wouldn't have learned without the Stone Soup assignment or activity?

I think a background concern of many students is whether the type of principled, problem-solving approach to negotiation that is taught in the classroom has any real relevance to the real world of lawyer negotiation. Is it too Polly Anna-ish, not how real lawyers work?

Some students did interview attorneys who turned out to be the sort of hard-bargaining, positional, take-no-prisoner types that that is in the popular mind. Most students, however, interviewed attorneys who implicitly confirmed much of what was being taught in class (though the students could not have known this advance – and I didn't want them to select attorneys known already to be “on board”). Many of my students were surprised by the extent to which, at least among seasoned negotiators in practice for a long time, the academic teachings found resonance among practicing lawyers – particularly insofar as honesty, integrity, civility, fairness, the need for preparation, and the importance of relationships, communication, and reputation were concerned.

Even the “technical aspects” found salience in the legal community (e.g., “objective criteria”, BATNA, interests, options, etc.) even if not by those terms, at least they were implicitly being considered and affirmed by the practicing attorneys. This held true regardless of field of practice – corporate, civil litigation, prosecution and defense counsel, personal injury. While some still wonder how positional the bargaining actually is in the real world (was their sample size too small?), the students seemed to feel relieved to have these lawyers confirm that they didn’t have to be jerks to be successful negotiators.

Even if the practicing attorneys couldn’t see how realistic the concept, for example, of “expanding the pie” was in the context of specific cases that seemed to just be about “the number” (as one student discussed below), the students seemed to want to be prepared for and open to collaborative opportunities in their own work.

So what they learned wasn’t really something new about negotiating – it was confirmation that what they were learning was worthwhile and relevant, and the assignment gave them confidence that they could tailor that learning to fit the contexts, personalities, and subject matters of the negotiations they would face in the world of practice. I think the assignment gave them that self-confidence because it supported and reinforced what they were learning in the classroom.

8. What worked well with the assignment or activity?

Here’s what the students themselves said (for anonymity, this is edited to omit student and attorney names and identifying personal information):

Student #1

“This assignment was awesome. It revealed a lot about the professional identity that I am currently building, and gave me direction for the professional identity I want to have as a practicing attorney. Although Attorney A is probably wealthier than Attorney B, I am willing to bet that [he/she] is not a pleasure to work with, neither as a coworker or opposing party. And, I am also willing to bet that [his/her] general hard-ass nature bleeds over into [his/her] personal life, because few can maintain two discrete and distinctly different personalities.

Attorney B, alternatively, was seemingly cool, calm, and collected. [He/she] did not seem stressed. [His/her] office atmosphere was relaxed, and [he/she] spoke fondly of past negotiations and opposing negotiators. I also spoke to another attorney who knows [him/her] personally and professionally, and [he/she] reaffirmed my perceptions. I want to build a professional reputation like Attorney B. I realize, however, that I should remain cognizant of my natural tendency to revert to hard bargaining tactics. I will always reflect on this class, this assignment, and the experiences I had in our mock negotiations and will carry forward the lessons I have learned in hopes to build a successful career as a fair and principled negotiator.”

Student #2

“These interviews also reinforced the notion of preparation. Regardless of the negotiation, regardless of my years of experience, preparation will always be key in being an effective negotiator. In my discussion with both interviewees, they broke down their negotiation process and preparation. Then I showed them each my 7- Element Preparation Tool and they agreed that these elements are vital to my success as a negotiator. For instance, I will always need to be aware of my interests and the interests of other parties. This goes directly to understanding context as Attorney #1 repeatedly noted.

With Attorney #2, in [his/her] her settlement agreements, [he/she] noted that having a BATNA is critical and also understanding the attractiveness of my BATNA. Thus, going forward, thorough preparation should never be a step that I skip when entering a negotiation. Also, as Attorney #2 noted in our interview, I will pay strict attention to communication with the client because that it an integral part of the preparation process.”

Student #3

“Interviewing both attorneys cast an informative light onto my philosophies, strategies, and tactics as a negotiator. I naturally bring a collaborative mindset to the table. I want everyone to walk away feeling satisfied. Yet, my discussion with these attorneys has called that notion into question. Having practiced for much longer than I and in fields that I plan on entering, their opinions and approaches carry the real weight of experiences behind them. One could reasonably infer from these interviews that an element of positional bargaining is necessary to succeed in negotiations in the legal field.

The question remains how realistic is expanding the pie. These interviews demonstrate how unlikely other interests play into a negotiation and that everyone resorts to the bottom line. That being said, I believe in the collaborative approach and I will continue to stick to my style. However, I plan on infusing more aggressive elements I picked up from these interviews into my negotiations. The most valuable tactics, which are not entirely competitive, include playing up my strengths and diminishing my weaknesses and vice versa for the other side and sticking to objective criteria, as discussed in Getting to Yes. These two tactics seem to yield the greatest result based on the interviews and my own personal experience negotiating in this course.”

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

I would ask everyone to interview two attorneys (rather than one) – I think having two points of view can be valuable, whether they are polar opposites or similar. It takes more time for the students, but the ones who did two interviews seemed to get more from having the additional interview. In my mediation class that I taught this summer, I asked students for a reflection paper on their observations of two mediations – and having two experiences enriched their reflections.

10. It seemed from some of the students' comments that they interviewed two people, though you mentioned that you required only one interview. Did those students do more than one interview or perhaps the interview subjects referred to other lawyers?

Students were given the option to interview one or two attorneys – their choice. Next time I'll require two interviews, to provide a somewhat broader perspective than just one attorney's approach.

11. I have been concerned that asking subjects about their philosophies generally may lead to idealized descriptions (particularly if in the interviews the students describe concepts they learn in the course). How much, if at all, do you think that happened in your students' interviews?

That did not seem to happen, perhaps because the attorneys largely didn't seem to have any conceptual (or idealized) frameworks or philosophies for what they were doing when they were negotiating. For better or worse, they came to their approaches through the school of hard knocks, without the benefit of a philosophical or academic background in negotiation. I think only one attorney had ever taken a course on negotiation. [This makes it very different from mediators, who all get some sort of basic training. Mediators thus have been introduced to an "idealized" version of mediation, but most of the practicing attorneys interviewed by my students about their negotiation experiences/styles had never had even a basic course or CLE workshop in negotiation.]

12. As an illustration of my concern, many years ago I did a continuing mediation education program with some mediators in Florida and had them answer some questions about their mediation approach. Whadaya know – the responses indicated that they were all facilitative. Except that I knew darn well that many used "evaluative" techniques.

I have been emphasizing the value of asking about actual cases is that I think that such possible distortions are less likely to happen if subjects discuss actual events in actual cases rather than a general philosophy in many cases. I assume that getting a detailed account of cases generally is less likely to get biased accounts, though asking people to describe in detail episodes of cases can also be valuable. What do you think about this?

Interesting. I think the attorneys in the negotiation interviews would discuss aspects of de-identified actual cases by way of example (e.g., as an example to support a philosophical outlook about what works or not). I would be a bit worried about asking the students (or their interviewees) to go into depth about an actual negotiation case due to client confidentiality concerns and due to my concerns that students naturally tend to focus on "what happened" (in the war story, in their own negotiation experiences) and I encourage them to focus as much (or more) on the "lessons learned" from their own experiences or the attorneys stories.

That said, there is much to be said for a thorough-going, in-depth review of “what happened” and for post-hoc analysis of what that implicitly (and perhaps more honestly) says about the attorneys’ approaches to negotiation. I am not certain students are sophisticated enough about this kind of social science qualitative research to do it well (or perhaps more honestly, that I am sufficiently sophisticated about qualitative research to be able adequately to guide students in such an endeavor).

Pedagogically speaking, I was satisfied that the students were learning a lot from their interviews – both directly and indirectly – and primarily, they were being given a lot to think about in terms of their own professional development. So for me, the interviews, while perhaps not a good foundation for serving other goals, served very well to promote constructive self-reflection (a key pedagogical goal for me).

[I think the students could distinguish puffing from honest self-assessment by the attorneys, and making that distinction also gave students opportunities for self-reflection on issues of profession identity. The students were definitely not all admirers or believers in what they heard – either in the classroom or in the interviews. And I encourage this kind of skepticism and “decide for yourself” approach after giving a good-faith effort to learn the classical negotiation teachings.]

This is a fruitful area for further collective discussion about our goals for assigning a Stone Soup project in the first place – pedagogical, anthropological, or other?

13. In a way, your mediation clinic assignment can provide a useful comparison as students refer to specific cases. It’s an imperfect comparison because they report on cases that they observe themselves rather than cases that others describe. Nonetheless, I wonder if you think that focusing on actual cases leads to more realistic understandings.

Interesting. It would certainly be a richer (and more realistic) experience to observe an actual mediation than to interview someone about how they mediate. The problem with trying to extend that to the negotiation setting is that I suspect it would be unlikely that most attorneys would allow a student to observe an actual negotiation – heck, they mostly don’t even want their own clients to observe them negotiating on the client’s behalf. Of course, if it were possible for students to observe an actual negotiation, I would ask students to opt for that opportunity (rather than a straight interview) and to then engage the negotiator in discussions about what they were doing and why.