



Beyond The Bar

**EFFECTIVE LEGAL
NEGOTIATION TOOLKIT**



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Prior to joining the faculty at George Washington Law School, Professor Charles Craver taught at the University of Illinois, University of California, Davis, University of Virginia, and University of Florida. He also practiced law with Morrison & Foerster in San Francisco and clerked for Judge George MacKinnon of the U.S. Court of Appeals for the D.C. Circuit.

Professor Craver is co-author of *Alternative Dispute Resolution: The Advocate's Perspective* (5th ed. 2016), *Legal Negotiating* (2007), *Employment Law Treatise* (2 Vol. 5th ed. 2014), *Employment Law Hornbook* (5th ed. 2015), *Human Resources and the Law* (1994), *Labor Relations Law* (13th ed. 2016), *Employment Discrimination Law* (8th ed. 2016), *Collective Bargaining and Labor Arbitration* (1988), *Labor Relations Law in the Public Sector* (4th ed. 1991), and *Skills & Values: Alternative Dispute Resolution* (2013). He is also the author of *Can Unions Survive?* (1993), *Effective Legal Negotiation and Settlement* (8th ed. 2016), *The Art of Negotiation in the Business World* (2014); *Skills & Values: Legal Negotiating* (3rd ed. 2016), *The Intelligent Negotiator* (2002), and numerous law review articles pertaining to labor and employment law and dispute resolution.

He is a member of the American Law Institute, the National Academy of Arbitrators, the American

Arbitration Association, the International Society for Labor and Social Security Law, the Labor & Employment Relations Association, the Association for Conflict Resolution, and the Labor and Employment Law and Alternative Dispute Resolution Sections of the ABA. Craver is also a fellow of the College of Labor and Employment Lawyers, and served as secretary to the ABA Labor and Employment Law Section in 1986-87.

Over the past 35 years, Professor Craver has taught negotiation skills to over 90,000 lawyers throughout the United States and around the world. He has received awards for outstanding teaching from three different law schools, including George Washington Law School.



LEGAL NEGOTIATING

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DESCRIPTION

Professor Craver earned his B.S. and M.I.L.R. from Cornell University and his J.D. from the University of Michigan.

AUTHOR

Effective Legal Negotiation and Settlement (8th ed. 2016)

The Intelligent Negotiator (2002)

The Art of Negotiation in the Business World (2014)

Skills & Values: Legal Negotiating (3rd ed. 2016)

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Legal Negotiating (2007)

Skills & Values: Alternative Dispute Resolution (2013)

Alternative Dispute Resolution The Advocates Perspective (5th ed. 2016)

This book is an excellent resource for law students learning negotiation skills in clinical courses and for practicing attorneys who want to enhance their negotiation proficiency. The book explores the three basic negotiator styles: the “win–lose” competitive/adversarial style; the “win–win” cooperative/ problem-solving style; and the “WIN–win” competitive/problem-solving style. It describes the five stages of the negotiation process and the psychological factors that influence bargaining interactions and also covers applicable legal rules and economic principles. The book finally explores the impact of abstract reasoning skills, emotional intelligence, and negotiator gender and race on bargaining interactions. The appendixes include transcripts from lawyer-to-lawyer negotiations.

NEGOTIATION ETHICS

1. Negotiating is a deceptive process as both sides try to convince counterparts they have to obtain better terms than they actually have to get. Lawyers over- and under-state the value of items being exchanged for strategic purposes, and demand more and offer less than they are prepared to accept.
2. Model Rule 4.1 says it is unethical for lawyers to “knowingly make a false statement of material fact or law to a third person.”
3. Comment 2 recognizes that “under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are ordinarily in this category.” It is thus acceptable for lawyers to engage in “puffing” and “embellishment” when they negotiate in an effort to advance their side’s interests.
4. Attorneys who misrepresent material information behave unethically and expose their clients to liability for fraud. Their reputations for dishonesty will also undermine their ability to negotiate with others in the future.

NEGOTIATOR STYLES

1. Cooperative/Problem-Solvers – “win-win” – Open and trusting negotiators who begin with reasonable opening offers and seek to maximize the joint returns by reasoning with their counterparts. More than half of Cooperative/Problem-Solvers are considered by their peers to be effective negotiators. Counterparts also tend to look forward to future interactions with these persons.
2. Competitive/Adversarial – “win-lose” – Closed and untrusting negotiators who begin with one-sided opening offers and seek to maximize their own side results. Few overtly Competitive/Adversarial are considered by their peers to be effective negotiators. Counterparts dislike the prospect of future interactions with these persons.
3. Competitive/Problem-Solvers – “WIN-win” – Appear to be open and trusting negotiators, but they are not entirely open and they use subtle manipulation to maximize their own side results. Once they obtain what they want, however, they work to maximize counterpart returns. Since these individuals are usually considered by counterparts to be Cooperative/ Problem- Solvers, those persons generally look forward to future interactions with these negotiators.
4. The most effective negotiators are persons whose counterparts think they are completely open and cooperative, but who admit to being somewhat manipulative to enable them to claim more of the joint surplus generated by the bargaining parties.
5. Naturally cooperative negotiators should slowly disclose some of their important information and see if their openness is being reciprocated. If the other side is not being as open, they must behave more strategically by being less open to avoid exploitation by manipulative counterparts.

Negotiation Preparation Form

[To Assist Lawyers When They Prepare For Bargaining Interactions]

1. Your **minimum settlement point** (lowest result would accept given your alternatives to settlement – Including **transaction costs** of both settlement and non-settlement):
2. Your **target point** (best result you might achieve) – Is your **aspiration level** high enough? Never begin negotiation until you have solidified goal with respect to each item:
3. Your estimate of **counterpart's minimum settlement point** (what external options appear to be available to them):
4. Your estimate of **counterpart's target point** (try to use their value system when estimating their target point):
5. Your **factual and legal leverage** re each issue (strengths and weaknesses of case) – Prepare logical explanations to support each strength and anticipate ways you might minimize weaknesses:
6. Your planned **opening offer** – Try to start a reasonable distance from where you hope to end up, but always begin with a position you can logically explain (“**principled opening offer**”) to provide yourself with credibility:
7. Your **counterpart's factual and legal leverage** regarding each issue (prepare effective counter-arguments):
8. What **information** do you plan to elicit during **Information Phase** to determine counterpart's underlying needs, interests, and objectives? What questions will you ask? (Begin with broad, open-ended questions.):
9. What **information** are you **willing to disclose** and how do you plan to divulge it? (Best to disclose important information in response to counterpart questions.) How do you plan to prevent disclosure of sensitive information? (Plan use of “**blocking techniques.**”):
10. Your **negotiation strategy** (agenda and tactics) – Plan your anticipated **concession pattern** carefully to disclose only information you intend to divulge and prepare **principled explanations** for each concession:
11. Your prediction of **counterpart's negotiation strategy** and your planned **counter-measures** – You may be able to neutralize counterpart's strengths and emphasize his/her weaknesses:
12. **Negotiating techniques** you plan to use to advance interests (be prepared to vary/combine them for optimal impact):
13. **Negotiating techniques** you expect **counterpart** will use, and way you plan to counteract: