

Fundamentals of Negotiation

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Planning

If you know the enemy and know yourself, you need not fear the result of a hundred battles. If you know yourself but not the enemy, for every victory gained you will suffer a defeat. If you know neither the enemy nor yourself, you will succumb in every battle. (Sun Tzu, 983, at 18) (See also LePoole, 1991, at 43)



- Lawyers who carefully prepare generally achieve more beneficial results
- Obvious, yet many don't
- Creates more confidence—undermines self-assurance of less prepared opponents
 - Underprepared will misconceivingly defer and generally make more frequent and more substantial concessions (and less money?)



RAPPORT

- Creating an environment for effective communication to take place
- Creates **leverage**
- Use emotions as both a **lens** and a **lever**



INCREASING VALUE

- ATTENTION
- ACKNOWLEDGEMENT
- ACCEPTANCE
- AFFIRMATION
- ➔ USE LISTENING SKILLS/RAPPORT TOOLS

PEOPLE CRAVE APPROVAL & VALUE

Listening

- Supportive eye contact, a lead nod, an “I can see” encourages further disclosures as done silently after an initial response
- If writes constantly, what’s said, oblivious to non-verbal cues – study – active listening, recall more replies than those who asked same questions but attempted to write as much as they could – balance here



Information Gathering

- What do I know
- What do I need to know
- What does the opponent know (I think)
- Negotiations have a tendency to skip this stage and move immediately to bargaining
- This is an error



Fact Gathering

- Broad questions – open-ended
- Use silence
- Listen to questions asked by opponent – suggests areas of her interests
- Planning for fact/information gathering stages
 - What will I disclose
 - What do I not want to disclose
 - Blocking techniques



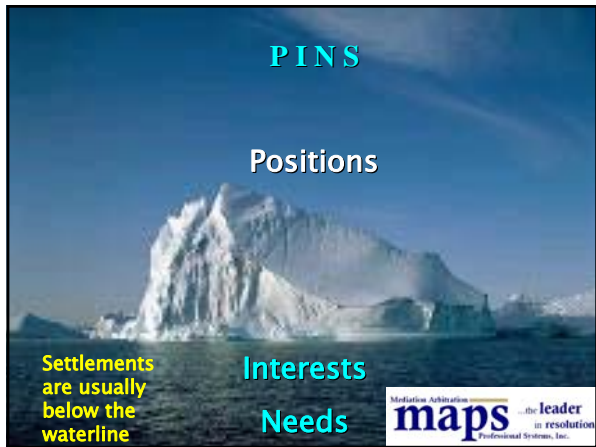
Blocking Techniques

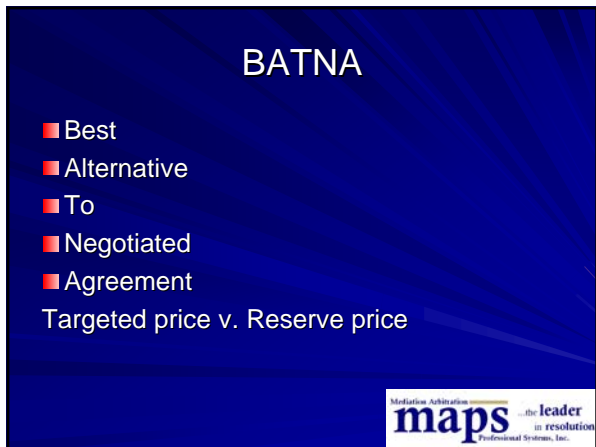
- Ignore; continue with prior conversation or change topic
- Answer only beneficial part of a compound question
- Over or under answer: narrow question responds with general; broad answers need a narrow part
- Unintentionally misconstrue and argues as you reframe it
- Answer with a question
- Rule out of bounds

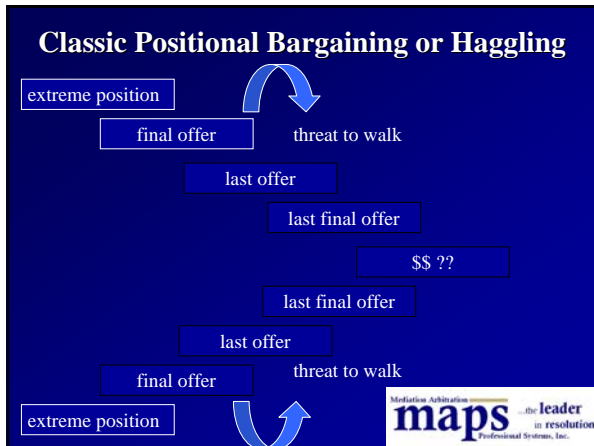


Don't volunteer significant information – make opponent work to get it because people listen more intently to answers to their questions and give it more credence than if volunteered.

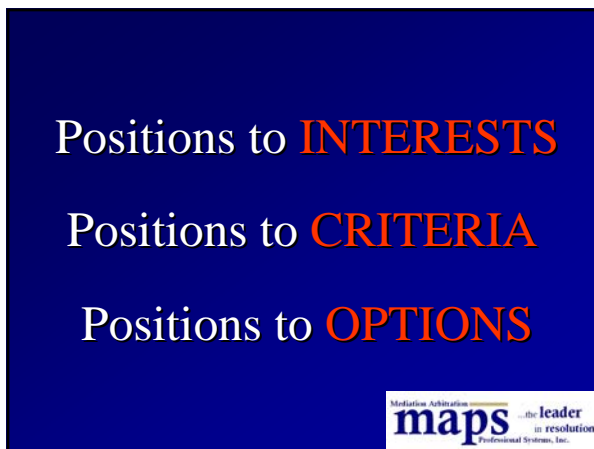




















REACT OR CREATE

Options:

-  Surrender
-  Play Game Better
-  Quit - Leave
-  Change the Game



CHANGE THE GAME

-  Play Your Game
-  Reframe
-  Name the Game
-  Change Players



NEGOTIATION TENSIONS

- ✓ Economic Tension between creating and distributing value
- ✓ Interpersonal Tension between empathy and assertiveness
- ✓ Agency Tension between principals and agents



RESEARCH: More often than not, negotiators who make the first offer come out ahead.

WHY? ANCHORS

- How we view an offer's value is influenced by relevant numbers that enter the negotiation environment.
- Such numbers pull judgments towards themselves CALLED ANCHORS!
- In positions of uncertainty and ambiguity, first offers have strong anchoring effect



Real Estate Study: All agents influenced in home valuations by the suggested list price citing features that justify amounts, but denied taking list price into account. (Northcraft & Neale)

Mercedes: 2,800 DM v. 5,000 DM. Estimated value of car 1,000DM higher when given higher list price on used car (Univ. of Wurzburg)

- Every item, matter or case has positive/negative qualities.
- High anchors focuses attention on positive attributes and low anchors on flaws: New roof, big rooms v. small yard, old furnace

•WHEN SELLER MAKES FIRST OFFER, FINAL PRICE HIGHER THAN WHEN BUYER MAKES FIRST OFFER



WHEN TO MAKE FIRST OFFER?

- Confidence, sense of control or want it
- If lack power, less inclined
- Wait when lack info

AMOUNT :

- More aggressive, better outcomes, BUT Aggressive v. Absurd
- Negotiator satisfaction related to number and size of concessions
- Target price v. BATNA

First offer Protection:

- Make your first offer in same way
- Always demand concessions
- Scott's nightmare



Games/Tactics

- Threats
- Promise
- Contingent concessions
- Range offers
- Authority
- Nibble/Crunch
- Use of anger, walk out, end
- Bracketing
- "Brer Rabbit"
- Mutt and Jeff
- Split the differences