

Negotiation
Fall 2017
Interview Assignment

Overview

In the course of this exercise you will be asked to select one of the topics we will be discussing during the semester. After you have selected and familiarized yourself with the topic, you will interview a small group of individuals (4 to 6) who have been involved in a negotiation, in order to explore how that topic played out in their experiences. You will then write a report summarizing their answers and describing insights you gained from the interview.

The report will be due at the beginning of class on October 30. The report should be 6 to 8 typed pages, double spaced and with one inch margins on each side, in Times New Roman 12 Font. About 1-2 pages should address your insights from the negotiation, as described below.

The goals of the assignment are to provide you an opportunity to: (1) learn from someone's experience in an actual negotiation; (2) practice interviewing skills including developing rapport and protecting confidentiality; and (3) reflect on how concepts we discuss in class may apply in actual negotiations.

Selecting Your Topic(s)

As discussed in the first day of classes, this course is intended to provide you with a conceptual framework that will assist you in better understanding the practice of negotiation. In that context, we will discuss a variety of concepts and issues that are common in all types of negotiations. For your interview, you will select one or more of those topics. For example, you could interview someone about a particular issue (e.g., dealing with difficult emotions) and ask the subject to describe what happened in one or more actual cases where this issue arose without describing the entire case. You might also want to interview someone about the process that they go through in preparing for a negotiation. You could explore what steps they took, and whether they found those steps helpful. Before selecting your topic(s), I encourage you to look at the syllabus and the table of contents in our casebook. Ideally, you would like to have all of your subjects answer the same or similar questions. Thus, consider selecting a topic or topics with which subjects would be likely to have experienced.

About the Interview

The individuals you interview could be one of the parties in a negotiation, an attorney who represented a party in the case, or a neutral involved, such as a mediator. There is a small risk that you could be subpoenaed to testify about what you learn in an interview about an entire case. This situation seems unlikely to arise for several reasons. First, the interview would have to involve a situation that would 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, you probably wouldn't learn significant relevant information and it wouldn't be worth the expense to pursue this.

You first will need to identify the individuals you are planning to interview and contact them to inquire about their interest in participating and their availability. You **MUST** send a document (preferably an email) to the subject describing the interview. You may send it to request the interview or, if you arrange the interview in person or by phone, to confirm the interview. A model for this document will be provided separately.

At the outset of the interview, you **MUST** remind the subject that you will not disclose his or her name or anyone mentioned in the interview. To further protect confidentiality, you **MUST** tell the subject not to mention anyone else's name and, instead, use generic descriptions such as the person's

client or lawyer, the other lawyer, a manufacturing business, etc. You **MUST** tell the subject not to provide any information that might be relevant in future litigation.

In general, you should adopt the mindset of a tactful investigator to get as thorough and accurate understanding of a case and the process as possible, especially an understanding of the sequence of significant events. **It is important to ask subjects to describe actual cases illustrating the topic and not simply provide general statements about the topic.** Instead of simply accepting statements at face value, you should ask questions probing for other possible explanations of the events.

Start the interview by asking about the subject's background. Remind the subject about what the topic/focus of your interview is and ask the subject to think about situations in which they have to deal with that topic in the context of a negotiation.

You are free to conduct the interview however it would be most effective. Ask follow-up questions that seem important to you, especially to clarify things that you don't understand. Often, it is a good idea to wait to ask follow-up questions until after you finish learning the chronology because the follow-up questions may distract from the chronology and cause you to miss important events. Pay particular attention to anything that seems unusual or surprising and ask follow-up questions. Whenever appropriate, ask the subject about others' perceptions of particular issues. For example, you might ask how the other side viewed an issue.

Writing Your Paper

You have limited space to summarize the interview, so carefully decide what is most important to include. In general, the purpose of this assignment is for you to learn about the reality of a case in some detail, including the subject's assessment of it. In describing this part of the assignment, **be objectively descriptive, use plain English (not dispute resolution terminology)**, and generally avoid expressing your judgment about the parties, actions, decisions, etc.

Your narrative should begin with a brief description of the interview subject including information that would help readers assess the report (such as the subject's past experience with similar cases, if any). Your report should include brief descriptions of the key people and entities in the negotiations the subject described, but they **MUST NOT include any details that could reasonably identify the subject or any parties. The report MUST use pseudonyms referring to the people and entities in the case. The pseudonyms MUST 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 report must use plausible names, not silly ones.

The report MUST 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 MUST 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 six 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 demands \$X and the defendant offered \$X - \$100,000. Or a defendant offered \$Y and plaintiff demanded \$5Y (i.e., five times Y).

Your paper **MUST** prominently include the following legend at the top: "Note: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data."

Following the narrative, under a separate heading, your report must address your insights about what you learned from the interview. If you were writing about dealing with difficult emotions in a negotiation, for example, you might want to identify the different styles or tactics that your subjects used and whether they were successful. You might evaluate, perhaps, the reasons why a particular strategy worked or did not work. In this part of the paper, you may use dispute resolution terminology and refer to course readings, simulations, and class discussions.

This final section should also describe how this case affects your thinking about handling cases in the future. Of course, you won't encounter the exact same situation in the future, considering differences in parties, lawyers, facts, issues, etc. So any lessons for the future necessarily should be qualified.