

Bridgeton's Polluted Waters: Teaching Plan

Introduction

This exercise consists of a negotiation between Rep. Roberts [R-TN] and Rep. Duffy [D-MO]. Roberts is Chair and Duffy is Ranking Member on the U.S. House of Representatives Water Resources and Environment Subcommittee of the House Transportation and Infrastructure Committee. A major bill, the Water Infrastructure Bill of 2025 (WIB), with a 4-year authorization, has majority support in both the Republican and Democratic caucuses,^a but there is one outstanding issue – whether Duffy's bill for a new regional drinking water supply program that would deal with drinking water quality in Duffy's district will be attached to the WIB. Without agreement on that issue, the WIB will not move forward. As the Chairman and Ranking Member of the Subcommittee, Roberts and Duffy have the responsibility of finding a resolution to the issue. Leadership on both sides supports an agreement that is acceptable to both Roberts and Duffy, subject to final review.

Each negotiator's *position* is clear to the other, but neither's *interest* is clear to the other. Agreement is not possible if each party sticks to its position. The parties' interests are such, however, that creative negotiators can reach agreement if each becomes aware of the other's interests and priorities. Such awareness, however, is unlikely in the absence of disclosure by each party of sensitive interests and priorities of both parties.

The disclosure of interests and priorities, although of assistance in making agreement possible, is fraught with danger if knowledge of those interests and priorities by the other party could be used against the disclosing party. As a result, the negotiator who seeks an interest-based agreement, which is unlikely to be attained absent the disclosure of sensitive information, is faced with a dilemma. On the one hand, disclosure of the negotiators' interests may make possible an agreement otherwise unattainable, or at least an agreement substantially better for both parties than could otherwise be

^a WIB is expected to attract widespread bipartisan support since the benefits of the water infrastructure projects contained in this bill extend to many Congressional districts.

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obtained. On the other hand, such disclosure also runs the risk that the disclosed information will not be used by the other negotiator to create or improve the agreement for both parties, but only for itself, leading to the worst possible outcome for the disclosing party. Dealing with that dilemma is a major challenge in this exercise.

Materials

As soon as the Instructor has a list of names/e-mail addresses of all training participants (even if the list is tentative), the Instructor should arrange for the “Bridgeton’s Polluted Waters: General Information & Logistics” [HKS Case 2143.0] to be sent to all persons on the list.

The “Bridgeton’s Polluted Waters: General Information & Logistics” (which you should have) consists of:

- General Information (fact set) for Bridgeton’s Polluted Waters
- Logistics and Negotiation Exercise Rules for Bridgeton simulation

Providing participants with this material in advance of the training day should save time on the training day. And, since nothing in the “General Information and Logistics” document is confidential, its disclosure to persons who ultimately do not attend the training will do no harm.

On the training day, the Instructor should assign roles to each participant and divide the participants into pairs consisting of one Roberts (R) and one Duffy (D). (If the number of participants is not divisible by two, you may assign two participants to share a role.) Once roles are assigned, you should distribute the Confidential Information to the participants assigned to each role.

It may be most efficient to prepare a preliminary list of roles and assignments in advance of the training date. If you do so, you can post the preliminary pairings on the training day after confirming that all on the preliminary list are present. If not, or if there are additional participants, you can alter the preliminary pairings accordingly, and distribute the Confidential Information.

Negotiation Rules

The Participant “General Information and Logistics” document contains three basic rules of the exercise. It is important that the Instructor go over those rules orally during his/her introductory remarks as the participants have a tendency to invent facts not in the Exercise in order to reach agreement. The rules, and the reasons they are important, are these:

- You may not invent facts contrary or in addition to those contained in either the General Information or your Confidential Information. If you are asked a question to which neither the General nor the Confidential Information provides an answer, you should say that you do not know the answer. *(If each negotiator could invent facts different from those provided in the General and Confidential Information, or ignore those facts, the dynamic of the exercise might be altered in such a way that it would no longer serve a useful teaching function.)*

- You may, to the extent you believe it is strategically wise, disclose information in your Confidential Information to your negotiation “opponent”. You may not, however, show your Confidential Information sheet to him/her. *(If a participant could prove to a dubious “opponent” that his/her statements are truthful by handing the opponent the Confidential Information sheet containing the basis for those statements, the exercise would no longer resemble the real world, in which you rarely know with certainty whether the other negotiator’s statements of “fact” are true or whether the other negotiator has disclosed all the information he/she has.)*
- You should not disclose any Confidential Information or the terms of any agreement to persons outside of your class or training program. They might do this training at another point and knowing this information could substantially lessen their future learning. *(This is probably a self-explanatory rule, but if anyone asks you can point out that the purpose of the training is to learn how to negotiate better, and knowing the Confidential Information of all negotiators and/or the agreements reached by other negotiators negatively affects the learning experience.)*

Logistics

Space for the Negotiation. Space should be sufficient for as many 2-person groups as will be negotiating. If more than one group is to meet in a single room, the distance between them should be sufficiently great that noise is not a distraction. (Look for extra space outside the classroom in nooks or other quiet areas.) Videotaping capability, if available, can be extremely helpful for later review of negotiation dynamics, as participants typically will have a distorted and incomplete memory of the process. Alternatively, or in addition, it helps if the Instructor or a Teaching Assistant can observe all or part of the negotiation.

Time for the Negotiation. The Instructor should make every effort to start sufficiently promptly that there will be 60 minutes available for the negotiation and another 60 minutes for debriefing. Do not allow the participants to negotiate for more than 60 minutes. A few extra minutes devoted to a rigorous debrief is typically more valuable than the same amount of time spent in trying to reach agreement.

Negotiation Results. The “General Information & Logistics” document [HKS Case 2143.0] advises the participants that at the conclusion of the time allotted for negotiation, whether they have reached agreement or not, each pair should post/provide the Instructor with a summary of the results of their negotiation. If they reached agreement, they should provide the Instructor with a brief (1-3 bullet points) summary of terms of that agreement, as well as the names of both negotiators. If they did not reach agreement, they are to post/provide the Instructor with a sheet that states “No Deal”, and that contains the names of both negotiators. **It is important that you collect these results, no matter how summary they may be, as you are likely to use them in your debrief** (see pages 11-14 of this teaching plan.)

Ideally, you will have large white sheets of paper, sufficiently large for 1-4 pairs to write a summary of their results, taped to the walls of the classroom, with markers for writing next to each agreement,

potentially questioning their approach to negotiation. This presents the Instructor with fertile ground for introducing the interest-based approach.

Questions about how some participants, whose results are posted, were able to reach agreement, while others were not, is an excellent means of beginning the debrief. (See pp. 11-13.)

Debriefing the Exercise

This exercise offers the potential for teaching the advantages, limitations, and risks of interest-based negotiation. Below you will find:

- A teaching plan (“What the Exercise is Intended to Teach”)
- A debrief outline (“Questions That Might Be Used by The Instructor to Stimulate Discussion/Understanding of Teaching Points”)
- A copy of a Feedback Form, which we would like each participant to fill out and submit electronically. The form is available at:
https://docs.google.com/forms/d/14iw5x9ouhbnpbjPlyiZe2r6hBIJkPNL1cYGEg4ltqxE/edit?usp=s_haring
- Confidential Information for Representative Duffy
- Confidential Information for Representative Roberts

What the Exercise is intended to Teach

The core teaching point of this exercise is the value to negotiators of focusing not only on *what* they want (their position), but also on *why* they want it (their interests, needs, concerns, fears). A negotiator's positions are typically based on fulfilling some underlying interest, but too often the negotiator will see only one means of doing so, with the result that the negotiator stakes that out as his/her position. For example, as a young accountant practicing on my own, I may find that despite having medical insurance, I am chronically short of funds with which to pay my family's medical bills. Accordingly, I tell the CEO of the large manufacturing firm which accounts for 90% of my billings that I really must have a 20% increase in my monthly retainer, from \$10,000 to \$12,000. The CEO's response is that while she thinks highly of my work, the manufacturing firm could not possibly afford such an increase, and that if I insist on anything more than a 5% increase, she will have to terminate our relationship.

At times, focusing on underlying interests will lead to an agreement that could not be reached if each party focused only on its initial position. In this case, for example, if the CEO asks the reason for the accountant's demand, the CEO may quickly realize that the accountant's underlying interest of coping with medical bills could be met at less expense to the company than the demanded raise of \$2,000 per month by putting the accountant on the company payroll as an employee, and enrolling him/her in the company group medical plan.

Similarly, in "Bridgeton's Polluted Waters", D's position is that his/her District must be assured of clean water, and that this can be accomplished only by providing for 4 plants, or, as a fallback position, 3 plants and 100 urban foresters. R's position is that the cleanup must be done by 40 filters, and within the Republican caucus budget of \$140M. There exists no Zone of Possible Agreement (ZOPA) as long as each sticks to his/her position, since D's demands cannot be satisfied for less than \$274M (3 plants and 100 urban foresters).

A ZOPA exists in "Bridgeton's Polluted Waters" only when/if the parties focus on their core underlying *interests*. R's core interests are clean water at a price within the Republican caucus budget, plus \$20M in R&D money for Cleanzyme. D's core interests are clean water and 100 long-term union jobs. Once R learns from D that R&D money can be obtained from D's unused \$20M R&D fund^b, it opens up at least one possibility of an agreement that meets the core interests of both R and D.^c Such an agreement would provide for cleaning the polluted water by using 30 filters (\$75M), together with 100 urban foresters (\$64M). The cost of this agreement is \$139M, within the Republican caucus budget.

^b Note that this R&D money for Cleanzyme couldn't be included in the WIB since the House Transportation and Infrastructure Committee doesn't have jurisdiction over D's R&D fund (it is in the House Energy & Commerce Committee budget). Nonetheless, Duffy and Roberts, as members of the House Energy & Commerce Environment Subcommittee, especially Duffy, at whose behest the fund was created, could jointly go to the Energy & Commerce Committee to amend the language to authorize the Bridgeton Reservoir and more specifically research and development for photocatalytic air filters. They might also write joint letters of support for Cleanzyme's application to this fund as is, or take other steps to make likely that Cleanzyme could get R&D funding from this source.

^c There may be other agreements that would meet the key interests of both parties, but we have not yet found them. We welcome additional information of creative solutions that met both parties' core interests and are Congressionally realistic.

It ensures clean water, a core interest of both R and D, as well as satisfying D's interests in 100 good union jobs and R's interest in enabling Cleanzyme to obtain \$20 million for R&D on its air filters. Finally, such an agreement serves the interests of both R and D in getting re-elected.^d

It is not uncommon for the negotiators to agree on terms that satisfy neither D's interest in obtaining 100 good union jobs or R's interest in enabling Cleanzyme to obtain \$20 million in R&D money from Tomahawk. They typically do so by ignoring the facts in their Confidential Information, inventing new facts, or deciding that any agreement – even one that does not satisfy their core interests – is better than no agreement. Only the most accomplished and or dedicated negotiators will continue beyond an initial impasse to search for an agreement that does satisfy their core interests. The dichotomy between the average negotiator and the accomplished negotiator is particularly striking in this case in which a mutually satisfactory agreement is available to those participants who use some of the most powerful tools of the interest based negotiator – being persistent in asking the other negotiator the reasons underlying his/her positions, and being willing, under appropriate circumstances, to share previously undisclosed reasons underlying his/her positions.

The reason why so many participants will agree on a deal that does not satisfy their core interests is clear. There is a limited amount of negotiating time, and the participants are able to persuade themselves that any agreement – even one that does not satisfy their core interests – is better than no agreement. They can also rationalize that this is a class on negotiation, so that failure to reach agreement represents a failure to achieve the goal of negotiation – to reach agreement. One of the key points we wish to teach, however, is that the goal of negotiation is not to reach agreement, but rather to reach agreement when the agreement being proposed is better than any realistically favorable alternative to that agreement. (See the Questions beginning at page 11 for some suggestions on raising/discussing this point.)

It is not always necessary for negotiators to focus on interests to reach agreement. Agreement is possible in a negotiation focused solely on positions if each party will compromise its position and there is a ZOPA, but a focus on interests will often lead to an agreement that is better for both negotiators than they could reach by focusing solely on their positions.

Some people will contest this assertion, believing that negotiation is inevitably a zero-sum game in which there are winners and losers. In fact, however, both negotiators can be winners because there are often matters that they value differently, and, if they understand what those matters are, they can trade a low-cost concession for a high-value gain. The classic example of doing so is that of the two siblings arguing over the only orange in the house. Each wanted the orange, one claiming it on the basis of being older, the other claiming it on the ground that he/she had been unwell recently, and needed

^d Actually, Duffy's interest in good union jobs is not fully met because the amount authorized for the urban foresters (\$64M), will fund the urban forester program for only 4 years. The 4 water filtration plants originally sought by Duffy would have provided good union jobs for the life of the plants, which would be considerably longer than 4 years. Whether Duffy should have accepted a jobs program guaranteed for only 4 years as part of an overall settlement is a question that the Instructor might pose in the debrief. (See p. 14.)

the orange more than did his/her sibling. There exists an obvious compromise agreement – cut the orange in two and share it.

On the other hand, if one of the siblings asks the other, “Why do you want the orange?” and the response is, “To use the skin to flavor a cake. Why do you want it?” to which the other responds “To make orange juice”, a resolution that fully satisfies the interests of each is clear. They could agree that one sibling could squeeze the orange for its juice, the other could use the rind to flavor a cake, and both would be better off than cutting the orange in two – the best that could be achieved if the siblings focus only on their positions.

This is not to say that an interests-based approach is always successful, or even feasible. If there are only one or a few issues to be negotiated, and the parties’ core interests are not reconcilable or capable of compromise, a focus on interests may be insufficient to reach a mutually satisfactory agreement. In the orange example, if each sibling’s interest in the orange were to drink its juice, it is unclear that any more satisfactory agreement than cutting the orange in two could be reached by discussing those interests. This limitation on the capacity of an interest-based approach to lead to agreement when there are few issues involved, and they are not susceptible of compromise, tends to be overstated. Even in negotiations with issues apparently not susceptible to compromise (like money), interest-based negotiation is often fruitful. For example, suppose A needs (and demands) \$100M in payment under a disputed contract clause, and B has (and will pay) no more than \$90M, and neither will compromise. A skilled interest-based negotiator will recognize that the single issue of how much B will pay A, apparently not subject to compromise, can sometimes be resolved by dividing it into sub-issues, in which the parties value their interests differently, with the result that each party can receive what it values more. Suppose, for example, that B discovers that A does not need the entire \$100M immediately, and that A would accept \$90M, if that sum were paid immediately and A could be assured of another \$10M in 90 days. Suppose further that although B could pay only \$90M immediately, B has a payment of \$10M due from an unrelated transaction in 90 days, and could comfortably pay the full \$100M if it had 90 days within which to pay the last \$10M. The different weight the parties assign to the time of payment makes agreement possible on the amount to be paid.

In another negotiation (in which Steve Goldberg was involved), A demanded \$100M, which B did not have. However, B discovered that A also needed a raw material, to which B had access at a wholesale price below market value. B provided A with \$100M worth of the product, satisfying A’s interest in receiving \$100M, while the cost to B of doing so was well below \$100M. (This is reminiscent of the health insurance example cited at page 5 in which the company could purchase medical insurance much more cheaply than can the solo accountant.)

A negotiation based on interests is most likely to succeed when each party is aware of the other’s interests, *as well as its own*, hence can intelligently search for an agreement which satisfies both those interests. The suggestion that each party should be aware of its own interests may appear superfluous, since each party will surely possess that information. In practice, however, we may become so focused on our *position* (what we say we want) that we lose sight of *why* we want it, and so fail to obtain an

agreement that would satisfy our interests because that agreement does not provide what we said we wanted. Also, by psychologically dwelling on our position, sometimes we are unwilling to budge (because it *seems* like a loss), even when it actually produces a win (by meeting all our underlying needs).

A good negotiator will use all means available to obtain as much information as possible about the other party's interests before negotiations begin. If there is a high degree of public interest in the negotiation, such information may be available from the media. If not, people with contacts to the other party may be a useful source of information. (There are typically other things one would attempt to learn in advance beyond the other parties' interest, such as their negotiation reputation, their style, their other available alternatives, etc., but we focus here only on their interests.) Once the negotiations have begun, each negotiator can learn much about the other party's interests and priorities by observing the demeanor of its representatives at the negotiating table. How, for example, do they react when an issue is raised in which your preliminary research suggests they have no substantial interest? If they sit up straight, and/or start feverishly typing on their computers, or there is stunned silence, that may suggest a greater level of interest than you had thought, and may warrant a closer examination of the importance of that issue to the other party (because if that issue is of little importance to you, trading it for something you value more may lead to a mutually satisfactory agreement). The point is that you should not be so entranced by the sound of your own voice that you fail to observe and listen to the other party's reaction to what you are saying. And, when someone from the other party is talking, you should listen not only to what is said, but how it is said, and what is not said. (A friend told me once that we were born with two eyes, two ears, and one mouth for a reason!)

Among the most valuable sources of information about the other party's interests, as well as how it prioritizes those interests, is to be found in its responses to your proposals. The priority assigned by each party to its interests is important because we can rarely get all our interests satisfied, and will typically (and appropriately) accept an agreement that satisfies our high-priority (or "core") interests, if not all our interests. If the other party rejects a proposal, and you ask "why", the response will often shed light on that party's interests and how it prioritizes those interests. Negotiators reluctant to explain explicitly their priorities are rarely reluctant to state what is wrong with your proposal, and hence implicitly reveal their preferences. As a result, "why?" may be the most valuable word in the vocabulary of the interest-based negotiator.

Another means of determining the other party's interests and priorities is to make simultaneous proposals that are alike except for one issue. The other party's response to the question, "which of these proposals do you prefer?" may provide valuable information concerning that party's interests and priorities. In this case, for example, if R were to ask D whether he/she would prefer an agreement providing for 30 filters and 1 plant to clean Bridgeton, or an agreement providing for 30 filters and 100 urban foresters, D would almost surely choose the latter, suggesting to R that in addition to clean water, D's interest was in maximizing the number of jobs created by the Agreement, rather than maximizing the number of plants. R might follow up by asking D the reason for his/her preference.

One means of making alternative proposals more useful as a means of determining the other party's priorities is for you to state, when making alternative proposals, that you are not suggesting that any of these proposals necessarily meet your needs, and that you will not regard the other party as necessarily accepting either proposal. Rather, you just want to understand which of these packages are preferable to the other negotiator... That approach can free you up to learn the other party's preferences without locking either of you in to either of the alternative proposals you put forward.

A particularly difficult issue for the interest-based negotiator concerns the extent to which he/she should disclose sensitive information not known to the other party. On the one hand, a failure to do so may doom a resolution that might have resulted from its disclosure. In this case, for example, if R does not disclose that his/her reason for insisting on using 40 filters for the water cleanup is R's interest in obtaining \$20M in R&D funds for Cleanzyme from Tomahawk, which has conditioned its willingness to provide these funds on the sale of 100 filters, D is unlikely to suggest making those funds available from his/her unused \$20M grant fund, and a potential mutually satisfactory agreement is lost. On the other hand, if R reveals to D that R is insisting on 40 filters as a solution in order to get Tomahawk to provide \$20M R&D money for Cleanzyme, D could threaten to tar R's re-election campaign by letting R's opponent reveal that R is more interested in assisting a golfer friend (the Cleanzyme CEO) than in clean water for R's constituents. The point here is that disclosing sensitive interests to the other negotiator holds out the promise of obtaining the best possible agreement, but also runs the risk of obtaining the worst possible outcome.

The surest means of managing this tension is to reveal sensitive interest only to those whom you can trust. Determining that your opponent can be trusted in a negotiation is not, however, always simple. If you have dealt with someone repeatedly, and have shared sensitive information without that information being misused, you have a pretty good basis for sharing once again. Even if you have not previously dealt with that person, friends and professional colleagues may have done so, and be willing to share their experience with you. This is particularly likely in an ongoing body, such as a legislature, in which people deal with each other regularly, and there are frequent opportunities for demonstrating that one is or is not a trustworthy negotiating partner. In the absence of such information, the best you can do to protect yourself is to share sensitive information gradually, trusting a little at a time, and continuing to do so only if your trust is rewarded, such as by the other party reciprocating your disclosure of sensitive information with a similar disclosure of sensitive information.

You should, in short, be cautious in disclosing sensitive information to someone unless you have reason to trust that person. Conversely, if you want others to trust you, you should be trustworthy, and develop the reputation for not sharing confidential information.

In sum, this exercise is intended to demonstrate:

- The advantages of focusing not only on what you want (your position), but also on why you want it (your interests). Doing so will sometimes lead to an agreement that could not otherwise

have been reached; at other times doing so will lead to a better agreement for both parties than could have been achieved by focusing solely on positions.

- An interest-based approach to negotiation is not a guarantee of success, but adding a focus on interests to the typical focus on positions increases the likelihood of success, and is typically of limited risk. There is, however, an important *caveat* to this statement. If you disclose sensitive interests to an untrustworthy person, you run the risk of that information being used against you. The disclosure of sensitive interests carries both the possibility of the best possible deal, one in which both parties will have their core interests satisfied, but at the same time carries the risk of the worst possible outcome, in which the recipient of sensitive information uses that information to improve its outcome at the expense of the disclosing party. Hence, a wise negotiator should disclose sensitive information only to another negotiator deemed to be trustworthy . . . and a negotiator who wants to be deemed trustworthy should at all times seek to demonstrate that he/she is worthy of such trust.
- In this exercise, finding a win-win solution through meeting the other party's hidden interests should be apparent to the other side, but Bill Ury (co-author of *Getting to Yes*), speaks of sometimes needing to "build a golden bridge" across which each of you can advance. This entails reframing a solution so the other side does not feel they are giving anything critical up but instead highlighting how the bridge gets your opponent to their destination (their interests). (Not highlighted is how the golden bridge also gets you to your destination, i.e., your interests!)

Questions That Might Be Used to Stimulate Discussion/ Understanding of Teaching Points

(Suggested questions in bold)

How many of you reached agreement? How many did not reach agreement? [LOOK AT, COMMENT ON A FEW NEGOTIATION RESULTS, ALL OF WHICH YOU SHOULD HAVE PARTICIPANTS POST BEFORE YOU BEGIN THE DEBRIEF]

Focus first on pairs that reached agreement that did not provide for \$20M R&D money for Cleanzyme and/or did not provide for 100 good union jobs.

- If no \$20 M R&D for Cleanzyme, ask R why agreed?
- If not 100 good union jobs, ask D why agreed?
- Response must be some variant on couldn't get any more, or what I got was better than nothing.

Is it accurate that these agreements are the best that could be achieved under the circumstances?

Did any pairs reach an agreement that satisfied the core interests of both R&D? What were the terms of your agreement? [HAVE PARTICIPANTS READ ONE OR TWO. SELECT THOSE (IF ANY) THAT SATISFY CORE INTERESTS OF BOTH R AND D]

- **Did that agreement satisfy the *positions* of both R and D, the terms each presented at the beginning of the negotiation?**
 - R: No. [Must use 40 filters for water purification, and the cost must be under \$140M]
 - D: No. [Must have assurance of clean water, and 4 water purification plants, or 3 plants and 100 urban foresters]
- **If agreement did not satisfy your demands, why did you accept it?**
 - R: Accepted agreement that met core *interests*, which were:
 - Clean water
 - \$20M R&D for Cleanzyme
 - Total cost under \$140M
- **R: How did you get clean water with fewer than 40 filters and a total cost of under \$140M?**
 - [Likely: 30 filters (\$75M) and 100 urban rangers for 4 years (\$64M) – TOTAL \$139M].]
- **R: How did you get \$20M R&D without selling 40 filters?**
 - (Must be from D's R&D fund.)
- **D: How did you get your core interests met?**
 - 30 filters and 100 urban foresters provide clean water and 100 good union jobs [which were my core interests.]

Let's talk about how these agreements were reached. How did D discover that R needed \$20M for R&D on Cleanzyme air filters?

- **If R disclosed, ask R why not concerned about risks of disclosure?**
 - (Risk that if no agreement reached, D would go public that reason for no agreement was that R wanted to help his/her golfing friend get \$ for Cleanzyme in addition to cost of filters?)
- **How did R discover that D needed 100 jobs?**
 - (If D disclosed, same question about risks of disclosure. For D, risk is that R will go public that reason why D did not accept R's proposal, which would have provided clean water, was that D wanted more jobs to satisfy Local 12 of AUWU. D put union interests ahead of public interest in clean water.)
- **Why, in light of risks, did you disclose information that put you at risk?**
 - If any R or D says he/she disclosed because trusted other negotiator not to misuse that info, discuss importance of trust in negotiations – the more you are trusted, the more people will be willing to share info with you, and this will increase the likelihood that you will more often reach win-win agreements. A good example is the 2 sibs with one orange, each of whom trusted the other, and so responded truthfully to the question "Why do you want the orange?" and came away with an agreement that satisfied the interests of each better than would have cutting the orange in half.

Not likely to have time for this, but one nearly final question. . . for those Duffys who agreed to a deal that included 100 urban foresters for 4 years. . . Is that as good a deal for you as 4 filtration plants? (No; only 4 years. . . useful life of filtration plant much longer.)

- **Why did you accept this agreement, which provided considerably less employment than would have 4 filtration plants?**
 - The best answer to this question is that it was the best agreement Duffy could get. If Duffy would not accept this, there would be no agreement, which would mean zero jobs. Too often, negotiators refuse to accept a proposed agreement because it's not "good enough" or not "fair". That's fine, but you should always ask yourself, "What is my best realistic alternative to the proposed agreement?" (known in negotiation jargon as your BATNA). If your BATNA is worse than what you are offered, you typically do better to say "yes" than to walk away. This does not mean that you should be a pushover, but it does mean that you should be realistic, and not reject a proposed agreement because it does not live up to some nebulous standards of "not fair" or "not good enough" without considering your BATNA. [Playing a tough negotiator and demanding something better than your BATNA may succeed in you getting a better deal, but it also runs the risk that you lose out on a deal and have to accept your worse alternative.]

Were there any agreements other than 30 filters, 100 urban foresters, and \$20M R&D to Cleanzyme from the Congressional R&D Fund that met core interests of both parties?

- I'd be surprised, but let's see.

Why did so many participants accept agreements that did not satisfy their core interests?

- There is often a strong desire of negotiators to reach agreement in these exercises since no agreement feels like a failure, particularly in a class designed to teach negotiation skills.
 - Still, you should remember the goal of negotiation is not necessarily to reach agreement, but rather to reach agreement when the agreement being proposed is better than any realistically favorable alternative to that agreement. In this exercise, such an agreement is possible, but it takes time and skill to find it. *If any students come up with an agreement different from that we have suggested, and the student agreement meets the parties' interests, we would like to hear since this should be added to the teaching plan.*

Final question: What, for you, are the key learning points (or “takeaways”) from this negotiation?

- (If it doesn't come out in the discussion following the question: the key takeaway from this exercise is the advantage to a negotiator of focusing not only on what you want (your position), but also on why you want it (your interests), which are typically the needs, desires, concerns or fears that lead us to take certain positions. All too often, we cannot get our positions (what we say we want) satisfied, and so we end up in a no deal stalemate or an unsatisfactory compromise.
- A good negotiator, however, will ask himself/herself, “why am I taking this position? What are my underlying interests that lead me to take that position? And, what do I think are the interests behind the other side's position? More often than you would think, focusing on both side's interests enables us either to reach an agreement otherwise unavailable (as in this case), or at least a better agreement, as in the story of the 2 sibs/1 orange.
- Another key point is that before you enter into an agreement in negotiation, you should consider whether that agreement is better than any realistically foreseeable alternative. Sometimes, the best “agreement” is no agreement.
- Still another key point is the tension between the advantages of being open and disclosing your interests in a negotiation and the risks of doing so.
 - The advantage of the negotiators disclosing their interests is that if each knows the interests of the other, as well as their importance, it is easier to satisfy those interests than if they are not known.
 - The risks of disclosing of information about your interests are two-fold: (1) if a negotiator's interests are sensitive (such as Duffy's interest in obtaining 100 good union jobs), and disclosure of those interests outside the negotiation could harm the negotiator, the other party could threaten public disclosure in order to force the negotiator to accept the latter's proposals, or could actually disclose to punish the negotiator for not accepting its proposals; (2) even if the interest disclose is not sensitive, the other party could use its knowledge of that interest, not to help construct a mutually satisfactory agreement, but to construct an agreement better for it than for

the disclosing negotiator. In the 2 siblings and 1 orange situation, for example, if the first sibling honestly disclosed his/her interest in the orange to make juice, the second sibling, whose primary interest was using the rind to flavor a cake, could falsely claim that he/she also wanted the orange for its juice, and insist on cutting the orange in half. The result: the honestly disclosing sibling gets the juice of only half an orange; the dishonest sibling gets the entire rind (after surreptitiously recovering the rind the other sibling throws out), plus a bonus of half the juice.

- In sum, disclosing your interests, as in this case, may increase the likelihood of a better outcome, but it also creates the risk of being badly burned if the person to whom you disclose is untrustworthy, and uses that information against you, rather than to help create an agreement that will satisfy the interests of both parties.
- The obvious solution to that problem is to disclose sensitive info only to those people you trust, but that raises the far from simple issue of how you determine who is trustworthy: someone you dealt with before, & he/she always upheld trust; collect info. from others about your negotiating adversary; trust slightly, perhaps by small disclosure, see if reciprocated. Note: you also want to develop your *own* reputation for being trustworthy.
- The central point is that even though the free exchange of information is helpful to interest-based negotiation, you don't want that to lead you into making unwise disclosures – particularly because there are many other ways to determine a person's interests without disclosing yours if you think it is unwise to do so. For example, ask “why?”, key word in the interest-based negotiator's vocabulary and listen carefully to the response and make alternative proposals.

Ask participants to fill out feedback form available at:

https://docs.google.com/forms/d/e/1FAIpQLSc9IOPaA4QgLYeoFsedSAbz4ufKtJrkyYap7_ADwupQ1q3ktA/viewform?fbzx=2026976851471714000.

Bridgeton's Polluted Waters: Confidential Information for Representative Duffy

Years ago, your District was heavily industrialized, and you benefitted from labor union support. Much of that industry has moved or closed, along with the labor unions that represented their employees. As a result, elections in your District are more contested than they were in the past, and you depend even more on such union support as remains.

You definitely need a victory on cleaning Bridgeton's waters attached to the Water Infrastructure Bill of 2025 (WIB). Your only recent "success" was working together with former Republican Representative Martinez to secure a \$20M environmental technology Research and Development Grant Program^e 18 months ago to fund previously uncommercialized environmental technologies. But despite your hopes that this program would bring jobs and economic development to your District, the few applications for grants from the Program were rejected by Program staff on the grounds that the projects for which funding was sought had already been commercialized.

You are not personally close to Rep. Roberts, but the two of you have a cordial working relationship, resulting from your being Ranking Member, and Roberts being Chair, of the House Water Resources and Environment Subcommittee of the House Transportation and Infrastructure Committee. You have also worked well with Roberts on the House Energy & Commerce Environment Subcommittee, which Roberts recently joined. Roberts represents a largely conservative District with no single major employer, but with an increasing number of high-tech startups. Roberts and you both won by slim margins in your last elections, each of you winning with 51% of the vote.

You have been told by colleagues that Roberts has occasionally disclosed confidential information learned during legislative negotiations, but this has not taken place in any of your past dealings with Roberts. Still, the risk that Roberts will do so in this negotiation seriously concerns you, and therefore you need be quite cautious in sharing with him/her any information, the disclosure of which could be harmful to you.

Your position, supported by both the Democratic members on the Transportation and Infrastructure Committee and your constituents, is that the Committee should authorize your legislative proposal that

^e The grant program was authorized by the House Energy & Commerce Environment Subcommittee on which you sit.

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includes \$280 million that would be available to build the four water treatment plants recommended by the Bridgeton Water Commission. The contamination of the Bridgeton Reservoir was not caused by the residents of your District, and there is no reason they should be expected to pay for eliminating that contamination. This would be true even if the money were available to pay for the cleanup, which it is not. The loss of most of the industry in your District has led to a significant loss of tax revenues, and finding \$280 million to deal with the water pollution problem would not be possible. Hence you believe that federal funding of the cleanup effort is not only appropriate, but necessary.

Your goal of obtaining funding for 4 water treatment plants is based upon two factors. First, the Water Commission found that the construction and operation of these plants is necessary to ensure clean, safe drinking water for your constituents. Additionally, 4 water treatment plants would bring 100 well-paying jobs into your District (25 per plant). You have what will probably be a highly contested election coming up in 14 months, and you are counting on the support of what remains of the union movement in your District. Of particular importance is Local 12 of the American Utility Workers Union (AUWU), which represents electric, gas, and water workers throughout your District. You have told the Local 12 leadership that you are working to bring 100 new long-term jobs to them when the water filtration plants are up and running, and a failure to deliver those jobs would likely cost you critically important Local 12 support. As a result, you do not see how you could accept any proposal for water cleanup that did not include the 4 water treatment plants and the 100 long-term jobs that they would bring.

On the other hand, the optics are important. Your public support of federal funding for the pollution cleanup effort has been based entirely on your District's need for clean drinking water. You can't afford to base your rejection of a proposal from Roberts on the ground that you want to obtain 100 union jobs, as your doing so, if it became known to the public, would align you with the unions to the detriment of the public interest in clean drinking water.

Your staff has advised you that there are high-tech substitutes for traditional water treatment plants, and that at least one of these substitutes – photocatalytic filters – has been successfully tested and commercially deployed at a number of locations. If Roberts proposes such a solution, and it does not provide the jobs you need, you can still oppose it on the grounds that you will not entrust your constituents' need for safe and clean drinking water on a new technology that can, as any technology, go disastrously wrong.

Your staff also discovered another approach to the water pollution problem. Water Solutions, Inc., which is in your District, recruits and trains what it calls "urban rain foresters", who instruct and supervise residents and businesses in using lightweight inexpensive cisterns, also developed by Water Solutions, Inc. These cisterns, which are provided to users at no cost, are used to collect, lightly treat, and store runoff rain water in safe and sanitary conditions. Water so collected and stored can be used for all purposes other than drinking, substantially reducing water consumption. The average annual income (wages and benefits) of each urban rain forester is \$60,000. The annual cost of engaging 100 urban rain foresters at \$60,000 per year would thus be \$6 million, or \$24 million for 4 years. There would also be \$10 million in annual costs for cisterns and supervision costs. The total cost of a 4-year urban rain forester program employing 100 urban rain foresters, the most that could be usefully deployed in your District, would thus be \$64 million. [Since the foresters would be working with water,

they would fall under the AUWU jurisdiction, thus insuring that the 100 new jobs would be not only good jobs, but union jobs. (Indeed, your staff discovered that in the few areas in which urban foresters have been used, they have been successfully organized by AUWU.)

Experience has shown that the commercial deployment of 100 urban foresters has reduced the consumption of river and lake water in an amount generally in the 25-30% range, but occasionally as high as 50%. Using the more conservative measure, as you must to protect water quality, a 25% reduction in water demand would enable you to reduce your demand from 4 plants (\$280M) to 3 plants (\$210M) plus 100 urban foresters (\$64M), for a total of \$274M.

In sum, this could be a difficult negotiation. In order to succeed, you must obtain both a solution to the water pollution problem (which is necessary to move WIB out of Committee), and the 100 long-term jobs expected by AUWU. These are high stakes since failure to reach a resolution will anger your fellow Democrats who are looking forward to the infrastructure investments in their districts from WIB. If you come away from this negotiation without these 3 goals being met – a solution to Bridgeton's water pollution problem, WIB agreement, and 100 or more jobs for AUWU -- your advisors tell you that your chances of being re-elected 14 months from now will be sharply reduced. Accordingly, you should not enter into any agreement that does not achieve these goals.

Bridgeton's Polluted Waters: Confidential Information for Representative Roberts

You represent a District with conservative views on most issues. There is no single major employer in the District, but considerable light industry, including an increasing number of high-tech startups, nearly all of whom supported you in the most recent election. Duffy's District, on the other hand, was heavily industrialized, but much of that industry has moved or closed. Both you and Duffy won by slim margins in your last elections, each of you winning with 51% of the vote.

You are not personally close to Duffy, but the two of you have a cordial working relationship, resulting from your being Chair, and Duffy being Ranking Member, of the House Water Resources and Environment Subcommittee of House Transportation and Infrastructure, as well as working with Duffy on the House Energy & Commerce Environment Subcommittee to which you have recently been appointed. You have been told by colleagues that Duffy has occasionally disclosed confidential information learned in negotiations, but this has not taken place in any of your past dealings. Still, the risk that Duffy will do so concerns you, and you will be cautious in sharing with him/her any information the disclosure of which could be harmful to you,

Based on a poll from your last campaign, your conservative constituents generally support the Republican caucus position that the costs of cleaning up the polluted water should be borne by the local community's residents. Still, it is important that you reach an agreement with Duffy. Duffy's support, and that of the Democratic members, will provide momentum in reporting the bill out of Committee, and will be necessary to pass the bill on the floor.

The Water Infrastructure Bill of 2025 (WIB) is a high-priority item for both you and the Republican caucus since its benefits extend to key infrastructure projects covering every Congressional district in the country. WIB currently is at the initial Republican caucus position on total maximum costs, without any water quality improvements for the Bridgeton Reservoir. Although both you and the caucus think that Duffy's demand for federal assistance in the water cleanup is unwarranted, the Republican leadership authorized you to propose up to \$140 million in the WIB for water quality improvements, if doing so is necessary to secure Duffy's agreement to vote for WIB.

You are not optimistic that \$140 million, which would pay for only two of the four water treatment plants Duffy has demanded, will be enough to satisfy Duffy. As preparation for WIB negotiations, you

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asked your staff several months ago to see if they could find alternative water pollution cleanup techniques that were less costly than the proposed water treatment plants.

Your staff reported that there is a start-up in your District, Cleanzyme, which has perfected a high-tech photocatalytic^f water filtration device that could filter and clean the existing pollutants in the Bridgeton Reservoir. Although the technology used in these filters is new, they have been successfully purchased and used in water-pollution clean-up efforts at three sites in as many states, plus one other country (Canada). Your staff has had the results of the use of Cleanzyme filters examined by four independent experts in water pollution cleanup and control. These experts unanimously confirmed the effectiveness of the filters. If Duffy, who is somewhat “old-school”, is opposed to the use of these filters in lieu of water treatment plants, you can refer to both the successful results of the Cleanzyme filters and the expert confirmation of those results.

Each Cleanzyme water filtration device can be purchased at \$2.5 million, and 10 devices, at \$25 million, effectively treats as much water as one water treatment plant. As a result, 40 devices, at a total cost of \$100 million, should be equally as effective in improving water quality as the 4 water treatment plants that Duffy seeks for \$280 million. These devices can be deployed at a site with minimal set-up and the filters run themselves through automated controls. Further, due to Cleanzyme’s desire to be the successful bidder on this project, any set-up and maintenance costs have been included in the \$2.5 million per unit purchase price. Cleanzyme will also provide 10-year warranties on all units at no additional cost.

The CEO of Cleanzyme, whom you know as a fellow member of your golf club, told you, in confidence a few weeks ago, that Cleanzyme has been studying the possibility of an equally revolutionary device to reduce air pollution. The experimental testing of this device has been sufficiently successful to garner the interest of venture capital firms headquartered in your District. The Cleanzyme CEO told you that she had a commitment from one of those firms, Tomahawk, Inc., that if she succeeded in landing a \$100 million contract to clean up the Bridgeton Reservoir water with 40 Cleanzyme water filtration devices, thus demonstrating Cleanzyme’s sales ability and technological expertise, Tomahawk would invest \$20 million for further research and development of Cleanzyme’s air pollution clean-up device.^g Such an investment, the CEO told you, could not only be quite profitable for Cleanzyme and its investors, but could also improve air quality across the entire country. Indeed, she said, obtaining \$20M for air filter R&D, was crucial to the future of Cleanzyme. In response, you told the CEO that you support innovative technologies that save the government money, and that you would do all in your power to try to ensure this as Chair of the House Water Resources and Environment Subcommittee by making the Bridgeton Reservoir, and specifically the purchase of these photocatalytic water filtration devices eligible for that program. (You knew, but did not specify, that obtaining such authorization would require Duffy’s agreement to such a purchase.) Now, you fear that if Duffy will not agree to the purchase of 40 filters, with the result that Cleanzyme loses not only a substantial sale, but also Tomahawk’s promised R&D funding for Cleanzyme’s air pollution filter project, Cleanzyme and the

^f The photocatalytic filters accelerate the chemical cleanup reaction using light.

^g According to the Cleanzyme CEO, Tomahawk’s offer was an “all or nothing” deal. A \$100 million contract for 40 filters would lead to their \$20 million R&D investment in air filters. Anything less than 40 water filters would result in Tomahawk withdrawing the offer.

numerous other high-tech start-ups in your District will view you as ineffectual, and will not support you for reelection.

On the other hand, you are also concerned that if your support for Cleanzyme (especially its efforts to secure R&D funding for its air pollution filters from Tomahawk) were to be publicized, you would be accused of not acting to ensure clean water, but to maximize the profits of your golf-playing cronies. This could be almost equally harmful to you. As a result, as important as authorizing a program that would permit Cleanzyme to obtain the \$100 million contract that would provide it with \$20 million in R&D funding from Tomahawk, you need to consider quite carefully the risks to you in raising the R&D funding issue with Duffy in the negotiations.

In short, you want an agreement with Duffy in which Duffy agrees to support WIB in exchange for WIB funding of \$140 million (or less) to be used for cleaning the Bridgeton Reservoir by 40 photocatalytic water filtration devices. Such an agreement would lead to Tomahawk's promised investment of \$20 million in R&D funding for Cleanzyme's new air filtration technology. If you come away from this negotiation without these 3 goals being met – passing the WIB, staying within your \$140M authorization from Republican leadership, and enabling Cleanzyme to get the full \$20M of R&D funding it needs for the air filtration devices -- your advisors tell you that your chances of being re-elected 14 months from now will be sharply reduced. Accordingly, you should not enter into any agreement that does not achieve these goals.

Bridgeton's Polluted Waters: Simulation General Information & Logistics

General Information

Rep. Roberts [R-TN] and Rep. Duffy [D-MO] are Chair and Ranking Member on the House Water Resources and Environment Subcommittee of the House Transportation and Infrastructure Committee. A major bill, the Water Infrastructure Bill of 2025 (WIB), with a 4-year authorization, has majority support in both the Republican and Democratic caucuses, but there is one outstanding issue – whether during floor consideration of WIB to attach Duffy's bill for a new regional drinking water supply program that would deal with drinking water quality in Duffy's District.^a Without agreement on that issue, the WIB will not move forward. As the Chairman and Ranking Member of the Subcommittee, Roberts and Duffy have the responsibility of finding a resolution to the issue. Leadership on both sides supports an agreement that is acceptable to both Roberts and Duffy, subject to final review. The WIB is an authorization bill, and Roberts and Duffy anticipate that appropriations will follow the authorizations approved in the bill.

The source of the drinking water in Duffy's District is Montana's Traverse Mountain. Water coming off the mountain flows into the Songo River, and travels hundreds of miles, through 4 states, before arriving in Duffy's District, where it is held in a reservoir just outside Bridgeton, the largest city in the District. Until recently, water arriving at the reservoir was relatively clean, requiring little treatment before being stored in the Bridgeton Reservoir. Increased residential and commercial development along the Songo River has, however, resulted in a marked increase in contaminated run-off, impacting water quality in both the river and reservoir.

^a Leadership has indicated that they have no intent to revisit another major water bill in the next 4 years. As a result, both the WIB and any attached bill that Duffy and Roberts agree upon must be for 4 years duration.

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According to a recent report by the Bridgeton Water Authority, pollution levels are such that providing the residents of Bridgeton and surrounding areas with clean, safe drinking water will require the construction of four water treatment plants as soon as possible. The cost of doing so, the Water Authority estimated, would be approximately \$70 million per plant, or a total of \$280 million.

Duffy seeks Roberts' approval to attach a new 4-year pilot drinking water program bill, which is under the jurisdiction of the Energy and Commerce Committee, into the WIB during floor consideration, which would enable Bridgeton to access federal funding for construction of the needed water treatment plants. In order to avoid the Congressional earmark prohibition, Duffy's new program is drafted to potentially be useful to other communities, but Bridgeton is the most likely candidate for funding. District residents, Duffy argues, did not cause the pollution, and should not have to pay for cleaning it up. Nor would it be feasible to require the many states through which the water passes to share the cleanup costs. Accordingly, Duffy contends, federal funding of the \$280 million cost of constructing the plants is appropriate.

The bill introduced by Duffy generally requires a cost share from the non-federal sponsor for projects funded under the bill. But to assist Bridgeton, the program also includes criteria that waive the non-federal cost share requirement in the event of certain economic or employment losses, a requirement for which Bridgeton would easily qualify.

Duffy's position is supported by the Democratic caucus, but not by the Republican caucus. The Republican position is that the costs of cleaning up the polluted water should be borne by the residents of Duffy's District.

There has been some discussion of this issue between Roberts and Duffy staffers, but no progress has been made. Roberts and Duffy will now seek to resolve the impasse.

Logistics

On the day of the negotiation training, each participant will be assigned to play the role of either Roberts or Duffy, and will be provided with Confidential Information for that role. Each participant will also be advised of the name of the participant with whom he/she is to negotiate. (If the number of participants is not divisible by two, some participants will be assigned to share a role.)

At the conclusion of the time allotted for the negotiation, if you have reached agreement, one of you should post/provide the Instructor with a summary of the terms of the agreement, as well as the names of both negotiators. If you did not reach agreement, post/provide the Instructor with a sheet that states "No Deal", and that contains the names of both negotiators. At the end of the negotiation debrief, please fill out the Feedback Form, which you can access at:

https://docs.google.com/forms/d/e/1FAIpQLSc9IOPaA4QqLYeoFsedSAbz4ufKtJrkyYap7_ADwupQ1q3ktA/viewform?fbzx=2026976851471714000

Negotiation Exercise Rules

1. You may, to the extent you believe it is strategically wise, disclose information in your Confidential Information to your negotiation “opponent”. You may not, however, show your Confidential Information sheet to him/her. (In a real-life negotiation, the other party can never be certain of the truth of your assertions. We do not want you to be able to eliminate that uncertainty by showing your Confidential Information sheet to the other party as proof of the truth of your assertion.)
2. You may not invent facts contrary or in addition to those contained in either the General Information or your Confidential Information. If you are asked a question to which neither the General nor the Confidential Information provides an answer, you should say that you do not know the answer.
3. The facts may indicate that your character did something that you personally would not have done. You cannot change that, but may discuss it in the post-exercise debrief.
4. You should not disclose any Confidential Information or the terms of any agreement to persons outside of your class or training program as they might do this training at another point, and knowing some of this information could substantially lessen their future learning.