

From: *Legal Services Practice Manual: Skills*  
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## Getting to YES Negotiating Agreement Without Giving In<sup>1</sup> – A Summary

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A Note on the Harvard Negotiation Project

<sup>1</sup> By Roger Fisher and William Ury  
with Bruce Patton, editor. 3d edition, 2011.

#### I. THE PROBLEM

##### 1. Don't Bargain Over Positions

Positional bargaining - each side takes a position, argues for it and makes concessions to reach a compromise. Here's a classic example of this negotiating minuet:

How much do you want for this brass dish?

That is a beautiful antique, isn't it?

*I guess I could let it go for \$75.*

Oh come on, it's dented. I'll give you \$15.

*Really! I might consider a serious offer, \$15 certainly isn't serious.*

Well, I could go to \$20, but I would never pay anything like \$75. Quote me a realistic price.

*You drive a hard bargain, young lady. \$60 cash, right now.*

\$25.

*It cost me a great deal more than that. Make me a serious offer.*

\$37.50. That's the highest I will go.

*Have you noticed the engraving on that dish? Next year pieces like that will be worth twice what you pay today.*

And so it goes, on and on. Perhaps they will reach agreement; perhaps not.

A wise agreement can be defined as one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable, and takes community interests into account.

The most common form of negotiation, illustrated by the above example, depends upon successively taking — and then giving up — a sequence of positions.

- Your ego becomes identified with your position. You now have interest in "saving face"

- As more attention is paid to positions, less attention is devoted to meeting the underlying concerns of the parties

- Dragging feet, stonewalling, threatening to walk out, and other such tactics become commonplace and all increase the time and costs and the risk of no agreement at all

- Bitter feelings generated by one such encounter may last a lifetime

- Choosing a soft and friendly position makes you vulnerable to someone who plays a hard position - hard always dominates soft

In principled negotiation, the participants should come to see themselves as working side by side, attacking the problem, not each other

**Any method of negotiation may be fairly judged by 3 criteria:**

1. it should produce a wise agreement if agreement is possible

2. it should be efficient

3. it should improve or at least not damage the relationship

## II. THE METHOD

### 2. SEPARATE THE PEOPLE FROM THE PROBLEM

Recognize that emotions and egos can become entangled with the problem affecting your ability to see the other party's position clearly.

Three sources of people problems:

1. People perceive things differently (most conflicts are based in differing interpretations of the facts);

2. Emotions may run high (especially when interests are threatened); and

3. Communications are faulty (not listening, grandstanding).

• **Clarify perceptions**

- Put yourself in the other person's shoes to understand the problem from their view. Feel the emotional force with which they believe in it.

- Understanding is not the same as agreeing - one can understand perfectly and completely disagree

- Don't deduce their intentions from your fears

- Discuss each other's perceptions

- Look for opportunities to act inconsistently with their perceptions

• **Recognize and legitimize emotions**

- Make emotions explicit and acknowledge them as legitimate

- Allow the other side to let off steam

- Don't react to emotional outbursts: adopt the rule that "only one person can get angry at a time"

- Use symbolic gestures

• **Communicate**

- Whatever you say, you can expect that the other side will almost always hear something different

- Sometimes, parties give up and talk merely to impress 3rd parties on their own constituency

- Listen actively and acknowledge what is being said

- Speak to be understood - put yourself in the role of a co-judge working toward a common verdict

- Speak about yourself, not about them: describe a problem in terms of its impact on you ("I feel let down" instead of "you broke your word")

### 3. FOCUS ON INTERESTS, NOT POSITIONS

The difference between interests and positions is crucial: interests motivate people; they are silent movers behind the hubbub of positions. Your position is something you have decided upon, while your interests are what caused you to decide.

- Ask "why?" Ask for another's interests, making clear that you do not want justification, just a better understanding their needs, hopes, fears, or desires that they serve.

- Ask "Why not?" Identify the basic decision that the other side sees you asking them for, and then to ask yourself why they've not made that decision. What interests of theirs stand in the way?

The most powerful interests are basic human needs: security, economic well-being, sense of belonging, recognition, control over one's life.

- If you want the other side to take your interests into account, explain to them what those interests are.

- Make your interests come alive - be specific!

- Acknowledge their interests as part of the problem - be sure to show your appreciate their interests if you want treatment in like kind.

- Put the problem before your answer: give your interests and reasoning first and your conclusions or proposals later

- Look forward, not back: instead of asking someone to justify what they did yesterday, ask "What should we do tomorrow?"

### 4. GENERATE OPTIONS FOR MUTUAL GAIN

Separate inventing from deciding - invent first, decide later.

- Look for options that will leave the other side satisfied.

- Every negotiation has shared interests. Shared interests are opportunities. Make them concrete and future-oriented.

- Jack Sprat could eat no fat, his wife could eat no lean, and so betwixt them both they licked the platter clean.

- Look for items that are low cost for you but high value for them, and vice versa.

- If you place yourself firmly in the shoes of your opposite number, you will understand their problem and what kind of options might solve it.

- If you want a horse to jump a fence, don't raise the fence.

- It is usually easier to refrain from doing something not being done already than to stop an action already underway.

- Making threats is not enough. Offers are usually more effective.

- When planning, write out 1-2 sentences on what the most powerful critic on the other side might say about your proposal.

### 5. INSIST ON USING OBJECTIVE CRITERIA

The final step is to use mutually agreed and objective criteria for evaluating the candidate solutions.

- Negotiate on the basis of objective criteria and NOT either side's will.

- Possible sources of objective criteria include scientific findings, professional standards, or legal precedent.

- Rather than agreeing on substantive criteria, create a fair procedure for resolving the dispute – one cuts, the other chooses.

- Commit yourself to reaching a solution based on principle, not pressure.

- Be open to reason, but closed to threats.

### **III. YES BUT...**

#### **6. WHAT IF THEY ARE MORE POWERFUL?**

##### **Develop your BATNA**

The reason you negotiate is to produce something better than the results you can obtain without negotiating.

**BATNA** - Best Alternative To a Negotiated Agreement - develop it for every negotiation and keep it close.

- Invent a list of actions you might conceivably take if no agreement is reached

- Improve some of the more promising ideas and convert them into practical alternatives

The better your BATNA, the greater your power. The relative negotiating power of each side depends mainly on how attractive to each is NOT reaching an agreement.

- Consider the other side's BATNA: if theirs is so good they don't see any need to negotiate on the merits, consider what you can do to change it.

#### **7. WHAT IF THEY WON'T PLAY?**

1. Continue to use the principled approach. This approach is often contagious.

2. Use "negotiation jujitsu" -- refuse to respond in kind to their positional bargaining. Deflect attacks back on the problem –ask for reasons

underlying their position. Take it as constructive criticism and invite further feedback and advice. Recast personal attacks as attacks on the problem.

##### **Use these statements to help them play:**

- o Please correct me if I am wrong
- o We appreciate what you're done for us
- o Our concern is fairness
- o We would like to settle using independent standards, not on who can do what to whom
- o Trust is a separate issue
- o Can I ask you a few questions to see whether my facts are right?
- o What's the principle behind your action?
- o Let me see if I understand what you're saying
- o Let me get back to you
- o Let me show you where I have trouble following some of your reasoning
- o One fair solution might be...
- o If we agree ... and if we disagree...
- o We'd be happy to see if we can leave when it's most convenient for you
- o It's been a pleasure dealing with you

3. Involve a third party to fuse the views of the opposing parties.

##### **What if they use dirty tricks?**

Sometimes parties will use unethical or unpleasant tricks in an attempt to gain an advantage in negotiations.

##### **- Deliberate deception:**

• Phony facts: get in the habit of trusting but verifying factual assertions

• Ambiguous authority: find out about the authority of the other side. Ask "how much authority do you have in this particular negotiation?"

• Dubious intentions: get them to commit to their intentions

• Less than full disclosure is not the same as deception: if asked, "what would be willing to pay?", then answer "let's not put ourselves under such strong temptation to mislead."

- **Psychological warfare:**

• **Stressful situations:** When the tricky party uses a stressful environment, the principled party should identify the problematic element and suggest a more comfortable or fair change. Subtle personal attacks can be made less effective simply by recognizing them for what they are.

• **Personal attacks:** comments on clothes, being late, interrupting to deal with others - all attacks. Bring it up explicitly and they should stop.

• **Good-guy/Bad-guy:** recognize it and treat both the same - ask the good guy the same questions as the bad guy.

• **Threats:** simply state, "I only negotiate on merits. My reputation is built on not responding to threats."

- **Positional pressure tactics:**

• **Refusal to negotiate:** recognize this tactic as a ploy to gain the upper hand, talk about their refusal to negotiate, and then insist on using principles

• **Extreme demands:** ask for principled justification of their position until it looks ridiculous even to them.

• **Escalating demands:** call it to their attention and maybe take a break while you consider whether and what basis you want to continue negotiations

• **Lock-in tactics:** resist lock-ins on principle - make a joke and don't take the lock-in seriously. Also reassure them that your practice is to never yield to pressure, only to principle. Avoid making the commitment a central question.

• **Hardhearted partner:** recognize the tactic ("...I'm o.k., but my wife...") and then get the other person involved

• **A calculated delay:** make these tactics explicitly known - consider creating a fading opportunity for the other side - establish deadlines.

• **"Take it or leave it":** consider ignoring this at first - say something like "CASE X was your final offer before we discussed the principles of CASE Z."

- **Don't be a victim:** question your own motives on whether or not you would deal this way with a family member or good friend. It is easier to defend principle than an illegitimate tactic.