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**PROGRAM MATERIALS**  
**Program #3006**  
**January 24, 2020**

## **The Art of Effective Negotiating**

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# The Art of Effective Negotiation

January 24, 2020

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*“In business you don’t get what you deserve but what you negotiate.”*

- Chester L. Karrass, The Negotiating Game

# Take a moment to consider...

- How important is negotiation to my professional success?
- Have there been times when skilled negotiations have made a significant difference in my practice?
- Have there been times, if I knew how to negotiate better, I would have obtained better results?

# For almost all lawyers...

- Their ability to effectively negotiate can make a tremendous difference in the success of their practices
- Even for those lawyers that are very good negotiators, it is always possible to incrementally improve

# With whom do lawyers negotiate?

- Their clients
- Attorneys and their clients on the other side of the table
- Co-Counsel
- Judges
- Governmental agencies
- Their partners, associates, and staff
- Just about everyone
  - Family
  - Friends
  - People they hire

# Learning Objectives

- Understand the strategic nature of effective negotiations
- Recognize that expert negotiators know the issues cold and have “people smarts”
- Become keenly aware of the difference between “backstage” and “front stage” when it comes to understanding the people involved
- Learn the incredibly valuable art of focusing on the other person’s enlightened self-interest

# The Key to Effective Negotiations

- A solid understanding of the issues involved
- Credibility
- Intuition
- “People smarts”
  - A deep understanding of what others want and what they need
  - Top flight bargaining skills



*“All the worlds a stage, and all the men  
and women merely players.”*

- Shakespeare, As You Like It, Act II, Scene VII

# Looking Backstage

- Great negotiators look backstage
- The front stage is where people see your behaviors and proclamations. When you are front stage you are playing a role.
- Backstage is where the truth lies. It is where your real needs and wants as well as your concerns and insecurities come out.
- Backstage is where the deepest or “most real” information about a person typically resides.
- How do you get there?

# In negotiations

- The front stage more likely is a debate over terms, often based on rationale arguments.
- Backstage is the reality because it is all about hidden and not-so-hidden agendas, emotional issues, and ego.

# Your Front Stage

- Front stage
  - What impression do you want other people to have of you?
  - What characteristics and qualities would you like other people to attribute to you?
- For example, do you want people to think you are:
  - Smart
  - Clever
  - Fair, or
  - Do you want your Adversary to think your position is strong?
    - From an evidentiary standpoint?
    - From an Irrational standpoint?
      - Client doesn't really care
      - Not motivated?

# Your backstage

- What facts exist about your life that you would prefer very few people know?
- When it comes to bargaining, backstage is where all the anxieties and insecurities surrounding the negotiations live.
- Backstage is where all the adverse consequences or true desires go through your mind when you are trying to close a negotiation.
- Its your real goal or “ask”.

# Expert negotiators

- Understand their own backstage
- Focus on the backstage of the people they are negotiating with
  - What is backstage gives them powerful bargaining insights
  - They know what really matters
- They are in touch with their “gut” feelings
  - Gerd Gigerenzer in his book *Gut Feelings: the intelligence of the unconscious* says, when using the term gut feelings, intuition or hunch he is referring to a judgment:
    - That appears quickly in consciousness
    - Whose underlying reason we are not fully aware of, and
    - Is strong enough to act upon

# Backstage is the Key

Everyone has a Backstage



Backstage is More Important  
than Front Stage



Concentrate on What is  
Backstage

# So, how do you look backstage?

- Don't discount your "gut" instinct but, don't just rely on that alone
- Knowing the history of the people you are negotiating with
  - Have you done your research? What are their interests; Who are their friends; What are their politics; Dig deep to form some initial hypothesis.
  - What do they really need?
    - Is it cost?
    - Is it time?
    - Is it power?
    - Is it optics?
    - Is it ego?
- Asking astute and detailed questions
  - Questions that should elicit detailed responses
    - *i.e.* ask open ended questions
- Actively looking for pieces of valuable information over time
  - The kinds of things that a good poker player looks for are deviations in behavior. They will not take their opponents money in the first hand. Instead, will acutely watch things like, do you sip your drink after looking at cards, do you bet when you draw, et al
  - Unsophisticated negotiators may try to hard to convince you of a point when it really is the sine qua non and obvious to a trained negotiator. This may suggest an insecure negotiator or weak position. A seasoned expert never has to try too hard to convince their opponent of a self-evident proposition.
  - Look for consistencies or lack thereof (which is in itself a consistency), but be careful for red herrings
- So how do you do this?



# Active listening

- Ask open ended questions and listen
- People tend to like to talk about themselves
- Listening to
  - A person non-verbal messages such as posture and tone of voice
  - What they say and how they say it
- Include being empathetic
  - One way is to repeat what is being said\*
    - Accurate demonstrative empathy
    - Mislabel- to allow the other side to correct you and identify new information
    - Mirror
- Be patient
- Watch the interaction between your counter-parties and their clients. Are there any clear disagreements?
  - Look at body language; Posture; Eyes
  - Does it seem they are “off script?”

\* Chris Voss Teaches the Art of Negotiation, MasterClass. (n.d.). Retrieved January 17, 2020, from [https://www.masterclass.com/classes/chris-voss-teaches-the-art-of-negotiation/chapters/exercise-mirroring-and-labeling?action=preview&controller=chapters&course\\_id=chris-voss-teaches-the-art-of-negotiation&id=exercise-mirroring-and-labeling&logged\\_in=true](https://www.masterclass.com/classes/chris-voss-teaches-the-art-of-negotiation/chapters/exercise-mirroring-and-labeling?action=preview&controller=chapters&course_id=chris-voss-teaches-the-art-of-negotiation&id=exercise-mirroring-and-labeling&logged_in=true)

# From backstage to enlightened self-interests

- Enlightened self-interest is where your adversary discovers that by doing what you want achieves what they also want. It's the magic where you successfully communicate areas of overlap that therefore make it apparent and logical to agree with your position
- People act in accord with their enlightened self-interests
  - It is not about what you think they should or should not do
- By looking backstage you can determine the enlightened self-interests of the people you are negotiating with

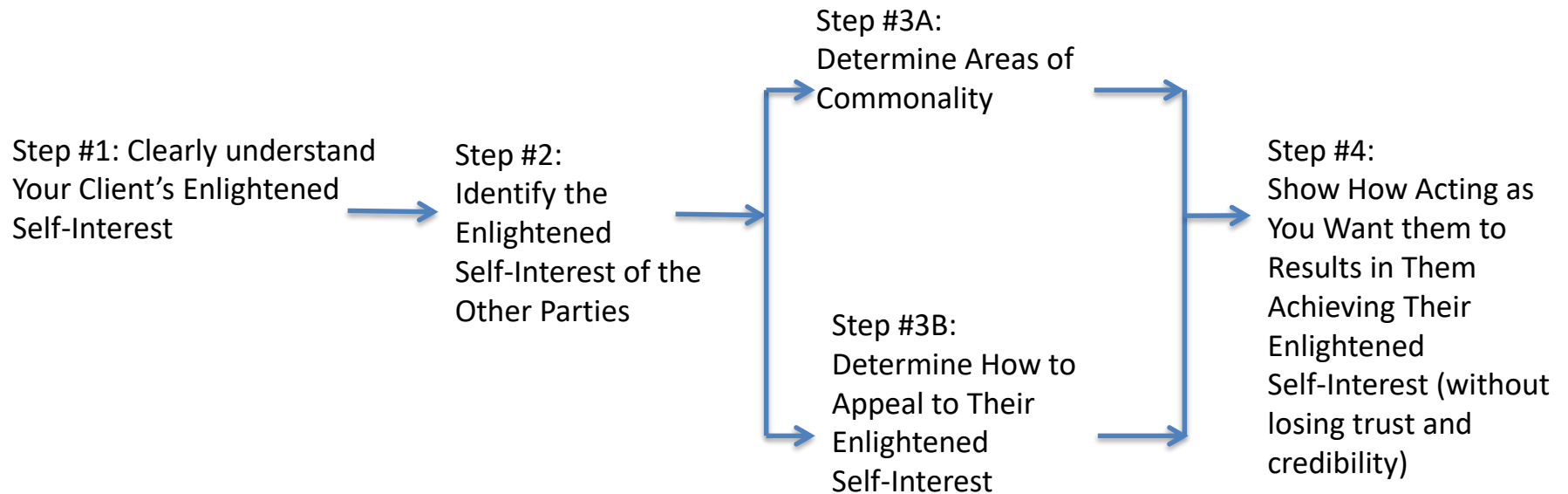
# Give to get

- Every person has his or her own goals and agenda and is looking out for his or her welfare – especially when negotiating
- The idea behind enlightened self-interest is to identify some commonality in what you most want and what the other person most wants in a negotiation. Then, by acting to further the other person's interests and meet goals, you will be able to satisfy your own interests and meet your own goals.

# Critical Considerations

- Every person at the negotiating table has his or her own goals and agendas
- Much of this is visible only by looking backstage
  - Be aware that looking backstage may take time and patience
  - If you lose credibility or lack authenticity in some way it will not occur \*CANNOT STRESS THIS ENOUGH\*
- Great negotiators are exceptionally good at aligning the enlightened self-interest of everyone involved in a negotiation
  - *i.e.* use charts if necessary or if there are many parties
    - See attached example of a chart used in a complex settlement negotiation

# The Enlightened Self-Interest Process



# Step #1: Be very clear about your own enlightened self-interest (Goal)

- A clear understanding of your client's enlightened self-interests
- A relatively easy way to determine your client's enlightened self-interests with respect to any negotiation is to answer questions like these:
  - Why is your client participating in the negotiation?
  - What outcome would be satisfactory?
  - What results would make your client feel you have been extremely successful?
  - What terms are absolutely nonnegotiable?
  - What are the minimally acceptable results?
  - What happens if you do not reach a deal?
  - How important is the relationship with the other party over the long term?

## Step #2: Identify the enlightened self-interest of the other parties

- Great negotiators are patient and put in the time and effort to unearth what is strongly meaningful to the counter-parties they are negotiating with
- They have strong intuition and rarely take anything at face value, and they look hard to see behind the curtain into people's backstage area
- Use sincere empathy
  - Do not flatter or repeat back what you have heard. “Label” what you have heard. Don't use phrases like, “What I am hearing ...”. This suggest that you are interested in your own perspective not theirs.

## Step #3(a): Determine areas of commonality

- The more overlap that exists between your client's self-interest and the other party, the easier it is to move forward to pursue mutual success
- There will be areas of commonality that may need to be extended



# Step #3(b): Decide how to appeal to their enlightened self-interest

- Because you know their backstage, you have good insights into their enlightened self-interests
- Gently guide them to see how by agreeing with you they can achieve their enlightened self-interest
- You are aiming to match up aspects of your agenda with their enlightened self-interest
- Much more art than science
- Enlightened self-interest is not about trying to persuade that an opportunity exists. It is about pointing out opportunities for success that actually exist in a situation, for both of you, by focusing mainly on how the other side can benefit.

# Step #4: Help them discover that by acting as you want them to achieve their goals

- Expert negotiators are very good at framing their discussions to focus on the other side
- You will want to connect your positions and recommendations to their enlightened self-interests
  - Remember that a win achieved through argument is ephemeral and pyrrhic.
    - In the book *48 Laws of Power*, Robert Greene states “words are a dime a dozen” and instead “Self-interest is the lever that will move people. Once you make them see how you can in some way meet their needs or advance their cause their resistance to your requests for help will magically fall away.”
    - Help others get what they really seek (i.e., their enlightened self-interest) and you will find them taking actions you want them to take that will put YOU and your client in the winner’s circle
- Everyone wants to advance or, “Increase” – Wallace D. Wattles\*

# Simply put

- For every person in every negotiation, ask yourself:

***“What is his or her enlightened self-interest in these negotiations?”***

***“Am I appealing to his or her enlightened self-interests?”***

- If not, ask yourself:

***“How can I align my enlightened self-interest with his or her enlightened self-interest?”***

***The more it is all about them,  
the better your results!***

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Revised Counterproposal to	RESPONSE
1. Issue a new RFP under the Procurement Guidelines to all interested responders, existing and new.	Agree
2. Content of RFP shall include:	
a. Medical-services plan: <i>Q - Yanked at 170 35 155? - what happens to MALLINCH TRUST. - OTHER (SSS) APPLICATION</i>	With respect to both the mandatory and desired elements, no award shall be made to any proposal which provides for less than \$220m sales non-contingent sales proceeds (net of seller financing or contribution). <i>A 175 MIN</i>
i. Mandatory elements of RFP response. To be considered, any RFP response shall include a facility with services/departments sufficient to support a full- service emergency room, an intensive care unit, and in-patient beds. The foregoing mandatory requirement shall not be waived without consent of 2/3 of the members of the Evaluation Committee.	Plan: This requires additional discussion, both as to specificity and consequence. Petitioners appear to have described a full service hospital. We agree that this is the appropriate goal, but this definition as mandatory would appear to preclude a proposal for a satellite :  proposal if no proposal as described by petitioners as mandatory is submitted or fails to meet the financial floor.  Waiver: no; inconsistent with evaluation

*- OTHER  
Assumed paid back  
as used for . . .  
HANGELL done on  
head of a pin "*

	process.
ii. Desired elements of medical-services plan: A full-service hospital with at least 100 in-patient beds.	Yes
iii. Specific elements of offered medical-services plan: To be considered, any RFP response must specify the medical services anticipated in responder's medical-services plan, including (a) the total square footage anticipated of all medical services; (b) for in-patient services, the expected number of beds; (c) the medical departments (e.g., obstetrics, oncology) to be included in the medical-services plan; and (d) how the medical-services plan will meet the needs of the community.	Yes
iv. RFP should include the following language: The goal of the RFP process should be stated as finding the operator of a full-service hospital, if possible. Financially-feasible proposals offering more expansive and sustainable medical services may receive a higher technical ranking.	The RFP will contain the provisions agreed to above and the evaluation criteria to be agreed upon as discussed below. Proposals will be ranked based on these criteria.
b. Form of RFP: Prior to distribution to potential responders, the form and substance of the RFP must be approved by the Evaluation Committee referred to in subsection II(f) below. Among other things, the information provided with the RFP must be as comprehensive and accurate as possible. The Evaluation Committee's input concerning the content of the RFP may not delay issuance of the RFP beyond	Substance of RFP (and form, for discussion) to be set forth in the stipulation

20 days from the date of this settlement.	
<p>c. <b>Distribution of Proceeds/Inclusion of Assets:</b> If the desired elements of a medical service plan described in paragraph 2(a)(ii) are achieved, _____ alone will direct the distribution of proceeds from an transactions consummated as a result of the RFP. If such desired elements of a medical service plan described in paragraph 2(a)(ii) are not achieved, _____ may take from the transaction only proceeds actually used to (a) retire the PIT bonds and (b) pay the outstanding liability to fund. The balance of the proceeds from the transaction will be distributed in a manner towards the provision of medical and related healthcare services in the catchment area as decided by the Court. All assets, including without limitation all real estate transferred _____ to _____ used in the ordinary course of business or that were disposed of as (obsolete) and all other assets owned by _____ any of its affiliates and that are primarily used, useful to, or held for use in connection with operation shall be included in the sale.</p>	No
<p>d. <b>Date for Submission of Proposals:</b> 30 days after advertisement appears</p>	<p>15 days as proposed yesterday by _____ publication in the SCR. Public announcement. Advertisement in publications only if at petitioner's expense.</p>

<p>e. Method of evaluation: Proposals will be evaluated primarily based on a comparative assessment of the nature, quality, and sustainability of the responder's medical-services plan.</p>	<p>Proposals will be evaluated based upon the criteria set forth in the RFP. The criteria in the pending RFP shall be included except as specifically modified by this agreement.</p>
<p>f. Evaluation team: Selection will be determined by an Evaluation Committee through numerical rankings by two Subcommittees, Technical and Finance. The Finance Subcommittee shall be provided with sufficient information concerning [redacted] claimed liabilities and shall determine the proven liabilities. Plaintiffs- Petitioners in the two litigations will appoint representatives on each of the Technical and Finance Subcommittees with such members representing no less than 45% of the membership on each Subcommittee; these designees will include representation by public officials. Only members of the Technical and Finance Subcommittees will serve on the Evaluation Committee.</p>	<p>Award will be by the [redacted] administration and trustees to the highest ranked qualified proposal.</p> <p>Petitioners will appoint two representatives to each of the Technical and Financial committees, and each shall be part of the joint committee evaluating presentation. Petitioners may seek suggestions from elected officials at petitioners option.</p> <p>Members of the evaluation committee must have professional experience in health care and finance, respectively depending on their subcommittee, and no conflicts of interest. They must agree to be bound by the obligations required by state policy and procedures for such participation.</p>
<p>g. Determining the Final Score: the technical components shall account for 70% of the final score,</p>	<p>45-45-10</p>

25%  
Need significant Break

"STATISTICAL SUPPLEMENT"

70-30  
(conditional on 2 STAT committee)

• outside all parties?  
• 5 or 6? Yes

12  
12



and the financial components shall account for 30%.	
h. Negotiation with Awarded Responder: If is unsuccessful in negotiating and closing a transaction with any responder consistent with the RFP, then the RFP process will be repeated subject to the terms in this Counterproposal unless 2/3 of the members of the Evaluation Committee agree otherwise.	No
i. Deed Restrictions: For any land used for the delivery of the plan by the successful responder, permanent deed restrictions will be placed on those parcels to assure the use of the property for in perpetuity.	Yes for 10 years
3. Confidentiality: Other than information specifically identified as protected trade secrets, all responders' proposals will be made public within 5 business days of submission.	Yes provided that if any proposal is submitted before the deadline, they will all be released together.
4. Prequalification Criteria: All responders must agree to meet with designated Plaintiffs- Petitioners' representatives after submission of proposals but before determinations by the Technical and Finance Committees.	Proposers will be encouraged to meet with petitioners but not a requirement as a petitioner's unavailability could result in disqualification.
5. Financial Disclosure: Full financial disclosure by The through the date hereof shall be made to the Plaintiffs-Petitioners on or before February 28.	No as not within our control but we will support petitioners' efforts to obtain information.
6. Audit: will consent to, and fully and timely cooperate with, an audit of and the funds by the , and the results of said	No

<p>audit will be made public. If the State Comptroller will not agree to audit and the Comptroller funds at the request of Petitioners, will agree to an independent audit and make the results public.</p>	
<p>7. Legal fees:</p>	<p>Legal fees should be resolved with the Attorney General. Referee and ombudsmen fees to be shared by the parties.</p>
<p>8. Releases:</p> <p>Depending on the promptness and completeness of acceptance of all material terms herein, we will agree to withdraw contempt proceedings, dismiss pending litigation, and appropriate releases, including for Trustees. Further, we will take no position adverse to consummation of a transaction in accordance with the settlement in any future proceeding.</p>	<p>Stipulation to provide for withdrawal contempt proceedings, dismissal of all pending litigation, and appropriate releases, including for Trustees. Further, neither petitioners nor their counsel will take any position adverse to consummation of a transaction in accordance with the settlement in any future proceeding, or related proceedings, or support, encourage, advise or participate in any way with any third party in such. In addition, the parties will jointly request vacature of Decisions, dated September 12, 2013, and Orders, dated October 11, 2013, and the foregoing provision shall include dismissal with prejudice or release of any of Petitioners' (including the claims that were or could have</p>

	<p>been brought against including for contempt arising out of any conduct, known or unknown, that occurred prior to the date of the settlement), and (c) all Petitioners' agreement not to challenge the closure regulation again.</p>
<p>9. Maintenance of services: will maintain current services until a new operator takes over  t. This promise is conditioned on ability, within 90 days, to negotiate an acceptable layoff schedule with and</p>	<p>Operations to cease 60 days after the Stipulation is so ordered.  Layoffs to be conducted in accordance with the terms of the respective collective bargaining agreements.</p>