

NEGOTIATIONS

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NEGOTIATIONS TECHNIQUES AND TIPS

You negotiate all day long, not just on the job but in every situation you encounter – with your boss or your employees, with your vendors or your clients, with your spouse or your children, even with the serviceperson who comes to your house but doesn't repair that refrigerator after all. All these relationships call for constant negotiations.

A negotiation is any communication in which you are attempting to achieve the approval, acquiescence, or action of someone else. Most people tend to think of negotiations in the business context or in connecting with major purchases such as a home or a car. But you probably spend more of your energy in one-minute life negotiations such as, "Dad, can I borrow the car?" or "Honey, will you please put the seat down?" The lessons in this seminar apply to both the once-in-a-lifetime, million-dollar deals and the everyday, one-minute life negotiations.

The skills you need to be a successful negotiator in your everyday life are the same skills required for major international and industrial negotiations. Sure, you can refine these skills with additional techniques and strategies, and you enhance them with your own personal style and personality. But only these six skills are essential:

- ✓ **THOROUGH PREPARATION**
- ✓ **THE ABILITY TO SET LIMITS AND GOALS**
- ✓ **KEEPING YOUR EMOTIONS IN CHECK**
- ✓ **GOOD LISTENING SKILLS**
- ✓ **CLARITY OF COMMUNICATION (BEING REFLECTIVE TO THE OTHER PARTY)**
- ✓ **KNOWING HOW AND WHEN TO CLOSE THE DEAL**

The benefits to good negotiation skills can result in:

- ✓ **MORE RESPECT**
- ✓ **MORE MONEY**
- ✓ **MORE RESULTS FROM EMPLOYEES, COWORKERS, AND BOSSES**
- ✓ **MORE SUCCESSFUL AGREEMENTS WITH YOUR FRIENDS, FAMILY AND BUSINESS ASSOCIATES OR CUSTOMERS**
- ✓ **MORE CONTROL IN YOUR NEGOTIATIONS**
- ✓ **MORE SATISFACTION FOR BOTH PARTIES AS A RESULT OF YOUR NEGOTIATIONS**

LET'S BEGIN

The theory of negotiations is a simple, one lets compare it to the champion tennis player, golfer, baseball player or any pro athlete what is the difference between the weekend sports enthusiast verses the professional sports athlete. Simply stated:

PRACTICE AND GUIDANCE!

But it is more than that:

Negotiating is not a skill that you take out once in awhile when you have to make a deal. Negotiating is a way to get what you want out of life and business. Many people blame a lack of negotiating skills for not getting what they want. That is only part of the answer. People must also do some long-range thinking about their business relationships. Often, people are unhappy about the results of specific negotiations, when the real problem is that they should not be in those negotiations in the first place.

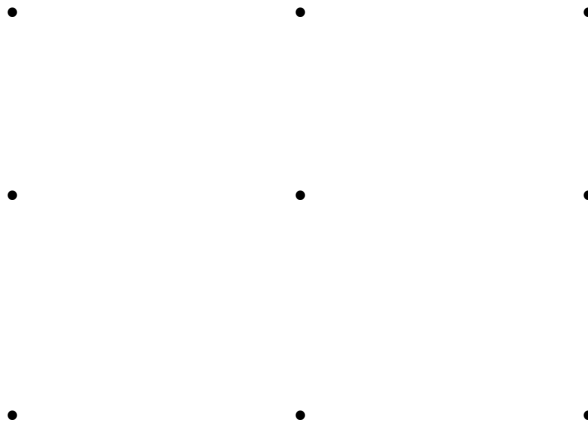
Every person involved in a negotiation has common interests that stem from selfish needs, they are the same for business negotiations:

- ✓ **Love:** We are committed to the health and well-being of our relationships.
- ✓ **Trust:** We care about how our actions affect each other, and we would not deliberately hurt each other.
- ✓ **Respect:** We consider ourselves and each other worthy, and its okay for the other person to have thoughts, feelings and opinions different from our own.
- ✓ **Appreciation:** We do not hold back appreciation for the other.
- ✓ **Financial independence:** Although the joining of monies may change closer to retirement, we value our respective abilities to be totally financially independent of each other or anyone else.
- ✓ **Integrity:** We are hones (we don not lie, cheat, or steal) in dealing with each other and other people.
- ✓ **Contribution:** We lead useful lives that contribute to the health and well-being of others.
- ✓ **Responsibility:** When we unwittingly cause someone pain, we recognize it, admit it, and make amends.
- ✓ **Growth:** We are dedicated to self-growth and awareness. We know that we came into the relationship with our own baggage, and we don't argue from the point of view that one of us is a finished product and the other person is not.

HOW DO WE LIMIT OURSELVES?

We are constantly putting limitations on our own capabilities look at the puzzle and see if you can answer it:

Try connecting all the dots with only four (4) lines and not lifting your pen off the paper.



If you are having difficulty solving the problem then you are doing exactly what every normal person does in their lives and in business. You limit your opportunities by not thinking in abstract ideas. Open your mind to thinking in abstract and creative ideas or as we say ***"OUT SIDE THE BOX"***. In negotiations this can become your greatest tool, thinking what you want and knowing what your limitations are based on facts or information you possess. Then applying those same principles to understanding what the person you are negotiating with wants and needs.

Negotiation is a two-way street each party wants something but the real key is to find their hidden agenda to what their real needs are. An example might be you want a beach front house with 5 bedrooms, but what you need is a house period. What you want maybe different than your needs. However, in negotiating we tend to start at the top and settle somewhere in the middle. No one ever pays total sticker price for a new car. We automatically assume they will discount the car if we are serious.

BEING PREPARED

Here are some questions to ask yourself before you start a negotiation:

- ✓ In preparing for a negotiation, do you often consult an outside source for information?
- ✓ List five resources, other than your personal knowledge and intuition, (books, people, or periodicals) that you used during the last year in preparing for a negotiation – any negotiation.
- ✓ Name the five most widely recognized sources of authoritative information in your profession.
- ✓ Of these five resources, how many are in your personal library or your office library?
- ✓ Think of your last negotiation. Try to recall five pieces of information that you learned during the course of the discussion. Could you have obtained that information before the negotiations ever started?

As you answer these questions, you can decide for yourself how prepared you have been in the past. No matter how good you are at preparing you can become better. Time spent on preparation pays off in handsome dividends.

THE ONE WITH THE MOST KNOWLEDGE WINS!

Some people think that power comes from size, gruffness, or clout, but the easiest and most effective single thing you can do to increase your power is to prepare. You may be facing the greatest negotiator in the world, but if you are prepared, and the greatest negotiator isn't, you have the upper hand.

PLAY DETECTIVE

You should know about all aspects of a negotiation before you begin. Identify the items that are most important for your next negotiation and get to work. The task breaks down into two major categories:

The issues under negotiation: When you begin the actual dialogue, make sure that you know more about the subject matter than does the person with whom you are negotiating.

The person with whom you are negotiating: Learn as much as possible about your counterpart and what that individual wants out of the negotiation. Leave no unanswered questions about your counterpart or your counterpart's client.

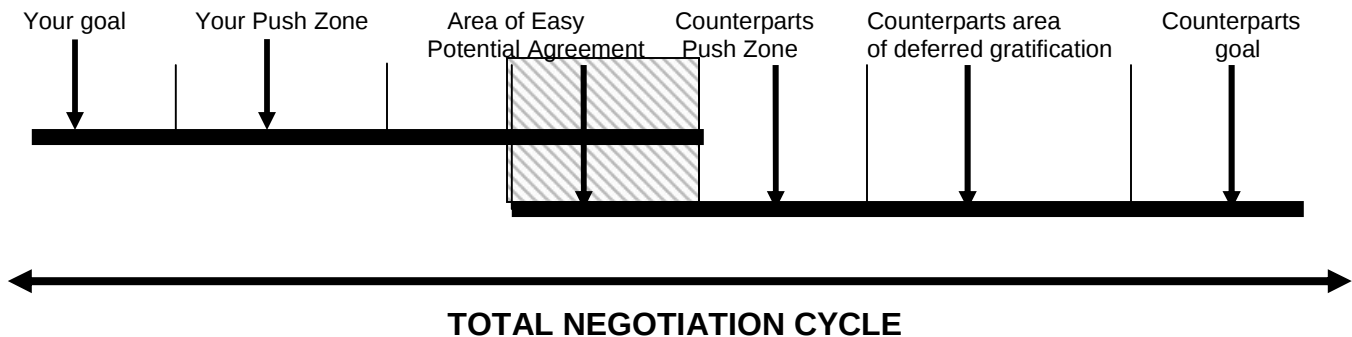
SOLVING THE MYSTERY OF VALUE

- ✓ Value is always in the eye of the beholder. When you finish with your research, only you can conclude the ultimate value a service or product holds for you. You are the one who will be spending (or receiving) your money. You must decide.
- ✓ From diamonds to dime stores, experts compile price surveys and put out a report on the item's value: these publications are how insiders know what's going on in the world. Whether you are buying a hotel or a holiday in a hotel, you can find insider information on the value of your purchase.

Don't forget that values change over time. One important thing for you to decide, if you are a purchaser, is how long you're to keep the item you are buying. The longer you plan to keep your purchase, the longer it needs to hold its value.

ASK QUESTIONS

Even after the negotiations begin, you can continue your preparation by asking your counterpart questions. Some people are afraid to ask question for fear of appearing dumb. This is false pride at its most expensive. You are flying blind without accurate information. You can't worsen your position by requesting information from your counterpart. Your job is to get a good outcome – not to impress the seller. If you have unanswered questions ASK.



The above graph represents the total negotiation cycle. You can see graphically why information is critical and how the entire negotiation is shaped by your perception of your own position and the other party's.

Note the center portion of the above figure in which the agreement will most likely occur. This area represents the terms with the most potential for resolution; the parties can probably reach an easy compromise on these issues.

The areas to the left center and right center represent points of contention that require you or your counterpart to compromise more than is desirable in order to reach an agreement. We call these areas the *push zones*.

TAKING GENDER INTO ACCOUNT

- ✓ **Myth Number 1:** Men already respect you. WRONG. Women may already respect you coming in the door. They probably read your brochure and have specific questions outlined. But many men are going to make you earn their respect right at the negotiating table. Never assume that your credentials precede you and that your background, education, and brilliant maneuvers in your industry establish you before you walk in the door. Picture in your mind the male negotiator behind a big desk, clean surface, his eyes glittering, his arms outstretched, and hands placed firmly on his desk, saying “So! Tell me why you should get my business!” He wants to play, and the game starts now. Every sentence out of your mouth must sell yourself or your company, in some way building your credibility and respect in his eyes. This self-promotion may sound like bragging. Even if it is, it’s okay. Successful women long ago got over felling offended at being called “pushy.”
- ✓ **Myth Number 2:** Men are complex creatures. They are not. Men are very direct. They mean what they say, and they say what they mean with very few hidden meanings. Plan your communications with men to be short and to the point. Give them bullets and one-paragraph summary of your conclusions. Most busy female executives prefer toe precise, to-the-point style as well. But whereas women may engage in a side conversation and segue right back to business without missing a beat, men mostly talk about one subject at a time and don’t switch back and forth.

SEARCH FOR THE HIDDEN AGENDA

As you prepare for a negotiation, be alert to the fact that everything is not always as it seems. Maybe, besides buying what you have to sell, the buyer wants to establish a relationship with your company. Maybe the buyer wants to know how your business runs in order to enter the field as well. Maybe the buyer wants to teach another supplier a lesson. In the world of negotiating these ulterior motives are called *hidden agendas*.

Hidden agendas are difficult to ferret out – that’s why they’re called hidden agendas! Without introducing paranoia into the process, be mindful of the possibility of hidden agendas. You rarely uncover them early in the process by asking directly. As part of your ongoing preparation, gather all the information you can about motive. The more you know about the other person’s motive, the more you can create possibilities for yourself. Sometimes you may even decide to walk away from a deal.

WATCH OUT FOR THE SPIKE IN THE NEGOTIATIONS

Spikes in negotiations are the key to your success! What is a spike, it is the one little phrase or comment that doesn't belong in the negotiation process, when a person is talking and you hear something in their conversation that sticks out as not associated with the negotiations this can be a key to your success. Usually, an individual can not help give away their hidden agenda. As with most people once talking most people can't help straying from the facts. Should you hear the out of place word or phrase, this is your key to target in on as a possible area of weakness or opportunity.

LISTENING IS THE KEY TO GOOD NEGOTIATIONS

Unfortunately most people listen half heartedly and this can be to their demise in a negotiation. The facts are that the average person speaks at a range of 140 – 200 words per minute; however most people can hear at a rate of 400-600 words per minute. What does that mean, simply put, our minds stray when someone talks too slow and we miss some of the most important information. The spike that could make the difference in the negotiation can easily be missed and the negotiation to your benefit could be lost.

It is critically important when beginning a negotiation that you prepare not only with knowledge but with actions. Prepare to listen, stay focused and alert, some of the largest negotiations have been lost because the person failed to hear the counterpart's message as to what their needs were.

PUT IT IN WRITING – CHECK LIST FOR NEGOTIATION

Create a check list of information prior to a negotiation about the person you are negotiating with:

Sample Check list:

Name

Company

What is your relationship to this negotiator?

How long with the organization?

Future plans with the company?

If planning to leave, when? And to what sort of situation?

How qualified is this person for this negotiation?

What company policies exist with regard to this type of negotiation?

How is the negotiator compensated? Is there an incentive program if money is saved on this negotiation?

Is the compensation based on commission or straight salary?

What time constraints exist for the other side?

What other pressures originate from the negotiator's place of work?

Who else must this person consult before a final decision can be rendered?

Is there a cut-off to the negotiator's authority? That is, is there a point under which the negotiator is authorized to close the deal and over which higher authority is needed?

What is that point?

How is the negotiator for the other side perceived by superiors?

What is the negotiator's attitude toward you?

You're Company

Your subject

Who has made similar deals with this person in the past?

How can you contact that person?

What does that individual have to say about this negotiator?

What is your overall assessment of this negotiator?

CULTURAL DIFFERENCES DO THEY MATTER?

How to speak like a native when your aren't

International negotiations require special preparation, but the tools are out there. Read books about the history, geography, customs, and religion of the people with whom you plan to negotiate. Such specialized knowledge makes your international negotiations much less frustrating and more fulfilling. If your negotiations take place on your counterpart's turf, the knowledge you gain in preparing for the negotiation add immensely to your enjoyment of any free time you have on the trip.

The sources for your preparation are wide-ranging. Here are just a few:

- ✓ Talk to your friends and business associates who have experienced the culture. We always get a kick out of telling people about our international travels.
- ✓ Read the many books that are available and watch travel videos as well as movies that takes place in that culture.
- ✓ The internet can provide an electronic gateway to other cultures. You can chat with computer junkies from other countries or just visit international Web pages.
- ✓ Many large cities have cultural centers sponsored by the foreign government or expatriates from the country you want to visit.
- ✓ Ethnic restaurants can be another fun resource. Chat with the owners. You often find out a wealth of information about your counterpart's country while learning firsthand about the country's food. Foreign embassy's can be a source of information. Know whether a high ranking government official might be involved, particularly in some business dealings that might be otherwise termed private, might have a high ranking government official involved in some way or other.

Be careful of other cultures as you can offend some negotiators from the beginning, an example of doing business in other countries, such as the United States, business people from the United States tend to want to get down to business, work out a deal then go have a drink at the local bar. However, if you are dealing with Asian negotiators, you find that getting to know you and all about you is most important to continued negotiations.

Some Asian cultures have certain business procedures they like to follow for example the Japanese will hand you their business card with both hands indicating respect and usually with a little bow, it is customary for the recipient to

accept their card with both hands as well. And then to place the card in front of you for future reference on names and titles. However, American's tend to want to cut to the chase and aren't too interested in what the person's name is that they are dealing with, just can they make a deal, and how quickly they (American's can get out of there).

Some races and cultures prefer to deal with their own race or nationality and find that someone of another culture or race can hamper the negotiations. So, in preparing for a negotiation, it is wise to know the race and nationality prior to negotiating, it might be in your best interest to substitute someone of similar traits to negotiate on your behalf.

If, this situation should confront you, do not feel offended or insulted, it is simply the parties want to feel comfortable negotiating with someone with similar beliefs or origin. Knowing your counterpart is the most important key to success in negotiations.

SEATING WITH PURPOSE

Seating arrangements are the subject of many jokes, and sometimes the importance of seating can be overemphasized – but not often. Definitely do not leave seating to chance, in spite of the number of people who seem willing to do so.

- ✓ Sit next to the person with whom you need to consult quickly and privately
- ✓ Sit opposite the person with whom you have the most conflict. For example, if you are the leader of your negotiating team, sit opposite the leader of the other negotiating team. If you want to soften the confrontational effect, you can be off-center by a chair or two. Sometimes the shape of the table or room gives you the opportunity to be on adjacent sides with your opponent, rather than dead opposite.
- ✓ Consider who should be closest to the door and who should be closest to the phone. If you expect to use the phone or to have people huddling outside the negotiating room, these positions can be positions of power. The person nearest the phone generally controls its use. The person nearest the door can control physical access to the room.
- ✓ Windows and the angle of the sun are important considerations, especially if the situation generates heat or glare.

In your boss's office, avoid the seat where you normally sit to take instructions. If your boss has a conversation area, try to move there for the discussion about your concerns or raise. Sofas are the great equalizers. If your boss is firmly planted behind the desk, do two things:

- ✓ Stay standing for the beginning of your presentation so that you are meeting at eye level.
- ✓ When sitting, move your chair to the side of the desk – or at least out of its regular position. You want to make the statement that this is a different conversation than the normal routine of your boss assigning you a task.

MAKING IT EASY TO LISTEN

When deciding where to negotiate, be sure that both sides can listen to everything that's said. If your negotiating environment includes constant interruptions or overwhelming noise, listening may not be possible, no matter how hard you try to do so.

A quiet atmosphere without distractions or interruptions is highly recommended for effective negotiations. Sometime you might want to suggest either a different location or setting to establish the environment that helps both parties' listen to the negotiations.

SETTING THE AGENDA

Creating the written agenda can be as important as the negotiations.

- ✓ Write out all the things you want to talk about and everything you want to find out that you don't already know.
- ✓ Check off the items you want on the written agenda
Information you want to extract from the other side goes into your private notes, not on the written agenda that goes to everyone at the table.
- ✓ When you know what you want to talk about, determine the order.
Starting a session with things that are less emotional and easier to reach a consensus on is usually best. (Best example is the book called "Getting to Yes"), the Psychology of sales techniques it to get the client starting to say yes, and continue that process until you are into the negotiations, then saying yes from the counterpart's side becomes much easier when closing the deal.
- ✓ Make copies of the agenda for everyone at the meeting.
Make extra copies for people who want to attend but could not or were not included. Make extra copies for note taking and filing.

LEAVING ENOUGH TIME

Many negotiations fail because one side or the other doesn't plan on the length of time it will take to negotiate. If you are planning a negotiation make sure that you allow yourself ample time to complete the negotiations. If you are limited on time at the beginning of the negotiation, you need to inform your counterpart of this time constraint failure to do so could result in damage to the negotiations and possibly the relationship.

If this is an extremely important negotiation, plan on several extra hours of negotiation and possibly days of continuance. Scheduling other events or meetings well after the proposed negotiations will only help you feel relaxed and not rushed. If you are successful early on, then you can reschedule your other appointments.

One of the biggest mistakes negotiators make is planning something else to close to the negotiations and then trying to hurry the process along. There is a cliché **"SPEED KILLS"**, that is very true in negotiations.

PREPARING YOURSELF

A is for Alert

- ✓ To negotiate at your best, you must be well-rested and alert:
- ✓ You're more likely to be quick-witted and able to respond to questions or attacks.
- ✓ Your concentration and ability to listen are improved
- ✓ You won't be rushing to tie things up so that you can get home or get to bed.

DRESS FOR SUCCESS

Dressing professionally in business negotiations is a key to taking the negotiations seriously. Don't dress to distract. You are in a negotiation, you want people to listen and you need their eyes as well as their ears.

Wild or sports cloths maybe fun on the beach, but it has no place in a business negotiation. Distractive outfits may get you noticed away from the office, but seldom help in a negotiation. Women should be aware that oversized earrings distract as well as low cut blouses. This tends to become obvious to the other side you might have a weakness in your negotiations and that you are trying to compensate for the weakness by using distracting cloths. You want your counterpart to see you as focused and professional.

PREPARING FOR A SESSION WITH SOMEONE FROM ANOTHER CULTURE

If you need a translator for the negotiation tell the other party in advance plan on hiring an outside translator, and if both parties need the translator, both should hire their own. It is not a good idea for both parties to use the same translator.

- ✓ Simultaneous translation: Working with simultaneous translators is expensive, but it's interesting experience. You feel as though you are at the United Nations. It's a little like being inside a badly dubbed movie. You have to watch the speaker for body language and the facial expressions. For the words – usually delivered in a sort of monotone – you listen to the translator who is about two beats behind the speaker. As expensive and impractical as simultaneous translation is, the measure does lend importance to the negotiations.
- ✓ Consecutive translation: Much more common is the consecutive translator (also called a delayed or sequential translator). This type of translator listens to a response and then summarizes it for you in your language. Never hire such a person unless you carefully check references, preferably with people you know well. You need loyalty, confidentiality, strong technical skills, and a detachment from what is going on.
- ✓ Follow these guidelines when using a translator:
- ✓ Never share a translator with the other side
- ✓ Leave plenty of time to brief the translator before the negotiation begins.
Treat the translator like a professional
- ✓ Never crack jokes for the interpreter to translate
- ✓ Don't use slang expressions.
- ✓ Speak in short sentences and use simple words.
- ✓ Never raise your voice.

Be alert to the possibility that the translator may be taking too big a role in the meeting, sometimes rising to the position of some sort of broker or agent. The biggest indicator that this may be happening is that the translator and the other subject will be talking back and forth without including you. If this should happen by just telling the translator ***“not to get out in front of you”*** or ***“get ahead of you”*** will in most situations remedy the problem.

How quick to the Chase

Be very sensitive about how quickly you turn the meeting from the informal to the business at hand. Every culture has its subculture, and even within that, individuals vary. Take the lead from the opposing party. Don't launch right into business unless you know that is what is desired. When in doubt, go slow.

SETTING LIMITS

What it means to set limits. Your limits define what you are willing to give up in order to get what you want. Setting limits means establishing the point at which you are willing to walk away from the negotiations and pursue some alternative course.

Your limit may be the highest price you will pay or the amount you will take to settle the negotiation.

Setting your limits in advance of the negotiations can help you maintain control over anger or disappointment.

Four easy steps to setting limits

- ✓ Know when to hold on the negotiation
- ✓ Know when to stick to your demands in the negotiations
- ✓ Know when to walk away
- ✓ Know when it is time to close the negotiations completely

This is all tied to knowledge.

TWO ACRONYMS THAT ARE KEY IN NEGOTIATIONS

BATNA

Best **A**lternative to a **N**egotiated **A**greement, your best results from a negotiation. The best you could hope for if everything works perfect.

WATNA

Worse **A**lternative to a **N**egotiated **A**greement, the worst thing that could happen in a negotiation.

Sometimes the best deal is no deal at all.

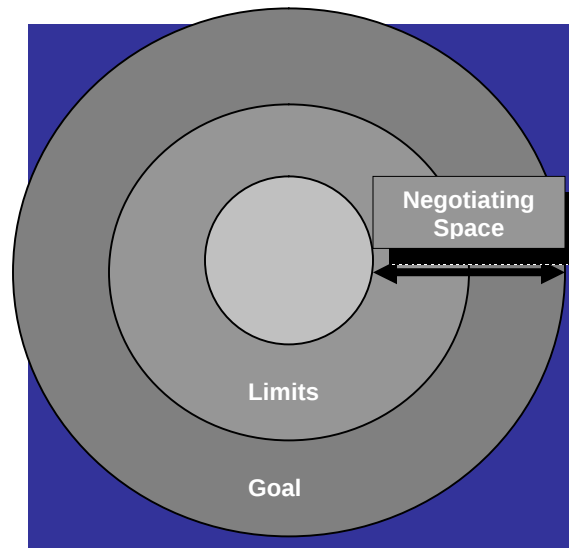
WHO SHOULD MAKE THE OPENING OFFER

There is a statement out there “he who speaks first loses.” that is especially true with negotiations. Usually, the first person to speak in a negotiation is speaking from a weak point. However, if you are the one who has set the stage and entered the first demand, then you will have to negotiate from that position.

Examine this, have you ever gone to a store or sale and looked at something that didn't have a price tag on it, and then went to the seller and said “I will give you this amount for this item”, and then once you purchased it found out that he would have taken less for the item. That happens more often than not, If you experience a seller or buyer that wants to negotiate with you let them make the first offer, sometimes you might be surprised to find out they will pay more, or charge less than you expected, because you let them go first.

I was involved in a mediation where I asked both parties if a demand or offer had been made, both parties acknowledged that there hadn't been a monetary demand made as of yet, so I asked who wanted to start, the Plaintiff's attorney (person suing) jumped up and said we want a million (\$1,000,000) dollars. The other side asked me to meet with them privately and stated “We will settle this dispute today”, I asked what had I missed, the Defense attorney said he just left \$20,000,000 on the table, he didn't have the information that we had two insurance policies and they were expecting to pay \$3,500,000 for this case. In this scenario the person who spoke first lost over \$3,200,000 because he spoke first.

Again, information is power and resistance can be a clever tool in your favor.



Opening offer

Whether the amount you state in your opening offer is higher or lower than the amount of your goal depends on whether you're the buyer or the seller (you determine how much higher or lower through good preparation):

- ✓ If you're the seller, your opening offer should never be lower than the goal you set.
- ✓ If you're the buyer, the opening offer should never be higher than the goal you set.

Don't chisel your goals in stone, because other factors could change your goal, alternatives to solutions and negotiations can come in many different forms. Examples of altered negotiations, you want to buy a house, and the owner is fixed on the price and you feel that it is over your budget, however you notice a really nice older car in the drive way and you jokingly say throw in the car and you have a deal, to your surprise the owner agrees, and you have a deal. Some settlements can turn out entirely different from your perceived original goal.

WHEN TO PAUSE

Too often than not, people involved in a negotiation can become stressed or pushed, that is the time you should hold and just sit there to determine the next step. There is never a time to rush things. Emotions can cause you to not think clearly, and often cause you to make the wrong decisions.

HANDLING HOT BUTTON ISSUES

Hot buttons are stimuli that trigger an action, response or movement of resistance and cause you be tempted to go out of control. To negotiate masterfully, you must stay in control of your emotions. This means having the confidence to take control in the first place and the skill to channel your emotions effectively as the negotiation progresses. You can usually do this – with one exception – when people or situations push your hot buttons.

ANGER HOT BUTTONS

Negotiations can lead to the risk of becoming upset with the actions, arrangements, or the people associated with the negotiation. You can avoid these situation by keeping your comments in check, such statements as you are wrong, can move the level of stress higher in both parties. It is much better when expressing emotions to use "I", for example I feel angry because of this step you have taken, and can we discuss other alternatives to your recommendation. Avoid YOU statements, as it appears to place blame or accuses the other party.

LISTENING BEST QUESTION (DO YOU HEAR WHAT I HEAR)

How often have you heard a joke or funny story and tried to re-tell it to someone else and find you can't remember all the details and the story or jokes comes out a flop. This is one of the biggest mistakes in negotiations, failing to understand what the other party says. Hearing only what you want to hear and not the actual message being transmitted.

Active listening in a negotiation is demanded and is not an option. Listening appears to be passive however the reality is that it is very active and failure to pay attention can cause you to miss valuable information.

Avoid, environments that are noisy, busy or have lots of interruptions such as people entering and exiting the room, telephone constantly ringing, or other distractions that might cause you to miss the message of your counterpart.

When a key statement is made it is always advisable to rephrase it directly back to the party for clarification and to make sure that you understood exactly their meaning.

The reason most people don't listen more effectively is that they don't want to listen. They just want to talk. You must decide that listening is worth doing; and then you must do it.

Our society values good listeners however most people fail when it comes to listening; they are too busy, too distracted or too talkative themselves. Yet most people claim to be good listeners. It requires a considerable amount of practice and control, control to prevent you from interrupting people.

Naturally in listening when a conflict occurs most people become defensive, don't compound the situation by adding fuel to the fire. Avoid remarks such as "Yeah, but", it tends to aggravate the other party. Again, the use of "I" tends to remove the hostility usually associated with a conflict and difficult negotiation.

TIPS FOR BECOMING A GOOD LISTENER

1st simply clear away any distracting thoughts you might be harboring, mind clutter can be one of the worst distractions to listening. So often we confuse good listening with just hearing. Good listening, is the retention of information, good hearing is that you can hear noise at various levels. Good listening requires focus, reduced distractions, directive conversations and reflective conversations. Clear the way for good communication and negotiations, YOUR MIND, YOUR DESK, OR WORK AREA, YOU NOISE LEVELS, and YOUR DISTRACTIONS. Once cleared then you have still just a 50/50 chance of retaining all the information being processed from your counterpart. Because, we hear at over

400 words per minute and are only capable of talking at a range of 140-200 words per minute.

We create our own distractions with our mind.

You should do the following when you are negotiating:

1. Uncross your arms and legs
2. Sit straight in the chair
3. Face the speaker full on
4. Lean forward
5. Make as much eye to eye contact as you can

Communication between Sexes

When Women Listen to Men

Don't talk when he's talking – Many women think that because they are marrying their best friends, they can talk to their husbands the same way that they talk to their best women friends. As their husbands talk to them, they interject comments, usually, the husband abruptly stops talking. The women, confused by this response, ask what is the matter, and the husbands accuse them of interrupting.

The women don't think that they're interrupting, they think they are *adding*. For women to add to each other's sentences is acceptable. However, most men need a space in which to enter a conversation, and they want to keep their space until they are finished talking.

Listen silently instead of vocalizing little affirmations such as "uh-huh," "oh, yes," and "wow, yeah." Women use these phrases to encourage the speaker to keep talking. A woman speaker interprets these comments the way they are intended. A male speaker may view them as an interruption.

Another problem is that sometimes, when you verbalize such affirmations, a man thinks that you are agreeing with the content of what he is saying rather than letting him know you understand what he means.

Believe what he is saying. If we had a dollar for every time a woman told us, "He said this, but here's what *I* think he meant," we'd be rich. Many women believe men speak on many levels, and they try to find hidden meanings. In my experience, men usually say what they mean and mean what they say, and they expect women to do the same. They don't spend two minutes of their time calling another guy to say, "Here's what she said at breakfast this morning – what do you think she meant?"

Be patient. A man's pace may be different from yours. He may talk more slowly or pause more often than you do. Let his thoughts flow. Don't speak during his pauses.

When Men Listen to Women

Listen to her all the way through. Sometimes, women talk in order to process information or to figure out what they want to do, instead of thinking in silence and then stating a conclusion. If you sense that this is happening, just let her thoughts progress. Don't rush her – prompting her interrupts her thought process and causes her to feel slighted.

Give her your full attention. Don't just look at her once in awhile, and keep on doing what you were doing. Completely stop the task you are doing, face her and listen completely. This response will show the female listener that you are paying attention to her and that she is important rather than a distraction to what you are already doing.

Be Patient. Her pace may be different from yours. She may want to cover more subjects in the same conversation than you do. Remember that men and women communicate differently. Make an effort to accommodate those differences.

We all tend to be half hearted listeners to some degree, thinking that we can do two or three tasks at the same time that we are listening to someone. Men have a tendency to read papers, work on a computer, answering phone calls, while we are in the middle of a conversation with women, sometimes not respecting them as we should. However, women on the other hand, have that tendency to try to help men along with their conversations. So in summary of communication with the opposite sex, remember patience, full attention is key to a successful negotiation.

Asking Question: A Real Power Tool

Plan your questions in advance. Prepare what you're going to ask about but don't memorize the exact wording, or you'll sound artificial. A script is too restrictive to flow naturally into the conversation. However, it pays to outline your purpose and a sequence of related questions. If you plan ahead, you can follow the speaker's train of thought and harvest much more information. Pretty soon, the speaker is comfortably divulging information. The question-and-answer format acts as an aid rather than a block to good communication.

Ask with a purpose. Every question you ask should have one of two basic purposes: to get facts or to get opinions. Know, what your goal is and go for it, but don't confuse the two concepts.

THE TWO GOALS OF ASKING QUESTIONS

To Get Facts

To Get Opinions

"When did you begin work on the plan?"

"How good is this plan?"

"How many employees are available?"

"Will the schedule work?"

"What are the dimensions of the office?"

"What do you think of the design?"

"Which car reached the intersection first?"

"Who caused the accident?"

Tailor your question to your listener. Relate questions to the listener's frame of reference and background. If the listener is a banker, use banking examples. If the listener is young, make references to areas they would be interested in and hit home with those interests. Don't try to dazzle the person you are trying to negotiate with, with terminology that is too technical for them or terminology they can't relate to.

Follow general questions with more specific ones. These specific inquiries, called follow-up questions, generally get you past the fluff and into more of the main stream information. This progression is also the way that most people think, so you are leading them down a natural path they can understand.

Keep questions short and clear – cover only one subject. By keeping your questions short you are helping the other party understand your questions, as our minds tend to work in a burst mode. Meaning short concise sentences are easier for us to comprehend and process. Questions are just another way to lead

people into telling you what you want to know. If you really want to know two different things ask two different questions, not a compound sentence. Short questions may take more effort but the results will be better clarity for your question. This is like the starter on most cars, as will people once you get it going it just starts running on, the communicator will volunteer information without you having to ask. **This is probably the most important time for you to listen intently; this is where key information can be obtained on the weakness or strengths of the other party's position.**

Make transitions between their answers and your questions. Listen to the answer to your first question. Use something in the answer to frame your next question. Even if this takes you off the path for a while, it leads to rich rewards because of the comfort level it provides to the person you are questioning. This approach also sounds more conversational and therefore less threatening. This is one reason I urge you to plan your questions, not to memorize them.

Don't interrupt; let the other person answer the question! (Beware) A sharp negotiator may try to use a series of questions to compel you toward a specific conclusion. Each question is designed to elicit a positive response – a “yes.” This sequence of questions leads to a final query posed in the same manner. When you respond in the affirmative to this final question, the negotiation is complete – and you have agreed to your counterpart's terms.

(Tip) Some people use questions to intimidate or beat up on others. Someone may ask you, “Why in the world would you want to wear a hat like that?” You may be tempted to take off the hat and use it to pummel that person. The best answer, in such cases, is no answer. Let a few seconds go by and then go on without answering or acknowledging the question. Some conduct is unworthy of any of your time or energy and don't require a response. Don't try to educate such a person on the niceties of living in a civilized society. It won't work. Keep your eye on your own goal and ignore the diversion.

Key Points

- Don't assume anything
- Avoid leading questions (Example “Isn't the usual price XYZ?”)
- Ask open-ended questions
- Ask again
- Don't waste your questions
- Accept no substitutes
- Don't tolerate the dodge or avoidance of answering the question
- Don't accept an assertion for the answer (usually when you are asking for commitment the other party doesn't want to answer)
- Don't allow too many pronouns (he, she, they especially they)
- Look for evidence of listening (such things as un-huh or that's interesting, sometimes can mean the party is not paying attention)

Let the silence begin – “He Who Speaks First Loses”

Most everyone knows how to listen; most people just aren't willing to listen enough of the time. They aren't clear on when to listen.

There are so many stories about the salesperson that talks too much and talks the customer right out of the sale. Silence can be your best tool. Many negotiations change direction in favor of the other party simply because the one side choice was to be quite longer than the other side. With most business people, silence is an area of uncertainty and fear. When a good negotiator asks a question, they stop and wait till the other party responds, at this point in time negotiations are critical. If you don't wait for a response, and add something else, you confuse the listener and weaken your position. Many good deals become bad deals when one party talks too much in the negotiation phase.

Your Inner Voice Is Your Best Friend

Your inner voice is your intuitive self talking to you. Call it a hunch, intuition, or sixth sense, don't ignore it. You tend to be more honest with yourself, when you listen to yourself you tend to be more honest and ethical in your dealings with others.

Your inner voice is most adept at sending messages of warning. In another word, **“this deal doesn't smell right”** or something doesn't seem to follow the logical path of good business. **“Seems too good to be true”**, another statement that you usually think but won't say out loud.

The problem with listening to your inner voice is agreeing with it and not discounting its importance.

Hearing Two Voices

You know, the two conflicting voices in your head, the “I want to” (usually the selfish side) versus the “I Know better” (More practical side). This is where you have to let your more practical side rule. Sometimes we all have selfish interests in the deals we negotiate, from the purchase of a new car, to the purchase of a business. Personal issues come to play in most all negotiations, if you are negotiating for your company, the selfish interest might be “will this make my job more secure, will I be praised, will I get a raise, on and on”, as apposed to the Practical side saying is this a good deal for my company, should I walk away, are the terms satisfactorily stated as to insure a good agreement.

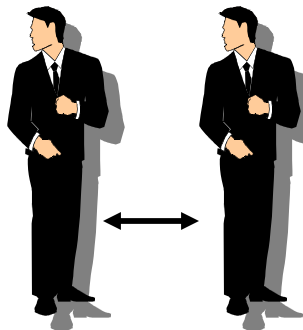
Pre-buyers remorse

If you start having pre-buyers remorse before you close the negotiations then stop everything, because there usually is a problem.

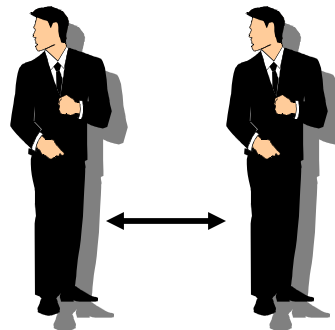
Body Language

Everyone has heard about books teaching body language and how to interpret someone's crossed arms, legs, the position directed toward or away from you.

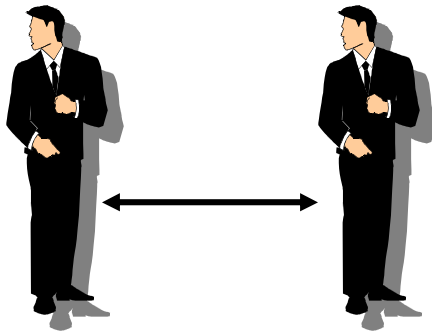
First lesson is to know where to stand. The most important single observation you can make about a room full of people is the personal space each person commands. During conversation, for example, people don't lean closely into the space of an important person they think has greater standing than they do (either in wealth, influence, power, or social status).



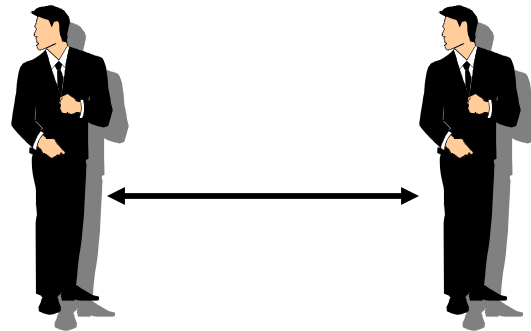
Intimate 6" – 18"



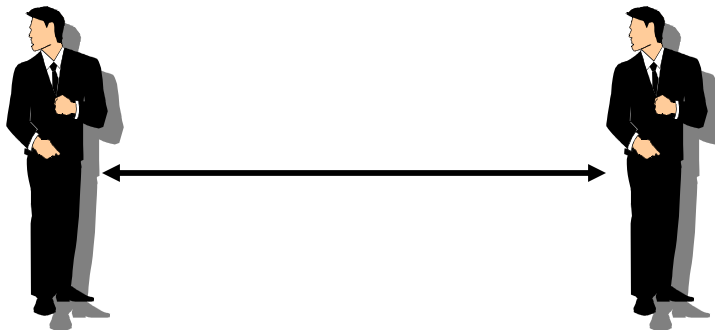
Informal personal distance 1 – 1 ½'



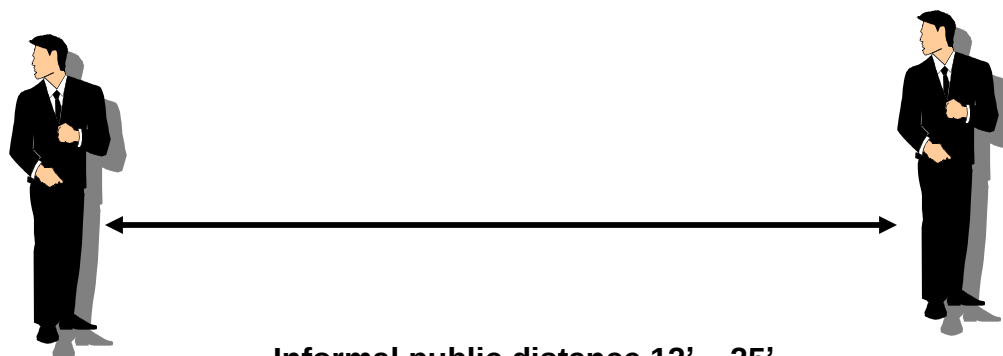
Formal personal distance 2 ½' – 4'



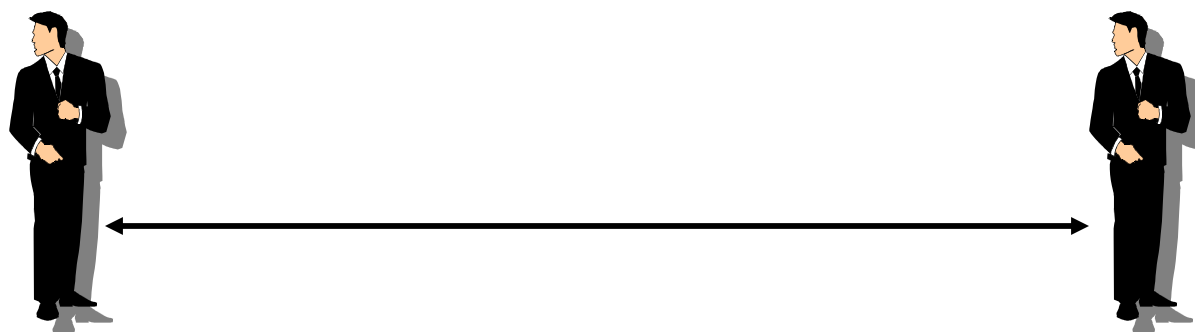
Formal social distance 4' – 7'



Informal public distance 7' – 12'



Informal public distance 12' - 25'



Formal public distance more than 25'

Knowing where to stand is important.

Making the first contact is as important as anything, showing the party your interest in them and with good eye contact and body language. A good firm handshake represents a positive first impression.

Body Language of Receptive and Unreceptive Listeners

Body Channel	Receptive(Positive Cues)	Unreceptive (Negative Cues)
Facial expressions And eyes	Smiles, much eye contact, more interest in the person Than in what is being said.	No eye contact or squinted eyes, jaw muscles clenched, Checks twitching with tension Head turned slightly away from the speaker so the eye contact is a sidelong glance.
Arms and hands	Arms spread, hands open on The table, relaxed in the lap, or on the arms of a chair, hands touching the face.	Hands clenched, arms crossed in front of the chests, hand over the mouth or Rubbing the back of the neck.
Legs and feet	Sitting: legs together, or one In front of the other slightly (as if at the starting line of a race). Standing: Weight evenly distributed, Hands on hips, body tilted toward the speaker.	Standing: Crossed legs, pointing away from the speaker. Sitting or standing: Legs and feet pointing toward the exit.
Torso	Sitting on the edge of the Chair, unbuttoning suit coat Body tilted toward the speaker	Leaning back in the chair, suit coat remains buttoned

Receptive people look relaxed with open hands, displaying the palms, indicating openness to discussion. The more of the palm that is visible, the greater the receptivity of the person. They lean forward, whether they are sitting or standing. Receptive negotiators unbutton their coats.

By contrast, people who aren't willing to listen may keep their hands on their hips, lean back in the chair, or protectively fold their arms across their chest. People who aren't receptive clench their hands into a fist or tightly grip some other body part. Having one leg on the arm of a chair often appears to be an open posture, but watch out; more often, this position signals a lack of consideration. Studies show that parties are more likely to reach an agreement if they begin a negotiation displaying receptive body language.

Closing the deal, often means physically closing in on the person with whom you're negotiating. Consider the insurance salesperson that physically leans into the buyer's space with an assuring nudge for them to sign the application.

Control through Clarity

Being clear, on communication is as important as listening. Being clear doesn't mean revealing your position, being clear simply means that when you speak, write, or otherwise communicate, your listener understands your intended message. Most people add too much clutter to a conversation, thinking they are clarifying their information, when in most cases confusing the issue. Keeping it simple and to the point is most effective. Short spurts of information that helps your other party clearly understand your message is far more important than a lengthy description.

Being Clear – 7 Points to Remember

1) Set the climate.

Be sure you're in a place conducive to concentration at a time when the other party is free to pay attention. Listen to your words as you set the tone. A hurried person may unwittingly say "Now this is a simple mindless task; that's why I'm giving it to you." Would you take that message if it was given to you as a compliment and a motivational statement? Probably not!

2) Give the big picture.

Describe the overall objectives. People need to see where their part fits into the whole to feel like they are a part of the higher goal.

3) Describe the steps of the task.

This is the important information of the delegation discussion. In negotiation that might mean the steps it will take to close a successful negotiation. You will still need to go over these steps, however briefly, to assure yourself that the other parties understand your thought process. Steps can be pre written, if a plan of action is required to finalize the negotiations, example, construction of building, would require design, contractor selection, site preparation, or similar steps that are part of the negotiations.

4) Cite resources available

Point out comparisons of other types of negotiations the similarities or maybe the differences to create a better sense of reality to the negotiations.

5) Invite questions.

Clarity is gained from clearer understanding and if you have the slightest question unanswered about the negotiations, this one unanswered question could be the demise of the entire process. Better to spend time on answering questions than trying to fix problems at the end.

6) Get the person to summarize his or her position

Clarity from your position is as important as the other side's clarity. Make sure you have a clear understanding of all the segment of the negotiation prior to closing the negotiations. Either successful or unsuccessful you must have all your questions answered.

7) Agree on all the details

Many negotiations fail because someone doesn't pay attention to the details, or assumes the meaning of a term, when the definition is quite different for their understanding of the meaning. Clearly stated, understand all the facets of the negotiations.

WIN-WIN Negotiating

You are about to end the negotiations, either by closing a deal or walking away from it. Take a moment – push the pause button. If you are going to close the deal, be sure that the deal is positive for both parties. If you are thinking about walking away from the negotiations, be sure that you aren't overlooking some way to achieve a mutually satisfying outcome. This may be the most valuable moment in the entire negotiation.

Win-Win negotiating is a deal that satisfies both parties. In an ideal world, a win-win agreement is the only kind of deal that would ever close.

Good Deal – Bad Deal

A good deal is one that is fair under all circumstances at the time the agreement is made. It provides for various contingencies before problems arise. A good deal is workable in the real world.

What is and isn't fair is very subjective. The parties must decide for themselves whether an agreement is fair based on their own criteria. Make sure that everyone is in agreement. Draw the other side out on this basic point before closing the deal. You don't want to sign a deal with someone who is harboring resentments over some aspect of this agreement. Be sure that the other side agrees that the deal is a good one.

A bad deal is not fair under all the circumstances. It allows foreseeable events to create problems in the relationship after the deal is struck. Some aspect of the agreement looks great on paper but simply doesn't work out in the real world – for reasons that were predictable during the deal-making process.

To be sure that you have a good deal and a win-win situation, take a break just before closing (take a break then ask yourself six questions)

- 1) Does this agreement further your long-range goals, either personal or professionally? Does the outcome of the negotiation fit into your own vision statement?
- 2) Does this agreement fall comfortably within the goals and the limits you set for this particular negotiation?
- 3) Can you perform your side of the agreement to the fullest?
- 4) Do you intend to meet your commitment?
- 5) Based on all the information, can the other side perform the agreement to your expectations?

- 6) Base on what you know, does the other side intend to carry out the terms of the agreement?

In the ideal situation, the answer to all six questions is a resounding YES. If you are unsure about any one of them, take some extra time. Review the entire situation. Assess how the agreement could be changed in order to create a yes answer to each question. Try your best to make the change needed to get a firm **YES** to each question.

When you have **YES** response to each of the above questions. **CLOSE THE DEAL.**

ASKING FOR THE DEAL

Is the final and most critical question? Many negotiators forget to finalize the negotiations, because they are afraid to ask the most important question ***“DO WE HAVE A DEAL”***, fearing that this may drive off the prospective party. However, in most negotiations, each party is waiting to that exact statement, the key is timing.

If you have outlined the benefits and answered the objections clearly, then the logical conclusion is to ask to finalize the negotiations. Do not hesitate in this critical moment. Your strength comes from asking or being the initiator of the question. Unlike, going first shows some weakness, going for the close strengthens your position and forces the other party to make a decision. This will help you understand if the other party is in agreement with you or still has some reservations about the deal. Should the other party have concerns, what better time to address them.

THERE IS AN OLD SAYING **“ASK AND YOU WILL RECEIVE”** either good news or bad, you will know where you stand.

Negotiating isn't a science it is a skill easily learned, we learn it from the first minute we are born, and we use it throughout are lives for everything we do, we negotiate for food, shelter, care, work, and love. Business negotiations are just as similar, both parties receive or give something in return for something they need or want.

“Hopefully, this seminar will add to your knowledge, ideas, concepts and understanding, which will help you in your business as well as your personal lives. Additional information is available in advanced courses which teach you one-on-one skills that can sharpen your negotiating techniques to a razor sharp edge.”

-Dr. Jerry Hall, J.D.

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International Association of Mediators – Arbitrators
Texas Association of Mediators
Texas Bar Association – Alternative Dispute Section
Texas Round Table – Alternative Dispute Resolution Section
American Bar Association – Ethics, training in Alternative Dispute Resolution
Mediator for The U.S. Department of Justice
Mediator for the U.S. Postal Service
Mediator for The Equal Employment Opportunity Commission
Mediator for U.S. Immigrations
Mediator for Texas Department of Criminal Justice
Mediator for National Aerospace Science Administration (NASA)
Mediator for Texas Department of Transportation
Trainer for Texas General Services Commission
Trainer for Office of the Governor for Texas
Trainer for U.S. Postal Service
Trainer for Occupational Safety and Hazard Administration (OSHA)
Trainer for Texas Department of Criminal Justice
Trainer for Railroad Commission Texas
Key note Speaker for the Commission on Conflict Resolution Conference in South Carolina where he was one of the mediators that negotiated the settlement between the African Americans against the confederate flag flying over the capitol and the White's for keeping the confederate flag flying over the capitol. This mediation was resolved and both parties agreed that it was an acceptable alternative.

Mediation Questions & Answers

What is mediation?

During the last 15 years, mediation has grown into one of the most popular alternatives for resolving civil disputes in the United States. Many lawyers, insurance companies, risk managers and legal departments now use mediation on a day-to-day basis to help resolve claims and litigation as quickly and efficiently as possible. Across the country, United States Arbitration & Mediation (ADRSI), through its local offices, successfully mediates many thousands of disputes each year in a wide variety of legal areas.

At a mediation session, the disputing parties meet with an impartial person, the mediator, to attempt to reach a mutually acceptable settlement. There are no formal court procedures or rules of evidence, although careful pre-mediation preparation and organization are crucial to a successful mediation outcome. Unlike a judge or arbitrator, the mediator has no authority to render a decision or force the parties to accept a settlement. Yet in the great majority of cases, the training and ability of a professional mediator can help achieve a final settlement of the matter which would not otherwise be possible.

What types of disputes can be resolved through mediation?

All kinds. Mediation has been successfully used for tort claims, commercial and business disputes, construction issues, employee grievances, environmental claims, professional malpractice allegations, product liability claims, maritime issues, insurance coverage disputes, real estate interpretations, partnership dissolutions, securities-related disputes, domestic relations matters, and workers' compensation claims.

It makes no difference whether liability is admitted or hotly contested, whether the case is in litigation or not yet filed, or whether the dispute involves a few thousand dollars or many millions of dollars or issues other than money--mediation have proven effective in all of these situations.

What are the benefits of mediation?

Settle disputes now. Almost every case will settle prior to trial. So the real issue is not *if* a case will settle, but *when*. A mediation session has the effect of getting settlement negotiations focused much more quickly than if the case proceeds to trial. Proposing mediation is an excellent way to get settlement discussions moving in the right direction and away from court.

Save money. An early settlement naturally saves litigation expenses and other costs related to managing the dispute.

Maintain control. Mediation differs from arbitration or trial because the mediator does not make a decision or force any party to accept a settlement. When you agree to mediate a dispute, you are only agreeing to attend the mediation session and participate in a good faith effort to settle the matter. Consequently, you are always in full control of the outcome.

Improve everyone's understanding. The mediation session is designed to educate everyone about the legal and factual issues involved in the dispute, and this can be particularly helpful to people who are unfamiliar with the litigation or claims process. For example, many attorneys have told us that their clients would not have accepted a reasonable settlement offer had they not attended a mediation session.

Informally explore settlement options. Because of the confidential nature of private meetings, often referred to as 'caucuses,' the mediator can explore settlement options without exposing your final position. This can remove the "posturing" that takes place during traditional negotiations.

Organize multiple party negotiations. The mediator can play a major role in simply organizing the discussions. The mediator can work closely, and confidentially, with each side to explore settlement possibilities and put a settlement package together.

Preserve continuing relationships. Mediation is particularly appropriate in situations in which the disputing parties will be working together *after* the dispute is resolved. Some examples include construction projects, commercial leases, partnerships, business suppliers, and employment relationships. Mediation allows the parties to stay on the best terms possible by doing everything they can to settle their dispute as quickly and easily as possible.

How is a mediation case started?

Typically, one party to a dispute will contact the nearest ADRSI office to initiate mediation scheduling efforts or propose mediation to the other parties. As a general rule, the parties have discussed the possibility of mediation prior to contacting ADRSI, although it is always an option to have ADRSI initiate the contact about mediation. In some situations, ADRSI, as an impartial organization, might have a greater chance of gaining the parties' participation in mediation. Because mediation is such a sensible process, ADRSI administrators are usually successful at convincing everyone to participate. Under the ADRSI Fee Schedule (which varies by office), there is generally no administrative fee charged if a necessary party

declines to participate in mediation.

Mediations are conducted in accordance with uniform ADRSI Mediation Procedures.

What takes place at the mediation session?

All parties to a dispute will be present at the mediation session. For example, participants in a typical personal injury case usually include the plaintiff and the plaintiff's counsel, an insurance company representative, possibly a defense attorney, and the mediator. In a commercial case, the owners and/or managers would attend, along with their attorneys.

All parties, representatives and the mediator first meet in a joint meeting format. After introductory remarks by the mediator and the signing of the Agreement to Mediate (if not already signed earlier), each party is given the opportunity to explain its position in the presence of the other participants. These short and informal opening statements, typically no more than ten to twenty minutes long, are a starting point for the mediator to gain an understanding of the case.

After the joint session, the mediator will meet with each side individually. These separate meetings, called caucuses, are confidential. In each caucus, the mediator will discuss the risks of the case -- best and worst outcomes, quality of evidence and the costs of litigation. The mediator will also explore possible settlements. It is common for the mediator to go back and forth between the parties for a number of private meetings, just as the mediator may bring the parties back together for joint discussions. If the mediation results in a settlement, the parties may choose to draft a formal settlement agreement.

What if the case doesn't settle?

Most cases will settle at the mediation session or shortly thereafter. If a settlement is not reached at the mediation session, the mediator may continue the discussions by telephone, and in some cases the parties may elect to have a second session. If a full settlement is not reached, the parties are free to pursue other options such as arbitration or litigation. Parties whose cases don't settle in mediation at ADRSI do not pay any additional administrative fee to proceed with arbitration through ADRSI.

How to prepare for a mediation session

Preparing for a mediation session is much easier than preparing for an arbitration or a trial:

1. There are no pre-session pleadings required, although in a more complex

case the parties may wish to furnish the mediator with a short brief or explanatory document that were prepared for another purpose.

2. Prior to the mediation session, all parties should have obtained sufficient information to make settlement decisions. It is common for ADRSI and/or the mediator to help with informal information exchanges. Please make ADRSI or the other parties aware of any information you need prior to the mediation session.

3. A critical element of a successful mediation is that each side must be represented by a person with adequate authority to settle the case. This typically means that clients, business managers, etc., should attend.

4. A ten to twenty minute *opening statement* should be prepared. Keep in mind that this is an excellent opportunity to talk directly to the other side. Representatives should consider whether their clients should participate in this presentation (e.g., how the accident or dispute has affected them).

5. Obviously, you need to be prepared to discuss the details of your case. Have quick access to needed information.

How much will mediation cost?

No *filing fee* is required upon initial submission of a case. ADRSI offices charge a basic administrative fee and hourly or per diem fees for the mediator's time, which will be pre-collected at the time of scheduling or billed after the mediation is concluded.

In many cases, the parties agree to divide the mediation costs, although it is not uncommon for one party to pay the entire cost. There must be a clear fee agreement prior to the mediation session taking place.

Consult the ADRSI Fee Schedule for more information.

How is mediation different from arbitration and settlement conferences?

Arbitration involves the presentation of evidence to an arbitrator for a legally binding decision. Arbitration can be effective, but it is generally more time consuming and expensive than mediation, plus the parties give up control of the outcome (although high-low agreements can be used to provide a limited range for the decision).

In a judicial settlement conference, parties submit informal evidence to a judge for an advisory decision. However, any time an outside party is rendering an opinion, particularly about case value, there is a risk that one

party will strongly disagree with the opinion and the other party will be *locked in* to a settlement at that figure. This can actually impair further settlement efforts. Remember that almost every case settles anyway, so the role of the neutral should be to help parties move toward settlement. For this reason, mediation is often preferred to arbitration or settlement conferences.

What cases should be sent to mediation?

As discussed in previous sections, any type of case can be mediated, and there are often many benefits to mediating. ADRSI has developed a checklist of characteristics for selecting cases for mediation. Each ADRSI office also provides in-house training in how to identify mediation cases.

How are mediation clauses used?

Many businesses and attorneys are routinely inserting mediation clauses into contracts. By using such a clause, the parties are pre-agreeing to use mediation in the event of a dispute.

For further information

ADRSI has a library of mediation related articles, video tapes and other materials that are available upon request.

ADRSI also provides in-house training in Advocacy in Mediation and other ADR topics. We would be happy to furnish you with references.

Selecting Cases To Send To Mediation

Mediation works because it (1) brings the parties to the bargaining table; (2) educates the participants; and (3) lets the mediator work behind the scenes to develop a settlement.

Does the case have any of the following characteristics? If so, click in the appropriate boxes:

- ☐ 1. It has been 3 months since the parties discussed settlement; or the case is over 2 years old.
- ☐ 2. Your phone calls or letters to the other side go unanswered.
- ☐ 3. The other side is not furnishing you with the information you need to discuss settlement.
- ☐ 4. You/or the other side are having 'client control' problems -- 'I believe your settlement figure is in the ball park, but my client (or insured) will never accept it'.
- ☐ 5. You're fairly sure that a lawsuit will soon be filed.
- ☐ 6. The case is in litigation and a substantial round of discovery is coming up.
- ☐ 7. The case is in litigation and it is time to begin preparing for trial.
- ☐ 8. The case involves a large number of parties, and you are having trouble putting together a comprehensive, global settlement.
- ☐ 9. The case involves co-defendants or co-plaintiffs who are unable to agree among themselves on settlement positions.
- ☐ 10. One party to a case--or his/her attorney--is driving up everyone's litigation costs by engaging in unnecessary discovery or procedural maneuvers.
- ☐ 11. You are handling numerous similar claims.

- ☐ 12. The disputants in a case have an ongoing relationship--such as partners or other business associates--and you are concerned that the dispute--particularly litigation--will impair their ability to work together in the future.
- ☐ 13. The case's settlement value is less than what it will cost you to take the case to trial.
- ☐ 14. Your negotiations have broken down, and you are going to incur a substantial amount of expenses before the next round of negotiations would normally occur.
- ☐ 15. While the stated offers and demands are far apart, your experience tells you that this case will settle.

ADR Services International, Inc. obtains the parties' agreement to mediate, provides the mediator, schedules the mediation and can provide the venue. To submit a case, you simply contact the nearest ADRSI office by e-mail, fax or telephone. **You do not have to get the other parties to agree before sending the case, and we do not require any pleadings, briefs, or position papers at or prior to the mediation.**

Selecting Cases to Send to Arbitration

Does the dispute have any of the following characteristics? If so, put a "check" in the appropriate box.

- ☐ 1. The parties have reached their maximum authority for purposes of negotiation.

COMMENT: Whenever the parties have additional authority for movement they should consider *mediation* first. When the parties have reached their final offer and demand, arbitration may be the preferred option.

- ☐ 2. The parties want a binding resolution of the matter.

COMMENT: When parties want a non-binding resolution, mediation is the preferred option. When parties are anxious to have a binding resolution of a matter, arbitration can be sought.

- ☐ 3. The parties believe that the case involves fairly straightforward legal and/or damage issues.

COMMENT: Arbitration can involve a full hearing, much like in the courtroom. Alternatively, arbitration issues can be submitted with written briefs only to the arbitrator and a hearing can be waived.

- ☐ 4. The parties want a decision in a short period of time.

COMMENT: Hearings can be set up fairly quickly. Therefore, the parties can easily have a binding decision within 45 to 90 days from the date the case is submitted. Parties may request that the arbitrator make an immediate ruling at the conclusion of the hearing. Parties can also request the expedited hearing process available at USA&M.

- ☐ 5. The parties want the rules of evidence to be more flexible.

COMMENT: Arbitration involves rules which can be amended or modified by the parties themselves; thus, if the parties want the rules of discovery to be made more flexible they can do so. See [USA&M Rules of Arbitration](#) for general guidelines, and keep in mind that the parties are the ultimate sources for determination of the rules. (Any rules must be in conformance with the local arbitration statute.)

- ☐ 6. The parties want the outcome to be within specified parameters.

COMMENT: Many parties like the "high/low" arbitration format. In a high/low arbitration, the parties specify that the award will be no higher than a certain amount and no lower than another amount. The arbitrators are not usually made aware of the parameters of the high/low, and make their awards based on the evidence. Any award which is not within the parameters of the high/low is then reduced or increased in order to conform with the parameters. High/low parameters are set forth in an independent contract that the parties make prior to the arbitration.

- ☐ 7. The parties have been to mediation, and the case is one of the few that did not settle.
COMMENT: Once parties have participated in mediation, the issues have often been extensively discussed. There may be no reason to wait to get to court and perhaps wait even longer to get a ruling in court. Parties can proceed directly from mediation to arbitration, perhaps with the high/low parameters based on the negotiation stances of the parties at the conclusion of the mediation. The mediator of the case should not usually serve as the arbitrator.
- ☐ 8. The parties believe a hearing would be beneficial, and a rigid hearing like that in the courtroom may be traumatic to the clients or other participants.
COMMENT: Arbitration is much more informal than a courtroom proceeding. The hearing can be held in a conference room in an informal manner. This type of proceeding may be less intimidating to parties or witnesses.
- ☐ 9. Parties or their counsel may wish to limit the amount of time involved in the arbitration hearing.
COMMENT: Parties can specify at the beginning of the arbitration process, through the arbitration contract, that each side will have a specified amount of time in which to present their case. This often encourages parties to get to the heart of the issues earlier, and to conduct whatever discovery is necessary only for presentation of the most critical matters, thus saving discovery costs.
- ☐ 10. The parties may have agreed on a specified amount of damages, but issues of liability must first be decided.
COMMENT: The parties may ask the arbitrator to make a binding award with regard to liability. For example, the arbitrator may determine percentages of liability to be allocated to each party. Once the percentages of liability have been determined, the parties often are willing to agree on a specified amount for damages.
- ☐ 11. The parties need a binding determination on one issue in order to proceed with other issues in the case.
COMMENT: Often it is one issue that is the "stumbling block" to parties' resolving a case. By having an arbitrator make a binding award with regard to a certain issue, the parties may then proceed to negotiate the remainder of the case to settlement.
- ☐ 12. The parties may want an advisory opinion rendered by a former judge or respected attorney.
COMMENT: Arbitration need not be binding. All of the rules of arbitration and procedures associated therewith may be carried out on a non-binding format. In a non-binding arbitration, the arbitrator will give an advisory opinion only.
- ☐ 13. The case involves a large number of plaintiffs whose percentages of recovery must be determined.



COMMENT: An arbitrator can hear evidence and decide what percentage of a recovery each plaintiff is entitled to receive. This can expedite settlement negotiations by the plaintiff's attorney(s), and avoid further problems in determination of each plaintiff's percentage of recovery. The plaintiffs simply agree prior to the arbitration that they will be bound by the percentage of recovery awarded by the arbitrator. The attorneys then proceed to negotiate a settlement on behalf of all the plaintiffs.