

# SYLLABUS

## NEGOTIATION AND MEDIATION

DON PETERS

SPRING 2002

The materials for this course are:

- (1) Robert Bastress and Joseph Harbaugh, **INTERVIEWING, COUNSELING, AND NEGOTIATING** (Little, Brown 1990), available at the normal text outlets and cited hereafter as "*Text*;"
- (2) Don Peters, **SPLITTING THE DIFFERENCE: SUPPLEMENTAL PROBLEMS IN NEGOTIATION**, an unpublished compilation that contains our negotiation lab exercises, available at Justice Story, and cited hereafter as "*STD*;" and
- (3) Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello, **BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES** (Harvard Press 2000) (hereafter *BW*), a supplemental source so valuable that reading assignments from it are included and multiple copies of it are on library reserve.

In addition, **GETTING TO YES**, by Roger Fisher, William Ury, and Bruce Patton (Penguin Paperback, either 1st ed., 1983, or 2d-3d, 1991); **GETTING TOGETHER: BUILDING RELATIONSHIPS AS WE NEGOTIATE**, by Roger Fisher and Scott Brown (Penguin Paperback ed. 1989); and **GETTING PAST NO: NEGOTIATING WITH DIFFICULT PEOPLE**, by William Ury (Bantam Books, 1991, and also in paperback), *are strongly recommended but not required*. Copies of these books also are on reserve in the Library.

Please purchase the *Text* and *STD* [and, if you wish, *BW*] as soon as possible. I recommend reading all of the *Text* devoted to negotiation, pages 339-531, either before the course begins or as soon as possible in the term. Our reading assignments are often long but contain no appellate cases. They are typically concentrated before major and focused role plays begin, and you should review them as necessary during these intensive

performance phases of the course. In addition, participation in this course requires use of a small audio tape recorder for taping and reviewing our lab exercises. You must provide your own audio recorder and tapes.

Our course goals include:

1. Providing information about action theories allowing you to prepare, conduct, and evaluate negotiating, mediating, and advocating before and during mediating tasks effectively;
2. Providing information about ethical and other value dimensions of effective negotiation, mediation, and mediation advocacy;
3. Providing sufficient opportunities to apply this information in the reflective practice of fundamental tasks to allow you to develop your skills and improve your competencies in negotiating and advocating before and during mediation.

This is a learning-by-doing course with grades based almost entirely upon the cumulative evaluation of your negotiation, mediation and written assignments. This course has no final examination but does include two short, multiple option quizzes during the term that are designed to encourage you to read the text assignments. A more thorough discussion of our grading approach is included later.

This course involves five negotiations done in evening lab classes [including two exercises done in teams] plus eight other negotiations done during normal class hours [including three mediations]. This course also requires ten graded written assignments consisting of 8 evaluations of negotiations, 1 analysis of three mediations, and one final paper. Specific suggestions for these papers and a schedule of the dates for submitting each are provided later. In addition, you will be asked to submit written negotiation plans before four of your negotiations. These will be graded. You will also be asked to complete short written questionnaires after many of your negotiations. These documents will help us review the experience and they will be distributed after the negotiations. They are not graded.

Attendance is required for all evening lab classes containing an evaluated performance assignment. Those lab classes this term are on February 5, February 19, March 12, March 19, and April 9. It simply is not feasible to reschedule these negotiations. If you miss one of these negotiations, you lose the points obtainable from that exercise. You may be able to write a reaction paper by reviewing a videotape of the negotiation. Students who are stranded by someone who does not attend a scheduled negotiation will automatically receive 90% of the points available for that exercise.

Standard 305(c) of the ABA Standards for the Approval of Law Schools requires “regular and punctual class attendance.” I interpret this standard as requiring presence

at 90% or more of our classes and monitor your attendance. Your grade will be reduced if your attendance falls below this definition. Many classes involve distributing materials for performances to be done at future classes. You are responsible for picking these up promptly from either me or one of the secretaries in the Clinic Suite if you miss one of the classes where documents are distributed.

The following schedule of classes is quite detailed. Any questions you have about any of these assignments should be directed to me at 392-0412 or e-mail [petersdon@law.ufl.edu](mailto:petersdon@law.ufl.edu). If you cannot reach me, the Virgil Hawkins Clinic Office Manager, Helen Stoneking, will be able to respond in my absence. You may fax papers. My fax number is (352) 392-0414.

## COURSE SCHEDULE

**Tuesday, January 15: COURSE INTRODUCTION.** *Read pages 3-17 and 341-47 of the Text, 1-8 and 13a-13g of STD, and 1-8 of BW.* We will introduce the course, explain its learning approach, and do a preliminary exercise which will be explained in class.

**Thursday, January 17: A PRELIMINARY LOOK AT NEGOTIATION STRATEGIES AND DYNAMICS PLUS THE MBTI AND MODE.** *Read pages 349-87 of Text and 9-43 of BW.* We will do an introductory role play which will be explained and distributed in class. In addition, The Myers-Briggs Type Indicator [MBTI] and the Thomas-Kilmann Conflict Management of Differences Exercise [MODE], valuable tools for learning negotiation skills, will be administered during this class.

After class, prepare the letter required by the Ed Euratz and Gator Printing situation, *pages 178-79 of STD.* This letter may not exceed two double-spaced typed pages and must be either typed or written legibly. It must be submitted no later than **5:00 PM on Monday, January 21**, and it will not be graded. All required course papers and negotiation plans are submitted by placing them in my mailbox [the two slots underneath my name in the upper right hand corner of the mail system] in the Clinic Suite, found in the unmarked room facing the wall between rooms 101 and 109.

**Tuesday, January 22: CHOOSING STRATEGIES AND STYLES AND THE ROLE OF CONTEXT.** *Read pages 389-404 of TEXT, 14-25 of STD, and 11-43 of BW.* We will do our first short negotiation which will be distributed in class, review demonstration video clips, and discuss your action choices in the letter you wrote for Ed Euratz.

**Thursday, January 24: NEGOTIATING ADRA AND TROPICAL HOTEL AND NEGOTIATION ETHICS.** *Read pages 474-479, 488-500, and 506-510 of Text and 274-94 BW.* We will negotiate the ADRA and Tropical Hotel situation, *page 180 of STD*, in pairs, using confidential information that will be distributed on *Tuesday, January 24*, at quiet locations you select. This negotiation will be limited to 15 minutes. After it ends we will reconvene to complete a short questionnaire capturing aspects of your experience, discuss the exercise, review demonstration video clips, and analyze negotiation ethics issues.

**Tuesday, January 29: MBTI AND MODE REVIEW.** *Read pages 71-117 STD and 5-55 BW.* We will discuss these instruments, distribute individual type profiles, share aggregate class data, and speculate how this information may help you improve your negotiating, mediating, and mediation advocacy skills.

**Thursday, January 31: HSN AND OCN NEGOTIATION.** We will negotiate the HSN and OCN negotiation during class at quiet sites that you select. Pairings and confidential information will be distributed on *Tuesday, January 29*. Your client will be available for brief consultation during this negotiation following procedures that will be

announced. You may negotiate for no longer than 130 minutes [10:20 to 12:30] and you must pick up a copy of the questionnaire no later than 12:30 p.m. on this date. Complete this short questionnaire and return it with your reaction paper. Your no more than one page reaction paper, plus a completed questionnaire, must be submitted no later than **5 PM on Monday, February 4.** *[this paper is worth 9 points]*

**Tuesday, February 5: CORE EXCHANGE SKILLS OF QUESTIONING AND LISTENING.** *Read pages 116-26, 162-73, 405-28, 515-22 of Text, 26-41 of STD, and 44-68 of BW.* After reviewing the HSN & OCN negotiation, we will explore the critical importance of information and the core skills of questioning and listening. We will critically evaluate videotaped demonstrations and practice these skills in short role plays that will be distributed in class.

**FIRST LAB CLASS—TUESDAY EVENING, FEBRUARY 5: NEGOTIATING WINNER v. CLUB CIMMARON.** We will conduct our first lab class, working entirely in our 12 student breakout groups. Please review the Lab Class protocols which follow later in this Syllabus. We will negotiate Winner and Club Cimmaron, pages 181-187 of *STD*. This negotiation will be limited to 72 minutes. At its conclusion we will discuss the exercise and review video excerpts in our master breakout rooms. Pairings, room assignments, and video times will be distributed on *Thursday, January 31*. Your written negotiation plan is due no later than **5 PM on Tuesday, February 5.** *[this plan is worth 7 points]*

A reaction paper discussing this experience, along with your completed questionnaire and action choices chart, is due no later than **5:00 PM on Friday, February 8.** *[this paper is worth 15 points]*

**Thursday, February 7: REVIEWING THE WINNER NEGOTIATION AND THE CHALLENGES OF DISPUTE RESOLVING.** *Read pages 59-70 of STD and 97-126 of BW.* After reviewing the Winner negotiation, we will critically evaluate video clips based on this exercise and analyze some of the general challenges involved in negotiating litigation linked lawsuits. We will also practice important negotiation skills in short roles plays based on Winner and Club Cimmaron that will be distributed *after class on Tuesday evening, February 7.*

**Tuesday, February 12: DISSOLVING A LAW FIRM---NEGOTIATING REMAYNE AND GOGH.** *Read pages 479-85, 496-97, 501-04 and 511-15 of Text, 44-51 of STD, and 204-23 of BW.* We will negotiate the ReMayne and Gogh situation, pages 188-194 of *STD*, using the following process. During the first hour we will critically evaluate video excerpts showing your senior partners starting this negotiation and setting the stage for your negotiation in the second hour. You will pick this negotiation up where the videotape ends and attempt to resolve all remaining issues. Pairings and confidential information will be distributed on *Thursday, February 7*. A one page reaction paper, together with your completed questionnaire, is due no later than **5 PM on Wednesday, February 13.** *[this paper is worth 9 points]*



**Thursday, February 14: REVIEWING REMAYNE AND GOGH AND THE CHALLENGES OF DEAL MAKING.** *Read pages 127-55 of BW.* After reviewing the ReMayne and Gogh negotiation, we will critically evaluate additional videotapes based on this exercise and analyze some of the general challenges involved in negotiating deals. We will also practice important negotiation skills in short role plays based on ReMayne and Gogh that will be distributed in class on *Tuesday, February 12.*

**Tuesday, February 19: PERSUASION IN NEGOTIATION AND FIRST QUIZ.** *Read pages 429-472 of Text and 52-59 of STD.* We will discuss our experiences with action choices designed to persuade and resist persuasion in the course thus far and critically evaluate video tape demonstrations. In addition, our first quiz, covering all reading assignments in Text and STD thus far, will be administered.

**SECOND LAB CLASS: TUESDAY EVENING: FEBRUARY 19: NEGOTIATING KLARE AND JOURNAL OF HUMAN RELATIONS.** Our second lab class involves negotiating Klare and Journal of Human Relations, pages 195-204 of *STD*, for no more than 90 minutes. After this negotiation, we will discuss your experiences and review video excerpts in our master breakout rooms. Pairings, room assignments and video times will be distributed on *Thursday, February 14.* A written negotiation plan is due no later than **5 PM on Tuesday, February 19.** *[this plan is worth 9 points]*

A reaction paper discussing your experiences, along with a completed questionnaire and action choices chart, is due no later than **5 PM on Friday, February 22.** *[this paper is worth 15 points]*

**Thursday, February 21: REVIEWING THE KLARE AND JOURNAL NEGOTIATION.** *Read pages 249-71 of BW.* After reviewing the Klare and Journal negotiation, we will practice important negotiation and counseling skills in short role plays based on the Klare and Journal negotiation. These role plays will be distributed *after class on Tuesday evening, February 19.*

**Tuesday, February 26: CREATING SOLUTIONS.** We will discuss experiences and challenges creating solutions in negotiation, critically evaluate videotaped demonstrations, and do role play that will be distributed in class.

**Thursday, February 28: CLIENT ROLES AND AGENCY TENSIONS.** *Read pages 235-41, 252-54, 265-82, and 303-08 of Text, 118-128 of STD, and 69-91 BW.* We will discuss these readings, critically evaluate videotaped demonstrations of these issues, and engage in short role plays that will be distributed in class.

**Tuesday, March 12: MORE BEHIND THE TABLE ISSUES.** *Read pages 178-203 of BW.* We will continue our analysis of negotiation counseling issues and practice these important skills in short, focused role plays based on exercises we have already negotiated. These role plays will be distributed in class.

**THIRD LAB CLASS: TUESDAY EVENING, MARCH 12: NEGOTIATING CREATI-VIRTUAL, INC AND CITRUS NATIONAL BANK.** We will negotiate a commercial loan situation Creati-Virtual, Inc. and Citrus National Bank, pages 205-206 of *STD*. This will be a one-on-one negotiation with clients. Lawyers may confer with their clients before this negotiation as much or as little as they wish. Clients must attend their negotiation. Negotiations will last no longer than 72 minutes. Then we will discuss experiences and review video excerpts in our master breakout room. Client assignments, negotiation pairings, room assignments, and video times will be distributed on *Thursday, February 28*. A negotiation plan from the lawyers only is due no later than **5 PM on Tuesday, March 12**. *[This plan is worth 9 points]*

A reaction paper discussing your experiences and a completed questionnaire should be submitted following these guidelines: (1) use separate questionnaires for negotiators and clients; (2) clients write papers evaluating their lawyers' counseling and negotiating effectiveness; (3) lawyers only also submit *action choices chart*. All are due no later than **5:00 PM on Friday, March 15**.

**Thursday, March 14: REVIEWING THE CVI AND CNB NEGOTIATION AND MORE COUNSELING ISSUES.** *Read pages 311-15 and 324-38 of TEXT.* After reviewing CVI and CNB counseling and negotiation experiences, we will discuss additional lawyer-client topics, evaluate videotaped demonstrations, and do short role plays that will be distributed in class.

**Tuesday, March 19: EVALUATING CASES, ADVICE ON DISPUTE RESOLVING, AND DIFFICULT CONVERSATIONS.** *Read pages 224-48 of BW.* After discussing approaches to evaluating cases and other advice on dispute resolving negotiation, we will analyze an important new book, *Difficult Conversations*, by Douglas Stone, Bruce Patton, and Sheila Heen. We will also do short role plays that will be distributed in class.

**FOURTH LAB CLASS: TUESDAY EVENING, MARCH 19: NEGOTIATING THE LAW FIRM LIABILITY SITUATION.** We will negotiate the Law Firm Liability exercise, pages 207-212 of *STD*. If you played a lawyer role in our last lab, you will be a client in this one, and vice versa. Again lawyers may confer with their clients before this lab as much as they wish. Clients must attend this negotiation. Negotiations will last no longer than 72 minutes. Client assignments, negotiation pairings, room assignments, and video times will be distributed on *Thursday, March 14*. A negotiation plan from the lawyers only is due no later than **5 PM on Tuesday, March 19**. *[this plan is worth 9 points]*

A reaction paper discussing your experiences (with clients evaluating their lawyer's counseling and negotiating effectiveness) along with a completed questionnaire (with separate questionnaires used for negotiations and clients), and an action choices chart from the lawyers only is due no later than **5 PM on Friday, March 22.** *[this paper is worth 15 points]*

**Thursday, March 21: REVIEWING THE LAW FIRM LIABILITY NEGOTIATION, FRAMING, REFRAMING, AND PSYCHOLOGICAL BARRIERS.** *Read pages 129-132 of STD and 156-72 of BW.* We will do a short exercise based on Global Touch, Ltd. and Jorman Telecom, *page 213 of STD.* We will also review ideas about psychological barriers, evaluate videotaped demonstrations, and do short performance exercises that will be distributed in class.

**Tuesday, March 26: NEGOTIATING MILAMS v. CAPRI HOTEL AND MIDWEST AIRLINES.** We will negotiate the Milams, Capri Hotel, and Midwest Airlines situation, pages 214-227 of *STD* during this class period. This is a three-party negotiation with one negotiator representing each side and each trio needs to find a quiet spot to conduct this session. It may last no longer than 130 minutes [10:20 a.m. until 12:30 p.m.] A short document summarizing the outcome must be prepared, signed by all negotiators, and submitted at the end of the session when everyone picks up a questionnaire. Pairings and confidential information will be distributed on *Thursday March 21.* A one page paper, along with a completed questionnaire, must be submitted no later than **5 PM on Wednesday, March 27.** *[this paper is worth 7 points]*

**Thursday, March 28: REVIEWING THE MILAMS NEGOTIATION, ORGANIZATIONS AND MULTIPLE PARTIES, AND POWER, TRUST, AND COALITION ISSUES.** *Read pages 295-314 of BW.* After discussing experiences in the Milams negotiation, we will analyze action theories regarding organizations, multiple parties, coalitions, power, and trust. We will also evaluate videotaped demonstrations of some of these issues and do short role plays that will be distributed in class.

**Tuesday, April 2: NEGOTIATING WASTING AWAY AGAIN IN FAJITAVILLE.** We will negotiate *Wasting Away Again in Fajitaville* during this class. This is a two party negotiation and each pair needs to find a quiet spot to conduct their session. It may last no longer than 130 minutes [10:20 a.m to 12:30 p.m.] A short document summarizing the outcome must be prepared, signed by both negotiators, and submitted at the end of the session when each acquires the short questionnaire. Pairings and confidential information will be distributed on *Thursday, March 28.* A one page paper, along with a completed questionnaire, must be submitted no later than **5 PM on Wednesday, April 3.** *[this paper is worth 7 points]*

**Thursday, April 4: REVIEWING FAJITAVILLE AND COLLABORATIVE NEGOTIATION.** After reviewing the *Fajitaville* negotiation, we will do a negotiation that will be distributed in class.

**Tuesday, April 9: NEGOTIATION AND FLORIDA'S MANDATORY MEDIATION SYSTEM.** *Read pages 133-162 of STD.* We will discuss how mandatory mediation in Florida practice works. In addition, we will do a short mediation role play featuring teams of two mediators, two parties, and separate students assigned to play client and lawyer roles. Pairings, role assignments, and confidential information will be distributed on *Thursday, April 4* and lawyers and clients are encouraged to meet and prepare for this mediation in advance of class.

**FIFTH AND LAST LAB, TUESDAY EVENING, APRIL 9: NEGOTIATING THE NAVAJO LAKE SITUATION.** We will negotiate the Navajo Lake situation, *pages 228-233 of STD.* This three-party dispute will have one negotiator representing each side. It may last no longer than 90 minutes. After it ends we will discuss experiences and review video excerpts in our master breakout rooms. Pairings, room assignments, and video times will be distributed on *Thursday, April 4.* Your written negotiation plan is due no later than **5 PM on Tuesday, April 9.** [*this plan is worth 9 points*]

A reaction paper discussing this negotiation, along with a completed questionnaire and action choices chart, is due no later than **5:00 PM on Friday, April 12.** [*this paper is worth 15 points*]

**Thursday, April 11: MEDIATING FEAR AND LOATHING AT THE GARAGE SALE.** We will spend this class mediating this scenario, *pages 234-245 of STD.* We will employ break out groups using teams of two mediators and separate students playing client and lawyer roles. Group, role, and room assignments, along with confidential information, will be distributed at the end of the class on *Tuesday evening, April 9.* Once again lawyers and their clients are encouraged to meet and prepare for this mediation before this class. The mediators must prepare a short document summarizing the outcome, get everyone to sign it, and then submit it no later than the end of this class.

**Tuesday, April 16: MEDIATING BROKEN HEARTED.** We will spend this class mediating this scenario, or another which will be distributed, using the same approach followed on April 11. Group, role, and room assignments, along with confidential information, may be acquired at the end of class on April 11. Again lawyers and their clients are encouraged to meet and prepare for this mediation before this class. Again the mediators must prepare a short document summarizing the outcome, get everyone to sign it, and then submit it no later than the end of this class.

A no more than three page reaction paper, describing the high and low points of your experiences in the three mediations on April 9, 11, and 16, must be submitted no later than **5 PM on Wednesday, April 17.** [*this paper is worth 15 points*]

**NOTE:** Your final paper, a no-more-than-five-page essay, is due by **5 PM on Friday, April 19.** This paper should treat the following topics in any way that you wish: (1) a critical self-evaluation of your negotiation strengths and weaknesses and how they have

been influenced by this course; (2) the aspect of negotiation theory developed in this course that was most valuable for you, explaining why; (3) the piece of negotiation theory you found least valuable, indicating why; and (4) suggestions for improving this course. This paper should be a thoughtful piece of writing that uses examples to illustrate points. *[It is worth 19 points]*

**Thursday, April 18: MEDIATION ADVOCACY.** *Read pages 163-177 of STD.* After reviewing our mediation experiences, we will discuss how this process influences negotiation and ways that lawyers can work in it effectively. We will also critically evaluate videotaped demonstrations.

**Tuesday, April 23: GENDER, CULTURAL, AND OTHER INFLUENCES IN NEGOTIATION AND MEDIATION AND LOOKING BACK.** *Read pages 523-31 of TEXT.* We will discuss what effect, if any, gender, cultural, racial, ethnic, and age factors had on negotiations and mediations in this course and beyond. We will also review this course, points and ideas raised in final papers, and anything else that seems germane.

## **SCHEDULE OF WRITTEN ASSIGNMENTS**

| <b><u>Assignment</u></b>  | <b><u>Due (no later than)</u></b>                          |
|---|--|
| 1. Letter required by the Ed Euratz and Gator Printing situation  | <b>5 PM on Monday, January 21</b> [ungraded]               |
| 2. First reaction paper discussing the HSN & OCN negotiation  | <b>5 PM on Monday, February 4</b><br>[worth 9 points]      |
| 3. Written negotiation plan for Winner and Club Cimmaron  | <b>5 PM on Tuesday, February 5</b><br>[worth 7 points]     |
| 4. Second reaction paper discussing the Winner-Club Cimmaron negotiation                                  | <b>5 PM on Friday, February 8</b><br>[worth 15 points]     |
| 5. Third reaction paper regarding the ReMayne and Gogh negotiation  | <b>5 PM on Wednesday, February 13</b><br>[worth 9 points]  |
| 6. Written negotiation plan for Klare and Journal of Human Relations                                      | <b>5 PM on Tuesday, February 19</b><br>[worth 9 points]    |
| 7. Fourth reaction paper regarding Klare and Journal negotiation  | <b>5 PM pm on Friday, February 22</b><br>[worth 15 points] |
| 8. Written negotiation plan for Creati-Virtual and Citrus National Bank (half class playing lawyers only) | <b>5 PM on Tuesday, March 12</b><br>[worth 9 points]       |
| 9. Fifth reaction paper regarding the Creati-Virtual and Citrus National Bank (both lawyers and clients)  | <b>5 PM on Friday, March 15</b><br>[worth 15 points]       |
| 10. Written negotiation plan for the Law Firm Liability negotiation (lawyers only)                        | <b>5 PM on Tuesday, March 19</b><br>[worth 9 points]       |

11. Sixth reaction paper regarding the Law Firm Liability negotiation **5 PM on Friday, March 22**  
[worth 15 points]
- 12.. Seventh reaction paper regarding the Milams Negotiation **5 PM on Wednesday, March 27**  
[worth 9 points]
13. Eighth reaction paper regarding the Fajitaville negotiation **5 PM on Wednesday, April 3**  
[worth 9 points]
14. Written negotiation plan for Navajo Lake negotiation **5 PM on Tuesday, April 9**  
[worth 9 points]
16. Tenth reaction paper regarding the three mediations **5 PM on Wednesday, April 17**  
[worth 15 points]
17. Final paper **5 PM on Friday, April 19**  
[worth 19 points]

## DESCRIPTION OF WRITTEN ASSIGNMENTS

The following suggestions are illustrative rather than mandatory. Although I apply no set formula for evaluating papers, these suggestions stem from my hunch that focusing your papers in these directions will provide valuable insights identifying specific behaviors and then evaluating their effectiveness. In addition, these directions give me greater understanding of your experiences, many of which regrettably but necessarily occur outside my or other instructor observation. Finally, these suggestions may alleviate uncertainties regarding what should be in these papers to get good grades for them.

1. What the person [or persons] with whom you were negotiating did that was the most effective and why it was effective;
2. What the person [or persons] with whom you were negotiating did that was the least effective and why it was not successful;
3. What you did that was most effective and why it worked;
4. What you did that was least effective and why it was not successful;
5. What part of this experience caused you the most ethical conflict and how you resolved this conflict [and you may find reviewing pages 285-95 of *Text* helpful with this one]; and
6. What was the decisive or turning point in your negotiation and why was it critical.
7. What surprised you during the negotiation, why it surprised you, how you reacted, and how you evaluate your reaction.

Remember, your reaction papers should be reactions to and reflections about the experiences you had. They should be an account of what happened that was significant and what you think of it now, not simply narrative or chronological descriptions of what you and others did. They should analyze specific behaviors rather than describe broad outcomes. They can also include topics such as: (1) lessons you drew from the class discussion, the exercise, and its critique; (2) questions you have about the negotiation process for which it would be helpful to have answers; (3) what bothered you then and what you think about it now; (4) suggestions you have for improving exercises, demonstrations, discussions, readings, critique methods, and course procedures; (5) what you might do differently if you were doing it over again and why; (6) what skills the others you worked with used effectively and what you can learn from them; and (7) what personal skills you used effectively, which ones you would like to improve, and how you might do that. This list is neither exhaustive nor mandatory but rather illustrative of the kinds of

issues appropriately addressed in reaction papers. Specific suggestions for reaction papers when you play a client role in either our fifth or sixth negotiation will be distributed.

Reaction papers must follow the space restrictions, typically no more than three [or one] typed pages, double-spaced, 8 1/2 by 11. Although they should address the topics mentioned above, they also must be focused directly on specific experiences in the negotiation. Do not simply describe how the negotiations unfolded. All papers must be typed or written legibly. To promote anonymity, please use your social security number rather than your name on your papers. The short deadlines contained in this syllabus are essential to insure that you reflect, react and write while the experience is still fresh.

# LAB PROTOCOLS

Please follow these protocols for all of our lab classes:

1. Complete and submit your negotiation plans by the time announced in either the Syllabus or class. Failure to do this results in lower marks.
2. Report directly to the assigned rooms at the beginning of class. To the extent possible, room assignments will correlate with the master room in which your section is meeting.
3. Begin negotiating at the designated time or as soon as everyone has arrived. Non-punctual students reduce the amount of negotiating time for everyone in the group because all negotiations must end at the announced time. Close the doors to your negotiation rooms. Remember to audiotape your entire negotiation, including the portion that you conduct in the master room on videotape. It is your responsibility to provide the tape recorder and audiotapes for these sessions. Arriving a few minutes early to check your audio taping equipment is recommended.
4. Respect that my colleagues are letting you use their offices. Do not move anything. Do not look at files, documents, or anything else. Remove all cups, bottles, etc. that you bring. Leave the office exactly as you found it.
5. Proceed to the master room at the assigned time to conduct the portion of the negotiation before your instructor that is videotaped. Knock on the door to announce your arrival. Your instructor will stop the negotiators at an appropriate point, let you in the room, and then you proceed to the table and resume your session. Please use content summaries to inform your instructor where your session is if you are not the first group negotiating that evening.
6. Do not negotiate as you proceed to and from the master room. Do not discuss any aspect of your negotiation with anyone else as you travel to and from the master room. Eavesdropping on other negotiations in progress is prohibited.
7. If you are in the last one or two master room slots and fear that your negotiation will end before your scheduled taping time, take a break so that at least some of your session can be observed and videotaped. Do not discuss any aspect of your negotiation with anyone else during these breaks. Do not eavesdrop on other negotiations in progress during this break.
8. All negotiations must cease at the announced time. You must enforce this yourselves because it takes time for instructors to get around to all of the assigned rooms to declare time. If you finish before the deadline, you may leave your room but lock it when

you do. Please be sure to take all of your belongings when you leave your assigned room. A ten minute break will follow the conclusion of your negotiations. You may discuss them with anyone during this break. You may also share your confidential information with each other at this point. Instructors will treat as impasses any negotiations that do not stop at the announced time because of the strong likelihood that information will be disclosed by other students that will unfairly influence further bargaining. If your negotiation ends early after your videotape slot, you may take a longer break, remembering to avoid any discussion with students who may still be negotiating.

9. Please do not attempt to talk to your instructors during this ten minute break. They will be busy reviewing their notes, coordinating video review sequences, and completing their evaluation forms. Ten to fifteen minutes will be available to discuss issues individually with your instructors after class ends.

10. Reassemble in your assigned master room at the announced time, ten minutes after the ending time for the negotiation. This session provides an excellent time to share all questions, comments, and observations about your experience. In addition, video clips from each of the performances will be shown and discussed.

11. You are required to write a reaction paper following each lab class which evaluates your negotiation experiences and, if you wish, any aspect of the post-performance feedback and discussion session. In addition, your instructors will distribute negotiation questionnaires at the end of most classes. These brief documents need to be completed and submitted with your reaction paper at the times announced either in the syllabus or class. Also remember that after most classes you must listen to your audiotape, chart your action choices on the chart contained in *Splitting the Difference*, and hand this document in with your reaction paper.

## ETHICAL ISSUES

Real world and simulated negotiations are laden with ethical dilemmas and we will discuss them when they are encountered in our exercises. The nature of simulated negotiations create the potential for additional difficulties that need to be discussed here.

Specifically, each of our negotiations involves written confidential instructions from your client. You may **not** share these instructions with any law student other than your partner if the exercise is done in teams. You may **not** either read from or show them to the other negotiator during the exercise. You also will be asked to return these instructions at the end of each negotiation, and to refrain from copying and distributing them to anyone while you have them. Finally, take care when you pick up the confidential instructions before each assignment to get the correct set. Please notify me immediately if you discover that you have the wrong set so that steps can be taken to preserve the integrity of the exercise. Reading more than one set of confidential instructions per exercise is obviously prohibited. Gaining access to and using confidential instructions, outcome summaries, or **any** other information from classes in other semesters is also prohibited. Violating any of these rules transgresses our Law School's regulations and the applicable Honor Code provisions regarding academic dishonesty and will be dealt with accordingly.

In addition to these rules, you are bound by the ethical constraints generally applicable to lawyers during this course. The Florida Rules of Professional Conduct govern negotiation ethics in this class. If at any time you think that another member of the class has breached the rules described above, or if you believe that the Florida Rules of Professional Conduct have been violated, then you should file a formal written complaint with me. If I find the complaint is non-frivolous after talking with you and the affected student, I will attempt to resolve it under Regulation 6C1-4.017 of the Florida Administrative Code. If I find a violation, sanctions I will consider include a downward modification of the student's evaluation in that negotiation; a reduction in the student's course grade; a failing grade for the course; and all other remedies available for academic dishonesty. I also reserve the right to initiate proceeding for violations that come to my attention.

## SOME THOUGHTS ON COURSE GRADING

Grades are important both to you and to those unfortunately narrow-minded law firms that look only at GPAs when deciding whom to hire. Grading is also difficult to do well, particularly in professional skills and clinical courses. Because it causes me anxiety, and is likely to cause you anxiety as well, I want to be as explicit as possible about how grades are computed in this course.

As mentioned earlier, this course has no final exam. All lab performance exercises and all written assignments [except the letter for Ed Euratz] will be evaluated on the point scales described earlier. The points you earn for each exercise and paper will be totaled at the end of the semester, added to the grades earned on course quizzes, and that computation will be used to fix your final grade. Up to 15 points for class participation will also be awarded at the end of the term.

The theories outlined in *Text* and supplemental readings provide the starting point for our evaluations. Most of the points in the course thus will not depend directly and exclusively upon outcome achieved except to the very significant extent that effective performance correlates with favorable outcomes.

No method of grading ever totally resolves the subjective aspects that can irritate and anger those who do not earn the marks they feel they should have received. The approach adopted here may be challenged on that basis. It also may be attacked because it simultaneously asks you to learn and be judged. Ordinary, non-clinical courses follow a two step process: first, learning [hopefully], and then testing. Since we don't have a final, we have to assess something. It may be that fewer assessments would generate less stress. On the other hand, they would be worth more proportionately and could thus produce more anxiety.

The present scheme was chosen to spread the dreaded risk of failure [which we all experience] around to encourage everyone to be creative and to experiment with different approaches and techniques. It also tracks practice because everything you do subjects you to subtle evaluations that ultimately add up to reputation; a factor which directly affects your level of professional satisfaction and success. Being explicit about criteria, which we try to do by basing evaluation on the theories articulated in our reading assignments and the standards expressed in *STD*, and providing specific, detailed oral feedback about your observed performances [yes, I know, there will be little feedback on your written assignments in this imperfect world], is the best that can be done to alleviate those concerns.

The problem of evaluating group work also surfaces in teamed negotiations because it is often difficult to identify who is responsible for aspects of group products. Being branded with products not done to your standards is a difficult but occasionally encountered part of the collaborative reality of much of law practice. Collaborative issues

between negotiators on the same side, as well as those that surface across the table with people with whom you are bargaining, are topics of exploration in this course. Beyond that, try to take comfort from my assurance that I will make those decisions as accurately as I can. Moreover, negotiating pairs will not necessarily receive identical grades for their performances and the reaction papers may also produce different marks.

Having said all this about grading, my belief is that the most valuable feedback you will get in this course will be that which you generate from: (1) reflecting on your performances, (2) measuring them against the theoretical discussions in readings and generated in class and the critiques you receive from instructors and each other, and (3) augmenting them with maximum utilization of this course's unique opportunities to view yourself negotiating on videotape. How far or little you progress in skill development by these measures in this course will mean much more to your career than the letter appended later to the total of your points earned in this course [even if that letter helps you get in door of Smash, Bash, and Crash].

The evaluations of your performances and your written assignments will not be kept secret if you ask to see them. I will not total scores until the course ends so don't ask me for a comparative evaluation during the term. I won't be able to provide them. If you do the reading, prepare, and reflect on your negotiations, you will learn a lot in this course, even if it does result in just another frustrating final grade.

# NEGOTIATION BIBLIOGRAPHY

## 1. BOOKS ON NEGOTIATION

Bazerman and Neale, *Negotiating Rationally* (Simon & Schuster, Inc., 1992)

Bunker, Rubin, and Associates, *Conflict, Cooperation, and Justice, Essays Inspired by the Work of Morton Deutsch* (Jossey-Bass, Inc., 1995).

Craver, *Effective Legal Negotiation and Settlement* (The Michie Co., 2d ed. 1993)

Edwards and White, *The Lawyer as a Negotiator* (West Publishing Co., 1977)

Fisher, Ury, and Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (Penguin Paperback, 2d ed. 1990)\*

Fisher and Brown, *Getting Together: Building Relationships as we Negotiate* (Penguin Paperback 1938)\*

Fisher, Kopelman, and Schneider, *Beyond Machiavelli: Tools for Coping With Conflict* (Harvard Press, 1994)\*

Frascogna and Hetherington, *Negotiation Strategy for Lawyers* (Prentice-Hall, Inc. 1984)

Gifford, *Legal Negotiation: Theory and Applications* (West Paperback 1989)\*

Haydock, *Negotiation Practice* (John Wiley & Sons, 1984) (soft-cover available)\*

Herman, *Better Settlements Through Leverage* (Aqueduct Books, 1965)

Hornwood, *Systematic Settlements* (The Lawyer's Cooperative Publishing Co.) (Bancroft Whitney Co. 1972)

Ilich, *The Art and Skill of Successful Negotiation* (Prentice-Hall, Inc., 1973)

Jacker, *Effective Negotiation Techniques for Lawyers* (National Institute for Trial Advocacy, 1982, 1983)

Karass, *Give and Take: The Complete Guide to Negotiating Strategies and Tactics* (Thomas Y. Crowell Co., 1974)

Lax and Sebenios, *The Manager as Negotiator* (Macmillan, Inc.) (1986)

Lewicki, Litterer, Saunders, and Minton, Negotiation: Readings, Exercises and Cases (Irwin- McGraw Hill, 2d ed. 1993)

Mnookin and Susskind, Negotiating on Behalf of Others (Sage Publications, Inc. 1999)

Mnookin, Peppet and Tulumello, Beyond Winning: Negotiating to Create Value in Deals and Disputes (Harvard Press 2000)

Nierenberg, Fundamentals of Negotiation (Hawthorne Books, Inc., 1968)

Pruitt, Negotiation Behavior (Academic Press, 1981) \*

Raiffa, The Art and Science of Negotiation (Harvard University Press & Belknap Press, 1982)

Rosenthal, Lawyer and Client: Who's in Charge? (Russell Sage Foundation, 1974)

Schelling, The Strategy of Conflict (Oxford University Press 1960) (paperback)

Shell, Bargaining for Advantage: Negotiation Strategies for Reasonable People (Viking Penguin, 1999)

Stone, Patton, and Heen, Difficult Conversations: How to Discuss What Matters Most (Viking Penguin, 1999)

Teply, Legal Negotiation in a Nutshell (West 1991) (paperback)

Ury, Getting Past No: Negotiating Your Way From Confrontation to Cooperation (Bantam Books, paperback ed., 1993)\*

Williams, Legal Negotiation and Settlement (West Publishing Co. 1983) (paperback)

Zartman and Berman, The Practical Negotiator (Yale University Press, 1982)

## **2. CLINICAL LEGAL EDUCATION BOOKS THAT DISCUSS NEGOTIATION**

Batress and Harbaugh, Interviewing, Counseling, and Negotiating: Skills for Effective Representation (Little, Brown and Co., 1990)

Bellow and Moulton, The Lawyering Process, Chapter 5, pp. 430-606 (Foundation Press, Inc., 1978)\*

Brown and Dauer, Planning By Lawyers: Materials on a Non-Adversarial Legal Process, Chapter 8, pp. 359-404 (Foundation Press, Inc., 1978)

Freeman and Weihofen, Clinical Law Training: Interviewing and Counseling, Chapter 6, pp. 116-141 (West Publishing Co., 1972)

Hegland, Trial and Practice Skills, Chapter 15, pp. 275-301 (West Nutshell Series, 1978)

Meltsner and Schrag, Public Interest Advocacy: Materials for Clinic Legal Education, Chapter 13, pp. 231-240 (Little, Brown & Co., 1974)

Shaffer, Legal Interviewing and Counseling, Chapter 5, pp. 293-302 (West Nutshell Series, 1976)

### **3. POPULAR BOOKSTORE POSSIBILITIES**

Cohen, You Can Negotiate Anything: How To Get What You Want (Lyle Stuart, 1980)

Fast, Body Language (Originally published by M. Evans & Co., Inc., 1987), Pocket Books Paperback Ed. published 1971)

Nierenberg, The Complete Negotiator (Berkley Paperback Ed. 1991)

Nierenberg and Calero, How To Read a Person Like A Book (Pocket Books Paperback 1973)

Nierenberg and Calero, Meta-Talk: Guide to Hidden Meanings of Conversations (Pocket Books Paperback 1975)

Ringer, Winning Through Intimidation (Fawcett Crest Paperback, 1973)

Schatzki, Negotiation: The Art of Getting What You Want (Signet Paperback, 1981)

Striker and Shapiro, Power Plays: How To Deal Like A Lawyer In Person To Person Confrontations and Get Your Rights (Dell Paperback, 1979)

Warschaw, Winning By Negotiation: How To Get What You Want From Your Spouse, Lover, Parents, Children, Employer, Friends, Doctor, Lawyer, Landlords ...And Make Them Love You In The Process (Berkley Paperback, 1980)

Zartman, The 50% Solution: How To Bargain Successfully With Hijackers, Strikers, Bosses, Oil Magnates, Arabs, Russians, and Other Worthy Opponents In This Modern World (Anchor Press 1976)

#### **4. VALUABLE ARTICLES ABOUT LEGAL NEGOTIATION**

Allman, Nice Guys Finish First, *Science* 25-32 (Oct. 1984)

Cochran, Legal Representation and the Next Steps Toward Client Control: Attorney Malpractice for the Failure to Allow the Client to Control Negotiation and Pursue Alternatives to Litigation, 47 *Wash. & Lee L. Rev.* 819 (1990).

Condlin, "Cases on Both Sides": Patterns of Argument in Legal Dispute-Negotiation, 44 *Maryland Law Review* 65 (1985)

Eisenberg, Private Ordering Through Negotiation: Dispute- Settlement and Rulemaking, 89 *Harvard Law Review* 637 (1976)

Fisher, What About Negotiation As A Specialty, 69 *American Bar Association Journal*, 1221 (Sept. 1983)

Fisher, He Who Pays the Piper, *Harvard Business Review* 105 (March-April 1985)

Fisher, A Code of Negotiation Practices for Lawyers, 4 *Negotiation Journal* 16 (1987)\*

Fisher, Negotiating Power: Getting and Using Influence, 27 *American Behavioral Scientist* 149-166 (Nov.-Dec. 1983)\*

Gifford, A Context-Based Theory of Strategy Selection in Legal Negotiation, 46 *Ohio St. L.J.* 41 (1985)\*

Guernsey, Truthfulness in Negotiation, 17 *University of Richmond Law Review* 99, (1983)

Jackson and Eisenhardt, Negotiations in Commercial Cases: Assess-Advise-Advocate, 5 *Litigation* 32 (Fall 1978)

Lowenthal, A General Theory of Negotiation Process, Strategy, and Behavior, 31 *Kansas L. Rev.* 69 (1982)\*

Menkel-Meadow, Legal Negotiation: A Study of Strategies in Search of a Theory, 4 *American Bar Foundation Research Journal* 905 (Fall 1983)

Menkel-Meadow, Toward Another View of Legal Negotiation: The Structure of Problem Solving. 31 *U.C.L.A. Law Review* 754 (No. 4, April 1984)\*

Mnookin and Kornhauser, Bargaining in the Shadow of the Law: The Case of Divorce, 88 *Yale L.J.* 950 (1979)

Perschbacher, Regulating Lawyers' Negotiations, 27 *Arizona Law Review* 75 (1985)

Peters, Forever Jung: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Negotiation, 42 Drake L. Rev. 1 (1993)

Peters, Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling, 48 Florida L. Rev. 875 (1996).

Rubin, A Causerie On Lawyer's Negotiations, 35 Louisiana State L. Rev. 577 (1975)

Shaffer, Negotiation Ethics: A Report To Cartaphila, 7 Litigation 37 (Winter 1981).

Schoenfield, Strategies and Techniques for Successful Negotiations, 69 American Bar Association Journal 1226 (Sept. 1983)

Schwartz, The Professionalism and Accountability of Lawyers, 66 Cal. L. Rev. 669 (1978)

Voorhees, Law Office Training: The Art of Negotiation, 60 Practical Lawyer, 61 (1967)

White, Some Standard Negotiating Techniques and Some Thoughts on Non-Verbal Communication, 5 Litigation 17 (Fall 1978)

C:\WINDOW S\Desktop\ldr-templdon's disk\Negotiation Spring 2002.wpd

## CYBEROPTIONS

This is version 1 of ADR@www. The goal is to provide a sampling of sites relevant to mediation and negotiation classes. Sites are selected because of their content, uniqueness, or local flavor. The addresses are good as of 8/15/2001. Please notify (preferably in writing) Don Peters of any updated addresses or valuable websites which are not included. A supplemental list will be available toward the end of the semester with your updates and additional sites.

### MEDIATION

[www.mediate.com](http://www.mediate.com) containing an extensive library of over 200 articles on a wide range of topics

**The Global Arbitration Mediation Association, Inc.:** [www.gama.com](http://www.gama.com) - “dispute resolution over the internet at the speed of light” these people facilitate mediations and arbitrations with the internet and have several downloadable documents including mediation forms

**Mediation@MIT:** [web.mit.edu/mediation/www](http://web.mit.edu/mediation/www) - example of on campus mediation project

**Neighborhood Justice Center:** [www.applicom.com/njc](http://www.applicom.com/njc) - up in Tallahassee

### ADR

**American Arbitration Association:** [www.adr.org](http://www.adr.org) - Commercial Rules and Procedures, Labor and Employment Rules and Procedures, International Rules and Procedures, Forms, and Ethics and Standards. Also a link to their ftp site where you can download their “complete ADR package” (adr.zip). Links to other ADR pages, links to articles from *Dispute Resolution Times* and *Dispute Resolution Journal*, their *Beginner’s guide to Alternative Dispute Resolution*.

**American Bar Association Section of Dispute Resolution:** [www.abanet.org/dispute](http://www.abanet.org/dispute) - includes ftp version of Janet Reno’s “The value of Smart Negotiation and Mediation”

**Conflict Research Consortium:** [www.colorado.edu/conflict/](http://www.colorado.edu/conflict/) - University of Colorado site with many working papers, a case study database, abstracts, research services, etc.

**CPR Institute for Dispute Resolution:** [www.cpradr.org/welcome.htm](http://www.cpradr.org/welcome.htm) - Several Bibliographies, articles from *Alternatives*, various national and state provisions and proposals on conflict of interest and advice giving in Mediation

**Dimostenis’s Conflict Resolution Page:** [www.geocities.com/athens/8945/#conflict](http://www.geocities.com/athens/8945/#conflict) - good set of links to other pages and, at /search.html, there are alternative, topic oriented, search engines

**Institute for Dispute Resolution:** [www.dispute.resolution.uvic.ca](http://www.dispute.resolution.uvic.ca) - University of Victoria’s site with a bibliography, articles from *Working Together*

**Lectric Law Library’s ADR Topic Area:** [www.lectlaw.com/tadr.htm](http://www.lectlaw.com/tadr.htm) - A legal search engine’s page on ADR

**Society of Professionals in Dispute Resolution:** [www.spidr.org](http://www.spidr.org) - Has a link to their *Ethical Standards of Professional Responsibility*

## NEGOTIATION

**ADR resources:** [www.adrr.com](http://www.adrr.com) - very good site maintained by attorneys in Wichita Falls, Texas. Has a lot of essays, tutorials, checklists, and links

**Harvard Program on Negotiation:** [www.pon.harvard.edu](http://www.pon.harvard.edu)

**Negotiation and Resolution of Conflicts:** [www.cba.neu.edu/~ewertheim/links.htm](http://www.cba.neu.edu/~ewertheim/links.htm) - Among other interesting and humorous documents is a web-published text on negotiation by Professor E. Wertheim of Northeastern University

**PERC:** [www.conflictresolution.org](http://www.conflictresolution.org) - Foundation for the Prevention and Early Resolution of Conflicts. PERC 101 is an internet based distance learning program on the mechanics of conflict resolution which includes modules on conflict resolution, mediation and negotiation among other topics.

[www.beyondwinning.com](http://www.beyondwinning.com) keyed to our supplemental text Mnookin, Peppet, Tulumelo, Beyond Winning: Negotiating to Create Value in Deals and Disputes.

## MEYERS-BRIGGS (& other type related theory)

**Association for Psychological Type:** [www.aptcntral.org/apt.htm](http://www.aptcntral.org/apt.htm) - international organization with information about upcoming events, conferences, general information on personality type

**Center for the Application of Psychological Type:** [www.capt.org](http://www.capt.org) - Right here in G'ville - books, training, articles, research interests

**Consulting Psychologists Press, Inc.:** [www.mbti.com](http://www.mbti.com) - publishers of the MBTI

**Insights:** [www.win.net/insightsys](http://www.win.net/insightsys) - information on the Insights game and a quickie MBTI-like quiz

**The Personality Project:** [pmc.psych.nwu.edu](http://pmc.psych.nwu.edu) - links to type research, type sites

**Stress profiles by type:** [www.dougdean.com/profiles/index.htm](http://www.dougdean.com/profiles/index.htm) - click on your MB type and see how you react under stress.

**Temperament Research Institute:** [home.earthlink.net/~trinstitute/home.html](http://home.earthlink.net/~trinstitute/home.html) - articles by Linda Berens, Ph.D. (eg. "How to tell iNtuiting from extraverted Sensing")

## COMMUNICATION THEORY

**American Communication Association:** [www.americancomm.org](http://www.americancomm.org) - good link page on conflict and communication and plenty of other link pages covering other aspects of communication studies

## ACTIVE LISTENING

**Active Listening with Children and Young People:** [www.bbll.com](http://www.bbll.com) - scroll down to chapter 3 of an engaging, web-published book called Lessons in Lifemanship

## **CLINICAL LEGAL TRAINING**

**Upperclass (sic) Curriculum Guide:** [www.law.georgetown.edu](http://www.law.georgetown.edu) (Then search: **alternate dispute resolution**) - Georgetown University has a half dozen faculty members and offers over 20 courses! This page briefly describes their approach to teaching ADR.

## **CREATIVITY**

**Creativity Self Assessment:** [www.volusia.com/creative/mag5.htm](http://www.volusia.com/creative/mag5.htm) - online test of your creative/innovative attitude.

## **HUMOROUS LEX**

**'Lectric Law Library's Rubber Room:** [www.lectlaw.com/rub.html](http://www.lectlaw.com/rub.html)

**Legal Humor & Lawyer Jokes:** [people.delphi.com/geaat/joke.htm](http://people.delphi.com/geaat/joke.htm)

**How to Win Arguments:** [www.funnybone.com](http://www.funnybone.com) -by Dave Barry

**Dumbest Things Ever Said in Court:** [www.wvlia.org/dumb.htm](http://www.wvlia.org/dumb.htm)