The Art and Science of Negotiating “Hard Conversations”

THIRD ANNUAL COURT LEADERSHIP ACADEMY AND LEADERSHIP CONFERENCE

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Overview of Morning

• Short exercise
• Discussion of basic negotiation theories and tactics
• Psychology and its implications in negotiation
• Communication, persuasion, and power
X & Y Game

Pairs v. pairs
Choose to play X or Y
Cannot discuss with other side initially
Opportunities for discussion
Multiplier round
Goal: maximize your score

YY = everyone gets $1
XX = everyone gets $3
XY = X gets $0
Y gets $5
Issues in the game

What does it mean to do well in this game?

Social value orientation:
- Prosocial
- Individualistic
- Competitive
- Altruistic

How well do we understand each other?

**WHY DO YOU PLAY Y?**

- It’s rational
- You get something
- It’s the safe choice

**WHY DID THEY PLAY Y?**

- They wanted to “get” us
- They wanted to see what they could get away with
- They thought we were suckers
How well do we understand each other?

**WHY DO YOU PLAY X?**

- It’s the best option for long-term gain
- It demonstrates that we are trustworthy

**WHY DID THEY PLAY X?**

- They’re suckers
- They didn’t understand the directions
- They are more idealistic than we were
How can we ever trust each other?

• Strategies for building trust
  • Commitment
  • Reciprocity
  • Relationships
  • Communication

• Consequences for breaking trust
  • Positive short-term economic gain
  • Potential long-term economic loss
  • Negative relationship consequences
  • Negative reputational consequences
Why negotiation?

• What is negotiation, anyway?
  • Anytime we are trying to reach a resolution where people are not automatically moving forward together in the same way
  • Reaching an agreement that all parties will sign off on

• What is the connection between negotiation and leadership?

• Can you lead without negotiation?

• Can you rule by fiat?

• Why or why not?
Negotiation basics

• Getting to Yes (Fisher & Ury, 1980)
• Most popular negotiation book
• Sets out “principled negotiation”
• In contrast to “positional negotiation”
• A different idea about how to resolve conflict
Separate the people from the problem

- People first
- Substance versus relationship
- Know which you are dealing with
- Think about the other party’s perceptions
  - “put yourself in their shoes”
- Understand/acknowledge emotion
- Use communication effectively to surface issues
Focus on interests, not positions

Classic stories to explain the difference

- The open window
- The orange
Invent options for mutual gain

Avoid assumption of fixed pie

See their problem as your problem too

Brainstorm (with or without them)
Use objective criteria

• Positions lead to a battle of wills

• Instead, find benchmarks:
  • Market value
  • Precedent
  • Scientific evidence
  • Professional standards or rules
  • Law
  • Norms (equality, equity, reciprocity)

• Are these the whole answer?
  • No. But they help.
Consider and develop alternatives

• Best Alternative to Negotiated Agreement (BATNA)

• BATNA is the key to negotiation power (Korobkin, 2006)

• Never agree to any outcome that is not as good as or better than your BATNA

• Your BATNA is not set in stone; work to develop the best of all BATNAs

• Think about the other party’s BATNA
BATNA and reservation price

• BATNAs drive reservation price

• Reservation price is the price beyond which you would refuse a deal

• Reservation points of each side determine the zone of possible agreement ("ZOPA")
Buyer likes Seller’s house, but can pay $340,000 for one that is very similar (but slightly less appealing). Buyer’s BATNA is to pay $340,000 for the other house, and reservation price is determined by BATNA + value of the better option to Buyer.

Seller has another buyer who is willing to pay $300,000. So Seller’s BATNA and reservation price is $300,000.

Seller will take $300,000 Buyer will pay $350,000

⇐ ZOPA ⇒
Making the BATNA better

• Convincing other parties of the strength of your BATNA
• Remember that they don’t know what you know
• What are the outer limits of the ZOPA?

Seller will take
$300,000 $350,000

⇐ ZOPA ⇒

Buyer will pay
Psychology and negotiation

• Human interaction

• In law, one dominant paradigm is “bargaining in the shadow of the law” (Mnookin & Kornhauser, 1979)

• In practice, law does not consistently play a directly dispositive role; legal skill and negotiation tactics make a difference

• What do we know about human behavior and how can it make a difference in negotiation?

• Four basic areas of interest:
  • Styles
  • Emotions
  • Decision-making heuristics and biases
  • Fairness
Negotiation styles

Thomas-Kilmann Conflict Mode Instrument
Knowing one’s emotions

Self-awareness (intrapersonal intelligence)

Harnessing emotions during negotiation
  ◦ Anger, happiness – can be used strategically

Suppressing emotions during negotiation
  ◦ Emotion can be damaging

Lack of awareness leaves emotions in control of your behavior
Managing emotions

Redirecting emotion or changing behavior to alter emotional state is critical.

Behavior that is solely guided by unmanaged emotion is not the most effective behavior.

Three styles of dealing with emotions:
  ◦ Self-aware
  ◦ Engulfed
  ◦ Accepting
Recognizing emotion in others & managing relationships

Central tension in negotiation: empathy versus assertiveness
- Standing in the other party’s shoes
- Critical to reaching amicable negotiated outcome

Key to managing relationships
- Identifying emotions in others
- Managing those emotions

Key components of interpersonal intelligence
- Organizing groups
- Negotiating solutions
- Personal connections with others
- Social analysis
Four strategies to handle emotional situations

Defensive reaction
- Ignore problem or keep at bay

Acknowledge and delay
- Simple recognition without intervention

Social convention
- Expression of awareness channeled through social norms

Emotional management
- Awareness, analysis, planning, connection, resolution
  (Mayer-Salovey)
Decision-making heuristics and biases

• Anchoring and adjustment
• Prospect theory
  • Framing
  • Endowment effect
  • Status quo bias
• Reactive devaluation
• Selective perception
What effect do offers have?

Key question of negotiation: who makes the first offer?

What does a first offer do?

It can lop off a whole bunch of the ZOPA:

<table>
<thead>
<tr>
<th>Seller will take</th>
<th>Buyer will pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>$300,000</td>
<td>$350,000</td>
</tr>
</tbody>
</table>

⇐ ZOPA ⇒
First offers affect the ZOPA

First offer by buyer at 10% below reservation price: $315,000

New ZOPA

Seller would have taken
$300,000

$315,000

Buyer would pay
$350,000

⇐ NEW ZOPA ⇒
Other effects of first offers?

Anchoring and adjustment (Kahneman & Tversky, 1974)
Anchoring and adjustment

Effects are robust, widespread

Even exist with crazy anchors (Quattrone, 1984)
Anchoring and adjustment

Implications of anchoring
- You can use anchoring effects to help you in negotiation
- But there are pitfalls:
- You might be too far out of the ZOPA to be credible

Buyer offers $125,000  Seller will take $300,000  Buyer will pay $350,000

↔ ZOPA ↔
So who should make the first offer/proposal?

It depends

Pros of making offer or proposal:
- You can anchor
- You may gather information

Cons of making offer or proposal:
- You may lop off potential gain without awareness
- You may lose credibility

Gather information before deciding the if/when/what of first offers
Framing effects

• Prospect theory (Kahneman & Tversky, 1979)

• Why people prefer discounts to surcharges
The disease hypothetical

**DISEASE EXPECTED TO KILL 600 PEOPLE.**

A. 200 people will be saved.

B. 1/3 probability that 600 people will be saved and 2/3 probability that no one will be saved.

**WHICH OPTION WOULD YOU CHOOSE?**

- 1. 400 people will die.

- 2. 1/3 probability that nobody will die and 2/3 probability that 600 people will die.
Framing choices

Framing an option as sure gain induces risk aversion
Framing an option as potential loss induces risk seeking

Implications:
- Typically to your advantage to frame options as gains when you want another party to accept those options
- Framing as minimizing loss makes options less appealing
Endowment effect

• Suggests that people value what they have more than they would be willing to pay to acquire it
  • Cornell mug study
  • Sellers want $5.25
  • Buyers will pay $2.50
  • Mug is $6.00 at the bookstore
  • Same effect with other items
  • Implications: people may have distorted or incongruent valuations depending on their current status
Status quo bias

• People overvalue the status quo

• They value it more highly than they’d value the same option if they were choosing from an array

• Predicted trades do not occur

• Implications: helpful to think about valuation separate and apart from current status
Reactive devaluation

People discount offers made by parties whose role they believe to be oppositional to their own

Even when they are good offers

Implications

◦ Opportunities can be overlooked or lost because of personal disagreement or institutional perception
◦ Use objective criteria to counteract
◦ Separate people from problem
Selective perception

People selectively process information

People see information through their own lens

- Typically positive, but sometimes negative
  - Dartmouth v. Princeton (Hastorf & Cantril, 1954)
  - Media coverage of political candidates & controversial international conflicts (Vallone, Ross & Lepper, 1985)
Fairness

Decision fairness

- The ultimatum game

- People won’t take offers they think aren’t fair

- Unless there’s a compelling reason
Fairness

• Process fairness
  • People are more satisfied with outcomes when process is fair
  • People are more willing to adhere when process is fair
  • Procedural justice research in psychology suggests four key factors for determining whether a process is fair
    • Voice
    • Trust
    • Neutrality
    • Courtesy and respect
Using electronic communication

Features of electronic versus in-person versus telephonic communication

◦ Rich versus lean communication media
◦ Difficulty adding context, nuance, and personality (visual & verbal cues)
◦ Asynchronous nature has pros and cons
◦ Pro: parallel processing
◦ Con: ease of transmission to others and formulation of response
Email negotiation: a cautionary tale

“As you know, I am very enthusiastic about the possibility of coming to Nazareth. Granting some of the following provisions would make my decision easier[::<n>

1) An increase of my starting salary to $65,000, which is more in line with what assistant professors in philosophy have been getting in the last few years.

2) An official semester of maternity leave.

3) A pre-tenure sabbatical at some point during the bottom half of my tenure clock.

4) No more than three new class preps per year for the first three years.

5) A start date of academic year 2015 so I can complete my postdoc.

I know that some of these might be easier to grant than others. Let me know what you think.”
Response from college:

• “Thank you for your email. The search committee discussed your provisions. They were also reviewed by the Dean and the VPAA. It was determined that on the whole these provisions indicate an interest in teaching at a research university and not at a college, like ours, that is both teaching and student centered. Thus, the institution has decided to withdraw its offer of employment to you.”

• “Thank you very much for your interest in Nazareth College. We wish you the best in finding a suitable position.”
What went wrong? – part 1

• Features of electronic communication

• Rich versus lean communication media
  • Harder to infuse email with personal relationship, tone; harder to regroup when not able to see other person’s reaction through visual and verbal cues

• Asynchronous nature
  • Allows time to think about issues carefully
  • May allow too much time to think about issues carefully; easier to say no; easier to communicate to other stakeholders
What went wrong? – part 2

• Interests versus positions
• Inventing options for mutual gain
• Use objective criteria
• Considering the BATNAs for both sides – yours as they perceive it and theirs as they perceive it
• Stand in other person’s shoes / be sure to create a situation where the other party can separate the people from the problem if that is to your advantage – or where conflation is to your benefit
Communication issues

Cultural differences
  ◦ Dangers of ignorance / stereotyping
  ◦ Balancing act

Stylistic differences
  ◦ Mode of contact
  ◦ Degree of formality

Gender differences
  ◦ Men and women may present themselves differently
  ◦ Differences may be misunderstood (Tannen, 1994)
    ◦ “Sorry” is seen as apologizing / softening blows is misheard
    ◦ Speaking indirectly is misinterpreted

Potential solutions: be alert and aware; seek clarifications; separate people from problem
Persuasion in negotiation

Reciprocity
- Generosity reciprocated
- Concessions reciprocated
- Classic haggling based on reciprocity

Commitment and consistency
- Foot-in-the door
- Writing it down
- “Lowball” strategy

Social proof
- What others think – can be helpful or misleading
Persuasion in negotiation

Liking
- Similarity, compliments, relationships
- Can be beneficial
- But separate the people from the problem

Scarcity
- A resource that is not in great supply will be in greater demand
- Raising prices sometimes increases sales
Power in negotiation

• BATNA
• Perception of BATNA
• Status/hierarchy
• Money
• Personal influence/skills

• Structure
• Constituencies
• Relationships
• Gender, culture
• Perception
Power in negotiation

Power is assumed and implicit

Power can be highly manipulable

Question assumptions

Use power strategically
  ◦ Assert or don’t assert with purpose in mind
Small group discussion

Think of a interaction at work that could be termed a successful negotiation.
• What happened?
• What factors contributed to your success?
• What advice would you give someone else based on that experience?

Consider a time when you did not realize that there was a potential to lead through negotiation at work.
• What was the situation?
• What factors contributed to you not seeing the opportunity for negotiation?
• What, if anything, would you do differently now?

Choose a situation when you deliberately avoided an opportunity to negotiate at work.
• What were the details of the situation?
• What factors led to your decision to avoid negotiating?
• What, if anything, would you do differently now?
Plenary discussion

What can we learn from one another about

- When to negotiate
- How to negotiate
Wrap-up

• Key lessons
  • Realize the possibilities for negotiation
  • Consider the other side’s point of view
    • Their BATNA
    • Their interests
  • Make the implicit explicit
    • Surface issues (to yourself or to others)
  • Preparation and research are critical