

71. The Art of Negotiation

with Mari K. Eder, Dean Leslie, & Myles Miller

Kendall Lott: PMs, you face the client or executive, urgently pushing to get the project sponsored, to be selected over others. You claw for resources from across the organization to build your team. You counter and bend, duck and bob, as you try and get the customer to understand, you did produce what they asked for! We all face it. We want the project, we build the team, we defend its value. And the skill we need? Negotiation.

Myles Miller: It's about what's mutually beneficial for both of us. That's what a win-win negotiation is about.

Mari K Eder: There always is some way to understand what the other party is driven by. You may not be able to help them achieve their ultimate goals. But you may find something along the way; there's always something you can do that will assist them.

Dean Leslie: Two sisters go to the village elders, with a question of how to divide 12 oranges amongst them. And the elder sister argues that, "I'm the elder sister. I should have seven oranges, while the younger sister only gets five." And the younger sister argues, "Well, we're sisters. We should share everything equally." An effective negotiator will say, "What do you want the oranges for?"

Kendall Lott: The word negotiation originated in the early 15th century, in reference to business, trade or traffic. By the late 1570s it had come to mean, "to communicate in search of mutual agreement." When executed successfully, negotiation can deliver outcomes that exceed the expectations of all the parties. The pie effectively can become bigger.

Some key ingredients are trust, civility, rapport. Rather than taking an adversarial approach, success comes from taking the opportunity to build a relationship. Ultimately, negotiation is collaboration. And if all parties walk away satisfied, the final agreement will be that much more sustainable.

Today's episode brings you three very different negotiation situations: a business negotiator looking for value; a very model of a major modern general gathering resources to build a huge organization; and a federal mediator getting others to resolve conflict in their commonality. The recurring themes they bring up, when put to use, can yield beneficial results.

Announcer: From the Washington DC chapter of the Project Management Institute, this is PM Point of View, the podcast that looks at project management from all the angles. Here is your host, Kendall Lott.

Kendall Lott: On a tactical level every project manager has to engage in negotiation. Think of all the stakeholders: the executive who commissioned the project; your project team; and your end

71. The Art of Negotiation

users or recipients. They all have needs and desires, requirements and limits. And it's up to the PM to constrain, control or enhance resources. The better you can negotiate along the way, the more fluidly your project will proceed, and the more effective your outcomes.

My first guest, Myles Miller, has a background in project management. He is CEO and founder of international training and success development companies, such as Lead Up, Learning Breaks, and Success HQ. In addition to our conversation at his office in Pennsylvania, the Final Milestone's crew recorded Myles' presentation at the University of Maryland's Project Management Symposium, back in 2019. So, let's kick it off with a snippet from UMD.

Myles Miller (03:38): Negotiation is about settling differences, not making things worse. This is another way to think of negotiation: The art of letting the other side have it your way.

So there are two types of negotiations. One's called integrative and the other one's distributive. Alright, integrative is about "We." Distributive is about "You against Me and Me against You." And it's basically about who wins and who loses. Whereas integrative is all about, "How can we both walk away feeling some sense of satisfaction?" Typically known as a "win-win."

KL (4:23): What's the basic principle that you think is so important in negotiation?

MM: I think the main number one tenet is... It's all about relationship and rapport. Most of the negotiations that you're going to do, they're primarily going to be with people you've got to deal with over and over and over again. So it's important that every negotiation builds that relationship, and rapport.

KL: So when I go into a negotiation, presumably I know my position.

MM (laughing): Hopefully.

KL: So I'm trying to figure out, is the focus. Well, so is that a key? What level of ambiguity is allowed there, is one question. Going with that, so if I've sharpened or I'm knowledgeable about that, is my goal to lay that out? Is my goal to pull theirs out?

MM: Yeah, that's a great question because a lot of people go into a negotiation and sometimes they don't even know truly what they want out of it. Say if I'm the party who's going into the negotiation I would be thinking about, Okay, what do I want out of this? And another aspect of that is, what am I willing to concede or compromise on? I should know those things going in. May that change during the course of our conversation and negotiation? Maybe. But you should have some pretty clear understanding on your part of what you're willing to negotiate on, and maybe what you're not. But the other side of the coin is, not only do you need to know *your* position, but the most important thing that I think you have to spend time on is realizing what *they* want... what the other party wants.

Negotiation is very much strategy. If I do this, what are they going to counter with? And if they counter with that, what am I going to say in response to that? And thinking through all that, before the negotiation happens makes you better prepared for when the negotiation happens.

MM (06:18): Do you know how much time I spend on average, preparing for a one hour

71. The Art of Negotiation

negotiation? At least 48 hours. Because I need to think about what strategies I'm going to use. What answers they're going to give. What responses I'm going to give back. So that when I walk in that room, no matter who's in the room, and that's also part of preparing, you should know who's going to be there. You should also know who are the true decision-makers in the room, I'll give you that piece of advice as well. You can find this out with a little research. Checking people who work with them, find out who's going to make the final decision, alright?

So one of the preparations may be this: thinking of those "if-then" statements. If we do come to an impasse...it could happen in a negotiation...what am I going to say to them to kind of move things along?

MM (07:15): So whenever you enter into a negotiation, one of the first strategies to consider is, can I come up with more than one option here to offer them to choose from? If you give them options, and they're like "I don't like any of those," a pro is going to say, "Well out of the options that I presented to you, was there one that you liked better than the rest?"

Now why would I do that? I need to kind of think where their head is. Where they're thinking is. What they are considering. Or at least, out of the offers that I gave them, which one had the most interest to them? Even though they said no to it. I can come back to them and say, "You know the last time we talked I gave you a few options, and it seems like that one option was at least of some interest to you." So I use that as a talking point. And then I play off of that.

KL (08:10): So are we trying to find where we're going to give and get...

MM: Yes

KL: ...with each other? Or are we trying to actually get them to tell us what they're really after to begin with?

MM: It depends on several factors. One is how well you know the other party. If say, for example, you're going into a negotiation, you've never sat down with these people before, I almost compare it to a first date in the sense that you've done your due diligence, you should know a little bit about the person or persons you're meeting with. And in our technological age today, you can find out, who am I meeting with? Who is this person that I'll be talking to? What's their background, how long have they been with this company, are they new to the company? What's their experience prior to this? Knowing who you're dealing with gives you better expectations and it also gives you more leverage, too. In a positive way.

If I know that a person that I'm meeting with has common interests, like I do, or if they come from a common background, that's a good jumping off point. And then I can use that as part of our conversation. The strategic part to your point, Kendall, begins before you meet. The strategy, once you're meeting in the negotiation, may change. And you kind of have to be able to read as a savvy negotiator, "What's the ebb and flow of this negotiation?"

Is this a point that they keep driving home? Okay, well then clearly that's probably important to them. Is this a point that they kind of just glanced over and don't care a whole lot about? Probably not something we need to dwell on.

KL (09:49): Let's talk about word use.

MM: One of the things is to get away from words like "I want," "I need." Yes. Because...

KL: Well aren't you supposed to be sharing your position with them?

MM: Well, you are, alright? But there are better ways to say that. Okay? Things like, "One of the things that could benefit us," or, "One of the things that we would like to see that..." And the "we" is...the "we" and the "us" are very powerful words, because the we and us, could mean you're talking about the organization you represent. You could be also alluding to how "we"... You and the other party...can work together. So those words are very powerful, and you want this to be a collaborative cooperative experience. The more "I" statements you make, the more potentially the opposing party may get defensive to that.

Now we're being combative, right? We're tossing stuff back and forth. We're not coming to an understanding. We're not moving towards cooperation/collaboration, which the best negotiation should end up becoming that.

KL (11:03): Knowing where you are in relationship to power...You haven't mentioned the word power yet.

MM: Right.

KL: What's the role of power?

MM: I would be remiss if I didn't say that there's power elements in every negotiation. There are. The reason I don't use that term is because I feel in many negotiations, power is misused. The most "powerful person" in the room should not necessarily always use that power to win the negotiation. Because remember it's not about you winning, and them losing. It's about us, collectively, winning.

So the most savvy negotiator, who may have power in some respect, will realize, "Yes, I could use that power for my benefit solely, and I can definitely do that. But how will that impact the relationship and the rapport I have with this person?"

So does... Is there a power position in a negotiation? Yes. But when it comes to that power position, what is the ultimate goal of the person in power? Is it to show that I'm powerful? Or is it to show that, because I'm powerful, I can make a decision that's best for everyone?

KL (12:24): When have you been uncomfortable? What are the characteristics that put you in an uncomfortable situation?

MM: I think in general, without getting too specific, because I've had these happen on occasion, when the other party is solely interested in only what they can get out of the negotiation. That's all they're concerned about. And it's going to be very evident in the first 15 minutes.

KL: Really?

MM: Oh my gosh, yes.

KL: So we don't need seven meetings...

MM: No. And this may cut...

KL: So what are we watching for?

MM: No, yeah, well, yeah...

KL: What should we be looking at, and what are our triggers? What should we be feeling?

MM: Well, you want to look for... I'll just be candid...for an egotistical personality.

KL: Okay.

MM: And what I mean by that is, the person you're negotiating with has to feel like everything in negotiation is about them. "What's best for me?" "What do I... This is what I want." The other situations I've been in, which are uncomfortable, which is where... And I've been in this situation at least a handful of times, someone came in with a piece of paper or a document of some sort, slid it across the table, and said "This is what I want."

I'm not going to say yes; and I'm certainly not going to say no. But I am going to take the time to look it over. So I pick up the document and I begin to read and I begin to take notes. And this has happened on more than one occasion. The person who gave me the document eventually gets frustrated with me because I'm not saying anything, I'm not communicating with them, and I'm also taking time because I've never seen this document.

KL: Now, how does that end?

MM: Well it ends in a couple of different ways, depending on how detailed the document is. And if it's one page, it's not going to take me a long, a lot of time to read that, so I can quickly go through that, jot down some notes, and then the negotiation can continue. Now if it's a much bigger document, it could be 15-20 minutes, you know, that have gone by, and I get to...

KL: That's a long time.

MM: I know, try it some time. Be in a meeting for 15-20 minutes where nobody's saying anything. And most of the time, we never get to that amount of time, because there's often the other person interjecting and saying, "Are you done yet?" or "How much longer?" Because they're getting frustrated.

KL: So once that happens what do you do?

MM: Well remember, it's about relationship and rapport here. Right? I don't want to be off-putting, so I'll say, "Listen, I would love to have a discussion about this today, and negotiate over these points, but I really want to take the time necessary because I think you're worth it. I think your organization...what we're trying to negotiate is worthwhile to do and to do it right, and I would hope you would agree with that." Well, who's going to say no to that?

71. The Art of Negotiation

So then I'll just kind of leave it at, "Why don't we reschedule another time to talk about this? That way I'll have time to look this over. I won't be taking up more of your valuable time here, while I'm reading through this." Once again, I'm acknowledging them, I'm giving them the power position again, but I'm doing it in such a way, if the reality is, if there was a person observing this, they would say, "But, Myles, you're probably the person in power here, because you're directing what happens next." And they're kind of right. In a good negotiation, that power should be ebbing and flowing like the tide, as I mentioned before.

KL (15:47): It's clear to me that you look forward to negotiation. You like this stuff.

MM: I love it...

KL: You like leaning into it.

MM: Oh my gosh.

KL: So what are the characteristics that make a person interested in and maybe being super effective as a negotiator?

MM: Well, first of all, I think as an individual, you have to have pretty good self esteem. Because you're going to get a lot of push back; you're going to get a lot of no's sometimes in negotiations. And you have to be able to deal with that well. In negotiations, and this is something you've probably heard other people say, emotion is something you have to be really careful to measure. You can't let emotion get in there. You can't get angry or frustrated at the other party or even yourself. One of the things, my company focuses on this a lot, is emotional intelligence. That's a big part of negotiation.

KL: Starting with Know Thyself ...we're back to...

MM: Absolutely.

KL: Go back to the beginning, always.

MM: Absolutely. You've got to know what your buttons are; you've got to know when your buttons are being pushed. That's a big part of emotional intelligence. And by the other part of that is, you need to know what the appropriate response is when your buttons are being pushed, so that you don't let that emotion overtake you.

MM (17:06): Now, some of you may think, to be a really good negotiator I have to be bold. Tough. No. But you have to be able to not give up easy. If you go in with only one idea to a negotiation, it's going to be way too easy to give up. You need multiple ideas. If you don't have some ideas about how we wrap this up after we're done and set a tone for what can come next, you're going to have some challenges. So tenacity is very important. And notice the other word there: preparation. And what I mean by preparing is simply this: You sit down with a piece of paper. You make 2 columns – Me ... We. So Me Column: What do I want? You should know pretty much, but writing it down brings clarity. In the We column: What am I thinking they want? Maybe I have some insight, maybe I don't, that we both could agree on.

KL (18:08): Other characteristics that you've come across?

MM: A good negotiator is someone who listens well, really well. Not just a person who hears the other party, but listens for what I like to call what's in between what they're saying. And you need to kind of sense what they are saying, because you'll hear that, but even more importantly, what they're not saying. And a really savvy negotiator will know to explore those points that aren't being spoken, because those oftentimes are the points that the negotiation is ultimately going to revolve around.

And this is how I do it in a negotiation. I always have pad of paper, pen whatever. What I'm writing down on that is not what I already know; it's what I'm discovering as we go through the negotiation. And what I might be able to leverage, what I might be able to revisit, what I'm intuiting if you will, that is not necessarily being said, but what I'm picking up on.

KL (19:18): All of this healthy interaction, improving relationships, being productive, getting an outcome, being aware. Can you walk us up to how this is part of leadership?

MM: And we're talking to project managers here, so I'll tie it very directly to them. Project managers, to me, are the change agents of the world. Now to drive change you have to "be a leader." And a leader, by definition, my definition at least, is someone who has vision, mission, and purpose, and not only knows what that is, but can communicate and get others on board with that as well. That's what a leader does. As a leader, tons of negotiation. How do you get people who don't see the thing that you're doing as important to consider it important? How do you get them to do that? That requires negotiation. It requires you understanding what's important to them, what's not important to them, how do you get this project to become important to them? Leaders know how to do that well, and it's negotiation that makes that happen.

KL: So a good negotiator doesn't have to be tough or ruthless, but you do need a certain level of confidence; an unshakeability, which is not the same as inflexibility. Prepare your option offers in advance. If they don't like option A, be ready with option B. Check out Myles' website www.leadup.biz. You can contact him directly at Miller665@verizon.net.

KL (20:56): In 2013, after 36 years of service, Major General Mari K. Eder retired from the army. She is a renowned speaker, and a thought leader on Strategic Communication and Leadership. Her book, [Leading the Narrative: The Case for Strategic Communication](#), is used in a number of university communications courses.

KL: One of the things I noted in your biography that was really interesting was how you had to build an entire organization, and a new command, it looked like, and it said 5000 people in two and a half years.

Mari K Eder: It's a little bit more now...

KL: It seems like a bit of a... I mean that's really standing up a large group quickly.

MKE: In the Army things, organizations change and morph all the time. And the Army Reserve was looking at taking down several organizations. Downsizing, restructuring, rebuilding. They took it down so far and then said, "Well maybe we don't really want to do that."

71. The Art of Negotiation

So about the time I took over this organization and signed on the dotted line that I was now in charge, there were two people in it: me and the sergeant major.

KL: Oh, two people!

MKE: Two people. As of the next day we picked up 15 more in the staff. Then I had to move the headquarters, which was in South Carolina, to Utah, and then start doing the paperwork to add the units back in that had already been shaved off or cut away and moved.

KL: I'm fascinated by that as a project. It's both building an organization, and then you literally moved geography...

MKE: Right.

KL: ...At the same time. I assume there's a method for that in the Army...? They know about this, they've documented this process before? It's a project, you have a beginning and an end?

MKE: We call it a fore-structure. Building an organization, building a fore-structure, for what this is meant to be.

KL: Here we go.

MKE: But you have to keep in mind that these are humans involved, who say, "I have this now, it belongs to me. I have these 250 people now are part of my organization and I'm not giving them back." So there are a lot of negotiation skills involved with this.

The organization that I had was meant to be all of the Army's high-tech pieces. So I had cyber units, I had 1850 attorneys, a brand new legal command. And I also had pieces of homeland defense, and I had pieces of all of the reserve parts of joint organizations around the world. Those were the ones that they didn't want to give back, because if you have the people, you have their budget.

KL (23:28): When they're undertaking a project like this, they build it for a specific mission, for a certain value. "We are doing it for this reason," and I think that's probably the prize you keep your eye on, it's built for that. And the other one you were mentioning, they don't want to give it up. This idea of ownership, that other people engaged in this project have ownership of pieces, and I think that's, to me, the underpinnings that walk us right into negotiation, this...

MKE: Yes.

KL: ...you probably couldn't just command things easily, even though you were very senior or how did that play out?

MKE: In some cases I commanded directly. I commanded all of the legal units directly. That entire organization was brand new as well, so it came to me.

KL: So you're able to pick that right up?

MKE: Right.

KL: So where does the negotiation come in, without the ability to just use authority, positional authority, to make it happen?

MKE: In dealing with some of these units that belonged to the joint organizations, where they didn't want to give them up, the negotiation began with, "This is my charter. I am supposed to have all of the Joint Army Reserve pieces to joint organizations. I have five out of the 10. I want to have yours."

KL (laughing): I want ten out of the ten.

MKE: Because it makes more sense that I can manage them and still give you what you need. Well, the fear of ownership means, if I don't own it, then I can't control it. I can't get the support I need, when I actually need it.

Alright, well here's Colonel So-and-so, who is in charge of that unit that supports you. He reports to me directly, but he will senior report to you. So he's a direct report to me, but you will senior rate him, therefore you maintain that control. How does that sound to you?

Okay, and what about the funding? I said, "I have the best fund managers there are and I can probably get additional funding for you."

Okay. That worked on some of them.

KL: You had to come up with more?

MKE: Yes. At some point it became, "I have almost everyone but yours, and this is why I need to have yours to make it complete. Here's what's going to happen if you don't do this. The Army will continue to take your people and deploy them as individual fillers for regular units that are going to Iraq or Afghanistan. If your organization belongs to me, I will protect them from that."

It always becomes here's what I can do to make it better for you.

KL: So the negotiation is the act of finding something that they want. This sounds like interest-based negotiation.

MKE: Even if they didn't know they wanted it, or didn't know they could have it.

KL (26:05): So tell me something about your lessons learned from this. Let's get your model of good negotiations, the way we can be best prepared to engage in something like this.

MKE: It took a lot of work to educate myself before going into each one, because each one is very different. The US Transportation Command is in Omaha. It's run by Air Force Major General. I didn't know much about the organization, the people they had, how many they had from different services, whether they needed more people, whether they needed more training, whether they needed access to training sites. And in some cases, some of these organizations that did satellite work, I didn't even know what they did. So it was a major education process for me, to learn what they did, what they needed, their perceptions of that command that supported them or owned them

at the time.

KL: So, the first lesson we have here out of there is...do your homework. And it sounds like you're trying to identify where there's needs and incentives.

MKE: You do your homework, and you do it on both sides. So, not only did I get the perceptions of the people in the unit, I also went to the units themselves and said, "Tell me what you think of this, how does it help you? How doesn't it help you?"

And I would get a lot of, "We don't have any control over them." Some of them were very adept at playing both sides. "Oh, I can't do that for you because I belong to the Army Reserve." "Oh, I can't do that for the Army Reserve, because Transportation Command says I must do this."

So it was more of a, "Let me help you fix that."

KL: So it seems like understanding the party that you're negotiating with is important and having that understanding before you go into the negotiation.

MKE: Yes.

KL: Negotiation is not discovery.

MKE: If it is discovery, you lose.

KL (27:57): What else did you feel that you learned out of the negotiation process?

MKE: In many ways, in doing this type of a negotiation, to acquire units and personnel, I learned that the personnel in those units were often not a priority to be managed. Some of them stayed in place too long, some of them hadn't been to appropriate training or education opportunities. They needed to have a better mix of people, and they needed to have better people coming in, in some instances. So, I also told them I would provide for a rotation process that would refresh the pool of people they had.

KL: And so they felt more comfortable in, then, allowing you to have those resources?

MKE: Because I would give it the attention it needed and they couldn't do that.

KL: So finding what incentivizes them to participate...

MKE: What is incentivizing my peers, so that I can help them be successful with what they're doing. And I think that becomes the win-win, which is what you're after.

MKE (28:58): There always is some way to understand what the other party is driven by. You may not be able to help them achieve their ultimate goals, but you may find something along the way. There's always something along the way that you can do that will assist them.

KL: You just went to motivation a little bit. So it's what's motivating them?

MKE: Yeah, and will it cost me anything? It doesn't cost me anything to say, "This is yours to do a motivational type of presentation." It doesn't cost me anything. I had friends who would say to me, "Why did you do that? You didn't have to..." And I'd say, "It didn't cost me anything. That doesn't hurt me."

JKL (29:42): What's the role of signaling in this? Because I think that...it almost comes into conflict with some of the pre-judgment. Everything you do is a message, and it's a concept of signaling. Intentionally, and done intentionally, I would imagine is...

MKE: Very much.

JKL: ...what you're facing here. Yeah, so how do you see that playing out? What is that role of signaling, and then what can we do as a technique to handle that, and make choices around it?

MKE: I think what you're getting at is strategy. Your long-term strategy. This is not just about one meeting, one negotiation, one session. It's about what is the long-term strategy here and building the organization. And I may not achieve it today.

There was one organization, I had to try three separate times to have them be assigned to me. And then what it took was the head of that organization calling my boss and saying, "I want this to happen."

So it was trying it a different way. And going into a session, I think having that vision and understanding where you want it to go, leads you to how you set everything up for it. You've already done the homework; you know the person you'll be talking to. It's not staging, it is setting the conditions to have a positive conversation.

I had told the story before about Admiral Stavridis, meeting with a group of War College students when I took them to his office in Belgium. As a Supreme Allied Commander, he would meet with many Chiefs of Defense, ambassadors, heads of state, and he did with our group what he does with all of them. He would bring them into his office and say, "Let me show you around what I have. Here is a picture of my grandfather, emigrated from Greece to the United States. Here's his college degree..." And they're going, "That's nice." So he went on for a few minutes about his family and the opportunities they had after emigrating to America.

And then we resumed the discussion. And I watched him do this, and I thought how brilliant it was. Because he had, very deliberately probably, dug through the attic to find those things to hang in his office, and what he did was set the conditions for any conversation by saying the ties of the United States to Europe are not just those of alliance or friendship, but of family.

So, it is strategic communication, communicating with a forethought and design.

KL: Because I think this is all about building trust in the end.

MKE: I think what I'm highlighting this to say is, it's awareness. It is self-awareness, ultimate self-awareness. Am I... Am I going into this totally self-aware of how I project what I'm trying to say, what I wish to achieve, and that I am open, I'm honest, and I'm ready to talk about the things I don't know. There will always be some things I can learn in any negotiation. Someone can teach me that,

71. The Art of Negotiation

“You might have thought it worked this way, but it doesn't... This is what really happens.”

Okay, now I understand how your process works for bringing people in. I understand now how you do assignments for attorneys. I understand the request process for getting homeland defense support in an emergency. So now I know how to support it better, and I also know how to find various sources of funding to help you more.

KL: From how you're approaching the concept of building trust – doing your homework, don't pre-judge, go for the big picture – does it matter how often I might be working with this person or with this organization?

MKE: For as long as I'm in the position I'm in, I will continue to work with that organization, so I want to... It's about building a relationship. So it's not just, “Hello, how are you? I want your people and your money, and I'd like them today, thank you.”

It is more about however this plays out, however, this negotiation plays out, we will have to work together for the next two to three years. And I want that to be a good working relationship.

KL: It sounds like what we're doing through building relationships is lowering some barriers. It's the breaking down of the we, they, me, you, kind of thing, it sounds like.

MKE: There's only us and we get to there's only us, then we have an ultimate vision and we can all find a way to get there.

KL: Are you explicit about that in negotiations? This negotiation is about something that we have to both get. Is that your point? It's not...

MKE: You just said the main word.

KL: ...you just get something and I get something?

MKE: I say *we* a lot. *We* all want to get this to work. *We* all want to have the same thing happen here. *We* want you to have the best team you can, so I'm going to make sure *we* provide you with all of the support and the resources and the people you need.

KL (34:39): So what was the point that you wanted to make at the end?

MKE: Humor. I think humor can go a long way to...it dispels my own nervousness at times. It breaks the ice in a room. It lets me see how the other people in a negotiation will react. If I get the gruff, “Well, let's just get on with it,” I'm like, “Okay I see what that's going to do.” I see how this is going to play out. But it lets you have another insight into what you are facing in terms of a negotiation, and also lets you see how, if you're talking about managing a project, how all of the team members are going to be able to work together. It gives you personnel and personality insight.

KL: Do your homework. Find out what the other party does. What drives them or what do they need that you can give them? How can you sweeten their pot? Remember, negotiation is not the time for discovery, but for sharing to get to a conclusion. You can find Mari K's book, [Leading the Narrative: The Case for Strategic Communication](#) on amazon.com.

KL: Dean Leslie is a circuit mediator for the US Court of Appeals for the Second Circuit. Besides being a consummate negotiator, he's an adjunct professor at New York Law School, where he teaches drafting contracts.

Dean Leslie: I mediate cases on appeal, and try to come to a resolution. So it's a post-judgment appeal setting, and the parties are then called upon to negotiate a resolution before continuing with an appeal.

KL: You are handling, after things have come out of a district level federal court, and there's still dispute of the judge's decision, in order to avoid an additional court setting, is where you're stepping in as the mediator.

DL: Right. Alternative Dispute Resolution is essentially an alternative to going to court.

KL (37:02): Let's lay out the position or the posture that involves you in the negotiation, or the act of having to negotiate or observe the negotiation that others are doing, which is, there's two parties. They've had some sort of judgment typically at a lower court level, and now they're coming to you to, essentially, get to a negotiated outcome based on the case that they have had, and for which they have some sort of judgment.

DL: Usually they have a judgment. Someone is...someone is displeased with the judgment. And so what we have is a situation where we tried to resolve a problem, and it's still not resolved, which is a typical posture for entering into a negotiation.

So the Second Circuit really just gives parties this opportunity to have an informal conversation to explore the underlying dispute. The understanding is that, often parties don't have a discussion about how to resolve their problems until after the litigation's already started. And at that time, the parties only get to speak to each other, really, on the witness stand. So they haven't had this frank informal open conversation, and they're all the way through to an appeal, and they still haven't had that.

Meanwhile, as a backdrop, there might be still some innovative or amicable resolutions available that really address the underlying issue, and really supplant the need for continued litigation. Often, they would have been better off engaging in this type of process before they went to litigation. But sometimes people don't wait that long.

DL (38:50): All negotiations could benefit from sort of a transformation of thinking. But in appellate mediation, you're really required to transform your thinking, because you're in a situation where a litigation has already focused on the past, and so now the only thing to do is to supplement that with the present and the future.

And when you're in a negotiation, often that is one of the most critical things to be able to do, is to change your viewpoint in order to create a resolution.

KL (39:35): What are some key attributes of good negotiation, or a method of approaching it?

DL: You know, oddly enough, it really, it's a very, very simple thing. There are simple steps, but

71. The Art of Negotiation

they're difficult to achieve. The first is to figure out how you speak to the parties and how you get the parties to speak to each other.

The next is how you listen to what people have to say, and how you engage their position. And I think that those two parts are the part that allow a resolution to fall out.

So you have to understand your own position in the negotiation. You're a person sitting at the table and you're a person that has specific incentives, and specific desires out of the discussion. And in order to share those effectively, you have to really develop and refine how you think about your position. How your position fits in with the other person, and then you have to figure out how to present it to them. You have to arrange it properly, it's sometimes called disposition, for the maximum impact.

And then of course there's the style. Your style has to match the person you're negotiating with. If you go in and, you know, to, for example, a Texas negotiation, to be very, very flip and stereotypical about it, and you're wearing a Yankees baseball cap, you're going to get a certain reaction. And if you go in with a big hat, you know what they say in Texas, big hat, no cattle. There's an issue there as well.

KL: Spoken like somebody east of the Hudson there, in your stereotypes. But what I'm hearing underneath this disposition, in this matching, we've heard that from other negotiators as well. It's kind of know your audience, but know yourself. I'm hearing the call for civil discourse, almost, like a level of civility in the sense that we're going to play by rules, as adults, almost.

It's approaching my negotiation from an understanding of myself, and an awareness that I need to be prepared to have the table set for understanding, for both of us.

DL: Right. And that preparation for understanding is to not understand just the specific preferences of the parties, but to also understand the form of an argument. There are things that are internally inconsistent; there are things that are internally consistent. And so, the important thing is to not put yourself in a situation where you're undermining your own credibility and also not to necessarily call out when someone has made an error in logic, but to explore that error together. And this is part of the listening aspect that I was just getting to. There are some issues with active listening that are really, really important here.

One thing is, is that we have these tendencies. There are certain habits, and I guess this is more about what we shouldn't do than what we should, but the natural tendency is to know the answer and to try to finish other people's sentences or other people's thoughts in your mind. That's because you can think so much faster than someone can speak.

KL: Yeah.

DL: And so it's almost inevitable that you, not only will you do that, and maybe miss their point, but if you do interject your understanding, you may either, 1) Get it wrong, which is really dangerous. Or 2) Discourage the other person from sharing information that may have been more pertinent, or may have been additional information that you needed, that they were going to get around to, because you shut them down, they think you understand it. Now, that breakdown in understanding is going to undermine your negotiation immediately.

KL (43:44): I think I'm hearing a sense for the space for trust. Like at least I can trust you to engage with me properly here, and that's going to be important when I'm negotiating. Is that where we're headed with this?

DL: Absolutely. And the space for trust is the corollary to something that I have sort of, kind of built in. I've got a bit of a bolster at the court. We have confidentiality of the mediation, and it's guaranteed by the court. So already, there's this level of being able to say whatever you want to. However, when you listen and you actively listen, and you listen, and you know I say this word advisably, without judgment. That doesn't mean without assessment. But it means without pre-judging other people's, the other side's for instance, incentives or motives, or anything until you have to... That allows the other party to open up and that allows a certain amount of trust to develop. And the things that create distrust is when you start treating the discussion as a competition. Maybe you're saying the same thing, you totally agree, but now you want to say it in a better way than the other person. Now that really shuts down their desire to communicate, because they're going to self-edit; they're going self-assess before they try to talk to you.

The other thing is, is that everyone wants to be right, and it's a natural tendency, so you'll tend to treat the discussion as a competition more than a cooperation. But a negotiation is an effort to cooperate. You have to ask yourself, "Why are these two people sitting here?" Because they want the same thing. In court, they both want resolution, so that's the big issue. But in the private sector and in business, people are negotiating because they have a common goal. And so, often I've seen negotiations break down, because people just refuse to see the result. And that's the thing you have to remember that you're all on the same team.

DL (46:00): But I do want to mention something about the listening. There are some forms of active listening, and I really think it's important to understand the different ones, and when they're important. There's informational listening. There's critical listening. There is appreciative listening and there's empathetic listening.

Now informational listening is where you should always start your negotiation. You should just be perceiving the information as broadly as possible, gathering it without any attention to how you're going to react or what your position is. You want to gather as much information as possible. There will be time, over lunch or over your cup of coffee break, for you to reflect on all of this information.

Because if you start reacting, if you go to critical listening too quickly, you may start to miss things. You know, after you've done your informational listening, you can move on to something critical. And that really requires sort of an understanding and analysis of the evidence, and self-reflection, importantly. You really need to think now, about how you fit in with what you've heard.

Now there's a stage as well, and I call this appreciative listening, because it's where you're really restraining your critical analysis and you're listening to the rhetoric, you're listening to how the person presents something. And you can begin to hear the words people use. It's very, very important. If I refer to money that you're giving to me as a payment, as opposed to a contribution, that changes the whole flavor of the conversation.

DL (47:48): Finally, there's this empathetic listening, which is to understand where things are

coming from. And that really is very difficult because sometimes when people make mistakes, sometimes when people offer improper syllogisms or they're illogical or logical or whatever, it's coming from some place. And if you can tap into where it's coming from, if you understand where it's coming from, not only can really reflect on the relationship to you and empower your ability to bring a solution, but it also builds the trust and their engagement in the solution that you bring, because it addresses these underlying issues that, by the way, the other the person may not even be aware of.

KL: We've got to get away from positions to more to what is the actual need.

DL: Indeed

DL (48:44): Getting into this...I call it the me-you line, because I thought of it as there's me, there's you, and we're on different sides of a certain issue and the object of the game to set up the me-you mechanism is to figure out all the incentives that are at work. The desires, whatever the preferences are, the necessities, etcetera. And you have to sort of align them. You have to figure out how they align with each other. And if you imagine the sweater as being the actual alignment, and you're trying to button this sweater around someone it doesn't fit, that's why there's this negotiation. If you could just button the sweater, we wouldn't need a negotiation.

And so, what you have to do is, once you've aligned these aspects, you work on buttoning the sweater where you can. You try to figure out where you can stretch the sweater a bit to make it, to button the sweater. Now the sweater may shift a little bit to one side or the other. When it shifts to one side, that gives some play on the other side of the sweater. And so, as you go through each one of these elements, or you go through trying to button up these elements, there's give and take on either side, and you remember the give and take, and by having aligned them, you can codify the give and takes. You can use a concession that was made in this important area in order to gain a concession in another area.

And that is how you create this sort of cooperation. Once you've buttoned this sweater, and maybe the buttons may not be aligned, they're not running straight down the middle like Mr. Rogers, but once you've done this, now you have to sort of resolve this matter, you have to now codify that. You have to implement it.

DL (51:04): Negotiation is not over when we've gone through the five main elements that we disagree upon, and resolve them one way or the other. It's over when we can button all of it up and put it in the past. And that requires papering that element. Papering our agreement. Describing our agreement. If you describe things in the wrong way, you'll get to a situation where the other side doesn't want to sign off on your agreement.

So by taking notes in the negotiation, you get to test the words. You get to use the words. The words become part of the agreement.

KL: It's something we face in project management. It's not done when you've just met the first set of requirements. Frankly, when the investment finally returns its value in project management, is when the product goes out and is used...when it enters the universe of use that the client wanted, that the customer wanted, that the stakeholder, the executive wanted. The project isn't really done when you've hit the end of your calendar, you know, last milestone of, "we produce something."

And in that sense, too, with this negotiation, we need to think through the... “We feel like we've met and agreed.” It's really in the detail. That paper really has to be signed, which means how we say it is going to matter. But more than anything, that's the real closure. It has to be papered. We've got to carry through.

DL: It's got to carry through.

DL (52:38): Negotiation used to be much more of an information game and the information was much more controllable. And one of the things, one of the evolutions that we've had through technology is that information is available. So if you give poor or inaccurate information, it is usually a lot easier now, to check whether that is right or not, and that could undermine your credibility. So as a result of that, many of the traditional aspects of negotiation, you know, like Aim high, and Bid low; Make them bid first...All of the traditional aspects of negotiation that we could go through a list and bullet point, but I won't bore you with... have given away to this is modern collaborative approach, where creative collaboration is the focus rather than traditional confrontation. It's not win-lose, it's win-win. It's increasing the size of the pie, you may have heard this type of thing.

I've seen this. I'm not just saying this. A modern collaborative approach will almost always improve on the total benefit to the parties than the traditional approach. There usually is a way to increase the size of the pie. And so it really is true, from what I've seen, that every negotiation, when you look at it creatively, and entrepreneurially and collaboratively, it's always an excellent opportunity to sort of develop and improve the synergies between the parties. You can benefit both sides with any negotiation.

Now, that being said, it only works if both parties are doing it. If you're the only party modernly collaborating and the other side is using traditional negotiation techniques, you're going get raked over the coals. And that's the real problem, and that goes back to the building of trust.

KL: Let me ask one other aspect to this collaboration. We like to talk about that in kind of a nice feel good way. But you're really describing that it has a value outcome. When we engage with it, in the manners that you've discussed, my sense is, is that this will help with the stickiness of the outcome. Like, I'm not trying to defect later, or find a work around. It's almost like the collaborative negotiation that was actually based on some level of trust and understanding each other...actually driven by the, “I get where they're coming from and they know my need now,” is that everyone is more likely to maintain the requirements of the outcome.

DL (55:26): That's absolutely correct, I've seen this over and over and over again. When a resolution is imposed on you, you only keep the letter of the resolution. But you keep the spirit of it when you've participated in creating it. It's now something that you've created, you have investment in it.

And what happens with this modern collaborative approach is that everyone has a stake in seeing the outcome succeed. If your agreement has no spirit, it will have no effectiveness. So really focus on the person that you're dealing with. Learn the person that you're dealing with and shake their hand and get to know them. This sort of building of the relationship is a critical, critical factor. And when I look at the negotiations that have been successful, invariably they deal with a very civil sort

71. The Art of Negotiation

of discourse. They definitely have parties that actively listen, try not to be judgmental, try to take everyone's interest into account.

DL: There's this parable of the oranges, where two sisters go to the village elders, with the question of how to divide 12 oranges amongst them. And the elder sister argues that, "I'm the elder sister. I should have seven oranges, while the younger sister only gets five." And the younger sister argues, "Well, we're sisters. We should share everything equally."

An effective negotiator will say, "What do you want the oranges, for?"

And then you find out that the elder sister wants to make marmalade, and the younger sister wants to make juice. And so now the elder sister can have the skins of 12 oranges and the juice of 2 (you need some juice to make marmalade). But the younger sister can have the juice of 10 oranges. And they are both so much better off than they ever intended to be, because they've collaborated with each other, and because that information was shared in a safe environment and they made the pie bigger.

KL (57:46): How you speak and how you listen are crucial. Word choice matters. Align your style to the other parties in the room. Know thy position, but at the same time engage in active listening. Be open to new information and alternative perspectives.

One thing we heard over and over is the imperative of the "we" approach – not you versus me. Both sides need to get; both sides will have to give. Go into a negotiation with a strategy and a clear understanding of what it is you want, as well as what you are willing to give up. All parties can and should walk away satisfied. Not just in the letter, but in the spirit of the agreement. That's the mark of a successful negotiation.

Special thanks to my guests, Myles Miller, Mari K Eder, and Dean Leslie.

Announcer: Our theme music was composed by Molly Flannery, used with permission. Additional original music by Gary Fieldman, Rich Greenblatt, Lionel Lyles, and Hiroaki Honshuku. Post-production performed at M Powered Strategies.

KL: PMPs who've listened through this complete podcast may submit a PDU claim, one PDU, in the talent triangle Strategic, with the Project Management Institute's CCR system. Use provider code 4634 and the title "PMPOV0071 The Art of Negotiation." You can also use the PDU claim code 4634L71UP5.

Be sure to tune in to next month's episode, Cultivating Success.

Lucas Marino: If we don't invest or at least acknowledge that we're developing our own leadership in a structured way, we're kind of at the mercy of whatever comes through the other side of the gate.

Lisa diTullio: What are we doing as project managers? We are instituting change. And the only way that people are going to gravitate towards that change, whether they are members of our project teams or they are the recipient of those changes, the only way that we're going to get them to latch on, to get excited and to stay with this for the duration till we cross that finish line, is to affect them in two levels: rationally and emotionally.

71. The Art of Negotiation

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