



**Wednesday, May 21**  
**1:30 pm–3:00 pm**

## **1001 Negotiating Skills for Paralegals**

**Ellen Zavian**

*Associate General Counsel*

Association of Corporate Counsel

## Faculty Biography

### **Ellen 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*, USA Today.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.

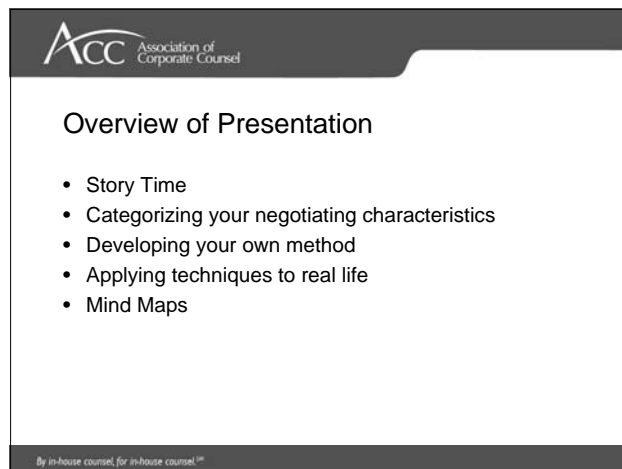


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## WIN - NEGOTIATION WORKSHOP

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

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## Overview of Presentation

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

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## NEGOTIATIONS

CLICK, CLACK,  
MOO  
COWS THAT TYPE!

By Doreen Cronin


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

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


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

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

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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

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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.***


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"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***

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The next day, he got another note:


Dear Farmer Brown,

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

Sincerely,

The Cows

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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

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"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

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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.

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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

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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

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

***LOOK OUT BELOW.***

***DIVING IN!***

***The end***

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**Definition**

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

See Worksheet #1

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NEGOTIATE

**EVERYTHING**


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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.**

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## 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.**

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## 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


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**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

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**3 WAYS TO RESOLVE A DISPUTE**

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


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**INTERESTS**

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

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**WHO IS RIGHT**

1. Rarely Clear
2. Contractual
3. Fairness

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### 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

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**Power**

**Rights**

**Interests**

By Lewicki, R.


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### POWER IS PERCEPTON

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

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### SOFT vs. HARD

Soft Negotiating:  
Building  
Maintaining

Hard Negotiating:  
Leverage  
Firm Stance

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### WHICH APPROACH IS BETTER

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

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### EFFECTIVE DISPUTE RESOLUTION SYSTEM

The diagram illustrates a shift in the hierarchy of dispute resolution. On the left, an inverted pyramid is divided into three horizontal sections: 'Power' at the top, 'Rights' in the middle, and 'Interests' at the bottom. An arrow points to the right, where a standard upright pyramid is shown, also divided into three horizontal sections: 'Interests' at the bottom, 'Rights' in the middle, and 'Power' at the top.

BY LEWICKI, R.

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### DIFFERENT STYLES

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


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### 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

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## COMPETING - STYLE

Position Negotiating yields

A contest of:

- Will
- Anger
- Resentment building

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## NEGOTIATING DIPLOMACY

“THE ART OF LETTING  
THEM HAVE YOUR WAY.”

by: Italian Diplomat Daniele Vare

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### 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?


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### 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


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**THREE MAIN STAGES**

- Analysis
- Planning
- Discussion


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**ANALYSIS STAGE**

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


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**PLANNING STAGE**

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


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**DISCUSSION STAGE**

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


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**MIND MAPS®**

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


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**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

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## 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

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## 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

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## 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


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## 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?


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MISTAKES (1)

- PERCEPTION
- EMOTION/HUMANSIDE
- COMMUNICATION


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MISTAKES (2)

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


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### NONNEGOTIABLE ITEMS

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


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### OBJECTIVE CRITERIA TO INCLUDE

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

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**ESCAPE PLAN**


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

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***BEST  
ALTERNATIVE  
TO A  
NEGOTIATED  
AGREEMENT***

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## 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


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## PROCEDURES

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

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## 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

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## GETTING PEOPLE TO LIKE YOU

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


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**TEAM NEGOTIATIONS**

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

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**SELLING YOUR POINT**

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

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### 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

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**NEGOTIATION**

CONTENT + PROCESS

= PSYCHOLOGICAL SATISFACTION

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## 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


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## 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


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## 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


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## 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


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## PARALYMPIC CYCLIST

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

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## 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)

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