

AN EXAMPLE OF DRAWING THE LINE ON PAYMENT

A large, solvent client was a very slow pay on a very large project—for no apparent reason. As the DD phase was being completed, the client clearly needed the DD documents to develop a cost estimate for the project. Project funding and the future of the project relied on the estimate. But the architect, in spite of all best efforts, had not been paid for several months and was owed over \$1 million.

At the conclusion of the DD phase, the documents were reviewed with the client and found to be satisfactory. The

architect had made it clear for the prior month that payment was required for the release of the DD documents. No payment was received. So, at the conclusion of the DD review meeting, the architect simply stated, “And you can have copies of the DD documents when you pay me up to date through the DD phase.” The client was surprised and not too happy, even though they had been warned in advance, but the client paid a couple of days later. They paid on a timely basis thereafter, and they hired the firm to do their next project.

CONCLUSION

As much fun as it is being an architect, it's even more fun to get paid to be one. Compensation is based on the value, risk, and effort required to deliver the services. Keeping those in balance and maintaining clear communications with the client will help make sure that the architect is compensated fairly and gets paid.

For More Information

A Guide to the Project Management Body of Knowledge (PMBOK® Guide), 4th edition (Project Management Institute, 2008).

The Architect's Guide to Small Firm Management: Making Chaos Work for Your Small Firm (Wiley, 2010) by Rena M. Klein, FAIA.

How Firms Succeed: A Field Guide to Design Management (Greenway Communications, 2004) by James P. Cramer and Scott Simpon.

Impact 2020: Ten Giant Forces Now Colliding to Shake How We Practice Design in the Future (PSMJ Resources Inc., 2010) by Frank A. Stasiowski, FAIA.

“Monitoring Earned Value” (AIA Best Practices, 2012) by David B Richards, AIA: <http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab092063.pdf>.

The Ultimate Project Management Manual, 2012 edition (PSMJ Resources Inc., 2012).

15.3 Negotiating Agreement

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At its core, negotiation is problem-solving, the development of enticing options that meet the critical interests of disparate parties in a special and appropriate way. Like design, negotiation is a skill that can be learned and mastered.

Nothing is more surprising than the fact that most architecture schools don't teach negotiation. Lawyers and MBAs intent on practice don't graduate without a negotiations course, yet architects are expected to pick up these skills by osmosis. It has never made sense. Architects negotiate daily and with everyone: partners,

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The Harvard Project on Negotiation (PON) is universally recognized as the creator of principled negotiations. Founded by the authors of *Getting to Yes: Negotiating Agreement Without Giving In*, PON and its leadership have produced some of the best treatises on negotiations.

clients, users, consultants, contractors, inspectors, building officials, government employees—the list is endless. And though practice issues are negotiated, much of the time, if not most of the time, architects are negotiating design issues. Yet there is an ethos—shared by many in and out of the profession—that negotiating is somehow unseemly, potentially combative, a touch unethical, and all too often unwarranted. After all, if the architect is looking out for the client and the integrity of the client's design, what is there to negotiate?

The answer in today's business climate is “everything.” At its core, negotiation is problem-solving, the development of enticing options that meet the critical interests of disparate parties in a special and appropriate way. Viewed this way, negotiation should be the architect's forte. Architects have the very skills that solid negotiation demands: the ability to analyze problems, create options, and design solutions that meet a multiplicity of interests and needs—as inconsistent and conflicting as those interests and needs may be.

Comprehensive research on modern negotiating techniques confirms that the most effective negotiators are steeped in creative and principled problem-solving. As reported by researchers nationwide, the best negotiators simply do not bargain over positions. Rather, they enter into “principled negotiations” by distinguishing the people from their problems and dealing with each, often separately, concentrating always on the underlying interests of the people at the table, and thus reducing the possibility for personal conflict. This helps negotiators identify common ground, disarm potential tensions, and use differences to develop options that address each party's interests. Using this approach, all parties gain as a result of the negotiating process.

Sure, there are limits to negotiation. No approach to negotiation—for even the best negotiator in the world—can succeed in persuading the government to sell the White House. Nevertheless, principled negotiation can be put to work in the toughest of situations. What is needed is thorough preparation by, and the unwavering conduct of, a negotiator committed to the basic premises of this method. Fortunately, principled negotiation can be learned.

NEGOTIATION CONCEPTS IN BRIEF

Principled negotiation evolves from certain core premises. People are people, and they have the strengths and weaknesses, intellect and emotion, needs and interests, and internal consistencies and inconsistencies common to the human species. At the same time, each person is unique, with a distinct personality and internal drumbeat. Effective negotiators recognize the global realities as well as the unique realities of the individuals at the table—and respect them both.

Make no mistake. Respect does not mean acquiescence. Understanding does not mean concurrence. Negotiators need not debase themselves or others to win an agreement. In fact, “winning” an agreement at that cost may only sour a working relationship, making future agreements even harder to come by. Worse, debasing oneself may evolve into the norm in working with a client. Instead, respect means accepting others' realities as real and dealing honestly and openly with those realities—as well as one's own—so that a mutually advantageous agreement can be achieved.

The question then becomes, how is this done?

Principled Negotiators Know Their Interests

Of all the weaknesses architects bring to the negotiating table, their most undermining is their failure to know their interests. (Don't take this personally. Of all the weaknesses lawyers bring to the negotiating table, their most undermining is their failure to know *only* their interests.) What is an interest? An interest is the hodgepodge of needs, wants, desires, emotions, insecurities, and certainties that lie behind a person's position. A teenage girl wants to go to the prom? Her interests most likely are a night to remember,

to be the belle of the ball, to be proud of everything that happens that night, to have fun, to not get into trouble, and most certainly to not be yelled at when she gets home. A teenage boy's interests differ, of course, but many of their interests overlap. Their positions quite likely are the same: "We are grown-ups, and no one needs to tell us anything about how to handle ourselves tonight, thank you very much." The parents of these two most probably share the majority of their child's interests, but, one can safely bet, have an entirely different position. If the parties fight over positions, no one's interests will be met. If the parties focus on interests, they may find that their positions can readily be met. Bottom line? Principled negotiators know their interests and keep them in mind—always. It is new information that makes them reconsider their interests, not the mere demands of the Other.

Principled Negotiators Do Not Bargain over Positions

Negotiating over positions usually ends a negotiation before it has a chance to begin. The owner wants to pay the architect one amount; the architect wants to be retained for a higher amount. If the parties both "stick to their guns," both of them get shot. One may "win" the battle only to lose the war, and the project may suffer in the long run.

Play it out. If the owner "wins," the architect may not have enough fee to manage the project scope—and project risks—effectively, with the owner paying later anyway. Moreover, the owner may doubt the architect's ability to look out for the owner's interests in light of the architect's inability to look out for his or her own. Alternatively, if the architect "wins," the owner may feel bullied and view every future conflict as an opportunity to get back at the architect for the "wrong" done to the owner at the outset. Or, the owner may question the architect's commitment to the owner and the project, and every recommendation the architect makes in the future may become a major problem for the owner to resolve—alone. In other words, with one party "winning" on positions, both parties can lose the opportunity to develop the working relationship essential to project success.

Principled architect negotiators don't get caught up in that trap. Instead they think it through: What interests are behind the Other's unswerving commitment to that one dollar amount? Is that all the money they have? Or maybe they're loaded, just afraid I won't respect their budget? Or maybe cash flow is their problem? Hey, what if their stance has nothing to do with money now, but money later. Maybe return on investment is winding their clock. If that's the case, we can explore together what mix of budget, quality, and scope will give them the best return. Or maybe it's not today's cost of construction that is troubling them. Maybe it's life cycle costs and storing up money for that rainy day when something is bound to need fixing. The principled architect negotiator asks all these questions and then some, all with one goal: to understand the interests of the Other so the parties can figure out mutually beneficial ways to meet them.

YOU DON'T JUST WANT TO DO THE PROJECT

If there is one easy way to fritter away the power and leverage you have, it is to enter negotiations with one goal: getting the project. Know your interests. Even in a recession, you are not that desperate. You want more than just to do the project. What that "more" might be will differ by architect, but I venture to say most architects I know want a project that is good business, a project where they:

- Provide the client valued and valuable services.
- End up with a happy client and a solid reference.
- Do good design.
- Manage the tensions of design and construction well.
- Make money or at least break even (or bring in new business as a result of having consciously taken a loss-leader project).
- Have a claims-free experience.
- Feel ethical about the entire experience.

In other words, if you are like the architects I know, you are not a johnny-one-note. You enter negotiations with many interests and the hope that you will achieve most, if not all of them.

From *The Architect's Essentials of Negotiation* (Wiley, 2009) by Ava J. Abramowitz. Reprinted with permission.

OTHER THAN WHAT

I refer to the "Other" and not the "other side" when talking about the people with whom you negotiate. "Other side" implies the people are opponents of yours. "Other" implies they are just not you. It is hard to build common ground with opponents, but a bit exciting, invariably challenging, and sometimes even fun to build common ground with people who, although they want a solution to a shared problem as much as you do, view that problem differently because they have different sets of eyes and experiences. A small change in mindset, but it's an important and useful one to use and remember. Not a friend. Not an enemy. Just an Other.

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In other words, the principled negotiator joins with the Other in their struggle, asking the tough questions, not to confront, not to persuade, but to fully understand the reality facing the Other. With that new understanding, the architect can explain their reality and with that shared understanding the two can confront the problem, mindful of each other's interests, intent on designing a solution both want to buy.

Look at the People as People, Not as the Problem

If someone obstinately sticks to a “take it or leave it” position harmful to you, the firm, or the project, it is only human to regard that person as an obstacle to be overcome. The goal of principled negotiation, however, is not to win over the Other. Rather, it is to win the Other over. To do that, it is best to attack the problem the Other is facing—and not the Other themselves.

Solid negotiators do this by asking questions. They force themselves to step outside of their own emotions and positional correctness and enter into the realities of the Other. What is behind the other person's position? Why is it so attractive to them? What's stopping them from letting it go? What problem do they think it resolves? What are they trying to achieve? The easiest and best way to get answers to these questions is by asking them directly in a non-confrontational manner: “Help me understand your needs. What about your position is important to you? What problem of yours does your position resolve? How will it affect the project?”

Asking questions this way not only insulates information seekers from inappropriate (and all too human) responses on their part, it also conveys caring and respect for the other party's perspective, thus building the goodwill necessary for a lasting result. Equally important, asking questions helps build an information base, allowing negotiators to make sure they are dealing with the Other's problems and not their (quite possibly wrong) perception of those problems. And questions by truly interested people are appreciated by the Other. Interviews with many architects and owners show that most participants remember a negotiation more by the quality of the interaction than by the specific outcomes.

For these reasons, architects will want to ask still other questions: What does the Other want to get from the negotiation? What do they want from the negotiation process? What do they want from the relationship? Answers to these questions may prove vital to making your participation in the negotiation constructive. Remember, issues of substance, process, and people can advance—or impede—a negotiated result.

Talk About Interests, Not Positions

While learning the Other's interests and needs, you will want to tell them yours—clearly and convincingly—so that both parties can focus their collective energies on meeting their own and each other's interests. You want a 5 percent raise? The firm can't afford it? Ask what the firm is concerned about. If it is only a matter of money (and not performance, status, and the like), you can ask yourself how much new business the firm must bring in to be able to afford that raise. Alternatively, how much in expenses need to be saved for such a raise to become reality? What can I do to increase revenue or control expenses? What can the firm do? Goal-oriented negotiations can ensue only when each party knows the other's interests and the problems they are facing in achieving those interests.

To achieve your negotiation goals, it is essential that you participate actively in this process. The Other cannot read your mind any more than you can read theirs. If you do not make your interests clear, they cannot be addressed. Suppose that a contractor wants to substitute a material, and you know the owner is committed to the specified finish. Unless you convey that knowledge to the contractor—and your overriding interest in being responsive to the owner's needs—the negotiation between you and the contractor can go nowhere productively.

A corollary to speaking out is taking in. It does no good to speak without also listening. And it does no good to listen without also hearing. Active involvement requires all three.

Proving active listening is not that difficult. You need only summarize what you heard and ask the Other if you heard correctly. With the Other's sign-off, you can confidently proceed. Using the information the Other gave is also a powerful listening tool. Both work to convince the Other that what they said was important and heard.

Identify Shared Interests

Owners, architects, engineers, contractors, and subcontractors share one key interest. They each want the project to succeed. They also share a common definition of project success: They want the project to come in on time, on budget, and claims-free, with some level of profit for all. And each wants to accomplish this success with a minimum of headaches and strife. Where they may differ is in their definitions of "on time," "on budget," and "claims-free," with "some level of profit for all." Expert negotiators do not shy from differences; they use them to strengthen common ground. They find that exploring differences can produce new understandings and develop even stronger shared interests as all the players come to understand how to help each other succeed.

Work Together for Mutual Gain

With a clear understanding of the interests of all, creative problem-solving can begin. Brainstorming is a good first step, as it allows everyone to place ideas on the table without having to commit to any of them. The better the brainstorming effort, the more likely you are to uncover alternative ways to serve people's interests.

The brainstorming process has many benefits. It puts all parties on the same side: How can we work together to solve the problem? It helps people distance themselves from their initial positions without forcing them to take ungainly face-saving measures. And, as minds melded often produce better ideas than a single mind struggling alone, the chances of finding creative solutions improve. Finally, the more the parties are involved, the more likely they are to buy into the solutions created.

When Stuck, Look Outside for Objective Criteria

At some time in the negotiation, a little backpedaling can be expected and people may resort, if only temporarily, to their original positions. There are many reasons for this. Some people want to win for the sake of winning. Others perceive negotiation as "giving in," and they do not want to be perceived as weak. Still others fear overstepping their authority and do not want to jeopardize themselves with their bosses. And there are others who may see option building as a waste of time and decide to cut through the process by demanding their way.

Principled negotiation teaches this: Concentrate on the merits of the problem, not the mettle of the parties. Be open to reason but closed to threats. The easiest way to do this is to look outside the argument to objective criteria that are mutually respected and independent of each party's will.

Architects do this routinely without consciously realizing it. In negotiating owner agreements, they start with AIA Document B101TM-2007—the standard in the profession and the custom of the trade. Owner-suggested alternative language is evaluated against that standard, and the reasons for and against the alternative language are explored in that light.

Similarly, in resolving many contractor problems, architects look to the general conditions of the construction contract—signed by the contractor—to ascertain who should do what, when, and at what cost. In other situations, they look to the specifications and technical standards to find solutions available to the parties that can address the problem. These uses of outside criteria allow the parties to depersonalize arguments and maintain a focus on merit, principle, and the general good.

OWNER-ARCHITECT AGREEMENTS: FERTILE GROUND FOR NEGOTIATION

When negotiating owner-architect agreements, architects often harbor at least two beliefs that are just not true. The first is that the entire negotiation process is (and some think is supposed to be) riddled with conflict. While some level of disagreement has to exist—or else there would be no reason to negotiate—it is more often the case that you and the Other have been brought together by common ground. The better you are at locating that common ground and building on it, the more likely it is that both of you will want to live there.

The second myth is that the only thing architects and owners can negotiate is the fee. In fact, these days there is not much in any business relationship that is not open to negotiation. What to ask for, how, and when is as much a matter of strategy as anything else. Following are some examples of subjects open to negotiation:

- Scope of services
- Additional services
- Project schedule
- Responsibility for engaging consultants
- Owner's responsibilities
- Coordination responsibilities and fees on consultant services
- Coordination of owner consultants and fees on those
- Specific limits of professional liability insurance
- Project insurance
- Limitations of liability
- Ownership and reuse of the documents
- Rights to publicity about the project
- Contractor selection
- Excessive contractor requests for information
- Record drawings
- Reimbursable expenses
- Initial payment (retainer)
- Prepayment of fee
- Hourly rates
- Allowances (e.g., for reimbursable expenses)
- Frequency and timing of invoices and payments
- Project restart fee if there is an interruption
- Share of equity in the project
- Termination procedures and expenses

One fight easily avoided is the fight over the value and fairness of the AIA contracts. It's not in any architect's interests to lose goodwill over them. Moreover, it is not the architect's job to improve people's perception of the integrity of the AIA contracts. It's the AIA's. Let the Institute do it, not you.

Adapted from The Architect's Essentials of Negotiation (Wiley, 2009) by Ava J. Abramowitz

Develop Solutions That Provide Mutual Gain

By now, all parties should well understand the interests of the other. They will have uncovered and identified their shared interests. Possible resolutions have been put on the table and discussed in the light of different interests. Some problems will have resolved themselves, others will need tinkering with, and a few will remain outstanding. Now is the time to put forward cogent, concrete proposals—in short, to design the solution. Effective negotiators find they have the best results when they put their reasoning first and their proposal second. “This is the problem we’re facing. For you, it is important that any solution does For me, any solution has to What if we do this? There are a few disadvantages to this solution, but there are more advantages, especially What do you think?”

In this way, principled negotiators are saying to each other, “We are in this together. What you want is important to me. What I want is, I assume, by now also important to you. This solution is one way to address both of our concerns.” By the way the proposal is laid on the table, the negotiator is communicating that, if the Other says “no,” the two can keep negotiating. In other words, the negotiator is creating an ambience and a proposal to make it easy for the Other to say “yes”—or to come up with a better, *mutually* responsive solution.

Notice the stress on *mutually* responsive. Principled negotiators know that to be effective, they must balance empathy and assertiveness appropriately. They recognize that satisfying the Other's interests will not help meet their own goals unless their interests are satisfied also. Thus, skilled negotiators make their interests known, and they do so in ways that ensure they can be heard by the Other, most often by aligning their needs with the needs of the Other.

NEGOTIATION STRATEGIES

No matter how one negotiates, certain strategies can be useful. Mastering these will give you the added ego-strength necessary to ease the tension of even the most difficult negotiations.

Prepare for the Negotiation

If there is one strategy that expert negotiators will tell you is more important than any other, it is to prepare for the negotiation. You cannot wing a negotiation. No one can. You have to analyze your interests and the Other's interests before you sit down at the negotiation table, if only to have the freedom to listen to the Other unencumbered by fear of being bested. And in that process, you will more readily be able to locate common ground.

When the preparation approaches of expert negotiators were compared with those of average negotiators, the key difference was that expert negotiators *strategize* before their negotiations, while average negotiators *fret*, beating themselves up in the process. As a result, average negotiators enter the negotiation with no confidence and no capacity to listen and react flexibly. To avoid that scenario, you may want to address the following questions before you walk into your next negotiation. It is not important to know the answers to all these questions before the negotiation. Just using these questions can get the negotiation conversation going:

- What are the needs that bring you together?
- What's your position? What's their position?
- What are your interests? What are their interests?
- Where's common ground?
- Where are discrepancies?
- What options would resolve the discrepancies?
- Are there any real deal breakers?
- What's your goal, your target point? Why may they say no to your goal?
- What would make you walk away?
- Are there any objective standards for you to rely on? For them?
- What gives you leverage? What gives them leverage?
- What's your Best Alternative to reaching a Negotiated Agreement (BATNA) with the Other? What's their BATNA?
- Given all that, what's your starting point?
- Can you think of elegant options to make the pie bigger?

You can use these questions to prepare for the negotiation, applying them to all issues, not just the ones that involve money. You may even want to have a trial run at the negotiation with someone else, asking the person to play the Other. Do it not to pin down the dialogue, but to free yourself up so that at the negotiation table you can listen and react appropriately to what you hear. In time, you will find that the better you get at preparing, the better you get at imagining the many ways the negotiation can be successful, the better you will get at negotiating.

Identify Your Interests

To prepare well, the first step to increasing your power is to know your own interests. As an example, suppose that an architect wants to design a specific project for a certain sum, but the owner wants to pay less. At the fee the owner is suggesting, the project cannot be achieved as the architect is conceiving it. The architect's *position* could dictate an argument and maybe even walking away. More likely than not, though, the architect's *interests* are to have the commission and not the precise scope first imagined. Focusing on interests, the discussion can more readily turn away from fee—the position—to the owner and their program, to design, user involvement, community reaction, and other scope elements. When there is a meeting of minds on scope, then the discussion can return to fee. Perhaps there can be mutual agreement on a lower fee in exchange for a modified scope or a more efficient design approach. Or perhaps the owner will see the need for additional services. Better yet, the owner may appreciate the return on investment that good architecture will bring to her bottom line. Regardless, both the owner's and the architect's interests will be understood and shared, and as a result, negotiations should flow more logically.

The single most important skill in negotiation is the ability to listen and to hear, as it is that ability that allows one to put oneself in the shoes of the Other. Moreover, it builds trust. People trust people who listen, hear, and ask questions or provide new information based on the information the person just gave them.

Listening is a powerful tool: It proves to the speaker that the listener is concerned about them and their needs, and not the self-serving needs of the listener. Indeed, if architects want to get rid of that old canard of “arrogance,” the easiest way to do it is to *stop* listening for the purpose of *designing* for the Other better, and *start* listening for the purpose of *understanding* the Other better.

Learn the Other’s Interests

In negotiating with a new client, consultant, or contractor, architects recognize that each new player is different. However, architects sometimes forget this is also true about people with whom they have worked before. Experience changes both parties. As a result, preconceived notions about the other’s interests have to be evaluated continually—by both parties. The only way to test preconceived notions and ascertain interests is to explore them, which includes listening attentively. The more you ask, and the more you listen and hear, the greater your power and leverage.

This notion was borne out in a survey of 800 clients who had worked with architects on commercial and institutional projects. Asked what they expected and wanted from their architects, these clients reported that having the architects understand and respond to their interests as clients was first on their list.

Second in importance was the “ability to manage zoning requirements.” This was followed by the architects’ ability to adhere to schedules and budgets, and the architects’ design experience and quality of design. Architecture fees were ranked relatively low on the scale of selection factors. Clients seemed to feel that, while fees can be negotiated, chemistry, responsiveness, and an ability to listen to the client cannot.

Any given client may differ in interests and expectations from those in this survey. What will not differ, however, is the requirement that client interests be understood for negotiations to succeed. And once you understand what is important to all at the table, you will be in the comfortable position of being able to think of alternatives for satisfying the Other’s interests without compromising your own.

Increase Everyone’s Focus on the Problem

When focusing on interests isn’t enough, refocus everyone’s attention on the problem. Asking questions such as these helps: “What are we missing? What’s the root cause of the dilemma we’re facing? Is there another way to analyze the issue?” By refocusing, new options should arise. Architects do this all the time with a design problem, peeling away one challenge after another. The same skills can be brought to bear on a negotiation problem.

That is why expert negotiators enter a negotiation with more than twice as many options in mind than the average negotiator. They know that one problem can have many solutions. And they listen hard to the Other because they also recognize that no one idea (not even one design idea) is ever the cure-all. The more you remember that, the more you will give yourself and the Other the degrees of freedom necessary for an effective negotiation.

Listen While You Are at the Negotiation Table

Active listening is much praised as a negotiation strategy, but at its core, active listening is the antithesis of a strategy. Active listening has nothing to do with *your* next steps. Rather, it says to the Other, “I am listening to you because what you are saying is important to you, and therefore it is important to me. Moreover, I will not pursue my thoughts—even about what you are saying—until you tell me that I have understood your thoughts.” In other words, you have not actively listened to the Other until the Other demonstrates he has been heard. The importance of the Other knowing he has been heard cannot be minimized. It ensures understanding. It facilitates all discussion, and it permits you to say, “I listened to you and now I need you to listen to me.”

Understand the Role Trust Plays

Everyone has stories of being hurt by people they trusted, or of not being trusted by people they so want to trust them. Trust is much sought after because it helps build working relationships and affects power and leverage. It is key, therefore, to understand how trust works and how it affects negotiations.

As a first step, it helps to recognize that trust is a matter of choice. Moreover, whether you choose to trust someone or not is often more a reflection of you than of the Other. So it's always wise to extend your trust to people worthy of receiving it.

The converse is also true. If you want the Other to trust you, you must be worthy of being trusted. In that regard, you will want your behavior to be predictable, your communications reliable, and your word honest and dependable. Teaching others that you are trustworthy may mean seeking out—even creating—moments for trust building and trust tests.

At the same time you are building trust, you will want to assure yourself that you are right to trust the Other. This does not mean putting the other party to a moral test; trust is not a moral issue. Rather, you will want to evaluate their trustworthiness in the same way you evaluate any exposure, and then manage the results. Do they need more information to make you trust them? Then give them that information. Are they acting in ways that make you shy away from them? Suggest things they can do to increase your comfort zone. Their reaction (both immediate and long-term) will outline the parameters of your trust and dictate productive courses of conduct available to you.

The bottom line is this: Principled negotiation recognizes that, at some time, you will be negotiating with people you do not trust, and it gives you tools to handle those negotiations. The working relationship may not be as close and the project may not be as much fun as you would like, but you can achieve mutually profitable business relationships even in these situations.

Develop Elegant Options

There is power in the elegant option. Learning how to develop elegant options and when to present them helps increase leverage in a negotiation.

As an example, suppose that a group of developers wants to build 135 single-family houses and sell them for upward of \$1 million each. They ask an architect to design nine model homes and three variations on each model. They are willing to pay \$100,000 for this effort and to consider retaining the architect on a lump-sum basis for construction contract administration, but for the nine models only.

The architect, of course, recognizes that the developer could potentially gross somewhere between \$135 million and \$255 million if each house sells at the asking

TRUST IS A DOUBLE-EDGED SWORD

Trust is a question of choice. You choose to trust people. They choose to trust you. You can build trust. You can destroy trust. And you can give the Other opportunities to prove to you they are worthy of your trust.

The easiest way to build trust is by being trustworthy. Research conducted by Neil Rackham of Huthwaite Inc., a negotiation and sales performance consulting firm, found that, the more professionals proved themselves to be *concerned*, *candid*, and *competent*, the more the client judged them to be trustworthy. You can use those three components as guides for building trust.

- *You can build trust in little ways.* You say you're going to be there at 9 o'clock in the morning? Be there at 9 o'clock in the morning.

- *You can build trust in big ways.* As soon as you know something's going to go against client expectations, you can call and tell your client about the changed situation.
- *You can build trust in bigger ways.* If the client is concerned about something, you can be concerned about that something too.

In other words, choose to build trust as much as you choose to trust and expect to be trusted. Let your clients see you working to address their concerns. Give them a reason before and after you get the commission to build on the common ground that is there for you both. In this way, the two of you can come to rely on each other's judgment—and rightly so.

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price. Consequently, the architect believes that a \$100,000 commission is out of kilter with the value the firm is bringing to the effort. At the same time, the architect reasons that if every house had a \$10,000 to \$30,000 problem—an unlikely possibility, but one a firm can calculate—the firm’s potential exposure could range from \$1,350,000 to \$3,950,000, a huge amount unsupported by the \$100,000 fee.

Stepping into the developer’s shoes, the architect recognizes that design fees come directly from the developer’s own pocket, unlike construction fees, which usually, for all intents and purposes, are “paid for” by the bank. Hence, having the developer pay more money up front is probably not an option.

Under these circumstances, what is an elegant option? One is to pay the architect one lump-sum fee for all design services, an hourly fee for construction contract administration services (but for all 27 models), and, finally, another fee calculated at 1 percent of the gross sales price on the sale of each house.

Why is this option elegant? The developer pays the architect (1) a reasonable, though tightly guarded, amount for design services and (2) an amount for construction contract administration services sufficient to help contain basic exposures for both the architect and the developer, while (3) profit can be enjoyed by both parties when profit is realized.

Keep Your BATNA in Mind

The Harvard Negotiation Project teaches negotiators to develop for themselves a “best alternative to a negotiated agreement” (BATNA) before they enter a negotiation. Knowing you have a solid alternative available should the negotiation not pan out increases your personal sense of power and, therefore, leverage throughout the session. The absence of a solid BATNA is what makes the architect’s scope and fee negotiations so difficult in recessionary times. The sense that “If I don’t get this project, what will I do?” limits even the strongest willingness to risk.

The importance of developing a BATNA cannot be underestimated. All that is needed is one solid, tangible “best alternative” to have the freedom to walk away from a bad deal or push for a good one. What BATNAs are available if you don’t get this project? That’s up to your personal business and practice goals. Perhaps it’s merging with another firm. Perhaps it’s reallocating staff to expedite the completion of other projects and improve your cash flow. Perhaps it’s associating with a contractor friend to pursue a design-build project that’s yours for the asking. Don’t limit your imagination or your value. To flourish, BATNAs demand your full creative support.

Ultimately, you may find that one of the easiest ways to increase your power and leverage is to increase your efforts to develop your BATNA. Indeed, you may find you opt out of a negotiation not because you are losing, but because your best alternative is winning.

Recognize and Respect the Power and Leverage You Have

In any negotiation you have power and leverage by virtue of the fact that the other party wants you to agree to something with them. Power and leverage, however, can be frittered away if they go unrecognized or are not respected.

It doesn’t take much to lose power and leverage. Their value can be diminished if you refuse to be engaged in a debate in which you have something to offer. “Being fair” to the detriment of your own interests can undo you. Standing mute while others decide what responsibilities you should have and how much authority you need to manage those responsibilities can set you up for failure. Concessions on substance can deny both you and the Other the chance to build the working relationship without which you will fail. None of this has to happen. All you need to do is speak up and say what interests are important from your perspective for the endeavor to succeed.

At the same time, like anyone else, no architect can say “yes” all the time. An impatient contractor unreasonably demanding that the architect approve a change order “right now” has to be reminded that, no matter how responsive the architect would like to be, the architect owes a duty to the owner to evaluate the change order first. Even then, only the owner’s final approval can trigger implementation. Admitting limitations to one’s power can help ease a stressed negotiation.

Appreciate the Extent of the Other’s Power

People often say “no” to a proposition because it is not within their power to say “yes.” Unless the proposer appreciates that the rejecter lacks the power to agree, the proposer may wrongly conclude the rejecter is not committed to a successful negotiation. Armed with this misdiagnosis, the proposer may become disenchanted with the process and unwittingly—through body language, lack of energy, inartful reactions, and the like—help the negotiation falter further.

This phenomenon is commonly experienced in government and institutional settings in which the contract officer lacks the authority to bend the rules, no matter how much project success dictates those rules should be bent. “We do it this way because we do it this way” is a hard position for any negotiator to dislodge, particularly when the rejecter believes it is in his or her personal interest that the position succeeds unchallenged. The first step in getting the rule changed is to get the rejecter to understand that the success of the project—and, consequently, of the rejecter—requires that a higher, supervisory authority evaluate the rule’s applicability.

Be Open to Alternatives to Saying “No”

In a negotiation, anyone can ask for or demand anything at any time. Sometimes it is necessary to say “no” to win the trust and respect of the other party. More often, however, saying “no” ends the negotiation prematurely—or at least derails it for a while.

This is most unfortunate, especially when disagreeing could have been avoided altogether. “Yes, I can do it for you, and it will cost you this much” is a far easier way to get an owner to reconsider a misconceived scope. Asking “How does that help you?” gives you time and information to determine alternative ways to address the Other’s concerns. “Will it help you if we agree to this?” shows you are intent on responding to their needs. “Perhaps there are alternatives we should consider as well?” serves much the same purpose, as does offering an alternative or two for the Other to think about. “Can I get back to you on that?” proves you are listening while buying you time to consider and develop more workable responses. Finally, you can reframe what you are hearing into an option acceptable to you both. In short, saying “no” works only when it is wise to do so.

Think Acceptable Ranges

Expert negotiators approach the negotiation table with acceptable ranges in mind. Average negotiators don’t. They have a fixed figure in their head, and if they don’t get that figure, they have, by definition, failed. Expert negotiators don’t defeat themselves that way before, during, or after the negotiation. They come to the negotiation table prepared to craft a wise outcome that meets the long- and short-term interests of the parties—an agreement that will stand the tests of time. They know that standing in cement with one fixed goal in mind puts too much stress on an already fragile process. Expert negotiators want room to move.

Not only do expert negotiators plan ranges, they also plan their concessions. Indeed, for them the issue is not so much who made the first offer, but who made the first concession. They know that research shows that the first conceders are often the losers in the negotiation process, especially if they drop fast and far from their starting

point to stay in the game. Hence, each concession the expert negotiator makes is reasoned, and that reason and the basis behind it is communicated when the concession is made. Further, whenever possible, a *quid* is exacted for every *quo* conceded. “In light of what you just told me (new information), if you can do *x*, I can do *y*.” In this way, expert negotiators protect themselves from the feeding frenzy surrounding inartfully made concessions.

Budget for Negotiation

Build negotiation costs into your project’s budget, just as you include profit in that budget. When the time and funds you have set aside for negotiation run out, you can assess options, knowing that the next increment of time—and money—you put into the negotiation will be coming from your profit. Doing this can keep you from unknowingly starting a project at a loss.

Increase the Merit of Your Arguments

As one-sided as the other party’s proposal may be, arguing fairness rarely works to resolve a situation. To many people, indicating “it’s not fair to me” is evidence that it must be good for them. A better approach is to increase the merits of your own solution to the problem and to explain these in language the Other will understand and appreciate. In this way, they see your solution as the best solution to their problem.

One way of doing this is citing external standards the other party respects and should, accordingly, accept, such as code-mandated performance criteria in response to technical dilemmas. On matters of design, however, or on issues involving lay-people, conveying the responsiveness of architecture solutions may prove more daunting.

As a first step, it may help to recognize that the sanctity of a design or a design solution may not be a value to someone else. More likely, they would cherish having their interests served. Perfecting your skills at explaining why your suggested solutions meet their interests is the key. Better yet, ask competent questions that convey your commitment to meeting their interests and prove, in the process, how capable you are in using design to meet their needs. Expanding your ability to fine-tune your solutions in light of client interests brings you even more power and leverage.

You can ask the Other for help in this process. They know where and how your proposal does not respond to their interests. They may even have ideas on how to modify it to make it more responsive. Consulting with them for solutions puts you both on the same side, making it easier for everyone to come to an agreement.

Another way to increase the Other’s appreciation of the merits of an argument is to use analogies to explain your reasoning. For example, if you are negotiating with a doctor-client who wants perfection, you can explain that no doctor can guarantee the results of an operation. Or, if you are dealing with a law firm that insists you negotiate with the firm instead of your client, you can explain that both of you are agents of the owner—you for design, the Other for law. Thus, both of you are on the same side—the client’s—and only the client itself can resolve any impasses between the two of you. In other words, when you can find similarities between your experience and that of the other party, use those similarities to bridge gaps.

Increase Your Mettle

A 2006 Harris Poll reported that 91 percent of the people interviewed responded that architects were worthy of prestige, so having the respect of your clients, as well as the respect of others dependent on those clients (like contractors), should not be an issue.

Quietly knowing that the respect you need to negotiate is already yours should make any negotiation easier.

There is, however, a difference between confidence and arrogance, and between respect and obedience. While confidence and respect can facilitate negotiations, being arrogant or otherwise demanding obedience can just as readily undermine them. This is so regardless of who is doing the overreaching. In such cases, the Harvard Negotiation Project encourages negotiators to address the overreaching openly.

Here's an example: You may choose to ignore the threat of "Take it or leave it," or you can choose to respond by saying, "Look. You will have to make many decisions in the course of this project. Each decision will have trade-offs. Some will be truly hard to make. I promise I will give you the latitude to discuss and negotiate these trade-offs. Right now, I need the same latitude from you." From there, as a principled negotiator, you can return the discussions to the problem at hand.

Control Yourself

While you may have power and leverage in a situation, it is rare that you have control over the other party. As much as you may wish the Other won't get angry, distance themselves, or decide something contrary to your hopes, you cannot make them live up to your wishes. No one's will is that strong. You can, however, control yourself—and you should.

To that end, you will want to develop "mindfulness." Are you getting too tired or too angry to think straight? If so, ask for a breather. Go for a walk around the block by yourself, or if you think it would help more, try to diffuse the situation, perhaps by suggesting the group go out for a cup of coffee. Then talk about non-architecture topics so the group can regain the sense that it can work together easily and successfully.

By all means, feel free to tell the other party how you feel, if you think that would help and not be used against you. "I feel discouraged [angry, perplexed, or confused] and would appreciate any ideas you may have on what we can do together to put these negotiations back on track." The Other may not know how you feel or what you are thinking. They may be misreading you. Information, directly given, may be just what they need to retool their negotiation effort.

This method allows you to be what the Harvard Negotiation Project characterizes as "unconditionally constructive," that is, doing only those things that are both good for the relationship and good (in the case of architecture) for the firm—whether or not the Other reciprocates. This approach to enlightened self-interest is conducive to overall negotiation success, as it allows both parties the opportunity to empathize with each other's needs and assertively state their own. It also gives everyone the best opportunity to develop the options that create value for all.

Finally, Make It Easy for the Other

Negotiating can be difficult and exhausting. Many people feel they may have lost something in the process—even in a win-win situation. They may wonder if they should have asked for more or held out longer. That ambivalence—and even fear—of being gotten the best of is one reason it is often wise to come to closure gradually. This allows the parties to get comfortable with the results—to try them on, so to speak.

This ambivalence is also why it is often helpful for parties to be generous with each other at closing. Sometimes when the deal is close and the Other is having difficulty buying in, giving something the Other values that has no cost to you may be just the ticket to encourage the Other to join in the agreement. You will seal the deal, and with goodwill. This is particularly important in architecture, where risks can be high, decisions are final, and change—and thus the need for future negotiation—is the only thing that truly can be guaranteed.

Studies show that the most stressful stage of a buying process can be just after the decision to buy is made. Buyer's remorse and doubt may set in. A call confirming your commitment to successful implementation of the agreement may be just the reassurance the other party needs.

For More Information

The Architect's Essentials of Negotiation (Wiley, 2009) by Ava J. Abramowitz.

Getting to Yes: Negotiating Agreement Without Giving In (Penguin Books, 1991) by Roger Fisher, William Ury, and Bruce Patton.

The Trusted Advisor (Free Press, 2000) by David H. Maister, Charles H. Green, and Robert M. Galford.

Beyond Winning: Negotiating to Create Value in Deals and Disputes (Harvard University Press, 2000) by Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello.

Spin[®]Selling (McGraw-Hill, 1988) by Neil Rackham.

Difficult Conversations (Penguin Books, 1999) by Douglas Stone, Bruce Patton, and Sheila Heen.

Getting Past No: Negotiating with Difficult People (Bantam/Doubleday/Dell, 1993) by William Ury.