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Nine Lessons for Teaching Negotiation Skills

Melissa Conley Tyler and Naomi Cukier***

Negotiation is a key skill for legal practice and one that offers a rich theoretical literature as well as opportunities for experiential learning. However, it can be a challenging skill to teach both in the law school and law firm environment. Many teachers have limited time and resources and may be tempted to fall back on a fairly basic model for teaching negotiation skills.

This paper outlines research that is showing new and innovative ways of teaching negotiation skills. While best practice is still evolving, there are a number of clear insights from work to date. Practical suggestions for class activities are offered including in areas such as observation of experts, emotional intelligence and analogical reasoning.

The authors draw on their experience teaching negotiation skills to both students and practitioners. Their experience is varied, ranging from groups of 5 to 180, and includes both law school, law firm, government, corporate and non-profit clients in Australia, New Zealand, South Africa and the USA. In particular, the authors draw on experiences with small group and on-line negotiation teaching with law students at the University of Melbourne and Monash University.

A Negotiation and Negotiation Skills

At least since the early 1980s, negotiation has been seen as an area of theoretical inquiry as well as day-to-day practice.¹

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1 Key texts include H Raiffa, *The Art and Science of Negotiation* (Cambridge, MA: Harvard University Press, 1982) for its theoretical insights and R Fisher, W Ury & B Patton, *Getting to Yes* (New York: Penguin Books, 1981) for its ability to introduce negotiation theory to a wide audience. Other pioneers include GI Nierenberg, *Fundamentals of Negotiating* (New York: Hawthorn Books, 1973); D Druckman ed, *Negotiations, social-psychological perspectives* (Beverly Hills: Sage Publications, 1977); H Cohen, *You can*

Spearheaded by the Program on Negotiation at Harvard Law School, negotiation theory has become an area of inquiry for a number of law schools around the world.² It continues to inspire both significant theoretical work³ and mainstream “how to” guides.⁴ A number of specific journals such as the *Negotiation Journal* publish research on this area.⁵

A key to learning from this academic activity is understanding that negotiation is a skill that can be taught and learnt. Negotiation performance can be demonstrably improved by training interventions.⁶ For example, a study of novice negotiators showed that they had different “scripts” about negotiation that made them less effective than trained

negotiate anything (North Ryde, NSW and London: Angus & Robertson, 1980); DG Pruitt, *Negotiation behavior* (New York: Academic Press, 1981) and WI Zartman & MR Berman, *The practical negotiator* (New Haven: Yale University Press, 1982).

- 2 See <http://www.pon.harvard.edu> (accessed 8 December 2005) for a description of the Program on Negotiation’s work. Academic inquiry in this area has been greatly promoted by the 18 university-based negotiation research centres established with support from the William and Flora Hewlett Foundation; S Cobb, Negotiation Pedagogy: Learning to Learn (2000) 16 *Negotiation Journal* 315.
- 3 For example MH Bazerman & MA Neale, *Negotiating rationally* (New York: Free Press, 1992); DM Kolb, *Is it her voice or her place that makes a difference?: a consideration of gender issues in negotiation* (Kingston, ON: Industrial Relations Centre, Queen’s University, 1992); DM Kolb & J Williams, *Everyday negotiation: navigating the hidden agendas in bargaining* Rev Ed (San Francisco: Jossey-Bass, 2003); RM Kramer & DM Messick eds, *Negotiation as a social process* (Thousand Oaks: Sage Publications, 1995); RJ Lewicki, *Essentials of negotiation* (Boston: McGraw-Hill/Irwin, 2004); DG Pruitt & PJ Carnevale, *Negotiation in social conflict* (Buckingham: Open University Press, 1993); NM Spiegel, B Rogers, RP Buckley, *Negotiation: theory and techniques* (Sydney: Butterworths, 1998).
- 4 Practical guidance is offered for audiences from managers through to “dummies”: eg *Negotiating for dummies* (Foster City, CA: IDG Books, 1996). In Australia, examples include L Dicker, *Making negotiation happen* (Warriewood, NSW: Business and Professional Publishing, 2002); B Eunson, *Negotiation skills* (Brisbane: John Wiley, 1994); LFI Hawkins & M Hudson, *The effective negotiator* (Melbourne: Information Australia, 1989); C Hayes & L Hardie, *Negotiation skills* 2 ed (Wantirna South, Vic.: Eastern House, 1997); P McCarthy, *Developing negotiating skills and behaviour* (North Ryde, NSW: CCH Australia, 1989); J Mulder, *The negotiator’s handbook* (Oatley, NSW: Penny Publishing, 1997); C Richards & F Walsh, *Negotiating* (Canberra: AGPS Press, 1990).
- 5 Previously *Negotiation Journal*: *On the Process of Dispute Settlement*. Other journals with a focus on negotiation include *International Journal of Negotiation*, *The International Journal of Conflict Management*, *Harvard Negotiation Law Review* and *Negotiation*, a newsletter from Harvard Business School Publishing and the Program on Negotiation at Harvard Law School.
- 6 J Nadler, L Thompson & L Van Boven, Learning Negotiation Skills: Four Models of Knowledge Creation and Transfer (2003) 49 *Management Science* 4.

negotiators.⁷ While greater longitudinal studies would be welcome,⁸ existing evidence shows that negotiation training is effective in improving participants' negotiation skills and the quality of negotiation results.

The demonstrated success of targeted training in improving negotiation skills has led to the popularisation of negotiation training by groups such as the Harvard spin-offs Conflict Management Group and Conflict Management Initiatives and in this region, CMG's affiliate Conflict Management New Zealand and former affiliate Conflict Management Australasia.⁹ Other training groups such as ENS,¹⁰ Aticus,¹¹ the Trillium Group¹² and LEADR¹³ also have a strong focus on negotiation training.

Many law firms include negotiation skills as a standard part of their early legal practice training. Professional legal education programs, such as Leo Cussen and the College of Law, include negotiation in their skills training.¹⁴

This trend towards negotiation skills training has been adopted by many law schools as part of a focus on clinical legal education.¹⁵ For example, standard textbooks on legal skills, legal practice and dispute resolution include

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- 7 Id; KM O'Connor & AA Adams, What Novices Think About Negotiation: A Content Analysis of Scripts (1999) 15 *Negotiation Journal* 135.
 - 8 MA Sacks, KS Reichart & WT Proffitt, Broadening the Evaluation of Dispute Resolution: Context and Relationships Over Time (1999) 15 *Negotiation Journal* 339.
 - 9 Further information is available at Mercy Groups <http://www.cmgroup.org> (accessed 8 December 2005); Conflict Management New Zealand www.cmnz.co.nz (accessed 8 December 2005) and CMA <http://www.cmaservices.com.au> (accessed 8 December 2005); Mercy Corps merged with the Conflict Management Group to become Mercy Corps Conflict Management Group in September 2004 <http://www.mercycorps.org/items/2105> (accessed 8 December 2005).
 - 10 ENS International www.negotiate.org (accessed 8 December 2005); L Hawkins & M Hudson, The ENS approach to training lawyers for ADR (1991) 65 *Law Institute Journal* 55.
 - 11 Aticus <http://www.aticus.com> (accessed 8 December 2005)
 - 12 The Trillium Group www.thetrilliumgroup.com.au (accessed 8 December 2005).
 - 13 Leader <http://www.leadr.com.au> (accessed 8 December 2005); See K Wilson, Lawyers engaged in ADR (1990) 64 *Law Institute Journal* 688.
 - 14 Negotiation is a formal part of the College of Law curriculum: The College of Law, *Practice Papers* (Sydney: LexisNexis Butterworths, 2005) vol 1, 45-62; The Leo Cussen Institute's practical legal training program includes negotiation skills throughout the curriculum <http://www.leocussen.vic.edu.au> (accessed 8 December 2005).
 - 15 See for example G Tamsitt, Interviewing and negotiation revisited (1987) 5 (2) *Journal of Professional Legal Education* 177; S Rice, *A Guide to Implementing Clinical Teaching Method in the Law School Curriculum* (Sydney: Centre for Legal Education, 1996).

negotiation as one of their key components.¹⁶ However, 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?” For example, 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?¹⁷

The gap between the demonstrated success of negotiation teaching and our poor understanding of its dynamics has led to much greater interest and focus on the process of negotiation learning, particularly in the last five years.

B Current Practice in Negotiation Training

It is a paradox that on the one hand, popularisation of negotiation training has led to a more or less standard basic model, while on the other hand, there has been great diversity in what is being attempted on a more experimental basis.

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, and
- to encourage students to continue their learning process.

The popularisation of specific theoretical frameworks such as the Harvard principled negotiation model has led to some standardisation of negotiation training worldwide. Since much of the base work in developing negotiation curriculum has already been done, basic negotiation training courses now arguably follow a remarkably similar pattern wherever they are taught.

16 Examples include R Hyams, S Campbell & A Evans, *Practical Legal Skills* 2nd ed (South Melbourne: Oxford University Press, 2004) 76-87; H Astor & CM Chinkin, *Dispute Resolution in Australia* 2nd ed (Sydney: LexisNexis Butterworths, 2002) 105-115; T Sourdin, *Alternative Dispute Resolution* (Pymont: Lawbook Co, 2002) 19-20; D Spencer & T Altobelli, *Dispute Resolution in Australia: Cases, Commentary and Materials* (Pymont: Lawbook Co, 2005) 63-104.

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

This means that a teacher with limited time can fall back on a model of presenting some theory, asking students to conduct a role play and debriefing their results. Personally, we have both used this basic model when law school curriculum time or client resources have been limited.

At the other end of the spectrum, there can be great diversity in how negotiation is taught. 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, and
- in orientation: from a mainly theoretically based treatment to an inductive approach where insights are generated from experience.

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

Assessment or evaluation of negotiation skills development can include self-perception, for example feedback surveys, changes perceived by colleagues and/or supervisors, demonstration of theoretical understanding, ability to analyse negotiation scenarios or assessment of role-plays, either by observation or results.

C Lessons for Negotiation Training

A number of authors have looked at the diversity of negotiation training in order to identify those practices that best promote learning.¹⁸ Some of the best work in this area includes studies on:

18 One notable example was the Hewlett Conference on negotiation teaching and related articles and reports. See S Cobb, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools*, at the Hewlett Conference 2000 (Harvard University 2000); B Fuller & L Susskind, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools*, at the Hewlett Conference 2000 (Harvard University 2000); R C Bordone & B Mnookin, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools*, at the Hewlett Conference 2000 (Harvard University 2000); RS Fortgang, *Taking Stock: An Analysis of Negotiation Pedagogy Across Four Professional Fields* (2000) 16 *Negotiation Journal* 325. See also J Lewicki, *Teaching Negotiation and Dispute Resolution in Colleges of Business: The State of The Practice* (1997) 13 *Negotiation Journal* 253.

- the role of theoretical material (traditional prescriptive lectures),¹⁹
- the role of simulations and role-plays,²⁰
- the role of feedback, including self-review, video review and interviews,²¹
- the importance of teaching self-reflection and emotional intelligence skills,²²
- the importance of analogical reasoning,²³
- the potential of service learning,²⁴

19 Nadler et al, supra note 6, at 4; O'Connor & Adams, supra note 7, at 135; See also D Gentner, MJ Ratterman & KD Forbus, The Roles of Similarity in Transfer: Separating Retrievability and Inferential Soundness (1993) 25 *Cognitive Psychology* 4; BH Ross & MC Kilbane, Effects of Principle Explanation and Superficial Similarity on Analogical Mapping and Problem Solving (1997) 23 *Journal of Experimental Psychology* 2; LR Novick, Analogical Transfer Problem Similarity and Expertise (1998) 14 *Journal of Experimental Psychology* 3.

20 J Loewenstein & L Thompson, The Challenge of Learning (2000) 16 *Negotiation Journal* 399; Reilly, supra note 17, at 2.

21 For example K Thomas, Conflict and Conflict Management in MD Dunnette ed, *The Handbook of Industrial and Organizational Psychology* (Chicago: Rand McNally, 1975); C Argyris, *On Organizational Learning* (Cambridge: Blackwell, 1993); J Decety, J Grezes, N Costes, D Perani, M Jeannerod, E Procyk, R Grassi & F Fazio, Brain Activity During Observation of Actions: Influence of Action Content and Subject's Strategy (1997) 120 *Brain* 10; MA Neale & GB Northcraft, Behavioral Negotiation Theory: A Framework for Conceptualizing Dyadic Negotiation in LL Cummings & B Staw eds., *Research in Organizational Behavior* (Greenwich: JAI Press, 1990); L Thompson, The Influence of Experience on Negotiation Performance (1990) 26 *Journal of Experimental Psychology* 6.

22 Reilly, supra note 17, at 2; RC 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. See also C Menkel-Meadow, Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education (2001) 6 *Harvard Negotiation Law Review* 97; C Menkel-Meadow, To Solve Problems, Not Make Them: Integrating ADR in The Law School Curriculum (1993) 46 *SMU Law Review* 1995.

23 JJ Gillespie, L Thompson, J Loewenstein & D Gentner, Lessons from Analogical Reasoning in the Teaching of Negotiation (1999) 15 *Negotiation Journal* 363. Earlier work includes D Gentner, Structure Mapping: A Theoretical Framework for Analogy (1983) *Cognitive Science* 7; D Gentner & AB Markman, Similarity is Like Analogy: Structural Alignment in Comparison, in C Cacciari ed, *Similarity in Language, Thought and Perception* (Brussels: BREPOLs, 1995); Thomsson, supra note 20, at 6; J Loewenstein, L Thompson & D Gentner, Analogical Encoding Facilitates Transfer in Negotiation (1999) 6 *Psychonomic Bulletin Review* 4; D Gentner, Structure Mapping: A Theoretical Framework for Comparison (1993) 7 *Cognitive Science* 155; L Novick, Analogical Transfer, Problem Similarity and Expertise (1988) 14 *Journal of Experimental Psychology* 3.

24 A Kenworthy-U'ren, Teaching Ideas: Service Learning and Negotiation (2003) 19 *Negotiation Journal* 51. Earlier work includes A Furco, Service Learning: A Balanced Approach to Experiential Education (Washington:

- culture, gender and negotiation training, and²⁵
- the potential of technology-assisted training.²⁶

A survey of these findings reveals nine key lessons for negotiation teaching which are outlined below:

- 1 Students won't learn just from experience
- 2 Students won't learn just from theory
- 3 Role-plays need to be credible, relevant and contextual
- 4 Students need a rich review of negotiation experience
- 5 Students learn best through analogical reasoning
- 6 Observation is one of the most effective learning techniques
- 7 Real world placements can be an effective training tool
- 8 Emotional intelligence and interpersonal skills assist negotiation learning
- 9 Technology can enhance negotiation learning.

The implications of these findings for teachers and trainers of negotiation are significant and may require adaptations to practice. Overall, what they suggest is the need for multi-faceted negotiation training that makes use of a variety of teaching techniques.

While the discussion below in some ways just touches the tip of the iceberg for each area, the aim is to provide a succinct and practical summary of the latest research on negotiation teaching for those who are designing courses. Practical

Corporation for National Service, 1996); A Kenworthy-U'ren, Management Students as Consultants: A strategy for Service-Learning in Management Education, in PC Godfrey & ET Grasso eds, *Working For the Common Good: Concepts and Models for Service Learning in Management* (Washington: American Association for Higher Education, 2000); DE Giles & J Eyler, The Theoretical Roots of Service Learning in John Dewey: Towards a Theory of Service Learning. (1994) *Michigan Journal of Community Service Learning* 1

- 25 DM Kolb, More than Just Footnote: Constructing a Theoretical Framework for Teaching about Gender in Negotiation (2000) 16 *Negotiation Journal* 4; C Menkel-Meadow, Teaching about Gender and Negotiation: Sex, Truths and Videotape (2000) 16 *Negotiation Journal* 357; DM Kolb & J Williams, *The Shadow Negotiation: How Women can Master the Hidden Agendas that Determine Bargaining Success* (New York: Simon & Schuster, 2000); EM Landry & A Donnellon, Teaching Negotiation with a Feminist Perspective (1999) 16 *Negotiation Journal* 4. See also DM Kolb & J Bartunek eds, *Hidden Conflict in Organizations: Uncovering Behind-the-Scenes Disputes* (California: Sage, 1992).
- 26 RB McKersie & NO Fonstad, Teaching Ideals: Teaching Negotiation Theory and Skills Over the Internet (1997) 13 *Negotiation Journal* 363; SR Peppet, Teaching Negotiation Using Web Based Streaming Video (2002) 18 *Negotiation Journal* 271.

suggestions for classroom activities are offered for each lesson below.

1 Students Won't Learn Just from Experience

Both negotiation teachers and students can fall into the error of regarding negotiation experience as equivalent to negotiation training. Students may assume that increased experience will lead to improved negotiation skills. Our experience in training professional groups has highlighted this phenomenon where students consider themselves experts at negotiation due to the fact that they have negotiated many times. However, in many cases they do not possess a wide repertoire of negotiation skills and cannot articulate any comprehensive theory when trainers seek to elicit the knowledge behind their "expertise". There is no guarantee that an "experienced" negotiator is not simply repeating the same limited negotiation menu with little reflection or learning on each experience.

Negotiation trainers can also fall into the trap of equating negotiation experience with negotiation training. For example, most trainers use simulated role-plays as effective and efficient ways to teach negotiation. Since many students do not recognise that they constantly experience negotiation situations during their everyday lives, some instructors find that they need to use simulations purely so that students have something to talk about when reflecting on negotiation. Role-plays can be helpful in enhancing 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.

However, there is a danger of over-reliance on simulations where negotiation experience in simulations is presumed to be sufficient for learning. Evidence from recent studies suggests that role-plays are not an effective negotiation teaching tool in the absence of other activities.

A 2003 study by Janice Nadler, Leigh Thompson and Leaf Van Boven²⁷ looked in depth at what students gain from negotiation experience and found that this was the least effective way of teaching negotiation skills. The study tested four common methods for teaching negotiation: didactic learning, learning via information revelation, analogical learning and observational learning. Groups in all methods achieved better learning outcomes than those for negotiation experience alone.

27 Nadler et al, *supra* note 6, at 4

A 2005 study by Professor Peter Reilly of Georgetown University Law School confirms these results.²⁸ Students were divided into groups and, for each group studied, role play simulations were combined with various other teaching tools, including principled based learning and analogical reasoning. Students' responses to these role-plays were observed, analysed and scored. The findings were consistent: simply having negotiation experience in the absence of other learning is largely ineffective for teaching negotiation.

Similarly, a 2003 study of negotiation training using real world placements (or service learning) to teach negotiation skills by Amy Kenworthy-U'Ren,²⁹ Assistant Professor of Management at Bond University School of Business, acknowledged that theoretical and prescriptive skills based learning is essential as a support for these placements.

These studies suggest the need to support negotiation experiences with other learning methods. Suggestions for the classroom include:

- use role-plays predominantly for consolidating and practicing learning,
- incorporate theoretical material both before and after negotiation role-plays, and
- leave at least as long for debrief and review of role-plays as for the role play itself.

2 Students Won't Learn Just from Theory

A similar trap comes from over-reliance on negotiation theory. Negotiation courses taught through didactic, principle based lectures and readings, allow teachers to impart theory of negotiation quickly and efficiently. When time is particularly limited for negotiation training, there is a temptation to rely on prescriptive theoretical material as the primary form of negotiation training. Students' grasp of such material is also relatively easy to assess. However, studies have shown that exposure to theoretical material alone is not sufficient for negotiation learning.

The 2003 study by Janice Nadler, Leigh Thompson and Leaf Van Boven³⁰ showed that this was the second least effective method for learning negotiation. Their method was to give students a one page synopsis of key principles of negotiation

28 Reilly, supra note 17, at 2.

29 Kenworth-Uren, supra note 24, at 51.

30 Nadler et al, supra note 6, at 529.

taken from a textbook. The most important principles were highlighted, and all examples were removed for the synopsis so that the didactic nature of the synopsis would remain distinct from the analogical conditions. It was found that unless there was a close connection between a principle and the relevant example, students were unable to apply the abstract principle.

The reason that theoretical material alone will not necessarily improve negotiation performance is the difficulty of transfer to real-life situations. Abstract principles presented alone may not be adequately understood and are hard to apply. Differences between the contexts of classroom based learning and practical use decrease the likelihood of transfer of material.

Kathleen O'Connor of Cornell University and Ann Adams of Rice University studied the "scripts" that various negotiators bring to negotiation.³¹ They found that novice students of negotiation were not easily able to appreciate and extend principles to new situations. This suggests that unless there is a close and obvious connection between a principle and a relevant example, learners are unable to take advantage of abstract principles.

This is not to dismiss the role of theory. Theory and prescriptive lessons are an essential accompaniment to negotiation simulations and other practical exercises. Theory can be particularly useful in learning about the preparation phase of the negotiation (especially vital for students who believe that the only important action occurs when parties are face-to-face). Theoretical instruction is also the only way to equip students to understand and apply concepts such as Best Alternative To Negotiated Agreement (BATNA).

This suggests the need to use prescriptive negotiation theory in conjunction with other learning methods. Suggestions for the classroom include:

- wherever possible, present theoretical material in context using examples that are similar to students' own real-life situations,
- incorporate theoretical material both before and after negotiation role-plays, and
- use theoretical material to enhance student understanding of preparing for negotiation.

31 O'Connor & Adams, *supra* note 7, at 135.

3 Role-Plays Need to be Credible, Relevant and Contextual

Negotiation teachers can often make the error of writing role-plays 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 role-play 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 role-plays in allowing students to experience negotiation practice. This should include practice with complications, which students will have to address in real life negotiations. A few negotiation trainers have addressed this phenomenon and have experimented with more detailed, contextual and even emotive role-plays.

Professor Peter Reilly of Georgetown University Law School was involved in the development of an exercise, which used role-plays, videotaping, and certain aspects of psychodrama to allow students to negotiate in an intensive, safe, and interactive environment with feedback from peers and course instructors.³² Reilly's role play is a good example of the kinds of role-plays with which instructors encourage students to practice negotiation. Others commonly involve negotiations between employers and employees (around issues of salary, job assignment, bonuses) in various industry contexts.

Other limitations of simulations as a method for teaching negotiation result from the difficulty the role play author has in giving enough detail to reflect real life negotiations. Often, simulations leave students unprepared to deal with real life organisational politics, status and emotion.

Kathleen O'Connor and Ann Adams' study on novice negotiators using "negotiation scripts"³³ also acknowledge that whilst scripts can be gleaned from sources outside their own experience, for example, someone instructs them in a sequence of behaviours appropriate for negotiating, they are often based on a person's own experience. As a result, when the person anticipates a negotiation, they refer to a sequence of behaviours that they deem appropriate for every negotiation, regardless of the specific context surrounding the anticipated negotiation.

³² Reilly, *supra* note 17, at 301.

³³ O'Connor & Adams, *supra* note 7, at 135.

James Gillespie, Leigh Thompson, Jeffrey Loewenstein and Diedre Gentner's Harvard University based research,³⁴ has indicated that the greater the difference in contexts between practice and theory, the less students will transfer from their learning into the practical environment. Given this, ensuring that role-plays are detailed, contextual and "real" enough to reflect real life negotiations will ensure a greater chance of transfer of skills to practice.

Our own experience with writing role-plays has been telling. When role-plays have not contained enough detail, students waste valuable preparation and negotiation time asking questions about inane details, figures and statistics. Providing students with these details at the outset so that they can incorporate them into their preparation, allows them to focus solely on the task of managing the process of negotiation, rather than the substance. Thus, a balance needs to be reached between succinct, manageable sized role-plays and ensuring that adequate subtext, context and facts are provided in order to allow students to concentrate on the process of negotiating, rather than on plugging any gaps in the facts.

Aside from giving enough hard figures and facts, other factors such as organisational politics, status, emotion and gender, need to be considered to ensure that students are realistic about their ability to achieve desired outcomes. Whilst a pedagogy, which analyses how contextual and social realities reconfigure the general prescriptions about "how to negotiate", does make teaching more challenging, it is an important consideration if students are to accomplish effective transfer of what they learn to real life negotiations.

One way of ensuring students feel comfortable with the realistic nature of a negotiation and understand its context is to facilitate student design of role-plays. When students share their own experiences of conflict and negotiation, it can also help to make visible what may otherwise remain invisible in exercises which focus on transactional perspectives.

Some trainers have observed that one of the most intriguing ways to stimulate discussions about negotiations and their influencing factors, is to change the gender of the protagonists of the role-plays. Discussion, which takes place after carrying out the negotiation, about the difference it would make to the negotiation if the characters were of a different sex, helps facilitate valuable lessons in how context affects negotiation.

³⁴ Gillespie et al, *supra* note 23, at 363.

Detailed, contextual and realistic role-plays should form a part of all experiential negotiation skills training. Suggestions for role-plays include:

- incorporate a role play which explicitly describes contextual, bureaucratic and politically based influencing factors into classroom learning,
- include at least one relational (relationship based) and one transactional negotiation role play into classroom activities,
- write/use role-plays which feature personalities and circumstances, different from those the students' are likely to have experience with,
- give adequate facts and figures to ensure there are no gaps which may distract students from management of the process of their negotiation, and
- allow adequate preparation time before negotiations (possibly allow students to prepare in groups "by side"), ensuring students fully understand their party's interests, goals and limitations in the negotiation.

4 Students Need a Rich Review of Negotiation Experience

When time is limited, there can be a temptation to spend more time on theory and role play and less on review of negotiation experience. In fact, a rich review of experience is needed if students are going to achieve deep learning of material.

The notion of deep learning is unlike a surface approach, where the students' intention is simply to complete the tasks required. It is where students endeavour to understand, to focus on what was intended and the concept applicable to solving a problem. The task is to interpret this as an opportunity to gain insight and understanding, rather than to satisfy external demands (like assessment exercises such as exams). The approach is designed to be holistic and integrative.

Deep learning is strongly linked to Deborah Kolb's experiential learning cycle which envisages a circular process of concrete experience, reflection, abstract conceptualisation, and active experimentation.³⁵ Reflection is seen as the creation of the opportunity for students to generalise from simulations and exercises.

One of the most convincing reasons for the effectiveness of deep learning in teaching negotiation skills is that it facilitates

35 Kolb, supra note 25, at 347.

students teaching themselves from their own experience. It has been proven an effective way to learn but also an important element in being an effective negotiator.

Ray Fells of the University of Western Australia suggests some questions that can be used to promote deep learning in negotiation including:³⁶

- What real life negotiation situations can I relate this role play experience to?
- What other real life situations can I relate this role play experience to?
- 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. Journals and videotaping are used as a means for private or group reflection. Popular commercial video clips or videos of expert negotiations are also used to engage students around theoretical points of negotiation skills. Other methods for giving students detailed feedback have been appointing observers to each set of role players. This way, students receive detailed coaching that often teachers are unable to give students in this setting. Video streaming has been used at Harvard University Law School, where role-plays were video taped and placed on the internet so that all students were able to watch their own and others’ role-plays and have detailed feedback posted on the site from their instructor.

There are various psychological conflict assessment tools, which have been used for review and self-reflection. One such tool is the Thomas Kilmann MODE (TKM) which analyses the ways in which students respond to conflict. It states that people respond to conflict in one of five ways: competing, accommodating, compromising, avoiding and collaborating.

The TKM has proved a challenging opportunity for students to make an in-depth analysis of their own tendencies and skills, especially if utilised straight after a simulated negotiation. TKM

36 RE Fells, Teaching a subject like negotiation: How might we encourage deep learning? *Papers Presented at 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> (accessed 8 December 2005).

37 Menkel-Meadow, *supra* note 25, at 357.

has been recognised as an accurate and helpful configuration for review as in most cases where it has been used, the TKM conflict styles match up with students' predispositions in their responses to conflict and negotiations.

One study, which utilised the TKM test to illicit deep learning, was in relation to a study of a gender's influence on negotiations skills. Carrie Menkel-Meadow used the TKM pencil and paper test at Georgetown University Law School³⁷ and asked students to complete a 30-item test and total their scores in the five different categories. Afterwards, they physically moved themselves into groups representing their scores and together, asked them to consider the advantages and disadvantages of this quality. Then they are asked to look around the room and make any comments which were relevant to where other members of the class have appeared, reflecting on their experience with that fellow class member during the exercise. This study was an effective tool to examine obvious gender groupings, for example, were men more competitive and women more accommodating? This style of study was an extremely effective tool in analysing the deeper learning aspects of influencing factors (such as gender) on negotiation.

Review and self-reflection should be key components of any negotiation training. Suggestions for the classroom include:

- incorporate at least one deep learning question in debriefing students' negotiation experience,
- explicitly mention deep learning as one of the aims of negotiation training,
- explicitly promote self-reflection as a key skill of experienced negotiators,
- consider how assessment tasks can promote self-reflection and deep learning, and
- use journals and video taping to elicit self reflection and rich review.

5 Students Learn Best Through Analogical Reasoning

Getting students to analyse and compare various examples has proven more effective than merely providing students with single examples to illustrate a principle.

Negotiation skills trainers often assume that one abstract example will sufficiently illustrate each principle they impart when teaching negotiation skills.

38 Lowenstein & Thompson, *supra* note 20, at 399.

However, it has been shown that comparing multiple examples and asking students to then extract the common, underlying principles is a better way to facilitate learning of those principles, as well as enabling better transfer of these principles to other contexts. Studies on analogical reasoning suggest that this is due to the critical exercise of similarity mapping and 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, which helps to make clear their common structure.

Jeffrey Loewenstein and Leigh Thompson from Northwestern University have undertaken significant research on the use of analogical reasoning to teach negotiation.³⁸ This has highlighted that even brief examples are sufficient to enable students to grasp even complex negotiation principles and allow them to transfer those principles to solve analogous negotiation problems in new contexts.

Loewenstein and Thompson asked one group of students to take one negotiation case and extract the underlying principles from it. They asked another group of students to compare two mini negotiation cases and extract the underlying principles from them. The study indicated that learning by comparing examples works better than learning by being provided with advice on a case-by-case basis. Loewenstein and Thompson noted that this was because comparing examples makes explicit the relational structure present during the original encoding. They further noted that comparison allows students to abstract a common denominator which is not tied to irrelevant and distracting surface elements of the negotiations.

This same study led to other conclusions about the use of analogical reasoning. That is, that students' awareness of when to make comparisons was not obvious and that comparing cases is not automatic.

Another significant downfall of the method, highlighted in this study is "negative transfer". This is where a learner transfers a principle to an inappropriate situation. Another problem is the misapplication of principles where the learner tends to fall back on heuristic and biased thinking about negotiation; for example, an assumption that they need to trade concessions or that the pie is fixed.

Despite difficulties in teaching when to compare and transfer negotiation principles using examples, it has been proven that analogical reasoning is one of the most effective

³⁹ Nadler et al, *supra* note 6, at 529.

methods of teaching negotiation skills. Suggestions for incorporation into the classroom environment are:

- asking students to compare and contrast two or more negotiation cases,
- explicitly asking students to access negotiation skills from past cases and applying them to new and novel situations,
- providing multiple examples to illustrate a single principle, and
- asking students to come up with multiple examples that they feel illustrate one principle.

6 Observation is One of the Most Effective Learning Techniques

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, one is better able to conduct one's own negotiations.

This technique is currently seldom used in most negotiation training. Trainers may model good negotiation behaviour themselves; however, commonly, 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 Boven³⁹ looked in depth at what students gain from negotiation experience and found that observation was the most effective way of teaching negotiation skills. Students were given negotiation tasks including two role-plays and a short quiz. Four learning conditions were used: didactic, information revelation, analogical and observational. A baseline, control condition was also used, where students received no instruction between the two role-play tasks. Student groups were randomly assigned to one of the conditions. The results showed that students completing the task, as part of the observational condition, demonstrated the highest rate of improvement from one task to the next.

This result was attributable to the fact that observers are able to absorb beneath a conscious level and then apply by analogy to new situations.

In their report on teaching negotiation in law schools,⁴⁰ Robert Bordone and Bob Mnookin of Harvard Law School,

⁴⁰ R C Bordone & B Mnookin, *Hewlett Pedagogy Survey Report on Negotiation Teaching in Law Schools, at the Hewlett Conference 2000* (Harvard University 2000).

also recognised that observational learning is facilitated when the observer pays attention to the model, retains the information, and has the capacity to enact the model's behaviours, provided the observer is motivated to do so. They give examples of where observation has also been used as a feedback and self-learning mechanism. In these activities, students view a video of actors acting out the negotiation role-play they have just completed. Watching the actors come to an integrative agreement, provokes discussion of negotiation skills and how these effective methods could have been used during their own negotiations.

In our own training practice we use observational methods to portray effective negotiating. Other, logistically simpler examples of our use of observational modeling are video tapes of experts or actors, and even Hollywood film clips. The excitement of a courtroom drama or a thrilling hostage negotiation scenario can be equally effective in providing stimulating and effective models for observation. These videos are not only helpful in providing modeling opportunities, they also provide engaging exercises for debriefing and learning from negotiations.

There are many opportunities for integrating observational modeling into other experiential activities. For example, real world placements provide the opportunity for observation of institutional, organisational and community based negotiations.

Opportunities for observation should be incorporated into negotiation training as much as logistically possible. Suggestions for the classroom include:

- inviting expert guests to negotiate "live" in front of students, including question time and interactive discussion,
- creating a video-tape of expert guests, for example negotiating a role play that students also complete,
- using videotape extracts from movies and other readily available material to illustrate good negotiation techniques, and
- using group role-plays where students can observe each others' behaviour; such as, where students take turns to play a role in a "rotating fishbowl" exercise.

7 Real World Placements can be an Effective Training Tool

Another technique that gets little use in negotiation learning is real world placement or “service learning”. Service learning is a branch of experiential education with active engagement as its foundation. Service learning courses can be defined as those that “emphasise academic rigor and the integration of real world course projects where students produce tangible, professional products for use in the local community as they work with and learn from organisations designed to serve community needs”.⁴¹ Typically this would be through students completing an internship with a community organisation while also receiving instruction and/or support.

A 2003 study by Amy Kenworthy-U'ren of Georgetown University Law School shows that service learning can have a significant impact on negotiation skills.⁴² Kenworthy-U'ren reports that the service learning projects allowed students to experience; “controlled chaos” (occurring through mixed feedback), the need to balance different clients’ interest, and layers of bureaucracy. These elements are real life influences, which can make negotiation a varied and challenging activity. In this way, service learning provides the opportunity not only to teach negotiation, but to teach about the variables that affect negotiations in the real world. Another benefit identified is the absence of time constraints is that students have the entire semester to explore and understand contextual complexity associated with their negotiations. Additionally, whilst some negotiations in these courses are planned, many negotiations arise with very little notice, providing challenges for students to apply the course theory to frequent and varied negotiations.

It might be said that service learning is an even more effective tool than other simulation or role play exercises because it provides the student with many opportunities for learning and self reflection, rather than just one opportunity for feedback from an observer or instructor. Its interactive nature and community based quality means that several observers (in the form of stakeholders and relevant members of the institution) can provide the student with feedback on negotiations. Furthermore, it is an ongoing, realistic opportunity to practice with dozens of different negotiation scenarios in a low risk but “real world” environment.

⁴¹ Kenworth-Uren, supra note 24, at 51.

⁴² Id.

Self-reflection and review models, specific to service learning pedagogy, are based on the work of John Dewey. It provides that instructors must allow students ample time to engage in novel, interesting and challenging coursework. This can include written reports, oral reports and group meetings throughout students' semester of service learning.

However, service learning (as a form of negotiation experience) needs to be supported by adequate theoretical material. For example, Kenworthy-U'ren argues that service learning pedagogy should be incorporated into negotiation courses in order to achieve the most effective outcomes for teaching students negotiation skills. She sees this style of learning as requiring the inclusion of carefully designed lessons in negotiation theory as well as self reflection.

Placement experience can be a highly effective method of negotiation instructions. Suggestions for activities include:

- select placements that offer contextual complexity and a variety of planned and unplanned negotiations,
- be aware of the need to resource placements through liability coverage, placement contracts and support, and
- use placements in combination with other instructive methods of teaching including theoretical material and review.

8 Emotional Intelligence and Interpersonal Skills Assist Negotiation Learning

Training in negotiation skills by teaching tools for self reflection and emotional intelligence, is an often used mechanism in the university sphere. The theory behind this method of teaching negotiation assumes that training in emotions will provide law students with a greater capacity to *connect* with their clients. That is, to understand their clients completely and thoroughly, with focus and intention. Academics agree that this skill is necessary to form a relationship of trust, cooperation, and collaboration, which, in turn, is necessary to effectively represent a client in mediation and negotiation, and many other legal or quasi-legal processes.

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. It suggests that building connections and effective relationships are more likely if one can first gain a fundamental understanding, both theoretical and practical, of human emotion.

One such self-reflection and emotional intelligence activity, which was used at Georgetown University by Peter Reilly, was the simulated negotiation exercise entitled “Charlene Walker.”⁴³ This was a multiparty negotiation, in which the class was divided into several groups of four students, with each student playing one of the following roles: Charlene Walker, a low-income mother of three children; Charlene’s attorney, who had just started a private law practice after spending three years working for the city’s legal aid foundation; a social worker for the city’s department of social services; and an assistant city attorney called upon to counsel the city social worker.

Reilly notes that there is some skepticism about the extent that law students can “get into” playing the role of characters whose life experiences are, in most cases, starkly different from their own, such as that of a low-income mother or a social worker for the city. However, students tend to perform this task quite well. Role-plays are generally effective in providing students with a license to experiment with behaviors they might not feel comfortable displaying “in their own skin” or when playing themselves. Moreover, there is something about a case, in particular, the Charlene Walker exercise, that enables students to engage with each other in a very realistic manner. Perhaps it is the simplicity of the facts, or the raw emotions that tend to emerge. This negotiation almost invariably intensifies quickly, with body language, emotion, and behaviors that frequently transition from play-acting to “real life,” including facial and vocal expressions.

One way to offer any prescriptive advice at the feedback stage is to show a PowerPoint slide listing various suggestions. However, Reilly believes that from a pedagogical standpoint, it was more effective to ask the students to discuss which specific behaviors and statements led to the creation of a safe environment where all information could be shared. Specifically, ask those students who just played the roles of Charlene and Charlene’s attorney, or characters in any role-play, why those characters’ counsel/representation made them feel safe and comfortable.

This approach to teaching negotiation logically follows that negotiation be framed as more of a conversation, that is; “the art of creating a positive mood whilst trading information in order to achieve integrative solutions and maximise value for both parties”. Students will then conclude that every conversation is a potential negotiation. Reilly comments that

43 Reilly, *supra* note 17 at 301.

where students often enroll in negotiation skills courses to become “tough negotiators”, it seems unlikely that students will express a desire to learn how to become a “tough conversationalist”.

Another use of self-reflection to teach negotiation skills is apparent in Bob Mnookin’s methods at Harvard University.⁴⁴ Originally developed by Roger Fisher and Frank Sander of Harvard University’s Program on Negotiation, this method involved participants practicing a set of deeper interpersonal skills which are essential to becoming a good negotiator, but that are equally transferable to a number of arenas; such as, difficult conversations with parents, friends and work colleagues. Involving group time, individual work and the coaching of an instructor, the Interpersonal Skills (IPS) Exercises was designed to expand students’ perception of what constitutes a “good negotiation”. It also allowed a certain amount of self-discovery and self-examination of one’s own communication style, and confidence. The IPS Exercises proved to be a valuable aspect of the Negotiation Workshop, however, it involved an enormous investment in student and faculty time and resources. It highlighted the fact that negotiation itself is not a difficult scientific formula, which is difficult to master, but that the difficulty lies in implementing skills in the heat of the moment.

The following are suggestions for classroom application of emotional intelligence and interpersonal skills in negotiation training:

- explicitly mentioning the interpersonal skills required to enhance negotiation performance,
- asking students to reflect on an interpersonal skill they feel under-confident in using – which might also help to improve their negotiation skills,
- providing students with role-plays which explicitly detail the emotion and sensitivities surrounding a negotiation – and asking the student to imagine how the various parties in the scenario “feel” whilst role playing, and
- providing extensive opportunities for self reflection after negotiation activities.

9 Technology can Enhance Negotiation Learning

An emerging technique for negotiation training is the use of information and communication technologies (ICT). Whilst

⁴⁴ R C Bordone & B Mnookin, *supra* note 18.

there are many examples of teaching negotiation in universities using online methods, teachers of negotiation have tended to use technology to supplement rather than replace face to face negotiation and the teaching of negotiation. Some instructors are now being more ambitious with their use of ICT.

Novel methods with which instructors are currently experimenting are; electronic negotiation bulletin boards to post or respond to critical ideas; employing a web based discussion room before and after simulation; polling systems; and internet based cross border negotiation simulation with coaching for aided learning.

Robert McKersie and Nils Fonstad of the Sloan School of Management at the Massachusetts Institute of Technology summarised their teaching ideas focusing on their semester long on-line negotiation course.⁴⁵ The course included simulated negotiations between students in addition to online lectures. Many benefits were identified. Students were able to analyse and retrieve parts of the experience because every lecture, comment and response was recorded. Furthermore, students reported that they had enough thinking time to formulate responses in their simulations and that the process allowed for sorting of relevant topics so that they could put off-shoot discussion topics in a “parking lot” to come back to later.

At the University of Colorado, in their Law School online method for teaching negotiation, Scott Peppet, Associate Professor of Law, used a web based streaming video.⁴⁶ In this activity, student negotiations were videotaped and then, almost immediately, disseminated online for all students to access. Students benefited from their ability to refer back to the tape of themselves at any time in order to self review. It also facilitated collective analysis and discussion of their performances at any time. Scott Peppet notes that the most powerful quality of this method was that in capturing raw data about a student’s performance, it minimised students’ capacity for defensiveness about their need for improvement. The instructor was able to break down this barrier to learning and confront student tendencies to re-describe, legitimise or remain vague about their performance and to set about the task of helping students learn from their experience, using raw video data.

There are obvious limitations to using web based streaming video as a technique for teaching negotiation. Amongst them

45 McKersie & Fonstad, *supra* note 26, at 363.

46 Peppet, *supra* note 26, at 271.

are the requirements of multiple video cameras, facilitation of asynchronous simulations, real time negotiation tutorials, wider accessibility and web expertise. However, continual developments in the availability and user friendly nature of online technology will increasingly facilitate the use of this method for teaching negotiation.

Technology can be used both to supplement other activities or as the main medium of negotiation instruction. Suggestions for activities include:

- use videotaping to assist review, reflection and assessment
- use discussion boards and other techniques to assist reflection and class discussion
- conduct one or more negotiation simulations online.

Whilst 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 conducted in relation to these nine lessons, specifically those utilising the ever-changing phenomenon of online technology, are required in order to further refine teaching methods and produce optimal learning outcomes.

D The Expanding Pie of Negotiation Training

We have focused in this paper on how to teach negotiation as if it were a static thing. In fact, at the same time as learning more about the dynamics of negotiation teaching, researchers are continuing to uncover new insights about negotiation processes and techniques themselves. Recent developments in negotiation theory have potential implications for those involved in negotiation training. There are a number of areas where research is rapidly expanding our understanding of negotiation processes which will inevitably have implications for training practice.

First, the impact of non-legal approaches to negotiation is going to continue. This will include areas such as neuro-linguistic programming (NLP).⁴⁷ Relatively few law teachers are familiar with work being done in psychology, linguistics and other disciplines that will have a direct bearing on

⁴⁷ For example R Bandler & J Grinder, *Reframing: neuro-linguistic programming* (Moab, Utah: Real People Press, 1982); J O'Connor & I McDermott, *NLP* (London: Thorsons, 1996); WB Gumm, MK Walker & HD Day, *Neuro-linguistic Programming: Method or Myth?* (1982) 29 *Journal of Counseling Psychology* 3.

negotiation teaching. There are a few examples of suggestions for drawing on this research in teaching,⁴⁸ but this is an area which is likely to grow and deserves attention.

Second, the multi-cultural environment in Australia's law schools and law firms suggests the importance of including teaching on inter-cultural negotiation as part of the negotiation syllabus. Despite the large and growing literature on inter-cultural negotiation,⁴⁹ there are relatively few tips for teachers who want to represent this in the classroom.⁵⁰ This is likely to be a greater area of concentration in the future as some of the general guidance being provided on multi-cultural legal education⁵¹ is translated into negotiation training practice.

Finally, the impact of medium of communication on negotiation is a significant area of inquiry. With lawyers around the world now using online communication such as email to conduct negotiations,⁵² an understanding of the differences in communication and negotiation techniques involved is vital. However, very few negotiation teachers are involved in the burgeoning area of online dispute resolution, despite its rapid growth worldwide.⁵³ Early research suggests that online

48 T Garratt, *The Effective Delivery of Training Using NLP* (London: Kogan Page, 1997); B Graunke & KT Roberts, Neuro-linguistic Programming: The Impact of Imagery Tasks on Sensory Predicate Usage (1985) 32 *Journal of Counseling Psychology* 4; R Dilts, *Applications of NLP* (California: Meta Publications, 1983).

49 For example MJ Gelfand & JM Brett eds, *The handbook of negotiation and culture* (Stanford, CA: Stanford Business Books, 2004); JM Brett, *Negotiating globally: how to negotiate deals, resolve disputes, and make decisions across cultural boundaries* (San Francisco: Jossey-Bass, 2001); GO Faure, JZ Rubin eds, *Culture and negotiation: the resolution of water disputes* (Newbury Park, CA: SAGE Publications, 1993); D Kahane, Dispute Resolution and the Politics of Cultural Generalization (2003) 19 *Negotiation Journal* 5; JK Sebenius, Caveats for Cross-Border Negotiators (2002) 18 *Negotiation Journal* 121; JW Salacuse, Ten Ways that Culture Affects Negotiating Style: Some Survey Results (1998) 14 *Negotiation Journal* 221.

50 For example P Casse & S Deol, *Managing intercultural negotiations: guidelines for trainers and negotiators* (Washington, D.C.: SIETAR International, 1985).

51 A O'Donnell & R Johnstone, *Developing a Cross-Cultural Law Curriculum* (Sydney: Cavendish Publishing Australia Pty Ltd, 1997).

52 N Balvin & M Conley Tyler, More Effective Than Face to Face? The Pros and Cons of Online Negotiation (2005) 7 *Internet Law Bulletin* (No 10 – February) 142; K Valley, The Electronic Negotiator, (2000) <http://www.mediate.com/articles/valley.cfm> (accessed 8 December 2005).

53 For a summary of the current state of online dispute resolution, including the more than 115 ODR sites and services launched worldwide that have resolved more than 1.5 million disputes, see M Conley Tyler, 115 and Counting: The State of ODR 2004 in M Conley Tyler, E Katsh & D Choi eds, *Proceedings of the Third Annual Forum on Online Dispute Resolution*. Hosted by the International Conflict Resolution Centre at the University of Melbourne in collaboration with the United Nations Economic and Social

negotiation, in some cases, may be more effective than face-to-face negotiation,⁵⁴ which will require a radical rethinking of negotiation training. While some pioneers have seen the potential of technology to assist negotiation learning,⁵⁵ there is still significant resistance in many quarters and logistic problems with providing online negotiation training within the law school environment.

Future negotiation teachers are likely to encounter a more sophisticated audience who seek guidance on some issues that are only starting to be well researched, including deep communication skills, the impact of technology on negotiation and inter-cultural aspects of negotiation. This requires negotiation teachers to continue to extend their knowledge of both theory and pedagogy.

Negotiation teachers need to presume that they will continue to work in a dynamic environment where the parameters of both what is to be taught and how best to teach it will continue to evolve. This makes negotiation a challenging but ultimately highly rewarding area of legal education to be involved in.

Commission for Asia and the Pacific (UNESCAP), Boston: University of Massachusetts, March 2005 <http://www.odr.info/unforum2004/> (accessed 8 December 2005). Further resources on ODR are available at M Conley Tyler & E Allen, *Online Dispute Resolution Index and Online Dispute Resolution Digital Library*, April 2005 <http://www.odr.info> (accessed 8 December 2005).

54 J Tan, D Bretherton & G Kennedy, *Negotiating Online*, paper presented at the Third Annual Forum on Online Dispute Resolution hosted by the International Conflict Resolution Centre at the University of Melbourne in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific, summarised in Balvin & Conley Tyler, *supra* note 52, at 142.

55 S Lewis, *Computers help with CLE* (1994) 4 *Australian Legal Practice* (No 3) 9.