ADR Bulletin
ADR Bulletin

Volume 9 | Number 4 Article 2

12-1-2006

Making it fresh: ideas for teaching negotiation skills

Melissa Conley Tyler

Naomi Cukier

Recommended Citation

Conley Tyler, Melissa and Cukier, Naomi (2006) "Making it fresh: ideas for teaching negotiation skills," *ADR Bulletin*: Vol. 9: No. 4, Article 2.
Available at: http://epublications.bond.edu.au/adr/vol9/iss4/2

This Article is brought to you by ePublications@bond. It has been accepted for inclusion in ADR Bulletin by an authorized administrator of ePublications@bond. For more information, please contact Bond University's Repository Coordinator.

ADR Bulletin

ADR in the class-room

Making it fresh: ideas for teaching negotiation skills

Melissa Conley Tyler and **Naomi Cukier**

In Dreamworks' 2005 movie *Madagascar*, Alex the Lion responds to his zoo-mate Marty the Zebra's depression on reaching his 10th birthday: 'another year's come and gone and I'm still doing the same old thing: stand up here, over there, eat some grass and walk back over here.' Alex gives him some good old show-biz advice: 'Make it fresh!'

At the risk of comparing trainers to performing animals (heaven forbid!) we think something similar can happen to those of us who have been training for too long. We can fall back on a standard model of training that has served us well but perhaps could use some renovation. For negotiation trainers this can consist of the basic model of 'theory-roleplay-debrief'.

To deal with a similar mid-(training)-life crisis we recently reviewed the latest research on the most effective methods of negotiation teaching.[1] This article outlines these results and suggests practical ideas for making your negotiation teaching 'new'.

Negotiation skills and negotiation training

At least since the early 1980s negotiation has been an area for research and teaching as well as day-to-day practice. University centres such as the Program on Negotiation at Harvard Law School and journals such as the *Negotiation Journal* and *International Journal of Negotiation* have given negotiation theoretical credibility and promoted the study and teaching of negotiation worldwide.

A key learning is that negotiation is a skill that can be taught and learnt — for example a study of novice negotiators showed that they had different 'scripts' about negotiation that made them less effective than trained negotiators.[2] While greater longitudinal studies would be welcome,[3] the evidence is clear that at least some forms of training can effectively improve participants' negotiation skills and results.

This has led to the popularisation of negotiation training by groups such as Conflict Management New Zealand and Conflict Management Australasia. Other training groups such as ENS, Aticus, the Trillium Group and LEADR also have a strong focus on negotiation training.

Most negotiation training shares a set of similar objectives:

- to impart some type of theoretical framework for understanding negotiation
- to provide opportunities to practice negotiation, if possible
- to reflect on students' experiences of negotiation
- to encourage students to continue their learning process.

As specific theoretical frameworks such as the Harvard principled negotiation model have become popular, negotiation training has become standardised worldwide — summarised here as the 'theory-roleplay-debrief' model. Since much of the base work in developing negotiation curricula has already been done, basic negotiation courses now arguably follow a remarkably similar pattern wherever they are taught.

At the same time, there can be great diversity in what is being attempted on a more experimental basis. Negotiation training can vary widely on a number of fronts:

- in length: from a two-hour lecture to a one month full-time course
- in format: from a large-group lecture to a customised coaching session
- in orientation: from a mainly theoretically-based treatment to an inductive approach where insights are generated from experience.

Published by ePublications@bond, 2006

Specific tools that may be used in negotiation training include theoretical readings, communication skills exercises, roleplay simulations, self-rated questionnaires, aptitude testing, videotaping, reflective journals, essays or research assignments.

Lessons for teaching negotiation

While we know that negotiation training does work, at a deeper level the success of negotiation training has remained a mystery: how exactly does negotiation learning best occur? Until very recently, there was relatively little understanding of why negotiation training worked — or why some forms of negotiation training worked better than others. As stated by Adjunct Professor Peter Reilly, a law professor at Georgetown University, the central pedagogical question is, 'to what extent is this material really teachable?' — that is, how much can you teach someone to incorporate material at the 'motor level' so it can be exhibited through behaviour rather than through analytical thinking alone?[4]

The gap between the demonstrated success of negotiation teaching and our poor understanding of why it works has generated greater interest and focus on the process of negotiation learning, particularly since 1999. This has led a number of authors to look at the diversity of negotiation training in order to identify those practices that best promote learning. One notable example was the Hewlett Conference on negotiation teaching that inspired a number of articles and reports.[5]

Some of the best work in this area includes studies on:

- the role of theoretical material (traditional prescriptive lectures)[6]
- the role of simulations and roleplays[7]
- the role of feedback, including self-review, video review and interviews[8]
- the importance of teaching self-reflection and emotional intelligence skills[9]
- the importance of analogical reasoning.[10]

A survey of these findings reveals some key lessons for negotiation teaching which requires adaptation and additions to the 'theory-roleplay-debrief' model. The implications of these findings for teachers and trainers of negotiation are significant and may require changes to practice. Practical suggestions for classroom activities are offered for each lesson below.

Lesson 1: Negotiation theory and experience are both needed, but depend on the quality of roleplays and review

While the studies to date show that there is nothing intrinsically wrong with the 'theory-roleplay-review' model, they suggest that some sophistication in delivery is required, particularly in the key areas of designing roleplays and conducting review.

The 'theory-roleplay-review' model works because of a key truth: students won't learn just from experience but they won't learn just from theory either. We know that the experience of negotiating day after day does not necessarily teach a person to negotiate; instead, the person may use the same limited skills over and over again. Studies show that experience alone is the least effective way to learn to negotiate.[11]

Similarly, reading a book on negotiation does not make a good negotiator. A 2003 study showed that this was the second least effective method for learning negotiation.[12] The problem is in the difficulty of transferring abstract knowledge to real-life situations. Differences between the contexts of classroom-based learning and practical use decrease the likelihood of transfer of material and are particularly problematic for novice negotiators.[13]

The limitations of relying just on negotiation theory or experience mean that some melding of the two is needed. This has led to the use of simulated roleplays as an effective and efficient way to teach negotiation. Many students do not recognise that they constantly experience negotiation situations during their everyday lives; thus roleplays give students something to talk about when reflecting on negotiation. Roleplays can help enhance students' ability to identify self-interest and the underlying interests of others. Furthermore they effectively create concrete mutual experiences, useful for review and group learning.

While the studies to date show that there is nothing intrinsically wrong with the 'theory-roleplay-review' model, they suggest that some sophistication in delivery is required, particularly in the key areas of designing roleplays and conducting review.

However there is a danger of over-reliance on roleplays where negotiation experience in simulations is presumed to be sufficient for learning. Evidence from recent studies suggests that simulations are not an effective negotiation teaching tool unless roleplays are:

- credible, relevant and contextual, and
- supported by a rich review of negotiation experience.

Quality of roleplays

Negotiation teachers can often make the error of writing roleplays with insufficient detail which do not take into account many important factors which influence negotiations. Many trainers assume that a short, non-complicated fact sheet for a roleplay will accomplish an effective negotiation experience for students.

Our experience in training professional and student groups has highlighted the need for detailed, complicated and realistic roleplays in allowing students to experience negotiation practice. When roleplays have not contained enough detail, students waste valuable preparation and negotiation time asking questions about inane details, figures and statistics. The scenario should also include practice with complications which students will have to address in real life negotiations — such as organisational politics, status, emotion and gender. The greater the difference in contexts between practice and theory, the less students will transfer from their learning into the practical environment.[14] Thus roleplays that are detailed, contextual and 'real' enough to reflect actual negotiations will ensure a greater chance of transfer of skills to practice.

A few negotiation trainers have addressed this phenomenon and have experimented with more detailed, contextual and even emotive roleplays that focus on building students' emotional intelligence. This approach assumes that to become a more effective lawyer, negotiator or problem-solver, one must learn how to connect with other people — how to build relationships of trust, respect, and collaboration.

For example, Peter Reilly at Georgetown University used a simulated negotiation exercise in which one party was a low-income mother of three children to enable students to engage with each other in a realistic manner.[15] He observed that this negotiation almost invariably intensified quickly, with body language, emotion and behaviours frequently moving from play-acting to 'real life'. He concluded that students' negotiation skills were elevated by their mere involvement and personal investment in the emotions and difficulties of the roleplay.

Quality of review

The other key element of quality roleplays is a rich debrief or review of negotiation experience. When time is limited there can be a temptation to spend more time on theory and roleplay and less on review of negotiation experience. In fact, a rich review of experience is arguably the most important aspect of training. Ideally such review should encourage 'deep learning'.

Unlike a surface approach (where students' intention is simply to complete the tasks required) deep learning occurs when students endeavour to understand a phenomenon, or discover the concept applicable to solving a problem.[16] The learning task is interpreted as an opportunity to gain insight and understanding rather than to satisfy external demands (like assessment exercises such as exams).

When time is limited there can be a temptation to spend more time on theory and roleplay and less on review of negotiation experience. In fact, a rich review of experience is arguably the most important aspect of training.

This is similar to Deborah Kolb's experiential learning cycle that envisages a circular process of concrete experience, reflection, abstract conceptualisation and experimentation.[17] Debriefing enables students to reflect on experience and thus generalise from simulations and exercises. A focus on deep learning in teaching negotiation skills thus facilitates students teaching themselves from their own experience.

Ray Fells of the University of Western Australia suggests some questions that can be used to promote deep learning in negotiation including:[18]

- To which real life negotiation situations can I relate this roleplay experience?
- To which other real life situations can I relate this roleplay experience?
- How has this experience enabled me to see what I 'already knew' about negotiation in a new light?
- What else do I need to explore and examine before I can make up my own mind on what this experience means?
- What have I learned elsewhere which I can draw upon to help me understand this experience?

Other popular methods for encouraging deep learning through self-review are journals and videotaping[19] (or, with newer technology, video-streaming).[20] Novel methods include electronic negotiation bulletin boards to post or respond to critical ideas, employing a web-based discussion room before and after simulation, and polling systems. A simple method for giving detailed feedback includes appointing observers to each set of roleplayers who can then give feedback on individual performance.

Psychological conflict assessment tools can also be used for review and self-reflection including the Thomas Kilmann MODE (TKM) which analyses the ways in which students respond to conflict. For example Carrie Menkel-Meadow used the TKM pencil and paper test at Georgetown University Law School[21] and asked students to physically move themselves into groups representing the five different categories. This was an effective tool to examine obvious gender groupings, for example: were men more competitive and women more accommodating? This enabled students to analyse the deeper learning aspects of factors such as gender on negotiation.

Suggestions for practice

In summary, studies suggest the need to provide both negotiation theory and experience. Suggestions for the classroom include:

- incorporate theoretical material both before and after negotiation roleplays
- where possible, present theoretical material in context using examples that are similar to students' own real-life situations
- use roleplays predominantly for

Published by ePublications@bond, 2006

consolidating and practicing learning
- give adequate facts and figures to ensure there are no gaps which may distract students from their negotiation
- provide students with roleplays which explicitly detail the emotions, sensitivities and political and bureaucratic contexts surrounding negotiations
- use roleplays which feature personalities and circumstances different from those with which the students are likely to have experience
- allow adequate preparation time before negotiations, ensuring students fully understand their party's interests, goals and limitations in the negotiation
- ask students to imagine how the various parties in the scenario 'feel'
- facilitate student design of roleplays through sharing their own experiences of conflict and negotiation
- provide extensive opportunities for self-reflection after negotiation activities
- leave at least as long for debrief and review of roleplays as for the roleplay itself
- explicitly mention deep learning as one of the aims of negotiation training
- incorporate at least one deep learning question in debriefing students' experience
- explicitly promote self-reflection as a key skill of experienced negotiators
- consider how assessment tasks can promote self-reflection and deep learning
- use journals and videotaping to assist review, reflection and assessment.

Lesson 2: Students learn best from observation and analogy

While the suggestions listed above can be accommodated within the 'theory-roleplay-debrief' model, the literature has revealed two highly effective techniques that need to be added to this model: the benefits of observation and analogy for negotiation learning.

Learning through observation

Observation is a technique that is currently little used in most negotiation training. Trainers may model good negotiation behaviour themselves, but often there is little opportunity for formal observation of more experienced negotiators. However, evidence suggests that this is one of the best ways of teaching negotiation: in their 2003 study Janice Nadler, Leigh Thompson and Leaf Van Boven found that observation was the most effective way of teaching negotiation skills.[22]

Observational learning is based on the premise that negotiators can improve their own skills by observing those of others, that is, by watching an expert negotiator conducting a negotiation. Observation allows students to absorb lessons beneath a conscious level and then apply by analogy to new situations.

Observational methods can include showing live or videotaped experts or actors, or even Hollywood film clips. The excitement of a courtroom drama or a thrilling hostage negotiation scenario can be highly effective in providing stimulating and effective models for observation. These videos are not only helpful in providing modelling opportunities, they also provide engaging exercises for debriefing and learning from negotiations.

Observation can also be provided through experiential activities. For example, real world placements provide the opportunity for observation of institutional, organisational and community-based negotiations.[23]

Observation can also be used for reflection. Robert Bordone and Bob Mnookin of Harvard Law School showed the benefits of observational learning as a feedback and self-learning mechanism.[24] Students watched a video of actors coming to an integrative agreement in the negotiation roleplay that students had just completed. This provoked discussion of negotiation skills and how these effective methods could have been used during their own negotiations.

It is also worth thinking about how technology can be used to try to assist observation. For example, the University of Colorado Law School uses web-based streaming video to videotape all student negotiations and disseminate them almost immediately online for all students to access.[25] Negotiation courses delivered online can store a range of information for observation and reflection, as for Robert McKerise and Nils Fonstad's semester-long online negotiation course at the Sloan School of Management at the Massachusetts Institute of Technology where every lecture, comment and response was recorded.[26]

Learning through analogical reasoning

Negotiation skills trainers often assume that one abstract example will sufficiently illustrate each principle they impart when teaching negotiation skills. However it has been shown that getting students to analyse and compare various examples is more effective than providing students with single examples.

Jeffrey Loewenstein and Leigh Thompson from Northwestern University have shown that learning by comparing examples works better than studying one case: in their study, one group of students were asked to extract the underlying principles from one negotiation case while another group was asked to compare two mini-negotiation cases and extract the

Trainers may model good negotiation behaviour themselves, but often there is little opportunity for formal observation of more experienced negotiators. However, evidence suggests that this is one of the best ways of teaching negotiation …

underlying principles from them.[27] Comparison allowed students to abstract a common denominator which is not tied to irrelevant and distracting surface elements of the negotiations which they could then apply to new situations. It was shown that even brief examples are sufficient to enable students to grasp complex negotiation principles and allow them to transfer those principles to solve analogous negotiation problems in new contexts.

However this same study showed that learning by analogy is not automatic and requires guidance: students were not automatically aware of when to make comparisons and could fall into the trap of 'negative transfer' where the learner transfers a principle to an inappropriate situation.

Negotiation training should give students the chance to compare multiple examples and extract the common, underlying principles. This both facilitates learning of those principles and enables better transfer of these principles to other contexts. Studies on analogical reasoning explain this through the critical exercise of 'similarity mapping', noting that abstract principles presented alone may not be adequately understood and are hard to apply. Making comparisons prompts a focus on the common element between two examples that helps to make clear their common structure.

Another way of achieving this end is through on-site placement where students get the chance to learn by comparing and contrasting multiple negotiation situations.[28]

Suggestions for practice

In summary, students learn best through observation and analogy:

- invite expert guests to negotiate 'live' in front of students, including question time and interactive discussion
- create a videotape of expert guests, for example negotiating a roleplay that students also complete
- use videotape extracts from movies and other readily available material to illustrate good negotiation techniques
- use group roleplays (such as where students take turns to play a role in a 'rotating fishbowl' exercise) where students can observe each other's behaviour
- ask students to compare and contrast two or more negotiation cases
- provide multiple examples to illustrate a single principle
- ask students to come up with multiple examples that they feel illustrate one principle.

Conclusion

The research outlined in this article suggests the need for multi-faceted negotiation training that makes use of a variety of teaching techniques. This requires some deepening and adaptation of the 'theory-roleplay-debrief' that has become the staple of many negotiation training courses.

While innovation in methods for teaching negotiation in universities and other institutions still has room for further development, the past five years have seen very significant positive development in trainers' approaches to best practice teaching of this skill. Further studies, including those utilising the ever-changing phenomenon of online technology, are required in order to further refine teaching methods and continue to improve learning outcomes in negotiation courses. ●

Melissa Conley-Tyler is a senior fellow in the Faculty of Law at the University of Melbourne and former program manager of the International Conflict Resolution Centre and can be contacted at m.conleytyler@unimelb.edu.au.

Naomi Cukier is the Learning and Development Adviser for Lander Rogers Lawyers and can be contacted at ncukier@landers.com.au.

Endnotes

1. M Conley Tyler and N Cukier, 'Nine lessons for teaching negotiation skills', *Legal Education Review*, Vol 15, 2005, 61–86.

2. K M O'Connor and A A Adams, 'What novices think about negotiation: a content analysis of scripts' (1999) 15 *Negotiation Journal* 135.

3. M A Sacks, K S Reichart and W T Proffitt, 'Broadening the evaluation of dispute resolution: context and relationships over time' (1999) 15 *Negotiation Journal* 339.

4. P Reilly, 'Teaching a law student how to feel: using negotiations training to increase emotional intelligence' (2005) 21 *Negotiation Journal* 301.

5. S Cobb, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools, at the Hewlett Conference 2000* (Harvard University 2000); B Fuller and L Susskind, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools, at the Hewlett Conference 2000* (Harvard University 2000); R C Bordone and B Mnookin, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools, at the Hewlett Conference 2000* (Harvard University 2000); R S Fortgang, 'Taking stock: an analysis of negotiation pedagogy across four professional fields' (2000) 16 *Negotiation Journal* 325.

6. J Nadler, L Thompson and L Van Boven, 'Learning negotiation skills: four models of knowledge creation and transfer' (2003) 49 *Management Science* 4; K M O'Connor and A A Adams, 'Research report: what novices think about negotiation: a content analysis of scripts' (1999) 15 *Negotiation Journal* 135.

7. J Loewenstein and L Thompson, 'The challenge of learning', (2000) 16 *Negotiation Journal* 399; P Reilly, 'Teaching Law Students How to Feel' (2005) 21 *Negotiation Journal* 2; K Mack, G Mullins, J Sidford, D Bramford, 'Developing student self-reflection skills through interviewing and negotiation exercises in legal education' (2003) 13 *Legal Education Review*.

8. R E Fells, 'Teaching a subject like negotiation: How might we encourage deep learning?' in A Herrmann and M M Kulski eds, *Expanding Horizons in Teaching and Learning*. Proceedings of the 10th Annual Teaching Learning Forum, 7–9 February 2001 (Perth: Curtin University of Technology, 2001) <http://lsn.curtin.edu.au/tlf/tlf2001/fells.html>.

9. P Reilly, 'Teaching a law student how to feel: using negotiations training to increase emotional intelligence' (2005) 21 *Negotiation Journal* 2; R C Bordone, 'Teaching interpersonal skills for negotiation and for life' (2000) 16 *Negotiation Journal* 377; E Ryan, 'The discourse beneath: emotional epistemology in legal deliberation and negotiation' (2005) 10 *Harvard Negotiation Law Review* 231;

Published by ePublications@bond, 2006

C Menkel-Meadow, 'Is creativity possible in legal problem solving and teachable in legal education' (2001) 6 *Harvard Negotiation Law Review* 97.

10. J J Gillespie, L Thompson, J Loewenstein and D Gentner, 'Lessons from analogical reasoning in the teaching of negotiation' (1999) 15 *Negotiation Journal* 363.

11. J Nadler, L Thompson and L Van Boven, 'Learning negotiation skills: four models of knowledge creation and transfer' (2003) 49 *Management Science* 4; P Reilly, 'Teaching a law student how to feel: using negotiations training to increase emotional intelligence' (2005) 21 *Negotiation Journal* 2; A Kenworthy-U'ren, 'Teaching ideas: service learning and negotiation: engaging students in real world projects that make a difference' (2003) 19 *Negotiation Journal* 51.

12. J Nadler, L Thompson and L Van Boven, 'Learning negotiation skills: four models of knowledge creation and transfer' (2003) 49 *Management Science* 529.

13. K M O'Connor and A A Adams, 'What novices think about negotiation: a content analysis of scripts' (1999) 15 *Negotiation Journal* 135.

14. J J Gillespie, L Thompson, J Loewenstein and D Gentner, 'Lessons from analogical reasoning in the teaching of negotiation' (1999) 15 *Negotiation Journal* 363.

15. P Reilly, 'Teaching a law student how to feel: using negotiations training to increase emotional intelligence' (2005) 21 *Negotiation Journal* 301.

16. R E Fells, 'Teaching a subject like negotiation: How might we encourage deep learning?' in A Herrmann and M M Kulski eds, *Expanding Horizons in Teaching and Learning*, proceedings of the 10th Annual Teaching Learning Forum, 7-9 February 2001 (Perth: Curtin University of Technology, 2001) Available <http://lsn.curtin.edu.au/tlf/tlf2001/fells.html>.

17. D M Kolb, 'More than just a footnote: constructing a theoretical framework for teaching about gender in negotiation' (2000) 16 *Negotiation Journal* 347.

18. R E Fells, 'Teaching a subject like negotiation: How might we encourage deep learning?' in A Herrmann and M M Kulski eds, *Expanding Horizons in Teaching and Learning*. Proceedings of the 10th Annual Teaching Learning Forum, 7–9 February 2001 (Perth: Curtin University of Technology, 2001) Available <http://lsn.curtin.edu.au/tlf/tlf2001/fells.html>.

19. R B McKersie and N O Fonstad, 'Teaching ideals: teaching negotiation theory and skills over the internet' (1997) 13 *Negotiation Journal* 363.

20. S R Peppet, 'Teaching negotiation using web-based streaming video' (2002) 18 *Negotiation Journal* 271.

21. C Menkel-Meadow, 'Teaching about gender and negotiation, sex truths and video tape' (2000) 16 *Negotiation Journal* 357.

22. J Nadler, L Thompson and L Van Boven, 'Learning negotiation skills: four models of knowledge creation and transfer' (2003) 49 *Management Science* 529.

23. A Kenworthy-U'ren, 'Teaching ideas: service learning and negotiation: engaging students in real world projects that make a difference' (2003) 19 *Negotiation Journal* 51.

24. R C Bordone and B Mnookin, *'Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools, at the Hewlett Conference' 2000* (Harvard University 2000).

25. S R Peppet, 'Teaching negotiation using web based streaming video' (2002) 18 *Negotiation Journal* 271.

26. R B McKersie and N O Fonstad, 'Teaching ideals: teaching negotiation theory and skills over the internet' (1997) 13 *Negotiation Journal* 363.

27. J Loewenstein and L Thompson, 'The challenge of learning', (2000) 16 *Negotiation Journal* 399.

28. A Kenworthy-U'ren, 'Teaching ideas: service learning and negotiation: engaging students in real world projects that make a difference' (2003) 19 *Negotiation Journal* 51.