



Thursday, May 22
8:30 am–10:00 am

302 Negotiating Skills for Lawyers

Ellen Zavian
Associate General Counsel
Association of Corporate Counsel

Faculty Biography

Ellen M. Zavian

Ellen M. Zavian serves as associate general counsel for ACC, an organization representing the needs of in-house counsel, focusing on new media and legal technology areas.

Prior to joining the ACC, she represented NFL players, the first female attorney to represent them, the members of the 1996 US Women's soccer and softball teams in contract negotiations with their governing bodies, professional skateboarders in negotiations with ESPN for the X-Games, and held the title of commissioner for the Central Atlantic Collegiate Conference (NCAA Div. II).

Ms. Zavian served as national coordinator for the NFL Players Association/John Hopkins Native Vision project, which helped deal with life issues facing the Native American population across the country. She has been a columnist for *Street & Smith's Business Journal*, *Brand Marketing* and *Operation Bass* magazines, while regularly writing, as a freelancer, for *Street & Smith's PRO*, *Football Annual* and *College Basketball* and *Sports Illustrated for Women*, *Pro Football Weekly*, *USAToday.com*, *MSNBC.com*. She also teaches sports law and management at George Washington University and other prominent schools in the area.

Ms. Zavian received her B.S. from the University of Maryland and her J.D. from American University.

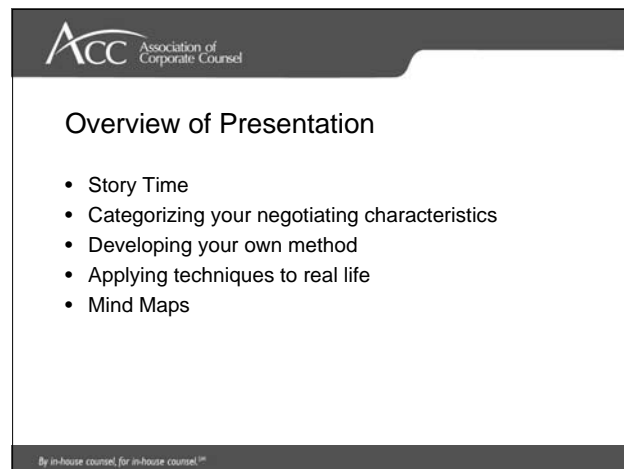


ACC Association of Corporate Counsel

WIN - NEGOTIATION WORKSHOP

“GINGER ROGERS DID EVERYTHING
FRED ASTAIRE DID,
BUT SHE DID IT BACKWARDS
AND IN HIGH HEELS” (Author Unknown)

By in-house counsel, for in-house counsel.™




ACC Association of Corporate Counsel

Overview of Presentation

- Story Time
- Categorizing your negotiating characteristics
- Developing your own method
- Applying techniques to real life
- Mind Maps

By in-house counsel, for in-house counsel.™




NEGOTIATIONS

CLICK, CLACK,
MOO
COWS THAT TYPE!

By Doreen Cronin


By in-house counsel, for in-house counsel.™



Farmer Brown has a problem.
His cows like to type.
All day long, he hears:

Click, Clack MOO
Click, Clack MOO
Click, Clack MOO


By in-house counsel, for in-house counsel.™



At first, he could not believe his ears.
Cows that type?
Impossible!

***Click, Clack MOO
Click, Clack MOO
Click, Clack MOO***

By in-house counsel, for in-house counsel.™




Attached to the barn door was a note. It read:

Dear Farmer Brown,

***The barn is very cold at night. We'd like
some electric blankets.***

Sincerely,
The Cows

By in-house counsel, for in-house counsel.™




It was bad enough the cows had found the old typewriter in the barn, now they wanted electric blankets!

"No way," said Farmer Brown. "No electric blankets."

So the cows went on strike. They left a note on the barn door that read:

***Sorry, We're closed.
No milk today.***


By in-house counsel, for in-house counsel.™



"No milk today!" cried Farmer Brown. In the background, he heard the cows busy at work:

***Click, Clack MOO
Click, Clack MOO
Clickety, Clack MOO***

By in-house counsel, for in-house counsel.™



The next day, he got another note:


Dear Farmer Brown,

***The hens are cold too.
They'd like electric blankets.***

Sincerely,

The Cows

By in-house counsel, for in-house counsel.™




The cows were growing impatient with the farmer. They left a new note on the barn door that read:

Closed! No milk. No eggs!

"No eggs!" cried the Farmer Brown. In the background he heard them.

Click, Clack MOO
Click, Clack MOO
Clickety, Clack MOO

By in-house counsel, for in-house counsel.™



"Cows that type. Hens on Strike! Whoever heard of such a thing? How can I run a farm with no milk and no eggs!"


Farmer Brown was furious. Farmer Brown got out his own typewriter.

Dear Cows and Hens:

There will be no electric blankets. You are cows and hens. I demand milk and eggs.

Sincerely,
Farmer Brown

By in-house counsel, for in-house counsel.™




Duck was a neutral party, so he brought the ultimatum to the cows.

The cows held an emergency meeting. All the animals gathered around the barn to snoop, but none of them could understand MOO.

All night long, Farmer Brown waited for an answer.

By in-house counsel, for in-house counsel.™




Duck knocked on the door early the next morning. He handed Farmer Brown a note:

Dear Farmer Brown,

We will exchange our typewriter for electric blankets. Leave them outside the barn door and we will send Duck over with the typewriter.

Sincerely,
The Cows

By in-house counsel, for in-house counsel.™




Farmer Brown decided this was a good deal. He left the blankets next to the barn door and waited for Duck to come with the typewriter. The next morning, he got a note:

Dear Farmer Brown,

The pond is quite boring. We'd like a diving board.

Sincerely,
The Ducks

By in-house counsel, for in-house counsel.™




***Click, Clack QUACK
Click, Clack QUACK
Clikety, Clack QUACK***

LOOK OUT BELOW.

DIVING IN!

The end

By in-house counsel, for in-house counsel.™



Definition

1. Define the term 'negotiation'.
2. Define the term 'wise agreement'.

See Worksheet #1

By in-house counsel, for in-house counsel.™



NEGOTIATE

EVERYTHING


By in-house counsel, for in-house counsel.™



Term - NEGOTIATION

A Process by which two or more people move from the point where they have a conflict or disagreement to where they have a solution or agreement that maximizes the return to both parties.

By in-house counsel, for in-house counsel.™



WISE AGREEMENT

ONE WHICH MEETS THE LEGITIMATE INTERESTS OF EACH SIDE TO THE EXTENT POSSIBLE, RESOLVES CONFLICTING INTERESTS, FAIRLY, IS DURABLE AND CONSIDERS COMMUNITY INTERESTS.

By in-house counsel, for in-house counsel.™




NEGOTIATIONS

- Negotiations plays a pivotal role in the ALL industries
- Good Negotiations result in a Wise Agreement
- Negotiations Skills are critical to develop
- Techniques to develop

See Worksheet #2


By in-house counsel, for in-house counsel.™



OBJECTIVES

- ID your own strengths and weaknesses in negotiations
- ID your areas of improvement
- ID effective behaviors
- ID steps in the negotiation process
- ID strategies
- ID key tactics

By in-house counsel, for in-house counsel.™



3 WAYS TO RESOLVE A DISPUTE

1. Reconcile interests of each party
2. Determine who is right
3. Determine who is most powerful

By in-house counsel, for in-house counsel.™



INTERESTS

1. Needs
2. Desires
3. Concerns
4. Fears

By in-house counsel, for in-house counsel.™



WHO IS RIGHT

1. Rarely Clear
2. Contractual
3. Fairness

By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel

MOST POWERFUL

1. The ability to coerce someone to do something he would not otherwise do.
2. It imposes economic costs on the other side.
3. Two Forms
 - a. Act of aggression
 - b. Withholding of benefits

By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel


Power

Rights

Interests

By Lewicki, R.


By in-house counsel, for in-house counsel.™

 Association of Corporate Counsel

POWER IS PERCEPTON

- Recognize sources of your/their power
- Time
- Options
- Risk Taking
- Information

By in-house counsel, for in-house counsel.™

 Association of Corporate Counsel

SOFT vs. HARD

Soft Negotiating:
Building
Maintaining

Hard Negotiating:
Leverage
Firm Stance

By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel

WHICH APPROACH IS BETTER

1. Transaction costs
2. Satisfaction with outcomes
3. Effect on the relationship
4. Recurrence

By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel

EFFECTIVE DISPUTE RESOLUTION SYSTEM

BY LEWICKI, R.

By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel

DIFFERENT STYLES

1. Avoiding
2. Accommodating
3. Competing
4. Collaborating
5. Compromising
6. No strategy


By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel

MUTUAL GAINS - STYLES

COMPETITIVE	COLLABORATIVE
Position Bargaining	Problem Solving
Guarded communication	Sharing information
Own needs/objectives	Balance Needs
Explosive Climate	Accepting Climate
My way, Only way	Our Solution
No Change	Willingness to Change

By in-house counsel, for in-house counsel.™




COMPETING - STYLE

Position Negotiating yields

A contest of:

- Will
- Anger
- Resentment building

By in-house counsel, for in-house counsel.™




NEGOTIATING DIPLOMACY

“THE ART OF LETTING
THEM HAVE YOUR WAY.”

by: Italian Diplomat Daniele Vare

By in-house counsel, for in-house counsel.™



NEGOTIATION WORKSHEET

1. What are your (and theirs) objectives for negotiation?
 - a. Hope to get:
 - b. Intend to get:
 - c. Must get:
2. How are you prepared to open? Why?
3. What questions do you need to ask?


By in-house counsel, for in-house counsel.™



PRE-NEGOTIATION

- Hold out incentives
- Offer something of value/need
- Make your value visible
- Get credit for your value
- Step up pressure
- Exert control over process
- Build alias
- Plant seeds of ideas ahead of time


By in-house counsel, for in-house counsel.™



THREE MAIN STAGES

- Analysis
- Planning
- Discussion


By in-house counsel, for in-house counsel.™



ANALYSIS STAGE

1. Separate Acts
2. Invent First
3. Brainstorming
4. Postpone
5. Listen
6. Perspectives
7. Units


By in-house counsel, for in-house counsel.™



PLANNING STAGE

1. Prioritize ideas
2. Separate the people from the problem
3. Focus on interests - not personal position

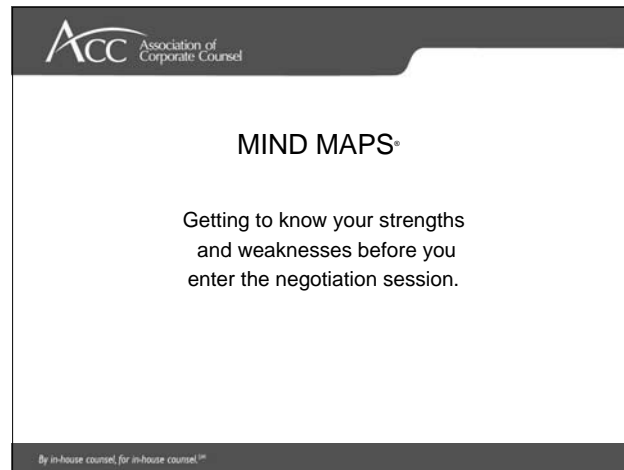
By in-house counsel, for in-house counsel.™



DISCUSSION STAGE

1. Come to terms and settle
2. Go back and forth between stages
3. Review the agreement

By in-house counsel, for in-house counsel.™

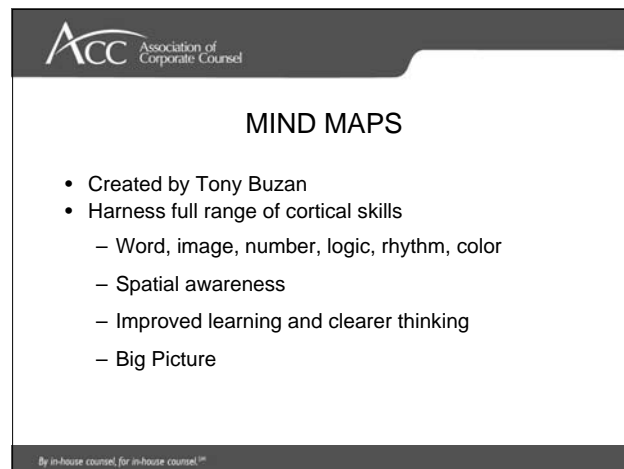


ACC Association of Corporate Counsel

MIND MAPS®

Getting to know your strengths and weaknesses before you enter the negotiation session.

By in-house counsel, for in-house counsel.™




ACC Association of Corporate Counsel

MIND MAPS

- Created by Tony Buzan
- Harness full range of cortical skills
 - Word, image, number, logic, rhythm, color
 - Spatial awareness
 - Improved learning and clearer thinking
 - Big Picture

By in-house counsel, for in-house counsel.™




WHAT IS A MIND MAP

Four Steps

- Main Subject in Central Image
- Main Themes Radiate From Central Image As Main Branches (Trunks)
- Minor Themes Are Linked to Main Themes
- All Branches Are Connected Forming a Nodal Structure


By in-house counsel, for in-house counsel.™



MIND MAPS - Techniques

- Use multiple colors
- Use pictures and words
- Link ideas
- Use your own coding system
 - Symbols, dates, colors, images
- Examine for themes, patterns


By in-house counsel, for in-house counsel.™



MIND MAP LEADERSHIP

1. **Center:** You (as leader)
2. **Legs**
 - **Strengths:** Known & Suspected
 - **Weaknesses:** Known & Suspected
 - **Life lessons:** Significant life events
 - **Role Models:** Who, Why, When?
 - **Commitments:** to leadership development


By in-house counsel, for in-house counsel.™



YOUR MAP

1. Focus on the peaks and valleys
2. Determine three action items you can accomplish within a specified period of months:
 - What are they?
 - What resources do you need?


By in-house counsel, for in-house counsel.™



MISTAKES (1)

- PERCEPTION
- EMOTION/HUMANSIDE
- COMMUNICATION


By in-house counsel, for in-house counsel.™



MISTAKES (2)

1. Premature judge
2. Single answer
3. Fixed pie
4. Solving their problem is you issue

By in-house counsel, for in-house counsel.™



NONNEGOTIABLE ITEMS

1. Standards
2. Legal Requirements
3. Health and Safety
4. Overhead Costs
5. Code of Conduct/Ethics
6. Market Value/Rate


By in-house counsel, for in-house counsel.™



OBJECTIVE CRITERIA TO INCLUDE

1. Market value
2. Precedent/Tradition
3. Scientific
4. Professional Standards
5. Moral Standards
6. Equal Treatment
7. Cost Efficiency

By in-house counsel, for in-house counsel.™



ESCAPE PLAN


1. Fail to reach a deal
2. Poor timing
3. Fall-back position

By in-house counsel, for in-house counsel.™



BEST ALTERNATIVE TO A NEGOTIATED AGREEMENT

By in-house counsel, for in-house counsel.™




OUTSIDE THE NEGOTIATIONS

ITEMS TO CONSIDER OUTSIDE THE NEGOTIATION:

1. Procedures
2. Tactics
3. Likeable
4. Mutual Gain
5. Deadlock
6. Team - no me in team


By in-house counsel, for in-house counsel.™



PROCEDURES

1. Turns
2. Drawing
3. Arbitrator/Mediator
4. Location
5. Principle

By in-house counsel, for in-house counsel.™




TACTICS

Dealing with a deadlock:

1. Alter the financial terms/specs.
2. Change a team member/leader
3. Restate your interest in making a deal
4. Give a small concession, make it contingent
5. Go "off the record"
6. Take a recess
7. Settle easy issues first

By in-house counsel, for in-house counsel.™



GETTING PEOPLE TO LIKE YOU

1. Sincere
2. Clothing
3. Smile
4. Name Recognition
5. Listen
6. Chameleon
7. Importance


By in-house counsel, for in-house counsel.™



TEAM NEGOTIATIONS

1. Keep team small
2. Advance roles assigned
3. Note taker assigned
4. Observer assigned
5. Non-spokesperson procedure

By in-house counsel, for in-house counsel.™



SELLING YOUR POINT

1. Listen
2. Limit your argument
3. No immediate counteroffer
4. Primacy

By in-house counsel, for in-house counsel.™

ACC Association of Corporate Counsel

WHEN THEY DO NOT WANT TO PLAY THE GAME

1. Position Assertion
2. Idea Attacking
3. Improve Options
4. Invite Criticism/Advice
5. Attack on Problem
6. Silence

By in-house counsel, for in-house counsel.™


ACC Association of Corporate Counsel

NEGOTIATION

CONTENT + PROCESS

= PSYCHOLOGICAL SATISFACTION


By in-house counsel, for in-house counsel.™



EXAMPLES OF NEGOTIATIONS

1. U.S. Olympic National Soccer Team Members
2. U.S. Olympic National Softball Team Members
3. Professional Skateboarders (extreme athletes)
4. Paralympic Cyclist


By in-house counsel, for in-house counsel.™



U.S. Olympic Soccer Team Members

1. 1995 Option to Renew
2. Lockout vs. Strike decision
3. Terms
 - Gold/Silver/Bronze: equal payment
 - Per Diem
 - Working Conditions: travel, housing;
 - Marketing Rights: individual


By in-house counsel, for in-house counsel.™



U.S. Olympic Softball Team Members

- 1996 Olympic Issues
 - Pre-Olympic Schedule
 - Individual Equipment Rights
 - Filed USOC and ASA Article IX Complaint
 - Professional vs. Amateur Definition
 - Future concerns with professional league


By in-house counsel, for in-house counsel.™



PROFESSIONAL SKATEBOARDERS

- ESPN X-Games Contract
- NBC Gravity Games Contract
 - Image Rights
 - I-Max Film (with Disney)
 - Working Conditions
 - Input to Vert Ramps/Park Ramps
 - Accommodations/Food/Travel Expenses


By in-house counsel, for in-house counsel.™



PARALYMPIC CYCLIST

- 1996 Issue
 - No tie-breaking Rule
 - No Separate Male and Female Events
- 2001 Issue
 - Classification Issue

By in-house counsel, for in-house counsel.™



REFERENCES

1. Getting To Yes (Ury, Fisher)
2. Getting Past No (Ury & Fisher)
3. Women Don't Ask (Babcock)
4. See Jane Win (Rimm)
5. When Talking Makes Things Worse (Stiebel)

By in-house counsel, for in-house counsel.™



Worksheet #1

Directions

Each of us is involved with some type of negotiation daily. In the space provided here, list examples of some of the your own negotiations, both on the job and in your personal life. While some examples are from the past, please be sure to include ones that you are involved in presently and are anticipating in the near future.

Business:

Personal:

Directions

Define, as a *group*, the term 'negotiation'.

Directions

Define, as a *group*, the results of a productive negotiation (aka: define 'wise agreement').



Worksheet #2

Directions

Since we are gathered here to learn negotiation skills, please take the time now to list what you would most like to learn about negotiations today.



Worksheet #3

Directions

Think of your negotiating skills and list your current strengths and improvement opportunities. You can add to this list during the course.

STRENGTHS

IMPROVEMENT OPPORTUNITIES



Worksheet #4

Directions

Write down ways to make the environment Competitive and Collaborative:

COMPETITIVE

i.e.: criticizing

COLLABORATIVE

i.e.: asking questions



Directions

List the issues in order of importance to both you and the other party. (Use one of your current negotiations).

MINE	THEIRS
_____	_____
_____	_____
_____	_____

List your objectives (rate on scale 1-10, one being the least important)

OBJECTIVES	RATE MINE	WHY I BELIEVE IT IS IMPORTANT TO THEM
_____	—	_____
_____	—	_____
_____	—	_____

List what you believe to be the other party's objectives (rate as above)

OBJECTIVES	RATE THEIRS	WHY I BELIEVE IT IS IMPORTANT TO THEM
_____	—	_____
_____	—	_____
_____	—	_____

Analysis of Objectives

1. Which objectives can I be flexible on? They?
2. Are there any issues on which we can readily reach an agreement?
3. What questions do I need to ask and will they ask me?
4. What is my option should we not be able to reach an agreement?
5. What is their option if we do not reach agreement?
6. Can I afford not to make this deal?

List three settlement options that you believe are acceptable to both you and the other party:



Worksheet #6

Directions:

List methods/tactics of dealing with a deadlock in negotiations:

List Questions you can ask to deal with a deadlock: