

SYLLABUS

11.255: Negotiation and Dispute Resolution in the Public Sector

Spring 2020

Mondays and Wednesdays, 3:30 p.m. – 5:30 p.m.

Room 9-354

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*** Please note that the syllabus is subject to change.**

Introduction

Conventional legislative, administrative, and judicial means of resolving resource allocation and policy disputes in the public sector often produce less than satisfactory results. This is true in democracies around the world. Planners, policy-makers, developers, and advocates of the poor who are concerned about the fairness, efficiency, stability, and wisdom of public sector decision-making are searching for better ways of resolving public policy disagreements. Recent advances in the theory and practice of multi-party negotiation and dispute resolution are, therefore, of great interest.

This seminar is designed for graduate students with no prior background or experience in the fields of negotiation or dispute resolution. Lectures, scenarios, case studies, video analysis and role-play simulations are used to introduce students to the "art" and "science" of negotiation and consensus building (or collaboration). The class also provides an intensive opportunity for each student to build his or her personal theory of practice and to strengthen their negotiating capabilities.

Some of the most important work in the field of dispute resolution is being done at the inter-university Program on Negotiation at Harvard Law School (PON). The Department of Urban Studies and Planning is well represented at the Program through the work of students and faculty affiliated with the MIT-Harvard Public Disputes Program. 11.255 builds on the research at PON.

Course Logistics and Participation

Required Texts: *These books can be found at the MIT Coop and in used form on Amazon. They are also on reserve in Rotch Library in the MIT School of Architecture and Planning.)*

Roger Fisher and William Ury, **Getting to Yes**, (Penguin, New York), 2011 (paperback, updated revised edition).

This is a short paperback. Please read before the 5th class session.

Lawrence Susskind and Jeffrey Cruikshank, **Breaking the Impasse: Consensual Approaches to Resolving Public Disputes** (Basic Books, New York), 1987, (paperback).

This is background reading. Please read the first four chapters before the 2nd class session.

Lawrence Susskind and Jeffrey Cruikshank, **Breaking Robert's Rules** (Oxford University Press, New York) 2006, (paperback).

This is background reading. Please read Part 1 before the 6th class session.

Lawrence Susskind, **Good for You, Great for Me: Finding the Trading Zone and Winning at Win-Win Negotiation** (Public Affairs, New York), 2015. *Kindle version available online from Amazon.*

All additional readings will be available on Stellar. All class announcements, assignments and due dates, along with updates to this syllabus will be posted on the Stellar web page, so students should check the site regularly.

Role-play simulation (RPS) exercises: Participation in all of the role-play simulations is required. Short self-reflection memos reviewing the results of each of the negotiation simulations are required from all students for every game. RPS negotiations will be videotaped to enhance student learning. **After each RPS exercise, students are required to provide written feedback (1-2 paragraphs) to their respective partners.**

Scenarios: Every student is expected to come to class familiar with the assigned scenarios - when applicable - and ready to apply the ideas covered in the assigned readings. Scenario leaders (each student will fill this role twice over the course of the semester) have the added responsibility of preparing a two-page framing memo in advance of the scenario and facilitating discussion about the scenario in small groups; see further guidelines below.

All negotiation self-reflection memos and scenario framing memos must be posted on the 11.255 Stellar class site as **PDF documents** by the assigned due date. **Please do not submit assignments as Word documents or in other formats.**

Office hours: The Graduate Instructor (Jung) will be available to meet with students by appointment. In addition, if you would like to set up a time to see Professor Susskind, please contact his assistant Sossi Aroyan (sossi@cbi.org).

Making Up Missed Negotiation Simulations: Participation in all of the role-play simulations is required. If a student misses a negotiation simulation, it is that student's responsibility to make up the missed work on their own time, either with classmates or friends. Students should arrange to pick up game materials for the make-up simulations from Jung. Students are expected to complete the simulation and submit their

reflections by the original due date, unless otherwise arranged with the teaching staff.

Grading and Assignment Guidelines

Grades are based on the various course elements as follows:

- Facilitation of two scenario discussions, including the preparation of two framing memos in advance (20%)
- Self-reflection memos (no more than 500 words), one for each game. Feedback (1 to 2 paragraphs) to each student's negotiating partner, one for each game. (30%)
- Video presentation (15%)
- In-class final exam (20%)
- Class participation/attendance, especially in role plays (15%).

Self-reflection memos and Scenario framing memos will be graded as follows:

- Memos that show only a minimal attempt to address the questions or the assigned material, or which are poorly written, will receive a check-minus (i.e., a grade of C+ to B-).
- An acceptable effort will get a check (i.e., a grade of B to A-)
- A superior level of effort will get a check-plus (i.e., a grade of A to A+).
 - Strong self-reflection memos will draw on class readings and lectures to help make sense of the game experience.
 - Strong scenario leadership memos will, as explained above, draw on class readings and lectures to reflect on the scenario.

Late assignments: Assignments turned in late will be marked down. Assignments will not be accepted if they are over a week late, unless special arrangements were made with the Instructor.

Guidelines for role play self-reflection memos: Following each negotiation simulation, all students are responsible for assessing their own performance and commenting on what worked well and less well. Each student will prepare a personal reflection (one-page) reviewing what they learned from the role play about their own negotiating capabilities.

Guidelines for negotiating partner feedback: Each student will be paired up at the beginning of the semester. After each RPS exercise, each student will provide a one to two paragraph feedback (or a set of comments and suggestions) to her/his partner via email and **copy Jung (jwchun@mit.edu)**.

Guidelines for scenario leaders: Scenario leaders are responsible for preparing a 1-2 page (single spaced) framing memo in advance of their assigned scenario. *This memo is to be uploaded to Stellar one day before class the scenario will be discussed.* The memo should clearly express the leader's ideas and approach to the scenario and serve as a template for facilitating a small group discussion. Drawing on the readings and class lectures, the small groups should analyze the scenario together. Scenario leaders should help the group:

- Identify the choices that the stakeholders in the scenario must make;
- Determine which principles the stakeholders should (or might) rely on in making these choices;
- Identify what negotiation or consensus building strategies the stakeholders might pursue, based on their priorities;
- Assess potential problems that the stakeholders may encounter.

Through the exchange of perspectives on these issues, students will have an opportunity to think hard about their personal theories of practice, improve their ability to analyze negotiation and dispute resolution situations, and craft appropriate negotiation strategies.

Guidelines for video presentations: Every student will be asked to make **one video presentation**. Once the class roster is final, each student will be assigned to one of the RPS exercises. On the day of the RPS exercise, each assigned student will be given an iPad to video record one of the groups conducting their negotiation exercise. This footage will then need to be edited into a “highlight reel” of no more than 5 - 6 minutes. Titles and subtitles will need to be added. The point of the video is to document how the videographer thinks the negotiators handled important aspects of the assignment. There will be a TA assisting with video production. Each video producer will lead a short class discussion of his or her composite video.

Outline of Class Sessions

COURSE SCHEDULE		
Focus	Date	Topic and Readings
PART I: INTRODUCTION	2/3	<p>Democratic Decision-making: An Overview</p> <p><u>Assigned Reading:</u> Shapiro, Ian (2003). The State of Democratic Theory. Princeton, NJ: Princeton University Press. pp. 10 - 34 (stellar)</p>
	2/5	<p>Deliberation vs. Dispute Resolution in the Public Sector</p> <p><u>Assigned Readings:</u> Susskind, Lawrence and Jeffrey Cruikshank (1987). Breaking the Impasse: Consensual Approaches to Resolving Public Disputes. New York: Basic Books. Chapters 1 – 4. (book)</p> <p>Susskind, Lawrence (2006). Arguing, Bargaining and Getting Agreement. The Oxford Handbook of Public Policy (Oxford Handbooks of Political Science, Vol. 10). M. Moran, M. Rein, and R.E. Goodin (eds.) Oxford, UK: Oxford University Press. (stellar)</p> <p>Susskind, Lawrence (2007, October 12). Consensus Building, Dispute Resolution and Social Justice. Fordham Urban Law Review. Pp. 185 - 203. (stellar)</p> <p>Forester, John (2019). Five generations of theory-practice tensions: enriching socio-ecological practice research. <i>Socio-Ecological Practice Research</i>. (stellar)</p>
	2/10	<p>Introduction to Negotiation: Playing the Traditional Game Well</p>

		<p><i>Game #1: Parker v. Gibson + Debriefing</i></p> <p><u>Assigned Reading:</u> Lewicki, Roy J. and Joseph A. Litterer (1985). Strategy and Tactics of Distributive Bargaining. Negotiation: readings, exercises, and cases, 2nd ed. Homewood, IL: R.D. Irwin. Pp. 75-100. (stellar)</p> <p>Raiffa, Howard (1982). The Art and Science of Negotiation. Cambridge, MA: Harvard University Press. Chapter 2 (pp. 35-43). (stellar)</p>
<p>PART II: NEGOTIATION THEORY</p>	2/12	<p>Playing the Traditional Game Well (Framing, Anchoring and Managing the Pattern of Concessions)</p> <p><i>Scenario #1: Traditional Negotiation Game</i></p> <p><u>Assigned Reading:</u> Bazerman, Max H. and Margaret A. Neale (1992). Negotiating Rationally. New York: Simon & Schuster Inc. Pp. 1-64. (stellar)</p>
	2/17	<p>NO CLASS – Presidents’ Day</p>
	2/18	<p>(MONDAY SCHEDULE OF CLASSES TO BE HELD) Consensus Building: Introduction to the Mutual Gains Approach (MGA) to Negotiation</p> <p><i>Scenario #2: The Consensus Building Approach</i></p> <p><u>Assigned Reading:</u> Susskind, Lawrence and Jeffrey Cruikshank (2006). Breaking Robert’s Rules: The New Way to Run Your Meeting, Building Consensus, and Getting Results. New York: Oxford University Press. Part 1 (book; please read as much as possible).</p> <p>Mutual Gains Approach to Negotiation: A Four Step Process (handout plus laminated card)</p> <p>Fisher, Roger and William Ury (2011) Getting to Yes, updated revised edition. New York: Penguin. (book)</p>
	2/19	<p>MGA Continued</p> <p><i>Game #2: Bakra Beverage (iDecisionGames) + Debriefing</i></p>
	2/24	<p>Value Creation and Integrative Bargaining</p> <p><u>Assigned Reading:</u> Lewicki, Roy J. and Joseph A. Litterer (2009). Strategy and Tactics of Integrative Bargaining. Negotiation: readings, exercises, and cases, 6th ed. Homewood, IL: R.D. Irwin. Pp. 71-106. (stellar)</p>

	2/26	<p>Multi-party Negotiation Theory (Conflict Assessment)</p> <p><i>Game #3: Three Party Game + Debriefing</i></p> <p><u>Assigned Reading:</u></p> <p>Sebenius, James (1994). Sequencing to Build Coalitions: With whom should I talk first? Wise Choices: Decisions, Games, and Negotiations. R. Zeckerhauser, R. Keeney, and J. Sebenius (eds.) Boston: Harvard Business School Press. Pp. 324-348. (stellar)</p> <p>Susskind, Lawrence and Larry Crump (2009). Introduction. Theory and Practice of Public Dispute Resolution (Multiparty Negotiation, Vol. 2) London: Sage. (stellar)</p>
	3/2	<p>Multi-party Negotiation Theory continued</p> <p><i>Game #4: Harborco (iDecisionGames)</i></p> <p><u>Assigned Reading:</u></p> <p>Raiffa, Howard (1982). The Art and Science of Negotiation. Cambridge, MA: Harvard University Press. Pp. 257-274. (stellar)</p>
	3/4	<p>Game #4 Debriefing;</p> <p>Introduction to Facilitation</p> <p><i>Scenario #3: Facilitation</i></p> <p><u>Assigned Reading:</u></p> <p>Straus, David (1999). Managing Meetings to Build Consensus. The Consensus Building Handbook. L. Susskind, S. McKernan, and J. Thomas-Larmer (eds.) Thousand Oaks, CA: Sage. Chapter 7. Pp. 287-324. (stellar)</p> <p>Schwarz, Roger M. (1994). Group Facilitation and the Role of the Facilitator, What Makes Work Groups Effective, The Skilled Facilitator: Practical Wisdom for Developing Effective Groups. San Francisco: Jossey Bass. Pp. 3-41. (stellar)</p>
PART III: FACILITATION	3/9	<p>Roles and Responsibilities of the Facilitator in a Public Disputes Context</p> <p><u>Assigned Reading:</u></p> <p>Thayer-Hart, Nancy (ed.) (2007). The Facilitator's Tool Kit: A Guide for Helping Groups Get Results. University of Wisconsin System Board of Regents (stellar)</p>

	3/11	<p>Gender and Negotiation</p> <p><i>Scenario #4: Gender and Negotiation</i></p> <p><u>Assigned Reading:</u></p> <p>Bowles, Hannah Riley. (2013). Psychological perspectives on gender in negotiation. In M. K. Ryan & N. R. Branscombe (Eds.), <i>The Sage Handbook of Gender and Psychology.</i> (stellar)</p> <p>OPTIONAL: Tinsley, Catherine et al. (2009) Women at the bargaining table: pitfalls and prospects, Marquette University Law School Legal Studies Research Paper Series, 09-19: 1-20. (stellar)</p> <p>OPTIONAL: The WAPPP Wire: "Social Norms and Stereotypes: What Happens When Everyone's a Little Bit Sexist?" (stellar)</p>
	3/16	<p>The Process of Facilitating a Public Meeting</p> <p><i>Game #5: Dirty Stuff</i></p>
	3/18	<p>Game #5 Debriefing</p>
	3/23 and 3/25	<p>NO CLASS— Spring Break</p>
<p>PART IV: MEDIATION</p>	3/30	<p>Introduction to Mediation</p> <p><u>Assigned Reading:</u></p> <p>Susskind, Lawrence and Connie Ozawa (1984). Mediated Negotiation in the Public Sector: The Planner as Mediator. <i>Journal of Planning Education and Research</i>, 4(1). Pp. 5-15. (stellar)</p> <p>Moore, Christopher W. (1986). How Mediation Works, The Mediation Process: Practical Strategies for Resolving Conflict, San Francisco: Jossey Bass. Pp. 13-43. (stellar)</p> <p>Optional reading: Nolon, Sean (2012). Second Best Practices?: Addressing Mediation's Definitional Problems in Environmental Siting Disputes. <i>Idaho Law Review</i>, 49. Pp. 70-119. (stellar)</p>
	4/1	<p>Roles and Responsibilities of the Mediator</p> <p><i>Scenario #5: Roles and Responsibilities of Public Sector Mediators</i></p>

		<p><u><i>Assigned Reading:</i></u></p> <p>Forester, John and David Stitzel (1989). Beyond Neutrality: The Possibilities of Activist Mediation in Public Sector Conflicts. <i>Negotiation Journal</i>, 5(3). (stellar)</p> <p>Susskind, Lawrence and Jennifer Thomas-Larmer (1999). Conducting a Conflict Assessment. <i>The Consensus Building Handbook.</i> L. Susskind, S. McKernan, and J. Thomas-Larmer (eds.) Thousand Oaks, CA: Sage. Pp. 99-136. (stellar)</p> <p>Mayer, Bernard, Joseph Stulberg, Lawrence Susskind, and John Lande (2012) Panel Discussion—Core Values of Dispute Resolution: Is Neutrality Necessary? <i>Marquette Law Review</i>, 95(3). Pp: 806-828. (stellar)</p>
4/6		<p><i>Game #6: Hydropower in Santaes (iDecisionGames)</i></p> <p><u><i>Assigned Reading:</i></u></p> <p>Fisher, Roger (1983). <i>Negotiating Power.</i> <i>American Behavioral Scientist</i>, 27. Pp. 149-166. (stellar)</p>
4/8		<p>Game #6 Debriefing: Roles and Responsibilities of Mediators (and Planners as Mediators)</p>
4/13		<p><i>Game #7: Pablo-Burford (Part I)</i></p>
4/15		<p><i>Game #7 (cont.): Pablo-Burford (Part II)</i></p> <p>Game #7 Debriefing</p>
4/20		<p>NO CLASS – Patriots Day</p>
4/22		<p>The Ethics of Mediation and Dispute Resolution; Cross-Cultural Applications of Public Dispute Mediation</p> <p><i>Scenario #6: A Call to Prayer</i></p> <p><u><i>Assigned Reading:</i></u></p> <p>Gensberg, Alexis (2003). Mediating Inequality: Mediators’ perspectives on power imbalances in public disputes. Cambridge, MA: Program on Negotiation. Pp. 4, 23-31, 60-63, 71-72. (stellar)</p> <p>Waldman, Ellen (2011). Mediation Ethics: Cases and commentaries. San Francisco: Jossey-Bass. Chapter 6 and Chapter 8. (stellar)</p>

		<p>Avruch, Kevin (1998). Culture and Conflict Resolution. Washington, DC: United States Institute of Peace. Parts 3–4 (pp. 57-108). (stellar)</p> <p><u><i>Assigned Video (watch before class):</i></u></p> <p><i>Cross-Cultural Negotiation Video: Expert Scholars Share Their Strategies & Stories (stellar)</i></p>
<p>PART V: DISPUTE SYSTEMS DESIGN</p>	<p>4/27</p>	<p>Introduction to Dispute Systems Design in the Public Sector (Rule-making, rate setting, etc.)</p> <p><i>Exercise: Negotiating with a Newtonian</i></p> <hr/> <p><u><i>Assigned Reading:</i></u></p> <p>Rogers, Nancy C., Robert C. Bordone, et al. (2013), Designing Systems and Processes for Managing Disputes, pp. 116-132. (stellar)</p> <p>Costantino, Cathy A. and Christina Sickles Merchant (1995). Designing conflict management systems: A guide to creating productive and healthy organizations. San Francisco: Jossey-Bass. Chapter 1 (pp. 1-66). (stellar)</p> <p>Miller, Alyson (2009). What Human-Centered Design Can Tell Us About the State of Dispute Systems Design, pp.1-56. (stellar)</p> <p>Optional Reading: Susskind, Babbitt and Segal (1993). When ADR Becomes the Law: A Review of Federal Practice. Negotiation Journal. (stellar)</p>
<p>PART VI: VALUE-BASED DISPUTES</p>	<p>4/29</p>	<p>Introduction to Values-based Disputes</p> <p><i>Game #8: OutFest</i></p> <hr/> <p><u><i>Assigned Reading:</i></u></p> <p>Forester, John (1999). Dealing with Deep Value Differences. The Consensus Building Handbook. L. Susskind, S. McKernan, and J. Thomas-Larmer (eds.) Thousand Oaks, CA: Sage. Chapter 12 (pp. 463-493). (stellar)</p> <p>Susskind, Lawrence and Patrick Field (1997). Dealing with an Angry Public: The Mutual Gains Approach. New York: The Free Press. Chapters 1 and 6. (pp. 1-14; 152-197). (stellar)</p> <p>Laws, David (1999). Representation of Stakeholder Interests. The Consensus Building Handbook. L. Susskind, S. McKernan,</p>

		and J. Thomas-Larmer (eds.) Thousand Oaks, CA: Sage. Chapter 6. Pp. 241-285. (stellar)
	5/4	<i>Game #8 Debriefing; Wrap-up Discussion</i>
	5/6	<i>Incorporating all the ideas and techniques covered in 11.255 into your personal theory of practice (PTOP)</i>
PART VII: CONCLUSION	5/11	Final Exam