

Handout 11

Principles of Negotiation

(adapted from Roger Fisher and Douglas Stone,
Consensus Building Institute and the Program on Negotiation at Harvard Law School,
<http://www.pon.harvard.edu>)

Negotiations do not just happen during the litigation process; negotiations occur throughout our daily lives and are used to decide many conflicts, big and small. A negotiation can result in two countries signing a trade agreement or can help you and a friend decide what restaurant to go to for dinner. A negotiation is a bargaining process that involves both give and take – parties must work together to find common ground and reach a solution that settles the conflict.

At the center of every negotiation is the conflict between the parties. This conflict, however, does not mean that the negotiation is a zero sum game where one party can only gain if the other party loses. Instead, negotiations can be *value adding* by addressing and satisfying each party's underlying interests and needs. Parties can create a value-adding negotiation by focusing on the different sources of conflict. There are four main sources of conflict:

- **Interests**
 - **Interests** are what the party wants and their reasons for wanting those things. During a negotiation it is important to listen to the party's demands and to analyze the underlying needs or desires that drive those demands. Basing a negotiation off a discussion of true interests, instead of a debate about demands, will help both sides get what they want and help generate nuanced and creative solutions.
 - During a negotiation it may be helpful to ask questions such as: Why is that important to you? How does this demand address your goals or interests?
- **Beliefs**
 - **Beliefs** underlie the positions of each party. There are two types of beliefs: beliefs about the way the world is (beliefs about what is true) and beliefs about the way the world should be. Both types of beliefs are often affected by the parties' past experiences or the parties' relationships with each other.
 - During a negotiation it may be helpful to ask both yourself and the other side: Why do you believe that your proposed solution is the best way to resolve the issue?
- **Emotions**
 - **Emotions** are how a person feels about something, whether it is the conflict, a demand, or a proposed solution. It is difficult to keep emotions out of a negotiation, however it is important that parties make sure their emotions don't get in the way of reaching a solution. Parties often feel anger toward the other side, fear of losing what they want, or pride about their own beliefs.
 - During a negotiation, it will be particularly important to understand the party's emotions when you are discussing the facts. It may be helpful to ask: How did that make you feel? What caused you to feel that way? How does this solution make you feel better?

- **Roles**
 - **Roles** are the labels people use to define themselves and the groups they identify with and belong to, such as student, parent, or teacher. The identity of each of these roles is shaped by history, culture, qualities, and characteristics.
 - During a negotiation it may be helpful to ask: What roles do you represent in the negotiation? How does this role shape your demands?

Once you have analyzed the conflict from both parties' points of view, it is important to think about developing solutions. A good starting point is to think about the likely outcomes if you are *not* able to reach an agreement in the negotiation. It is important to think about both your ideal solution and the least favorable deal that you would be willing to except. Establishing both a bottom line and an ideal solution will determine a framework that you can work within and help you create a range of options that address different aspects of your party's goals and interests. This framework can help you create a structure of what you value; during a negotiation each party will have to make trade-offs and its important to know what issues you care about most and what issues you are more willing to concede. As you develop your solutions, look back to the interests of both parties, and think about how that option addresses each party's interest.

As you begin a negotiation, it is useful to build a relationship with the opposing party. A good way to do this is to the negotiation with small or easily resolved issues. Once you have found common ground with the opposing party it will be easier to work towards resolving the more difficult conflicts and developing more nuanced solutions. You will want to draft a set of initial questions and solutions you can explore with the opposing party. As you begin to draft solutions, think about how you can invent a solution that is beneficial for all parties. How does this solution respond to the needs of both your party and the opposing party? Together you will work together towards building a solution that addresses the underlying interests and needs of both parties.