

Memorandum

To: ADR Students
From: Professor Ackerman
Re: Dispute Resolution Process Observation
Date: September 22, 2017

Between now and November 8, 2017, you are to observe at least two hours of a “real world” dispute resolution process and write a 3-5 page (double spaced) analysis of the process. Please follow these instructions:

1. The process you observe may involve any formal dispute resolution process; i.e., courtroom litigation (trial, *not* appellate), arbitration, mediation, case evaluation, or a hybrid process. It must occur in the “real world”; i.e., a simulation will not suffice. And it should have some degree of formality; Uncle Charley’s intervention in a dispute between your cousins at Sunday dinner will not cut the mustard.
2. You should observe at least two hours of a proceeding. That may mean more than one hearing or proceeding; it might mean attending on more than one day. On the other hand, it might require attendance at only a portion of a lengthy trial, arbitration, or mediation session.
3. Attend a session that the parties themselves are likely to attend, for example, an evidentiary hearing or a closing argument to a jury, a face-to-face mediation, an arbitration in which the parties are participating. It is advisable to check the court’s calendar or call the clerk of court, program administrator, or neutral prior to a scheduled session to determine what is likely to transpire.
4. If you will be attending a proceeding that is normally confidential (e.g., a mediation or arbitration), call the neutral or the program administrator well enough in advance for them to obtain permission from the parties for you to observe. You should explain that you will be reporting about the proceeding to your 22-student class and professor, but that you will not disclose the identity of the parties, nor will you disclose any information from which we might determine the identity of the parties. It is not at all unreasonable for them to ask you to sign a confidentiality agreement; just make sure it is tailored so that you may report as required under this memorandum.
5. If you are attending a court proceeding, as a courtesy, you should make an effort prior to the proceeding to tell the clerk and/or judge why you are visiting the court. They are likely to be gratified and may even want to talk to you at length, either before or after the proceeding. Most mediations and arbitrations are scheduled in such a way that the mediator or arbitrator will know in advance that you will be attending. Again, they will, in all likelihood, be happy to talk to you, with an appropriate understanding as to confidentiality.

6. The proceedings on which you report should not be proceedings in which you are directly involved, e.g., through a law school clinic or through a part-time job. If you report on proceedings in which a clinic or firm with which you are associated is involved (but in which you do not play a first-hand role), you must take care not to breach any confidences or compromise your clinic's or firm's representation in any way. Because your report should maintain the detachment of a disinterested observer, it is probably best to avoid such proceedings altogether.

7. I strongly encourage you to interview at least one participant in the proceeding (i.e., a lawyer, party, or neutral), preferably at the conclusion of the proceeding. One or more such interviews can add a great deal of texture to your analysis. Most lawyers and neutrals will be happy to talk with you if they have time, once you've identified yourself as a law student in an ADR course. Parties may be more reluctant to participate, and if they are represented, you should ask their lawyers' permission before interviewing them.

8. Your report must be a minimum of three and a maximum of five pages in length, typewritten, double-spaced, in 12-point New Times Roman font, with margins of 1" to 1.5" on all sides. Apart from the foregoing, you may adopt whatever format you choose for the report. Substantively, it should include the following elements:

- a. Type of proceeding (e.g., criminal trial, family mediation, case evaluation);
- b. What transpired;
- c. How the parties participated in, interacted with, or reacted to the process;
- d. How the various participants (parties, lawyers, witnesses, judges, jurors, other neutrals, staff) interacted with one another;
- e. If the parties did not attend, how their absence is likely to affect their perception of the proceeding;
- f. Whether you think justice was done, procedurally and substantively;
- g. What other interests (fairness, efficiency, parties' welfare, lawyers' welfare, court's convenience, value creation, public interest, etc.) were well-served or ill-served by the proceeding(s).
- h. Whether you think the process used or some other process is best suited to deal with the problem(s) at hand.
- i. Any other observations you consider relevant.

Unless you are reporting on a public proceeding, please make sure that the paper includes nothing that would identify any of the participants (e.g., by naming them or describing unique characteristics), the dates or places of the incident(s) involved, or (if you are dealing with a confidential procedure) the court or administrative agency in which a relevant action is pending. You may identify the program or process (e.g., a criminal trial, a neighborhood mediation program, an administered arbitration) without providing identifying particulars (e.g., Oakland County, the Wayne Mediation Program). Please remember to include your name (grading is non-anonymous), and number each page.

There are any number of courthouses in which you might conduct observations. In addition, a quick perusal of the Yellow Pages or Google will lead you to neighborhood mediation programs (e.g., Wayne Mediation Center), institutional providers (e.g., American Arbitration Association), or individual providers of neutral services. I suggest that you at least try to schedule your observation (and perhaps complete it) by the third week of October, as November will be here before you know it.

As you know, this assignment is part of a national collaboration called “Stone Soup.” At some schools, students are proceeding much as you are, reporting their observations of “real world” processes. At others, students are performing a series of interviews with lawyers, neutrals, and parties. There is a blog for ADR professors – <http://www.indisputably.org/?p=11210> – to which students participating in Stone Soup have been invited. Professor John Lande (University of Missouri), who is coordinating the Stone Soup project, suggests that I bring your attention to these two paragraphs from the blog:

... There is likely to be a great temptation to simply “find” that a case fits the concepts in the course. Our theoretical concepts can be lenses helping us to understand things more clearly. But they also can be blinders focusing attention only on what we expect to see and causing us to ignore things that don’t fit the theory.

So you should encourage students not to assume that the case neatly fits the theory. Comparing theory with actual practice is a major purpose of the assignment. So you should tell students to particularly look for anything that seems to deviate from theory – as well as to analyze things that seem to fit. In other words, **they should try to be truly open-minded about whether the subjects’ accounts fit the theory or not.**

Your paper is due at the beginning of class on Wednesday, November 8, 2017, at 10:10 am (that’s a two-day reprieve from the deadline in the syllabus). Please be prepared to discuss your observations in one of our last two classes.