Theories of Negotiation: System of assumptions, accepted principles and rules of procedure with which to analyze, understand and predict nature of behavior in a certain situation.

Adversarial
Underlying Assumptions?

Problem-Solving
Underlying Assumptions?
Strategy: Techniques employed to achieve your goals.

- **Adversarial**
  
  Competitive: Focus is on adversarial relationship, moves against the other, hides the ball
  
  Cooperative: Catch more flies with honey, moves toward opponent, takes the moral high ground

- **Problem Solving**
  
  Finding mutual interests, creating value, separating people from the problem, using objective criteria
Tactics: Specific Behaviors designed to advance goals

*Adversarial-*

- Extreme Opening Demands
- Few and Small concessions
- Limited Disclosure
- Commitment

*Problem Solving –*

- Brainstorming, logrolling
Extreme Opening Demands: Anchoring

Estimates tend to be biased toward the first number we encounter

– Absurd example
– Trial
  • e.g., Plaintiff’s lawyer’s damage requests
– Negotiation and settlement
  • e.g., Opening offers/demands
  • e.g., Insurance policy limits
  • e.g., Statutory damage caps
# Trial Studies

<table>
<thead>
<tr>
<th>Damage Request</th>
<th>Mean Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>$168,000</td>
</tr>
<tr>
<td>$500,000</td>
<td>$283,000</td>
</tr>
<tr>
<td>$700,000</td>
<td>$423,000</td>
</tr>
</tbody>
</table>

- Malouff & Schutte (1989)

<table>
<thead>
<tr>
<th>Damage Request</th>
<th>Mean Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100</td>
<td>$992</td>
</tr>
<tr>
<td>$20,000</td>
<td>$36,000</td>
</tr>
<tr>
<td>$5 million</td>
<td>$442,000</td>
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</table>

- Chapman & Bornstein (1996)
Negotiation “Meta-Analysis”  
Orr & Guthrie (2006)

- Negotiation simulation studies (n=16)
- Basic result = .5 correlation
  - i.e., Every $1 increase in an anchor results in a 50 cent increase in settlement amount
- Negotiator experience and presence of additional information mitigate the impact a bit
Settlement Conference

Wistrich, Guthrie & Rachlinski (2005)

Facts

• P is a 31-year-old teacher and father
• D is a package-delivery company
• P loses his arm and breaks three ribs in auto accident
• D concedes liability and economic damages, but contests pain and suffering damages
• Unsuccessful settlement conference
  – Control – P’s lawyer says P wants a lot
  – Anchor – P’s lawyer says P wants $10 million
• Question: What pain and suffering damages will you award?
Settlement Conference

*Wistrich, Guthrie & Rachlinski (2005)*

**Results**

<table>
<thead>
<tr>
<th>Groups</th>
<th>Mean Award</th>
<th>Median Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control</td>
<td>$808,000</td>
<td>$700,000</td>
</tr>
<tr>
<td>Anchor</td>
<td>$2.2 million</td>
<td>$1 million</td>
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</table>
Few & Small Concessions: Reciprocity Norm

• We feel obligated to repay in kind what we have received from another
  – e.g., Christmas cards
  – e.g., survey researchers
  – e.g., wait staff

• Reciprocity in settlement
  – trades
  – rejection-then-retreat
Loss Aversion

• Losses loom larger than gains
  – Thus, we place a higher value on an item we possess than on an item we are trying to acquire (endowment effect)
  – Also, we place a higher value on the current state of affairs than we do on any change from it (status quo effect)
Coffee Mugs or Chocolate Bars

Knetch (1989)

• **Group 1** – Choose either
  – Mug – 56%

• **Group 2** – Endowed w/ mug but can trade for chocolate bar
  – Mug – 89%

• **Group 3** – Endowed w/ chocolate bar but can trade for mug
  – Mug – 10%
Reactive Devaluation

• We devalue offers
  – Identity of the offeror
  – Offered versus withheld
Reactive Devaluation

*Stillinger et al (1988)*

**Identity of Offeror**

American survey respondents were asked to evaluate a nuclear disarmament proposal in 1986.

- Reagan – 90% viewed it “favorable” or “evenhanded”
- Neutral Third Party – 80%
- Gorbachev – 44%
Reactive Devaluation
Stillinger et al (1988)
Offered vs. Withheld

Stanford survey respondents reviewed two South Africa divestment plans – i.e., “Specific” and “Deadline”

- When told Stanford had offered “Deadline” plan, 85% favored “Specific”
- When told Stanford had offered the “Specific plan, only 40% favored it
Self-Serving Biases

We tend to make judgments about ourselves in egocentric ways:

– Abilities and prospects
– Contributions to collective activities
– Merits of our positions

– Selective Perception
  We tend to minimize information that is inconsistent with our theory
Self-Serving Bias in Settlement  
*Loewenstein et al* (1993)

Subjects read about a suit involving a car/motorcycle accident in which P sued D for $100,000. Half assigned to the “plaintiff” condition and half to the “defendant” condition:

- **What will judge award?**
  - Plaintiff -- $14,527 more than defendant

- **What is a fair settlement value?**
  - Plaintiff -- $17,709 more than defendant
Framing

• We tend to perceive decision options as “gains” or “losses” from the status quo:
  – Risk *averse* when choosing “gains”
  – Risk *seeking* when choosing “losses”
“Asian Disease” Problem  
*Tversky & Kahneman (1981)*

Scientists expect an outbreak of an Asian disease that will kill 600 people. Two treatment programs are available. Which will you choose:

- **Program A** – 200 people will be saved *[72%]*
- **Program B** – 1/3 chance that 600 will be saved and a 2/3 chance that 0 will be saved

OR

- **Program C** – 400 people will die
- **Program D** – 1/3 chance that 0 will die and a 2/3 chance that 600 will die *[78%]*
Framing in Litigation & Settlement

• Plaintiff are risk averse
  – Prefer settlement

• Defendant are risk seeking
  – More attracted to trial
Litigation Problem

Rachlinski (1996)

Imagine you are the plaintiff [defendant] in a copyright infringement lawsuit. You are suing [being sued] for the $400,000 that the defendant allegedly earned by violating the copyright. Trial is in two days and the defendant has offered to pay [plaintiff has offered to accept] $200,000 as a final settlement. If you turn it down, you believe that you will face a trial where you have a 50% chance of winning [losing] a $400,000 award. Will you settle?

– Plaintiff settlement rate – 77%
– Defendant settlement rate – 31%
Framing and Judges
*Guthrie, Rachlinski & Wistrich (2001)*

- Similar facts involving a copyright dispute
- Also provided information about litigation costs to each side
- Assigned some judges to a plaintiff’s frame – Do you believe P should settle?
  - 40% said yes
- Assigned some judges to a defendant’s frame – Do you believe D should settle?
  - Only 25% said yes
Contrast

We often alter our preferences between two options when an additional option is added to the choice set

– “Rational” only if the new option provides relevant information
– “Contrast” – Added option is similar but inferior to one of the original options
Simple Decision Problem
*Simonson & Tversky (1982)*

**Two-Option Group**
Select one of the following:
- (1) $6 cash payment, or
- (2) Cross pen

**Three-Option Group**
Select one of the following:
- (1) $6 cash payment
- (2) Cross pen
- (3) Inferior, unattractive pen

**Results**
Two-Option Group – 36% chose Cross pen
Three-Option Group – 46% chose Cross pen
Problem- Solving Negotiation:

GETTING TO YES
Getting to Yes

Positional Bargaining

Get locked in
Inefficient
Endanger relationship
Soft too dangerous

Principled negotiation

Produces wise agreement
Meets each sides interest
Resolves conflicting interest fairly
Durable
Community interest
Separating the People from the Problem

• Negotiators are people first
• Separate the relationship from substance: deal with people problem
• Perception: Their thinking is your problem—understanding is not agreeing
• Emotion
• Communication: not listening, misunderstanding
Focus on Interests not Positions

• Identifying Interests: Why, why not?
• Each side has multiple interests
• Acknowledge their interest
• Put the problem before the answer
Invent Options for Mutual Gain

OBSTACLES

Premature judgment
Searching for the Single Answer
Assumption of fixed pie
Solving their problem is their problem

PRESCRIPTION

Separate inventing from deciding
Brainstorming
Dovetail differing interests
Insist on Objective Criteria

• Deciding on basis of will is costly
• Develop objective criteria:
  fair standards
  fair procedures
Negotiate with objective criteria
BATNA

• “Bottom line” too costly; limits ability to use what you have heard
• Think about alternatives, make the most of your assets
• Develop your BATNA: list of actions if no agreement; improve some ideas; tentative selection
• Consider the other sides BATNA
What if They Won’t Play or If They Use Dirty Tricks?

• Negotiation Jujitsu
• One text Procedure: mediation
• Negotiate about rules of game
• Addressing:
  deliberate deception
  psychological warfare
  Positional pressure tactics