

Charleston School of Law  
**Strategy and Tactics for Law and Negotiation**

Professor Ben Pogue  
Syllabus, Fall 2021

Required Course Materials

Texts:

Chris Voss, *Never Split the Difference: Negotiating As If Your Life Depended On It*, 1<sup>st</sup> Edition (Harper Business 2016); ISBN: 0062407805. Our shorthand for this title is “NSTD.”

Sun Tzu (Lionel Giles, translator), *The Art of War: Complete Text of Sun Tzu's Classics, Military Strategy History, Ancient Chinese Military Strategy History, Ancient Chinese Military Strategist*, 1<sup>st</sup> Edition (Independently Published, 2021); ISBN: 979-8737610623

John Boyd, *Patterns of Conflict*, PDF, Available Online at:

<http://www.projectwhitehorse.com/pdfs/boyd/patterns%20of%20conflict.pdf>

Powerpoint version available online through: <https://iohai.com/iohai-resources/patterns-of-conflict-iohai.htm>

Cases:

Cases will be assigned to read and review throughout the semester. Some of these are on the syllabus, though most will be assigned as we progress.

Recommended Course Materials

Joel P. Trachtman, *The Tools of Argument: How the Best Lawyers Think, Argue, and Win*, 1<sup>st</sup> Edition (CreateSpace Independent Publishing Platform, 2013).

A Note on Reading, Preparation, and Class Work

All reading assignments are outlined below and should be completed before class. Please come to class prepared to discuss and apply the assigned reading. You are responsible for all required reading, class discussion, presentations, powerpoints, and other assignments or in-class work. Much that we will discuss in class will not be from your assigned reading.

The required reading for *The Art of War* only includes Sun Tzu's text from the selected readings in the book, that is, the non-bracketed text. The bracketed notes that accompany this text as well as introductory and conclusory notes and commentary can provide helpful context and interpretation, but they are not required. Our uses of *The Art of War* and John Boyd's *Patterns of Conflict* are primarily as

analogies, to provide guidance for strategic assessment of a wide variety of cross-disciplinary situations and provide greater understanding of general physical, psychological, and intellectual interactions.

The best book on strategy I've studied is not recommended or required for this course. Laurence Friedman's *Strategy: A History* is great. It's also 768 pages and is riddled with prolonged discussions of things like Xerxes' campaign at the Hellespont, business and management trends in the mid-20<sup>th</sup> century, and more; and this is a 2 credit-hour course. There are literally a hundred books that are interesting from one point of view or another that deal with strategy. I'll reference many of my favorites in my powerpoints so you can develop a reading list. But these other books are not required to understand the basics of Strategy and Tactics or to perform well in this course.

Under Charleston School of Law policy, the amount of work for each credit hour of a course must be: At least 750 minutes of in-class time (12 ½ hours), which may include 50 minutes of final examination time; and, at least 1800 minutes (30 hours) of out-of-class student work.

- This is a 2 credit hour course, which means that in addition to attending classes, students should plan to spend at least 4 hours and 17 minutes each week in the fall semester.

preparing for class.

### ADD/DROP

This course requires a lot of thinking and observing in the real world. As cool as it might sound, it's not for everyone. To see Strategy and Tactics at play everywhere you go and in everything you do, and to see the mechanisms behind human behavior (and to dissect your own behavior, psychology and beliefs)—that may not be your thing. Further, it can be overwhelming at times. We've only got 14 classes and there's SO MUCH to learn—it really requires our entire collaborative class working to stretch each other's minds. So, if it's not for you, I get it.

We only get one class period before the add/drop deadline on August 20<sup>th</sup>. I'll post the first class powerpoint on August 16<sup>th</sup> so you can review it and get a feel for what we'll be doing. Please review it ahead of time so you'll be prepared to make the decision that's right for you.

### TWEN Site

Each class powerpoint will be posted on the TWEN site. Aside from the first class, powerpoints will be posted the night before class, by 8pm.

### Attendance

Class meets from 5pm-6:50pm on Thursdays during the semester.

Under the School of Law's Attendance Requirement, students are required to attend at least 85 percent of the scheduled classes for each course. Therefore, no student may miss more than 15 percent (rounded to the nearest whole number) of the scheduled class meetings in any course or seminar. "Scheduled class meetings" is defined as the total number of classes that are established for that particular course during that particular semester or session schedule, as established by the published schedule, with such number remaining the same in spite of modifications that might arise during the

semester (speakers, inclement weather, professor cancellation, etc.). No absences from class are “excusable” for purposes of determining whether a student has violated the Attendance Requirement.

o Link to Attendance Requirement:

<https://charlestonlaw.edu/academics/academicpolicies/attendance-policy/>

o For this course in this semester, students may not miss more than 2 class meetings.

A student who is tardy or who exits class early may, at the discretion of the professor, be marked as absent. “Tardy” is more than 2 minutes late to class. “Exits class early” is leaving without the Professor’s immediate consent anytime before 6:45pm.

#### ADA Notice

Students with disabilities should contact the Associate Dean for Academic Affairs as soon as possible to request reasonable accommodations should those accommodations be desired.

#### Course Objectives and Grading

Our objectives are for students...

- To develop a deeper understanding of what strategy and tactics are, to identify when they’re being used, and how they can be implemented proactively.
- To develop templates for strategic analysis and for planning strategic and tactical implementation.
- To understand the dynamic process of strategic analysis and implementation, that incorporates ethics and responsibility as well as long term and cross-disciplinary considerations.
- To increase the skill level of students at real-time analysis and implementation of tactics.

Your grade for this class will be based on the following:

- Group project, of which each group member will be responsible for specific work.
  - o Details of the group project will be presented later in the semester.
  - o This will be both a written submission and class presentation.
  - o This will be a project with specific checkpoints and due dates.
  - o 40% of your grade.
- A one-hour final exam. Closed book. Non-proctored.
  - o Short answer; multiple choice; and essay.
  - o 30% of your grade.
- In-class quizzes and exercises
  - o Might be multiple choice, short answer, long answer/essay, on the fly presentations. Be prepared for anything.
  - o Cumulatively 30% of your grade.
- There is no grade for participation. But if you participate and engage in class discussions you will undoubtedly get more out of the class.

Class Topics and Assigned Text (all reading should be done before class)

**Class 1:** Introduction to Strategy and Tactics. Applications to negotiation and litigation. Development of generalized theories of strategy and tactics. Bias and identifying obstacles.

Reading: Never Split the Difference [NSTD]: Chapter 1. Art of War: Chapters I, II, III (Laying Plans, Waging War, Attack by Strategem).

**Class 2:** Introduction to our “Six Dimensions” and “Six Strategies”—Strategic analysis and implementation.

Reading: NSTD: Chapters 2 & 3. Art of War: Chapters IV (Tactical Dispositions), and VI (Weak Points and Strong).

Cases to review: Marbury v. Madison, 5 U.S. 137 (1803); Gossett v. McMurtry, 764 F. Supp. 2d 782, 784 (D.S.C. 2010).

**Class 3:** OODA, Direct Assault, and Infiltration. Discovery and investigation tactics.

Reading: NSTD: Chapter 4. Art of War: Chapters VII (Maneuvering), VIII (Variation in Tactics), IX (The Army on the March). Patterns of Conflict: pages/slides 1-47.

**Class 4:** Incorporating OODA, Direct Assault, and Infiltration into conventional legal strategies. Introduction to group projects.

Reading: NSTD: Chapter 5. Art of War: Chapter V (Energy), X (Terrain). Patterns of Conflict: pages/slides 56-66, 111-126.

**Class 5:** Quiz today! Infiltration, Realm Shift, Expansion and Contraction strategies.

Reading: NSTD: Chapter 6. Art of War: Chapter XI (The Nine Situations), and XII (The Attack by Fire). Patterns of Conflict: 70-73, 86-103.

**Class 6:** Group project checkpoint. Expansion and contraction strategy; conquest of unoccupied territory. Asymmetric and novel arguments, legal applications, and considerations.

Reading: NSTD: Chapters 7. Patterns of Conflict: 128-135.

**Class 7:** Strategic Landscapes and Resources. Understanding resources needed to pursue your case. Understanding the effect that a case has on the world around you.

Cases to Review: Brown v. Board of Education (1954); Shelley v. Kraemer (1948); Jones v. Mayer Co. (1968); Village of Arlington Heights v. Metropolitan Housing Development Corp. (1977); Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc. (2015); Bank of America v. City of Miami (2017).

**Class 8:** Group project checkpoint. Collaboration with counterparts, long-term strategies, and the importance of building relationships. Ethics and strategy.

Reading: Patterns of Conflict: 145-149, 154-156, 175-179, 185-186.

**Class 9:** Quiz today! Brass-tacks negotiation tactics and multi-case strategies. Prisoner's Dilemma, loss aversion, cognitive dissonance and relief.

Reading: NSTD: Chapter 8 & 9.

**Class 10:** Group project checkpoint. Application of Six Dimensions analysis; integrating Landscapes and Resources. Finding Black Swans and revealing blind spots.

Reading: NSTD: Chapter 10. Art of War: Chapter XIII (Use of Spies).

**Class 11:** Bringing multiple areas of litigation together as a strategic plan. No reading. Work on those projects!

**Class 12:** Group project checkpoint. Trial and deposition tactics. Practical and persuasion tactics—framing, reptile approach, dividing, pitting, public policy arguments, and slippery slopes. No reading.

**Class 13:** Quiz today! Seeing strategy everywhere you go. Understanding ramifications of legal rulings, and your response to them. No reading. Polish up those projects!

**Class 14:** Review and group presentations.

#### Office Hours

Your questions and ideas about Strategy and Tactics are incredibly important! And this is fun stuff! As a practicing lawyer rather than a full-time faculty member, the best way to connect with me is via email, to set up a time to talk by phone or Zoom. If you feel you need to meet in person, I'm happy to set up a time for that too.

More information about the exam and about group projects will be provided after we get rolling along. Please let me know if you have questions. Thanks for your patience.

This is exciting stuff. Looking forward to having you in class!