

PEPPERDINE UNIVERSITY
THE GEORGE L. GRAZIADIO
SCHOOL OF BUSINESS AND MANAGEMENT

PROFESSOR DENNIS TORRES

MBAM 683.11

NEGOTIATION AND RESOLUTION OF BUSINESS DISPUTES

FALL 2008

MONDAYS

1:00 PM – 5:00 PM

MALIBU CENTER

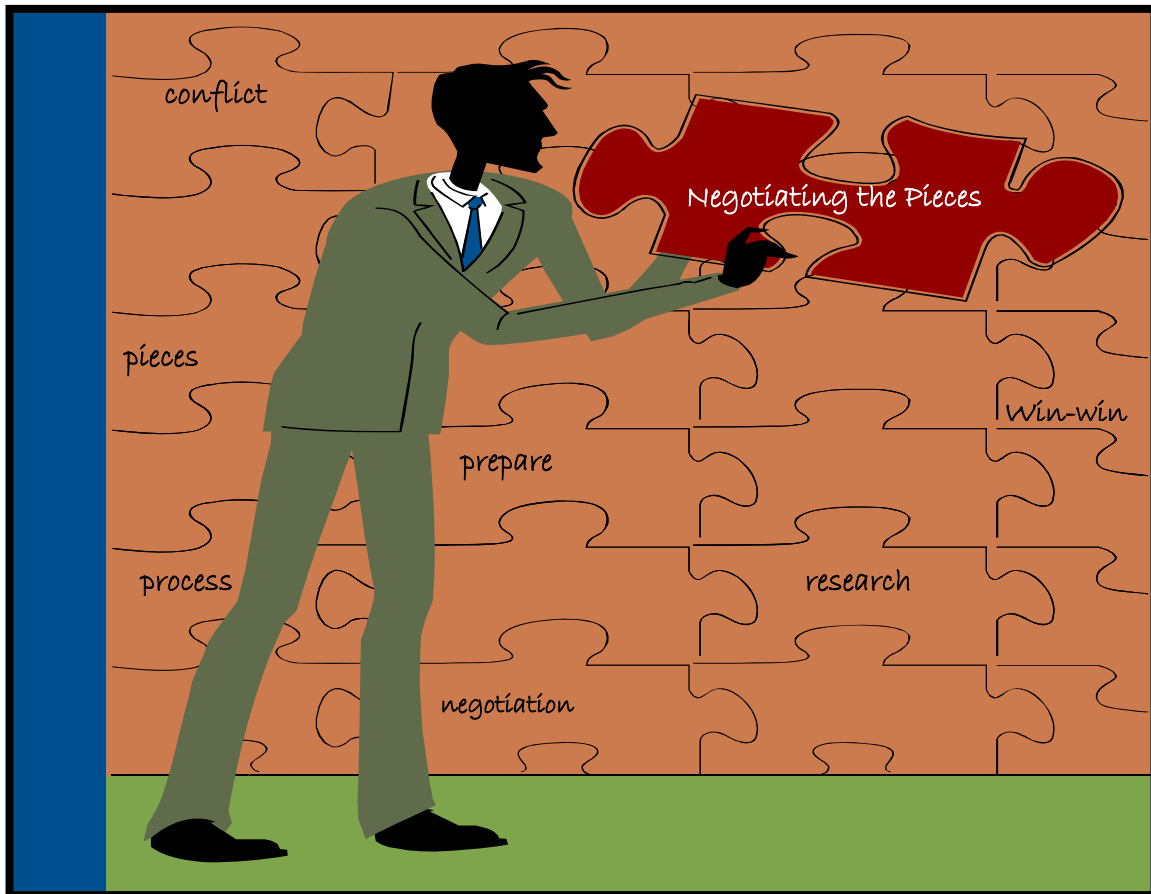
SYLLABUS

PEPPERDINE UNIVERSITY
Graziadio School of Business and Management

Technique

Personality

**NEGOTIATION AND RESOLUTION
OF BUSINESS DISPUTES**



Key Components of Negotiation
And Dispute Resolution

SYLLABUS

Fall Class MBAM 683.11
Monday's, October 20 – Dec 1, 2008
1:00 p.m. – 5:00 p.m. Room L1
Professor Dennis Torres, M.D.R.

Updated 8/1/07 1

HOW TO GET IN TOUCH WITH ME:

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Note: *When e-mailing Professor Torres always cc: Kristine*

Any Student with a documented disability (physical, learning, or psychological) needing academic accommodations should contact the Disability Services Office (Main Campus, Tyler Campus Center 264, x 6500) as early in the semester as possible. All discussions will remain confidential. Please visit <http://www.pepperdine.edu/disabilityservices/> for additional information.

REQUIRED READING:

Text Book:¹
How to Negotiate So Everyone Wins – Especially You! The Power of Nice
Author: Ronald M. Shapiro and Mark A. Jankowski with James Dale
ISBN: 0-471-08072-1 (pbk: Paperback)

Text Book:
The Keys to Conflict Resolution
Author: Theodore W. Kheel
ISBN: 1-56858-201-3

Text Book:
The Mantram Handbook
Author: Eknath Easwaran
ISBN: 0-915132-98-2 (pbk; Paperback)

READING ASSIGNMENTS:

How to Negotiate So Everyone Wins – Especially You! The Power of Nice (an easy read).

Class 1.	Pages 1 – 87
Class 2	Pages 88 – 161
Class 3.	Pages 162 - 278

The Keys to Conflict Resolution (an easy read). Read the entire book before class 6.
The Mantram Handbook (an easy read). Read the entire book before class 5.

¹ Class text books are available at Pepperdine University Book Store, Barnes & Nobel and www.amazon.com.

COURSE DESCRIPTION:

This course examines the theory and practice of negotiation in addition to the avoidance and resolution of business disputes. Emphasis is on the practical application of *interest* based negotiation, developing vital communication skills and mediation as an important resolution technique. It explores the root causes of conflict so that the student may better understand “why we fight and how we can stop.” It examines how beliefs create conflict and why it is so difficult to both recognize the problem and to change. Through insights gained in the course, students will discover both the skills and art of good negotiation. Pragmatic skills will be developed through class discussions, research, simulations and practical exercises that will enable students to apply the learned skills in their professional and personal lives.

COURSE OBJECTIVES:

1. To introduce the students to both the *positional* and *interest* based models of negotiation.
2. The in-depth study of interest based negotiation both in theory and practice.
3. For the students to master basic, intermediate and advance negotiation skills through pragmatic case study and negotiation practicums.
4. To explore the foundational causes typically associated with business disputes.
5. To introduce the students to the prominent modalities of alternative dispute resolution in use today through pragmatic case study and practicums.
We will study the dynamics of conflict and human communication. Then we will practice what we have learned through pragmatic skill exercises.

NOTE: Name cards must be brought and used throughout the semester.

GUIDING PHILOSOPHIES:

In Negotiation:

“The best way to get what you want is to help the other side get what they want.”²

In Conflict Resolution:

“The entire legal profession...lawyers, judges, law teachers... has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers of conflicts. Trials by adversarial contest must in time go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, too inefficient for a truly civilized people.

Chief Justice Warren Burger 1984 State of the Judiciary Address

² The Power of Nice – “How to Negotiate So Everyone Wins – Especially You!

PROFESSOR'S GOALS:

For the students to have fun while learning valuable negotiation and conflict resolution skills.

PROGRAM:

1. Study and practicum: The Dynamics of Negotiations
2. Study and practicum: How to Avoid Business Disputes
3. Study and practicum: How to Resolve Business Disputes

CLASS PARTICIPATION:

1. This course requires full and energetic participation of all students. Students will be given credit for the extent and quality of their class work. An A or B grade will not be given to those who just show up. In order to earn a higher grade a student must demonstrate real effort and a desire to learn. Students must be prepared for the block of information we are studying.
2. In the skill exercises, students must actually use the skills to probe, actively listen and demonstrate mastery. Simply doing the exercise without the evident skills is "C" work.
3. We learn best from interacting. This course is structured so as to draw upon every student's life experience. **It will reflect your grade adversely if you do not actively participate in class discussions** have not read the course materials and are otherwise unprepared to participate.

ATTENDANCE:

On time class attendance *for the full session* is required and is a factor in grading; attendance will be taken each session. If an absence is necessitated by unavoidable circumstances, please notify the Professor in advance. If you are absent from class more than once it is grounds for a full letter reduction of your final grade. More than two absences for any reason will cause significant concern and will likely have a negative impact on your receiving credit for the course.

USE OF COMPUTERS IN CLASS:

Since this course is designed to be interactive, the use of computers will **NOT** be permitted in class; you may bring your computer to class, but do not use it during class time.

JOURNALS:

Students are required to write 4 Journal assignments during the course.

See Addendum 1, "Template & Guideline for Writing Journal Assignments"

MID-TERM EXAMINATION:

Write approximately 3 – 4 pages double spaced about a negotiation you personally experienced, or one you researched, that illustrates an interest based negotiation. Describe what was being negotiated; identify each party's interest, how their interest played out in the negotiation; what worked; what did not work; what you learned from the negotiation.

Be prepared to discuss the negotiation with the class if called upon to do so, given time constraints not everyone will be called upon. If your negotiation experience is too personal and you would rather not discuss it with the Class you may mark it "Confidential."

A stapled copy of this paper is due at the beginning of Class 4; also submit an electronic copy via Blackboard.

Note: Each person must turn in a stapled paper copy of their mid-term just prior to presenting.

FINAL TERM PAPER:

A final term paper is required for completion of this course. You may choose one of the following two projects for your final paper.

1. Write a negotiation simulation.

See Addendum 2, Template & Guideline for Writing Final Exam Simulation"

2. "Create" a DVD or CD audio/video depicting a negotiation and write an analysis of the negotiation.

See Addendum 3, Template & Guideline for Writing Final Exam Audio/Visual"

GRADING:

Grading for the Class will be based on the Professor's evaluation of the student's work in the following areas:

- a. Demonstration of Critical thinking
- b. Class participation **(A must!)**
- c. Journals
- d. Practicum's
- e. Mid-term examination
- f. Final examination

Note 1: Not all work will be returned with a grade indicated. Students who are uncertain about their work or grade are encouraged to contact the Professor during office hours or by email.

Note 2: To avoid grade inflation and the devaluation of your MBA degree, each student's final grade will reflect that student's work **relative** to the work of other students in the class. A student who does good work may receive a lower grade than a student who does better work.

Note 3: While all of the above areas of grading are important, most emphasis will be placed on class participation; the final paper and demonstration of critical thinking.

CRITICAL THINKING:

It is the Professor's opinion that the most important work a student can do in the MBA program is to develop and use critical thinking. The following may be of help in this endeavor:

- a. ³ "Critical thinking is deciding rationally what to or what not to believe."
- b. ⁴ "Critical thinking is the formation of logical inferences."
- c. ⁵ "The purpose of critical thinking is, therefore, to achieve understanding, evaluate view points, and solve problems. Since all three areas involve the asking of questions, we can say that critical thinking is the questioning or inquiry we engage in when we seek to understand, evaluate, or resolve."
- d. ⁶ Thus, critical thinking involves: following evidence where it leads; considering all possibilities; relying on reason rather than emotion; being precise; considering a variety of possible viewpoints and explanations; weighing the effects of motives and biases; being concerned more with finding the truth than with being right; not rejecting unpopular views out of hand; being aware of one's own prejudices and biases, and not allowing them to sway one's judgment.
- e. ⁷ Critical thinking is "the art of thinking about your thinking while you are thinking in order to make your thinking better: more clear, more accurate, or more defensible.
- f. ⁸ Critical thinkers: distinguish between fact and opinion; ask questions; make detailed observations; uncover assumptions and define their terms; and make assertions based on sound logic and solid evidence.
- g. ⁹ Attributes of a critical thinker:
 - Asks pertinent questions
 - Assesses statements and arguments
 - Is able to admit a lack of understanding or information
 - Has a sense of curiosity
 - Is interested in finding new solutions
 - Is able to clearly define a set of criteria for analyzing ideas
 - Is willing to examine beliefs, assumptions, and opinions and weigh them against facts
 - Listens carefully to others and is able to give feedback
 - Sees that critical thinking is a lifelong process of self-assessment
 - Suspends judgment until all facts have been gathered and considered
 - Looks for evidence to support assumption and beliefs
 - Is able to adjust opinions when new facts are found
 - Looks for proof
 - Examines problems closely
 - Is able to reject information that is incorrect or irrelevant

³ Norris, Stephen P. "Synthesis of Research on Critical Thinking.

⁴ Simon and Kaplan, 1989

⁵ Maiorana, Victor P. Critical Thinking Across the Curriculum.

⁶ Kurland, Daniel J. I know What It Says... What does it Mean? 1995

⁷ Paul, Binker, Adamson, and Martin 1989

⁸ Ellis, D. Becoming Master Student 1997

⁹ Ferrett, S. Peak Performance 1997

Negotiation Communication in Blackboard

Students are encouraged to utilize their new found negotiation skills whenever the opportunity presents itself and to share (celebrate) those experiences with the class by posting to the Communication Button located in Blackboard.

Tell us how you negotiated that business deal; for that hotel room; when buying/leasing a new car; for those concert tickets; at the store; with your significant other; roommate; employer; the officer who wanted to give you a ticket. etc.

Identify the negotiation techniques you used, your strategy, what worked, what did not and what you learned from the experience.

Post any good negotiation stories that you may come across in the media too.

Post anytime even after you have graduated we would love to hear from you.

Go forth and enjoy the negotiation adventure – a journey of discovery and resolution.

Read the Following:

Addendum 1. Template and Guideline for Writing Journal Assignments

Addendum 2. Template and Guideline for Writing Final Exam Simulation

Addendum 3. Template and Guideline for Writing Final Exam Audio/Visual

Addendum 4. Recommended Reading

For Writing Journal Assignments

Pepperdine University
Graziadio School of Business and Management
Negotiation & Resolution of Business Disputes

To: Professor Dennis Torres
[683.11 Fall 2008]

From: [Student's Name]

Date: [Date]

Subject: [Journal Assignment Name]

GENERAL INSTRUCTIONS:

- Use this template, type 12pt double spaced.
- Each Journal assignment will be posted in Blackboard under Assignments or distributed electronically to the students during weeks 1, 2, 3, and 4.
- Each student Journal entry should consist of approximately 2 to 3 pages, double spaced.
- The Journal entry should contain a discussion of the subject matter and how the subject matter might impact the student's personal life and business career.
- Do not simply present a researched essay; write about your personal life experiences regarding the Journal topic.
- The Journals will be collected at the beginning of each class, reviewed and returned with comments at the beginning of the subsequent class.
- Additionally, students must provide an electronic copy of their Journal entries by **posting it in Blackboard**.

OBJECTIVES:

Good negotiation and dispute resolutions skills are rooted in good communication skills. The most effective communicators are those who can recognize conditioned responses in both themselves and others and effectively deal with them. Conditioned responses are those that cause you to react rather than to act – to respond impulsively rather than to choose how you respond; and they can spell disaster when you are negotiating or trying to resolve a business or relationship dispute. You may believe you are in control of your thoughts and actions, but in reality you may just be parroting a pattern of life long behavior in how you deal with certain perceived behavior from others. The reason for this is expressed well in the oft quoted truism, “we see the world not as it is, but as we are.”

The purpose of your Journal exercises is to help you become aware of why you think, speak and act the way you (and others) do.

Read the Journal instructions. Take time to reflect on what is being asked and how it relates to your own personal life experience. Write about profound experiences in your life, not superficial ones. For example if the instructions ask you to reflect on times you thought you were absolutely right only later to find out you were dead wrong, do not write about the time you thought the Dodgers were going to win the World Series and they did not. Write about those life experiences that affected you deeply; those that challenged your emotions, relationships and belief systems. Write about what these events taught you about yourself, others and life. Write with candor and a desire to explore and learn.

Addendum 2 (Page 1 of 3)

Template & Guideline

For Writing Final Exam Simulation

Pepperdine University
Graziadio School of Business and Management
Negotiation & Resolution of Business Disputes

To: Professor Dennis Torres
[683.11 Fall 2008]

From: [Student's Name]

Date: [Date]

Subject: [Title of final exam]

GENERAL INSTRUCTIONS:

Write a complete negotiation simulation, using the negotiation simulation that will be posted to Blackboard and marked "**Sample for Writing Final Exam**" as a model for your project. The paper should demonstrate principals learned during the class. It should be one of special interest or concern which the student enjoys researching or analyzing. Papers will be evaluated according to a number of factors including the student's expressed knowledge of the subject, the application of principals and techniques; the soundness of analysis; quality of research; facility of expression; and originality.

1. There are no set page requirements for the Final Term paper.
2. Take care not to "write a novel." Only include information that will be needed to effectively negotiate or mediate the simulation; extemporaneous information only serves to confuse the issues.
3. The "Overview" section should begin with a short paragraph of what it involves i.e. This simulation involves a negotiation regarding xxxx and xxxx about xxxx. The overview section should only include information that can be read by both sides without compromising the effectiveness of the simulation.
4. Each set of "Confidential Instructions" should be written as instructions to the Negotiation, i.e. "You are the agent representing..." and "you will be meeting with xxxx to negotiate xxxx, prepare for the negotiation." Be sure to include information on the person doing the negotiation and his/her needs/wants/motivations as it affects the negotiation.
5. Most important demonstrate your knowledge and understanding of the negotiation/dispute resolution process as covered during the term.
6. In addition to the preparation narrative, **complete** the preparation worksheet.

Your final paper must be posted in Blackboard and additionally presented in a bound hard copy at the beginning of the last class, week 7.

APPROACH: Base your simulation on either a real negotiation taken from your own experience, a researched one, or create a fictionalized one from your own imagination.

Addendum 2 (Page 2 of 3 Pages)

Template & Guideline

For Writing Final Exam Simulation

While you do not have to copy the "Exam Template" line for line, your project should include the following:

1. A Table of contents
2. An overview
3. Any special simulation instructions
4. Separate confidential instructions for each party to the negotiation
5. Separate completed preparation memos for each party.
 - a. The preparation memos should address the following issues:
 - i. Issues to be considered
 - ii. Interests
 - iii. BATNAs
 - iv. WATNAs
 - v. Alternatives
 - vi. The Conflicting issues?
 - vii. Arguments and responses to the arguments for each side.
 - viii. Ways to express and reveal the interests and concerns of each side.
 - ix. Relationships issues to be explored.
 - x. How each side can prepare for the negotiations
 - xi. Any integrative and distributive issues.
 - xii. Any suggestions and/or opinions you may have as to how the parties can best handle the negotiations.
 - xiii. Possible criteria for establishing an agreement.

Note: The Preparation memos should be completed BOTH in a narrative form containing discussion and commentary on the above issues and in an abbreviated form using the "Negotiation Preparation Worksheet" template distributed in class.

Write all sections in your own words. The best papers may be used for simulation practicum's in future classes.

REFERENCES: Footnote or Endnote any references or resources you have consulted and list any suggested reading relevant to your simulation.

(Continued)
Addendum 2 (Page 3 of 3 Pages)

**Template & Guideline
For Writing Final Exam Simulation**

Pepperdine University
Graziadio School of Business and Management
Negotiation & Resolution of Business Disputes

To: Professor Dennis Torres
[683.11 Fall 2008]

From: [Student's Name]

Date: [Date]

Subject: [Title of final exam]

INSTRUCTIONS: Use the following format for your final exam

FRONT COVER PAGE:

Centered; font size your choice
Pepperdine University
Graziadio School of Business & Management
Negotiation & Resolution of Business Disputes
Professor Dennis Torres
MBAM 683. 11 Fall 2008

Triple Spaced: Topic Name of Final Exam
(Optional Clip Art, Picture)
Centered font size (your choice)

Triple Spaced: By: Student's Name

FORMATTING: *Each page* of your document should have a header and footer as outlined below:

Header example i.e.,

MBAM 683.11 Fall 2008
Negotiation & Resolution of Business Disputes
Final Exam Simulation by: Student's Name

Header font size: 8

Type of font: Your choice

Layout: Flush right

Footer example i.e., Click on view; footer icon; insert auto text; file name; student name; date; page number. The file name should be the title topic of your document.

Addendum 3 (Page 1 of 2)

Template & Guideline

For Writing Final Exam Audio/Visual

GENERAL INSTRUCTIONS:

The audio/video can be an excerpt from a TV show, such as Commander and Chief, West Wing, a movie or any other source; you can also create your own or assemble a compilation of two or more videos from any source such as YouTube. Endnote or footnote as appropriate.

Your DVD or CD must be of good quality. A commercially produced video may be submitted with appropriate indices marking the subject section.

In addition to the audio/video you will need to write a complete analysis of the elements of mediation depicted in the audio/video. The analysis should demonstrate the principals learned during the Class.

The Audio/Videos and related paper will be evaluated according to a number of factors including the student's expressed knowledge of the subject, the application of principals and techniques; the soundness of analysis; quality of research; facility of expression; and originality. It should contain the following sections.

PROJECT: Your project should include the following:

1. A table of contents
2. An overview of the negotiation depicted in the DVD or CD.
3. Separate analysis and of each party's issues relative to the negotiation.
4. Separate completed preparation memos for each party.
 - a. The preparation memos should address the following issues:
 1. Issues to be considered.
 2. Interests
 3. BATNA's
 4. WATNA's
 5. Alternatives
 6. The conflicting issues
 7. Arguments and responses to the arguments for each side.
 8. Ways to express and reveal the interests and concerns of each side.
 9. Relationship issues to be explored.
 10. How each side can prepare for the negotiations
 11. Any integrative and distributive issues.
 12. Any suggestions and/or opinions you may have as to how the parties can best handle the negotiations.
 13. Possible criterion for establishing an agreement.

Note: The preparation memos should be completed BOTH in a narrative form containing discussion and commentary on the above issues and in an abbreviated form using the "Negotiation Preparation Worksheet."

Addendum 3 (Page 2 of 2)

Template & Guideline

For Writing Final Exam Audio/Visual

Write all sections in your own words.

Follow the "Final Exam Formatting Template"

The final audio/video DVD or CD and accompanying analysis must be contained in a binder and turned in to the Professor at the beginning of the last class. Additionally, the accompanying analysis paper must be posted in Blackboard.

REFERENCES: Footnote or Endnote any references or resources you have consulted and list any suggested reading relevant to your simulation.

See Addendum 3A, "**Article on Negotiation and Mediation In Film**"

(Continued)
Addendum 3A (Page 1 of 6 Pages)

Article on Negotiation and Mediation in Film



Reel Negotiation: The Good, The Bad, And The Ugly Reflections Of Negotiation And Mediation In Film

by Robert Benjamin, Peter Adler

October 2006

Almost ten years ago, we did a workshop showing film clips from popular films we thought were relevant to negotiation and conflict management practice. Since then, each of us have expanded and refined our repertoire of films and regularly include them in presentations and trainings. The visual experience of watching movie scenes is, needless to say, a great learning tool that helps to illustrate, clarify or frame the discussion not only about negotiation and mediation, strategies, techniques and skills, but approaches to problem solving and leadership as well. Many of our favorites are listed below with brief annotations as to why and how we think they might be helpful, along with references to articles and reviews of a few movies that are especially important.

The value and importance of films as a learning tool can't be underestimated. Popular movies offer a window into the prevailing cultural beliefs and myths and reflect how people tend to approach and respond to both conflict in general, and negotiation as a particularly important mode of conflict management. While virtually everyone negotiates at some time or another, we contend there is still considerable resistance in our society to the idea of negotiating differences and has been for centuries. At the same time, also because of their nature, or in spite of it, humans have, from time to time, managed to collaborate with each other. Films reflect both, our greatest hopes and our worst tendencies. Therefore, viewing and sometimes studying movies can be very useful to prepare for conflict management work.

While the stories that movies tell are not technically true, they carry a truth. The scripts lie somewhere between art imitating life or life imitating art, and after a while it doesn't make much difference which. To the extent that they elicit authentic human responses of fear, anger, frustration, sadness, and sometimes even hope, they are real enough.

When movies tell stories of significance, the kind that help us make sense of the world around us, then they perpetuate what 'licensed' anthropologists call myths. While not technically true, a myth is not, as many tend to think, a lie either. It carries within it a special kind of truth, often metaphoric, that offers insight into how people would like to believe things are or should be. The myths presented in movies become a guide of sorts for viewers' behavior---sometimes directly and other times more subtly and sub-consciously. So that, when John Wayne says, "I don't believe in surrender..." or Gary Cooper resolutely stands up to the bad guys in *High Noon*, or Harrison Ford, playing an American President in *Air Force One*, says with white hot determination, "We will not negotiate with terrorists," those lines resonate with us and we want to be like the hero.. Who among us doesn't want to believe that if faced with evil, that we wouldn't stand up and do the right thing, whatever the cost.

Addendum 3A (Page 2 of 6 Pages)

Article on Negotiation and Mediation in Film

Our culture has certain over arching operational myths that are close to sacred. Among those are the myth of justice and it's first cousin the myth of truth, which holds that both are susceptible to

clear determination. The myth of rationality posits the belief that events are causal and predictable and decisions can be made analytically and objectively. Finally, there is the myth of finality that suggests that once things are decided, they are effectively resolved. If these myths were, in fact true, there would be no need for negotiation. Thus, primary myths spawn second-order myths, such as the still widespread belief that negotiation is a sign of weakness at best, and often a deceptive activity that compromises the truth. Negotiators continue to often be seen as moral relativists who would 'sell their souls to the Devil for the sake of a deal.' Or, in the words of Dante, "The hottest places in hell are reserved for those who, in time of great moral crisis, maintain their neutrality." (See Benjamin, Robert D., "Managing the Natural Energy of Conflict: Tricksters, Mediators and The Constructive Uses of Deception," in *Bringing Peace Into the Room*, eds. Bowling and Hoffman, 2004).

It should be no surprise then, with only a few notable exceptions, in particular, *Hotel Rwanda (2005)*, movies past and present have not been favorable to negotiation. Mediation, the first cousin of negotiation, is seldom mentioned, and when it is, often not accurately or in an almost derisive off-handed way such as in a silly comedy like *The Wedding Crashers (2006)*, where the two leads play divorce mediators trying to seduce women at a wedding party. In fact, most movies have been downright hostile to negotiation, favoring armed force as the preferred means of revenge and conflict management. Current day movies, many unfortunately not great by any cinematic or creative standard, continue to foster resistance to negotiation and mediation.

While there has been a falling off in attendance, people still go to movies, rent them or steal them off the web and practicing negotiators and mediators would do well to be familiar with them. First, movies have contributed to the negative impressions many have about negotiation that very well might be carried into the mediation process. Experienced mediators have learned that even outwardly sophisticated looking and sounding people, are often reluctant to negotiate. They are afraid they are going to be played for a fool. The real world of conflict is like a movie script---things are not what they seem. A mediator would do well to not presume that because people have showed up for a mediation session, they want to be there or they can be expected to be rational and reasonable. Second, movies are fodder for forming a common frame of reference with parties and may even offer insight into how they construct their reality. What movies they like or don't like isn't conclusive information but definitely useful. And making reference to a movie they liked can open up a possibility for different thinking.

Viewing conflict and negotiation through film, not unlike other art forms, allows for thinking differently about things. Theatre and film allow us to access our intuitive sensibilities and encourages what de Bono calls lateral thinking. (Bono, Edward de, *Lateral Thinking*, Harper and Row, 1970). Ironically, sometimes the best way to approach a confounding issue maybe to not think about it directly. Distracting ourselves with activities like watching a movie or a play, accesses different parts of the brain and can spark a whole different perspective. It's a kind of crazy wisdom. If you're stuck, go to the movies.

Addendum 3A (Page 3 of 6 Pages)

Article on Negotiation and Mediation in Film

Articles and Reviews

Benjamin, Robert D., "The Movies- Constructions Of Reality And Sources Of Metaphors" www.mediate.com/articles/benjamin2.cfm , 1998

Benjamin, Robert D., "Mediation As Theater And Negotiation As Performance Art," www.mediate.com/articles/benjamin5.cfm , 2001.

Benjamin, Robert D., "Hotel Rwanda and the Guerrilla Negotiator," www.mediate.com/articles/benjamin18.cfm , February, 2005

Benjamin, Robert D., "Film Review: Thank You For Smoking Offers An Advanced Tutorial in Negotiation Strategies and Ethics," www.mediate.com/articles/benjamin27.cfm , April, 2006

Films

Air Force One (1997) Harrison Ford plays a US President, and echoes President Ronald Reagan, giving the modern day version of John Wayne, "We will not negotiate with Terrorists.

Apollo 13 (1995) Tom Hanks plays Astronaut Jim Lovell in this classic docudrama of American "can do" problem solving that requires putting a square object into a round hole.

Braveheart (1995) Mel Gibson plays 13th Century Scottish rebel hero William Wallace who fights the tyranny of Edward I. Juxtaposes the historical place of war and negotiation.

Changing Lanes (2002) Samuel Jackson is the stressed out working class stiff who is involved in a car collision with Ben Affleck, a slick NYC lawyer, who slights Jackson and records how conflict quickly spins out of control from a seemingly innocuous event. A worthwhile study for conflict managers.

A Civil Action (1998) Frames the 'myth of justice,' Travolta plays the conniver come hero attorney in this 'torn from the headlines backdrop of alleged corporate malfeasance (see also Erin Brockovich, 2000) in dumping hazardous waste. Best scene, however, is Robert Duvall. Especially valuable as sample of legal offer/counter offer negotiation.

Columbo (1971-1978) While not technically a movie, the television series about a seemingly unassuming, obsequious homicide detective ever ready with another silly question, starring Peter Falk, offers a rich vein of worthwhile material for study of effective negotiation and mediation technique. Columbo is well within the trickster folklore tradition of the 'wise fool.'

Crash (2005) Excellent exercise for conflict managers. Presses viewers to careen back and forth between hating and admiring the players behavior as the story develops, forcing into the open the natural inclination to be judgmental and deny it. Matt Dillon, and Sandra Bullock. See also *Dead Man Walking*.

Addendum 3A (Page 4 of 6 Pages)

Article on Negotiation and Mediation in Film

Dances With Wolves (1990) Provides a number of scenes useful in the study of communication between cultures. Kevin Costner, in arguably his best movie, plays a dedicated US Cavalry soldier isolated deep in Lakota Sioux territory and forced to come to terms not only with the environment but his most skeptical hosts.

Dead Man Walking (1995) Setting aside the religious stuff, this is a powerful film that compels viewers to feel the pressure of the validity of both sides of the capital punishment issue. Particularly useful for conflict mediators training. Sean Penn plays the convicted murderer on death row, Susan Sarandon, plays the Nun who connects with him and the family of the young girl he brutally killed.

Dog Day Afternoon (1975) Some of Al Pacino's best work. A true story of a loser who holds up a car dealer to raise money for his lover's sex-change operation, botches it, and ends up in a hostage negotiation. A useful study of the way hostage negotiation is often done.

The Fifth Element (1997) Set in 23rd Century, Bruce Willis is the hero who prefers shooting to negotiating. Is hostage negotiation too often used as little more than a ruse to set up a kill shot?

The Flim Flam Man (1967) George C. Scott plays the classic con-man. A study in the use of deception, swindling and selling.

Ghostbusters (1984) Classic Bill Murray, Dan Ackroyd, et al., stuff that more than honorably echoes the Marx Brothers movies several generations earlier. As three ex-communicated academics they set up their zany business which is the backdrop for endless negotiations among themselves and everyone in their path.

The Great Santini (1979) Pat Conroy's book on film with Robert Duvall as "a warrior without a war" who treats his family as his command and wages a cringe inducing war with his teenage son in an unforgettable scene on the backyard basketball court. Very useful in ferreting out peoples' emotional response to conflict that is all too real.

High Noon, (1952) In this classic American Western, Gary Cooper plays the quintessential reluctant hero who has provided the model for many American Presidents. Juxtaposes the hero and the mediator, the town leader who counsels appeasement, wants "Coop" to disappear and avoid the showdown.

Hotel Rwanda (2004), In this docudrama, Don Cheadle plays Paul Rusesabagina, a hotel manager caught in the middle of the Rwandan genocide in 1994, and saves the lives of some 1200 people through his negotiation prowess with all sides, the UN, the Rebels, the Hutus, the Tutsis and the White corporate owners of the Hotel. This is one of the only films where a negotiator is the hero and not backed up by blazing guns that save the day.

The Hurricane (1999), Denzel Washington plays Rubin "Hurricane" Carter, the great prizefighter wrongly convicted and imprisoned for murder. Great scene showing prison guard negotiating with him as moral extremist to survive.

Addendum 3A (Page 5 of 6 Pages)

Article on Negotiation and Mediation in Film

Kramer vs. Kramer (1979) Dustin Hoffman and Meryl Streep play in this drama of a couple in divorce, raising gender, parenting responsibility and conflict management issues. Mediation is not given much attention. Should be required viewing for family and divorce mediators especially.

Longitude (2000) Although not well known, this film offers a valuable study in problem solving and specifically, how to escape the constraints of established patterns of thinking and assumptions.

Michael (1996) John Travolta plays a slightly degenerate, rumped, and God forbid, smoking Angel, who comes directly out of the Trickster tradition, and loves life, women, and competition, allowing humans to learn by his use of both sacred and profane means.

The Millagro Beanfield War (1988) Reuben Blades plays a small town sheriff who stumbles into the role of a mediator to settle a dispute between local Hispanic farmers, the US Forest Service and Corporate Developers who want the land for a golf course and resort. It is a half way serious comedy of difficult dispute with a humorous bent.

The Negotiator (1998) Even though it deteriorates into a standard Hollywood action thriller, and not a bad one, Samuel Jackson and Kevin Spacey play sparring police hostage negotiators and offer up some useful scenes on the nature of authenticity and negotiation technique.

Tombstone (1993) Another retelling of the Old West saga of the shootout at the OK Coral, but though violent, offers terrific insights into the dynamics of the escalation of conflict and the risks / benefits of confrontation.

12 Angry Men (1957) Don't bother with the re-make, the original with Henry Fonda, Lee J. Cobb, Ed Begley, E.G. Marshall, Jack Klugman, Martin Balsam, et al., can't be improved upon. The belief in the triumph of rational inquiry deliberation over emotionalism in the jury room is profiled, setting the scene for the 'myth of justice.' If the court process really worked like this, why negotiate?

Schindler's List (1993) Steven Spielberg's compelling film on the Holocaust provides a powerful backdrop for the study of negotiation as a means of survival and the nature of authenticity. Liam Neeson, as Oskar Schindler, a real life war profiteer/scoundrel who appears to become a hero, negotiates with the Jews to allow for their survival and in a brilliant scene, with a German soldier for the life of a little girl being placed on the train for the concentration camp.

State and Main (2000) A great, but not well known film about the adventures of a Hollywood film crew in a small New England town, the resulting clash of cultures and negotiations within the crew and with the townsfolk. Illustrates a variety of styles of negotiation from 'hard ball' to empathetic. William Macy, Phillip Seymour Hoffman, Alec Baldwin, and Sarah Jessica Parker.

Article on Negotiation and Mediation in Film

The Searchers (1956) Would John Wayne negotiate? classic American; more than a mere actor, he is an icon that reflects our cultural resistance to resistance to negotiation: "...I don't believe in surrender... "

Thank You For Smoking (2006) Some brilliant scenes that illustrate advanced negotiation technique, specifically, the use of paradoxical injunction and reframing

Thirteen Days (2000) Absorbing dramatization of the 1962 Cuban Missile Crisis, depicting the negotiations of President John F. Kennedy, first with his own military advisors and then with the Soviet Union leader, Nikita Krushchev. Unusually accurate, it is worthy of being viewed in its

entirety and carefully studied for negotiation strategy and technique. The only downside is Kevin Costner's horrendous effort at a Boston accent.

The War of the Roses (1989) A classic study of the escalation of conflict in a divorce, but should be required viewing not just for family and divorce mediators, but every student of conflict management. Often dismissed as satire, from years of practice experience, found it all too real and plausible. Kathleen Turner and Michael Douglas as the principles and Danny DeVito as one of the lawyers.

Wit (2001) This is an absolute must see for anyone who works in or around healthcare. Emma Thompson is brilliant as a literature professor come ovarian cancer patient who must engage and endure doctors, and the hospital system in the last days of her life. Directed by Mike Nichols, this film is perhaps the most poignant depiction of doctor/patient communication---or miscommunication around.

BIOGRAPHY

Robert Benjamin

Robert D. Benjamin, M.S.W., J.D. is a Fellow at The Straus Institute for Conflict Resolution, Pepperdine University School of Law, He has been a practicing mediator and conflict management consultant since 1979, and presents training courses and seminars nationally and internationally. He is an Editor for the on-line publication and the Series Editor for the Video Project, "The Mediators: Views From the Eye of the Storm." He is the author of numerous articles and book contributions, including: "Managing the Natural Energy of Conflict: Mediators, Tricksters, And The Constructive Uses of Deception." He has a canine companion, Bean, a Soft Coated Wheaten Terrier, who appears not to know the meaning of work but is born to play endlessly.

Peter Adler

Peter S. Adler, Ph.D. is President of The Keystone Center which helps today's leaders solve critical environment, energy, and public health problems, and trains tomorrow's leaders to take the reins.

Recommended Reading

RECOMMENDED READING:

1. The Big Book of Small Business; You Don't Have To Run Your Business By The Seat Of Your Pants

Tom Gegax with Phil Bolsta
ISBN: 978-0-06-120669-6

-Is the most comprehensive and practical book on how to take a small business to the next level, and an indispensable slingshot for the millions of scrappy David's taking on corporate Goliaths.

2. Sales Effectiveness Training: The Breakthrough Method to Become Partners with your Customers¹

Carl D. Zaiss and Thomas Gordon, Ph.D.

-This sales book focuses on the most basic communication strategies which, if mastered, form the basis of any interaction—including negotiation.

What's exciting about Sales Effectiveness Training is its unique emphasis on skills we'd otherwise overlook. Most people want to know what to say, and how to say it, but the most important thing is how you listen, not what you say. This book puts the importance of listening skills – both as a technique for understanding and as a method of creating rapport in the context of sales effectiveness.

3. Getting to Yes: Negotiating Agreement Without Giving In¹

Roger Fisher, William Ury and Bruce Patton

-The foundation of all great negotiation books, Getting to Yes gives you the real essence of mutual gains negotiation. It's a neat, concise, little paperback, and a fast read.

The main ideas of the book are that positional negotiation is pointless, and that our negotiations should focus on interests rather than positions. By the time you finish Getting to Yes, you'll be convinced that negotiation is a simple matter of figuring out what you really want, what the other side wants, and working out the space where those interests intersect—despite the generalizations, deletions, and distortions the other side might use to confuse you.

One of the leading fundamental constructs presented in Getting to Yes – is “separate the people from the problem.” Getting to Yes proposes that problems exist objectively and can be analyzed on their own merits, independent of people's perceptions, attributions, and relationships.

In real life, it's impossible to disentangle people issues from discussions of “concrete substance.” Regardless of the prescriptive in Getting to Yes, real problem solving negotiations require constant simultaneous attention to the problem and the people. The skills you really need to extract and understand others perceived interests in the context of a relationship aren't taught in Getting to Yes. The book diagnoses the conditions that cause difficulty in negotiation, but doesn't offer all components of the cure.

Nevertheless, one dose each of Sales Effectiveness Training and Getting to Yes should cure just about anything that ails any normal renegotiation.

Addendum 4 (Page 2 of 3 Pages)

Recommended Reading

4. Getting Past No: Negotiating Your Way from Confrontation to Cooperation¹
William Ury

-Sometimes I'm tempted to tell people to bypass Getting to Yes and just go straight to this spin-off. It imparts the same essence of mutual-gains negotiation, and additionally includes lessons in good basic strategy for dealing with others' negotiation tactics, tricks, and attacks. While Getting to Yes gives you the foundation of principle-centered negotiation, this book focuses on what to do when that principle-centered negotiation breaks down due to the other side's deceitful, confused, or just plain difficult behavior. If this were a sales book, it would be called something like "Dealing with Sales Objections," but as a negotiation book, it's even more effective: It addresses ways of identifying and dealing with common barriers we all face when trying to strike deals.

Getting Past No has the same concise, pithy style as Getting to Yes, which makes the tactics sound a lot simpler than they prove to be when you try to put them into practice. But as an analysis of difficult negotiation and as general roadmap to the land of "Don't get mad, don't get even, get what you want", it really can't be beat.

5. Getting Together: Building Relationships as We Negotiate¹
Roger Fisher and Scott Brown

-Getting Together expands on yet another element of mutual gains negotiation: the need to develop ongoing, working relationships with the people we deal with. Functional relationships can accommodate conflict, speed reconciliation, and generally make the process of negotiation kinder and gentler at work, as well as in your personal and professional life.

6. Conquest of Mind²
Eknath Easwaran

-A look "under the hood" of the mind by a master mechanic, *Conquest of Mind* give practical steps for making your mind your faithful friend. "Nothing can be more important than being able to choose the way we think – our feelings, aspirations, and desires, the way we view our world and ourselves. It means that we can begin to reshape our life and character, rebuild relationships, thrive in the stress of daily living, become the kind of person we want ourselves to be.

7. Meditation: A Simple Eight Point Program for Translating Spiritual Ideals into Daily Life²
Eknath Easwaran

-Learn to meditate using this practical manual. Everything you need is here for developing a stable spiritual practice that fits your own tradition and lifestyle and bringing your highest ideals into every aspect of daily life.

8. Gandhi the Man: The Story of His Transformation²
Eknath Easwaran

-Can we learn to be as fearless, as unshakably secure, and as powerfully effective as Mahatma Gandhi? Gandhi himself started out very ordinary. *Gandhi the Man*

Addendum 4 (Page 3 of 3 Pages)

Recommended Reading

tells his story from the point of view of how he transformed himself and provides a pattern we can emulate.

9. Dialogue with Death A Journey through Consciousness ²
Eknath Easwaran

-A practical blue print for understanding and remodeling the mind. Topics include: The Race between will and desire. The choice of long-term welfare rather than immediate pleasure. The training of the senses to multiply vitality. The pushes and pulls from our higher and lower selves. The tools for mastering the thinking process. The divinity in each of us that reveals itself when the mind is stilled.

10. Compassionate Universe The Power of the Individual to Heal the Environment ²
Eknath Easwaran

-What is the connection between our small, daily, individual choices and the condition of the earth's environment? The Compassionate Universe looks at our choices through the perspective of Mahatma Gandhi's seven social sins, such as "Science Without Humanity," and "Politics Without Principles."

1 These books may be found at www.amazon.com

2 These books may be found at www.nilgiri.org.