**TOPIC: NEGOTIATION THEORY AND SKILLS (BREAKING BAD NEGOTIATIONS)**

**Materials:**

Stop Clock

PowerPoint

Music

Awards for Individual Winner and Table Winner

Tie-breaker questions

Score Cards

“X” and “Y” cards

Instructions for game

Neuroscience article

List of courses to learn negotiation skills

**March Team Intro:**

Honorable Geoffrey Gentile

Captains: Cary Goggin and Rachael Loukonen

Members: Valerie Downing, Adam Gross, John Hooley, Marc Huling, Matthew Jackson, David Jones, Sabsina Nunez, Ernest Ricci, Kenneth Turner

**Video** – Cary Goggin

**A. Strategy/Style – Matt Jackson**

1. Negotiation strategy

a. Value-claiming strategy

Seeks to maximize gain without regard to how other participants fare - - to win as much as can be won. It assumes that negotiation involves limited resources which are distributed so that what is gained by one negotiator is lost by others. All issues are fungible (or assumed to be fungible). Objective is to claim as much of the value as possible as a result of the negotiation. This strategy usually requires manipulating the perceptions of resistance levels and risk, as well concealing information – whether passively or actively.

b. Value-creating strategy

Creative or problem-solving strategy that seeks fair deals or solutions. Seeks to create value and promote mutual gain. This requires concern for others and consideration of the interests of other negotiators. Ensuring that everyone’s needs are met is a critical component of the search for fair deals or solutions. Does not assume limited resources that must be distributed in a win-lose fashion. Seeks to identify the real interests of all participants.

2. Negotiation style

There is no bright line between the styles and negotiators may move between these styles at times.

a. Competitive style

Forceful, aggressive language, pacing, listening, and non-verbal behavioral choices. Attack others and seek to create tense or coercive interpersonal dynamics. The stress is on working against other participants. Goal is to put psychological pressure on the will of other negotiators such that the emotional discomfort and tension induces concessions.

b. Cooperative style

Polite, mutually respectful behavioral choices regarding language, pace, listening, and non-verbal actions. Seeks to establish positive interactions promoting understanding and mutual esteem. Emphasizes working with other participants. It avoids personal attacks believing that moving psychologically against others to promote self-interest is manipulative and an affront to lawyering traditions of professional courtesy and fair play.

3. Neuroscience and Settlement Research Excerpt

**B. Exchanging Information – John Hooley**

1. Preparing for the Exchange

a. Preparing process

Prepare, prepare, prepare. Consider the content and process of the negotiation. The number and nature of issues involved, as well as the relationship factors (possibility of future relationship and consequences of past relationships). A single issue increases the odds of a value-claiming negotiation, while multiple issues provide an opportunity for value-creating. The potential for future relationships is often a key influencer on a negotiation and often lead to value-creating.

b. Preparing content

Careful assessment of information and alternatives to a negotiated agreement and should consider (1) data to get; (2) data to give; and (3) data to guard.

1. Value-claiming

Requires ascribing value to each issue. Then, there must a determination of the opening offer (how presented), target point, concession points (points along the continuum from the opening to the target), and the absolute bottom line. Preparation requires detailed exchange plans incorporating the values and issues, and a forecast of the resistance level and potential responses from the opposing party.

1. Value-creating

Usually requires more effort, because the needs of all participants must be identified and assessed. Analysis begins with identifying the interests of all participants (economic, social, psychological, moral, political, and religious concerns) – what do the other people really want? The more needs and interests that are identified, the more trading options there are to bridge a settlement. Needs should be identified as to whether they are essential, important, or desirable, so that values can be placed on these needs. That way, an essential need is not inadvertently traded for a possible desirable need.

2. Giving and Getting Information

a. Questioning

The most obvious way to get information – ask questions. Open questions invite more conversation and more opportunity to learn needs and interests. In a value-creating environment, questions are more likely to be answered in detail. Whereas, a value-claiming environment tends to shut down the conversation. Of course, a closed question, unlike an open question, can make the point that a specific issue is important and that specific information is necessary to assist the negotiation.

b. Listening

Effective negotiators listen far more than they speak. Silence itself can be a useful tactic in either strategy. As well, by listening and observing, the non-verbal cues become more apparent. Active listening is important because it provides an opportunity to confirm that you accurately heard and understood the person speaking.

c. Blocking

Occurs when the truth would be too risky, but lying would be unethical. Blocking takes several forms such as: (1) answering a question with a question. People tend to want to answer a question and can be moved off topic; (2) over- or under-answering a question. Over-answering works better with closed questions, while under-answering is best with open questions; (3) reframing and then answering another question; (4) ruling the question out of bounds; and (5) ignoring the question and changing the topic. Blocks for sensitive information should be prepared, considered, and thought out ahead of time.

3. Making Offers and Proposals

Offers are for value-claiming while proposals are for value-creating. First, matters to be negotiated must be defined. How many to include and whether “false” needs will be included to provide additional trading power. Or, is the risk of claiming a false need not worth it to reach a settlement. Second, the sequence of the matters to be negotiated. Started with the small ones, build consensus and then take advantage of the momentum to settle the large one? Or, vice versa? Third, is to determine whether issues should be discussed until they are resolved or if the topic should be postponed until all topics have been explored.

**C. Searching for Agreement – Sabsina Nunez**

1. Persuading

Persuasion is important in searching for agreement in value-claiming and value-creating strategies. Seeks to influence the perception and judgment of other participants. The goal is to get the other side to view issues in a similar way, because shared perceptions enhance the likelihood of agreement.

a. Arguing

Includes the use of authority, analogy, policy, and consequences. A good argument is detailed and comprehensive such that it includes the material that supports it. Detailed arguments are persuasive because their specificity teaches other participants what they did not know. The most persuasive arguments identify new facts or provide detailed interpretations of known data – facts, law, logic, policy, analogy, objective criteria, and emotion.

b. Promising and appealing

Promises are more likely to produce a quicker concession than threats will. This is because a promise is something that the negotiator will do for the interests of the other participants. As for appeals, appeals are sensory (feelings of participants), social (needs of prestige, acceptance, love, etc.), and ego (self-image).

2. Threatening

A form of persuasion. A conditional commitment to do something detrimental to participants unless they comply with specific requests. The persuasive value is the ability to avoid the damage that threats have the means and apparent willingness to cause. The underlying threat for most negotiations is that the exchange will end and the participant will pursue other remedies. Research shows that while threats generate concessions, they also increase the likelihood of impasse and hostility between negotiators. With a threat, the participant wither capitulates or resists. Effective threats: (1) must be communicated; (2) must be understood; (3) must be valued; (4) must be believed (this is crucial); and (5) must be prospective and the threator must make clear that they cannot control this future conduct.

3. Conceding and affirming

Concessions are important for bargaining and reaching agreement. They facilitate reciprocal movement and avoid deadlock. Affirming is the process of saying “yes” to as much as possible to mutually acceptable outcomes. Affirming signals flexibility in reaching a mutually desirable outcome. Affirming also involves accepting the reality of partisan perceptions and seeking instead to affirm the personal worth of other participants even while disagreeing with all or parts of their proposals or characterizations.

4. Commenting on the process

Careful monitoring of strategic and stylistic dimensions lets negotiators comments about the process as it unfolds. This is an effective way to influence behaviors within it. Process comments can be used as one way to encourage movement within a particular strategy. Process sensitivity also allows use of innocuous questions designed to reframe negotiations by shifting strategic discourse from adversarial to problem solving. Finally, process comments are often an effective way to neutralize the effect and diminish the future use of unfair negotiation tactics that are frequently encountered in claiming strategy.

**D. Applying What You Learned**

**1. Negotiation Courses List – Ernie Ricci**

**2 Game – WIN AS MUCH AS YOU CAN! – David Jones**

a. Individual Winner

b. Table Winner

**3. Debriefing – Judge Gentile**

a. Short-term gains can lead to long-term losses.

b. It isn’t in your interest to leave other people feeling as if they have to get even for past losses you have made them incur.

c. Negotiate with deeds as well as words.

d. Seek reciprocity.

e. Build a positive coalition.

f. Invoke reputation (your own, as well as theirs).

g. Create compliance mechanisms where necessary.

h. Make *yourself* trustworthy.

**E. Questions?/Thank you!**