

LAW 650: ADVANCED NEGOTIATION: PUBLIC POLICY
Jonathan Greenberg and Janet Martinez -- Stanford Law School -- Winter 2015

<u>Class Hours</u> Tuesdays, 4:15 – 7:15pm Crown 320-D	<i>Office Hours:</i> By appointment. Jonathan Greenberg – Crown 336 jgreenbg@stanford.edu ; 723-7762 Janet Martinez – Crown 326 janetkgm@law.stanford.edu ; 723.4457
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Course description

Advanced Negotiation courses are designed to take students beyond the two-party, lawyer-client negotiations that were the focus of the Negotiation Seminar, to examine many facets of negotiation complexity, both in terms of the participants and topics. This section of Advanced Negotiation will focus on more multi-party negotiations, working in teams and negotiating with decision makers and stakeholders to solve complex public policy problems.

We will study a diverse set of negotiation case studies addressing policy issues including economic development, natural resources management, land use and water disputes, political logjams on Capitol Hill, grassroots civil rights campaigns in urban communities, and efforts to contain nuclear weapons proliferation.

The goal of the class is for each student to become more expert and adept at:

- (a) Understanding, analyzing, and mapping multiparty public policy negotiations, for purposes of strategic intervention, negotiation preparation, or policy analysis;
- (b) Participating skillfully and effectively in them, whether directly as a stakeholder, party, or as a lawyer representing a client, or organizational officer, and
- (c) Designing and facilitating successful stakeholder dialogue and consensus building processes.

As in all Gould Center courses, class sessions are highly interactive, the curriculum and readings highly interdisciplinary, and the relationship between experiential and analytical learning highly integrated through cases and simulations.

Core competencies/learning outcomes

This course will enable students who work hard to develop the following core competencies:

- ❖ To obtain a sophisticated understanding of useful interdisciplinary frameworks for understanding and analyzing the dynamics of multiparty negotiation, especially in the context of diverse public policy fields.
- ❖ To gain expertise in the evaluation and design of multilateral negotiation processes and to identify and build upon deal design opportunities generated by shared and divergent interests.
- ❖ To enhance and refine your own skills in negotiation, advocacy skills, strategic intervention and policy design in all stages of multilateral negotiations and stakeholder dialogue processes (including pre-negotiation “set up,” strategies and tactics “at the table,” agreement drafting and implementation).
- ❖ To establish a foundation of knowledge and analytical experience to enhance your effective engagement in collaborative decision-making, distributed leadership, and group problem solving toward the achievement of optimal policy outcomes.

Initial questions in analyzing and preparing for multiparty public policy negotiations

Throughout the course we will refer to the following set of *ex ante* planning tools to design and evaluate negotiation processes, meetings and conferences. (The fact that each category of questions starts with a “P” provides a potentially helpful mnemonic device).

Purpose: What is the goal of the negotiation? What policy objectives should this outcome achieve in order for the negotiation to be regarded a success?

People: To achieve this purpose, who needs to be “at the table” or otherwise engaged?

Process: What forms of negotiation and technologies of communication will you (and your partners) choose, design and implement?

Procedures: What rules, protocols and practices govern communications within the negotiation process?

Product: What outcome is sought (at each negotiation meeting, and at the conclusion of the integrated series of meetings), and in what form will it be documented and/or distributed?

Course requirements and grading

Attendance, preparation and participation

This is a mandatory 3K course. Credit (“K”) is dependent upon attendance at all classes; active participation in class discussion, negotiation exercises, and small group meetings; and submission of all assigned short papers (individual and small-group), see below. Each student is expected to complete each week’s assigned reading with close and critical attention to the text; to bring the assigned readings or documents to class (with your notes included on the marked-up text or on a separate page); and to be prepared to participate with engagement in each class discussion. Required readings include (a) the primary source material and analytical texts that are posted on CANVAS, and, one book, (b) Martin Luther King, Jr., *Why We Can’t Wait* (Beacon, 1963, 2010), available for purchase at the bookstore. *Students taking section 2 of the course for “R” credit must also submit an independent research paper 28 pages in length on a research question approved by the instructors.*

Short preparation and reflection papers

Several writing assignments (one or two pages each) will be submitted throughout the term. The purpose of these papers will either be to help you prepare for a negotiation or to provide an opportunity to reflect on the negotiation experience.

Term project: an iterative small-group discussion and writing process

You will be assigned a small group following Class 2.

Part A: *Critical analysis of an ongoing or recently completed multiparty stakeholder negotiation process in a domestic and/or international policy arena.*

- A one-page group proposal is due Tuesday, January 20; each group will meet with one or both of the teachers to confirm the case selection and identify issues for group analysis.
- A joint analytical and/or advocacy paper interpreting your case, identifying policy and process lessons, and/or articulating an argument related to it; due in class on Tuesday February 17, with copies for seminar colleagues (to enable exchange of feedback). The paper will be between 1000 to 1200 words (4-5 pages), and meet all other requirements of a *New York Times* op-ed; see: <http://www.nytimes.com/content/help/site/editorial/op-ed/op-ed.html>

Part B: *Group negotiation analysis*

After you have completed Part A, write a joint **two-page** analysis of your interpersonal communication and collaborative decision-making process leading to the completion of Part A, including discussion of roles, coalitions, leadership, assignment of responsibilities, challenges, dilemmas and how they were resolved. This joint analysis is due in class on Tuesday February 24.

Part C: Self-analysis

Each person will prepare a *confidential two-page* personal reflection paper identifying lessons you learned from the process of working on Part A and B above; it will also be submitted on Tuesday February 24. *This reflection paper will be read by the teachers and will not be shared with the other members of the group or any other students.*

Part D: Small group debrief.

Each group will meet for approximately one hour with the teachers to discuss both Part A and Part B of this assignment (a student may wish to share any reflections he or she has presented in Part C, but any such disclosure is entirely at the discretion of the student). In class on Tuesday February 24, the teachers will circulate an appointment sign-up sheet. Each respective small group meeting will be held between Wednesday February 25 and Tuesday March 3 (our final class session).

Individual meetings.

The teachers are available by appointment to meet with each student at his or her initiative during the quarter to discuss your own learning process, to provide and receive constructive feedback, and to discuss any issues related to negotiation, including issues related to further coursework or independent research you might be considering, or questions concerning professional career options involving negotiation and dispute resolution practice.

Course Schedule**Part I: Mapping/Negotiation Analysis****January 6, Class 1: Introduction to Multiparty Negotiation*****Required reading:***

- Bruce Patton, "Negotiation Power"
- Lawrence Susskind, Robert Mnookin et. al., "Multiparty Negotiation – Key Distinguishing Features," in *Teaching Multiparty Negotiation: A Workbook*

Assignment: Susskind and Mnookin highlight three distinguishing features of multiparty negotiation: (a) the formation and dissolution of coalitions; (b) group interaction when there are many parties around the table; and (c) the need to continuously modify the structure of negotiations in multiparty situations. Come to class prepared to discuss any additional "distinguishing features" that come to your mind in thinking specifically about multiparty negotiations involving law and public policy decision-making, problem solving, and consensus building?

- Exercise 1: *Three-party Coalition*
- Exercise 2: *Win as Much Water as You Can*

January 13, Class 2: Mapping and optimizing stakeholder interests

Small group teams for the term project will be arranged in class.

Required readings:

- Thomas Schelling, "An Essay on Bargaining"
- W. Howard Wriggins, "Up for Auction: Malta Bargains with Great Britain, 1971"
- Martin Buber, "Elements of the Interhuman," *The Knowledge of Man: A Philosophy of the Interhuman*.

Assignment: Prepare "map" of the UK-Malta dispute, including key actors, their positions, interests and patterns of influence.

- Exercise 1: *Fountain Dispute (distributed in class)*
- Exercise 2: *Malta-UK Negotiation*

January 20, Class 3, Strategic analysis

*** Reminder:** *One-page group proposal is due in class and by Word file email to instructors.*

Required readings:

- David Lax and James Sebenius, "3-D Negotiation"
- *Negotiating Slots at Foxwood (A)*
- Lawrence Susskind, Boyd Fuller, Michele Ferenz & David Fairman, "Multistakeholder Dialogue at the Global Scale."
- Thomas Graham, Jr., "The Duration of the Nuclear Non-Proliferation Treaty: Sudden Death or New Lease on Life?"

Assignment: 1) Prepare "map" of the Foxwood negotiation, including the key actors (their positions, interests, alternatives) from the perspective of your assigned role; 2) What strategy should Thomas Graham pursue?

- Exercise 1: *Small group strategy development for Foxwoods negotiation*
- Exercise 2: *Strategic analysis of NPT extension negotiations*

January 27, Class 4: problem solving: overcoming barriers to negotiated agreement

Required readings:

- Robert H. Mnookin and Lee Ross, "Introduction" to Kenneth Arrow, Robert Mnookin, Lee Ross, Amos Tversky and Robert Wilson, *Barriers to Conflict Resolution*
- Excerpt from Paul Brest and Linda Krieger, *Problem Solving, Decision Making and Professional Judgment* (Oxford, 2010)
- David A. Straus, "Managing Meetings to Build Consensus," in Susskind, Mckearnan and Thomas-Larmer, *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*
- Exercise: *Arctic Survival exercise*
- Exercise: *Kidney negotiation*

Part II: Case studies: Civil rights protest, community disputes, and the US government

February 3, Class 5: Case study: the SCLC Birmingham Campaign, 1963

Required readings:

- Primary source documents/handouts
 - Birmingham's Racial Segregation Ordinances
 - Taylor Branch, *Parting the Waters: America in the King Years 1954-63*; Excerpts from Chapter 18 ("To Birmingham"), pp.688-691
 - *Six Principles of Nonviolence; Six Steps for Nonviolent Direct Action*
 - *SCLC Newsletter*, July 1963, including Rev. Fred Shuttlesworth, *Birmingham Manifesto*, April 3, 1963; Dr. King "How it All Began", "All Participate in Workshop", and "Boycott Aids in Birmingham."
 - Alabama Clergymen's Letter to Dr. Martin Luther King, April 12, 1963
 - Birmingham: People in Motion, booklet published by the Alabama Christian Movement for Human Rights, 1966.
- Martin Luther King, Jr., *Why We Can't Wait* (1963, 1964), Chapter III ("Bull Connor's Birmingham") through chapter VI ("Black and White Together"), pp. 47-128.

Assignment: Come to class prepared to discuss and debate issues identified in the readings, with special attention to *your personal analysis* of the following decision-making processes and outcomes: (1) the Birmingham "Project C" strategy proposed by Walker Wyatt at the secret retreat convened on January 10-11, 1963 at Dorchester in Savannah Georgia; (2) the decision to postpone the campaign until after the mayoral election run off; (3) the decision to proceed with the campaign notwithstanding the April 3 victory of Albert Boutwell in the run-off; (4) the decision to reject campaign volunteers unless they pass the strict eligibility tests (signed pledge to adhere to the SCLC "ten commandments" and successful completion of SCLC nonviolence training workshops); (5) the Good Friday meeting in Room 30 of the Gaston Motel; (6) Dr. King's April 16 response to the April 12 letter published by the Alabama Clergymen; (7) the decision to recruit and mobilize high school, middle school and elementary school to commit mass civil disobedience; (8) the role of the White House in facilitating negotiations; and (9) the May 10 "peace pact" (content and decision-making process).

February 10, Class 6: From Birmingham, Alabama to Ferguson, Missouri

Special guests: Clarence Jones, counsel to Dr. Martin Luther King, Jr., and Grande Lum, Director, Community Relations Service, US Department of Justice

Required reading:

- Community Service Relations agency website, <http://www.justice.gov/crs>
- *You Tube* videos of the Ferguson, Missouri protests and police response
- Ben Holman, "The Agencies Which Can Help: The Federal Government's Role", *Business Lawyer*, April 1974
- Richard Rothstein, "The Making of Ferguson," *The American Prospect*, Fall 2014, <http://prospect.org/article/making-ferguson-how-decades-hostile-policy-created-powder-keg>
- Steve Johnson, "Two Cheers for Ferguson's Democratic Citizens," and Eddie S. Glaude, Jr., "A Requiem for Michael Brown/A Praisesong for Ferguson," *Theory and Event*, 2014.
- Thomas Sowell, "The Steep Cost of the Ferguson Riots," *National Review* online,

<http://www.nationalreview.com/article/393738/steep-cost-ferguson-riots-thomas-sowell>

February 17, Class 7: Negotiating legislation in the US Congress: politics and process

Reminder: *small group analytical papers due in class and by Word file email to everyone.*

Special guest: Congressman Xavier Becerra, representing California's 34th congressional district (Downtown Los Angeles), member of the Joint Select Committee on Deficit Reduction.

Required readings:

- Testimony to the Joint Select Committee on Deficit Reduction and related documents
- Readings analyzing the potential viability, elements and wisdom of a “grand bargain” between Republicans and Democrats on fiscal issues including taxation, discretionary spending, and entitlement reform (to be distributed in advance).

Part III: Bringing it all together

Facilitated stakeholder dialogue & consensus building: complex multiparty simulations

February 24, Class 8: Beaufort Sea stakeholder dialogue process

Important: *This special class will go for one extra hour (until 8:15pm); dinner will be provided.*

Reminder: *Group negotiation analysis (2 pages) and individual self-analysis (2 pages) due in class and by Word file email to the instructors only. Sign up for team appointment with instructors.*

Required readings:

- Lawrence Susskind, “A Short Guide to Consensus Building: An Alternative to Robert's Rules of Order for Groups, Organizations, and Ad Hoc Assemblies That Want to Operate by Consensus”
- Susan Carpenter, “Choosing Appropriate Consensus Building Techniques and Strategies,” in Susskind, McKernan and Thomas-Larmer, *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*
- General Information and Confidential Role for Beaufort Sea negotiation

Reminder: *Each respective small group meeting with the instructors will be held between Wednesday February 25 and Tuesday March 3.*

March 3, Class 9: Mesquite Valley negotiation

Required readings:

- K. Emerson on collaborative governance
- Exercise: *Mesquite Valley*

We will conclude the course with an informal gathering together with food and drinks.