Principles of Negotiation
Introduction

9 out of 10 of our greatest victories have been negotiations.
The First Step to Becoming a Better Negotiator Is: Consciousness
Style

• We all have a style

• We must recognize our own style

• Recognition allows for improvement
A conscious style can then become an effective strategy
Traditionally, there were two recognized types of negotiating styles:

- Competitive
- Cooperative
Competitive

- High initial demands
- Limited disclosure
- Few concessions
- False issues/concessions
- Threats & arguments
- Commitment to positions or . . . policy
- Elective disclosure
“Then it’s agreed. I’ll try to get the best of you and you’ll try to get the best of me.”
Cooperative

- Foster trust
- Grants concessions
- Positive motivations towards a fair resolution
- Competitive negotiating leads to resentment
- Expect reciprocity
“Let’s compromise. You do everything I say and I’ll say everything you do.”
<table>
<thead>
<tr>
<th>Cooperative</th>
<th>Competitive</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Friends</td>
<td>• Adversaries</td>
</tr>
<tr>
<td>• Goal = friends</td>
<td>• Goal = victory</td>
</tr>
<tr>
<td>• Make concessions</td>
<td>• Demand Concessions</td>
</tr>
<tr>
<td>• Soft on people and case</td>
<td>• Hard on both</td>
</tr>
<tr>
<td>• Trust others</td>
<td>• Distrust others</td>
</tr>
<tr>
<td>• Change positions easily</td>
<td>• Dig in</td>
</tr>
<tr>
<td>• Make offers</td>
<td>• Make threats</td>
</tr>
<tr>
<td>• Search for answer other will accept</td>
<td>• Search for answer they will accept</td>
</tr>
</tbody>
</table>
Cooperative

- Accept 1-sided losses
- Insist on agreement
- Avoid a contest of will
- Disclose bottom line

Competitive

- Demand 1-sided gains
- Insist on position
- Try to win a contest of will
- Mislead about bottom line
Positional Negotiating

Both of these styles of negotiating focus on the positions taken by the opposing party. Each negotiator tries to gain concessions from the other party in order to move closer to an agreement. Concessions are done at the expense of the other party.
Principled Negotiating

- Separate people from the problem
- Focus on interests not positions
- Generate a variety of possibilities
- Base results on some objective standard
Positions

INTERESTS
<table>
<thead>
<tr>
<th>Cooperative</th>
<th>Competitive</th>
<th>Principled</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friends</td>
<td>Adversaries</td>
<td>Problem solvers</td>
</tr>
<tr>
<td>Goal = friends</td>
<td>Goal = Victory</td>
<td>Goal = wise outcome</td>
</tr>
<tr>
<td>Make concessions</td>
<td>Demand concessions</td>
<td>Separate people from problem</td>
</tr>
<tr>
<td>Soft on people/case</td>
<td>Hard on both</td>
<td>Soft on people – hard on problem</td>
</tr>
<tr>
<td>Trust others</td>
<td>Distrust others</td>
<td>Proceed regardless of trust</td>
</tr>
<tr>
<td>Change positions</td>
<td>Dig in easily</td>
<td>Focus on interests</td>
</tr>
<tr>
<td><strong>Cooperative</strong></td>
<td><strong>Competitive</strong></td>
<td><strong>Principled</strong></td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Make offers</td>
<td>Make threats</td>
<td>Explore interests</td>
</tr>
<tr>
<td>Search for answer</td>
<td>Search for answer</td>
<td>Develop multiple options</td>
</tr>
<tr>
<td>other will accept</td>
<td>they will accept</td>
<td></td>
</tr>
<tr>
<td>Accept 1-sided losses</td>
<td>Demand 1-sided gains</td>
<td>Invent options for mutual gain</td>
</tr>
<tr>
<td>Insist on agreeing</td>
<td>Insist on position</td>
<td>Insist on objective criteria</td>
</tr>
<tr>
<td>Yield to pressure</td>
<td>Apply pressure</td>
<td>Reason &amp; yield to principle</td>
</tr>
<tr>
<td>Cooperative</td>
<td>Competitive</td>
<td>Principled</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>Avoid a contest of wills</td>
<td>Try to win contest of will</td>
<td>Reach agreement independent of will</td>
</tr>
<tr>
<td>Disclose bottom line</td>
<td>Mislead about bottom line</td>
<td>Avoid having a bottom line</td>
</tr>
</tbody>
</table>
3 Primary Rules of Negotiation

• Do not argue over positions.
• Build trust.
• Prepare to negotiate.
1. Do not argue over positions.

• Bargaining over positions locks the negotiator to the position.
• Look for underlying concerns.
• Don’t haggle.
• Positional arguing is inefficient.
• Positional arguing engenders ill will.
2. Build trust.

- Establish trust through preparation and predictability
- Build credibility.
- Show genuine concern.
- Develop rapport.
3. Prepare to negotiate.

- Client interview.
- Investigation and research.
- Scout the prosecutor.
- Know your victim.
- Keep a book on the judges.
- Research fair standards.
- Enter the negotiation with a conscious strategy.
General Principles of negotiation
Stop, Look and Listen

• Where is prosecutor coming from?
• Observe body language
• Listen more – talk less
• Really listen
• Put yourself in prosecutor’s shoes
• Ascribe good reasons to prosecutor even when you are not sure they fit
Engage the Prosecutor in a Spirit of Cooperation

- Promote cooperative brainstorming
- Test out creative solutions on the prosecutor
- Ask the prosecutor for help
- Challenge your assumptions about the prosecutor
- Challenge the prosecutor’s perceptions of you
Involve Other Participants

- Victims
- Police officers
- Client
- Client’s family
- Character witnesses – teacher, employer, etc.
DO YOU KNOW YOUR BATNA?

OUTCOME 1

OUTCOME 2

OUTCOME 3

OUTCOME 4

A

B

C

D

SETTLE

TRIAL
"I never fucked anybody over in my life, who didn't have it comin' to 'em, you got that? All I have in this world is my balls, and my word, and I don't break 'em for no one, you understand?"
"Say hello to my little friend!"
Close Well

• Make it easy for the district attorney
• Secure the agreement in writing
• Do not do anything to create buyer’s remorse
Some Negotiations Fail

- Sometimes there must be a winner
- Negotiation initiated too soon/late
- One person doesn’t really want to negotiate – imbalance of power
- One person not prepared
- Sites set too low/high
- Becomes personal
- Lack of trust
- Impatient
- Unable to move off position
- Talk too much
Advance Negotiation Research

Average

vs

Skilled Negotiators
Amount of time planning?

- Average
- Skilled
- No difference
Amount of time planning?

• No difference
Exploring options?

- Average
- Skilled
- No difference
Exploring options?

- Skilled
Concentration on areas of common ground

- Average
- Skilled
- No difference
Concentration on areas of common ground

- Skilled – 3x as much time.
Setting goals?

• Average
• Skilled
• No difference
Setting goals?

- Skilled
Sequencing of negotiation?

• Average
• Skilled
• No difference
Sequencing of negotiation?

• Skilled
Use of Irritators?

- Average
- Skilled
- No difference
Use of Irritators?

- Average

- Warning Will Robinson – Irritators can be negative “That’s a ridiculous offer” or positive “I’m making you a very generous offer”
Attacking and defending spirals?

- Average
- Skilled
- No difference
Attacking and defending spirals?

- Average
- However...
Counterproposals?

- Average
- Skilled
- No difference
Counterproposals?

• Average

• Skilled negotiation average 1.7 counterproposals per hour of negotiation.
Warning that a question or proposal was coming.

- Average
- Skilled
- No difference
Warning that a question or proposal was coming.

• Skilled

4x as often.
Warning that a disagreement was coming.

- Average
- Skilled
- No difference
Warning that a disagreement was coming.

• Average

• Skilled negotiators state the reason for the disagreement first rather than starting with I disagree...
Testing understanding and summarizing?

- Average
- Skilled
- No difference
Testing understanding and summarizing?

- Skilled

- Twice as much time.
Asking questions?

- Average
- Skilled
- No difference
Asking questions?

- Skilled
- 2x as many questions.
Questions...

• Provide information about what the other thinks.
• Help control the discussion.
• Much more effective than direct disagreement.
• Help to provide breathing space.
• Questioning style is key.
Gives more reasons to support their argument?

- Average
- Skilled
- No difference
Gives more reasons to support their argument?

• Average
Spend time reviewing their negotiation?

- Average
- Skilled
- No difference
Spend time reviewing their negotiation?

• Skilled

• Overwhelmingly so.
Wrap Up

• Try to negotiate on principles, not positions
• Creatively solve problems, don’t haggle over positions
• Enlist the support/cooperation of your adversary
• Talk less, listen more.
• Ask questions.
• Go to the mattresses when necessary.