

# PROGRAM ON NEGOTIATION

Prepared by Keith A. Belzer  
Belzer, Schroeder & Lough, S.C.  
608.784.8055  
[Keith@dbsjustice.com](mailto:Keith@dbsjustice.com)

---

## ADVANCED NEGOTIATION THEORIES OUTLINE

- I. **Huthwaite:** Since 1968, a number of long-term studies have been carried out by members of the Huthwaite, Inc. organization, using behavior analysis methods. These studies have allowed direct observation during real negotiations, so that an objective and quantified record can be collected to show how skilled negotiators behave in relation to the average negotiators.
  
- II. **Huthwaite success criteria.**
  - A. Negotiators must be rated as effective by both sides.
  - B. Negotiators should have a track record of significant success.
  - C. Negotiators should have a low incidence of implementation failures.
  
- III. **Huthwaite results - planning.**
  - A. Amount of planning time?  
  
No discernable difference.
  - B. Exploration of options?  
  
The skilled negotiator considers a wider range of outcomes or options for action than the average negotiator. It is not just the amount of planning time that makes for success, but how that time is used. Skilled negotiators were concerned with the whole spectrum of possibilities, both those they could introduce themselves and those that might be introduced by the people they negotiate with.
  - C. Concentration on areas of common ground?

Both concentrate on areas of common ground, but skilled negotiators gave over 3 times as much attention to common ground areas as did average negotiators. 38% of skilled negotiators' comments were about areas of anticipated agreement or common ground. This is important in that a skilled negotiator builds a climate of agreement so that undue concentration on conflicts is unnecessary.

Examples of potential areas of agreement:

- Agreement on a particular charge.
- Agreement on probation.
- Agreement on amount of probation.
- Agreement on conditions of probation. (assessments, counseling, no alcohol, getting a license, getting an HSED, GED or diploma)
- Agreement on a written letter of apology.
- Agreement on an amount of restitution.
- Agreement on a particular kind of community service.
- Agreement on some of the facts.
- Agreement on the need for jail.
- Agreement on an amount of jail.
- Agreement on a fine.
- Agreement on the amount of a fine.
- Agreement to a mediated meeting with the victim.

D. Setting goals?

Skilled negotiators were significantly more likely to set upper and lower limits within a range. Average negotiators were more likely to plan their objectives around a fixed point.

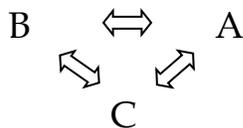
E. Sequencing of negotiation points.

Average negotiators place very heavy reliance on sequence planning. Skilled negotiators tended to plan around each individual issue in a way that was independent of any sequence. Issue planning not sequence planning.

**Average Negotiator**



**Skilled Negotiator**



**IV. Huthwaite results - face-to-face behavior.**

A. Use of irritators?

Using terms like “generous plea offer,” “fair disposition of matter,” “reasonable attempt to resolve case” have very negligible value in persuading the other party and cause irritation. These words imply that the other party is not generous, fair, or reasonable. Most negotiators, average and skilled, avoid the gratuitous use of direct insults or unfavorable value judgments. There is little to be gained from saying unfavorable things about the other party during face-to-face exchanges. However, the average negotiator says gratuitously favorable things about themselves fairly regularly, while the skilled negotiator tended to avoid them.

B. Attacking and defending spirals

Average negotiators are three times as likely to engage in behavior that is seen as attacking or defensive. Average negotiators usually begin their attacking gently, working their way up to more intense attacks slowly, and in doing so, causing the other party to build up its defensive behavior in the characteristic defending/attacking cycle.

Skilled negotiators, although less likely to use attacking behavior, when deciding to attack gave no warning and attack hard.

C. Counterproposals?

Counter proposals are generally put forward at a point where the other party is least receptive, right after they have just made a proposal.

At this point, counter proposals are perceived as blocking or disagreeing by the other party, not as proposals.

Skilled negotiators make counter proposals much less frequently than average negotiators. Skilled negotiators make counter proposals 1.7 times per hour of negotiation.

D. Warning that a question or a proposal was coming?

“Can I ask you a question – how much probation do you think is necessary?”  
“Can I make a proposal – make Johnny shovel the grocery store sidewalk all winter instead of watching TV in jail?”

Skilled negotiators are four times as likely to label their behavior as average negotiators.

Behavior labeling draws the attention of the listener to the behavior. It slows the negotiation down, thereby reducing stress on both parties. It also adds a level of formality that takes the negotiation away from personalities. It also reduces ambiguity and lead to clearer communication.

E. Warning that a disagreement was coming?

Average negotiators will characteristically say “I disagree with that because . . .”

STATEMENT OF DISAGREEMENT > REASON OR EXPLANATION

Skilled negotiators are more likely to begin with reasons and lead up to the disagreement.

REASON OR EXPLANATION > STATEMENT OF DISAGREEMENT

This creates minimal loss of face for the prosecutor.

F. Testing understanding and summarizing?

Skilled negotiators spend twice as much time testing understanding and summarizing.

This technique can be used to reflect on a position that the district attorney has taken. "As I understand it, you would not consider any sort of a plea bargain that does not include a felony?"

G. Asking questions?

Skilled negotiators ask more than twice as many questions as average negotiators.

21.3% of a skilled negotiators behavior consists of asking questions.

- Questions provide data about the other party's thinking and feeling.
- Questions give control over the discussion.
- Questions are more acceptable alternatives to direct disagreement.
- Questions keep the other party active and reduce their thinking time.
- Questions give a negotiator breathing space to allow time to marshal their own thoughts.
- Questions should be carefully crafted so as not to offend the prosecutor or create defensiveness.

H. Giving internal information - feelings?

Skilled negotiators are more likely to give information about their feelings than average negotiators. The most characteristic and noticeable form of giving internal information is a feelings commentary, where the negotiator talks about his feelings and the impression the other party has made on them.

Psychologists tell us that the expression of feelings is directly linked to establishing trust. Sharing internal information in the middle of a negotiation gives the other party a feeling of security because such things as motives appear to be explicit and above board.

<u>Behavior</u>	the
·perceptions	deeper
·feelings	you
·attitudes	see
·motives	the
·beliefs	more
·personality	you
	trust

- I. Do more reasons in favor of our argument, tip the scale in our favor?



Skilled negotiators use fewer reasons to back up each argument. Average negotiators give almost twice as many reasons to support each argument. The skilled negotiator tends to advance single reasons insistently, only moving to subsidiary reasons if the main reason is clearly losing ground. By advancing a whole series of reasons to back an argument, the negotiator exposes a flank and gives the other party a choice of which reason to dispute. If we give five reasons for not sending someone to prison and the third reason is weak, the prosecutor will exploit this reason in their response. The more reasons we advance, the more likely an argument is potentially diluted.

**V. Huthwaite - reviewing the negotiation after completion?**

Two-thirds of skilled negotiators spend some time reviewing each negotiation.

Less than one-half of average negotiators spend time reviewing negotiations.

**VI. Common negotiation tactics to be aware of.**

- A. Extreme offers.
- B. Environmental tactics. (Lower chair, behind a desk, prosecutor's office.)
- C. Walking out. (Literally or figuratively.)
- D. Visible reactions to an offer.
- E. Arbitrary deadlines.
- F. Personal attack.
- G. Threats.
- H. Misinformation.
- I. Refusal to negotiate.
- J. Escalating demands.
- K. Giving power over to a higher authority.

These behaviors can be gently pointed out in such a way that the negotiator does not lose face but everyone is aware of what manipulation may be taking place.

**VII. Review and conclusion.**

1. We can't apply all of information at once. Pick a few ideas to implement at a time.
2. Negotiate consciously.
3. Everyone has a style of negotiating - negotiate based on the situation not your personality.
4. Look at people as people, not problems. Keep the focus on the problem not the person.
5. Be creative when looking for possible outcomes and options.
6. Accentuate the positive during the negotiation.
7. Remain flexible during negotiation.
8. Avoid: irritators, immediate counter proposals, defend/attack spirals, and using too many reasons to argue a point.
9. Use: behavior labeling, (unless disagreeing), testing understanding and summarizing, lots of questions, feelings commentary.
10. Develop rapport.