

Negotiation

Interview Paper Information

For this assignment, you will conduct an in-depth interview with a lawyer of your choosing who is actively engaged in some form of regular professional negotiation and then write a detailed analysis of the interview. The following requirements apply:

1. The interview subject needs to have a minimum of five years professional experience as an actively-engaged lawyer-negotiator (that is, as a routine part of the subject's professional responsibilities). It does not matter whether or not this person formally studied negotiation or in what context this person negotiates professionally.
2. **Prepare for** and conduct a detailed (in-person preferred but telephone acceptable) interview with this negotiator focusing on a specific negotiation. I estimate that interviews will average about one hour. I have included a few suggested questions at appendix 1.
3. Your written analysis must include the following sections (please use these section headings):
 - a. Section 1
 - i. Subject's background (including education, negotiation training and years of negotiation experience). You do **not** need to identify this person by name or affiliation if anonymity is a concern.
 - ii. Description of the nature of the negotiator's experience (including the context in which the negotiator negotiates and the types of negotiations the subject conducts).
 - b. Section 2 – A discussion of the subject's philosophy of, insights into, beliefs about, and orientation toward, negotiation, including (but not limited to):
 - i. Subject's worldview and beliefs about the nature of people as they negotiate, the negotiation process itself, and how it influences the subject's approach to negotiation.
 - ii. Subject's levels of self-awareness, other-awareness and awareness about the negotiation process (this relates to our own exploration of awareness).
 - iii. How the subject approaches negotiations and why.
 - c. Section 3 – An example of a recent or otherwise memorable negotiation in which the subject played a leading role (do not include personally identifying information). The context can be transactional or disputational. Use the modes of eliciting information as discussed in the lectures, readings, and text. More advice is in appendix 2. Be sure to focus on the process—strategy, tactics, etc.. Get enough information about the context, personalities, assumptions, and expectations to apply to your analysis. The 7-elements tool might be useful in guiding your probes. You might initiate this part of the interview with a question such as: Can this person describe her or his: most difficult negotiation? Most satisfying negotiation? Most frustrating negotiation? A typical negotiation? What made it so, and what did the subject learn from this experience to make the subject a more effective negotiator?

- d. Section 4 – An analysis of (a) this negotiation and (b) this person as a negotiator in relation to the readings and concepts we have covered during this course. In this section, compare, contrast and draw insights about the ways this person interacts as a negotiator. **Make specific reference (including appropriate quotes) to our own readings and supplemental resources.** In part (b) of this section, you should compare and contrast what the subject says in Section 3 to how the subject describes their thoughts and actions in Section 3.
- e. Section 5 – A discussion of insights you draw about *yourself* as a negotiator in light of and in relation to the person you have interviewed.

Try not to exceed 10 pages in length. Although there is no penalty for exceeding that limit, I enjoy conciseness. Please use proper citation form. Also please use Times New Roman font, 12-point type, double-spaced with one-inch margins.

Appendix 1**Ideas for Interview Questions**

The following are *examples* of the types of questions you may want to ask for your interviews. This is not an exclusive list and I do not expect you to follow it if you wish to learn different things from your interview subject.

Context of her/his/their work

- In what settings does this person negotiate?
- Are these settings formal or informal?
- What is the culture of the industry or environment where these negotiations take place (is it a “macho” culture? Hierarchical structure? Flat organization? Diverse community?)
- Who does this person represent in negotiations (a person; a department; a company; a union; a public constituency; etc.)
- With whom does this person work as a negotiator (i.e. does she/he/they work as part of a negotiation team? Alone? Must obtain approval from a superior? From a workgroup?)

Background and training

- What is this person’s educational background? Does it include any courses or study related to communication? Psychology? Law? Management? Conflict? Negotiation? Mediation?
- Did this person receive formal *training* in negotiation? If it is formal, what approach or philosophy to negotiation was taught (e.g. “interest-based bargaining;” “negotiate to win”)?
- What is this person’s informal training in negotiation (for example, did this person have a mentor)?
- How extensive and what types of negotiation is this person most experienced in (for example, 10 years of negotiating complex labor agreements taking on average three - six months per agreement; one or two complex business transactions per year such as joint venture agreements; hundreds of individual sales contracts, etc.)?

Philosophy about people who negotiate

- What does this person believe/assume about people with whom she/he/they negotiates (for example does she/he/they believe people are generally honest? Fair? Concerned about joint gain? Willing to say whatever it takes to win the deal? Untrustworthy? Short-sighted? Self-interested? Deceitful)?
- Does this person have any core values or principles that she/he/they always keeps in mind when negotiating? What are they? How did she/he arrive at these principles and values? How do they manifest during negotiations?
- Is there anyone with whom, on principle, she/he/they refuses to negotiate? Who and why? How do they manage these situations?

Preparation and strategy

- How does this person prepare as a negotiator (and specifically, what does this person do to prepare)? Can this person describe an example?
- What strategies does this person use, and how does she/he decide on these strategies?

What else would this person like me to know that I have not asked?

Appendix 2

Guidance for Students in Conducting and Summarizing Interviews about a Case

In General

In your interview, you will try to get the best possible understanding of a case that you can. By “case,” we are referring to the sample negotiation described to you by the interview subject. To do this, you will need to enlist the cooperation of your interview subject to discuss important matters. This is similar to the process when lawyers and other professionals conduct initial interviews of clients who may be reluctant to fully or accurately describe the facts. If you interview lawyers or other professionals, they are required to protect their clients’ confidentiality, though they generally can do so as long as they do not disclose information that could identify people in the case. (See the document with more information about confidentiality of interview reports.)

So your first order of business is to gain your subject’s confidence that you will protect the confidentiality of the information provided and that you will treat him or her with understanding and respect.

This process begins with your first contact to invite the person to be interviewed, and you should assure him or her that you will be very careful in protecting confidentiality. The model letter inviting people to be interviewed illustrates how to do this.

Respecting the subject’s time is an important way to help gain his or her confidence. You should accommodate his or her preferences as much as possible in scheduling the time and manner of the interview. If you schedule the interview for a time more than a week or two in the future, send a reminder email or text a few days before the interview to confirm that the subject is still available at the time you scheduled.

Be on time for your interview. Being late is an immediate sign of not respecting the subject’s time. If you will be late or need to reschedule, let the subject know as soon as possible.

Conducting the Interview

Develop rapport from the outset of your conversation. Begin by thanking the subject for taking the time to talk with you. Then mention that you scheduled the interview to last an hour and ask if that still works for the subject. Sometimes things come up and subjects don’t have a full hour. If so, you should adjust your interview accordingly, reschedule, or plan to finish at a later time. It is a good idea to start with some “small talk” about safe topics such as traffic, weather, sports, school, mutual acquaintances etc.

After a few minutes, shift the conversation to begin the interview. **Remind the subject that you will not disclose his or her name or anyone mentioned in the interview. To further protect confidentiality, 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.** Tell the subject not to provide any information that might be relevant in future litigation. Even if the subject states someone’s name, do not record it in your notes.

Then ask if the subject has any questions and, if so, answer the questions.

Conduct the interview in a conversational manner rather than simply asking a list of standard questions. Feel free to use your own language if you think that will be more effective than using the wording of the questions in the assignment. Whenever appropriate, ask follow-up questions.

During the interview, use plain English as much as possible and avoid using dispute resolution terminology because the subject may not be familiar with it. If you think it really would help to use some of this terminology, define it clearly and make sure that the subject accurately understands what you mean.

Generally avoid expressing judgments about what the subject says. You should certainly avoid criticizing the subject or his or her client or lawyer etc. You should also generally avoid agreeing with the subject's perspective. Instead, using verbal and non-verbal communication, you should convey that you understand. As appropriate, you may summarize your understanding of what the subject said and check if you understand it correctly.

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 events. Ask questions probing for other possible explanations of the events rather than simply accepting statements at face value. 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, if you interview a lawyer, you might ask how the other side or his or her client viewed an issue.

When you ask about the case, start at the beginning, and after each event, ask what happened next. You may make notes of questions you want to ask after asking all the questions about the basic chronology. You may hold off asking some 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. This is also a good time to review the questions in the assignment and ask any questions that you haven't already covered.

If appropriate, you may ask the subject if there are any documents that he or she would be willing to provide relevant to your case. If the subject is willing to provide any documents and they include any identifying information, you should redact it so that it is cannot be retrieved. In that situation, substitute codes for any individuals or entities identified in the document and keep a separate document with the codes. If you get any documents from the subject, you may refer to them in your paper, being careful to avoid including information that could identify any party. If you get any documents from the subject, destroy them after you no longer need them for this assignment.

If your subject is uncomfortable answering a question, do not press him or her to do so. Instead, try rewording the question so that the subject would be comfortable answering or just move on to the next question. Similarly, do not press a subject to provide any documents that he or she does not want to provide.

After you finish asking about the chronology of events, review the list of questions in the assignment and ask any questions you don't already have the answers to.

Finally, ask if there is anything important that you didn't discuss about the case. Then thank the subject for his or her time and cooperation.

Taking Notes of the Interview

Take notes of key points, recognizing that you probably won't be able to take verbatim notes. If the subject uses vivid and distinctive language to make an important point, make a note of that language and put it in quotation marks in your notes.

In general, use single letters to refer to particular individuals or entities, which will help you take notes faster.

If you conduct the interview in person, periodically look up to maintain eye contact. If you conduct the interview by phone, you can use a speakerphone feature and type your notes into your computer.

In any interview, you may need to pause a number of times to keep up with taking notes of the conversation. Feel free to tell the subject you need to stop for a moment to write your notes before resuming the conversation.

You may record the interview with the subject's permission, though I encourage you not to record it. Part of the purpose of this exercise is to give you practice in conducting interviews and you generally won't record interviews in your work. Sometimes the quality of the recording is poor and you may have a hard time understanding the conversation. In addition, listening to and transcribing interviews takes much more time than most people realize. On the other hand, recording interviews can free you to focus on the interview. If you record interviews, to protect confidentiality, destroy the recording as soon as you no longer need it for this assignment.

As soon as possible after the interview, review your notes and fill in any important points that you may have omitted in your notes. It is important to do this promptly because your memory will fade quickly.