



PROGRAM MATERIALS

Program #3685

March 27, 2026

Demand to Deal: Strategic Negotiation and Mediation in Personal Injury Defense

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Demand to Deal: Strategic Negotiation and Mediation in Personal Injury Defense



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- **Purpose of the Program:** Enhancing pre-trial resolution skills in PI and insurance defense cases.
- **Why It Matters:**
 - Cost and risk of trial vs. pre-trial resolution.
 - Professional reputation and client satisfaction.

Overview of Key Topics: Strategy, psychology, data-driven evaluation, and communication



- Moving Beyond the “One-Day Deal” Mentality
 - Many lawyers treat negotiation as a single event — the meeting, the phone call, the mediation day
 - Effective negotiators understand negotiation as a continuum, not a single moment
 - The “event mindset” produces pressure and tunnel vision; the “process mindset” produces strategy and results

- The Process Mindset
 - Negotiation unfolds in phases, each shaping the outcome:
 - (1) Preparation: Research, risk assessment, value framing
 - (2) Positioning: Setting tone, managing expectations, signaling flexibility
 - (3) Exchange: Offers, counteroffers, testing priorities
 - (4) Closure: Final trade-offs, documentation, confirmation
 - (5) Post-deal management: Relationship maintenance, enforcement, future leverage.



Research — Know the Terrain Before You Enter

- **Fact Mastery:** Understand every factual nuance — medical records, witness statements, surveillance, contracts, and timelines. Surprises kill leverage.
- **Opponent Profile:** Know who you're dealing with. Different opposing counsel and adjusters have different risk tolerances, authority limits, and personality types.
- **Legal Landscape:** Evaluate the relevant case law, jury verdicts, venue tendencies, and any statutory caps or comparative negligence factors.
- **Decision-Makers:** Identify who actually has authority — not just who's in the room.

Key Principle: You can't negotiate what you don't understand. Every missing fact becomes someone else's advantage.

Risk Assessment — The Compass of Strategy

- Quantify exposure, do not guess at it.
- Assign probability ranges: *What's the likely verdict range? How probable is a defense verdict?*
- Consider intangible risks: sympathetic plaintiffs, corporate optics, inconsistent witnesses, or judicial temperament.
- Use this to define your **reservation point** (your walk-away) and your **aspiration point** (your ideal outcome).

Tip: A realistic risk analysis turns emotion into data. It keeps you from overreacting to the other side's bluster.

Value Framing — Controlling the Narrative

- **Frame the dispute in your terms** before the other side does. A well-crafted demand or pre-mediation memo is a framing document, not just a summary.
- Present value in a way that aligns with the other side's incentives — for example, emphasizing **cost of defense**, **certainty**, or **reputational control**.
- Highlight **mutual gains** where possible: early resolution, privacy, or preserving business relationships.
- Anchor expectations early; the first credible frame often becomes the psychological benchmark.

Bottom Line: Numbers follow narratives. If you don't shape the story, you'll end up negotiating inside theirs.

Tone — Setting the Emotional Baseline

- Your tone determines whether the other side sees you as credible, collaborative, or combative.
 - Confidence without arrogance earns respect; aggression without control breeds resistance.
 - Use civility as a weapon — it disarms hostility and signals professional competence.
 - The best negotiators radiate calm inevitability: they look like people who are used to getting good deals.
- Key Point: How you speak often matters more than what you say. People trade more easily with those they trust and respect.



Timing — When You Move Is as Important as How

- Good timing magnifies leverage.
- Don't rush a settlement before you understand value; don't delay so long that the case hardens.
- File, discovery, or mediation stages can each offer moments of maximum impact — know when your leverage peaks.
- Use procedural events (like IMEs, summary judgment motions, or pretrial conferences) as psychological signals to prompt movement.

Rule of Thumb: Control the tempo, and you control the narrative.

Strategic Communication — Shaping Perception

- Every communication — demand letter, email, phone call — is part of your negotiation architecture.
- Frame information selectively. Transparency builds trust, but timing reveals strength.
- Avoid premature ultimatums; they close doors you may later need open.
- Ask questions strategically. Getting the other side to articulate their reasoning creates opportunities for reframing.

Pro Tip: The first story told is rarely the final truth. Listen for what's *not* being said — the silences often reveal pressure points.

Takeaway

Positioning is psychological groundwork. You're not yet trading numbers — you're trading *perceptions*: of strength, reasonableness, and inevitability. The side that positions itself as calm, informed, and patient usually wins before the real bargaining even starts.



The Exchange Is Not Just Trading Numbers

- Too many negotiators mistake movement for progress.
- The goal isn't *just* to swap figures — it's to **probe priorities** and **map motivations**.
- Every offer communicates information: not just about value, but about confidence, urgency, and constraints.
- Think of each exchange as a **conversation in code** — numbers are symbols for interests.



Offer Strategy — Lead the Dance

- **Anchoring:** A well-supported opening offer frames the entire zone of negotiation.
 - High anchors pull the range upward, but credibility is essential; overreach invites dismissal.
- **Bracketing:** Plan your moves in advance. Each concession should be meaningful but measured.
 - Too-small moves appear stubborn; too-large moves suggest weakness.
- **Signaling:** Explain your offers. A naked number invites resistance; a reasoned number builds legitimacy.

Guiding Thought: Never make a move without a message.

Counteroffers — Information and Influence

- Don't react reflexively. Every counteroffer is a chance to **reframe the conversation**.
- Label your moves: “We're making this offer because we recognize X — but we expect Y in return.”
- Highlight reciprocity — each concession should invite one.
- Stay consistent with your earlier framing; if your valuation swings wildly, you lose credibility.

Remember: Counteroffers are narrative adjustments, not just math problems.

Testing Priorities — Finding the Real Levers

- Ask *why* the other side cares about certain terms — timing of payment, confidentiality, structure, etc.
- Sometimes the best concession isn't monetary; it's **non-economic value** (apologies, timing, logistics, future business).
- Explore options that expand the pie rather than divide it.
- Use hypotheticals: “If we could get X, would that make Y acceptable?”

Insight: The more you learn about what truly matters to them, the more power you have to close the deal on your terms.

Takeaway

The exchange phase is a dialogue of perception, not arithmetic. The best negotiators translate between numbers and needs — they treat offers as instruments, not outcomes.



The Psychology of the Finish

- Negotiations often collapse **right before** success. That's when anxiety spikes and second-guessing begins.
- Both sides feel the invisible gravity of *commitment*: the fear of leaving value on the table versus the relief of ending the battle.
- Recognize that moment and manage it. Don't chase the last inch so hard you lose the mile.



Key Insight: Closure is an emotional state as much as a procedural step.

Final Trade-Offs — The Art of the Last Inch

- Identify low-cost concessions that feel big to the other side.
 - Example: payment timing, release wording, or confidentiality language.
- If you must give something, **give strategically** — frame it as conditional (“In exchange for this, we’ll expect...”).
- Reconfirm shared assumptions: dollar amounts, dates, obligations. Ambiguity now becomes litigation later.

Rule: Never close in haste. You’ll regret fast deals longer than slow ones.

Documentation — Cementing the Understanding

- Put agreements in writing promptly; time is the enemy of clarity.
- Keep drafts consistent with the negotiation narrative — sudden additions erode trust.
- If possible, have both parties review key terms aloud before signing. It minimizes “I thought we agreed...” disputes.

Tip: Your written document is your closing argument. It should sound like the logic of inevitability.

Posture and Professionalism

- End on respect. Even adversaries remember how the deal *felt*.
- Follow up with a professional summary email confirming the outcome.
- Closing graciously preserves credibility for future cases — reputations are built in these moments.

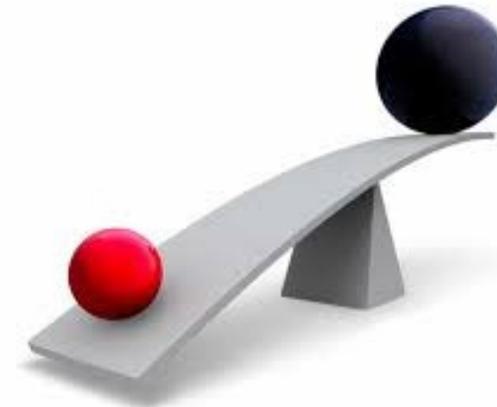
Bottom Line: The best closers make the end of the negotiation feel like a natural conclusion, not a surrender.



The Negotiation Isn't Over — It Just Changes Form

- Too many lawyers close a deal, exhale, and walk away. But the real professionals know: the relationship, the reputation, and the precedent are just beginning.
- Every settlement or agreement is a seed — how you tend it determines future trust and leverage.

Key Insight: The deal is the start of the next negotiation.



Implementation — Ensuring Follow-Through

- Confirm deliverables and deadlines in writing immediately after execution.
- Maintain clear communication with all parties: clients, opposing counsel, adjusters, carriers, etc.
- Anticipate friction points — payment logistics, release forms, or lien resolutions — and smooth them proactively.
- Keep your tone solution-oriented; you're protecting performance, not relitigating the case.

Pro Move: Treat the implementation phase like risk management — because it is.

Relationship Maintenance — Investing in Future Leverage

- People remember fairness and professionalism long after they forget numbers.
- A lawyer known for honest dealing gets more information, more flexibility, and faster settlements down the road.
- Send a courteous note or email after completion; gratitude leaves a lasting echo.
- Think reputationally: how you close determines whether opposing counsel dreads or welcomes your name on the next caption.

Guiding Thought: Every resolved matter is a rehearsal for the next.

Post-Mortem — Learn From Each Negotiation

- Debrief internally or with your client:
 - What worked?
 - What could have gone better?
 - Did the outcome align with initial risk assessment?
- Update your valuation models with the data. Real experience refines future judgment.
- Keep a record of tendencies — judges, mediators, adjusters — they form your institutional memory.

Takeaway: Reflection transforms experience into expertise.

- **Event-thinkers** celebrate the signature.
- **Process-thinkers** study it, learn from it, and leverage it into their next success.
- Negotiation, at its best, is not about one battle — it's about the architecture of reputation, trust, and repeat victory.



- **Scenario:** Plaintiff’s counsel sends a \$250,000 demand on a soft-tissue auto case. Defense counsel treats the mediation as the event that will resolve everything. They prepare a single offer of \$30,000 and plan to “see how it goes.”
- **Process View:** Had the defense treated this as a process, they would have:
 - Called plaintiff’s counsel two weeks earlier to discuss medical specials and pain-and-suffering metrics.
 - Tested liability framing with the adjuster to align expectations.
 - Seeded credibility by sending an early evaluation letter identifying comparative negligence and causation issues

Outcome:

By the time of mediation, plaintiff’s counsel had psychologically anchored at \$250,000. The defense was seen as unprepared and rigid. Mediation failed. Two months later, the same case settled for \$45,000 — after extra fees and hostility.

Lesson:

Preparation and pre-negotiation dialogue often save months and money. Waiting for the “event” almost guarantees overpayment or impasse.

Scenario:

A defense attorney routinely handles premises-liability cases for a national retailer. In one case, a plaintiff claims \$400,000 for a slip-and-fall.

Process View:

Because the defense counsel has cultivated a professional relationship with the plaintiff’s firm over years, he calls early to discuss medical progress and venue tendencies. They quietly agree to exchange key records informally before discovery.

Outcome:

Both sides enter mediation already understanding the range (\$60,000–\$80,000). The case settles for \$70,000 in two hours.

Lesson:

Negotiation is cumulative — reputation and consistency compound like interest. The “event” succeeds because the *process* was years in the making.

Questions