

NEGOTIATING LICENSING TERMS: A PRIMER ON PRINCIPLED NEGOTIATIONS

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Louis P. Berneman



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Principal

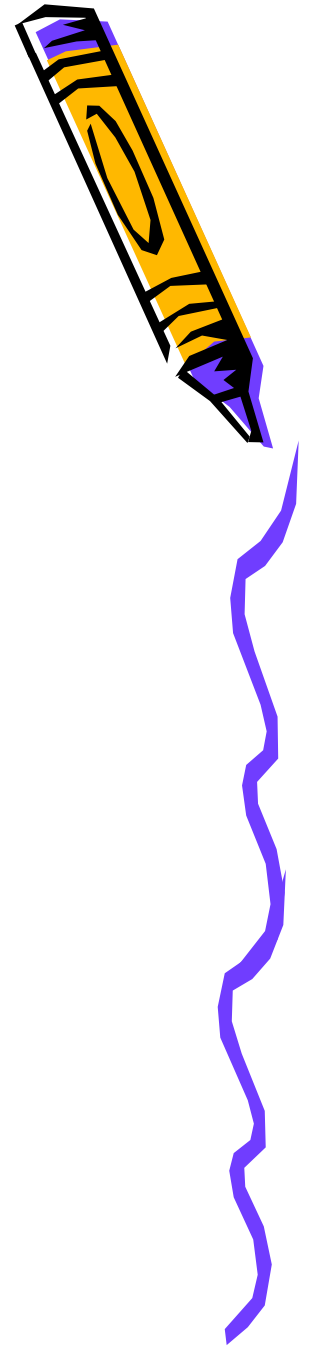
Texelerate

2119 Delancey Place, Suite 400

Philadelphia, PA 19103

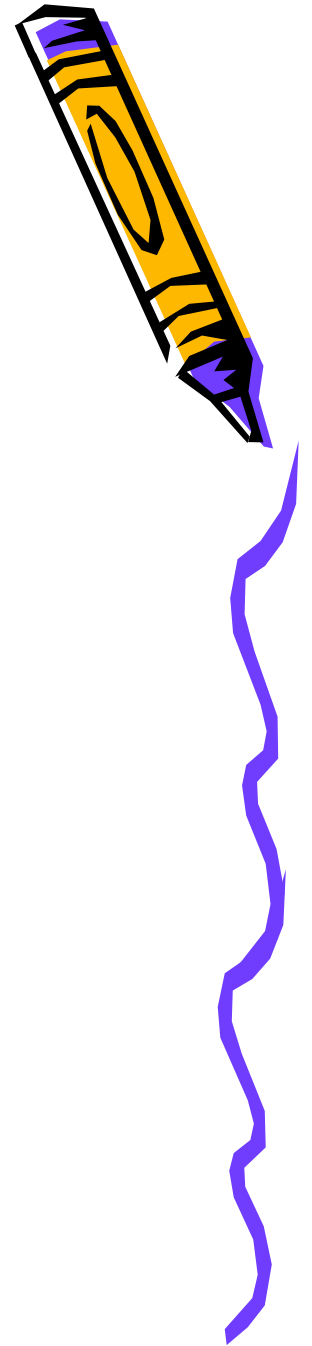
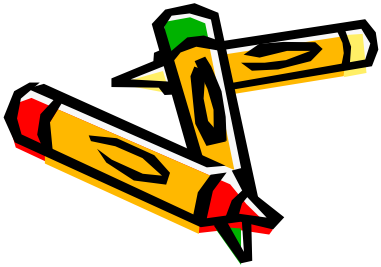
berneman@texelerate.net

215-275-8492



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Kathleen A. Denis, Ph.D.
Associate Vice President
Technology Transfer
Rockefeller University



Principled Negotiation

- Essential knowledge and skills to establish and maintain positive and productive professional and personal relationships



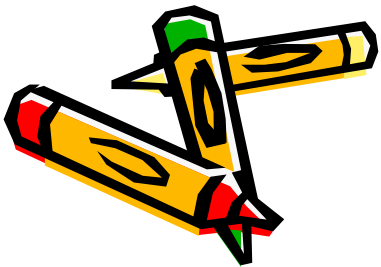
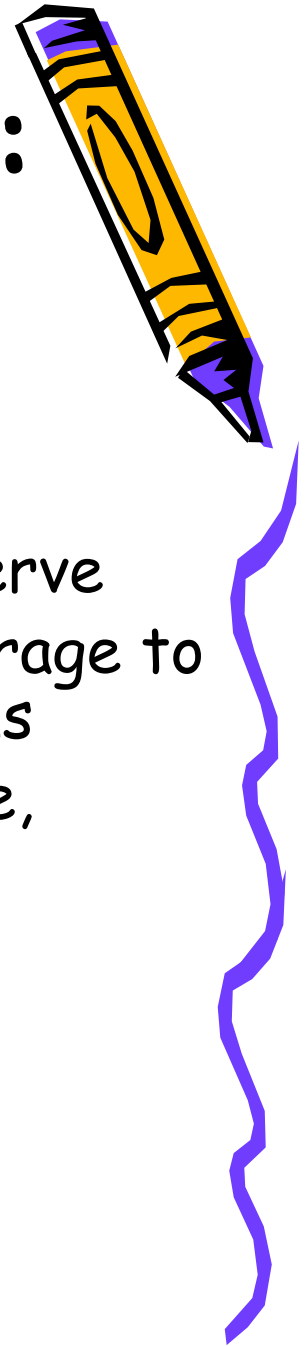
Definitions of Negotiation

- The interaction between two (or more) parties seeking a mutually acceptable outcome in situations where their preferences are not necessarily consistent or their interests aligned.
- The use of knowledge, power and leverage to affect another party's expectations, beliefs, perceptions and behavior.



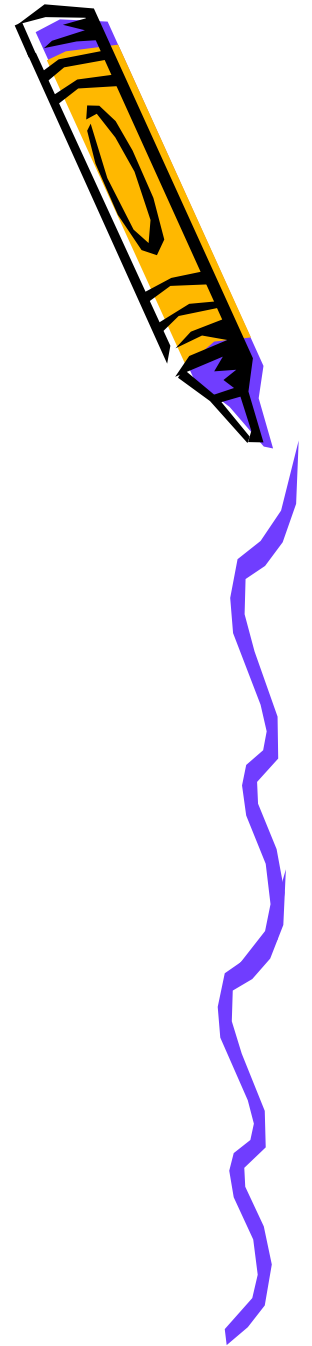
Successful Negotiators:

- *Learn* all they can about the other party
- *Enter* negotiations emotionally centered
- *Create* a positive atmosphere
- *Ask* more than tell - actively listen and observe
- *Use* knowledge, information, power and leverage to *manage* others' expectations and perceptions
- *Identify* areas of agreement and difference, *confirm* areas of agreement, then *focus* on differences
- *Seek* the negotiation success range
- *Attend* to long-term implications of issues



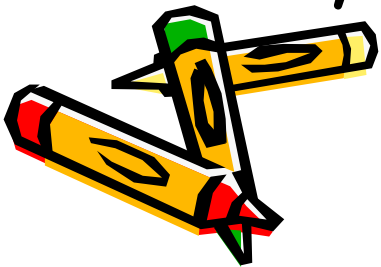
Elements of Principled (Win-Win) Negotiations

- Prepare
- Open
- Bargain
- Close
- Implement



Preparation (Homework)

- Preparation is critical to a successful principled negotiation
- A poorly prepared negotiator can only react to information and events
- It's OK to first see "what the other party has to say," but only if you are prepared



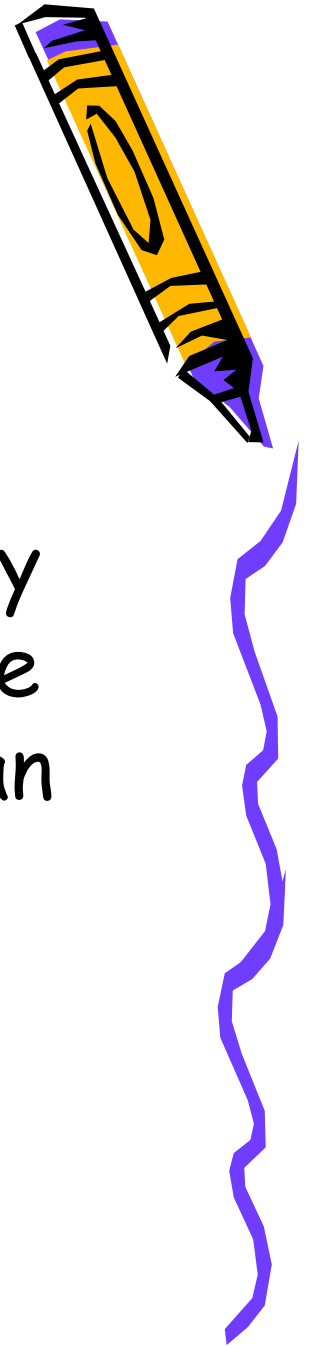
Preparation

- Determine if the framework for this negotiation is a relationship or a transaction?
- Select and brief the negotiating team (as appropriate)
- Be prepared to address any issue at any time
- Remain flexible and expect the unexpected



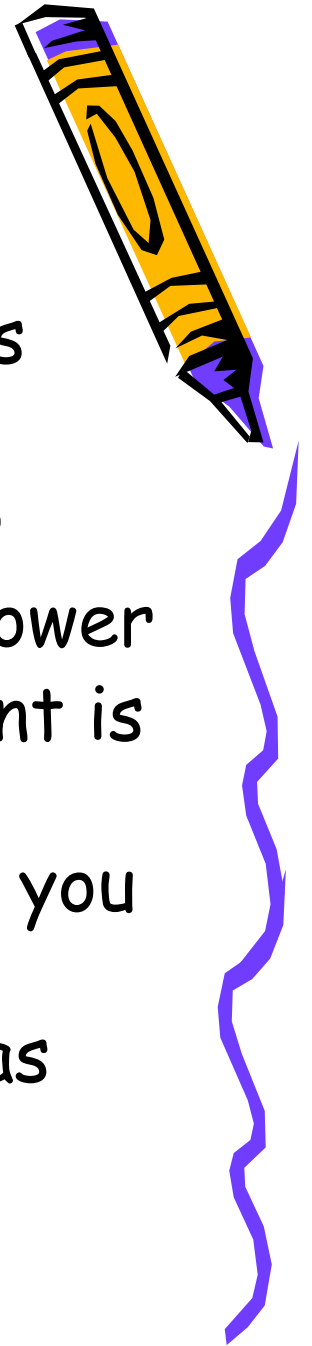
Preparation

- knowledge = power = leverage
- No one will ever negotiate seriously unless he or she believes (or can be convinced) that the other party can and will help (or hurt) them



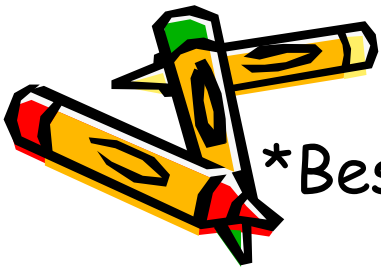
Knowledge and Power

- Determine what leverage you possess and if, how, and when you will use it
- Use your leverage in a timely manner
- Let the other party know you have power
- Power is useless unless its true extent is known by the other side
- But, don't express your power unless you need it
- Hold leverage in reserve, but use it as needed



Preparation

- Analyze the opportunity
- Identify and differentiate needs and wants
- Project other party's needs and wants (and if unknown, be prepared to ask)
- Value the opportunity, substantiate your position
- Determine your BATNA*



*Best Alternative to a Negotiated Agreement

The Negotiating Team*

The negotiating team should operate as a single, disciplined unit with defined roles and responsibilities:

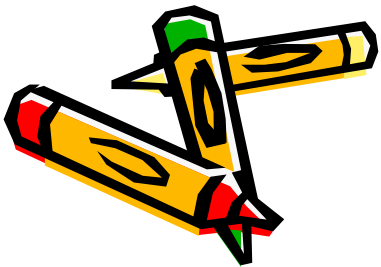
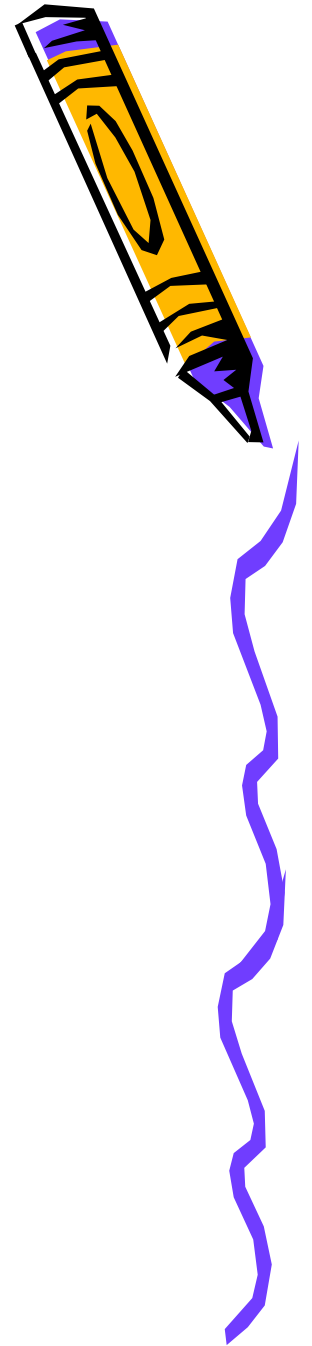
- Leader - manages and leads process to conclusion
- Summarizer - clarifies, refocuses, does not make concessions
- Recorder - technical or legal specialist

*Unfortunately, in academic technology transfer the negotiating team is often a team of one



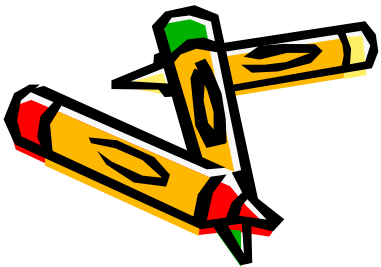
Entering the Negotiation

- be emotionally centered
- be positive
- ASK, LISTEN, don't tell
- Identify areas of agreement
- Focus on LONG TERM implications



Opening

- Be courteous and amicable
- Establish a positive and productive relationship before any contentious issues arise (and they will arise)
- Communicate needs (as appropriate)
- Seek a negotiating success range



Opening

- Start positive - go for "yesses"
- Listen, observe and ask questions to gather information and help educate
- Express willingness to consider/propose options/alternatives
- Find out what the other side needs (and wants, if you can) and show them how each side can get what each needs



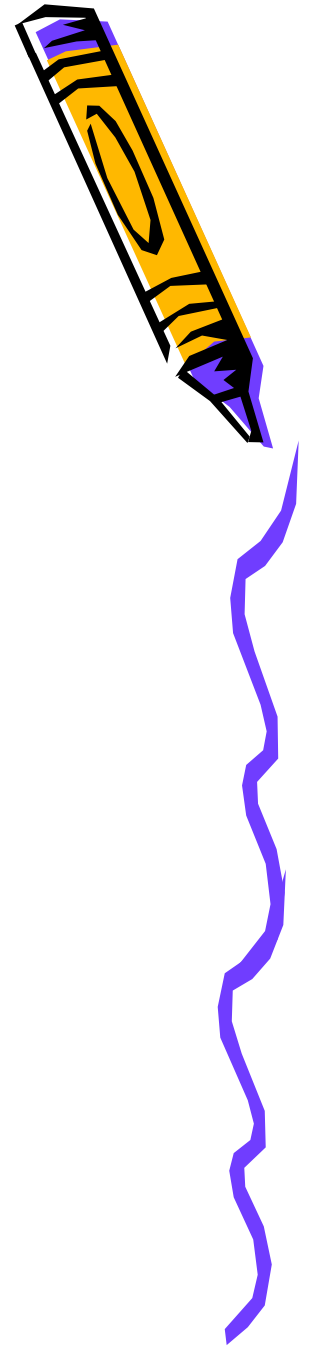
Opening

- Determine the level of authority of those with whom you are negotiating
- Identify who has the power/authority to make concessions and decisions
- Ask, if necessary
- Don't be fooled by title, age, appearance
- **Never accept a "no" from a negotiator who is not empowered to give you a "yes"**

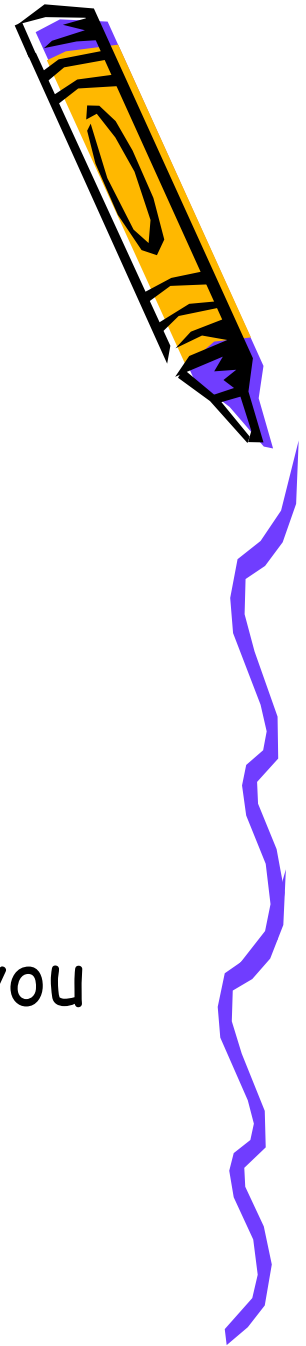


Opening

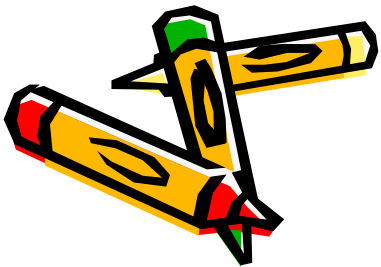
- First offer
- Anchor
- Floor and ceiling



Making the First Offer

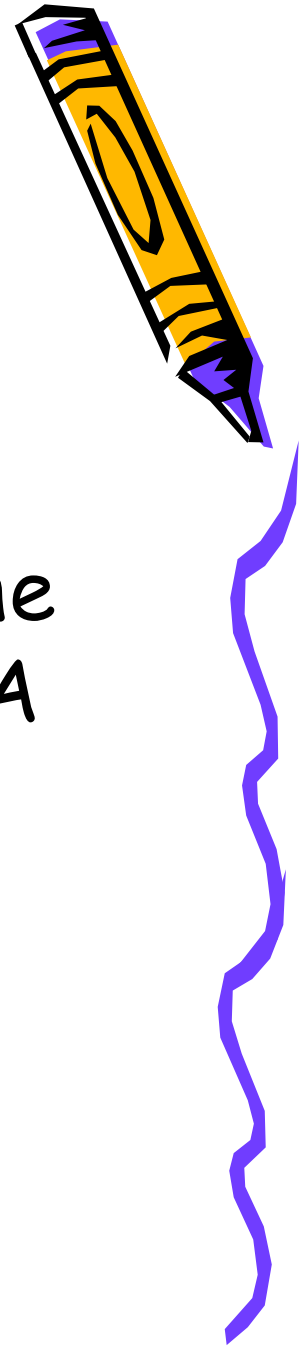


- What do you think?
 - Always make the first offer?
 - Never make the first offer?
 - Never accept the first offer?
 - Always ask for much more than you expect to get?



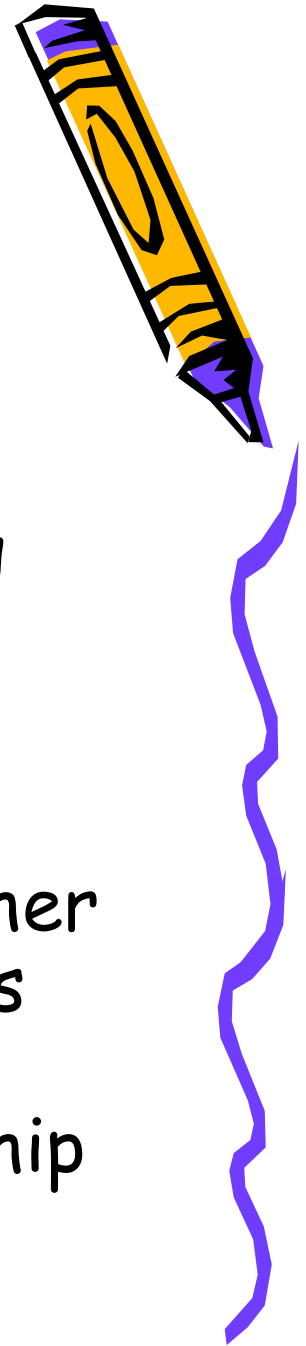
Anchor

- Every negotiation takes place in the context of the other side's BATNA
- Perceptions and control can be changed by events/proposals



Floor and Ceiling

- Floor is the bottom of the negotiating success range for the seller
- Ceiling is the top of the negotiating success range for the buyer
- Avoid lowballing and highballing - neither will likely be in the negotiating success range and may be counter-productive, damage credibility, respect, relationship

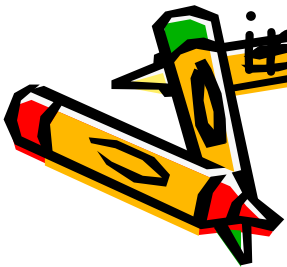


Negotiate Non-Financial Terms First

- Scope -- grant (exclusivity), field, territory, right to sublicense, reservation of rights
- Patent prosecution, rights to extensions and improvements, enforcement
- Risk management - representations and warranties, disclaimer, indemnification,

insurance

Diligence



Financial Terms



- Seek agreement on underlying assumptions
 - Relative contribution of the licensed IP to future revenue stream
 - Market size/share, profitability
- Use reason whenever possible
- Use knowledge, power, and leverage if reason isn't working

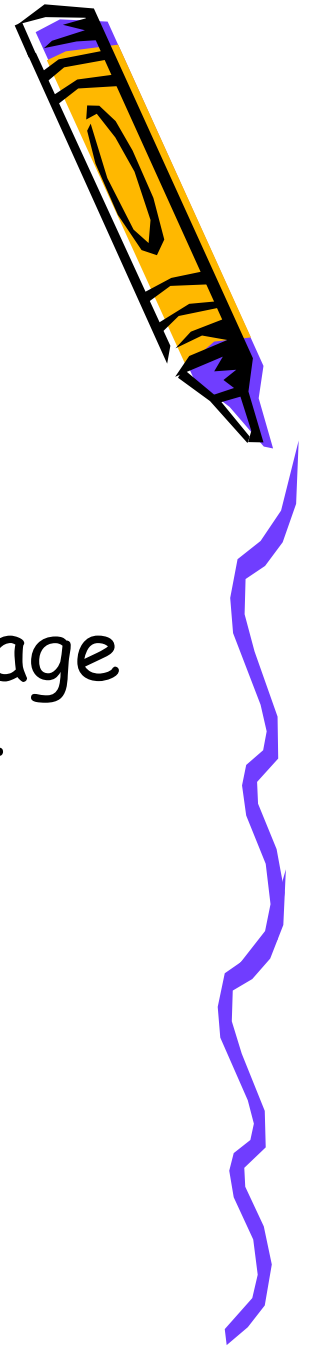


Options and Term Sheets



Financial Terms

- Fees - up front, milestones, maintenance, sublicense sharing
- Royalties - base and rate, running, minimum, pass-through or percentage
- Payment/reimbursement of patent costs - historical and ongoing
- Sponsored research support
- Consulting

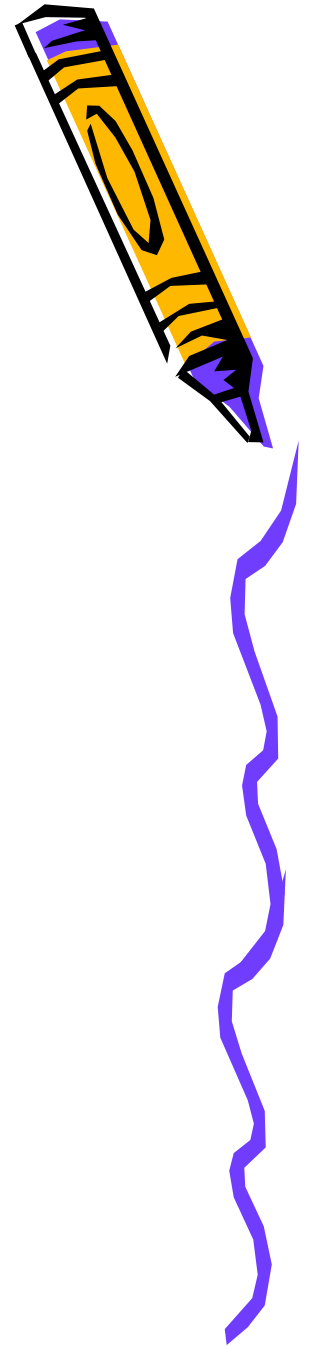


Other Terms

- Definitions
- Term and termination
- Accounting, reports, audit rights
- Taxes
- Confidentiality
- Use of name
- Publication rights/restrictions

Right to assign

Dispute resolution



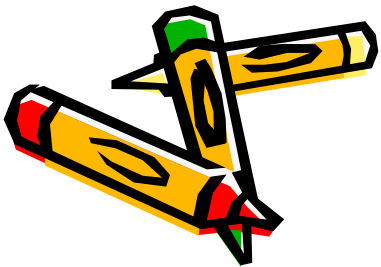
Negotiation Tactics

- Listen and observe
- Ask questions to understand and clarify
- Seek knowledge (to gain power and leverage)
- Use silence, repetition, patience and persistence
- Listen for subtle counter-offers, hints of softness or changes in their positions



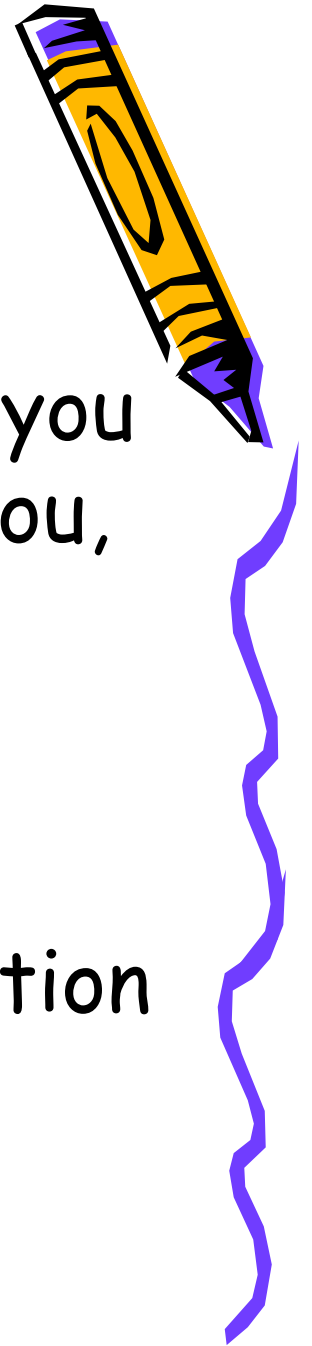
Dealing with Difficult People

- If they have more power and are being difficult, you must know your BATNA and be prepared to walk away
- It is difficult to "separate people from the problem" if the person is the problem and the person is a PITA



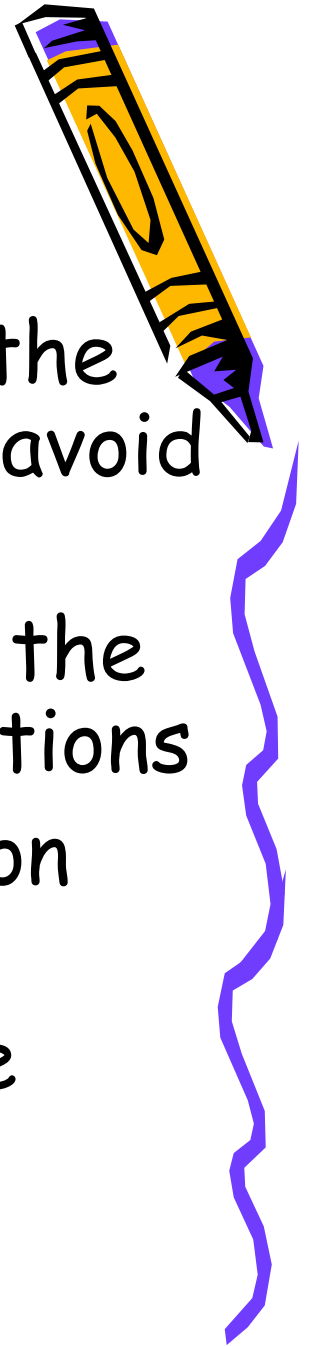
Dealing with PITAs

- Try to change the negotiator - if you need them more than they need you, it's tough
- Change your attitude
- Change your behavior
- Try to understand his/her motivation
- Walk away (BATNA)



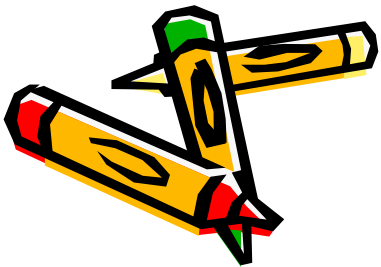
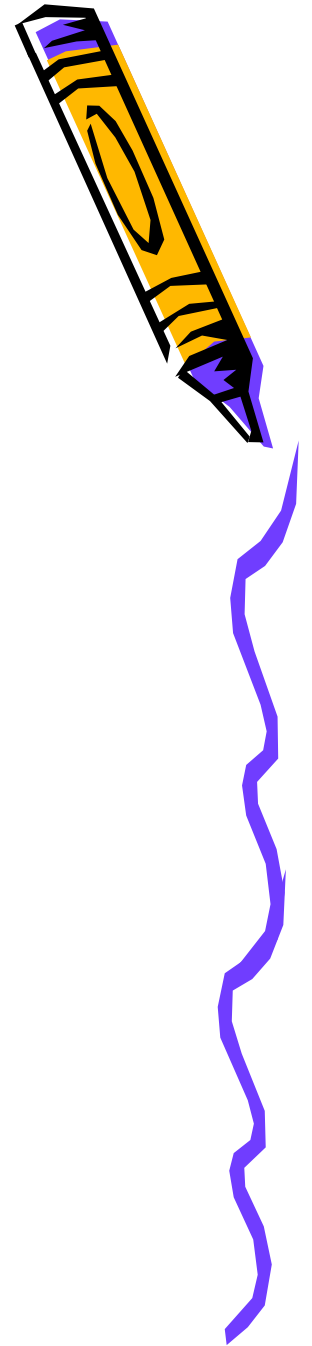
Dealing with Threats

- Ask to understand the basis for the threat; try to respond calmly to avoid further polarization
- Seek a common understanding of the problem, causes and possible solutions
- Express willingness to negotiate on merits
- Yield to principle, not to pressure



Dealing with Unresponsiveness

- Who has the power/leverage?



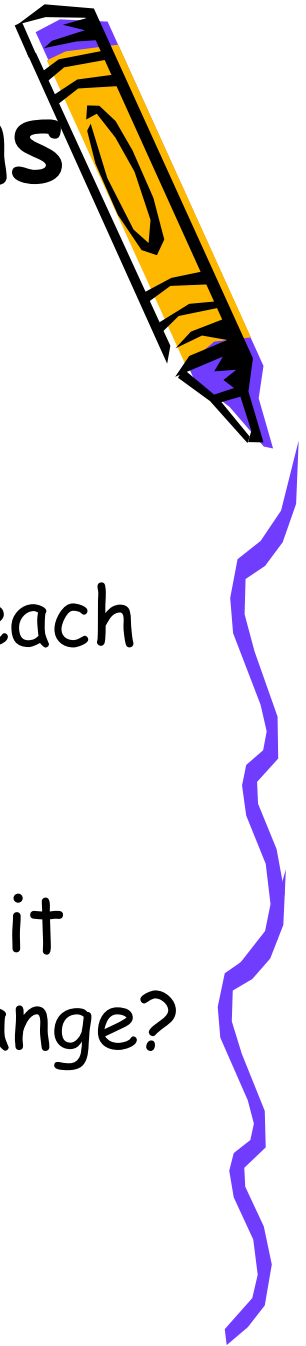
Compromise and Concessions

- Be clear on your needs and wants - you can compromise on wants, but not on needs
- Plan areas of compromise in advance
- Seek to reduce stress by exploring new/different options
- Understand your power and leverage and don't underestimate your bargaining position



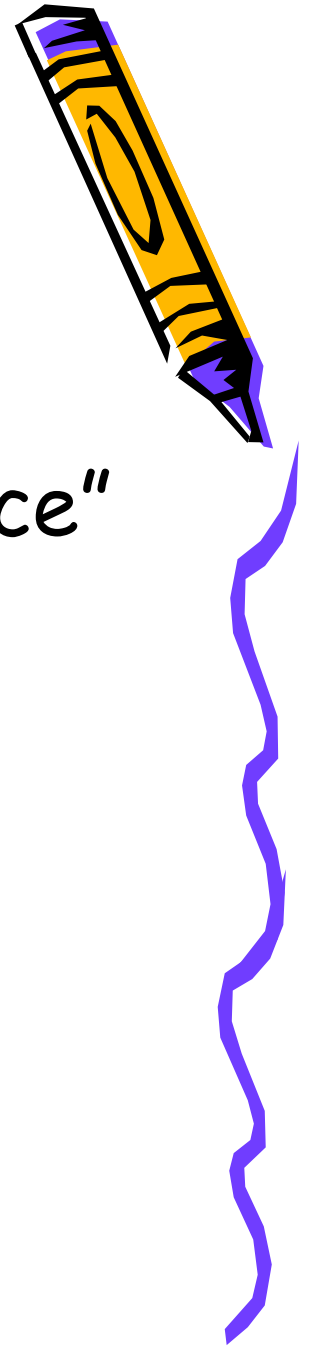
Compromise and Concessions

- Grant concessions sparingly - a concession easily given is of little perceived value
- Explain the basis/justification for each concession
- Consider the value of a concession - what's it worth to them? what does it cost you? what do you want in exchange?
- Compromise is a two-way street



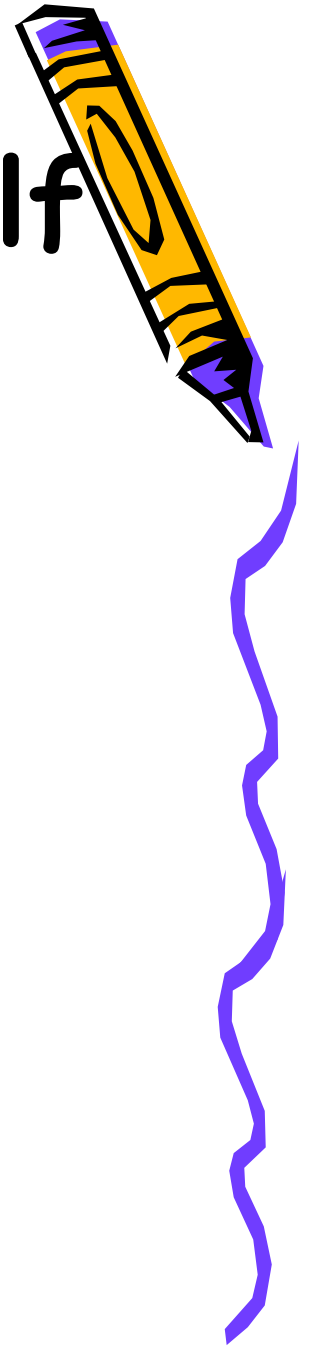
Splitting the Difference

- Learn to spot "split the difference" negotiators
- Be aware of compromise and concession patterns and use recognized patterns accordingly



Negotiating Against Yourself

- Don't
- Don't
- Don't
- Don't
- Don't
- When is it appropriate to negotiate against yourself?



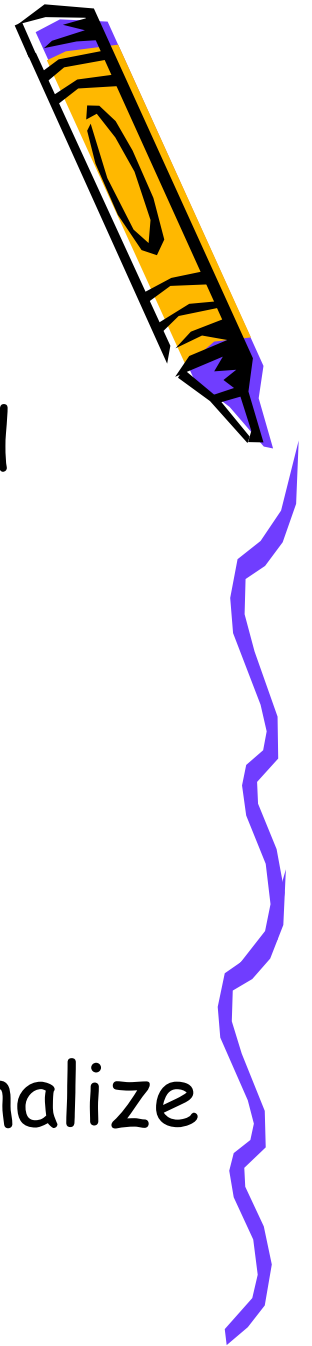
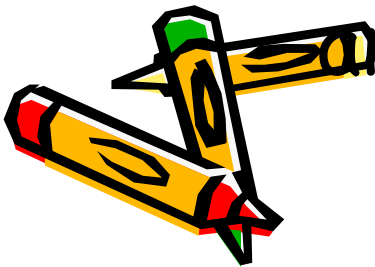
Persistence

- Most people are not sufficiently persistent when negotiating
- Be dogged in pursuit of your needs - try different approaches, explanations, arguments, new information
- Persistence is NOT begging, hassling, harassing or bullying (although these can be used effectively on occasion)
- Persistence is an attitude of determination



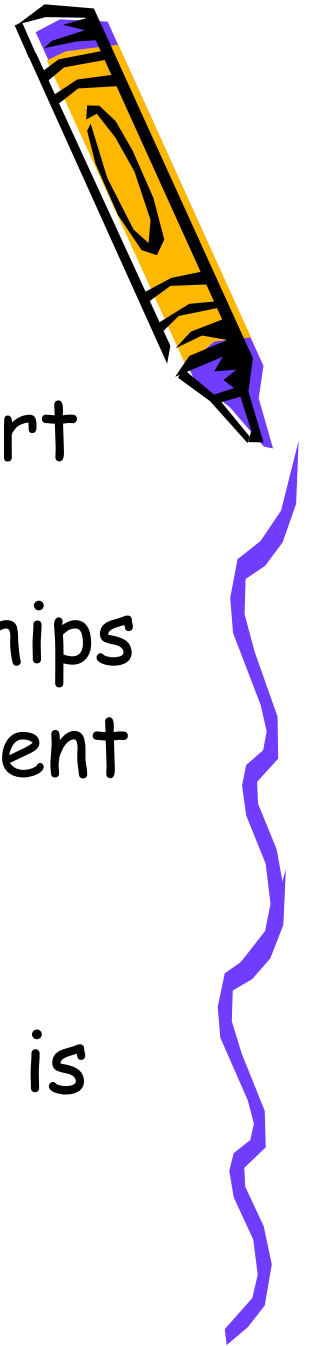
Closing

- Make the entire relationship and agreement workable; don't be pressured to accept unworkable arrangements just to close
- End on an affirmative and, if possible, ceremonious note
- Determine what's required to finalize and implement

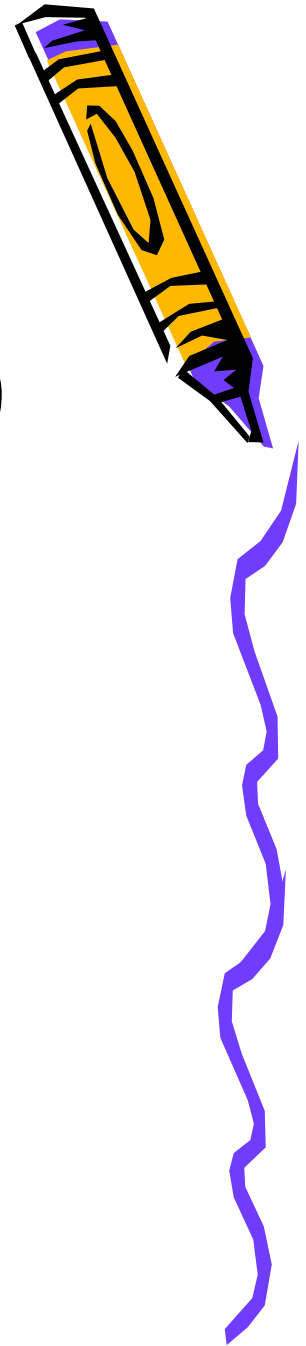


Implementing

- Work with the negotiating team and others to finalize and support the agreement
- Maintain contacts and relationships
- Monitor and manage the agreement
- Identify and diffuse or settle disputes early
- Plan for the next negotiation (it is highly likely)



The Four Basics of Getting to Yes ("Principled Negotiation")



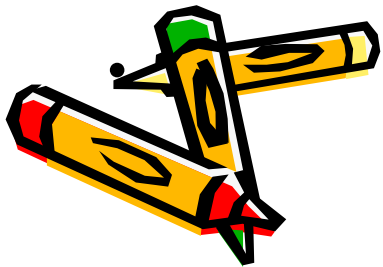
- Separate the People from the Problem
- Focus on Interests not Positions
- Invent Options for Mutual Gain
- Use Objective Criteria



Helpful Resources



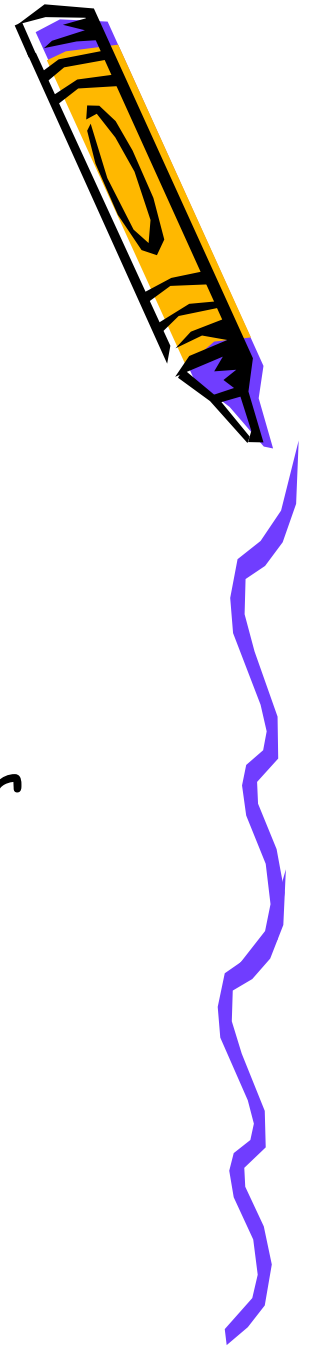
- *Getting to Yes*, Fisher, et al. (1991)
- *Getting Past No*, Ury (1991)
- *Smart Negotiating*, Freund (1992)
- *You Can Negotiate Anything*, Cohen (1980)
- *The Tao of Negotiation*, Edelman, et al. (1993)
- *Negotiating for Dummies*, Donaldson, et al (1996)
- *The Negotiator's Handbook*, Fuller (1991)
- *Bargaining for Advantage: Negotiation Strategies for Reasonable People*, Shell, 2000



LES Advanced Negotiation Course

Summary

- Prepare as thoroughly as possible
- Open with a positive message
- Negotiate in a principled manner
- Close in an affirmative manner
- Implement effectively





Thank you.
Who has the first
question?

