

You Are Our Negotiator

Hanford Site Negotiation Primer

Prepared by William F. Lincoln for the U.S. Department of Energy
Richland Operations Office under contract DE-AF06-02RL 14321



September 2004

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Introduction

Decontamination, cleanup and environmentally restoring the landmass simply referred to as the Hanford Site, constitutes more than scientific, engineering and bureaucratic challenges. Activities on the Hanford Site represent exercising ecological stewardship, responsibility for public safety, responsiveness to tribal and community concerns and visions of future land usage—all in accord with regulations, formal and informal agreements and in a timely, practical and cost effective manner. Such opportunities can not be realized without constant and candid cooperative interactions among the numerous and varied stakeholders. Challenges on the Hanford Site require a culture of collaboration and cooperation in which candor is valued, where combativeness is not.

Except for the examples that are specific to Hanford the negotiation theories, processes and skills presented within this *Primer* have appeared in materials previously copyrighted by one or both organizations that I have founded and still direct, namely, the *Conflict Resolution Research and Resource Institute, Inc.* and *The Lincoln Institute for Collaborative Planning and Cooperative Problem Solving, Inc.* I have written this *Primer* in a conversational style similar to the manner in which I conduct my training sessions and workshops. I believe that the relaxed style helps make this *Primer* and its important message both an enjoyable informative experience for the reader.

The hope and purpose of this primer are meant to compliment the true spirit of negotiation, *i.e., collaborative planning and cooperative problem solving*, while also supplementing skills that we all have acquired and for the most part, which we have used effectively throughout our personal and professional lives. This primer honors you for being an integral part of the Hanford Site challenge and pleads with you to acknowledge your proven competencies in negotiation—planning, managing and resolving conflict—by always applying a confident spirit coupled with competent skills to all that lies before you so that the Hanford Site challenges are met.

William F. Lincoln

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Who Me?



Who, Me?

All right, so it's just been one of those days, *not* that everything went wrong, but because so many different things demanded your attention, energies, time and skills to make everything just right, or at least to *okay* levels.

- On your 7:00 am arrival at the office, you received word that you would serve as a primary resource at the previously unscheduled 8:30 morning meeting for the *necessary and urgent 're' planning of the project's implementation strategy inclusive of definitive task-timelines and predetermined milestones*. So much for getting to your backlog of things to do. *How come work always interferes with work? It just does!*
- Again, a 2:30 pm lunch at your desk with the speaker telephone as your 'dining companion' so you could participate in a conference call to address a situation in which a vendor still is performing services as specified in a written work change order, but recently ruled 'not to have been authorized appropriately'. *Steady, can't allow a bad situation to worsen.*
- Almost predictable on a day like today, a 5:10 pm interdepartmental conflict regarding elusive lines of demarcation for jurisdictional authority, budgetary flexibility and some ambiguous doctrine about *cooperative accountability*. There was no way to leave such matters in abeyance, and having to telephone home to say you would be too late to greet the out-of-town house guests whom your spouse has never met. *Psst—a suggestion: hope that it will be one of your kids who answers the telephone, and who can pass on your message to a higher authority.*
- Of all times and places, 7:20 pm in the parking lot you learned that within the next couple of weeks you are going to be on several formal negotiating teams *...to deal with folks from the nation's Environmental Protection Agency (EPA), several state agencies, including the Department of Ecology and a couple of private contractors. Got lots riding on these sessions—plus the visit by a Congressional delegation...* Pure panic! Doesn't this maze and pressure qualify you for protection under some Helsinki accord for human rights? Well, it should.

So what's the problem? We already know that you are a competent and experienced negotiator—but do you know that? How else do you think you've come this far in your personal and professional lives? Sure, you've had some errors, shortcomings and instances of 'buyer's remorse'—who hasn't—but you are a survivor. You've learned lots of lessons, even if you can't quite recall all the circumstances or how you modified processes and skills for effective applications. Yes, you are a negotiator. And it's a good thing, 'cause conflict is inevitable'. In fact, conflict has been referred to as a 'growth industry' with regard to scope, intensity and frequency.

The ever-prevailing concern before all of us is this: How do we make the best out of conflict instead of letting conflict get the best of us?

First and foremost—behave with *confidence*, and employ confidence as well. No, we didn't say be cocky, be filled with hubris pride, or be self-righteous. We said be *confident* because you have reasons to be. You have a track record that statistically indicates that well more than 90% of the time your negotiation competencies have worked sufficiently for you and others. And when competencies didn't, the results usually weren't that bad. Pretty good news, don't you think?

**Preplanning
is essential
Don't go in
unprepared**

Lesson #1 has been taught—you determine whether or not it has been learned! *You* are a negotiator, and you can prove it if you have to. If need be, we'll help you do it.

Negotiation: What's It Used For?

If you answered, ...*to resolve conflict* your response is incomplete. Despite popular opinion, negotiation primarily is *not* used to resolve conflict. Nope.

Negotiation is used primarily for *conflict prevention*. We call it *planning*, and we use the process both formally and informally to prepare goals, strategies and tactics in developing everything from organizational structures, lines of authority and accountability, job descriptions, work plans, budgets and quality assurance instruments to pre-nuptial agreements, vacations, retirement and even wills, i.e., *estate planning*, which is often an effort to prevent conflict. In fact, most of the time and energy consumed in typical labor-management contract negotiations, as well as in the development of international treaties, constitute *planning for the sake of conflict prevention*—what will be the procedural and substantive factors that will govern the relationship of the parties in equitable, practical and acceptable ways. Sure, there might be key issues that are tough or even divisive at times, and some even temporarily may hinder the agreement building process. But for the most part, the primary purpose for using negotiation is *conflict prevention*—again, we call it 'planning'. Need an example? Return to the beginning of this primer (page 1) to review what happened on your 7:00 am arrival at the office.

**Conflict
Prevention
Conflict
Management
Conflict
Resolution**

The second most frequent use of negotiation is *conflict management*, i.e., from influencing to controlling circumstances, people, resources and possible external factors so that a bad situation doesn't worsen; doesn't open itself up for the involvement of persons who shouldn't be involved; and doesn't adversely affect people and places who shouldn't be so effected.

Negotiation's second function produces a variety of results—from 'standing firm and fast' as with the 38th parallel truce line between the two Koreas, to news caps, to summit meetings, to intermediate actions/nonactions, or through mutual accommodation by parties to share the weight of a particular situation until a more satisfactory and/or permanent solution is developed. Remember what you were doing during your 2:30 lunch at your desk? Review the situation (page 1). See what we mean?

Finally, we arrive at the least frequently used purpose of negotiation, namely, *conflict resolution*. Seems like this function is what gets most of the attention—from plea bargainings in criminal court, to relationship terminations, to labor management relations, to various international scenarios including military cease fire efforts and to address fair trade issue. Oh, don't forget to go back to the beginning (page 1) to review your 5:10 pm interdepartmental session. And while you're doing that, you just might want to recall the next meeting—7:20 pm in the parking lot.

Let's see where we are. Very often you are a *conflict preventor*. At other times you function as a *conflict manager*. Occasionally you even serve as a *conflict resolver*. And sometimes, it seems you are doing all these things bunched together in a single specific situational scenario. In the past you've performed these roles continually in a variety of circumstances, still are performing them, and always will. No doubt about it—you are a negotiator! Experienced, competent and confident.

How Do You Define Conflict?

Now that you have finally accepted the fact that you indeed are a negotiator, you are more eager to prevent, manage and resolve conflicts more easily, efficiently and effectively. *Patience, please!* Just as it is necessary to diagnose an illness before treating the illness properly, so too we need to diagnose conflict before we decide what are the best ways to address conflict. Because you can't argue your way out of that argument, let's start with an operative description: *Conflict is a sense of competing interests*, and that sense could be real as in undeniable, or merely *perceived*, or simply thought as *possible*.

Patience Please

But our efforts to define conflict are not very helpful unless we also provide examples with a preliminary explanation of *interests*, i.e., *those principles and values that motivate us to act—or to refrain from acting—in specific situations*. When

house hunting, our *interests* (principles and values) might include economic security, safety, aesthetics, privacy and convenience—all interest factors that influence whether or not we purchase a house, and, if so, what kind, where, when and for how much. Now, let's think that we have intrinsic rural values while our partner has intrinsic urban values—conflict. Not necessarily unresolvable, but nonetheless conflict.

We'll talk more about *interests* a little later, but for now just think what it means to be involved in the decontamination and decommissioning of a nuclear facility. *Conflict, a sense of competing interests?* You bet—safety for project personnel and the general public, ecological integrity, fiscal and technological factors, practicality, accountability, efficiency, inclusiveness in decisionmaking, responsiveness to tribes and communities, fairness and professional credibility, etc. This stuff is complex, not unmanageable as we will see, but certainly complex.

Note again a sense of competing interests can be *real* as in undeniable, as merely *perceived*, or simply thought as *possible*. It is best that we view these conditions through pertinent examples rather than through narrative explanations.

- **Real:**

On parts of the Hanford Site radioactive waste discharges were made to the soil throughout the 40's, 50's, 60's and 70's. Site scientists believed that the soil columns would 'tie up' the isotopes as the isotopes slowly decayed before entering the groundwater, and eventually the Columbia River. However, some elements appear to be moving more quickly through soil than anticipated. Presently DOE scientists report that the annual average radioactivity concentrations in the Columbia River water will not exceed ambient water quality standards. Other scientists contend that the water will become contaminated, and thus have adverse health effects on the public.

- **Perceived:**

The general public lacks adequate technical understanding, and thus concludes some of the current decontamination and cleanup operations on the Hanford Site jeopardize their health interests, as well as real estate property values.

- **Possible:**

U.S. Congress might not always provide DOE the requested budget; thus likely revising the schedule of tasks to be performed as well as extending the completion date—perhaps contributing to real or perceived adverse effects to health and the environment.

Any Ideas as to What Causes Conflict?

Although we now have a better understanding of the nature of conflict, we still are not ready to approach conflict effectively with process or technique. No, we won't be ready until we grasp a basic knowledge and appreciation of the *causal factors* that can contribute to conflict, whether such conflict be of high intensity or low intensity.

There are many contributing factors, but fortunately the factors all fit into the following five categories.

- (i) Data** ...best understood in relation to information, such as misinformation, omission, accessibility, complexities, amount, accuracy, credibility, interpretation, relevancy, methods collection and analysis, etc. *Whew!*

Example:

An analysis of groundwater near an old Hanford Site nuclear waste burial ground indicated high levels of tritium, a radioactive isotope of hydrogen. Environmental regulatory agencies, such as the Washington State Department of Ecology and the public, immediately called for action to speed cleanup of the burial ground. DOE examined the vicinity's groundwater to see if transmission of the tritium to the Columbia River was likely. Further analysis indicated that while the tritium reading was high, the tritium was not worthy of any special attention, i.e., the tritium would not pose a risk to the Columbia River. In the end, both DOE and the regulators determined that the presence of tritium was not worthy of any immediate action.

- (ii) Structure** ...best understood as those reality factors that can not be changed easily, such as rank, status, boundaries, the way organizations are organized, authority, law and regulations, patterns of practice, tradition, cultural norms, contracts and treaties, temporal and financial schedules, lines of accountability, court rulings, news media and the existence of the loyal opposition, etc.

Example:

The Tri-Party Agreement (TPA) is itself a structure inclusive of the DOE, the EPA and Ecology as signatories with reference to affected tribal nations, State of Oregon and numerous terms, conditions, timeframes and procedures.

- (iii) Values** ...best understood as what motivations cause us to live and work the way we do, i.e., honesty, integrity, credibility, safety-security, order-familiarity/predictability, professionalism, accountability, dependability, reliability, trust, competency, quality, equity-fairness/justice, productivity, efficiently, thoroughness, prestige, responsiveness, stability sustainability and patriotism, etc. *The list is endless.*

Example:

DOE and Hanford Site contractors have many of the same interests as Ecology, such as the integrity of the environment, the health and safety of the public and staff, institutional

credibility, professional competency, efficiency and cost effectiveness. Because interests are measured subjectively, there is much room for misunderstandings and conflicts.

- (iv) Relationship**...best understood with the use of adjectives that accurately describe the relationship, such as functional or dysfunctional, cooperative or uncooperative, predictable/reliable or volatile, equal or unequal, responsive/non-responsive, sensitive or insensitive, fair or unfair, trusting, valued and amicable, etc. *Ad infinitum!*

Example:

The bureaucratic and legal dynamics of the relationship between DOE and Ecology make conflict inevitable, i.e., federal authority versus state's rights. Furthermore, regulations are written purposely with a degree of vagueness as a means to allow for some flexibility to address particular situations in the most appropriate manner. The 'hows' of application—when, under what circumstances, to what degree—can become a case for varied and conflicting interpretations amidst a possible contest between federal supremacy and state authority. At times, such instances unnecessarily can lead to nonrespectful and nonproductive relationships with lingering negative residuals.

- (v) Behavioral** ...best understood when one side feels wronged by a particular activity or nonactivity, and often gives focus to that behavior while the other side contends justification for its specific action(s) or nonaction(s), such as neglect; dismissiveness; non-responsiveness; breaches of confidentiality; variations of lying; including deliberate omissions and exaggerations; practices of one's individualized code of situational ethics; unilateralism; accusatory ways; offensive language or gestures, threats; and use of violence, etc.

Example:

DOE's inability to meet some of its milestones on time has caused regulators to accuse DOE of inefficiency, nonproductivity and irresponsibility. Because Ecology has provided explicit directives to DOE's contractors, some DOE staff and project contractors perceive Ecology as wanting to manage the entire project. Such situations raise the issue—just what is the proper role and working relationship between a regulator and DOE?

Why, you ask, are we spending so much attention, time and energy on addressing *causal factors of conflict* when we could be spending our time discussing techniques?

Simply stated, proposals for resolution and settlement agreements themselves must implicitly or explicitly address specific *causal factors* that could or did contribute to a conflict, as well as address those *causal factors* that could contribute to *conflict aftermath*—all those bad things that shouldn't have happened once the parties had agreed on provisions of prevention or resolution. We, including you, are in pursuit of practical and durable remedies free of conflict re-occurrence or the creation of new conflicts that possibly could occur because we did not provide adequate thought to the actual or possible causal factors of conflict. That's why we've spent all this time, attention and energy on identifying and exemplifying the *causal factors*. Any more questions?

Conflict and Conflict Resolution Behaviors¹

Always know whether you are using a particular behavior to perpetuate the conflict or resolve it

Guess what? The five categories of conflict behaviors and conflict resolution behaviors are identical. *Interesting, huh?* But what to do with such information? Nothing, except always know whether you are using a particular behavior to perpetuate the conflict or exercising that behavior in efforts to resolve the conflict. That's a pretty important distinction of usage.

Avoidance is the first conflict/conflict resolution behavior and avoidance often is expressed or justified through idioms such as *Don't make a mountain out of a mole hill*, *Leave well enough alone*, *Time heals everything—it will go away*, *It's just the way things are—there's nothing we can do about it*, *It's their problem, not ours*. Be honest. The reason why these idioms sound so familiar is not because we have heard them so often, but because of the frequency in which we use them(!)—perhaps with occasional circumstantial justification. However, a draw back with 'problem avoidance' is that deliberate inattentiveness and continual postponement, or even neglect, often allow the situation to worsen to the point where the situation no longer can be shunned or perhaps where the situation no longer can be addressed effectively. We all hope that we'll never have to experience doctors taking off their glasses only to say to us *Wish you had come to us earlier so we could have nipped this thing in the bud*.

¹A modification of Kenneth Thomas' *Conflict and Conflict Management in Handbook of Industrial and Organizational Psychology*, Marvin D. Dunnette, Editor, Chicago, and McNally, 1976.

However, avoidance as a conflict resolution behavior might be meritorious if we are putting issues aside *only* tentatively until we can give due attention with all appropriate resources.

Let's see how avoidance might apply to our work on the Hanford Site.

Example: A contractor came to DOE with a request to dispose of 55-gallon containers of radioactive waste in which lead was used as shielding. In the past, Ecology has stated verbally that Ecology does not favor such containers to be buried. However, DOE decided to rely on federal law allowing the containers to be buried rather than developing a proposal for Ecology's review and concurrence.

Accommodation is another conflict-resolution behavior, i.e., to cooperate fully with the other side so that their interests will be satisfied even though ours will not. Be serious, why would we ever do that? Why have we done that? Why surrender our wristwatch, cash, credit cards and personal identification credentials to an armed robber? At the moment, living seemed better than risking death over such items. Similarly, we willingly allow dentists to inflict pain on us by their damnable injections so we won't experience even more severe pain when the drilling begins. Thus, one primary reason for our accommodating the wishes of others is a change in our own priorities. Additional, self-explanatory reasons for making accommodations include...the 'other side' is correct or deserving; their request is almost of nuisance value to us; our resistance isn't worth the trouble; we lack the resources (time, money, staff, health, etc.) to do anything else; a matter of principle is not involved; we wish to develop, maintain, or nurture the relationship; we wish to demonstrate good will or flexibility; and it is more important for us to get a sense of closure, and to move the process forward—perhaps to more important issues. Remember, accommodation is very much like a concession; nothing is received in return. This is not *quid pro quo*. This is not negotiation in and of itself although such behavioral incidents within negotiation might occur—we call these *concessions*.

The five categories of conflict behavior:

- **Avoidance**
- **Accommodation**
- **Competition**
- **Compromise**
- **Collaboration**

Example: On occasion, a regulatory agency, such as Ecology or the Washington State Department of Health (WDOH), has 'requested' DOE to conduct an activity that did not have a clear and definitive regulatory basis. Yet the effort and cost for DOE to have disputed and refuted the request were deemed to be greater than the effort and cost of fulfilling (e.g., complying with) the 'request'. Operations chose to begin implementation without grumblings or appeal, and thus maintained good will with the agency. Of course such responses could become precedent setting and become expected as a normal pattern of practice—then we would have real problems.

Competition is a conflict/conflict resolution behavior that need not be synonymous with combativeness. For the most part, organized sports demonstrate extraordinary skills performed by individuals and/or teams. And that is how we wish to regard and value competition: The enhancement of skill development whether it be among athletes or the new technologists, or the manufacturers of cameras, cars and computers. Things just get better.

But competition does denote 'winning'. Sounds a bit politically incorrect when discussing negotiations among today's conflictologists. Is it? Not at all. There are principles on which we stand, and they are not only non-negotiable but are indeed defensible: the health, welfare and security of our family—of our nation.

Furthermore, we live in a world of finite resources. Example, take the element of 'time'. For most of us, a 24-hour day is an insufficient amount of time for us to experience familial pleasures and fulfill related obligations, perform our professional responsibilities, be attentive to our own health needs and still have any of 'our time' left just for us. Sometimes there simply isn't enough time for everyone to do everything. Similarly, there is only so much land; and only so much water, natural resources, money and staff. *Who needs and deserves what?* and *How much?* are two of the moral question as to what constitutes 'fairness', 'the best use of' and 'for the greater good' in the distribution and use of resources. Hopefully 'fairness' is neither a finite nor a decreasing resource but one that increases in value, amount and accessibility. For now, one only can wonder that if competition stimulates talent, then what would be the results of true cooperation? *Hmm—does make one wonder, doesn't it?*

Example: The TPA dispute resolution process dictates that if the parties do not develop an acceptable agreement, the Director of Ecology can issue a 'determination' that only can be challenged in court. On occasion, Ecology imposes within its 'determinations' additional commitments for DOE. Ecology likely is attempting to provide further assurances of progress, yet the unilateral behavior is perceived by many as a means to circumvent the spirit of the TPA as it 'competes' with DOE and Hanford Site operations.

**Compromise is
NOT the 'art
of negotiation'**

Compromise often and wrongly is stated to be the art that constitutes the basis of negotiation. Such descriptions are as erroneous as is the supposition that compromise is equivalent to 'splitting the differences down the middle'.

No, compromise is not the 'art of negotiation'. Compromise is the distribution of the area of negotiation distance remaining between contesting parties when each already has reached the end of their respective negotiation ranges, i.e., their 'bottom lines'. We won't move above '5' and they won't settle for anything less than '10'—what's a body to do? No matter how the remaining distance of time, money, land, or whatever is distributed, the resulting resolution might cause each party a sense of dissatisfaction. And,

depending on the parties' levels of dissatisfaction, conflict aftermath might be a likely possibility. Too often it is stated that *It must be a good agreement cause each side is dissatisfied*. What a disappointing description of any resolution, of any settlement agreement!

So why would people, organizations and nations engage in compromise? Simply stated, what might not be the best resolution, might be far better than no resolution at all. It might be best for strangers to share a taxi and fare rather than stand in the rain waiting for another taxi or walking.

Example: DOE determined that a TPA milestone would be missed for beginning construction of a new waste treatment plant. Ecology declined to renegotiate the start date. As a compromise, Ecology assessed a penalty but did not impose a fine that accrued at \$10,000 per week; instead, Ecology would make a final determination when construction started. In turn, DOE continued the process to construct the plant with no net loss in schedule. Thus, the plant still would begin to treat waste at the same time as previously agreed, with confidence that Ecology would waive the penalty.

Okay, now we realize that on occasion it might be necessary—even prudent—to compromise on an issue, but we also realize there is no need to 'come to the table in the spirit of compromise'. Not us. We are pursuing satisfactions, *not* dissatisfactions. And one more note, while circumstances might encourage or even mandate compromise on a position, we never can compromise on a principle. Never. It is not that we merely shouldn't; it's that it is impossible to do because we can't fractionate safety, honesty, integrity, or any other interest or principle. We can neglect, jeopardize, dismiss and even change the order of importance of our values, but it is impossible to 'split values down the middle'. Half-truths are lies and to be 'half free' is to be enslaved. Remember that—always. The credibility of the agency and the mission of which you are an integral part, the integrity of the environment and the interests of public safety are not negotiable. Ever.

Collaboration should be the leading alternative to all negotiation options. In a nut shell, it is simply this: Every proposal from every disputing party is meant to satisfy their own interest, i.e., principles and values—not necessarily proposals—as well as the interests—not proposals—of the other side. *Hmm—this approach doesn't make negotiations sound like a contest at all.* Right, because it isn't. And neither is collaboration a soft 'hot-tub' type approach to problem solving. In fact, collaboration exemplifies that we can be extremely assertive in efforts to satisfy our own interests while simultaneously being extremely cooperative in our efforts to satisfy others' interest. At first we might not be successful, but in the collaboration process, attitudes, intents and the persistent efforts have an undeniably working presence. Real negotiation—the kind that strives to prevent, manage and resolve conflict in fair and practical ways—is 'attitudinal' as well as procedural and technical. *How so?*

Always remember: *The person or party sitting across the table is the partner whom we—you—are seeking to help develop a durable settlement agreement to prevent, manage and resolve conflict—and to keep it that way. Be ever mindful as how to treat your partner.*

Example: The Hanford Site RCRA Permit includes an 'Applicability Matrix' collaboratively developed solutions by the State's Department of Ecology and DOE as to what and where the Conditions of the Permit apply and where the Conditions don't. The Matrix addresses Ecology's interest of regulating the entire Hanford Site while meeting DOE's interest of having Permit Conditions applicable only to specific parts of the Hanford Site.

Yea, you say, but how do I learn of the others' interests, and what if they don't want to be collaborative—then what? Hold on, we'll get to that soon. First we have to address another concern.

Negotiation: What It Isn't and What It Is

Isn't ping-pong

Let's start with what negotiation isn't: Not a contest with winners and losers; not a mere exercise of seeking compromise; not a rhythmic process of offer, counter-offer, offer, counter-offer—which is nothing less than a facsimile of ping-pong; *not* expressions of ultimatums—*first, fair and final offers*; and *not* activities consisting of threats, manipulations, or various forms of lying.

Then what is it?

Negotiation is a process comprised of three sub-processes—*communication, education and the responsible use of power*—that are working harmoniously while the opposing disputants strive to satisfy their own as well as others' interests at levels that they together deem to be equitable, practical, achievable and durable—and to which they agree and adhere. *That's it?* Yes, period.

What's really great about the negotiation process is that the disputants together not only serve as collective architects of the process itself, but also determine what is fair, practical and acceptable in their particular circumstances. And negotiation has an amazing record of success. Far more

It is communication, education, and responsible use of power

often than not, people, organizations and nations continue to receive high levels of both substantive and procedural satisfaction in preventing, managing and resolving conflict—that's how negotiation earns and maintains credibility. That's why *you* continually use negotiation in your personal and professional lives. Keep doing it. It's working.

Now for a quick analysis of the three process components identified in our definition of negotiation.

Communication is more than just talk—its not making or listening to mere noise. Very simply, communication is a process of transmitting a message to a receiver who in turn explicitly or via 'code' checks back to the sender to be certain that what was heard is what was transmitted—a check for completeness, accuracy and comprehension. We participate in these processes by using many techniques, but mostly through the use of narrative sentences and various forms of questions that we use all day.

Education, the second component of negotiation, consists of 'teaching', not 'telling'. One very effective way to teach is to use data and data resources that the other side regard as credible, yet always allowing the other side to question and to examine the data in their quest for verification. But it's in 'learning' that we seem most deficient. Too often we react against data with which we disagree by either discounting the data, dismissing the data, or attacking the messenger who brought us the information. How do we expect to lower a person's resistance to our proposals if we ourselves are not willing to learn why disputants resist and what are the criteria on which their resistance is based? Negotiation is clearly an educational process—teaching and learning by all participants—focused on causes; circumstances; consequences and the possibilities of a settlement agreement that will be fair, practical and durable.

The Responsible Use of Power is the third component of the negotiation process. Note the word 'responsible'. Although we're talking about power as the 'ability to fulfill an intent', we're also talking about the responsible use of power—not about hunting mice with elephant guns, e.g., overkill, which is an abuse of power.

Example: Ecology holds regulatory authority to impose 'omnibus' terms and conditions in the hazardous waste permits issued to DOE for the Hanford Site. The justification for 'omnibus authority' is a determination by Ecology that such terms and conditions are necessary to protect human health and the environment. Without a clearly stated basis for the protection of human health and the environment, Ecology has invoked 'omnibus authority' to require DOE and its contractors to conform with prescriptive procedures in a manner specified solely by Ecology.

But here we're thinking about information as power, knowledge, specializations, experience, reputation, affiliations, rank, status, law, resources (financial, time, staff, land, water, etc.), measurements of quality and quantity; personal characteristics; and the power of reason, the power of persuasion, the power of persistence and the power of commitment.

All together now: Negotiation is a process comprised of three sub-processes—communication, education and the responsible use of power—that are working harmoniously while opposing disputants strive to satisfy their own, as well as others', interests at levels that they together deem to be equitable, practical and durable—and to which they agree to adhere.

Negotiation is not about contestants. It's all about partners striving to develop fair and functional partnerships.

Fair and functional partnership

Great, now I'm ready for the skills to... Not quite. We appreciate your eagerness, but there are a few more factors we must address.

At the Table: Complexities and Dynamics

Most negotiation sessions occur on the telephone, in offices and elevators, during walks and talks, increasingly through teleconferencing and not at 'the table' as such. Nonetheless, negotiation often is referred to as a *table process*—and it's a pretty messy table at that. Let's walk through the clutter step by step, and examine a hypothetical scenario. The DOE Assistant Manager has announced the Department might want to revise the comprehensive land use plan to better reflect the realities of the Hanford Site clean up. The regulatory division has been asked to convene a Hanford Site team of which you are a member 'to meet collectively with appropriate representatives of local public bodies'.

**Process equity, ownership
Team trust, unity**

First, we have the *horizontal negotiation* or the internal team decisionmaking process that occurs among the separate teams on each side of the table. This aspect of negotiation indescribably is key. All team members have to feel that their own

internal team decisionmaking process is truly fair, even if none of their ideas are accepted by other team members. Furthermore, each team member must feel that they truly share with all other team members the 'ownership' of the problem or opportunity, the ownership of the process, the ownership

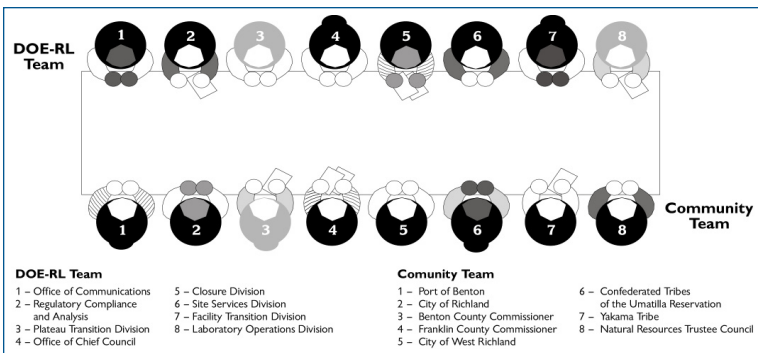


Figure 1. Horizontal Negotiation.

of the settlement agreement, or the ownership of the consequences if there is no agreement. Real senses of *process equity* and *process ownership* must exist if *team trust* and *team unity* are to occur without infringement on legitimate authority of team members.

A second dynamic is *vertical negotiation*. To whom are the team and team members accountable—whether it be superiors or constituents? Normally there is considerable vertical 'give and take' to/from the table with regard to planning, revisions and ratification processes.

There are numerous complexities including unauthorized unilateral negotiations, such as 'under the table' and conciliatory efforts away from the table, as well as authorized extended table negotiations, such as the use of small work groups and high-level summit meetings. However, here we only display a few external variables and pressures—those factors that cannot be negotiated but do affect the process, such as public opinion, news media, advances in technology, new data, court decision, legislation, economic changes, politics and time, etc.

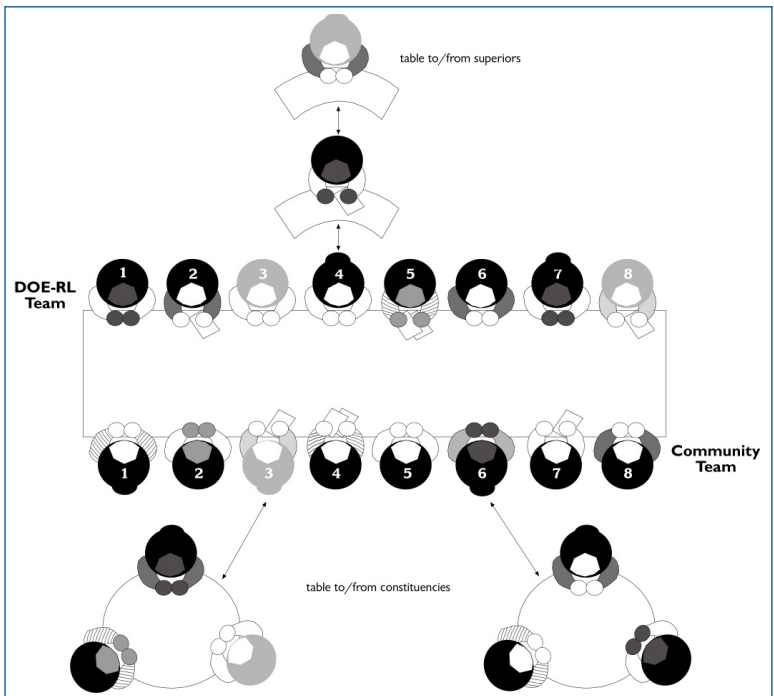


Figure 2. Vertical Negotiation

Let's look at our 'table' with just these three dynamics—the horizontal, the vertical and the external factors.

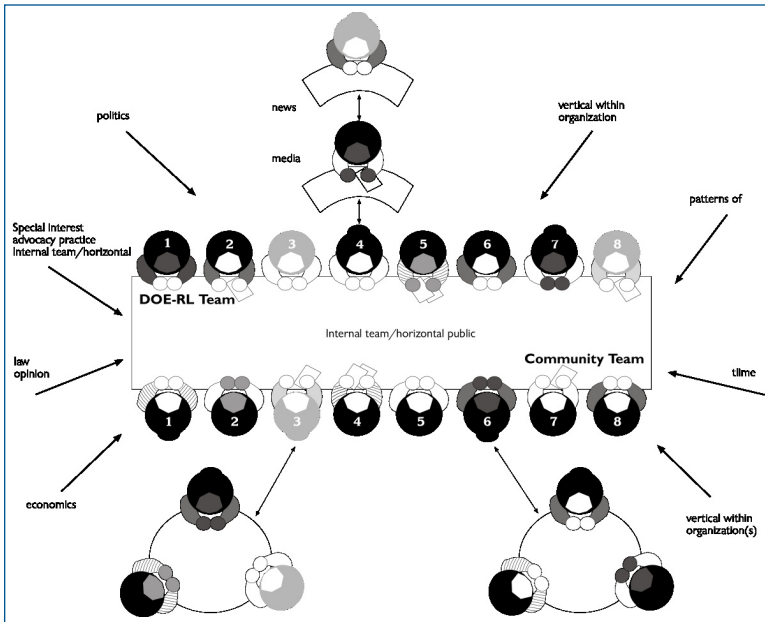


Figure 3. Horizontal, Vertical and External Factors.

You get the idea. The negotiation process is very fragile. Thus it is quite easy to disrupt its conciliatory nature, to hinder its productivity, or literally to break it up.

So what makes it work? What keeps the parties at the table?

The best answer contains the following six components:

The disputants...

- (1) are well aware of the possible negative consequences on their own interests and on the so-called 'third parties', i.e., the public, not at the table in the event of a protracted conflict or actual impasse
- (2) have a true sense of process equity
- (3) have a true sense of process ownership
- (4) have a true sense of process trust
- (5) have perceived that measurable progress has been made
- (6) have maintained that even if there is no sense of progress, at least a sense of hope prevails that progress will be forthcoming.

Otherwise, why meet?

Let's see where we are since the acquisition of information and its transformation into knowledge, which always seems to take longer to occur than it takes to learn actual skills application. So far we've been involved in both. Informed skills allow us to accurately identify our own *interests* and those of others—and to make clear distinctions between *issues* and *proposals*. Similarly, our acquired skills enable us to effectively use the three components of negotiation—*communication, education, and the responsible use of power*—as well as being ever mindful of the *complexities and dynamics* of the negotiation process as such pertain to making or hindering substantive progress. All these lessons are necessary for the effective negotiator—a practitioner like you.

Distinctions Among Interests, Issues, and Proposals

Have you noticed how the word *interests* keeps popping up? Interests appear in (1) our definition of conflict (a sense of competing interests); (2) our description of the goals of conflict prevention, management and resolution (our interests are no longer competing at unacceptable levels); (3) the degrees of assertive behaviors we may employ to satisfy our own interests as well as the degrees of cooperative behaviors we may employ to satisfy others' interests; and (4) our operative description of negotiation (to satisfy our own as well as others' interests). As we so frequently employ the term *interests*, it seems best we learn what it truly means.

Interests consist of the principles and values that motivate us to act or not to act in particular circumstances

As we stated previously, *interests* consist of the principles and values that motivate us to act or not to act in particular circumstances. For the sake of health, comfort and perhaps image, we dress appropriately. For safety's sake, we drive cautiously and in accord with laws as well as the use of best practices. For the sake of our family's health, welfare and economic security, we work hard.

These examples explicitly document that we have a lot at stake, and that's what makes us a stakeholder. It's the *interests* that are at stake—our *interests* and the *interests* of others!

...none of which can be fractionated. Half-safe, half-truth, half-free and semi-autonomous are all impossibilities.

...none of which are tangible. Can't touch them.

...none of which can be measured objectively. Interests can be measured only subjectively as is beauty, convenience, practicality, fairness, safety, etc.

...thus none of which can be negotiated in the usual sense of the concept, but might be altered in rank order of importance to us.

Think of a construction project: You can have the end product as good, completed quickly, with special customization, or completed financially cheaply—but we can't have the end product 'good, fast, special and cheap'. Highly unlikely! If you are going to build a home, which of these two interests might you choose? How about building a military base? How about decontaminating a nuclear waste site? We respond to such situations just as comedian Jack Benny did when asked in an old radio skit *Your money or your life?*, to which he responded *I'm thinking, I'm thinking*. Like him, we want all our interests satisfied all the time. Sorry can't always be done—that's why from time to time we change the rank order of importance of our interests, and at times attempt to persuade others to do the same.

The following are some of the interests that we must forever be mindful when performing our work on the Hanford Site—and whenever we are negotiating—formerly and informally. These interests are pretty constant, which makes it convenient for all of us, and for those with whom we negotiate—to plan, to manage, or to resolve conflict so that our mission can be fulfilled through efficient, effective means that meet all interests at the highest levels possible.

Examples of DOE's and Vendor's Interests on the Hanford Site

- Respect of the environment: land, air, water and all that dwells within
- Safety for personnel and the general public
- Legal principles of compliance
- Responsiveness to tribes, local communities and the public at large
- Credibility of the Hanford Site mission, TPA, DOE and its contractors as well as work performance
- Professional competency
- Fairness and practicality in the permitting and monitoring processes
- Efficiency
- Cost effectiveness
- Completeness.

But how do we identify our own interests as well as those of another side, particularly if they are unaware of this concept or simply don't want to disclose that information?

Good question, and an easy one to answer. We ask the most important question in the negotiation process—not *What do you want?*, but *Why? Why is this issue so important to you?, Why is this particular proposed resolution so important to you? Why are you resisting our proposal to you? Why?*

Keep high your antennae for reception. Be persistent. Listen accurately to their responses or comments, which will denote their reasons and their interests?

No we can't and won't do that?

Why?

It's not feasible.

Why? How so?

Well, it would take much more time to do—time we don't have—and lots more money that we also don't have. We don't think it can be done at all. The technology just isn't there. We'd look like fools for even trying to do what you propose.

See what we mean about keeping your antennae high and in good working condition? Check it out—the resistor disclosed many interests such as efficiency, economics, practicality and self-image. Now, we might try to prove them wrong or at least to mitigate their concerns, but if we are not aware of their interests, our efforts most likely will be in vain.

Interests often form the basis for acceptance or rejection

Stated another way, *interests often form the basis for accepting or rejecting proposals*. Pretty important stuff.

Issues are distinctly different. But quite frankly, issues are merely agenda items—mere 'titles' of what need to be addressed if interests are to be satisfied. Notice we're not saying 'how', which will be within the next item we examine. Incidentally, an issue is non-negotiable except in procedural ways—(1) will we agree or not agree to place it on the agenda; (2) if it is to be on the agenda, what will be its exact wording; and (3) where on the agenda will it appear.

Proposals are the *how's* of negotiation. *How* will we address the issues so that interests will be satisfied via agreements for the prevention, management, or resolution of conflict? Obviously it is the *how* that is negotiable. Let's keep the lessons clear, and not mix up interests with proposals. Perhaps, the following generic example will help:

Proposals are the how's of negotiation

Teenager: *I'd like to use the car tonight.*

Parent: *Why?*

Teenager: *I just want to be alone.*

Parent: *Well, I will go out with the car as I had planned, and you can have your privacy here at home—alone!*

Negotiation is complex, but you are realizing that negotiation also is quite manageable. Why not? After all, you've been doing it for a long time, and rather well too.

How to Prepare Proposals

Developing negotiation proposals takes time, and is indeed a skill that is based on accurate analysis of much information.

Planning is essential

Proposal development is an essential part of the negotiation process. Creating a clear, articulate proposal is not an easy task, even for simple issues. It requires careful thought and perhaps a little soul-searching on the part of individual negotiators in order to zero in on your desired result of the negotiation. And further, why that result rather than another proposal will best satisfy both parties interests and issues. In addition, you will identify specific increments of the proposal that are negotiable and non-negotiable. This will help you to develop your 'final offer', a fallback position and any other incremental proposals. Your proposal will represent the product of the 'horizontal' and 'vertical' negotiations which occur among the parties and decision makers represented on your own side of the table. By anticipating the interests and issues the other party at the table will raise, you will be able to craft your proposal to present it in a way that will enhance the likelihood of receptivity.

This—proposal development—is where and how you *plan* to involve the other party as your partner in reaching the common goal of a mutually acceptable resolution. If you can clearly articulate your proposal and how it addresses the interests and issues of both sides, the stage is set for collaboration with the others at the table. In short, make sure you know what you need and

Proposal development is where and how you plan to involve the other party as your partner

why you need it, as well as how and why it will work for them. Keep in mind that your goal is to develop durable resolution with both parties committed to follow through.

Recall the hypothetical scenario given on page 13, where the DOE-RL Assistant Manager announces a possible revision of the Hanford comprehensive land use plan to reflect the state of Hanford cleanup. A team of DOE-RL representatives (including you) is convened to meet with other public entities. In order to develop a proposal for this revision, your team has chosen to use the 'Proposal Development Worksheet' shown on the next page as an aid to develop the proposal and guide the negotiation. You will be expected to identify interests, issues and desired outcomes for

the parties you personally represent. In horizontal negotiations, your team will cooperatively identify all of these interests, issues and proposal(s) and merge them into a single, agreed-upon team consensus plan. The process of horizontal negotiation as well as the work product need to reflect process equity, process ownership and process trust—the basis of team unity.

Be aware that we will complete the proposal development worksheet in the prescribed numerical sequence, but the actual negotiation is conducted from left to right on the proposal development worksheet. (See foldout on page 59 for an example of a completed worksheet. This worksheet can remain unfolded and used as a reference guide while you work through the following pages. Page 60 contains a fullsize worksheet that you may use to fill in.)

Note: At first glance the column numbering of the Proposal Development Worksheet, might seem a little confusing. The column numbers across the bottom of the sheet seem to be out of order—#1, #2, #7, #8, #9, #6, #5, etc. Why? Because the order that is used to fill in the columns is different than the order that you will use the columns in the actual negotiation process. In the negotiation you will proceed from left to right on the Worksheet, ignoring the column numbers. Just trust—in practice the Worksheet order will make sense. For example, when you are preparing for the negotiation, your Current Predetermined Final Offer (#5), the absolute least favorable settlement that you could possibly accept, should be identified before developing your Preferred Settlement Point (#7), your best settlement case. During the actual negotiation, however, you would never reveal the very least you would accept before you presented and justified your most desirable settlement case.

Interest—Issue—Proposal Development Worksheet*

Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal	Subsequent Proposals	Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
#1	#2	#7	#8	#9	#6	#5	#3	#4

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Proposal development can be very complex and tedious, thus careful attention to every step is crucial. The preparatory process is prescriptive, but it is not an exclusive formula—admittedly, the illustration used contains its own complexities and instructional limitations. Nonetheless, you’ll get the idea, and that’s what counts!

Okay, get prepared to fill in the worksheet.

Column #1: Own Interests. You will record Hanford Site *interests* in this conflict scenario. Why is it so important that we are going to strive to prevent, manage and resolve conflict in this situation? Why are we 'stakeholders'? What is at stake? Can we identify our interests, i.e., those principles and values that are at stake? Answer these questions and we’ve found our interests. Let’s list them.

*	(1)	(2)	(7)	(8)
	Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal
	<ul style="list-style-type: none"> • clarity of the process and outcomes • environmental integrity • safety of personnel and the public • legal principles of compliance • responsiveness to tribal nations and the local community's interest • credibility of the Hanford mission, the TPA, DOE, and contractors and work performance • fairness and practicality in the permitting and monitoring processes • thoroughness and completeness • cost effectiveness • amicability (how to achieve). 			

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #2: Issues. What are the agenda items, i.e., the specific issues that we believe must be addressed? Remember, these items are *not* proposals. For example—additional definitive amounts of money would be a proposal, but the title *budget for expenses* without any specifics would be the issue; a specifically recommended change in scheduling would be a proposal, but the title *work schedule* without specifics would be the issue; a specifically suggested decrease in the water flow would be a proposal, but the title *rate and volume of water flow* without specificity would be the issue. See the differences? *Issues* are merely items for the agenda; details will be in the proposals, i.e., 'the hows'.

What are the issues we need to address in this conflict scenario? Let's list them.

*	(1)	(2)	(7)	(8)
	Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal
	<ul style="list-style-type: none"> • clarity of the process and outcomes • environmental integrity • safety of personnel and the public • legal principles of compliance • responsiveness to tribal nations and the local community's interest • credibility of the Hanford mission, the TPA, DOE, and contractors and work performance • fairness and practicality in the permitting and monitoring processes • thoroughness and completeness • cost effectiveness • amicability (how to achieve). 	<ul style="list-style-type: none"> • address the differences and approaches, e.g., although Ecology and DOE agree that determination of land use will prescribe a standard of cleanup, there is a fundamental disagreement on the future land use (i.e., residential vs. industrial) • future ownership for specified land usage, i.e., federal, state, county, city, tribal • land transfer criteria and process • timetable, i.e., the priority and schedule sequence for operable unit cleanup • determining buffers areas, i.e., dependent upon use of land inside and outside of the buffer. 		

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #3: The negative consequences of impasse. What if negotiation does not yield success? What would be the most likely negative impacts on our interests and perhaps on the interests of so-called 'third parties'—people who are not party to either the conflict or the negotiation process, but who might be affected by outcomes? Be specific. If our interests are financial, what would be the projected cost? If safety, what would be the increased level of endangerment and to whom? If environmental integrity, what would be the severity of the damage if we do not acquire a settlement agreement or if we experience undue delay?

*	(6)	(5)	(3)	(4)
	Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or of a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
			<ul style="list-style-type: none"> • possible federal legislation will be imposed • State might make <i>determination</i> cleanup orders • possible litigation by the parties • third party lawsuits • land use plan isn't suitable to anyone. 	

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #4: Realistic alternatives to settlement. If the negotiation process is not successful, what are we going to do to avoid the heavy costs on ourselves and others as recorded in column #3? How will we mitigate the negative effects on our interests?

*	(6)	(5)	(3)	(4)
	Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or of a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
			<ul style="list-style-type: none"> • possible federal legislation will be imposed • State might make <i>determination</i> cleanup orders • possible litigation by the parties • third party lawsuits • land use plan isn't suitable to anyone. 	<ul style="list-style-type: none"> • an all federal solution—the federal government will maintain full control of the land.

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #5: Our current predetermined final offer. Some persons refer to this component as the 'bottom line'. What it means is that we are at the end of our negotiation range. Whether we are on the giving end or on the receiving end, we contend that based on current information, we can go no further than this—our *current predetermined final offer*—without jeopardizing our interests. Next possible outcomes—compromise, concession, impasse, or an intensity in the conflict.

Note that in our preparation we refer to this position as *current*, i.e., based on information presently at hand, and as *predetermined*, i.e., in the negotiation business we must have an accurate and honest idea where we believe we must stop the negotiation on a particular issue before we even begin the negotiation process. Things could change, but right now it reflects our thinking. One more thought, our *preferred settlement point*, or first proposal, cannot be the same as our bottom line. 'First, fair and final offers' are not negotiation proposals; these are but mere ultimatums.

What will we write in the columns, and how did we make such determinations?

*	(6)	(5)	(3)	(4)
	Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or of a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
		<ul style="list-style-type: none"> • by mutual agreement, we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas • designate recreational usage in specific parcels and negotiate the standards for particular usage • within the 300 Area, all surface contamination will be cleaned to meet industrial standards • within 618-10 and the 618-II radioactive waste burial grounds, DOE plans to remove most of the contamination, but methods to safely remediate the burial grounds have not been developed. It is expected that this will have to be done remotely because of high level of radioactivity. 	<ul style="list-style-type: none"> • possible federal legislation will be imposed • State might make <i>determination</i> cleanup orders • possible litigation by the parties • third party lawsuits • land use plan isn't suitable to anyone. 	<ul style="list-style-type: none"> • an all federal solution—the federal government will maintain full control of the land.

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #6: Fallback proposal. Fall back to what? This marks the end of our preferred negotiation range and thus it is better for us than is our final offer. We're not too particular what we record in this column as long as we use it as a 'trip wire' to tell us that we have little negotiating room left on particular issues. We might have to change strategies, which might range from deferring the issue, developing agreements in principle only, brainstorming separately or together, forming working group, suggesting a summit meeting, or calling in a mediator.

* (6)	(5)	(3)	(4)
Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or of a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
<ul style="list-style-type: none"> • by mutual agreement, we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas • designate recreational usage in specific parcels and negotiate the standards for particular usage. 	<ul style="list-style-type: none"> • by mutual agreement, we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas • designate recreational usage in specific parcels and negotiate the standards for particular usage • within the 300 Area, all surface contamination will be cleaned to meet industrial standards • within 618-10 and the 618-II radioactive waste burial grounds, DOE plans to remove most of the contamination, but methods to safely remediate the burial grounds have not been developed. It is expected that this will have to be done remotely because of high level of radioactivity. 	<ul style="list-style-type: none"> • possible federal legislation will be imposed • State might make <i>determination</i> cleanup orders • possible litigation by the parties • third party lawsuits • land use plan isn't suitable to anyone. 	<ul style="list-style-type: none"> • an all federal solution—the federal government will maintain full control of the land.

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #7: Preferred settlement point. (An aside: Thought we would never get here.) We heard that, and we don't blame you in the least for your eagerness. But surely you now realize that negotiation positions are not simply plucked from the air without rhyme or reason, and surely you now appreciate that the final offer/bottom line has to be developed before the initial proposal is offered. While position development is not a science, position development nonetheless demands a defensible rationale.

So how do we develop our preferred settlement point that will serve as our initial proposal? Honestly, accurately and justifiably what we think is necessary, fair, deserved and practical as if there were no constraints such as politics, money, time, etc. No, this approach is not akin to announcing outrageous stances. All we want to do at this point is to make our case with indisputable merit. Remember what we said—honest, accurate, necessary, fair and justifiable.

We also must emphasize that in the actual negotiation sessions we are *not* going to state *We propose that land use on the Hanford Site be restricted to an industrial designation for the following reasons...* because nobody will listen to the reasons after they've heard the proposal. Too often people are pre-occupied as to how they themselves will respond to the proposal in contrast to trying to understand the merits and rationale being presented. Instead, we first are going to present meritorious reasons, perhaps by asking focused questions to the other side in ways that might help them respond in the affirmative. Questions such as (1) Do you acknowledge that there are parts of the Hanford Site that are so severely contaminated that there is no feasible or safe way to conduct cleanup?; (2) Do you acknowledge that some of these contaminants can be moved or contained, but these can never be neutralized?; (3) Are there areas in this world in which you would like to see this high level of long-life contaminants moved for storage and thus make that area inaccessible instead?; and (4) Do you agree that although the 300 Area would be valuable for residential usage, residential status can never be achieved?

Only when the other side has agreed with all or most of our reasons will we move into the phase of actually offering a proposal that will (1) state their interests that we believe the proposal will satisfy; (2) provide the merits of our case that now in full, or in part, are rooted in their responses to our previously asked questions; and (3) state our interests that the proposal also is meant to satisfy. Remember when we said that negotiation is an educational process? Well, it is.

Based on the other side’s responses to our questions, it seems that our preferred settlement point provided in column 7 is justifiable—and we are going to stand firm until they give us reason not to do so. Notice that we didn’t say until the others make a counter offer. *It’s their counter arguments that we should try to anticipate and be most concerned about.*

Following their responses and related rationale, most likely we will wait to receive a counter offer before we might offer our own modified proposal.

*	(1)	(2)	(7)	(8)
	Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal
	<ul style="list-style-type: none"> • clarity of the process and outcomes • environmental integrity • safety of personnel and the public • legal principles of compliance • responsiveness to tribal nations and the local community’s interest • credibility of the Hanford mission, the TPA, DOE, and contractors and work performance • fairness and practicality in the permitting and monitoring processes • thoroughness and completeness • cost effectiveness • amicability (how to achieve). 	<ul style="list-style-type: none"> • address the differences and approaches, e.g., although Ecology and DOE agree that determination of land use will prescribe a standard of cleanup, there is a fundamental disagreement on the future land use (i.e., residential vs. industrial) • future ownership for specified land usage, i.e., federal, state, county, city, tribal • land transfer criteria and process • timetable, i.e., the priority and schedule sequence for operable unit cleanup • determining buffers areas, i.e., dependent upon use of land inside and outside of the buffer. 	<ul style="list-style-type: none"> • industrial designation for land use. 	

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #8: Secondary position. This really will not be a firm second position, but merely a mark that establishes a range of offers that we can present and negotiate before we enter the yet unknowingness of column #9, i.e., subsequent positions. Quite often we write this entry right on the column line that separates #8 from #9. If the other side moves a lot with sound rationale, we might do the same. If they move ever so slightly, we might do likewise—or not move at all. But what we do or don’t do will be based on reason, and how their proposals indicate efforts to satisfy interests—theirs as well as ours.

Based on our understanding of the conflict scenario, including the interests of all sides and the defensible case merits of each side, we believe our secondary position should be as follows.

*	(1)	(2)	(7)	(8)
	Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal
	<ul style="list-style-type: none"> • clarity of the process and outcomes • environmental integrity • safety of personnel and the public • legal principles of compliance • responsiveness to tribal nations and the local community’s interest • credibility of the Hanford mission, the TPA, DOE, and contractors and work performance • fairness and practicality in the permitting and monitoring processes • thoroughness and completeness • cost effectiveness • amicability (how to achieve). 	<ul style="list-style-type: none"> • address the differences and approaches, e.g., although Ecology and DOE agree that determination of land use will prescribe a standard of cleanup, there is a fundamental disagreement on the future land use (i.e., residential vs. industrial) • future ownership for specified land usage, i.e., federal, state, county, city, tribal • land transfer criteria and process • timetable, i.e., the priority and schedule sequence for operable unit cleanup • determining buffers areas, i.e., dependent upon use of land inside and outside of the buffer. 	<ul style="list-style-type: none"> • industrial designation for land use. 	<ul style="list-style-type: none"> • by mutual agreement we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas.

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Column #9: Subsequent proposals. In the preparation stage, don't worry about what could be two or three or more additional alternatives. These subsequent offers are best developed during the actual negotiation process. Remember too that all subsequent proposals when presented also will have to reflect the three primary components of every proposal—their interests, case merits and our interests.

Our internal team preparation has now been completed through what we have termed horizontal negotiations. However, we still need to 'negotiate' vertically with higher authorities within our organization before we have a finalized worksheet.

You undoubtedly have become aware that we completed the proposal development worksheet in a natural numerical sequence. However, that is not how we will conduct the negotiation, which simply will move from the far left to the right—column by column, e.g., 1, 2, 7, 8, 9, 6 and 5.

One final word, if we omit column #1, interests, or neglect to use column #1, we will engage in straight positional bargaining that too easily can become adversarial, and that can even more easily evolve into a behavioral conflict with long-lasting negative residuals. Negotiation is not all about the 'bottom line'; it's about interests to be satisfied to what degree, short term and long term.

You say, *So, we're almost through. Now we can focus on techniques.* Hardly. Before you embark on the journey to develop a settlement agreement to prevent, manage and/or resolve conflict, we need to review the basic ingredients needed for a durable settlement.

*	(7)	(8)	(9)	(6)
	Preferred Settlement Point (PSP)	Secondary Proposal	Subsequent Proposals	Fallback Proposal
	<ul style="list-style-type: none"> industrial designation for land use. 	<ul style="list-style-type: none"> by mutual agreement we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas. 		<ul style="list-style-type: none"> by mutual agreement, we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas designate recreational usage in specific parcels and negotiate the standards for particular usage.

*worksheet must be completed following the numerical order (see worksheet example on page 59).

Basic Ingredients for Durable Settlements: Procedural, Substantive and Psychological Satisfaction

What are the stores, restaurants, banks, or other places you *don't* like to go? They don't open for business at the time indicated on the sign, or they close earlier than scheduled; there are no customer service personnel to assist you; lines are long; people are serviced out of turn; and whatever. Despite quality, price and environment, we don't like the process, and, therefore, we try to patronize other establishments where we are likely to receive *procedural satisfaction*.

And so it is with negotiation—parties strongly seek high levels of procedural satisfaction. In fact, we've seen people turn down settlement agreements because they either didn't trust the process or just didn't like the process. They regarded the process as nonresponsive, abusive or incomplete, inefficient, or like the rush of an oncoming freight train. *I'm not going through that again!* And they don't.

The test as to whether or not we have experienced procedural satisfaction is straightforward: Regardless of substantive concerns—win, lose, or draw—under similar circumstances would we use such a process again?

Process and procedural agreements are important in organized sports, the military, board games, religious ceremonies, office practices and in interpersonal habits of interaction. So, too, with negotiations. Slighting the process to move quickly to substance is like jumping on board without a ship. Without well developed and thorough procedural agreements, there can be no process.

Slighting the process is like jumping on board without a ship

How do we acquire procedural satisfaction in negotiation? First, by developing procedural agreements. There is no process without procedures—procedures that the opposing person or side fully participates in developing and to which all agree. Furthermore, the very process of developing procedural agreements performs several important functions: (1) the disputing parties become equal architects of the process, thus enhancing *process equity*, *process ownership* and a functional *process trust* even if the parties don't trust one another; (2) provides a sense of order and rules of behavior; (3) provides an opportunity for persons to get into the 'yes' habit by developing agreements even if they are only procedural; (4) monitors the process to see if people will keep procedural agreements, thus instilling the belief that they also will keep substantive agreements; and (5) determines the scope of the process by agreement as to who will participate in addressing what issues, where, when, how often and in what timeframe. Other logistical or procedural concerns might address the format of any final agreement,

the process of exchanging evidence and the relationship to the news media or broader public during negotiations.

Durable settlements require procedural, substantive and psychological satisfaction

Substantive satisfaction is the second component of our tripartite mandate for a durable settlement. Unfortunately it is where most people wrongly expend too much attention in qualitative terms as to what might be gained or lost and at what cost. But we know differently. The question is *What specific interests were met, to what degree, short term and long term?* That is how substantive satisfaction is to be determined. The questions are not simply about 'how much'. The questions and the tests for determining the levels of *substantive*

satisfaction relate to *interests*. What about safety, environmental integrity, responsiveness to tribes and communities, organizational credibility, practicality and all the other principle interests that make us stakeholders—including cost effectiveness and efficiency?

Finally, we must not dismiss the importance of *psychological satisfaction*. When a conflict is prevented, managed, or resolved, we are suppose to feel some sense of relief—perhaps things could have been worse, but they weren't. Perhaps we even lost, but not as much as feared or as possible. Perhaps we were really lucky or even achieved what we deserved. Perhaps we were not blamed or humiliated. Perhaps everything will be kept confidential; perhaps it is all over at last!

How do we get *psychological satisfaction*? Possibly some *psychological satisfaction* can be achieved through high levels of *procedural satisfaction* or perhaps some through *substantive satisfaction*, but *psychological satisfaction* also has to stand on its own. If any of the three satisfactions are at low levels, the concept of *conflict aftermath* is likely to occur.

Now can we talk about how to get started, techniques and stuff like that? Now we can.

Are You Ready?

First of all, you've already begun. You've defined your conflict, and completed your planning sheet. As clearly, honestly, accurately and completely as possible, you have defined and assessed the situation by addressing important considerations and questions.

First, *what* are we negotiating?

- What's this all about in terms of a historical sequential sketch of incidents, all that he said/she said stuff, and where are there agreements and disagreements regarding data, structures, values, relationships and behaviors?

- Where are *they* coming from?—interests!
- Where are we—*you*—coming from?—interests!
- How do we redefine the conflict in terms of a sense of competing interests—real, perceived, or possible?
- What, if any, activity has been attempted before? Results, please?

Secondly, *how* do we think we want to negotiate—in either formal or informal ways? Whether we choose to negotiate or choose not to, your response has to be based in reason. Consider *why* we would want to negotiate.

Because...

- The collective knowledge and efforts around the table most likely will produce the most realistic answer to which we can all agree—and to which all can be accountable for as well.
- It's the most efficient way to address and remedy the concerns, whether such matters relate to planning, managing, or resolving the situation.
- It's about building and maintaining productive and trusting relationships—they and we are in this together; we're partners.
- It's a matter of fairness, a matter of inclusiveness that they and we participate.
- Politically or legally, we may have no other choice.

Of course this list of possible reasons is incomplete, but the possibilities do emphasize a point. There have to be meritorious reasons as to why or why not we—*you*—have decided to negotiate. Yep, we're talking about an informed choice that also requires us to determine what process we and/or others will employ should we choose not to negotiate.

Thirdly, let's assume we—*you*—are going to exercise team negotiations. What does the team look like?

- Who should be on our team, and why?
- What will be their individual roles?
- What does each member bring?
- Who are the competent specialists?
- What is their compatibility factor with the other likely team members?
- Are they 'team players' in every respect?
- Are they dependable and reliable?
- Are they creative and flexible?

- Are they committed to the negotiation process to develop a practical and achievable solution?

Fourthly, how will the team operate?

- Will the team have reliable organizational authority to make procedural and substantive decisions within parameters that the team, and those to whom it is accountable, discussed and agreed to before actual negotiation?
- Will the team have reasonable access to pertinent organizational vertical structures? Very important.

This factor can't possibly be over emphasized—our own credibility and morale, as well as that of the team, depends on knowing the degrees of flexibility and authority that rightfully have been delegated to us as the representatives at the table. We expect the same of the team across from us—or however the seating configuration has been arranged. And they expect the same from us.

So far this primer is all common sense, and it's going to stay that way! *What did you expect?* Computer models? No, negotiation is a life skill that you've already mastered. We've already talked about that—you are a masterful negotiator. Accept that.

Fine, but now what?

Okay, but are you still not sure you're ready. Quite simply, just do what the primer suggests...

- Identify all your team's pertinent *interests*, and be prepared to clarify and to elaborate these principles and values that make you a stakeholder, i.e., what's at stake.
- Next, identify what *issues*—not positions or proposals—that must be placed on the agenda and addressed if interests are to be satisfied.
- And now for the *how* the various proposals for each issue are to be effectively used by using the instrument already developed just a few pages ago.

That's it?

Well, not quite—we need to be ever mindful that each proposal has to have three ingredients:

- **why and how the proposal might meet the specific interests of others,**
- **justifiable case merits rooted in verifiable data from credible resources, and**
- **how the proposal satisfies our side's interests.**

Also, because we are discussing team negotiation, the pre-final *interest-issue-position development worksheet* has to be the results of a formation and decision making process in which all members profess process equity and process ownership—that’s what creates and maintains team trust and team unity. AND, the superior authorities need to buy into and sign onto the plan before the team’s approach can be considered 'finalized' and ready for negotiation. It wouldn’t be a bad idea for some procedural preferences to be discussed and agreed to as well.

The Vast Middle of Negotiation— from Now to Closure

Okay, we’re all in the room—they and us. We’re *partners*—them and us—because of the importance of the current situation as well as a future we have to develop. We also are here with genuine respect for the different role functions of the various resource persons that must function together. Where would the world be without regulations and regulators? No argument—need, function and legitimacy do exist. Our concerns relate to what does constitute necessity, and what does constitute reality, fairness and practicality? Thus, during the pending negotiation, some moments, issues and people might be a bit contentious. That’s when a reminder is needed: Attitude in negotiation is more important than tactics and technique. In fact, attitude will dictate skill behaviors to be employed.

***In negotiations,
attitude is
more important
than tactics***

It’s time to collectively address, i.e., to begin to negotiate, to develop and to agree on procedural matters that everyone will experience working together, agreeing with one another and constructing a process in which everyone feels—you guessed it—a true sense of both process equity and process ownership. Together the 'yes' habit is being formed in a kind of valuable dress rehearsal before substantive negotiation. Remember, the way people negotiate procedural matters usually will display the same attitudes and behaviors they will exercise in negotiating substantive matters. So, don’t skip the rehearsal!

Allow a bit of prescriptive advice: Do resist negotiating any substantive issues until *all* issues are identified, briefly described and discussed (not negotiated!), and it is determined by agreement what will be on the agenda and when the agenda is 'closed', i.e., finalized.

Other procedural matters are fairly common—when, where and how often will negotiation sessions be held, target dates for completion, acceptable forms of behavior, methods for the exchange of evidence, matters regarding confidentiality, accessibility to the news media and so forth,

including what authority do representatives have for making decisions. As previously stressed, this last one is a big one.

Techniques, Techniques, Techniques! Please!

All right, the first technique is to learn of each others' *interests* through either explicit or implicit disclosures and discussions. That's what conflict is all about. That's what planning, management and resolution are all about.

**The first
technique—
learn of each
other's interests**

The second technique is to ask yourself before offering a specific proposal *Why would they accept it?* and following their refusal *Why are they resisting it?* Sometimes we just don't think. Because whatever we propose we regard as meritorious, justifiable, fair and practical, we contend they should accept it—unless they are selfish, insensitive, stubborn and stupid. The most common and serious errors negotiators make are not asking themselves *What's in it for them? Why would they accept the proposal—or not accept it? Why the refusal? Why the resistance?*

There is no way to reduce a party's resistances unless we know what resistance points are and on what criteria—right or wrong—these are based. Some of the more common reasons are the very same reasons we—you—resist proposals on almost any topic in any situation—personal or professional, informal or formal.

- Can't see how the proposal meets interests
- Data and/or data resources don't seem reliable
- Too much unresolved baggage from past sessions or situations interfering with the business at hand
- Proposed uses of resources—currency, time, land, water, staff, energies, etc.—are neither appropriate nor cost effective
- Unsure of persons' capabilities to do what's proposed
- Unsure levels of persons' commitment to do what's proposed
- Unrealistic proposal because of time, economic, cultural, political, legal, or policy factors
- Inability to get it accepted by full team or by superiors or constituency, i.e., the horizontal and/or the vertical dynamics
- Proposal too complex to grasp
- This isn't negotiation; it's coercion, manipulation and ultimatums
- Have no recourse if it doesn't work, if something might go wrong.

Think. What do *you* normally do when you want someone to lower their resistance to your ideas? Ask precisely, how do they feel their specific interests won't be met? Isolate their concerns or objections that such matters can receive focused attention? What parts—any parts—of the proposal do they like? Ask them, *Instead of saying 'no' could you tell me how would particular parts of the proposal have to be modified for you to say 'yes'?* What aspects of the proposal are not clear? Can we explore data and data resources that we both regard as credible? How about incremental implementation for monitorings, evaluations and, if necessary, provisions to make various adjustments? See, we're still proposing we conduct formal negotiations in the same ways that work effectively in so many aspects of our personal life.

Negotiation is not about deception, manipulation and 'pushing through' ideas. It is about patience and persistence. It's not about confrontation. It is about engagement in collaborative planning and cooperative problem solving—that means together. It is not about uncommonly sophisticated tactics and techniques. It is about common approaches we use in all spheres of everyday living to prevent, manage and resolve conflicts. The facts might be different, and the integration of complex disciplines are perhaps unique. But the people factors—what makes them 'tick and tock', why they resist and why they don't—are not new to us. We're on familiar ground, so relish it with confidence.

There are a few more approaches that we should address....

Fractionation

This approach to planning and to problem solving is familiar to all of us. Sometimes the problem is just too big or too complex to tackle as a whole. We have to break it down—fractionate the problem into smaller more manageable parts that can be addressed separately and effectively step by step until the isolated tentative resolutions can be modified for compatibility one with another so that an integrated whole can be achieved.

Example: An industrial area that is approximately 4 square miles, located just north of Richland (300 Area), could be transitioned to private ownership for industrial use. North of that is the Columbia River corridor of a couple hundred square miles that possibly might be used as recreational and hunting areas managed by the U.S. Fish and Wildlife Service and that will always remain under Federal control. So, let's separate these two areas, identify the viable land uses for each, and determine where and how much land for specific usages will be designated.

Agreement in Principle

As stated previously, persons and parties will remain at the table, i.e., 'in the process', if they are making progress or are maintaining the hope that progress will occur. Why else meet unless (1) to cause delay, (2) to acquire facts in a discovery process while knowing full well that a judicial remedy will be sought, or (3) to create the illusion of being fair and reasonable? *An agreement in principle* is just that—the parties simply make a profound agreement to satisfy specific interests without any particulars pertaining to the whats, whens, or hows. The purpose is to demonstrate mutual commitment

**Agreements
in principle
are the glue**

for the benefit of the negotiation process, the parties, their constituencies and perhaps the public. In a manner of speaking, such agreements serve both as a 'glue' and perhaps as a response to support meritorious political purposes.

Example: Let's see if we can all commit to some basic values free of a bunch of 'hows'. We all want a process and results that reflect practicality in meeting some of the economic interests of the community, including the port, while simultaneously meeting both active and passive recreational as well as aesthetic interests of the broader community. In addition, we want to always have safety and environmental integrity as the primary influences in all our decisionmaking activities.

Conceptual Agreement

The purposes of this approach are identical to the previous technique, but the content within provides hints toward actual substantive content beyond mere principles—even if only conceptually—and thus indicates forward movement.

Example: Okay, let's check it out. We've surpassed the strong objections of having manufacturing as a permitted usage as long as its 'light and clean manufacturing that produces nondangerous and nontoxic products and/or wastes' without identifying any particular industry—never mind specific company. All agreed? Good. Now let's address details while remembering the concept to which we have agreed.

Quid pro Quo

What could be simpler and more specific than the use of demonstrative adjectives 'this for that'. These are the tradeoffs—the *barterings*—that you have used many times: *Okay, okay—I'll do this if you do that. I'll give you this if you give me that.* This approach very much resembles a typical contractual exchange, and is used mostly for breaking impasses and acquiring closure. Caution: Always be sure of the respective values of the quid and the quo, the equity of the proposed exchange and if there is even the need for such an exchange.

Example: If a local organization would accept the responsibility for operating/funding the reactor museum, DOE might develop a substantial area for hiking and biking.

Concessions

In some instances it is best to 'let go'—let them have it with nothing in exchange except perhaps their almost undetectable expression of appreciation or at least relief. One concession does not require another. This is not a *quid pro quo*. It's giving up something with nothing expected in return.

Example: We're being badgered by press, public and politicians to let environmental activists onto nonclassified aspects of the site so they can observe or monitor some of the cleanup activities. By our refusals, they think we're hiding something when actually we want to protect their safety. Let's offer a select few persons of their choice access badges to unclassified areas as long as they sign the nonliability papers as well as conditions related to obeying all signs regarding safety and non-interference with work activities.

Concessions—why would we do such a thing, why have you done such things? Because the other side is right; because what is being given up is not a matter of principle and does not adversely affect our interests; because the cost of accommodating the matter is no big deal; because the matter doesn't deserve additional expenditures of time and energies; because we want to move toward more important issues; or because of our need or desire just to gain closure, 'just to get things done and over with....' Just be certain the costs, reasons and results of making a concession have been evaluated thoroughly. Being tired or fed up or pressured provides no justification. When in doubt, STOP!

And There Are Others

Again, the best techniques are those approaches that have proven to be practical and effective through the application of common sense—those things that have a record of reliability for us in our every day lives:

- Always be prepared. Have a well devised plan with regard to what we want and *why* we want it—and *why* the other side might find our proposals acceptable or unacceptable. Think of counter arguments, not counter proposals.
- Never underestimate the other side. After all, they are important and worthy enough to meet with us in exploring how to be our partner in preventing, managing and resolving conflicts. We're in this together!
- Remember: Teach, don't tell—and listen to learn.
- Don't assume that there is only one answer. Don't assume that we know the answer. Don't assume that there is a known answer—we're together to develop one.

- Watch for new openings for agreement building such as *We could never accept that unless...* or *Only if we could...*
- Write things down, and have all sides initial tentative agreements and assignments before the next meeting, thus avoiding mistakes that too easily could cause damage to the negotiation process and/or the relationship.
- Gain closure at each session—specificity is the key.
- Debrief each and every session. What worked and didn't work and why? What has been learned? Does the plan need to be revised? If so, how so?

The End: Closure, and the Start of a New Beginning

Several years ago there was a popular Simon and Garfunkel song that had the lyrics *the closer to our destination we keep slip sliding away*. This happens in negotiation all too frequently. We get sloppy to the point that often parties can't remember to what they agreed. Their respective recall of information is anything but an identical match.

To greater reduce the likelihood of *conflict aftermath*, be certain of the following...

- Primary interests have been met at levels that all parties deem acceptable in consideration of current and pending realities.
- The whos, whats, whens and hows are accepted as equitable, practical and achievable.
- Recourse or midcourse correction processes are in place to address unanticipated variables or even allegations of noncompliance.
- Language is specific and clear—no vague verbiage such as 'soon as possible' or 'a significant amount of...' or 'every reasonable effort' or 'appropriate and relevant applications'.
- All parties acknowledge that 'closure' usually also marks the 'beginning' of making the agreement work.

Any Final Words?

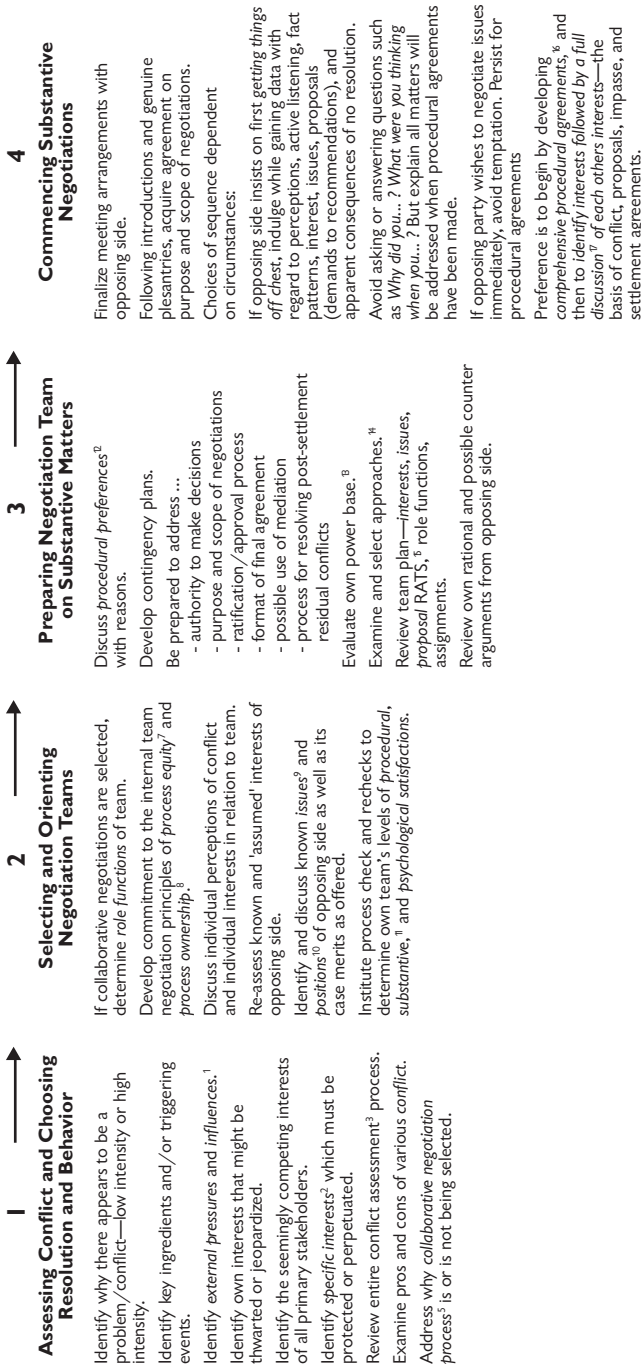
Yes, you've done all this before, so be confident—in yourself, in the process, and in the others across the table. Remember, they are the partners you need—to resolve this situation, and to keep it resolved.

Appendices



Appendix A

Eight Phase Sequential Flow Chart for Collaborative Negotiation Process



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¹page 115, ²pages iii-ii; 84-94; 140, ³pages 68-79; 80-81, ⁴pages 28-40, ⁵pages 37-38; 65-67, ⁶to be included in subsequent version of manual], ⁷pages 60-61; 108-114; 144-145, ⁸pages 60-61; 108-114; 144-145, ⁹pages 60-61; 108-114; 144-145, ¹⁰pages 60-61; 108-114; 144-145, ¹¹pages 60-61; 108-114; 144-145, ¹²page 148, ¹³pages iii-ii; 84-94; 140

Appendix A (continued)

5 Beginning the Exchange of Proposals	6 Beginning the Exchange of Proposals	7 Re-examine Approaches and Methods to Lower Resistance to Proposals for Settlement	8 Settlement Agreement Negotiating Substantive Issues
<p>Part A.</p> <p>If receiving a proposal, do not interrupt presentation; respond when presentation has been completed.</p> <p>Review facts and figures as presented—without comment—to test your accurate comprehension of the presentation.</p> <p>Request any need for clarification and/or elaboration.</p> <p>Request to see critical basis for proposal and/or conclusions as well as other matters regarding data/data resource credibility and verification.</p> <p>Ask what specific interests of opposing party would be satisfied by proposal.</p> <p>Discuss response.</p> <p>Ask what specific interests of your side would be satisfied. Discuss response and as to why/why not interests might be satisfied.</p> <p>Conduct team caucus⁸ if necessary.</p> <p>Return to the table to accept tentative agreement⁹ or to decline offer with reasons as to why; then offer counter proposal.</p>	<p>Part B.</p> <p>In making a proposal, refrain from disclosing content until educational process²⁰ has been completed and is successful.</p> <p>Use proposal development plan.⁷</p> <p>Use data and/or data resource that are credible to the opposing side.</p> <p>Exercise the <i>yes habit</i>.²²</p> <p>Be certain of the proposal—explicitly or implicitly, depending on situation, shows how your interests²³ would be met and how you believe opposing party's interest would be met.</p> <p>Disclose substantive content only after education process has been complete and is successful.²⁴</p> <p>Invite response, but refrain from attacking a rejection of proposal—instead examine criteria for the reasons for rejection and identify their reasons for resistance.²⁵</p> <p>Remain focused on interest satisfaction, practicality, feasibility realities, and negative consequences of impasse on all parties.</p> <p>Make clear distinctions between inevitabilities and threats.</p>	<p>In caucus,²⁶ re-evaluate various approaches with special attention on conceptual agreement building,²⁷ fractionation,²⁸ concession making,²⁹ and <i>quid pro quo</i>s³⁰ as well as the position development instrument.³¹</p> <p>Review common causes of resistance³² to proposals.</p> <p>Review common efforts to reduce resistance.³³</p> <p>On selecting strategies and tactics, explain to self/own team the criteria used for making the selection.</p> <p>Develop contingency plan(s).</p> <p>Review <i>do's</i> and <i>don'ts</i>.³⁴</p> <p>Note the realities of impasse and/or a protracted conflict on self and others.</p> <p>Note the responsible utilization of power.³⁵</p> <p>Give heed to ethics³⁶ as well as to the psychological satisfaction³⁷ and procedural satisfaction³⁸ for self and the opposing party.³⁹</p> <p>Recall RATS⁴⁰ as your contingency plan.</p>	<p>Offer/accept only tentative agreements⁴¹ with which own team is in accord as well as vertical entities.⁴²</p> <p>Accept new proposals not anticipated as merely interesting for consideration.</p> <p>Refrain from extending high expectations or hope which might not be realized.</p> <p>When proposals (other than conceptual⁴³) are accepted into tentative agreement status, check for specificity of all terms and conditions and check for interest satisfactions for self and others.</p> <p>Acquire closure.⁴⁴</p> <p>Anticipate what could possibly go wrong.</p> <p>Include future dispute resolution clause.⁴⁵</p> <p>Ratify/sign/file.</p>

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⁸pages 186-187, ⁹pages 183-184, ²⁰pages vii, 57, ²¹pages 163-166, ²²page 92, ²³pages 163-166, ²⁴pages 163-166, ²⁵pages 186-187, ²⁶pages 180-182, ²⁷pages 177-180, ²⁸pages 184-185, ²⁹pages 156-172, ³⁰pages 193-195, ³¹pages 196-199, ³²pages 196-199, ³³pages 213-219, ³⁴page 59, ³⁵pages 209-212, ³⁶pages 150-154, ³⁷pages 141-149, ³⁸pages 149, 154-160, ³⁹pages xi, 159, ⁴⁰pages 183-184, ⁴¹page 114, ⁴²pages 180-182, ⁴³page 189, ⁴⁴pages viii, 8, 200

Appendix B

Some Lessons Learned

The following points represent some of the valued lessons learned that numerous DOE staff offered from experiencing both formal and informal negotiations in the performance of their professional role functions at the Hanford Site in Richland, Washington.

- Conflicts are expected—and so too are resolutions.
- Negotiation is used primarily to prevent conflict and to manage conflict, *not* simply to resolve conflict.
- The party(ies) across the table are the partners—*not* opponents—of whom we need to prevent, manage and resolve conflict.
- If we are going to negotiate, know why; if we are reluctant to negotiate, also know why and what we intend to do instead. If we want to negotiate and *they* don't, be honest and analytical to learn the basis of their resistance—attempt to mitigate reluctance and objections.
- Before even preparing for negotiations, we need to ask ourselves (1) What is at stake for DOE? (2) What stakeholders would we be representing in the negotiation? (3) Who will constitute the DOE preparatory team, and who most likely will 'lead' the negotiation—and why?
- Re-interpret 'stakes' into substantive interest, i.e., principles and values at stake such as safety, environmental integrity, fiscal accountability, project credibility, efficiency, and effectiveness, etc.
- Always discuss the situation with superiors for input, assistance, and directives, including designated authorities regarding scope, preparation process, communication process, and accountability factors.
- When preparing for negotiation as a team, be certain that each team member knows and accepts (1) why self and all others are on the team; (2) what self and all others bring to the team; (3) the specific role function of self and all other team members; (4) what the scope and limits of team authority are to prepare for and possibly participate in the actual negotiation; (5) what the internal team negotiation process is and (6) what the specific accountability expectations to/by superiors are?
- As a team and with full knowledge and agreement of superiors, determine the specific goals of the pending negotiation, i.e., *not* negotiation proposals, but the preferred desired outcomes and the least acceptable results, yet acceptable nonetheless.

- In all team decisionmaking, be certain that no single voice is dominating the process or that others behave only as silent observers—give emphasis and consistency to full participation to achieve process equity and process ownership to ensure process trust and team unity.
- In preparing for negotiations, identify and agree on all substantive interests 'at stake' to the pertinent DOE- stakeholders and the Hanford Site mission as a whole, and then identify what specific issues will have to be addressed in the pending negotiation—be certain all team members are in agreement.
- As the team develops proposals, be sure that all are acutely aware as (1) how the proposal affects DOE's substantive interests; (2) what are the merits of DOE's proposal in terms of data, data resources, scientific and technological credibility, environmental responsiveness, safety of all concerned, fiscal realities, practicality, etc.; and (3) why the 'other side' might accept the proposal—or the reasons why they might not.
- Determine as a team how we plan to address anticipated data and structural (i.e., most likely to be legal or jurisdictional) conflicts with the 'other side' in actual negotiations. Can pre-negotiation sessions resolve or mitigate such differences *without* addressing or negotiation substantive matters?
- Determine as a team how we propose to address and resolve anticipated value and/or relationship conflicts with the 'other side.' Can pre-negotiation sessions resolve these differences *without* making any substantive concessions?
- Complete the team's working/discussion draft of a negotiation plan, inclusive of a practical and honest negotiation range, justifiable preferred settlement points, predetermined stopping points based on current information, and alternatives if it appears settlement is unlikely. Then present and discuss the plan with superiors to receive input, directives, approval and authority to negotiate and to settle issues at specific points. Also, re-affirm or revise agreed process of vertical communications to occur during the negotiation period.
- When collective negotiations begin, insist on the development of comprehensive and detailed procedural agreements including (1) statements by each side regarding their scope/limits to negotiate procedural and substantive matters as well as to enter into conceptual, tentative, and final agreements; (2) the final format of agreements, i.e., tacit or explicit, formal or enforceable; (3) groundrules, including a negotiation schedule; and (4) the full agenda with the exact wording of all issues agreed to be negotiated.

- Beware of developing premature 'agreements in principle', which should be only crisp statements, *not* comprehensive statements inclusive of specific details.

Incorrect Example: The parties agree to enter into a final and fully legal settlement agreement by February 29 that will address all aspects of technology. A specific work plan is to be included within a specific timeframe, not to exceed 171 days under any circumstances or a penalty of \$5,000 per day for non-compliance will be imposed, with no opportunity to appeal.

Correct Example: The parties agree to expeditiously pursue together a practical and enforceable agreement that is responsive to all crucial issues of safety and achievable environmental standards in light of fiscal realities. Agreed on timeframes are inclusive of provisions for recourse in the event of proven instances of noncompliance, and/or the occurrence of unanticipated variables.

Agreements in principle are exactly that, *not* a quasi-detailed, skeletal framework for full and final agreements. Details of an agreement in principle are all but abstract, but the *principles* are not. Agreements in principle are *not* synonymous with conceptual agreements that denote substantive generalities, but not detailed specifics.

- Before beginning substantive negotiation, all major and/or potentially distracting *value* and *relationship* conflicts should be addressed honestly—be kind but candid.
- When commencing substantive negotiations, but before addressing any issue, it is best to allocate ample time for the parties to identify, clarify, and discuss their respective underlying interests (i.e., the principles and values 'at stake' that make them *stakeholders*)—*not* proposed preferences for end results.
- Be patient and model good behavior that is attentive, genuinely amicable, focused, and productive. Be non-accusatory. When tense, frustrated, or annoyed, take a break by calling a team caucus. Don't let a data dispute or the persistence of an unacceptable proposal—*ours* or *theirs*—become a behavioral conflict. Negotiation is not a contest, but an exercise in collaborative planning and cooperative problem solving.
- When receiving proposals or counter arguments, request or seek data verification and the credibility of informational resources, as well as, the methodologies employed in data collection, analysis, and interpretation(s).

- When offering proposals, be prepared to offer the basis of your arguments and entertain all questions of data verifiability as well as resource credibility. Be willing to be wrong without defensiveness or apology. Negotiation is an educational process, e.g., experiences in teaching and learning.
- Whenever offering or receiving proposals, be mindful of the three essential ingredients—(1) effects on our interests, (2) case merits/rationale basis for proposal; and (3) effects on their interests. Parties must be ever mindful of their own and the other side’s interests throughout the negotiation process.
- Develop and maintain a date-documented memory sheet of all agreements (procedural—including deferrals—and non-regressive negotiation behaviors, agreements in principle, conceptual agreements, tentative agreements, agreed agenda issues, yet to be resolved) that the disputing parties state to be complete and fully accurate.
- When encountering resistance, refrain from overreacting, but seek the criteria on which the resistance is based—then address the criteria.
- Be certain that throughout the process of negotiation, our team’s sense of unity, equity, and ownership are maintained. Maintain frequent and regular vertical communications with superiors to ensure understanding, input, directives, and the authority to continue.
- When possible, seek to develop separate topical subgroups composed of all sides of the table to enhance the efficiency and productivity of negotiations. To preclude sacrificing to team equity and ownership without infringing on legitimate authority, be sure everyone is aware and agrees that subgroups are *not* authorized to make binding agreements but only to strive to make joint recommendations to their respective teams and the rest of the table. This will help ensure team equity and ownership are not sacrificed.
- Be aware of all *possible progress openings*. Example: *We could never accept that unless we were somehow to acquire reliable data from a confirmed field test. or What would happen if... or Maybe if we extended the timeframe we could... or How could that happen? Any idea?*
- Refrain from raising false expectations. Don’t say *We’ll recommend that...* but merely state that *We’ll discuss this idea with...*
- Whenever unsure of the accuracy, reliability, or relevancy of a new piece of evidence, or the practicality of a new proposal, or the effects of an unanticipated variable—privately discuss such concerns with our full team in caucus, and if advisable, discuss concerns with superiors.

- Despite temptations to 'just put this resolved issue to bed and move on', go for only tentative agreements until all agenda items are resolved—and then if necessary, refine tentative agreements for compatibility with all others that the final agreement can be realized—but not before a final check with superiors.
- Before developing tentative agreements and final closure, (1) discuss what specific interests will be met and to what degree in the short- and long-term, and (2) identify and discuss what could possibly go wrong and what future dispute resolution provisions might be included in the final complete agreements.
- Go for complete closure—all agenda items must be resolved or mutually disposed, and resolution language must be complete, clear, and precise.
- Remember, we and they are *partners* not only in conflict, but also in the prevention, management and resolution efforts—and in making it all work!

Glossary: Operative Description of Terminology

accommodation	Both a conflict behavior and a conflict-resolution behavior; means, in the fullest sense, to cooperate fully with the opposing disputants in order that their interests are satisfied even though the accommodator's previously stated interests remain unsatisfied; placation or capitulation due to a variety of circumstantial reasons.
adversarial	Describes relationships and behaviors when one or more disputants actively oppose others in a hostile manner in order to achieve specific results; uncooperative in most unpleasant ways; being contrary in volatile ways.
advocate	To 'give one's voice to' to represent a party, cause, or proposal; to argue in favor of something or someone. Also, a person who <i>advocates</i> .
agree	To consent; to be in accord; to share an opinion.
alternative dispute resolution (ADR)	'alternative dispute resolution' (ADR), attitudes, systems processes, skills, and behaviors as an option to fiats, to violence, and to litigation; includes conciliation, mediation, arbitration, and variances of the same. NOTE: A new effort is being made to have 'ADR' mean <i>appropriate dispute resolution</i> .
anchoring	Negotiation technique which is devised to cause the opposing disputants to move great distances from their preferred settlement range toward a proposal which the 'anchorer's' movement is slow and slight.
arbitration	Process which imposes a 'final and binding decision' on the disputants via a legal framework; exemplifies a substitute for negotiations; does not offer a resolution as such but a 'determination' or an 'award', quasi judicial in nature and format; arbitrator(s) regarded as neutral; not to be confused with or regarded as synonymous with mediation.
avoidance	Both a conflict behavior and a conflict resolution behavior; so as to deny or pretend there is a problem or to postpone action or even to 'move around' the situation.
behavioral conflicts	Rooted in what a party 'did or didn't do'. Ranges from non-responsiveness to unacceptable acts which one or more disputing parties often justify (or attempt to do so).
bottom line	What disputants currently believe and perhaps predetermined as the maximum limits they could offer or accept to resolve the conflict before jeopardizing their own interests; often referred to as 'final offer'.

caucus	A separate meeting of a negotiating team's members for the purpose of addressing issues, proposals, rationale, strategies, and tactics which will result in a 'team decision' which all can support; a 'huddle', which upholds the principles of internal team negotiations (and sometimes 'vertical' as well), i.e., process equity and process ownership.
closure	A fully completed procedural or substantive issue or even entire conflict resolution agreement on which all disputants accept and understand reasons, terms, and conditions; in most instances, specificity and clarity are emphasized (except in 'conceptual agreements').
collaboration	A problem solving process in which all disputants integrate their own interests with the opposing disputants' interests as they strive together to reach resolution which is mutually acceptable; may simultaneously involve cooperation to satisfy the other disputants' interests and assertiveness to satisfy one's own interest; demonstrates that cooperation and assertiveness need not be paradoxical; often applied to describe interest-based negotiations or principle-based negotiations in contrast to traditional positional negotiations.
competition	Both a conflict behavior and a conflict-resolution behavior; a process and action to satisfy one's own interest with little or any regard for the interests of opposing disputants; while not synonymous with combativeness, competition is often meant to deprive the opposing disputants of their interest satisfaction; often witnessed or interpreted as a means to control resources or to cause irrevocable harm upon the opposing disputants; also can stimulate creative thought and skills of differing purposes and intensity.
compromise	Both a conflict behavior and a conflict-resolution behavior; a condition when opposing sides all have to exceed their 'bottom line' and share a range of dissatisfaction if the conflict is to be resolved; not synonymous with 'splitting it down the middle'; often incorrectly used to define or describe negotiations as 'the art of compromise'.
conceptual agreement	A good faith commitment to the general undefined nature of a proposed resolution for which the detailed terms and conditions remain to be negotiated, i.e., 'Let's agree that we will develop a working and lasting peace between us'. (Often erroneously referred to as an 'agreement in principle')
concession	A 'giving up'; a conceding on either a procedural and/or substantive issue without being promised and/or without expecting anything in return. (Often erroneously used interchangeably with quid pro quo.)
conflict	Primarily a sense of competing interests in a real, perceived, or potential state; at times competing positions on mutually valued interests; scenario or conditions of disharmony; often results in prolonged strife, belligerency, hostility, or warfare.

conflict aftermath	The negative residuals from the conflict which are either feared or felt even though the matter has been supposedly resolved via a mutual settlement agreement; primarily caused by low levels of procedural, and/or substantive, and/or psychological satisfaction on the part of one or more disputants or by impacts on noninvolved parties.
conflict assessment	The combination of processes used to understand the conflict fully—interests at stake, primary parties, history, impacts on others, consequences of impasse or a protracted conflict, validity of data, etc; to analyze.
conflictology	The study of conflict in various arenas, including its forms, causes, functions and dysfunctions, costs and consequences as well as the theories, processes, and skills for its prevention, management, and resolution.
conflict resolution	Normally thought of in terms of so-called 'table processes', i.e., litigation, negotiation, conciliation, mediation, arbitration, and judicial processes.
consensus	A group decision making process which values collective knowledge and process equity, and utilizes the concept of reasoning in contrast to negotiations (as commonly exercised); results of the group decision can be regarded as definitive as affirmed by all group members yet there may be varying degrees of enthusiasm and commitment to the agreed upon decision.
consequences of impasse or from a protracted conflict	The specific immediate and long-term costs upon the disputants' identifiable interests and perhaps on nonparties who are affected by the conflict.
crisis	A critical moment or scenario; often determined as tense or even dangerous; fulcrum point where 'things could go either way'.
cross-cultural	Not limited to 'between nations, or between races, or between ethnic groups' but can deal with matters within groups or between 'subgroups', e.g., a corporate culture between departments of a corporation or within a hospital (between the 'docs' and the nurses); between young and old; between male and female, between regions of a nation, within the military; between branches of the military; etc.
current predetermined final offer	What is thought to be a party's own last possible offer on a specific issue and so determined prior to negotiations through information analysis and other means of preparation; note the equal emphasis on the word 'current'.
data conflicts	Revolve around information in terms of accuracy, completeness, relevancy, and interpretation.
dispute	A question, rational argument, or debate as to the validity (1) of truth or fact, or (2) of the merits or value of an assertion or of evidence; or (3) of the value of a principle; or (4) of the appropriateness, applicability, practicality, or presumed effectiveness of a proposal.

distributive bargaining	Negotiations addressing how finite resources (time, space, money, water, etc.) will be shared among the disputants in order to achieve resolution; if the finite resource actually belongs to only one set of disputants who are being asked to distribute a portion of their holdings to others the process scenario is referred to as 'zero-sum game'.
education	A key component of the negotiation process; involves both teaching (not 'telling') and learning via the use of credible data and data resources which are verifiable.
equality	Evenness in terms of a sameness in quantity or quality; equivalency which can be objectively measured.
equity	Evenness in terms of fairness which can only be subjectively measured.
extended table negotiations	Negotiations which occur away from the table; includes internal team caucusing, vertical negotiations (with constituency or through the bureaucracy), side bar conciliatory efforts, 'under the table' unethical activities, working groups, and summit meetings.
external pressures and influences	Dynamics which cannot easily be changed, yet need to be heeded such as news media, public opinion, law, time, politics, pending legislation, pending court opinion, emergence of new evidence, deterioration of the situation which calls for conflict resolution processes other than negotiations (law enforcement intervention), unanticipated variables (resignations or death).
fallback position	A negotiator's contingency proposal to one's preferred bargaining range and which precedes what might be the 'final offer' or bottom line; a structural point in a proposal development matrix.
'first, fair, and final offer'	An ultimatum which must not be confused with negotiations.
fractionation	A problem analysis approach which breaks the situation into numerous smaller and more manageable components which can then be addressed as issues and then addressed by negotiation proposals.
future dispute resolution clause	Often a final issue to be addressed and resolved for inclusion in the settlement agreement; allows for monitoring, evaluation, and adjustment through reconstructive negotiations, post settlement mediation, or arbitration.
good faith negotiations	Ethical motives, strategies, and tactics which conform to law, norms, and understandings; honest; neither coercive nor exploitative; explicit and implicit agreed upon standards.
horizontal bargaining	(See <i>internal team bargaining</i>).
initial position	A negotiator's opening proposal and, therefore, too often not taken seriously by the opposing disputant; often regarded as the 'starting point of the march toward the middle'; however, could be a 'conceptual agreement'; a term not used in this primer, but in its place preferred settlement point is used.

impartial	Often erroneously regarded as synonymous with neutral; person who is the facilitator and guardian of impartial processes such as mediation and arbitration.
impasse	Disputants stymied by process and/or substantive issues, external variables/pressures, feelings and frustrations or even exhaustion; formal declaration and at point that intervenors may be sought for assistance, i.e., conciliators, fact finders [with or without recommendations as how to resolve], facilitators, mediators, arbitrators, allies, law enforcement officials, and administrative or judicial officers.
interests	Those abstract concepts based on principles/values which can only be subjectively measured; the principles and values which are motivating us to prevent, manage, or resolve conflict; the basis of conflict, namely, 'the sense of competing interests'; that which is at stake; that which negotiators are attempting to protect or perpetuate; the whys of the conflict and the negotiation process.
internal team bargaining	Often regarded as 'horizontal negotiations'; necessary to achieve team unity via modified consensus building processes which assure a true sense of process equity and process ownership without infringement upon legitimate organizational authority.
issues	Items on the negotiation agenda, and which need to be addressed if interests are to be satisfied; the whats of the conflict and negotiation process; issues are 'negotiable' only in a procedural way, e.g., will they be placed on the agenda or not and, if so, where on the agenda; not to be confused with interests or proposals.
litigation	Legal processes within the judicial system; regarded by many as the adversarial, lengthy, and expensive processes which 'alternative dispute resolution' must address.
mediation	An impartial process which serves as an extension of the negotiation process (not a substitution of it), and thus honors not only process equity and process ownership on the part of the negotiators but also their rights and responsibility; process convened, administered, facilitated, and protected by a mediator who has no power to render a decision and who is regarded as a 'non-interested' party, i.e., has no vested interest and cannot benefit by either the conflict or by any particular resolution; not to be confused with or regarded as synonymous with 'manipulation' or arbitration.
mitigation	Process to make less harsh; to alleviate but not necessarily to dismiss or even to reach a mutually acceptable resolution.
negotiation(s)	A complex yet manageable process comprised of three primary sub-processes—proper communication, effective education, and the responsible utilization of power—intended to prevent (via planning), manage (via control and/or confinement), and resolve dysfunctional conflict via interest satisfaction as provided in the development, exchange, and maintenance of promises.

neutral	Erroneously yet popularly used to describe the non-interest vested intervenors such as fact finders, mediators, and arbitrators—for there is no such thing as 'a neutral'; however, accurately describes the impartial facilitated processes of fact finding, mediation, and arbitration.
partner	The [opposing] person/party we need or are looking for to join us in resolving a dispute in an equitable and practical way and to keep it resolved; a party in a unified linkage or relationship in order to ensure that specific understandings are maintained and/or goals attained.
power	'The ability to fulfill an intent'; a key ingredient to the negotiation process with an emphasis on 'the responsible utilization of power'; (forms of, identified within the text).
preferred settlement point [psp]	The initial offer to resolve the conflict; the proposal is justified—not rationalized—by the verification efforts of credible data and data resources, and is intended to satisfy the interests at various levels of all disputants.
principle	A key value characteristic of interest and in most cases can be used synonymously with interest [See above]; may be a driving motivation to accept or to reject offers because <i>It is the principle of the matter. Here I stand; I can do no other</i> (Martin Luther); not to be confused with or used interchangeably with positions or proposals.
procedural satisfaction	The value of process as desired and/or experienced by party(ies), i.e., efficient, equitable, focused, candid, courteous, comprehensive, honest, etc.; independent of substantive satisfaction; one of three basic ingredients for durable settlement.
process equity	When team members, as well as opposing disputants, perceive decision making processes as fair to all regardless of rank, position, seniority, age, gender, race, ethnicity, or any other factors; independent of substantive considerations.
process ownership	When team members, as well as opposing disputants, have a true sense of being a part of a process and owning that process; in contrast to feeling like a mere witness or observer of the process; also shares the responsibility within the process as well as for outcomes.
process trust	When team members as well as opposing disputants have confidence in, and credibility for, the process; concepts of equity and ownership do much to create and to maintain.
process unity	Both the 'togetherness' and the collective commitment of team members; fully dependent upon the concepts of equity, ownership, and trust.
promise	The settlement agreement made and maintained by the disputants; ten (10) (components of, identified and explained within the text).

proposal	A negotiator's current stance as reflected in a proposal, recommendation, or demand as to how the issue or even conflict should be resolved; the hows of the negotiation process and sometimes of the conflict itself; in terms of 'action proposals' or 'resolution proposals' it is truly positions which are negotiable (in contrast to issues).
psychological satisfaction	Senses of relief when a conflict has been resolved; one of three basic ingredients for durable settlements, along with procedural and substantive.
RATS	'Realistic alternatives to settlement'; these should be sagely determined prior to negotiations in order to avoid premature declarations of impasse or to prevent poorly thought responses when frustrated, angry, or exhausted; a likely viable option should a negotiated settlement prove to be impossible; should not be constructed as an obstacle to settlement or be construed as a threat.
relationship conflicts	Relate to the satisfaction/dissatisfaction of interactions or non-interventions between two or more entities.
resistance point	Rooted in reasons as why opposing disputants reject specific proposals for resolution; contain criteria which serve as the basis of resistance, and thus must be discovered and addressed.
resolution	A determination or an expressed opinion to which the disputing parties agree as a means to solve or better manage a crisis, a conflict, a dispute, or an issue; not really synonymous with a court's or an arbitrator's award, decree, or judgment.
settlement agreement	The mutually accepted promises (with specific terms and conditions) which resolve the conflict.
situational ethics	Departure in various degrees from the absolute/agreed upon norms which dictate or guide behaviors and processes in/due to particular situations and circumstances.
structural conflicts	Revolve around law, policy, regulations, chains of command and accountability, hierarchies, patterns of practice, customs, boundaries, jurisdictions, schedules, etc.
substantive satisfaction	The degree to which interests have been met for the immediate and long-term future, thus resolving the conflict; one of three basic ingredients for durable settlements, along with procedural and substantive.
third party impacts	Refers to the effect(s) of the conflict and/or resolution upon entities not party to the negotiations; 'third' is idiomatic in that the term is employed regardless of the number of primary parties who are disputants.
third party intervenors	Usually refers to impartial resource persons who convene, administer, facilitate, and protect impartial processes such as fact finding, mediation, and arbitration; 'third' is idiomatic in that the term is employed regardless of the number of primary parties who are disputants.

threat	In contrast to a warning, a threat is a statement of what one intends to do or not to do directly or indirectly in order to cause discomfort or harm to the other(s) or refrain from interceding unless particular demands or proposals to satisfy specific interests are accepted.
trust	Sense of faith, confidence, reliability, or credibility on the part of one entity to another, e.g., person(s), group(s), system(s), process(es), and even things.
value conflicts	Relate to principles we adhere to as primary codes and guidelines to various aspects of our living; or the rank order of importance of such principles; or those principles when are absolute or flexible with regard to adherence; or the principles we discount when in contention with the values pronounced by others.
venerable resources	Usually data and data resource which command respect, almost reverence, i.e., The Scriptures read...; <i>The Constitution implies...</i> ; Martin Luther King said...; <i>My parents, God rest their souls, would die all over again if they knew that you...</i> ; used by negotiators in efforts to add credibility to their arguments.
warning	In contrast to a threat, a warning is an alert to the other(s) as to what is believed will naturally or inevitably occur if a conflict is not addressed effectively as in a certain way, and constitutes no direct or indirect involvement or capability of the warner to cause or prevent such outcomes.

DOE Interest—Issue—Proposal Development Worksheet

Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal	Subsequent Proposals	Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
<ul style="list-style-type: none"> • clarity of the process and outcomes • environmental integrity • safety of personnel and the public • legal principles of compliance • responsiveness to tribal nations and the local community's interest • credibility of the Hanford mission, the TPA, DOE, and contractors and work performance • fairness and practicality in the permitting and monitoring processes • thoroughness and completeness • cost effectiveness • amicability (how to achieve). <p style="text-align: center;">#1</p>	<ul style="list-style-type: none"> • address the differences and approaches, e.g., although Ecology and DOE agree that determination of land use will prescribe a standard of cleanup, there is a fundamental disagreement on the future land use (i.e., residential vs. industrial) • future ownership for specified land usage, i.e., federal, state, county, city, tribal • land transfer criteria and process • timetable, i.e., the priority and schedule sequence for operable unit cleanup • determining buffers areas, i.e., dependent upon use of land inside and outside of the buffer. <p style="text-align: center;">#2</p>	<ul style="list-style-type: none"> • industrial designation for land use. <p style="text-align: center;">#7</p>	<ul style="list-style-type: none"> • by mutual agreement we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas. <p style="text-align: center;">#8</p>		<ul style="list-style-type: none"> • by mutual agreement, we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas • designate recreational usage in specific parcels and negotiate the standards for particular usage. <p style="text-align: center;">#6</p>	<ul style="list-style-type: none"> • by mutual agreement, we will determine which operable units will be cleaned first, and at what levels while noting that such revisions may downgrade and delay completion of other areas • designate recreational usage in specific parcels and negotiate the standards for particular usage • within the 300 Area, all surface contamination will be cleaned to meet industrial standards • within 618-10 and the 618-11 radioactive waste burial grounds, DOE plans to remove most of the contamination, but methods to safely remediate the burial grounds have not been developed. It is expected that this will have to be done remotely because of high level of radioactivity. <p style="text-align: center;">#5</p>	<ul style="list-style-type: none"> • possible federal legislation will be imposed • State might make <i>determination</i> cleanup orders • possible litigation by the parties • third party lawsuits • land use plan isn't suitable to anyone. <p style="text-align: center;">#3</p>	<ul style="list-style-type: none"> • an all federal solution—the federal government will maintain full control of the land. <p style="text-align: center;">#4</p>

Note that the proposal development worksheet will be completed in a natural numerical sequence. However, that is not how we will conduct the negotiation, which simply will move from the far left to the right—column by column, e.g., 1, 2, 7, 8, 9, 6, and 5.

DOE Interest—Issue—Proposal Development Worksheet*

Own Interests	Issues	Preferred Settlement Point (PSP)	Secondary Proposal	Subsequent Proposals	Fallback Proposal	Current Predetermined Final Offer	Consequences of Impasse or a Prolonged Dispute	Realistic Alternatives to Settlement (RATS)
#1	#2	#7	#8	#9	#6	#5	#3	#4

*worksheet must be completed following numerical order

About the Author

William F. Lincoln, DHL is President of The Lincoln Institute for Collaborative Planning and Cooperative Problem Solving, Inc. (www.thelincolninstitute.cc) and Executive Director of The Conflict Resolution, Research and Resource Institute, Inc. (www.cri.cc), both headquartered in Tacoma, Washington.



Lincoln, with over 35 years of professional experience has also served on the faculty of several colleges, including Harvard and the Federal Executive Institute. As a practitioner, Lincoln has mediated disputes related to multiple land use, wheat burning and health issues, destination resort and community impacts, oil spill risk management and wastewater treatment issues. He also has preformed training and process coaching services for a host of governmental agencies, including the Department of Energy, the Environmental Protection Agency, the Bureau of Land Management, the US Forest Service and the Department of Defense.

In addition to ecological concerns, Lincoln has resolved volatile conflicts concerning adult correctional facilities, labor management relations and public policy. He also has broad international experience in nations of the former Soviet Union, Eastern Europe, Latin America and Africa. In 2003 Lincoln received national recognition when the prestigious Strauss Institute for Dispute Resolution of Pepperdine University School of Law presented him The Masters Forum Distinguished Service Award for outstanding accomplishments in the profession. Of all his accomplishments, Lincoln is most proud of being one of the nine Federal Commissioners who convinced Congress to establish the United States Institute of Peace. In 2004, Lincoln was presented the annual *Award of Excellence* by the International Academy of Mediators.

