

PRACTICE HINTS: NEGOTIATION THEORY, STRATEGIES, AND SKILLS

Mediation is, in essence, a three-way negotiation. The mediator negotiates his or her authority and the terms of the mediation process with each party,. As well, the mediator then begins to effectively teach the parties to negotiate between themselves.

Despite the prevalence and importance of negotiation in our personal and professional lives, most people have learned how to negotiate the same way they have learned how to parent—by "hit and miss" or "seat of the pants". **PREFERABLY, NEGOTIATION THEORY SKILLS AND TECHNIQUES OUGHT TO BE STUDIED SYSTEMATICALLY AND COMPREHENSIVELY SO AS TO INCREASE THE LIKELIHOOD OF AGREEMENTS OCCURRING MORE BY DESIGN AND LESS BY CHANCE.**

NEGOTIATION AS RITUAL AND DRAMA

Negotiation is typically thought of in business/economic terms—how to maximize benefits and minimize risk, however, the negotiation process is also ritual and drama. How people see and present themselves to others in negotiation, gives a clear view not only to the parties personal belief systems, but as well, to the value system of the culture in which the negotiation takes place. Every culture has developed certain rituals about the conduct of negotiation. A mediator or negotiator must pay attention to those rituals or the negotiation will be ill-fated from the start. Only after the rituals have been accommodated can the negotiation frame or format be shifted to be more effective.

CULTURAL, RACIAL, ETHNIC AND GENDER DIFFERENCES IN NEGOTIATION STYLE

There are many varied notions about negotiation drawn from cultural, racial, ethical, religious and gender perspectives. Most importantly, especially in family disputes, but in business conflicts as well, gender is a significant factor in negotiation. (D. Kolb) Men and women use language differently: men tend to make positional statements and use language to solve problems, and women tend to ask questions and use language to build rapport. (D. Tannen) The differences extend into styles of negotiation; as a broad generalization, men tend to overestimate their ability and women tend to underestimate their ability to negotiate.

Further, as a broad generalization, in Western cultures where rationalism is valued, "John Wayne" haunts us still; the "say what you mean and mean what you say," "cut to the chase," positional offer/counter-offer ritual of negotiation is prevalent. In Eastern cultures, where face-saving is critical and, custom and tradition are highly valued, the process and ceremony of negotiation is more important, in some instances, even than the outcome or "closing the deal." Thus, Westerners tend to view Asian and Middle-Easterners as "shifty" and inscrutable "they never mean what they say or say what they mean to your face" Westerners are conversely viewed as rude.

Religion and history may also color the negotiation process. For instance, people from some religious or ethnic backgrounds tend to more easily engage in the negotiation-bargaining process, while others disdain bargaining as unseemly or even immoral. Differences in approach and style of negotiation develop not only between groups of people but within those groupings. The purpose in raising these considerations is not to play into or perpetuate stereotypes, but merely to raise the awareness of the multitude of variables that affect the negotiation process. More importantly, however, across cultural, racial, ethnic and gender differences, most people want to settle conflict and save face. (See "Negotiation and Evil: The Sources of Religious and

Moral Resistance to the Settlement of Conflicts." Robert D. Benjamin, *Mediation Quarterly*, vol. 15, no. 3, Spring 1998. Jossey-Bass Publishers, San Francisco, Calif.)

AVOID OVER-SIMPLISTIC NOTIONS OF NEGOTIATION

Many people think about negotiators as either of the hard and competitive "get all you can" variety, or the soft, cooperative "give in to keep the peace" kind. Develop an approach to negotiation that emphasizes being realistic and good business practice that is neither opportunistic or naive. (See "The Protean Negotiator.")

Be pragmatic. Do a deal because it meets enough of your interests and accommodates some of the other party's needs as well. Those agreements are the most likely to be resilient.

Tend to avoid primitive or coercive negotiation styles that rely on ultimatums ("do it or else") or humanistic or altruistic styles ("do it because it is 'the right thing to do'"). Agreements based on these approaches can often contain hidden resentments.

DO NOT LISTEN TO WORDS OR POSITIONS. THEY CAN BE MISLEADING; INSTEAD LEARN TO HEAR THE UNDERLYING CONCERNS, FEARS, AND REAL ISSUES

Keep in mind that positional statements are often merely defensive postures and reflect underlying insecurity or fear of loss. If the underlying concerns can be addressed the positional bargaining and posturing will be minimized.

The positional games that most people play in negotiation are often a reflection of their fears. The "high/low" device, for instance, tries to avoid being taken advantage of or looking like a fool—"I don't want to ask for too little or offer too much." Games cannot be entirely avoided, but they can be minimized by addressing the real concerns more directly.

PEOPLE DO NOT LIKE TO NEGOTIATE; THERE IS A CULTURAL RESISTANCE TO NEGOTIATE

For many, negotiation is tantamount to compromising your principles—"giving in" or "selling out." Restyle the negotiation process, not as compromising, but rather, getting enough of what you want in a way that allows the other to also get some of what he or she needs.

CONSIDER YOUR OWN BIASES ABOUT NEGOTIATION

For some, those who "dicker over everything" and seem to be "nickle and diming" trigger negative responses; for others, those who are too rigid, "It's my way or the highway" are difficult. Those approaches may be remnants of ingrained rituals. If the mediator has a strong sense of the "right way" to negotiate, his or her ritual may collide with one or both of the parties.

CHALLENGE AND FILTER CONVENTIONAL WISDOMS ABOUT NEGOTIATION

For instance, an all too easy assumption to make is that "people are greedy"—that they want something for nothing. It may be they just do not want to look like a fool in the negotiation.

A helpful alternative operating premise may be that people do want to settle conflict, they merely want to "save face."

CONSIDER TIMING AND STRATEGY — "NO CONFLICT BEFORE ITS TIME"; SLOW DOWN THE PROCESS. DISCOURAGE "CUTTING TO THE CHASE"

Do not let the parties begin to actually negotiate until you sense the following:

1. They both have necessary and sufficient information;
2. They both know all of the issues—the apparent ones and others they may not have thought about.
3. They know most of the options available.
4. They have considered the pros and cons of each option and the corresponding transaction costs.

Most negotiations fail because one or both parties is operating out of fear or confusion or is making unwarranted assumptions based on misinformation or no information. Just as in war, the strategic planning is as important as the execution; in negotiation, preparing a solid foundation for the negotiations is essential. ("Guerilla Mediation: The Use of Warfare Strategies in the Management of Conflict," R. D. Benjamin, <www.mediate.com/rbenjamin/articles., 1999).

ESPECIALLY IN DIFFICULT MATTERS, DO NOT EXPECT PARTIES TO MAKE SHIFTS IN THEIR PERSPECTIVES GREATER THAN THEIR ABILITY TO ASSIMILATE THOSE CHANGES. (J. Haynes).

DON'T JUST LISTEN TO WORDS, HEAR THE UNDERLYING CONCERNS THAT PARTIES ARE TRYING TO EXPRESS:

Positional statements are predominately defensive postures—statements about underlying fears. "I want joint custody" may be more about the fear of losing one's relationship with children than about the amount of time or form of custody.