

SOFTWARE FOR NEGOTIATIONS

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1998 Note: At the time this article was written, James A. Eidelman served on the ABA LPMS Council and was chair of the Practice Systems Interest Groups in the Computer Division. He is currently President of Eidelman Associates, 317 S. Division, Suite 187, Ann Arbor, MI 48104. (Web address: www.lawtech.com).

To save space, this article is reprinted in text format, with inserts of the screen shots from the original article, as published.

Although the article was written 5 years ago, the content is as valid today as it was then. Both products have been updated since then, and each publisher can be found on the World Wide Web at the Web addresses listed at the end of the article.

TEXT:

Whether you are trying to close a large business transaction, settle a case or negotiate a labor contract, using Negotiator Pro or The Art of Negotiating during preparations will help you get a better result. These programs can make you a more effective negotiator by guiding you through the psychological factors of negotiation and by assisting you in the process of preparing a negotiation plan.

Both programs fall into a category that some call "brainstorming software." These are packages designed to help you think and plan. Some encourage the creative process, some help plan financial strategies and some help you write a brief or prepare for trial. (See Eidelman, "Brainstorming Tools for Trial Lawyers," Winning with Computers, Part 2, ABA, 1992.) These packages help you to brainstorm about your negotiations.

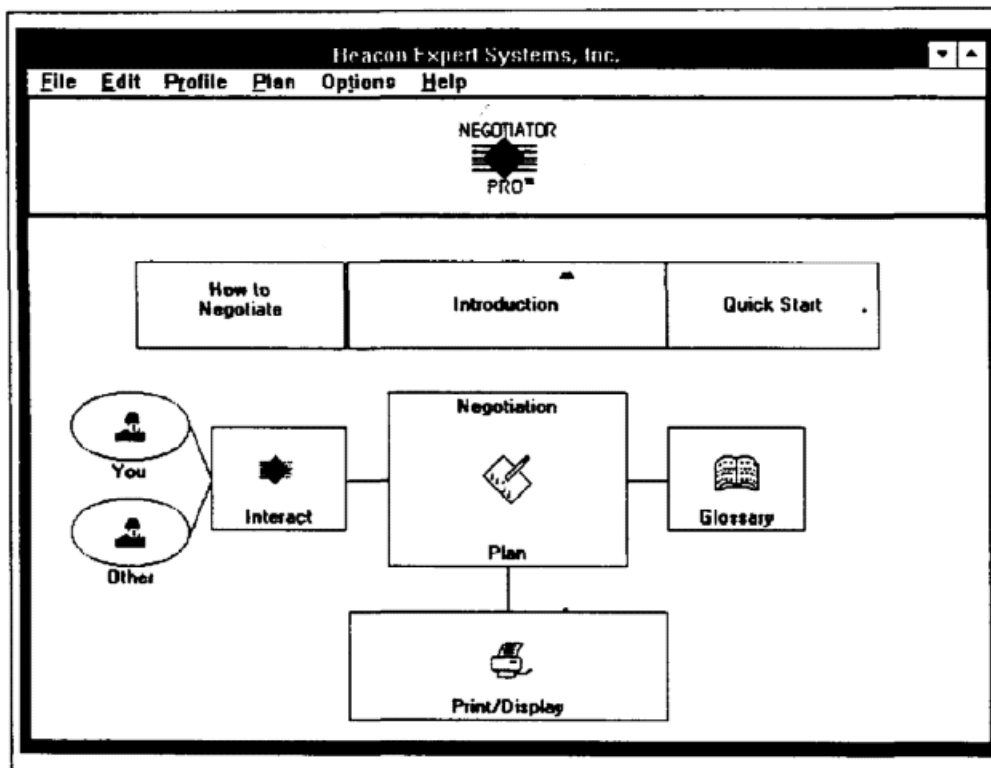
Negotiating skills are one of the primary sets of skills lawyers must have. Unfortunately, negotiating skills and tactics are not taught in most law schools. The important new ABA publication Statement of Fundamental Lawyering Skills and Professional Values (Task Force on Law Schools and the Profession:

Narrowing the Gap, ABA, 1992) reinforces this. It identifies negotiating as one of the fundamental skills of lawyering, with a section on negotiation skills and techniques a lawyer should master. In the manual, negotiating is divided into three basic parts. Of the three basic parts, "Preparing for Negotiations Effectively" takes up 80 percent of the section, while the parts on conducting the negotiations and counseling the client together take up just 20 percent. This highlights not only the importance of proper preparation for negotiations but also the reason both of these programs can be of such value.

NEGOTIATOR PRO

Negotiator Pro was designed by attorney and ABA LPMS active member Dan Burnstein. A version is available for the four most popular computer environments lawyers use -- MS-DOS, Microsoft Windows, Apple Macintosh and OS/2. I tried both the DOS and Windows versions, and worked primarily with the Windows version.

The interface is very nice, and includes a graphical overview in which parts of the system can be accessed with a mouse.

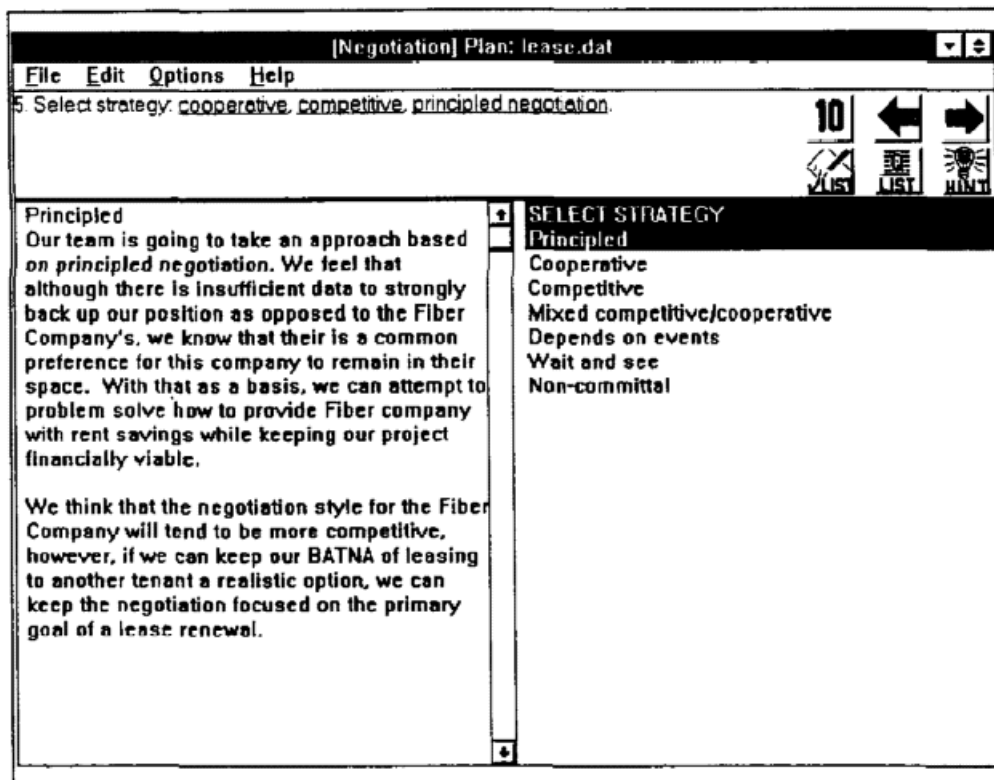


Negotiator Pro overview screen.

The Plan

The second feature, and the most important one, is the Plan. The Plan has two modes: a 10-question mode and a 35-question mode. You choose which one you want, based upon the complexity of the negotiation. You answer a series of questions designed to make you think about the opportunities and obstacles involved in a particular negotiation. A window with a checklist provides an extensive list of possible answers. The result is an outline that helps you both to enter the negotiations better prepared to achieve your goals, and to recognize and counter maneuvers that the other side might attempt.

Each question presented contains highlighted words linked by hypertext to help screens. There is a text box in which the lawyer types in text in answer to the question. This text will be incorporated into the appropriate part of the negotiation plan outline that can be printed or incorporated into a word processing document. For each question, a "checklist" of suggested ideas appears. The lawyer can insert any of these into the text of the plan with the click of a mouse. Also, a "helpful hint" relating to the question appears in the help screen on the right side of the screen.



Negotiator Pro questions and checklist: strategy.

The source of these questions, checklists and hints is a "template" file, created with any word processor that can output a standard ASCII format file.

The system comes with a "default" template that contains standard questions about the parties, objectives, objections, tactics, when to disclose your BATNA (Best Alternative to Negotiated Agreement) and other issues that may apply in any negotiation. There are also templates provided for purchase and sale. If I were a lawyer who regularly handled a particular type of matter, such as labor union contracts, venture capital deals or divorce settlements, I would set up a template specifically designed for the issues and parties in that type of negotiation. This is quite easy to do.

The interactive nature of the program truly does help you think about each aspect of the negotiation, research and compile needed information, and integrate it into a plan. The online storehouse of information, while not a substitute for reading books on negotiation, is quite helpful. If you have read several books on negotiation over the years, these help screens will serve to jog your memory and get the creative ideas flowing. The hypertext help will also give brief introductions to new and important ideas, with bibliographic information about where to find the full text.

One of the most interesting aspects of this system is the way it handles "tactics." Several of the questions relate to tactics, and the system helps you plan your tactics in two ways. First, it provides a checklist of popular negotiation tactics. Second, the hypertext help lists dozens of tactics, the explanations of which are available at the click of a mouse. Using the Copy feature, the explanation of an interesting tactic can be inserted into the text of the plan.

One additional feature is an "action plan," which functions as a notepad to write down "things to do." These might include calls to make, points to research, documents to prepare and any other similar notes.

Hypertext

The third feature is an extensive glossary that draws more than 350 excerpts from leading books on negotiation. We used the Windows version of the program. This operates in a standard Windows help style, using "hypertext" features, so that the user only has to point-and-click the word or subject he or she wants to learn about.

Another nice feature is the ability to annotate the help/glossary entries. At any point, you can annotate the text of the hypertext help, and a little picture of a paper clip appears.

Working with the Program

The program was designed to make you think through personalities, issues and strategies using the "principled negotiation" concepts of Fisher, Ury & Patton: *Getting to Yes: Negotiating Agreement Without Giving In*. This best-selling book

from the Harvard Negotiation Project introduced many important concepts that constitute the heart of this computer program, including negotiating a "win-win" result (both sides are happy), negotiating over "interests" (needs) rather than "demands" or "positions," and understanding how to work with the BATNA of each side -- or what your alternatives are if you walk away from the negotiations without a deal. (For trial lawyers handling a dispute, this is usually a lawsuit.)

Integration

I used the Windows version of the program. It takes full advantage of the Windows environment and is integrated in a number of ways.

First, you can use the program to access relevant advice about issues by clicking the mouse on a highlighted or underlined word. The program uses Microsoft Windows "hypertext links" both within the help system and within the program screens themselves.

Second, you can copy text from the help screens to the Windows Clipboard and paste them into your negotiation plan. I found this helpful for including practical advice about how to deal with particular negotiating styles on the other side.

Third, you can automatically incorporate into your plan the results of the "expert system" which creates a psychological profile and gives specific advice.

Finally, you can "append" other programs into your plan. This is particularly important to attorneys, who regularly may need to incorporate legal research (word processing) and financial analysis (electronic spreadsheets, graphs) into a plan.

A noted trial lawyer to whom I showed this program pointed out the need for this feature. He feels that most of the cases he tries involve large sums of money, present value calculations, calculations of lost opportunity costs, litigation risk analysis, business losses and other significant "number crunching." He felt that a program that did not help with these was of limited use to him. While neither Negotiator Pro nor The Art of Negotiating does financial analysis, Negotiator Pro does let you append Excel, Lotus or Quattro spreadsheets that contain the analysis, which can be of significant help in putting together the negotiation plan.

The developers are compiling a library of sample professional negotiations. Some modules are already available for \$ 49 each. The first module comes with the program and includes examples on negotiating the purchase of a car, the terms of a lease for commercial property, licensing of technology, terminating an employee and obtaining increased job responsibility with better pay. Future modules will contain samples covering vendor relations, financial management,

total quality management, governmental standards, financial turnaround negotiations, investment opportunities and mediation.

Hypertext is also included for many different national negotiation styles, including Europe, the Pacific Rim, Eastern Europe, Egypt, Mexico and India.

After working with the Windows version to develop a plan, I loaded the character-based version. I am delighted to report that it has virtually the same interface as the Windows version. It supports a mouse and pull-down menus, and no retraining or rethinking is necessary to go between the two versions. The only substantive difference is that the help text does not use hypertext or display on the screen at the same time as the questions. Another item of good news is that the data files are compatible. I was able to use the same personality profiles and plan data with the Windows and DOS versions.

In a number of ways, the program provides some intelligent tutoring. For example, after finishing the plan, the program analyzes which of the key areas of a negotiation you have failed to address.

The program is so robust and open-ended that it took some time before I got the hang of how to jump around among the different parts and make full use of the program. Once I used it for awhile, I found Negotiator Pro to be an outstanding tool to use in preparing for negotiations.

THE ART OF NEGOTIATING

Background

The Art of Negotiating is the computer version of Gerard I. Nierenberg's well-known books and seminars on negotiation, implemented by his son, Roy Nierenberg. The program was one of the first of its kind, originally marketed in 1984. The first software package included the book *The Fundamentals of Negotiating*, and this version includes Gerard Nierenberg's excellent book *The Complete Negotiator*. In fact, with this program, the place to start is the book. The program is a highly interactive and useful way to think through the issues discussed in the book, but it does not replace the book.

The Program

The Art of Negotiating presents a menu to take you through submenus and questions in seven areas, as follows:

1. Subject Matter of the Negotiations

Your side

The other side

What the negotiation is about

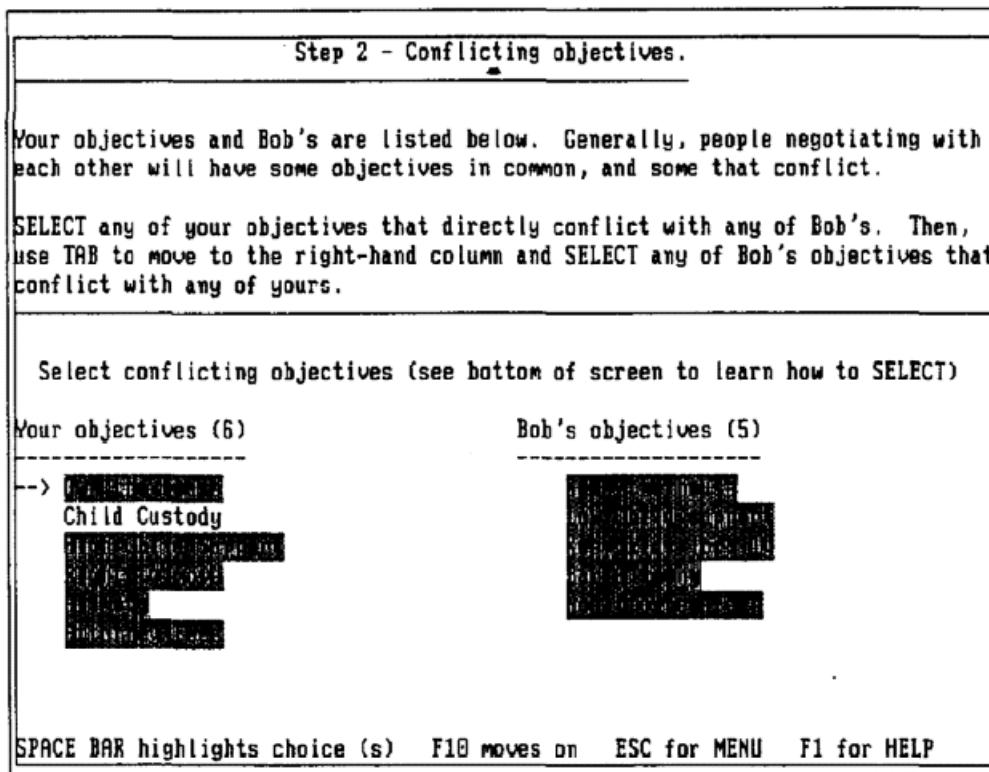
Other important parties

2. Objectives (See screen shot below)

Each side's objectives

Conflicting and nonconflicting objectives

Ranking of objectives of each side by importance



Art of Negotiating screen: conflicting and nonconflicting objectives.

3. Issues and Positions

Issues in the negotiations

Rating of the issues

Positions and questions on the issues

4. Needs/Gambits

Levels of approach

Needs of the other side

Working for or against needs to make gambits

Rating your top gambits

5. Climates

Determining your negotiating philosophy

Major climate categories

Choosing climates to create

Anticipating the other side's climates

6. Strategies

Explanations of strategies

Choosing your strategies

Anticipating the other side's strategies

Other side's counters to your strategies

Your counters to other side's strategies

7. Agenda

Options for handling specific issues

Setting up your private agenda

Refining your position and questions

Deciding about a general agenda

Thinking about your close

The program performs (and asks you about) some interesting comparisons. For example, in asking you what the negotiations are about, the program asks if you and the other side are in agreement on the subject matter, item by item, pointing out agreements and differences. With respect to the issues, the

program asks you to type in your position and the opposing side's position, and questions you have about that issue.

Nierenberg points out that understanding the other side's needs is the key to negotiation. The questions regarding needs and gambits (ways to meet needs) are very helpful, but sometime a little too general. Discussed are the need to survive, to be secure, to be loved, to retain self-esteem, to be self-actualized, etc., all of which are important, but such needs may not be too helpful in negotiating the sale of a building or settlement of an antitrust suit.

"Climates" are the feelings created during the negotiation. The system lets you select the climates you want to create, and those which you think the other side will create, such as cooperative vs. antagonistic, ethical vs. unprincipled, and open-minded vs. closed-minded.

Twenty-eight strategies are presented, including "When strategies" (surprise, apparent withdrawal, etc.), "How and Where strategies" (bracketing, association) and "Other strategies" (Good Guy/Bad Guy, Intentional Misunderstanding, etc.). I found this, and the recommended alternate strategies, to be particularly interesting, although they are not explained in as much detail as I wish they were. (They are covered in detail in the book.)

The Agenda, the final part, lets you raise false issues ("red herrings"), treat some issues as "fait accomplis" (already resolved), rate and refine issues, and think about a "close."

All of this can be printed out into a report which, like Negotiator Pro's report, becomes part of a "briefing book."

I found going through The Art of Negotiating and the related book to be a very useful process -- one that forced me to think through the issues in a pointed way that helped me achieve a better result.

WHICH PROGRAM IS BETTER?

"Which program is better?" This is the question my friend the trial lawyer asked. "Surely you don't expect me to buy both of them!" This question is hard to answer because they are, in fact, different programs that do not set out to do the same thing.

Negotiator Pro is much more open-ended, with advice from hundreds of texts, hypertext interface and a free-form format. Negotiator Pro is more robust, more theoretical and more flexible. The ability to add templates with your own questions and checklists makes it particularly suitable for lawyers, who are often involved in settling large and complex matters of a specialized type. The same is true of the ability to append spreadsheets, word processing and other

applications. I also like the Windows interface and "Getting to Yes" approach to negotiating.

The Art of Negotiating, on the other hand, is much more structured and focused in format, fields and advice. It seeks to emulate having Roy Nierenberg at your side, leading you through the questions as your consultant. Its advantage is that it is very easy to get into, to use and to get good results from. It is more specific in its suggestion of strategies, and offers an important feature that Negotiator Pro lacks -- suggestions of counterstrategies to tactics either you or the other side may use. It also has more on some familiar strategies and counters to them, such as "Good Guy/Bad Guy" and "Agent with Limited Authority." I like its focus and the way it forced me to go through all of the needs, objectives, issues and strategies, and to rank them.

If you are a serious negotiator, I recommend both. If you have to choose, then select the one whose features best fit your individual needs.

PRODUCT INFORMATION

Negotiator Pro is available from Beacon Expert Systems Inc., 35 Gardner Road, Brookline, Massachusetts 02146. Phone (617) 738-9300. Fax (617) 734-3308. Order (800) 448-3308. (Windows and OS/2, \$ 648; Mac and DOS, \$ 499). Hardware requirements: 286 or higher, 2 megabytes RAM, 1.5 megabytes on hard drive, mouse and printer recommended. (Web: www.NegotiatorPro.com)

The Art of Negotiating is available from Experience in Software, Inc., 2000 Hearst Avenue, Suite 202, Berkeley, California 94709-2176. Phone: 800-678-7008. Fax (510) 644-3823. It runs on most PC's, and is available for \$ 195. (Web: <http://www.experienceware.com/html/art.htm>)