

NEGOTIATION SKILLS

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Everything that we want or would like to own is currently owned by or under the control of someone else.

—Roger Dawson, author, trainer, speaker,
professional negotiator

Negotiating entails the attempt to obtain a desired outcome. Few people enjoy the conflict inherent in negotiations. Many will avoid asking for more than is initially offered because of the potential for rejection and failure. However, most people are regular participants in the negotiating process, often unknowingly.^{1,2} Any time one person interacts with another person to obtain an outcome that does not already exist, a negotiation is occurring. Negotiation is simply a form of conflict resolution. The conflict is simple: one wants an outcome that does not currently exist.

PRECONCEPTIONS ABOUT NEGOTIATION

The image of a stereotypical negotiation leaves many people feeling intimidated by the prospect of the conflict, since they believe they lack the skills or confidence necessary to be successful. In particular, women are more reticent than men to negotiate, with 2.5 times as many women as men describing great apprehension.^{3,4} A study of graduating MBA students revealed “half of the men had negotiated their job offers as compared to only one eighth of the women.”⁵ This is more commonly due to how women who negotiate are treated rather than to their confidence. Examples that are routinely cited by men and women as creating anxiety include:

The aggressive salesman: A used car salesman or a merchant in a foreign bazaar haggles over the price of a desired object. After an emotional exchange, the parties settle on a price. If the agreement comes too easily, one party may feel as if they could have done better.

Asking for a raise: A hardworking employee enters the boss’s office to ask for a raise. The employee feels underappreciated but is intimidated by the prospect of rejection. Embarrassed, the employee defensively apologizes and blurts out all the justifications for the raise. The boss simply says, “no!”

As a result of the anxiety felt during these interactions and the “social cost” of negotiating, many people perceive negotiating as distasteful or exceedingly complex. In reality, bargaining is learned at an early age. Children are masters because they inherently recognize that success is achieved by knowing what they want and demonstrating that they care about it (crying, temper tantrums, etc.).

APPROACHES TO NEGOTIATION

While all negotiators want to strike a deal that is personally beneficial, a completely one-sided negotiation can create significant long-term consequences and represents the “win-lose” style of negotiation: “I’m going to win and I really don’t care what happens to you.” This

BOX 99.1 ■ NEGOTIATION COMPONENTS

- Planning and preparation
- Attitude
- Information and aspirations
- Time and deadline
- Power

approach may be successful in the short term, but it runs counter to the development of the positive relationships necessary for ongoing collaboration. Adhering to a collaborative or “win-win” approach is more likely to create a solution satisfactory to both parties.⁶ Thomas and Kilmann have devised a “Conflict Mode Instrument” that defines various forms of conflict resolution and negotiating styles.⁷ Recognizing your own style and that of others can provide a significant advantage when determining your response to a situation.

Successful negotiation involves five components, which are listed in **Box 99.1**.^{8,9}

Planning and Preparation

Thorough preparation is a key factor for successful negotiation. Among inexperienced negotiators, advance preparation is both the most important part of the process and the most neglected. Effective negotiators gather as much data as possible to formulate a plan. Advance research allows a person to formulate critical questions, consider potential answers to those questions, and compare the answers to personal goals.

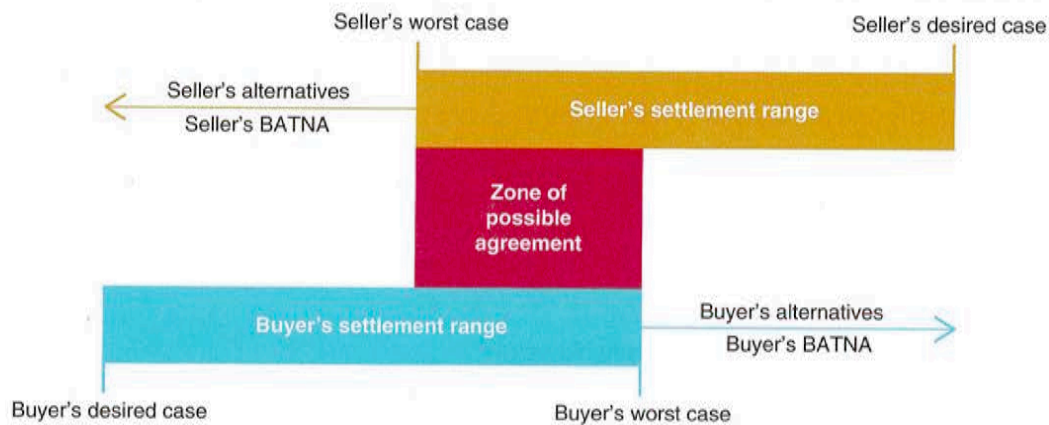
Preparation may also allow a person to plan an approach that addresses the needs of the other side. Determining the other side’s reasons for negotiating, political pressures, financial position, and likely strategy enhances the ability to formulate a solution that meets both sides’ needs. For example, a person negotiating a contract to staff an emergency department (ED) should perform extensive research to gather detailed answers to multiple questions, a few of which are detailed in **Box 99.2**.

The issues and interests of each participant may be multifaceted. When considering hiring practitioners, there are the obvious considerations, such as money, title, and responsibilities. Other priorities depend on personal interests. For instance, a person with a young family

BOX 99.2 ■ NECESSARY ED DATA

Planning for an ED practice requires gathering a substantial amount of current and projected information.

- Patient volume
- Arrival times
- Case mix: acuity
- Payer mix
- Fee schedule
- Billing expense
- Registration data
- Documentation process
- Flow metrics
- Physician qualifications
- Third-party contract details
- Malpractice expenses
- Business admin expenses
- Physician qualifications
- Provider costs
- Leadership costs
- Service support (lab, etc)

FIGURE 99.1 ■ BATNA Negotiation Tactic

might look for a consistent schedule, job security, and limited or no travel. Another person with an interest in building a career might want significant growth opportunities and have minimal interest in a long-term position.

Considerations in advance of a negotiation may include:⁵

- **Resources:** What can each side give to and get from the other?
- **Relative value:** What resources are of greater and lesser value to each party that can be traded? For example, trading time for money.
- **Risk preference:** What risk can each side tolerate or not tolerate? For example, consider an incentive plan or an “at-risk” plan, in which each side assumes some of the risk.
- **Time preference:** Does one side have urgent needs that can be negotiated, such as being willing to pay more or to pay a signing bonus for an early start?

BATNA

When developing a strategy, it is important to know not only your optimum realistic goal for a negotiated agreement but also your best alternative to a negotiated agreement (BATNA).^{10,11} BATNA (Figure 99.1) explores and develops options if the desired agreement is not reached—a failed negotiation.

An example of BATNA could occur when a physician or nurse cannot come to acceptable terms when negotiating for a job in a desirable location.

- **BATNA 1:** Walk away.
- **BATNA 2:** Consider another slightly less desirable job at the same location while waiting for the ideal job to become available.
- **BATNA 3:** Take a slightly less desirable job under better terms at a nearby location.

Determining one’s BATNA options in advance allows innovation when the predetermined bottom line (see aspirations and goals below) is not met, but one prefers to avoid walking away. Careful, thorough preparation is an effective way to mentally prepare for a negotiation. Understanding the needs and resources of both parties allows the adoption of a calm, assertive attitude that can help to communicate a sense of confidence and collaboration.

Attitude

It almost goes without saying that the attitude you bring to the negotiation is a key component in reaching a successful outcome.

Mental and Physical Preparation

People who exercise regularly recognize that being in good physical and emotional condition makes them more capable of dealing with day-to-day stresses.¹² This is particularly true when negotiating. Negotiating sessions can be intense and prolonged, so participants who are physically and mentally prepared have a distinct advantage.

Expectation and emotional attitude can play a significant role in the success of a negotiation. A negotiator with favorable expectations tends to project confidence and is more able to influence others. Alternatively, those who anticipate a negative outcome will likely communicate their low expectations nonverbally and work less hard to accomplish their aspirations.

Creating "Understanding by Identification"

It is difficult to negotiate when neither will trust.

—Samuel Johnson¹³

When trying to influence people and negotiate solutions, it is necessary to develop trust and convey respect. When both sides of a negotiation identify with each other, a foundation for understanding and a long-term relationship is established. For instance, leaders should avoid distinguishing themselves as different from those who provide services. Successful management teams do not "send down directives" or provide themselves with excessive personal amenities (e.g., special eating spaces, parking lots, luxuries, etc.) that separate themselves from those who deliver the product. Rather, they get close to those who deliver the service and inspire commitment to it. Management should be perceived as being a part of a team, with all participants being uniquely necessary for success.

The same principle applies during a negotiation. Early in the discussion/negotiation, it is important to be perceived as a peer of the other person. An identification of similarities unites the parties while emphasizing differences sets the two sides apart. Statements such as, "because I am a doctor/nurse," create a barrier to mutual respect and understanding. Instead, it is necessary to find areas of mutual interest to establish a bond of commonality.

Active Listening

Another key principle of successful negotiation is active listening.¹⁴ It is difficult for most people to be mentally receptive to another's message until they themselves have been heard. A saying believed by this author is:

The one who does the most talking thinks the most was accomplished.

Although novice negotiators often want to speak right away and can be eager to set the tone and parameters, it may be more beneficial to allow the other side to speak first. Speaking last permits the other side to relax and establish their point of view. In turn, you'll have time to determine what the other side thinks is most important and incorporate those interests into your presentation. Many poor communicators wait for their turn to speak by preparing a rebuttal rather than listening. When thinking about one's own interests, it is impossible to listen actively.

Active listening is a technique in which the listener communicates what was heard by paraphrasing or restating what has been said. Done well, the original speaker's point of view is acknowledged and perhaps even validated. Active listening may involve the effective use of body language and eye contact to communicate concern and interest in what the other person is saying. Neurolinguist Suzette Hayden Elgin points out that particularly effective active

listeners begin to move and breathe in sync with the speaker. Interested and intent listeners naturally tend to mirror the body positions of the speaker.¹⁴

Information and Aspirations

The Value of Information

Information creates powerful leverage in a negotiation.¹⁵ Large corporations and governments may spend millions of dollars for research before entering major negotiations. Likewise, it is important that an individual takes the time necessary to perform the “homework” likely to lead to success. Those who accumulate relevant and specific information about the other side’s needs and resources significantly increase the likelihood of a favorable outcome. A negotiation is somewhat like a game of poker—greater information about the other’s position creates a substantial advantage. Facts may be separated into material facts and motivational facts. For instance, when considering a position as an ED director, helpful material and motivational facts that would improve the position of the candidate include those listed in **Box 99.3**.

Aspirations and Outcomes

Negotiating goals may be defined by two levels of aspiration: the optimum realistic goal (ORG) and the bottom line. The ORG is the set of parameters that would maximize the deal for the job seeker and could still be accommodated by the other side. The bottom line is the set of minimum criteria that must be provided for the job seeker to agree on a deal. In some instances, these two aspiration levels may be the same, meaning there is only one “non-negotiable” offer.

Siegel and Fouraker studied the relationship between expectation and outcome.¹⁶ A group of Harvard students were divided into two groups. Members of group A were given a set of material facts and then told that their position would likely generate a profit of \$2.10. Members of group B were given the exact same material facts but told that their position would likely yield a profit of \$6.10. Individuals from groups A and B were then paired to negotiate against each other. Although it would have been reasonable to assume that each party would profit equally, the actual outcome was in line with the provided expectations, with members of group B negotiating a greater profit than members of group A. This result was one of the earlier experiments demonstrating that “negotiators who expect more achieve more.”

In 1968, business pioneer Chester L. Karrass paired 120 skilled professional negotiators against each other in a classic negotiation.¹⁷ Group A represented a man suing

BOX 99.3 ■ MATERIAL VS MOTIVATIONAL FACTS

Material facts

- Expectations
- Responsibilities
- Salary and benefits, including local market comparisons
- Start date
- Reasons why the previous director left

Motivational interests

- Fears and concerns
- Interests
- Importance of timing (why now?)

BOX 99.4 ■ NEGOTIATOR ASPIRATIONS AND OUTCOMES

- Higher initial aspirations achieved higher awards, regardless of their power.
- High initial aspirations did particularly well when paired with negotiators with low initial aspirations.
- Unreasonably high initial positions did the best or deadlocked.

a pharmaceutical company because a drug he had taken caused hair loss and blindness. Group B represented the pharmaceutical company. The study compared initial demands (aspirations) with final outcomes. It also contrasted the negotiators’ expectations of their opponents’ demands with their actual demands. The conclusions are noted in **Box 99.4**.

Karrass’s experiment demonstrated that expectation and aspiration have a direct bearing on outcome. In other words, the level of aspiration represents one’s intended success. As an example, most people would like to earn more money than they currently make. Setting goals just slightly above the present salary allows potential success with minimal risk of disappointment. Setting a higher goal potentially achieves more, but with a greater risk of failure. As the experiment demonstrated, negotiators willing to strive for higher goals attained more.

Paradox of Lofty Goals¹⁸

Higher aspiration levels may allow one to simultaneously gain and lose more. That is, by asking for less, one is more likely to get most or all of the requested amount and simultaneously have minimal or no disappointment. A higher aspiration level (request) may lead to a greater gain while simultaneously creating the greater disappointment (loss/deficit) inherent in not getting all of what is desired (**Table 99.1**).

Assumptions

The Karrass experiment also demonstrated that one cannot make accurate assumptions about the other side’s aspirations.¹⁷ In other words, what is fair and reasonable to one person may not be fair and reasonable to another. A person’s needs and expectations are unique. Initial assumptions about another’s aspirations tend to be based on one’s own personal constructs and beliefs. Therefore, all assumptions should be tested to determine the other side’s actual aspirations. These assumptions may have to be modified as more data are gathered.

Feedback Changes Aspiration Levels

In a negotiation, perceptions about the outcome may fluctuate depending on the feedback and data that are obtained. Encouraging feedback such as “Yes,” “Sure, that’s fine,” and a smile increases aspiration levels. Discouraging feedback such as “No! Are you kidding?” with a

TABLE 99.1 ■ The Paradox of Lofty Goals

| Goal | Result (Gain) | Deficit (Loss) |
|------|---------------|----------------|
| 4 | 4 | 0 |
| 8 | 6 | 2 |
| 12 | 8 | 4 |

scowl reduces aspiration levels. However, this type of negative feedback may be a purposeful ploy designed to lower expectations.

Time and Deadlines

Time is a powerful tool in a negotiation. It can be used effectively to modify outcomes. The impact of time can be broken down into three primary segments:

- Planning and preparation time
- Time during the negotiation
- Deadlines

Time

Understanding the strategic importance of time during a negotiation is a crucial element for success. Time can be used to build momentum, facilitate decision-making, and increase commitment.

An effective way to increase the other side's investment in making the deal is to achieve early mutual success. Sequencing easily agreed-upon issues early in the process leads to a greater commitment later when it may be necessary to work through more complex issues requiring concession. Early successes engender the atmosphere of collaboration necessary to tackle the tough issues. The more time both sides invest in the process, the more likely each will feel compelled to complete it.

The pace of the negotiation can enhance or limit success. Properly arranging the agenda and conducting the negotiation may facilitate momentum. If an urgent, time-sensitive negotiation begins to drag, momentum may be lost, and the deal may die. Even in less time-sensitive negotiations, long periods of inactivity between discussions may have a chilling effect on the eventual outcome. Alternatively, expanding the time between negotiations can be used to defuse an explosive situation. Given a little time, people can calm down and let anger dissipate.

Time pressures that appear to create time limits may be used to move the discussion forward. As an example, a person may state that the negotiation must conclude by a specific date. This stated deadline may be real or contrived to place pressure on the other side and accelerate the conclusion.

Deadlines

Early in the process, it may be advantageous to determine the other side's time limit. Deadlines are powerful tools; they create the incentive to settle because of the possibility of losing the opportunity or "deal" if the deadline is not met.¹⁷ Sometimes individuals set arbitrary deadlines. It is important to clarify the reasons for a deadline and the consequences of going beyond it.

Difficult negotiations usually last to the deadline. Congress makes most decisions just before recess. Labor management negotiations often achieve resolution just before the strike, at "the 11th hour." This occurs for two reasons. First, large concessions are generally made at the last minute out of fear of imminent loss. Second, under the assumption that easy settlements do not achieve all possible concessions, the sides represented by the negotiators might be distrustful and disappointed with their leadership if the settlement was made without the appearance of a hard-fought effort.

The fear that a deadline may be used against one side leads some negotiators to avoid sharing their true deadlines. However, negotiators should be cautious when considering the use of a deadline or any negotiating ploy to "force a deal." Often, negotiations are part of a longer-term relationship. Using a ploy to force another into a one-sided deal creates the foundation for a poor partnership.

BOX 99.5 ■ FORMS OF NEGOTIATION POWER

- Power of weakness
- Power of competition
- Power of legitimacy
- Power of expertise
- Power of previous investment
- Power of persistence
- Power of limited authority

Harnessing Power

Inexperienced negotiators commonly feel the other side has more power. Novices may worry they are not as tough, smart, or experienced as their opponents. Because they are acutely aware of their own pressures and not those of the other side, inexperienced negotiators may believe the other side will “walk all over them.” Much of the power wielded in a negotiation is “perceived” power. Positions are continually adjusting as the perceptions of relative power shift.

The degree to which one can alter those perceptions may determine the success or failure of the negotiation. Individuals will do less to promote the merits of their position if they believe their position is weak entering a negotiation. Conversely, those who believe they have a particularly strong position are more likely to pursue goals with conviction. The following are descriptions of some of the various forms of power and how they are used in negotiations (Box 99.5).

The Power of Weakness

It is not always disadvantageous to appear weak during a negotiation. In fact, it may be smart to act dumb and dumb to act smart. Consider Columbo, the bumbling detective, who, when walking away defeated, would turn around and ask, “Just one more thing . . .” A phrase such as, “Could you please go over that again?” will usually slow the other side down and reduce its momentum. This approach may result in the opponent revealing additional helpful information. Not quite getting it can be powerful. In some instances, it can even produce a concession.

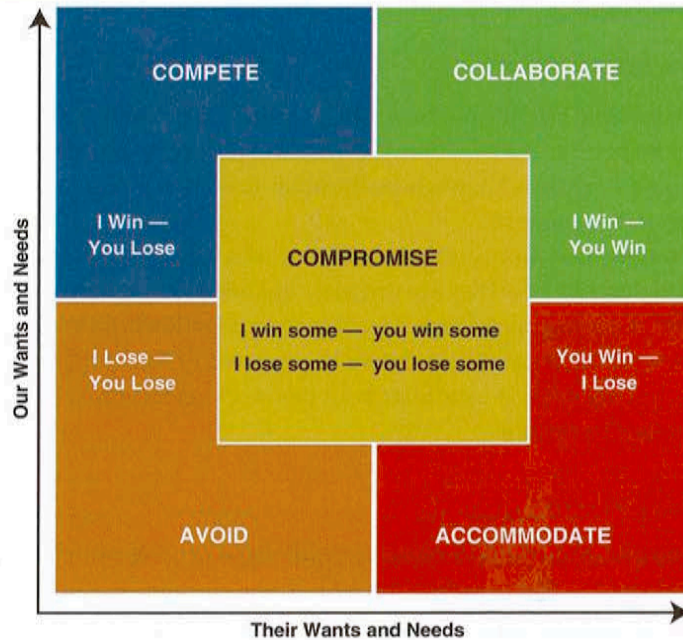
A variation of the power of weakness is asking for help. This approach is most likely to work when the other side is seeking a win-win solution. Asking, “What would you do in my situation?” compliments the other side, gives it an opportunity to demonstrate its expertise, and encourages it to take the other point of view. This approach helps develop the lasting relationship most successful negotiators seek (Figure 99.2). As the other side reviews its position and tries to “help you understand,” it may gain new insights that will enhance its own understanding.

The Power of Competition

Creating competition for a position, object, or service enhances its apparent value. A real estate broker uses the power of competition by suggesting there are other serious buyers looking at the house being considered. Interviewers create apparent competition when they tell interviewees how many candidates are looking at the position. Conversely, candidates may reveal the names of other prestigious companies that are wooing them.

Describing an opportunity as one of several options invokes the “power of competition” and may compel the other side to compete for the candidate who is now held in higher esteem. Alternatively, those who are or appear to be desperate lose bargaining power by

FIGURE 99.2 ■ Negotiating Styles



diminishing their value in the eyes of the other side. As an example, the following simple responses to the question, “Are you looking at other positions?” may create a very different perception.

Response A: “Not really, nothing seems very interesting. I’d really like to work here.”

Response B: “Yes, I’m very excited about my opportunities. I’ve been offered several positions. As an example . . .”

The first response creates the impression that the job-seeker has limited opportunities and could be hired easily. Further, it demonstrates that this candidate is unexcited and disinterested. The second response creates the impression that this candidate has several offers and is in high demand. It is not clear whether the current position being discussed is of interest to them. In fact, the offer may have to be “sweetened” to get this candidate.

... but this swift business
I must uneasy make,
lest too light winning
make the prize light.

—Prospero, *The Tempest*, Shakespeare, 1601¹⁹

As Shakespeare so wryly noted, another facet of the power of competition is that people generally are more satisfied with prizes that are earned and victories that are hard fought. A fish caught will taste better than a fish bought. A mountain climbed will have a better view than the same mountain driven. Consider the case of a provider who is considering other work opportunities.

Used for: Though the director becomes upset when a staff member looks at other opportunities, the practitioner contracts with another hospital for part-time work. Future negotiations with the director become easier and more successful because the practitioner is no longer at the mercy of the director.

Used against: When the provider mentions seeking other opportunities, the director nonchalantly states, “OK, let me know soon. I’ve got an interview with a superstar scheduled for next week.”

Competition solutions include:²

- **Gain information:** Finding out how much competition exists allows one to more effectively respond to the situation. If the candidate learns their position, offer, or proposal is strong and is known to be the other side’s first choice, negotiations are more likely to be successful.
- **Describe uniqueness:** Conversely, a candidate who is one of several must be prepared to describe how they are uniquely qualified to meet the employer’s needs. The process of setting oneself apart from other competitors can create an advantage.
- **Develop options:** The candidate should be prepared to (honestly) describe other desirable opportunities. A candidate with many options is generally more respected than one with few or none.

The Power of Legitimacy

Outward manifestations of success create a perception of credibility and legitimacy.² In certain business settings, the people with whom one associates, the type of car driven, and the clothes worn convey a message of success and authenticity. Patients are more likely to hire a plastic surgeon who is well spoken, well dressed, and appears successful. Inherently, the surgeon communicates that their services are desirable to others with means. Alternatively, potential clients may be less likely to hire a plastic surgeon who drives a broken-down car and practices in an unattractive office in an undesirable part of the community.

Certifications by specialty boards, advanced training, publications, previous recognition, and a well-written curriculum vitae (CV) all validate an individual’s achievements and successes. A polished CV confers legitimacy. A sloppy document, on the other hand, creates a negative impression and diminishes the conveyed information.

Used for: When presenting or negotiating, one should dress well, appear successful, bring documents that demonstrate achievements, and share written information that makes critical points.

Used against: An ED leader promotes a physical expansion of the department. In response, the hospital produces a bound report from a respected industry consultant that indicates the current space is more than adequate. As a result, the administrator concludes that the board will not support funding for additional space. Most people will assume that written document presented from a consultant is legitimate. Legitimacy solutions include:

- One must be careful not to accept all documents at face value, as the documents may have been specifically requested to legitimize a position.
- Finding or generating documents that are supportive of one’s own position creates the appearance of legitimacy.

The Power of Expertise

A corollary to the power of legitimacy is the power of expertise.² The appearance of knowledge, experience, and expertise is an influential and powerful tool that can be used daily. Simply walking into a room wearing a white coat and a stethoscope creates the impression that the practitioner is an expert and knows what to do. Because of the appearance

of expertise, patients allow staff members to perform invasive and painful procedures on them without questioning their competence.

Mastery of facts creates both expertise and confidence. Moore found that a confident approach enhances the perception of expertise in others, even when the track record of the expert is poor.²⁰ Therefore, one may appear to be an expert by having a command of information and a confident attitude.

Used for: A person walks into a negotiation to expand the ED with a full understanding of the facts, backed by supportive documents. The confidence in and knowledge of the information is persuasive.

Used against: The hospital calls in a consultant firm of architects with substantial credentials and a record of having undertaken multiple hospital renovations. The consultant recommends a less costly but impractical approach. Pleased with the new plan, the hospital prepares to move ahead. Further exploration of the consultant's background would have revealed broad experience in developing small specialty outpatient clinics but minimal experience in developing EDs.

Expertise solutions include:

- Recognize that most experts provide answers supporting the position of the person or organization that hires them.
- Avoid overconfidence in an expert. Most experts rely on previous work experience to guide future recommendations. Each set of circumstances is unique, and experts should consider the particular characteristics and nuances of a situation.
- Ensure that the experts demonstrate exactly how their recommendations address specific issues.
- Determine the experts' relevant experience, and find out if their solutions have led to the types of results that are warranted in the situation at hand.
- Use others' expertise to create an advantage. Actively collaborate with and guide the expert, demonstrating personal knowledge and expertise.
- Establish personal background and expertise early in or prior to the negotiation. When expertise is claimed during the debate phase, it is less likely to be accepted.

The Power of Previous Investment

The more time and effort put into a task, the harder it is to walk away. In economics, "sunk costs" are unrecoverable costs already incurred. Willingness to continue to work through a difficult negotiation, in large part, depends on the previous efforts expended.²¹ Examples of the power of previous investment abound:

- In poker, it is called "chasing." Once a person has placed money into the pot, the decision of whether to continue to invest in this hand may be based more on the amount of money contributed than on a comparison of the odds of winning the next bet.
- As the United States lost more lives in Vietnam, it became harder to withdraw. The government became more committed to achieving a victory based on its past loss of lives than on a rational assessment contrasting the benefits of victory with the cost of future investment in lives and resources.
- Surrogate mothers may want to keep the baby they carried for 9 months.

Used for: The more time and effort spent agreeing on contractual issues, the more likely compromise will be achieved on the final issues. Early in a negotiation, it may be wise to postpone a difficult issue or an impasse. This can be deferred by saying, "This is obviously a difficult point for both of us. Let's work on some other issues and come back to it a little later."

In this instance, the frustration of an imminent breakdown in the negotiations can be replaced with the satisfaction of achieving early agreement on simple issues. Early agreement on less challenging matters will enhance the relationship and build the foundation necessary to work through the more contentious issue.

When it is time, the more challenging issue can be introduced by saying, "We have made so much progress and are virtually done with this agreement. Why don't we find a compromise on this final issue?"

At this point, both sides are more likely to make the extra effort to complete the deal. This phenomenon explains why incumbency in a contractual relationship is so powerful. A hospital may become so invested in a group or individual that it is difficult to change.

Used against: Either side can use this same approach. It may be difficult to walk away from a "bad deal" once a long-term relationship is established. The other side may extend the process timing so the investment of time and resources leads to significant compromises by you.

Previous investment solutions include:

- When the deal and relationship are both important, putting off more complex issues and instead addressing simpler issues first creates a foundation for success.
- When a particular issue is more important than the relationship and walking away is acceptable, it may be disadvantageous to postpone the discussion.
- Incumbency may be used as an advantage by demonstrating the advantages of continuing the current relationship (e.g., market successes, ongoing projects, future potential).

The Power of Persistence

Persevering until success is achieved is one of the hallmarks of a good negotiator. Persistence requires creativity and discipline.²² A proposal may need to be presented over and over in a variety of different ways before it is accepted. Repeated efforts to attain a specific goal send a powerful message of conviction.

It is important to be physically and emotionally fit to endure the rigors of persistence. A long and complex negotiating session can be exhausting. As the hours stretch on, there is a tendency to give in and say, "Okay, enough, I accept your . . .!"

Used for: The director of a busy ED proposes enhanced staffing, knowing that it will be expensive. The plan is met with stiff resistance from administration. Success may eventually occur after doggedly working with various leaders to demonstrate the long-term financial benefit to the organization. Persistence will pay off if the necessary changes are eventually approved.

Used against: The other side may tirelessly repeat the same solution, leading one to concede a little each time or even capitulate completely. Alternatively, a party that will not "take 'no' for an answer" may be perceived as stubborn and frustrate the opponent, possibly breaking up the negotiation.

Persistence solutions include:

- **Be well rested and in good physical shape:** Loss of concentration creates a significant disadvantage. Taking a break to refresh may be advantageous.
- **Take detailed notes:** It may be very helpful to refer to well-kept notes when a previously resolved issue is raised in an attempt to wear down a negotiator. Publishing notes and having the other side sign off on them is even better.
- **Learn to creatively restate objectives:** Because it may be necessary to persevere on an important issue, learn to restate the issue using different examples and

perspectives. This approach demonstrates that the issue is multifaceted, well thought out, and important to the presenter.

- **Be willing to persevere:** Persevere even in the face of persistent attack.

The Power of Limited Authority

Rather than displaying power and authority, some will refer a decision to a “higher authority.” The technique is commonly used in the automobile sales industry. After haggling with a salesperson, a deal is struck. Hands are shaken and the buyer is relieved and psychologically committed to the deal. The salesperson says, “Everything is in order. I’ll just get final approval from my manager.” While the buyer has made a commitment, the salesperson has not. The salesperson returns saying, “I’m really sorry. My boss said that with the recent increases in overhead, we would lose money at that price. We could, however, do the deal for just \$300 more.” Once the decision to purchase the car is made, it is hard to walk away for just \$300.

Used for: The ability to defer to a “higher authority” may help avoid arriving at a hasty decision and allow time to consider its ramifications. The process can be used to bring parties to a well-considered and mutually beneficial conclusion. Deferred authority should not be used in a deceitful way or to force the other side into a deal that is unfair; to do so would ultimately erode the relationship.

Used against: After negotiating and shaking hands on a deal to provide services, one side states, “I have to take this back to my Board. I am confident that it will be approved.” A few days later she returns and claims, “The Board was tough, but I have good news. They agree to everything except the price. If you would just give a little—I think 8% would do it—we can close the deal right now.” The other side has used the power of limited authority to attempt to create a more favorable deal.

Limited authority solutions include:

- **Establish authority early:** At the beginning of the negotiation, determine who has the authority to make the final decision for the other side. If the other person’s authority is limited, clarify its scope.
- **Prevent the last-minute surprise:** If the other side describes limited authority at the last minute, it may be helpful to both play on pride and gain commitment by asking directed questions that encourage the other side to honor the deal as negotiated when speaking to their decision-makers.
- **Invoke one’s own trusted advisor:** When surprised by the other side’s limited authority, a powerful counter is to describe the need to obtain advice from your own trusted source. If the other side returns with a less favorable offer, balance may be achieved by describing the additional requirements suggested by your trusted advisor.

CRITICAL ASPECTS OF THE NEGOTIATION

Several aspects of the negotiation clearly influence success (Box 99.6).

The Starting Point

The “starting point” is the stated initial position in a negotiation.²⁴ There is often a direct relationship between the starting point and the final outcome.

BOX 99.6 ■ CRITICAL ASPECTS OF NEGOTIATION

- **The starting point**
 - Starting high
 - Starting low
- **Concession behavior**
 - The incremental nature of concessions
 - Karrass on concession behavior
 - The diminishing value of concessions
 - The “too-easy” win
- **Principled negotiations**
 - Positional bargaining
 - Principled bargaining
 - Interests before positions
- **Other techniques**
 - The theory of “yes”
 - Feel, felt, found

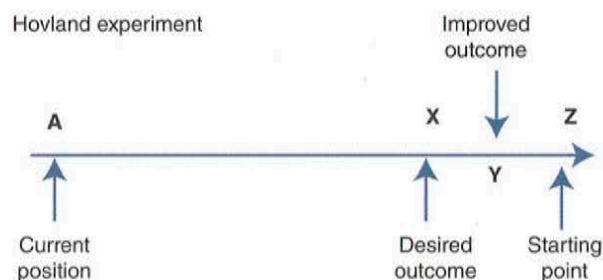
Starting High—Implying Self Confidence

Famed Yale psychologist Carl Hovland demonstrated that when trying to move or influence people, greater success is achieved if they are encouraged to go beyond the expected end point.²⁵ In other words, when trying to persuade a group to move from starting point A to end point X, targeting an additional end point beyond X, such as Z, was consistently more successful than targeting only end point X (Figure 99.3). Considering this in negotiation, it may make sense to begin a little higher than the anticipated goal. This is like the concept of encouraging others to adopt a shared vision. No matter how “right” a concept appears to be, you cannot assume that others will wholly embrace it.

In the Karrass negotiating experiment, the highest initial demands led to the highest settlements (Box 99.7).¹⁷ Starting high may communicate to others a high self-esteem. In other words, starting high suggests confidence and self-assurance. Conversely, a “too-high” starting point suggests arrogance. Starting somewhat above the desired end point may help during the compromise phase of the negotiations. In many negotiations, opposing parties may think the other side is “starting high” and will work toward a compromise. If padding is anticipated, you may place yourself at a disadvantage if you start at your “bottom line.” Then, resistance to concessions might be interpreted as unyielding rigidity.

Starting Low—Implying Flexibility

Starting low is the same concept from the opposite perspective.² In this situation, the purchaser of a service or product begins at a low point. This low offer may be meant to devalue the other person’s position. Starting low carries some risk and should be done with sensitivity to avoid the insult inherent in asserting low value. If a low offer is made to counter a high starting offer, it may imply flexibility.

FIGURE 99.3 ■ Hovland’s Order of Presentation

BOX 99.7 ■ ADVANTAGES OF STARTING HIGH

1. Enhances others' perceptions of you
2. Allows room for negotiation
3. Improves the end result

As an example, assume a purchaser is interested in a piece of art that may be worth \$7,500. The purchaser could make a low offer with implied flexibility, such as, "I'm not exactly sure what it is worth but given what I see, I think that \$4,200 would be a fair price." This statement suggests flexibility to avoid alienating the seller. Concessions by the buyer will simultaneously allow the seller to "get something" more than the initial offer and allow the buyer to purchase the item for less than the starting point.

Concession Behavior

All negotiations involve compromise. Without compromise, there is no negotiation. Without flexibility, there is a risk of each side becoming trapped in an all-or-nothing position. Conversely, there may be a great cost if one's approach to making a deal is just to "give in" to the other side. To compromise or adjust goals in a negotiation is referred to as *concession behavior*. How one concedes dramatically influences the success or failure of the negotiation (Table 99.2).

- **Give to get:** When dealing with conflict or negotiating, the approach of "you have to give something to get something" engenders the belief that both sides should succeed. If one side achieves its goals, it is appropriate for that side to help the other meet its goals. This approach builds strong relationships.
- **My way or the highway:** This strategy is based on the belief that concessions are a sign of weakness and that long-term relationships have no importance at the negotiating table. The ancient Romans maintained peace by demonstrating a readiness to use overwhelming force (*Pax Romana*). They demanded complete concessions and gave none; they were willing to win at any cost.²⁶
- **Get only:** The view of the former Soviet Union was a variation on this theme.²⁷ The classic Soviet style of negotiation was never to concede. By this theory, a concession was proof that the other side's position was weak, and more concessions were likely to follow.

The Incremental Nature of Concessions

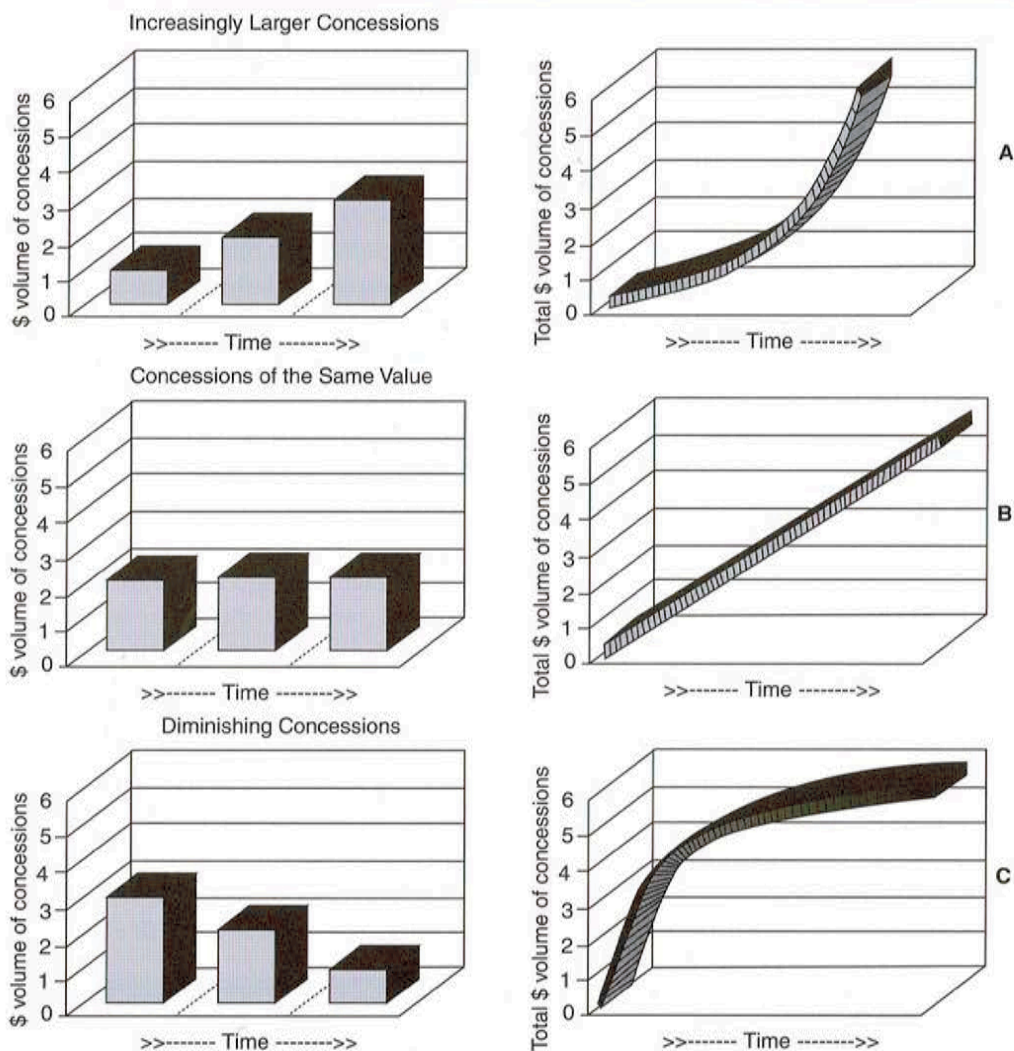
The way negotiators make concessions communicates their end point. Those who concede easily and in large amounts are sending the message that they have great flexibility and

TABLE 99.2 ■ Alternate Views of Concession Behavior

| View | Example | Belief |
|------------------------------|-------------------|-----------------------------------|
| Give-to-get | Typical | Compromise and seek middle ground |
| My way or the highway | <i>Pax Romana</i> | Total concession by other party |
| Get only | Russian | Concessions demonstrate weakness |

little commitment to their initial position. Novice negotiators may erroneously believe that a large concession will favorably impress the other side and lead them to a deal. Ironically, a large concession usually raises the aspirations of the other side, who may interpret easy, large concessions as a sign that more is available for the taking. As a result, they may ask for more concessions. Those who concede slowly and in a “stingy” manner reveal strong attachment to their position. This behavior sends the message that there is less room for flexibility and will lower the aspirations of the other side. Typically, negotiations are a back-and-forth process, with each side making concessions as they draw closer to a deal. The size and relationship of successive concessions influence the end point (Figure 99.4).

FIGURE 99.4 ■ Concession Patterns



(A) The negotiator gives increasingly larger concessions, perhaps to convince the other side to close the deal. However, this pattern may have the opposite effect. The unspoken message is that by holding out, the other side can get increasingly larger concessions. (B) Each of the concessions is similar in size. There is no message to suggest a limit to these concessions. The total value of the concessions is continuing to increase. (C) This pattern sends a different message. Each successive increment is smaller, suggesting to the other side that the end point is near. Thus, the total value of the concession is approaching a limit.

Karrass on Concession Behavior

In the Karrass experiment, early large concessions (sizable decline in demands) by the plaintiff's side led to the lowest settlements.¹⁷ Early large concessions by the defendant pharmaceutical company (sizable increases in the offer) led to the highest settlements. Karrass found that:

- Losers tended to make the first and the largest concessions.
- Winners tended to make the smallest concessions. Those obstinately making small concessions occasionally deadlocked, but if they didn't deadlock, they won.

Winners also made smaller concessions as the deadline approached. Deadlines create increasing pressure for both sides. Most deals are made as the deadline nears, not before. The winners made smaller concessions at this point than the losers and therefore made better deals.

The Diminishing Value of Concessions

The value of services always decreases rapidly after those services have been performed. Once a concession or favor has been given, its future value decreases. The concept "they will really owe me a lot for this concession" has no place in negotiation.

This concept could also be referred to as the "Hungry Man Principle."²⁸ The wealthy man dying of hunger and thirst in the desert may say he'll give everything he has for water, food, and safety. Once these are provided and he is in the safety of his mansion, there is little likelihood he will live up to his promise and turn everything over to his rescuer. Because the value of the services (concessions) diminishes rapidly after they are provided, it is wise to ask for something in return immediately when asked for a concession. The following scenario illustrates this point:

Quite frankly I'm not sure we can concede on this point. I'll have to ask the group (higher authority). But if we gave you "X" instead, what can I tell them you will do for us?

In this way, the value of the concession is elevated. Conversely, things given away for nothing, even unimportant items or services, may set up a process of grinding away or "nibbling." Some negotiators will continue to ask for more until the other finally says, "Enough!"

If the other side recognizes that every time it requests something additional it has to give up something in return, it will be less likely to continue to ask. The value of a concession is increased by insisting on reciprocal concession, as illustrated by the following examples:

- The staff members agree to rotate on more weekend and night shifts, if leadership agrees to pay more for those hours and publish the schedule earlier.
- The physicians agree to lower a guaranteed stipend if the administrator will provide an acceptable incentive plan.
- The group accepts a restrictive covenant prohibiting them from approaching area hospitals if the hospital will accept a long-term contract.

The "Too-Easy" Win

It is possible to be less satisfied with a better deal and more satisfied with a worse deal (Box 99.8). This paradox can occur when a settlement is reached too easily. People often think, "If I got what I wanted so easily, I probably could have gotten even more."

For example, a house is placed on the market for \$325,000. On the first day, a buyer says, "I'll take it for the full asking price." This is good because the seller got the full asking price. This is bad because the seller may believe the house was undervalued. Alternatively, if

BOX 99.8 ■ RESULTS OF THE “TOO-EASY WIN”**Settlements made too easily may leave one party thinking:**

- I could have done better.
- There must be something wrong with this situation.
- I do not trust them.

several offers were made between \$250,000 and \$295,000 over the course of 1 month, and then a buyer offers \$315,000, the seller may feel very satisfied with an offer less than the original asking price.

When a negotiated purchase is made too easily, the purchaser may think, “I could have done better” and “I wonder if there’s something wrong.” For example, a person considers purchasing a used car advertised for \$19,000. After inspection, the purchaser offers the low-ball price of \$9,000 and it is accepted without hesitation. The purchaser may immediately think, “There must be something wrong with the car. I don’t trust the seller. I could have gotten a better deal!” Alternatively, if the seller haggles for an hour and eventually sells the car for \$12,000, the buyer is more likely to believe a good deal was struck. The “too-easy” win occurs when services or commodities that are typically negotiated are purchased without any struggle.

Principled Negotiations

In *Getting to Yes*, Fisher and Ury describe the concept of “principled negotiation”—the philosophy of focusing on interests rather than positions.¹¹ This approach advocates that parties avoid positional bargaining and instead focus on their own and the other party’s interests.

Positional Bargaining

Positional bargaining focuses on narrowly defined outcomes. Solutions are more limited and less creative. In “hard” positional bargaining, more resistance to the position results in a greater commitment to the position. With further resistance, relationships may deteriorate. Hard positional bargainers typically see the other side as adversaries that must be overcome. The goal is winning; bonding and alliance are unimportant. The hard bargainer’s demeanor may be distrustful, threatening, and insistent. The hard bargainer would like the other party to avoid conflict and simply acquiesce.

The “soft” bargainer would like to maintain the relationship and cares less about the outcome. The soft bargainer’s demeanor may be trusting, yielding, self-deprecating, and solicitous. This accommodating approach steers clear of the confrontation and disagreement and instead focuses on maintaining the relationship. Accommodation accomplishes one goal—an agreement without confrontation—but often at great cost.

Principled Bargaining

Negotiations based on interests rather than positions generally produce wiser and more nuanced outcomes. This type of bargaining focuses the discussion on problem-solving based on objective standards. Adhered to, interest-based bargaining avoids getting bogged down in personalities, positions, and narrowly defined solutions and instead seeks options to meet the needs of both sides. The interests of both parties become the focus, and the goal is a judicious outcome achieved in a cordial environment. Consider the following example:

A physician, eager to join a group, is negotiating for an open position. The physician expresses determination to get a certain amount of money and is inflexible. The group would like to hire the physician but cannot afford the requested amount in the present reimbursement environment.

Positional bargaining will lead to frustrating concessions by one or both sides, or to deadlock. Alternatively, an open-minded focus on the interests of the parties might reveal their underlying issues. For the physician who might need a certain amount of money, the group might offer partnership, help secure a loan, or find additional sources of income such as an administrative stipend from the hospital. For the group, the physician might work additional shifts, work higher-paying night/weekend shifts, forego unneeded benefits, or provide administrative support that will save the group money.

Interests Before Positions

Occasionally, there is only one solution to a problem, forcing one side to adopt a hard position. When a position is essential, it is often helpful to describe the underlying issue before stating the position. By putting interests before the conclusion, the other side has an opportunity to listen and understand the reasoning.¹¹ The following examples demonstrate the difference between the two approaches.

- **Position before interest:** Leader A says to Leader B, “We’re going to have to find a way to pay our practitioners more money because we are unable to recruit.” Leader B may focus on and reject the stated position (the request for more money), overlooking the interest, which is recruiting quality practitioners in a competitive market.
- **Interest before position:** Leader A to Leader B, “Alice just turned in her resignation. She got a great opportunity at a nearby hospital and she will be leaving in 2 months. It’s unfortunate because she’s an excellent practitioner who is respected by the medical and nursing staff. Some of the medical staff and out-of-hospital care personnel specifically send their patients here because of her abilities. I’m sure you remember that the utilization program she developed has been the critical factor in our success with the managed care contracts. We’ve tried to recruit a replacement, but it’s difficult to attract quality practitioners like Alice. In fact, other members of the group are considering following her lead. To keep our current staff intact, we must be able to attract a replacement for Alice. To do this, we’re going to have to find a way to pay our staff more so we can be competitive with nearby facilities.”

Identifying the issue/interest first and providing the other side an opportunity to understand the common interests forms the foundation for collaborative problem-solving. When the other side finally hears the position, “paying more,” they are more likely to participate in the solution.

Other Techniques

The Theory of “Yes”

The theory of “yes” simply entails acknowledging the other’s point of view, not necessarily agreeing with it. This is a critical distinction. Repeating the other’s perspective, goals, and aspirations affirms an understanding of the other’s point of view without giving in to it. Examples include:

- “Yes, I can see that that is important to you. Let’s discuss it further.”
- “Sure, I can understand based on your situation why you would ask for that. Let’s review the ramifications.”
- “I get it; so you’re saying . . . Is that correct? I’d like you to elaborate on this portion of it.”

Saying yes and incorporating the other side's idea into a response acknowledges its point of view and validates and demonstrates appreciation of its concern. Starting with a form of "yes" opens the door to consideration of options and encourages forward movement. Alternatively, when negotiators respond to a proposal by shaking their head or saying "no," they are implying that the proposal has no merit. "No" is often interpreted as a lack of concern or understanding that shuts down the discussion and forces the other side to become more positional.

While it is not necessary to accept a proposal, it is helpful to accept the other's perspective and to validate the underlying issue. When their perspective is acknowledged, the other side becomes more receptive.

Feel, Felt, Found

The "feel-felt-found" technique is another way to acknowledge the other's view, even when personal experience would suggest the other is wrong.² Affirming by using the feel-felt-found technique incorporates the other's concerns as if they are one's own, decreases positional approaches, and moves the discussion forward. In the following example, the concept of direct patient billing is rejected.

Statement: "I'm very concerned that billing the patients directly as your fee-for-service proposal suggests would create a stir in this community. Patients would think we're too expensive."

F-F-F Response: "I understand how you feel. When we started separate billing at XYZ Hospital, our patients initially felt the same way. We directly bill the third parties whenever possible. Because of the increased reimbursement, we've brought in top-notch doctors, the quality of service has improved dramatically, and patient satisfaction is in the 97th percentile. As a result, we have found that the concern has not been realized."

OVERCOMING OBSTACLES

Negotiating does not come easily to many and is difficult for everyone at times. In the nursing profession, unionization has been an increasingly common means of deferring the burdens of negotiation to parties who are more comfortable and skilled in the activity.

Difficulties in negotiation can appear in many forms. Some negotiators adopt an "all or none" attitude. Some become emotional and blaming. Still others resort to ploys to accomplish their end. To effectively negotiate, one must recognize when the negotiations are sidetracked and initiate methods to realign the interests of the parties (Table 99.3).

TABLE 99.3 ■ Effective Responses to an Unreasonable Request for Clinician Coverage

| | |
|--|---|
| Restating their position | "So, you would like to have double physician coverage 24 hours a day for our 12,000-visit ED." |
| Acknowledging and validating their position | "Yes, and I know that your proposal is driven by a desire to eliminate waiting times and provide excellent customer service to our patients." |
| Emphasizing your expertise | "It is our experience that the number of providers is not the constraining factor for waiting times and patient experience." |
| Opening up the discussion | "Let's consider some of the other ramifications of the proposed provider staffing as well as additional solutions." |

Breaking Deadlocks

Deadlocks cause great stress, test resolve, and reduce aspirations, all while jeopardizing the potential for a successful outcome. Sometimes during a negotiation, there seems no way back to meaningful dialogue. Good negotiators figure out a way to walk back “in the door” without losing face and help the other side to do the same thing. Deadlock breakers work because they refocus the parties on meaningful discussion.^{2,30} The following approaches are potentially successful methods of breaking deadlocks:

- **The set aside:** The “set aside” is the postponement of difficult issues until a later time when mutual trust has developed and earlier successes have been achieved. When a difficult issue that is likely to become an impasse arises early in the negotiation, it can be set aside by saying, “I understand how you feel about this issue. I would like to think about it. Let’s set it aside and talk about some of the other issues first.” Later, when both sides have invested more time and consideration, it is likely both parties will be more willing to compromise to achieve agreement. Reordering the agenda allows the group to regain forward momentum by dealing with different, less contentious issues.
- **Take a break:** Taking a break allows either or both parties to momentarily let go of the intense focus that may be required during a negotiation. Its intent is to allow everyone to “cool down.”
- **Caucus:** Caucus is like taking a break but has the specific purpose of allowing members of a team to privately confer. Away from the bargaining table, a person is free to reexamine each side’s interests. It is an excellent way to decompress a situation.
- **Ask for help:** This approach entails simply stating the problem that’s causing the impasse and then asking for help getting beyond it. A form of the question, “What would you do in my position?” may be very effective. Asking for advice flatters the other party while encouraging it to see your side of the issue. Ideally, the other party will look at methods to solve the problem.
- **Modify the team:** Adding a new participant may create an opportunity to bring greater objectivity to the negotiations. A new “objective” participant will be less encumbered by preconceptions and emotional attachment to the previous positions. However, this approach does add risk if the third party is not familiar with or sympathetic to your point of view.

Deadlock breakers are effective because they allow both parties to begin to move forward together. Once both parties begin to negotiate after a significant deadlock, there is great relief and significant potential for bilateral concessions.

Negotiating Ploys

The term *ploy* has negative connotations, as ploys are frequently used to gain advantage or “win” at the expense of the other party. A “win-lose” may result in short-term gains but undermine the long-term relationship. In most instances, it is best to avoid using negotiating ploys and techniques. Unless one is very adept, others will recognize them and be put off by their use. Experienced negotiators may turn a ploy against its user. It is necessary to be aware of these techniques in order to recognize them when they are being used and avoid falling prey to them.

Bait and Switch

The bait-and-switch technique is common in everyday life. The underlying concept is to lure the prey (potential buyer) with the bait (an attractive offer or a deal that is too good to

be true). Once the prey has been enticed to buy and is psychologically committed to the offer, the switch is made. A less attractive or somehow diminished model is substituted, and the buyer makes a less advantageous deal.

Everyday example: An advanced digital camera is advertised for a very low price. The buyer has wanted this particular model, and this is the best deal yet. Excitedly, the buyer arrives eager to purchase the camera, only to find that the store has “run out of the sale model.” The buyer is told that for a few dollars more a deluxe brand is available. The technique is often successful. The buyer is there, committed to a product, and ready to buy.

Contract example: A physician reaches an oral agreement and commits to joining a group with the understanding that she will achieve partnership within 2 years. The conditions of partnership are never explicitly discussed. She gives notice to her current employer and prepares to move to the new location to join the new group. The written contract arrives and does not mention partnership.

Bait-and-switch solutions include:

- **Take assiduous notes:** Diligently record information when discussing the various aspects of the deal. Sending a copy of the notes to the other side for review will codify the verbal understanding. It is possible that the notes may be the only record of the discussion.
- **Get it in writing:** The best method of preventing a bait and switch is to document the agreement in writing, with explicit details covering all aspects of the understanding.
- **Create penalty and termination clauses:** A bait and switch may be prevented by incorporating a penalty clause or addressed by invoking a termination of the agreement based on noncompliance or nondelivery.

Good Guy-Bad Guy

The tough and irate “bad guy” is aggressive and demanding, perhaps even threatening. The pleasant, soft-spoken “good guy” intervenes and offers to protect you, the “innocent” negotiator, from the bad guy. Even if the good guy is not making a great offer, it is much easier to deal with the nice guy rather than to have to deal with the jerk again. This is a classic setup to gain key concessions.

Everyday example: The surly cop begins to rough up the suspect. The gentle, brotherly good cop rescues the suspect, temporarily stopping the bad cop. The good cop does not know how long he can hold off the bad cop and suggests that the suspect cooperate before the other guy loses control completely.

Everyday example: In the family setting, a stay-at-home parent says, “If you continue to behave like that, I’m going to have to tell your father (mother) when he (she) gets home.” The parent is playing the good guy, implying “do it my way and it will be easy for you.” The other parent is cast as the bad guy to modify the child’s behavior.

Contract example: Two physicians representing a group are negotiating a contract with a hospital administrator who is desperate to get ED coverage. One member of the physician team gets angry over the compensation package and storms out of the room. As the other physician picks up his papers to leave, he says, “Gee, I am really sorry this happened. We were so close to a deal. This is a sensitive issue for him. If there was something you could give, maybe I could get him back.”

Good guy-bad guy solutions include:

- **Recognize it:** The good guy and bad guy are on the same team. They are partners with the same goal—to get the best deal. Avoid being drawn in by it.

- **Avoid responding by trying to appease:** Placating is responding to a bully. The other side will win and will continue to use this technique until it does not work anymore.
- **Refer to the interest, not the position:** If the bad guy tries to maneuver the negotiation into positional bargaining, that is, “my way or we are done,” refocus the discussion on the underlying interest.
- **Identify the ploy and create embarrassment:** “Hey, you guys aren’t going to use the old good guy-bad guy technique on me, are you?” Once caught, they will probably smile, deny it, and get back to the discussion in a more fruitful manner.

Splitting Behavior—The End Run

The underlying principle of splitting behavior is playing team members against each other and reducing their aspirations. This technique can create conflict within a group and lead to concessions by individual members of the group. The end run is similar in that it attempts to split the other side by going around the negotiator(s) and appealing to another decision-maker. There are legitimate reasons for the end run, including trying to break a deadlock, bringing a more collaborative person into the discussion, and involving the decision-maker. There are also deceptive and improper reasons for using the end run and splitting behavior, including creating conflict to gain an advantage. To successfully counter this technique, it is necessary to first recognize it.

Everyday examples: A couple purchasing a car exposes areas of disagreement. The salesman recognizes this conflict and plays one against the other to enhance his profits. Another common example is a child asking the second parent’s permission to do something to which the first parent has said no.

Contract example: A physician is empowered by the group to negotiate for it. The other side goes directly to the group and states it is impossible to deal with that physician and the group is at risk of losing the opportunity. If the ploy is unrecognized, the physician and the group are put at a significant disadvantage. In a unionized nursing environment, laws protect the represented parties from tactics of addressing the nursing body directly by circumventing the negotiating entity.

Splitting behavior solutions include:

- **Determine your negotiating approach prior to the negotiation:** Revealing internal disagreements in front of the other side will demonstrate significant weaknesses in position and resolve. Define areas of concession privately in advance of negotiation meetings.
- **Do not get sucked in:** Those not part of the primary negotiating team should not make decisions apart from the selected negotiator(s) and should reaffirm the group’s decision-making process.
- **Modify the group:** Agree to send an additional person, not a replacement. By offering to expand the group, the alleged concern is addressed without undercutting the team.

Silence

Difficult moments in a negotiation can often be successfully managed with silence. As tension mounts and deadlines approach, most people will have a strong desire to act. It may be beneficial to resist the temptation to speak and allow the other side to fill the void. The person who speaks less listens more. Further, the discomfort caused by one person’s silence may cause the other side to reconsider a hard position and begin to concede.

Contract example: A physician negotiates on behalf of the group. After presenting multiple ways in which the group can provide quality care in a financially responsible

way, the other person is silent and appears disapproving. The physician, having assumed responsibility for the group, becomes increasingly fearful that he has angered the other party and that the group will suffer significantly as a result. The ploy of silence causes the physician to make early concessions.

Silence solutions include:

- **Wait comfortably:** Take a couple of slow deep breaths, relax, and wait for the other person to speak again.
- **Distract with humor:** If the other side is intent on winning the battle of silence, allow the victory by speaking first in a way that will not include concessions. Talk about an unrelated incident in the ED or a recent event. The key is to make it light and engaging so that the other person will feel good about reentering the discussion.
- **Give time to think:** If the other negotiator is unwilling to make a comment or a counterproposal, simply acknowledge that they may need time to consider the proposal and even discuss it with others. Offer to set a time for a follow-up meeting with the goal of settling this item.

The Ultimatum

The risk of nonagreement is present in every negotiation. The risk becomes reality if the sides cannot find a mutually acceptable solution. Some negotiators will threaten nonagreement as a ploy to accomplish their objectives.

The key to effective threats is believability. They are meant to lower the opposition's aspirations. The normal response is to become defensive and anxious. Ultimatums should be avoided because they always build resentment. Threats are the classic game of chicken: *Who will blink first?* While not recommended, ultimatums should only be used when nonagreement (walk-away as a BATNA) is a real option. Even then, it should be done in a way that allows the other side to acquiesce without loss of face.

Brinkmanship is an extreme example of threats and ultimatums. This tactic is considered the ultimate game of chicken in which one or both sides threaten extreme measures unless its demands are met. The threats can be in the form of verbal attacks or veiled in the righteous air of trying to save the deal. The Cuban Missile Crisis, which threatened nuclear war, was a successful example. The Peloponnesian War was an unsuccessful example, leading to the eventual fall of Athens. More recently, US President Donald Trump threatened North Korea by saying:³¹

[Further threats] will be met with fire and fury like the world has never seen.

Ultimatum/threat solutions include:

- **Take a deep breath and maintain control:** The normal response is to get upset and feel the need to either acquiesce or get up and walk out. Instead of being thrown off balance, take a deep breath, acknowledge that the issue is important to both sides, and ask the other side to elaborate its interest.
- **Use the power of silence:** Let the room fill with silence. Angry, threatening individuals depend on a defensive reaction from the other side. Silence may lead to discomfort.
- **Focus on the interest, not the position:** The threat is a position. Identify the mutual interests and work toward resolution.

The Nibble

The definition of the "nibble" is to chew off a little more after the deal is completed.³² This technique is successful because once agreement is achieved, both sides become

psychologically committed to the deal, lose their walk-away power, and let their guard down. Once a deal is done, there is a tendency to give even more to “sweeten the relationship.” Therefore, if someone asks for a little more after a deal has been struck, he or she usually receives it. Recognizing this phenomenon, the other side can add more and more, slowly changing the deal. The nibble may be preceded by words such as, “Of course you are including . . .,” or “And by the way . . .,” or “Oh yes, there is just one more minor detail . . .”

Everyday example: The seller concludes a deal to sell his house and shake hands. The buyer says, “Of course, you are leaving the refrigerator.” The seller agrees and then the buyer adds, “Just one more minor detail—we assume you will replace the old fence.” This nibbling process could continue until the seller stops it. Each time one acquiesces to an additional request, the behavior is reinforced.

Contract example: The ED group has recruited a new practitioner. After coming to agreement, the new staff member says, “Oh, by the way, to whom should I give the bill for my moving expenses?” Or, “Of course you will be paying for my license and dues, won’t you?” This ploy works because the group has made a psychological commitment. To say no might undo the deal.

Nibble solutions include:

- **Recognize the ploy:** The most important step in protecting against the nibble is to recognize it. Congratulate the other side on the deal it has already negotiated and point out the nibble. “You negotiated a fantastic deal. You’re not going to nickel and dime me now, are you?”
- **Just say no:** Some people will continue to nibble until you say enough. “We’ve made a deal. If you would like to discuss additional items, I would be willing to reopen the negotiations.”
- **“Tit-for-tat”:** Ask for a reciprocal concession. If they ask for more, so should you, “Sure I’d be willing to . . ., if you’ll . . .”

The Flinch

The “flinch” is a physical reaction demonstrating strong rejection of a proposal. It is powerful ploy designed to create embarrassment and concession. The flinch may be manifested verbally and/or nonverbally and may include a wince, moan, exaggerated gesticulation, or exclamation. The more dramatic the flinch, the more effective it becomes. Upon hearing the offer, the flinching party may respond immediately with a look of astonishment and disbelief while simultaneously uttering, “You want *what?*”

The flinch is a particularly effective ploy when used on someone who would never purposely use the flinch, and it may be a prelude to a very poor offer.

Everyday example: In an antique shop, a buyer decides to bid on a desired object and offers a reasonable price, at which point the dealer drops his jaw, throws his hands in the air, and claims, “That’s ridiculous!”

Contract example: A physician group is presenting a proposal to staff an ED. Upon stating the support requirements, the other party suddenly stands up, with arms thrown in the air and a stunned expression, and yells, “You’ve got to be kidding! There is no way we can do this deal.” The representative of the group immediately develops a sinking feeling in his stomach as aspirations plummet. The immediate reaction is to try to figure out how to change the deal to make it more appealing.

The flinch solutions include:

- **Recognize the ploy:** Avoid appeasing the “apparently” upset person.
- **Calmly reassert the value proposal:** Be prepared to restate calmly and clearly the value of the product or service. “Perhaps I didn’t fully clarify the financial reward you and your institution will achieve by contracting with us.”
- **Ask for a reciprocal concession:** If giving something to the flinching person, ask for something of equal value.

Puppy Dog Technique

The “puppy dog” technique is a trial offer of a desired object. “Why don’t you take the puppy home over the weekend and show it to the kids? If they don’t like it, you can bring it back next week.” Once the puppy dog is home, the kids will naturally fall in love with it and the deal is closed. This ploy is the same as the 30-day trial period; it is rare for the purchaser to return something within the trial period.

Everyday example: The trial offer is frequently used in television infomercials. A company promotes guaranteed exercise equipment and promises a full refund of the money minus (expensive) shipping costs if the purchaser is dissatisfied. Once purchased, the equipment may be used a great deal initially. Even if not used, most people will rationalize that they will start using it soon.

Contract example: As a recruitment tactic, a nurse is invited to perform a shadow shift on a low-volume day with a highly talented, particularly likable and entertaining charge nurse. Afterward, they and others have a wonderful dinner. The person being recruited leaves with a particularly, perhaps unrealistically, favorable opinion.

Puppy dog technique solutions include:

- **Develop criteria for acceptance:** Determine what will make the deal acceptable and unacceptable before accepting any trial. It is easy to rationalize what may ultimately be a bad situation once in the middle of it. Those who are more deliberate are less likely to fall prey to this technique.
- **Predetermine walk-away criteria:** Before the trial period begins, determine exactly how to evaluate it and in what situation you’ll say “no.”

Funny Money

“Funny money” is a term used to describe changing the cost basis to an insignificant quantity or increment. By concealing the value, the funny money ploy attempts to create the perception that a desired object is less expensive than it is.

Everyday example: To hide the true cost of a product, an advertiser may convert the payment to a daily cost. “For only \$1.78 a day, you can enjoy . . .” The annualized payment of \$650 may be more than the purchaser can afford.

Everyday example: When purchasing a house, the realtor might say, “It will only cost you five dollars more a day. Are you going to let five dollars keep you from living here?” It is considerably more than five dollars. On a 30-year mortgage, five dollars a day will cost the buyer \$54,750 in increased principal plus approximately \$51,058 in interest (at 5%), or a total cost of \$105,808 to the buyer.

Contract example: The hospital foundation comes to the physician group and says, “You have been very successful here. We would like your group to donate only one dollar an hour for the period of time that you’ve held the contract.” While a dollar an hour seems small, if a “single coverage” group has been present for 10 years, the cost would be \$87,600.

Funny money solutions include:

- **Determine the true cost:** Before saying yes, calculate the true total cost by translating it into real money—not pennies per hour, but dollars per year.
- **Correct the time frame:** Use the total time frame for which payment will be made.

CONCLUSION

This chapter has provided basic negotiation theory and a few practical applications. The skill to negotiate is the result of observation, practice, and study. The success of negotiation should not be measured by short-term gain at the expense of the other side. Rather, it should be measured by the development of a long-term and mutually beneficial relationship that is built on trust and the desire to achieve common goals. In a successful negotiation, both parties feel they have achieved their goals and want to do business with each other in the future.

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REFERENCES

1. Haden-Elgin S. *The Gentle Art of Verbal Self Defense* (Revised and Updated). New York, NY: Fall River Press Edition; 2009.
2. Dawson R. *The Secrets of Power Negotiating: Inside Secrets from a Master Negotiator*. Pompton Plains, NJ: Career Press; 2011.
3. Babcock L, Laschever S. *Women Don't Ask: The High Cost of Avoiding Negotiation – And Positive Strategies for Change*. New York, NY: Bantam Books; 2007.
4. Babcock L, Dunbrooke S. *Women Don't Ask: Negotiation and the Gender Divide* (Audible Audiobook). Newark, NJ: Audible Studios; 2012.
5. Bowles HR. *Why Women Don't Negotiate Their Job Offers*. Brighton, Mass: Harvard Business; Review June 19, 2014. <https://hbr.org/2014/06/why-women-dont-negotiate-their-job-offers>. Accessed July 5, 2018.
6. Nierenberg GI. *The Art of Negotiating*. New York, NY: Cornerstone Library Publications; 1968.
7. Thomas-Kilmann Conflict Mode Instrument – CPP, Inc. Available at: <https://www.cpp.com/en-US/Products-and-Services/TKI>. Accessed July 10, 2018.
8. Strauss RW. Negotiation skills. *Am Coll Emerg Phys*. Emergency Department Directors Academy. 2004-2019.
9. Wertheim E. Negotiation and resolving conflicts: an overview. College of Business Administration, Northeastern University. Available at: <https://www.europarc.org/communication-skills/pdf/Negotiation%20Skills.pdf>. Accessed July 22, 2018.
10. Mnookin TH, Peppet SR, Tulumell AS. *Beyond Winning: Negotiating to Create Value in Deals and Disputes*. Cambridge, Mass: Belknap Press of Harvard University Press; 2004.
11. Fisher R, Ury W. *Getting to Yes*. New York, NY: Penguin Books; 2006.
12. Exercise, yoga, and meditation for stress management. In: Dasgupta A. *The Science of Stress Management: A Guide to Best Practices for Better Well-Being*. London, United Kingdom: Rowman and Littlefield; 2018.
13. Johnson S. *Rasselas, Prince of Abyssinia*. London, United Kingdom: Cassell and Company; 1889. Chapter 37. Available at: <http://www.gutenberg.org/files/652/652-h/652-h.htm>. Accessed June 30, 2018.
14. Active Listening: a negotiators best tool. 2010. Available at: <https://www.karrass.com/blog/active-listening-a-negotiators-best-tool/>. Accessed June 23, 2018.
15. When negotiating—information is power. 2010. Available at: <https://www.karrass.com/en/blog/when-negotiating-information-is-power/>. Accessed June 25, 2018.
16. Siegel S, Fouraker LE. *Bargaining and Group Decision Making*. New York, NY: McGraw-Hill; 1960.
17. Karrass C. *The Negotiating Game*. New York, NY: Harper Collins; 1994.
18. Strauss RW, Keene JG. Negotiation skills. In: Salluzzo R, Strauss RW, Mayer T, et al, eds. *Emergency Department Management: Principles and Applications*. Philadelphia, Pa: Mosby; 1997.
19. Shakespeare W. *The Tempest* (Folger Shakespeare Library). New York, NY: Simon and Schuster; 2015.
20. Radzveck JR, Moore DA. Competing to be certain (but wrong): social pressure and overprecision in judgment. Carnegie Mellon University. 2009. Available at: http://www.gsb.stanford.edu/facseminars/events/marketing/documents/ob_01_09_moore.pdf. Accessed May 11, 2011.
21. Kuntsler JH. The psychology of previous investment, raise the hammer. 2005. Available at: <http://www.raisethehammer.org/article/181>. Accessed June 3, 2018.
22. St. John B, Haines AP. *Micro-Resilience: Minor Shifts for Major Boosts in Focus, Drive, and Energy*. New York, NY: Center Street; 2017.
23. Karrass C. *Business as in Life-You Don't Get What You Deserve, You Get What You Negotiate*. Beverly Hills, Calif: Stanford Street Press; 2013.
24. Shell GR. Step 3: Opening and making concessions. In: *Bargaining for Advantage: Negotiating Strategies for Reasonable People*. New York, NY: Penguin Books; 2006.
25. Hovland CI. *The Order of Presentation in Persuasion*. New Haven, Conn: Yale University Press; 1957.
26. Cohen H. *You Can Negotiate Anything*. New York, NY: Bantam Book; 1982.
27. Rowny E. Negotiating with the Soviet Union: the diplomatic discussion? Available at: <https://www.bu.edu/iscip/pubseries/PubSeries1rowny.pdf>. Accessed, July 16, 2018.

28. Strauss RW. Negotiation skills. In: Strauss RW, Mayer TA, eds. *Strauss & Mayer's Emergency Department Management*. Philadelphia, Pa: McGraw-Hill; 2013.
29. Strauss RW. Conflict management. *Am Coll Emerg Phys*. Emergency Department Directors Academy. 2004-2019.
30. Malhotra D. *Negotiating the Impossible*. Oakland, Calif: Berrett-Koehler Publishers; 2016.
31. Foreman A. A brief history of brinkmanship. *Wall Street Journal*. August 23, 2017. Available at: <https://www.wsj.com/articles/a-brief-history-of-brinkmanship-1503507520>. Accessed July 22, 2018.
32. Karrass C. *Give and Take: The Complete Guide to Negotiating Strategies and Tactics*. New York, NY: Harper Collins; 1993.