

Evaluating Email Negotiations

*Melissa Nelken**

***Editors' Note:** Recent developments in the art of teaching negotiation via email, including contributions from this project, have created the need for robust methods of evaluating students' success at using this medium. Negotiating via email provides an important learning experience which, Nelken points out, can include points poorly addressed in other negotiation assignment contexts, including students' discovery for themselves of the limitations of multitasking and the importance of nuance. Nelken reviews the relative strengths, for particular purposes, of a variety of both direct and indirect methods of assessing the process and results of student negotiations conducted by e-mail.*

Introduction

For several years, the Center for Negotiation and Dispute Resolution at UC Hastings College of The Law has been coordinating email negotiations among law school negotiation classes around the country. These negotiations, which usually take place over a ten to fourteen day period midway in the semester, give negotiation students the opportunity to experiment with a new negotiation format as well as to conduct a negotiation with students they do not know, usually from a different part of the United States. After briefly describing the simulations' use as a teaching tool, I will suggest its value for the purposes of student assessment.

Using Email Negotiation Simulations as a Teaching Tool

The email negotiation exercise is valuable in a semester-long course simply because of its novelty: in a small class, students get to know each other's styles and approaches to negotiation quickly. The email

* **Melissa Nelken** is a professor of law at the University of California, Hastings College of the Law in San Francisco, California, faculty chair and acting director of the Hastings Center for Negotiation and Dispute Resolution, and a practicing psychoanalyst. Her email address is nelkenm@uchastings.edu.

negotiation puts them in unfamiliar territory, negotiating with strangers whose approach to negotiation could be quite different from what they have been taught. Indeed, the ease of negotiating via email with students in other countries makes this exercise an excellent vehicle for learning about cross-cultural challenges in negotiation. In addition, since email negotiation has become common in law practice, there are important lessons to learn about effective communication in this medium that are different from face to face negotiations (see Ebner et al. 2009). For example, establishing rapport is more difficult because of the absence of body language cues; tone and level of formality can be easily misjudged when words are carelessly chosen; and if norms for the frequency of message exchange are not explicitly negotiated, serious misunderstandings can ensue.

The email negotiation can take place in the background while other exercises continue during class sessions. This parallel format poses a challenge to students' time management skills, and it is one of the virtues and challenges of the exercise (and of negotiating by email in general) that it requires multitasking. This is more of a challenge for negotiators than is commonly thought (see Ebner 2011), if only for the simple reason that heavy multitaskers, in particular, are not as effective as they believe they are at focusing on each individual task they need to perform (Ofir, Nass, and Wagner 2009). When the negotiation deadline arrives, students inevitably learn valuable lessons about procrastination and the reality of deadline pressure as the negotiation window closes (for further detail on structuring, conducting and debriefing online role plays, see Matz and Ebner 2010). An email negotiation offers an opportunity both for authentic learning and for authentic evaluation (see Douglas and Johnson 2009) since it requires that the teacher consider the assessment component when s/he structures the negotiation problem.

Evaluation of Email Negotiation

Email negotiations can be evaluated in number of different ways. The teacher can assess the negotiation directly, with the negotiation transcript serving as the assessed assignment. Alternatively, the teacher can assess the negotiation indirectly by having students reflect on the negotiation orally or in writing, and grading them on their performance. These approaches can, of course, be combined, as I will discuss below.

Direct Assessment

Evaluating outcomes

Students receive a grade based on the results they achieve in the negotiation, and that grade is factored into the final grade in the course.

This approach was frequently used in the early days of teaching negotiation in law schools: simulations (conducted face-to-face) specified point values for each issue in the negotiation and students were graded on these directly or through comparison with others on the same side, based on the number of points they earned for their clients. Such approaches tend to privilege monetary or otherwise quantifiable (“objective”) outcomes, but they can also be adapted to give students credit for creative results (e.g., “plus” points for elegant solutions). Since grades are the currency of law and business schools, grading at least some negotiations based on outcome helps to keep students mindful of the level of preparation and focus necessary to achieve excellent results, albeit for fictional clients.¹ Nancy Welsh of Penn State Dickinson School of Law bases ten percent of students’ grades on two negotiations during the semester, including an email negotiation, and she gives students the following criteria for grading:

[Y]ou will be graded based on your objective results, including how they compare with others’ results and the extent to which they achieve and protect your client’s interests, recognize the scope of your authority, and are consistent with relevant legal and ethical constraints.²

James Coben of Hamline University School of Law (see Coben, *Empowerment and Recognition*, in this volume) uses a variation on Welsh’s method of grading email negotiations: posting complete negotiation settlement summaries (including reduction of future cash payments or economic benefits to present value) and requiring students to rank the quality of the outcomes (other than their own). Coben then grades the simulation according to the aggregate scores for each student’s settlement, with an appeal opportunity offered as part of a written reflection on the assignment. Of course, the two methods can be combined, with the teacher taking the student rankings into account, but not making them determinative of the grade on the email negotiation.

Evaluating process performance

In addition to direct grading of negotiation results, the email negotiation transcripts can be used in a number of ways to evaluate students’ grasp of the negotiation process and proficiency with its basic skills. In this form of assessment, students receive points for their moves during the negotiation, for the skills they display, and for the negotiation theory they put into practice. The luxury of a written transcript of the negotiation allows the teacher to evaluate carefully the students’ abilities as negotiators in the email medium. This recorded medium offers two advantages. First, the email

transcripts are likely to be the only complete negotiations available for review – videotaped negotiations often cover only a portion of a longer negotiation, and during in-class negotiations, the teacher is usually moving around the room, observing each pair’s negotiation for just a few minutes at a time. Second, the transcripts provide a rich basis for a *nuanced* evaluation of students’ process skills.

Reviewing the entire negotiation transcript enables the teacher to evaluate, for example, the student’s overall strategy: how well s/he integrates principles studied in class into the process, how attuned s/he is to the other party’s needs and how well or poorly s/he responds to the other party’s moves. The skills students demonstrate on this exercise might then be factored in with grades on *other* exercises (e.g., if a portion of the grade is based on “performance in simulations”), or it can form part of the teacher’s overall grade on course participation, as documentary evidence of the effort and thought put into this particular class exercise. Rare is the student with the gall to begin the email exercise by writing “throw me some numbers”; but this has happened. If nothing else, such a transcript serves to confirm a teacher’s sense that a particular student is not putting much effort into the class. (For more on the uses of “course participation” as a catch-all for assessing different types of student behavior, see Ebner and Efron, *Black Box of Student Evaluation*, in this volume.)

Indirect Methods of Assessment

Transcript-based assignments

The email negotiation transcript makes it possible for a student to analyze the entire negotiation, without the need to rely on her memory of what actually occurred between the parties. Students can be instructed to turn in the transcript of the negotiation, along with their analysis.³ These allow the teacher to evaluate the student’s level of understanding of what s/he was doing during the negotiation and of what worked and did not work in the process. How well can the students apply the negotiation theory they have learned to their own negotiation efforts? To what extent is their ability to analyze their own negotiation process clouded by cognitive biases such as confirmation bias? A capacity for self-analysis is critical to students’ learning from their own negotiation experiences (see Deason et al. 2012a and 2012b); the email negotiation transcript is an excellent vehicle for developing this ability (for more on the value of online role-play for encouraging and assessing students’ reflective abilities, in particular, through indirect methods, see Law et al. 2009).

Specifically, the teacher can ask students to discuss how the use of email altered their approach to the negotiation (e.g., you have to think about how to establish rapport through the written word; you have to craft messages carefully to avoid ambiguity; you need to be mindful of tone because there are no visual cues to indicate how your messages are being received). It can also be revealing to ask students what they *liked* about negotiating by email (e.g., you can do it in your pajamas in the middle of the night; you have time to think carefully about what to write before you write it; you can adopt a more forceful persona than you are comfortable with face to face); and what they *disliked* (e.g., the negotiation tends to consume whatever time is available; a negotiator with a dominant personality in face-to-face settings might not have the same impact online; it is hard to “read” the other party through such an impersonal medium).⁴ If the parties in the simulation the teacher uses have a pre-existing relationship, s/he can also ask whether the nature of the case affected students’ approach to the negotiation (did they emphasize the importance of the relationship from the beginning and refer to it repeatedly, as a basis for a collaborative resolution, or did they ignore it and see the “lawyer’s job” as involving only claiming value for the client?), and whether the nature of the online medium contributed to this element.

Since students do not have to rely on memory alone in analyzing this negotiation, their analysis is more detailed. They can refer to the text, and the cooler medium of email helps them see the advantages of techniques they might not have tried in face-to-face negotiations. They often refer to specific things that they or the other party wrote – a tone that seemed hostile or collaborative, a proposal that was muddled, a concession containing valuable information – that influenced the course of the negotiation. Just as they were able to make more conscious strategic choices with the luxury of time to respond to each email received, so can they often pinpoint, in reviewing the transcript, where the negotiation came together or went off the rails. They now pick up subtleties of tone and wording that they reacted to unconsciously during the negotiation, and they can see patterns of escalating conflict or conscious efforts to foster collaboration.

Participation in class debrief

In debriefing the exercise in class,⁵ the teacher can evaluate how well the students have grasped the similarities and differences between face-to-face negotiation and email negotiation. It works best to conduct the debriefing after the students have completed any written evaluation of their own negotiations. The general discussion usually covers many of the points that each student has made in writing, and

they often worry that they will be seen as merely parroting what was said in class if they turn in the written analysis after the debriefing.

The fact that they have all had a chance to analyze the negotiation before coming to class also raises the level of discussion, and this gives the students the opportunity to learn which of their experiences with the medium were general and which were specific to them and their counterparts. Certain lessons are reinforced by *absence*: for example, students who may have minimized the importance of non-verbal communication in face to face negotiations quickly realize how much information they gather through that channel, when it is no longer available. Similarly, the challenges to establishing rapport through email often make it difficult for students to come up with creative solutions (see Nadler 2004.) Because the discussion of the email negotiation focuses more on issues of form, thanks to the rich text available, than on the particulars of outcome, students often begin to see that different negotiation contexts require different approaches and skills, quite apart from the subject matter of the negotiation itself. In evaluating students' contributions to the debriefing, the teacher can thus look at their ability to generalize by making comparisons between face-to-face and email negotiations, as well as at the level and depth of their participation in the general class discussion. In a large class, it may be difficult for the teacher to do more than note contributions to the discussion, but in a class of sixteen or fewer, s/he may be able to evaluate the quality of individual contributions, as well as quantity.

Combined Methods

A well-rounded approach to evaluation would entail teachers directly assessing the negotiation, as well as assessing students' capacity for analysis and reflection. Since the teacher also has the transcript available, s/he may be able to note turning points in the negotiation that the student did not comment on, capture dissonance between the student's self-reflective report and an objective reading of the negotiation, or appreciate the student's ability to understand and reflect on subtleties.⁶

Email negotiation offers excellent opportunities for formative evaluation, in addition to simply assigning numbers signifying levels of teacher satisfaction with the student's work. While an email negotiation does not provide an opportunity to comment on or to evaluate non-verbal communication, reviewing a transcript enables the teacher to focus on issues of tone, framing and timing that may be hard to capture in live negotiations. If the email exercise comes midway or later in the class, the teacher will know the students fairly well and know what their particular challenges are, so s/he can focus written comments on the transcripts on areas that s/he knows are troublesome for each

student. For example, a student who tends to wilt under the pressure of face-to-face negotiation may develop some backbone in the email context. The teacher can point out how this shift affected the course of the negotiation and encourage the student to transfer that success to the face-to-face context. The student might also want to keep this shift in mind in deciding whether to negotiate by email in the future.

Conclusion

For all the reasons discussed above, the email negotiation is a valuable addition to a semester-long negotiation class, and it offers students a unique opportunity to conduct and analyze an entire negotiation in a realistic context of limited familiarity with the opposing party's representative. It also provides teachers with an excellent opportunity to evaluate students' practical skills, their abilities in terms of theoretical analysis and their capacity for reflective growth.

Notes

¹ For some of the challenges inherent in this approach, see Welsh, *Making Reputation Salient*, in this volume.

² Syllabus on file with author.

³ The prompt I use for the assignment is:

Using the messages you sent and received, analyze the email negotiation you conducted. How did the use of email alter your approach to the negotiation? What do you see as the pros and cons of negotiating by email, based on this experience? Did the nature of the case affect the approach you took? If so, in what ways? Please attach the complete transcript of your email negotiation (messages sent and received), in chronological order. Feel free to highlight portions of the text that are significant to your analysis.

The written assignment could also take the form of contemporaneous journal reflections on the process as it unfolds, rather than (or in addition to) an analysis of the entire negotiation after the fact.

⁴ As social media have become more ubiquitous, the number of students who look up their counterparts on Facebook or the like before starting the negotiation has grown, and they use the personal data they find to give them a sense of the person they are negotiating with before they begin. Some teachers seek to eliminate this possibility by providing students with only their counterpart's email address, and no other identifying information. Others go even further, by providing each student access to a dedicated email account set up by the teacher for the purpose of the email negotiation (Noam Ebner, personal communication).

⁵ For more on debriefing generally, see Deason et al. 2012a and 2012b.

⁶ One issue teachers should consider when using this combined approach is which they prefer to evaluate first – the negotiation or the assignment. By reading the assignment before reading and evaluating the transcript itself, the teacher can see what the student learned from the negotiation and subsequent analysis – and can also avoid addressing topics in her own evaluation that the student has already covered adequately. On the other hand, reading the ne-

gotiation itself, before viewing it through the student's reflections, may allow for a more objective view of what happened in the course of the negotiation.

References

- Deason, E., S. Press, R. Howell, S. Kaufman, J. Lee, and Y. Efron. Debriefing the debrief. 2012a. In *Educating negotiators for a connected world: Volume 4 in the rethinking negotiation teaching series*, edited by C. Honeyman, J. Coben, and A. W. Lee. St. Paul, MN: DRI Press.
- Deason, E., S. Press, R. Howell, S. Kaufman, J. Lee, and Y. Efron. Debriefing adventure learning. 2012b. In *Educating negotiators for a connected world: Volume 4 in the rethinking negotiation teaching series*, edited by C. Honeyman, J. Coben, and A. W. Lee. St. Paul, MN: DRI Press.
- Douglas, K. and B. Johnson. 2009. Online role-plays as authentic assessment: Five models to teach professional interventions. In *Conference proceedings of the ATN assessment conference 2009: Assessment in different dimensions*, edited by J. Milton, C. Hall, J. Lang, G. Allan, and M. Nomikoudis. Melbourne: RMIT.
- Ebner, N. 2011. Negotiating via email. In *Negotiation excellence: Successful deal making*, edited by M. Bepoliel. Singapore: World Scientific Publishing.
- Ebner, N., A. Bhappu, J. G. Brown, K. K. Kovach, and A. K. Schneider. 2009. You've got agreement: Negoti@ting via email. In *Rethinking negotiation teaching: Innovations for context and culture*, edited by C. Honeyman, J. Coben, and G. De Palo. St. Paul, MN: DRI Press.
- Law, S. F., S. Jones, K. Douglas, and C. Coburn. 2009. E-learning and role-plays online: Assessment options. In *Conference proceedings of the ATN assessment conference 2009: Assessment in different dimensions*, edited by J. Milton, C. Hall, J. Lang, G. Allan, and M. Nomikoudis. Melbourne: RMIT.
- Matz, D. and N. Ebner. 2010. Using role-play in online negotiation teaching. In *Venturing beyond the classroom: Volume 2 in the rethinking negotiation teaching series*, edited by C. Honeyman, J. Coben, and G. De Palo. St. Paul, MN: DRI Press.
- Nadler, J. 2004. Rapport in negotiation and conflict resolution. *Marquette Law Review* 87: 875-881.
- Ofir, E., C. Nass, and A. D. Wagner. 2009. Cognitive control in media multi-taskers. *Proceedings of the National Academy of Sciences* 106(37): 15583-87.