

A Civil Action: A Pedagogical Case in Negotiation Practice

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Abstract

This paper presents the use of the popular film, A Civil Action, combined with the bestselling book, Getting to Yes: Negotiating Agreement without Giving In, as a pedagogical tool for teaching principled negotiation. Negotiation is a frequently unfamiliar and abstract concept for traditional students, and research supports the use of film to illustrate abstract concepts. This paper summarizes the main points of principled negotiation from Getting to Yes and provides a viewing guide to selected film sequences. Discussion questions and instructor notes are provided to facilitate classroom activity.

Keywords: Negotiation, settlement, pedagogy, film, Getting to Yes

1. Introduction

Negotiation methods and skills form an integral and increasingly important part of business curricula. This emphasis corresponds with the increased emphasis on “soft skills” like negotiation by prospective employers of business graduates. Recent studies bear this out. In a recent Rodkin and Levy (2015) survey corporate recruiters identify communication, leadership, and strategic thinking as skills that are in demand but scarce among MBA candidates. In 2014, the Graduate Management Admission Council (GMAC) asked employers what they want most from new graduate business hires. Ability to communicate in all its forms, including negotiation, was identified as the most sought-after skill. In the GMAC survey, negotiation skills ranked on par with qualitative analysis, quantitative analysis and core business knowledge and higher than several other managerial, leadership, and technical skills.

Law schools have long recognized the importance of negotiation in that discipline. Many leading law schools have established dedicated programs for the research and teaching of negotiation. Exhibit 1 provides a partial list of these programs. Business colleges similarly do well to teach negotiation skills. For those business schools accredited by AACSB International, the teaching and learning of negotiation demonstrates an integration of analytical, interpersonal and group, and introspective skills that are mandated by accreditation standards.

Exhibit 1: Selected Negotiation/Dispute Resolution Institutes, Centers, and Programs

| Organization | Web Address |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| American Bar Association, Section of Dispute Resolution | http://www.americanbar.org/groups/dispute_resolution.html |
| Creighton University, Warner Institute for Dispute Resolution | http://law.creighton.edu/werner-institute |
| Harvard Law School, Program on Negotiation | http://www.pon.harvard.edu/?floater=99 |
| Missouri State University, The Center for Dispute Resolution | http://www.missouristate.edu/cdr/ |
| University of Missouri School of Law, Center for Dispute Resolution | http://law.missouri.edu/csdr/ |
| The Ohio State University, Program on Dispute Resolution | http://moritzlaw.osu.edu/programs/adr/about.php |
| Pepperdine University, Straus Institute for Dispute Resolution | http://law.pepperdine.edu/straus/ |

For most students, negotiation—although a valuable and necessary life and business skill—does not come easily (Fisher and Ury, 2011). As a result, various strategies and modalities are used to teach negotiation. A common element is that the pedagogy usually follows the experiential learning model while accommodating differences in student learning preferences. Lewicki (1997) describes this combination as a pedagogical “learning cycle” incorporating: 1) cases, role-plays, and live negotiations (concrete experiences); 2) debriefing, journaling and papers (observations/reflections); 3) lectures and readings (formation of abstract concepts/generalizations); and 4) personal goal setting (testing implications of concepts in new situations). A typical role-play exercise consists of hypothetical facts depicting a typical negotiation scenario between two negotiators. The role-play materials typically contain an identical set of general facts, issues, and instructions available to both negotiators, along with different sets of confidential facts, issues or instructions given to each side. Role-play exercises thrust students into a real-world negotiating situation with incomplete knowledge and a degree of flexibility in how to proceed. Students must apply negotiating concepts and techniques learned in the course, but they can safely practice, experiment, and develop their negotiation styles. All this takes place while interacting with a negotiating counterparty having different personality, individual interests, motives, and style. A post-negotiation debriefing allows each student negotiator to obtain feedback.

Pedagogical research and classroom practice validate the use of role-plays to teach negotiation. Nadler, Thompson, and Van Boven (2003) find that negotiation role-plays enhanced by concomitant use of other teaching and learning modalities. Students participating in a negotiation role-play exercise followed by observational or analogical training demonstrated measurable improvement in a second role-play exercise, unlike students completing two consecutive role-play negotiations without the intervening training. Rosan (2008) concludes that these results suggest that observational learning enhances the ability to execute negotiation skills and to a more limited extent, increases appreciation of underlying negotiation concepts. Journaling allows students to document their observations and reflections on their interaction with the course materials and activities. Students are required to reflect on the important aspects of the course from both the theoretical and practical perspectives. It also provides a way to assess the depth of other important course concepts (King and LaRocca, 2006). Another tool in the course armamentarium is the discussion board. This online tool establishes a community of learners by promoting interaction among students in the context of important course concepts. Since most discussion boards require responsive posts, students have the opportunity for exploratory learning by evaluating the conclusions of others and formulating responses to them (University of Washington School of Social Work, 2011).

This paper presents the popular film, *A Civil Action* (Touchstone Pictures, 1998), as a pedagogical case in negotiation practice. Used in tandem with the bestselling negotiation book *Getting to Yes: Negotiating Agreement without Giving In* (Penguin Books, 2011), scenes from the film help students visualize applications of the principles of interest-based negotiation, combining multiple elements of Lewicki’s (1997) learning cycle. This paper discusses four specific sequences in the film and presents a series of classroom case questions and notes analyzing the film *mise-en-scene* and applying the doctrine of principled, or interest-based, negotiation

2. Principled Negotiation—Getting To Yes

“Principled negotiation” was developed at the Harvard Law School Program on Negotiation more than 30 years ago. It represents an alternative to the traditional choices of “soft” or “hard” negotiation. *Getting to Yes* authors Roger Fisher and William Ury (2011) begin with the thesis that everyone negotiates and that it is not easy to do well. Their method facilitates agreement based on merits rather than through a process of haggling. The authors begin by providing an overview of principled negotiation. The remaining chapters describe its basic elements: Separate the People from the Problem; Focus on Interests, Not Positions; Invent Options for Mutual Gain; Insist on Using Objective Criteria. This paper will use these principles to develop the film-based case.

Don’t Bargain over Positions. Fisher and Ury compare traditional positional bargaining with the interest-based method of negotiation endorsed in *Getting to Yes*. Traditional haggling over the price of a used car provides a readily understood example of positional bargaining. Conversely, in an interest-based negotiation, the negotiators focus on their underlying interests and not their positions. A simple example illustrates the difference: Carol wants to sell her car for \$5,000 to get enough money to remodel her house. The \$5,000—what Carol wants—is her “position” and the reason she wants the money—to remodel her house—is her “interest.”

Fisher and Ury argue that positional bargaining produces unwise agreements resulting from inefficiency, entrenchment, and the potential for damage to the relationship between the parties.

Interest-based negotiation stresses separating people from the problem; focusing on interests, not positions; exploring possibilities before deciding, and using objective criteria.

Separate the People from the Problem. Negotiators have both substantive and relational interests involved in every negotiation. Thus, they are subject to predictable human reactions. Fisher and Ury identify perception, emotion and communication as categories of people problems in negotiations and offer several strategies to prevent, eliminate, or reduce their impact.

Focus on Interests, not Positions. Positions are what a negotiator wants; interests are why the negotiator wants it. Fisher and Ury describe why a negotiator should, and how a negotiator can, direct the focus to interests. Reconciling interests is the goal, and there are several reasons why this is important. Most interests can be satisfied in multiple ways whereas most positions require a single means of satisfaction. Compatible interests often lie behind what seem to be opposed positions. If the parties focus on interests, the chances of success increase exponentially because parties frequently have interests that do not conflict, even if they differ. Open, specific, and concrete discussions often direct the focus of the negotiation to underlying interests. Meeting those interests is the next logical topic for forward-looking discussions in the negotiation.

Invent Options for Mutual Gain. Discovering options for mutual gain follows the identification of shared interests. It is the key to interest-based negotiation generally and the successful invention of options for mutual gain specifically. Fisher and Ury identify several roadblocks that impair the ability of negotiators to find ways to satisfy the interests of both parties by joint effort—chiefly premature judgment, the assumption of a “fixed pie,” and belief that each party is solely responsible for satisfying his/her interests.

Insist on Using Objective Criteria. Objective criteria tend to produce agreements that are: fair; less vulnerable to attack; protective of relationships, and they reduce the number of commitments each side must make and then unmake. Fisher and Ury posit that most negotiations involve issues for which fair standards and fair procedures exist or can be developed. As an alternative to selecting and applying fair standards to the negotiating issue, the parties may choose to develop what they consider to be fair procedures for reconciling the varying interests of the parties. These can be as varied as the parties’ imaginations and interest process.

The last task is to negotiate objective criteria with the other party. According to Fisher and Ury, framing each issue as a joint search for objective criteria allows each party to respond only to principle rather than being required to yield to pressure. Selecting the appropriate standard and how it is to be applied can be challenging requiring each party to remain open to discussion.

3. Using Popular Films to Teach Negotiation

Because the traditional undergraduate student often has little personal experience in negotiation, the concepts that form the elements of principled negotiation presented in *Getting to Yes* may at first seem very abstract. The film medium, combining visual images and verbal information, offers an effecting teaching platform for students who may be visual learners (Jenkins, 1968). Recent pedagogical research stresses that matching instructional methods to student learning style improves student learning. Fleming and Mills (1992) develop a taxonomy of learning styles and identify students as auditory, visual, or tactile learners. Auditory learners tend to learn best by listening and respond well to traditional lectures. Visual learners tend to think in pictures and respond best to visual stimuli (text slideshows, photos, videos). Tactile learners respond to hands-on experiences—learning by doing—and respond to role-play, practice problems, etc.

Recent generations of college students tend to self-identify as visual learners, more effectively processing image-medium information than text alone (Morrison, Sweeney, and Heffernan 2003; Maal 2004). In a study of undergraduate elementary education majors, Sloan, Daane and Giesen (2004) find that seventy-two percent of the students have a significant inclination toward visual learning, even though it may not be their primary learning style. Film’s images can be an effective tool for teaching visual learners. Seminal pedagogical work also suggests that combining film with print media information sources provides significant marginal educational benefits when compared to either of these media alone. Such benefits include increased rate of learning (Jenkins, 1968) increased long-term recall (Pang and Levin, 1979; Baggett, 1979) and improved student response and reception (Belden, 1992; Philpot and Oglesby, 2005). Film engages students by providing a visual presentation of real-world concepts that are often otherwise abstract, and this engagement fosters discussion (Belden, 1992). As Exhibit 2 shows, cases have been published using films to teach various topics in finance theory, practice, and ethics.

At least two studies, Flouri and Fitsakis(2007) and Hackley (2007) describe the film, *12 Angry Men* (Orion Nova Productions, 1957) as a case study in negotiation. Flouri and Fitsakis discuss the film's illustration of how a negotiator can successfully bargain from a minority position. Hackley, in particular, details *12 Angry Men's* illustration of the separation of positions from interests. We present *A Civil Action* as an updated negotiation teaching tool and provide structured case questions for classroom use.

Exhibit 2: Selected Published Popular Film-based Pedagogical Cases in Finance and Negotiation

| Film (Date) | Case Authors (Date) | Finance Topic(s) Emphasized |
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| <i>Wall Street</i> (1987) | Dyl (1991); Belden (1992) | Ethics, investment banking |
| <i>Other People's Money</i> (1991) | Chan, Weber, and Johnson (1995) | Acquisitions, governance, capital structure, social responsibility |
| <i>Barbarians at the Gate</i> (1993) | Nofsinger (1995); Peterson and Philpot (1997) | Mergers and acquisitions, governance, capital budgeting |
| <i>It's a Wonderful Life</i> (1946) | Philpot and Oglesby (2005) | Financial institutions history, management, and regulation |
| <i>12 Angry Men</i> | Flouri and Fitsakis (2007); Hackley (2007) | Negotiation, social change, active listening, framing |

4. Using *A Civil Action* In Class

A Civil Action dramatizes true events surrounding *Anderson, et al. v. Cryovac, et al.*, a landmark case in environmental law. In *Anderson*, plaintiffs argued that a local plant connected with the defendant firms Beatrice Foods, Inc. and W.R. Grace, Inc. polluted the local water supply, resulting in the deaths of several children in Woburn, Massachusetts from leukemia. Jan Schlichtmann, a successful Boston personal injury attorney, represented the families. Many published articles in academic, trade, and popular journals discuss the film from the perspectives of social and environmental responsibility. (See Yoder [2001] and Roper [2004] for reviews and discussion.) Exhibit 3 contains a set of questions and notes related to specific scenes in the film and the run/stop times of the selected scenes. To maximize the benefits of mixed media and make the best use of class time, the instructor can assign reading of *Getting to Yes* along with a synopsis of the film prior to viewing. If the students are aware of the basic plot line, the instructor can use DVD player technology to quickly and easily cue the film to the appropriate run times, saving class time for discussion. The relevant sequences featured in Exhibit 3 have a total running time of less than twelve minutes. An alternative method is to assign the film and the questions as out of class work.

Exhibit 3: Viewing Questions and Notes for *A Civil Action*, with References to Relevant Sections of *Getting to Yes*

| Sequence 1. Running times: 48:25-50:24 Title: "A Witness" | |
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| Synopsis: | Jan Schlichtmann, counsel for the plaintiffs observes that "only a fool with something to prove [about themselves]" would take a plaintiffs' case to trial, given the small chance of winning. In the next scene, Schlichtmann meets Beatrice attorney Jerome Facher at the tannery site. On behalf of Beatrice Foods, Facher offers to reimburse Schlichtmann the amount of his law firm's out-of-pocket expenses in full settlement of the claims against his client. Schlichtmann rejects this offer out of hand. |
| Discussion: | Identify any problems present in the relationship between Schlichtmann and Facher at this point in the film and describe any effect they had on the substance of the negotiation depicted in this scene. |
| Note: | By the time of this negotiation, some problems have developed in the relationship between Schlichtmann and Facher. These include problems of perception, emotion, and communication. In this scene, problems of perception and emotion are particularly manifested. The relational interests have become entangled with the substantive interests. Both men are prominent attorneys with big egos. Facher has consistently displayed an imperious attitude and overt condescension toward Schlichtmann. Schlichtmann has played the role of victim, acting out at every opportunity in an attempt to gain respect from Facher. Neither has paid attention to developing a professional relationship with the other. They have focused exclusively on the substantive issues, liability, damages, and legal gamesmanship. All of this has played a role in the outcome of the negotiation depicted in this scene. Here is the dialog leading up to the point at which Facher makes the settlement offer: F: How's business by the way? S: Business is good. F: Is it? That's good because I was afraid what with all these scientists and doctors and what not, a small boutique firm like yours might be in financial trouble. S: I appreciate your concern, Jerry. We've got more than enough to go the distance. F: Are you sure? I mean I'd hate it if one day you realize you have miscalculated the arithmetic and there |

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| | <p>you were digging quarters out of the seats of your shiny blacksports car.</p> <p>S: You really don't have to worry, Jerry.</p> <p>F: Well that's a relief.</p> <p>S: Yeah.</p> <p>Facher makes it impossible for Schlichtmann to accept his settlement offer and save face. Such condescension reinforces Schlichtmann's insecurity, prejudice, and feelings of resentment. Rather than looking for an opportunity to improve Schlichtmann's perceptions of him, Facher reinforces them. He shows no regard or understanding of the emotions at play on Schlichtmann's part. Schlichtmann responds predictably and in accord with his preconception of Facher and their relationship.</p> <p>Objectively, the arguments advanced by Facher in support of his offer are not without merit. Beatrice Foods is a wealthy defendant well able to pay any judgment rendered against it. The evidence against Beatrice is weaker than that against W.R. Grace. Beatrice's continued presence as a defendant may have a spillover effect on jury perceptions and weaken the claims against Grace. Reimbursement of the expenses at this point would allow the plaintiffs to marshal their assets and afford to continue the litigation against W.R. Grace and Company to the end. Had Schlichtmann and Facher developed a professional relationship during the litigation to this point, this offer might have made a basis for settlement. But given the state of the relationship as it existed at the point of this settlement discussion, Schlichtmann's summary rejection of the offer is not surprising.</p> |
| Discussion: | <p>What strategies could have been employed to avoid or minimize these problems? What could be done at this point in the litigation to improve the relationship going forward?</p> |
| Note: | <p>Schlichtmann and Facher have consistently framed the negotiation as a test of wills rather than as a set of factual and legal issues to be resolved by negotiation. They have conflated the substantive and relationship issues. They are unable to engage in a joint effort to find a way to satisfy the interests of their clients outside the judicial system. Their inability exposes the families and Beatrice Foods to great risk in the litigation that lies ahead.</p> <p>At the outset, the attorneys could have deployed the strategies put forth by Fisher and Ury. Simple awareness of the potential for "people problems" would have gone a long way toward avoiding or minimizing the problems manifested here. In the context of litigation and settlement negotiations, the concept of putting yourself in the other person's shoes is not as trite as it might first appear. In this negotiation, the emotional overlay was significant. The willingness of Facher and Schlichtmann to recognize the emotions at play in the negotiation may have gone a long way to ameliorating the effect of the people problems on this negotiation. Facher presented a serious settlement offer that merited at least serious consideration. But he ignored the effect on Schlichtmann of the way he presented it. Schlichtmann responded with feigned indignation. They were not communicating. Improving the relationship going forward from here would be possible, but not easy. These attorneys have failed to build a working relationship to this point. Their clients face an expensive trial with uncertainty and great risk at every turn. In the final analysis, they should "face the problem, not the people."</p> |
| <p>Sequence 2. Running times: 52:01-56:22 Title: "Jan's Terms"</p> | |
| Synopsis: | <p>Bill Cheeseman, attorney for W.R. Grace & Company, requested a meeting and wanted to hear "a number" from Schlichtmann. Schlichtmann and his partners meet with Cheeseman and several W.R. Grace executives and Beatrice attorney Jerome Facher and his associate. Schlichtmann describes the negotiating issue as the amount of money necessary to compensate the families, secure their economic futures, and prevent this from ever happening again. He proposed \$320 million broken down as follows: \$25 million cash, \$25 million to establish a research foundation, and \$1.5 million annually for 30 years for each family. The offer came as a surprise even to Schlichtmann's partners. Following a brief discussion between Cheeseman and Schlichtmann, the representatives of both defendants walked out without making a counter offer.</p> |
| Discussion: | <p>Describe any steps taken at this meeting by the Grace and Beatrice representatives to determine the interests of Schlichtmann's clients and vice versa? What additional steps could have been taken here to identify those interests?</p> |
| Note: | <p>Loosely stated, Fisher and Ury describe positions as what you want and interests as why you want it. Negotiators usually have no problem saying what they want. However, in many negotiations, it's hard to determine why they want it. In this scene, no one made any effort to identify the interests of the others. The primary method espoused by Fisher and Ury is to ask questions. Examples of questions to identify interests of Schlichtmann:</p> <ul style="list-style-type: none"> • Walk me through your settlement proposal and help me understand each element. • You mention compensation to the families, securing their economic futures and preventing this from happening again. How did you arrive at these three goals? Can you rank them in order of |

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| | <p>priority?</p> <ul style="list-style-type: none"> • What do you mean by “compensate the families”? How do you define “compensation”? • What do you mean by “secure their economic futures”? What do you see as ways to do that? When you say “prevent this from ever happening again” what do you mean by “this”? |
| Discussion: | What obstacles prevent the parties from taking meaningful steps to invent options for mutual gain at this meeting? Describe steps the parties could have taken to reduce or eliminate the effect of those obstacles? |
| Note: | This case is hard to negotiate successfully. Many obstacles stand in the way of resolution. A primary one is that due to the gravity of the issues and the amount of money involved, the parties have developed tunnel vision and look only at their interests. Fisher and Ury describe this as “thinking that solving their problem is their problem.” For the parties to reach a negotiated settlement, each party must begin the search for a resolution that both identifies and <i>meets</i> the interests of all the parties. The difficulties in the personal relationships make it easy to delegitimize the interests of the other parties and focus on their interests, options, and criteria. One way to break the cycle would be to bring some different people into the negotiation process to take a fresh look. Employees of Beatrice and Grace and someone trusted by Schlichtmann not previously involved in the negotiations could break this cycle of the impasse. Before proceeding with additional bargaining sessions, the parties should each consider conducting separate brainstorming sessions. Brainstorming separates options creation from options judgment and can be a mechanism to multiply opportunities, identify shared interests, and develop creative solutions. |
| Sequence 3. Running times: 1:14:50-1:16:40Title: “Waiting in the Corridor.” | |
| Synopsis: | While waiting in a corridor of the courthouse for the verdict on the question of the liability, Beatrice attorney Jerome Facher makes a \$20 million settlement offer to Schlichtmann. He also makes several gratuitous observations about Schlichtmann’s back taxes, his faith in the jury system and their status as kings in their castles counting money, making decisions and deciding the fates of others. Schlichtmann rejects the offer. Shortly after that, the jury returns a verdict in favor of Beatrice Foods. |
| Discussion: | Assess the actual and intended effect of these comments on Schlichtmann’s ability to “separate the people from the problem” in this situation. |
| Note: | Fisher and Ury would categorize what occurred in this scene the result of a serious perception problem brought on by differences in the thinking of the two attorneys. Facher makes the offer with his client’s authority at the last minute before a potentially devastating verdict. Facher’s responsibility was to present the proposal in such a way as to maximize the chance that Schlichtmann would accept it. Facher’s technique evidenced a stunning lack of understanding of Schlichtmann’s perceptions and emotions. He allowed the ongoing substantive and relational issues to become entangled to the point that settlement was impossible. He placed Schlichtmann in the untenable position of losing face if he accepted the offer. Rather than ensure Schlichtmann’s active participation in a last-minute effort to resolve the differences, Facher’s taunts and humiliating comments actually precluded Schlichtmann from the process thereby ensuring failure. |
| Discussion: | Identify any of Schlichtmann’s interests at this stage of the litigation that constitute basic human needs. What effect do they have upon the manner in which Schlichtmann conducts this negotiation? |
| Note: | Fisher and Ury describe a hierarchy of interests with the most powerful being “basic human needs” including economic security and recognition. Basic needs motivate the declared positions of negotiators, and finding a way to satisfy them can pave the way to a global settlement. Agents often negotiate on behalf of principals, in this case, clients. In such cases, the interests of the principal should be the focus of the negotiation. However, agent interests can also affect the negotiation. Schlichtmann’s economic security and recognition interests affected the positions he took in the negotiations. His economic security is at great risk due to his multi-million dollar investment in case expenses and his fee are contingent on the recovery of damages. Schlichtmann’s professional pride has suffered through Facher’s overt condescension throughout the course of the negotiations; Schlichtmann has failed to gain respect. Schlichtmann perceives these events as threats to his economic security and professional standing, and these basic needs have influenced the positions he has taken with opposing counsel. Their failure to recognize Schlichtmann’s perceptions and their unwillingness to look for a way to satisfy them have precluded a global settlement. |
| Sequence 4. Running times: 1:24:08-1:26:25Title: “Al Eustis” | |
| Synopsis: | After the jury verdict dismissing Beatrice Foods from the lawsuit, Schlichtmann travels to New York to meet with Al Eustis, the president of W.R. Grace & Company. The meeting takes place in two venues, the Harvard Club and the corporate offices of W. R. Grace & company. At the Harvard Club, the merits of litigation and settlement are not discussed because the discussion of business in the Harvard Club is not allowed. The meeting begins with Jan providing a brief biography, including his educational background. Eustis goes to great lengths to explain his erroneous belief that Schlichtmann was a graduate of Harvard |

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| | <p>Law School. The one-sided conversation focuses on Eustis' sailing hobby. The meeting then moves to the Grace corporate offices. Eustis acknowledges that he can pay almost any amount of money to settle the case. But, the effect on copycat lawyers and the likelihood of a multitude of additional frivolous suits preclude that. Schlichtmann declines to make the first offer and Eustis immediately responds with an \$8 million offer. Schlichtmann rejects the offer out of hand, "I can't go to the families empty-handed. I owe them more than that." Surprised, Eustis asks Schlichtmann if he "owes them his career." The meeting concludes with advice from Eustis, "Don't do it. Don't go for broke. It's not worth it."</p> |
| Discussion: | <p>Focus on interests, not positions. That is the cardinal principle advanced by Fisher and Ury. Did Eustis achieve that in his negotiation with Schlichtmann? Discuss.</p> |
| Note: | <p>Fisher and Ury define positions as what you want, and interests as why you want them. Negotiators must focus on interests, not positions. Eustis discusses his primary interests with Schlichtmann. He wants to pay Schlichtmann and his clients enough money to settle the case without additional litigation. He cannot pay so much that the settlement attracts copycat lawyers and a multitude of frivolous lawsuits against W.R. Grace and Company. He wants to induce Schlichtmann to make the first offer, presumably to ascertain the upper limit of the settlement range. When Schlichtmann refuses, Eustis internally compares the value of his interest in getting Schlichtmann to set the top limit of settlement range against the value of keeping the negotiation moving. Concluding the latter to have priority, he offers to pay \$8 million in settlement. This interaction reveals Eustis' understanding of interests, positions, and the importance of prioritizing and balancing them.</p> <p>He is comfortable discussing Schlichtmann's interests as well. He challenges Schlichtmann's contention that the \$8 million settlement offer is the equivalent of going to his clients "empty-handed" and that "he owes them more than that." Eustis reminds Schlichtmann that \$8 million is a lot of money. He questions whether Schlichtmann "owes them his career" by rejecting settlement and continuing to trial. He urges Schlichtmann to balance the certainty of the \$8 million settlement offer against the uncertainty of "going for broke" at trial.</p> <p>Eustis intends to focus Schlichtmann on his primary interests, economic security, and continued recognition as a preeminent plaintiff's attorney. Eustis knew that if he could accomplish that, Schlichtmann's negotiating positions would probably change, leading to a global settlement.</p> |

5. Conclusion

Negotiation and dispute resolution are important topics to include in a business curriculum. Because for the typical undergraduate, these topics are abstract and unfamiliar, a variety of teaching methods are used. Film combined with text is one effective approach. This paper provides an overview of the basic principles of negotiation outlined in *Getting to Yes*, a discussion of the film *A Civil Action*, and a detailed sequence-by-sequence, question/answer case discussion of professional practice scenarios illustrated in the film. Instructors can enhance student learning by integrating the text with appropriate sequences from the film.

References

- Baggett, P. (1991). Structurally equivalent stories in movies and text and the effect of the medium on recall. *Journal of Verbal Learning and Verbal Behavior*, 18, 333-356.
- Belden, S. (1992). A comment on 'Wall Street: A Case in Ethics'. *Financial Practice and Education*, 2, 53-54.
- Chan, K.C., Weber, M. & Johnson M. (1995). Using *Other People's Money* in the classroom. *Financial Practice and Education*, 5, 18-19.
- Dyl, E.A. (1991). *Wall Street: a case in ethics*. *Financial Practice and Education*, 1, 49-51.
- Fisher, R. & Ury, W.L. (2011). *Getting to yes: negotiating agreement without giving in*, 3rd ed., Patton, B. (ed.) New York: Penguin Books.
- Fleming, N.D. & Mills, C. (1992). Not another inventory, rather a catalyst for reflection. *To Improve the Academy*, 11, 137-146.
- Flouri, E. & Fitsakis, and Y. (2007). Minority matters: 12 Angry Men as a case study of a successful negotiation against the odds. *Negotiation Journal*, 23, 449-462.
- Graduate Management Admissions Council (2014). Employers want communication skills in new hires *The Official GMAT Blog* [Online] available: <http://www.mba.com/us/the-gmat-blog-hub/the-official-gmat-blog/2014/aug/employers-want-communication-skills-in-new-hires.aspx>
- Hackley, S.G. (2007). Negotiation and the fight for social change. *Negotiation Journal*, 23, 479-485.
- Jenkins, J.R. (1968). Effects of incidental cues and encoding strategies on pair-associate learning. *Journal of Educational Psychology*, 59, 410-412.
- King, F.B. & LaRocca, D.J. (2006). E-journaling: a strategy to support student reflection and understanding. *Current Issues in Education*, 9, 1.
- Lewicki, R. J. (1997). Teaching negotiation and dispute resolution in colleges of business: The state of the practice. *Negotiation Journal*, 13, 253-269.
- Maal, N. (2004). Learning via multi-sensory engagement. *Association Management*, 56, 61.
- Morrison, M., Sweeney, A. & Heffernan, T. (2003). Learning styles of on-campus and off-campus Students: the challenge for marketing educators. *Journal of Marketing Education*, 25, 208-217.
- Nadler, J., Thompson, L., & Van Boven, L. (2003). Learning negotiation skills: four models of knowledge creation and transfer. *Management Science*, 49, 529 – 540.
- Nofsinger, J.R. (1995). *Barbarians at the Gate: a capstone corporate finance project*. *Financial Practice and Education*, 5, 118-122.
- Peng, C.Y. & Levin, J.R. (1979). Pictures and children's story recall: some questions in durability. *Educational Communication and Technology*, 27, 39-44.
- Peterson, C.A. & Philpot, J. (1997). A supplement to 'Barbarians at the Gate: a capstone corporate finance project. *Financial Practice and Education*, 7, 98-105.
- Philpot, J. & Oglesby, R. (2005). *It's a Wonderful Life: a case in financial institutions management and history*. *Journal of Financial Education*, 31, 49-60.
- Rodkin, J. & Levy, F. (2015). Recruiting preferred skills. *Business Week*, 4422, 43.
- Roper, J.E. (2004). Review of film: *A Civil Action*. *Journal of Business Ethics*, 49, 307-309.
- Rosan, C. (2008). Maximizing the value of experiential exercises through observational and analogical learning. *Teaching Negotiation*, 2 [Online] Available: <http://archive.constantcontact.com/fs079/1101638633053/archive/1102208945307.html#LETTER.BLOCK9>
- School of Social Work, University of Washington. (2011). Using online discussion boards to enhance learning in your class. *Course Support*. [Online] Available: <http://depts.washington.edu/swedtech/2011/04/21/using-online-discussion-boards-to-enhance-learning-in-your-class/>
- Sloan, T., Daane, C.J., & Giesen, J. (2004). Learning styles of elementary preservice teachers. *College Student Journal*, 38, 494-500.
- Yoder, T.S. (2001). Corporate responsibility and the environment. *Business and Society Review*, 106, 255-272.