



Annual CLE by the HOUR Ethics in Negotiation

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Three Modes of Conflict Resolution

Based in *Rights*

Based in *Power*

Interest Based

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Three Legal Modes of Conflict Resolution

1. through *judgment*
2. through *consent*
3. through *the conscious design of systems of rules and procedures*

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Legal Structures:

Structures associated with the *judgment* mode of legal problem solving are the procedures and power structure of formal litigation and the substance of the law.

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Legal Structures:

Structures associated with the **consent** mode of legal problem solving are the rules of contract creation and the procedures of collective bargaining, negotiation and mediation.

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Legal Structures:

Structures associated with the **systems design** mode of legal problem solving are legislation and regulation and non-legal but still formal communication.

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Skills of Legal Problem Solving:

Judgment - legal analysis; legal research and writing; and oral advocacy.

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Skills of Legal Problem Solving:

Consent - negotiation; active listening; empathy; strategizing; collaboration; the ability to generate multiple options for outcomes through brainstorming or conscious re-framing of problems; and decisional flexibility by assessing proposals or options through multiple dimensions like logic, truth, feasibility, morality, efficiency, and emotion.

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Skills of Legal Problem Solving:

Systems Design - imagination, abstract and flexible thinking; understanding motives and the need for multiple methods of communication and an ongoing commitment to procedures.

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Timing of Legal Problem Solving:

Judgment - is past oriented.

This is because authoritative legal judgment (i.e. litigation) typically works by: (a) seeking to discover historical facts; (b) assessing those facts against established legal rules; (c) so as to determine blame or liability and even to vindicate the legal rules themselves.

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Timing of Legal Problem Solving:

Consent - is largely present-oriented, with some future orientation.

This is because the consent mode typically works by: (a) uncovering current preferences and interests of the parties; (b) generating alternative solutions, the most acceptable and desirable of which offer a fair compromise of those interests or the prospect of “win-win” gains.

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Timing of Legal Problem Solving:

Systems Design - is future oriented.

This is because the focus is on processes. The processes are concerned with: (a) uncovering and preventing potential trouble; (b) creating ways for people to address the problems that do arise; and (c) building ways for the system to formally change itself in response to changing conditions.

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They AGREED to IT!!!!!!!

What is the **PROBLEM**?????????

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Face-To-Face Situations

- On the Court House Steps
 - Settlement Conference
 - Mediation
- Attorneys Meet Informally

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Other Than Face-To-Face Situations

- Telephone
- E-Mail
- Online Environments

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**Can you control how your counterpart
engages you in the dispute?**

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How Does Conflict Become a Dispute?

- Identification
- Assignment
- Confrontation
- Dispute

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You have a dispute. Congratulations!

Now what?

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How to Negotiate (then)

1. Set a precondition.
2. Arrange to negotiate on your own turf.
3. Shockingly high initial demand.
4. Treat it as an endurance test.
5. Refuse to make a counteroffer.
6. Plan to make an agreement, and have your client be the last to sign, then have your client reject it and raise his demand.

Negotiating Tactics Meltzer and Schrag (1973)

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How to Negotiate (now)

1. Interests
2. Options
3. Alternatives
4. Legitimacy
5. Communication
6. Relationship
7. Commitment

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Seven Elements of Negotiation

1. Interests – What do these people really want / need?
2. Options – What are possible whole or partial agreements?
3. Alternatives – What will happen if we don't agree?
4. Legitimacy – What persuasive criteria do each of us have?
5. Communication – Is my side prepared to listen and to talk effectively?
6. Relationship – Are we ready to create a working relationship?
7. Commitment – What commitments should we seek and make?

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Definition of a Good Result

1. Interests – meets underlying interests.
2. Options – best possible combination of alternatives.
3. Alternatives – better than other likely or possible outcomes.
4. Legitimacy – consistent with applicable external standards.
5. Communication – reached efficiently.
6. Relationship – strengthened or maintained rather than burdened.
7. Commitment – meaningful promises, willingness and ability.

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Three Common Behaviors

1. Stonewalling

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Three Common Behaviors

2. Attacks

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Three Common Behaviors

3. Tricks

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Common Reactions

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Three Common Reactions

1. Act Difficult

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Three Common Reactions

2. Give In

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Three Common Reactions

3. Break Off

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Why Don't People Want to Cooperate?

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Four Common Motivations Underlying a Decision Not to Cooperate

1. They are afraid.

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Four Common Motivations Underlying a Decision Not to Cooperate

2. They don't know better.

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Four Common Motivations Underlying a Decision Not to Cooperate

3. They don't see what is in it for them.

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Four Common Motivations Underlying a Decision Not to Cooperate

4. They think they can win.

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How Can You Break Through Resistance?

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Breaking Through Resistance

1. Avoid Reacting

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Breaking Through Resistance

2. Diffuse Fears

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Breaking Through Resistance

3. Educate

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Breaking Through Resistance

4. Entice

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Breaking Through Resistance

5. Impress

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It Didn't Work, Now What?

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Common Mistakes

- Thinking 'just talking' is low risk
 - Thinking preparation/precision is unnecessary.
- Thinking the way everyone negotiates is to puff and defend.
 - Thinking no one is ever going to find out what you did.

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Learning to Use Nonverbal Cues

- verbal content only provides 7% of the message
- paralanguage (intonation / pauses / sighs) represents 38%
- body language comprises 55%

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Nonverbal Cues

- Accent
- Complement
- Contradict
- Regulate
- Repeat
- Substitute

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Functions of Nonverbal Communication

- **Accent** - punctuating or drawing attention to a verbal message.
- **Complement** - expressions / gestures that support, but could not replace a verbal message.
- **Contradict** - expressions or gestures that convey a meaning opposite that of a verbal message.
- **Regulate** - expressions or gestures that control the pace or flow of communication.
- **Repeat** - a gesture or expression that can be used alone to send the same meaning as a verbal message.
- **Substitute** - a nonverbal cue that replaces a verbal message.

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Examples

- **Accent** – Touching someone’s shoulder in empathy.
- **Complement** – Smiling in approval or frowning with disdain.
- **Contradict** – Reading the paper while saying I’m listening.
- **Regulate** – Looking confused by too much information too quickly.
- **Repeat** – A stern look or pointing along with a verbal command.
- **Substitute** – Nods and shakes of the head.

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Types of Nonverbals

- Facial expression
 - Eye behavior
 - Posture
 - Gesture
 - Proxemics
 - Touch
- Personal appearance
- Vocal features of speech

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Examples

- **Facial expression**- happiness, sadness, surprise, fear, anger and disgust.
- **Eye behavior**- functions: regulatory, monitoring, cognitive and expressive.
- **Posture** - indicative of attention, involvement, relative status and rapport.
- **Gestures** - speech related and speech independent.
- **Proxemics** - use the space.
- **Touch** - of self indicates emotion, and of others indicates relationship.
- **Personal appearance** - indicators of personality, values and lifestyle.
- **Vocal features of speech** - tone, stress, accent, loudness, rate of speech.

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Detecting Deception

- New body movements
- Touching of self/fidgeting
 - Hesitation
- Blinking, eye shifting and dilation of pupils
 - Lack of spontaneity
 - Speech errors
 - High vocal pitch
 - Negativity

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Figure 1

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Memorize as many as possible:

	Bed	
Stars		Wake
	Nap	
Night		Caffeine
	Slippers	
Toss		R.E.M.
	Milk	
Rest		Blanket
	Dreams	

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**Write down as many as you
can without looking back.**

Hint: 13 words on the list

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Please mark each word as either positive or negative.

- Pride
- Closure
- Complain
- Compromise
- Criticize
- Rumor
- Management
- Tough
- Extreme
- Superior
- Spontaneous
- Ordinary
- Strategic
- Adversarial
- Push-Over
- Forgiveness

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Try to assign a percentage to what each of these terms most closely corresponds. (0%-100%)

- | | |
|--------------------|------------------------|
| never _____ | frequently _____ |
| usually _____ | all the time _____ |
| sometimes _____ | most of the time _____ |
| almost never _____ | rarely _____ |
| often _____ | consistently _____ |
| occasionally _____ | habitually _____ |
| normally _____ | seldom _____ |

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“Chance favors the prepared mind.”

-- Louis Pasteur, 1853

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