

Negotiation Fundamentals for Diplomatic Leadership



Thursday, March 31, 2022

Welcome and Introductions

Professor Alex Carter

Director, Columbia Law School Mediation Clinic

**Kevin Cryan, Emily Dennan, Sophia Han, Parker Hasler,
Yae Rin Kim, Maria Philip, Paul Riley, Aita Seck & Isaiah Strong**

Columbia Law School Mediation Clinic

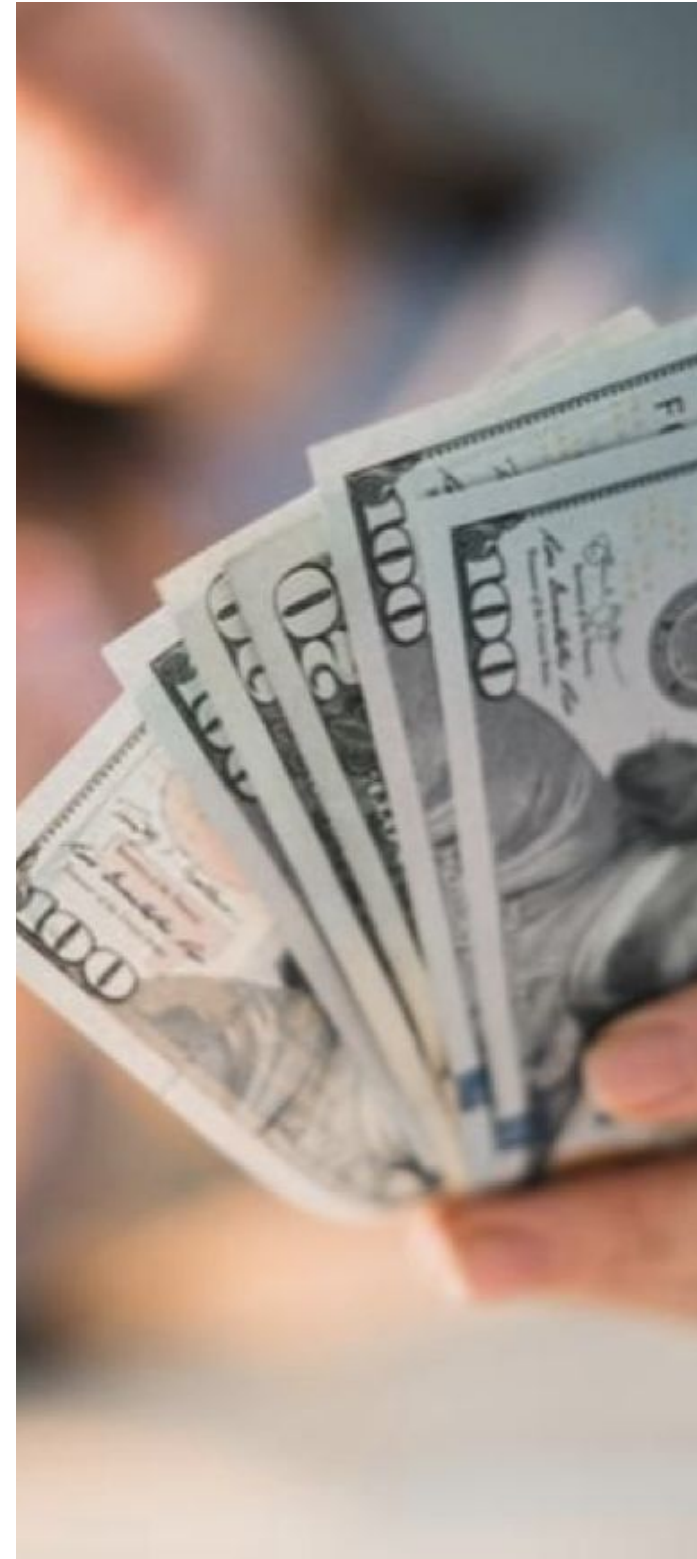
Goals for the Day

- To empower participants to negotiate thoughtfully and successfully
- Explore the importance of active listening for effective communication and dispute resolution
- Understanding how to ask the right questions for the purpose of information gathering

Icebreaker

Negotiation

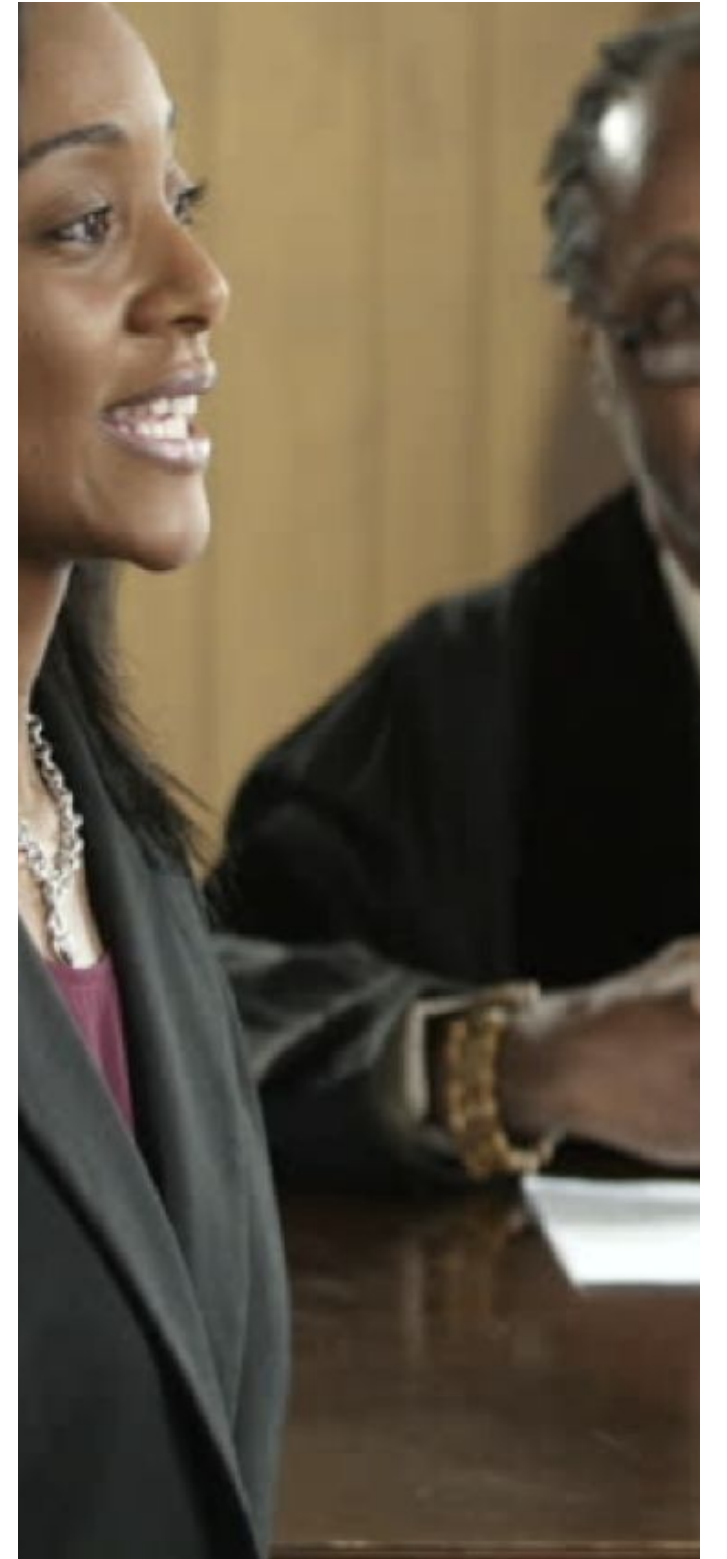
Negotiation: The Old Definition



SALARY



DEALS



CASES



What is negotiation?

- A **negotiation** is any conversation in which you are steering a relationship*
- Negotiation starts by steering the conversation you have with **yourself**
- Then you sit down to steer the conversation with **someone else**
- In **mediation** a third-party neutral facilitates a **negotiation** between people in conflict

Ask for More Framework: The Best Approach to Negotiations

- The **best approach to negotiation** involves raising the right questions
- Ten questions, five you ask yourself (Mirror) and five you ask someone else (Window)
- Each question serves a particular function useful to any legal negotiation (or non-legal ones!)

Mirror Questions

- The negotiation starts before you sit down with the other side: you need to steer your own internal conversation first
- Ask yourself open questions to clarify your own goals, interests, emotions and solutions
- When you do this work first, you will be in a much better place to hear and evaluate what the other person says

Mirror Questions

- What's the problem I want to solve?
- What do I need?
- What do I feel?
- How have I successfully managed this in the past?
- What is the first step?

- Ask someone else open questions in order to create trust, gather information and design better solutions
- Listening more than you talk creates better negotiations that generate more value
- You also generate relationships that transcend one “yes” to create longer-term, mutual gain

Window Questions

- Tell me..
- What do you need?
- What are your concerns?
- How have you handled this successfully in the past?
- What is your first step?

Window Questions

Ask for More Framework

- Expert negotiators know that their greatest source of strength in negotiation is not bluster but **knowledge**
- When you **know more**, you can **steer better**
- Asking the right questions helps you ask for more in every area of life!

Negotiation Theory

Negotiation Theory

How an individual approaches conflict and negotiation is determined by factors such as:

- Personality
- Background (e.g.culture)
- Surroundings (e.g. the situation)

NEGOTIATION THEORY

COMPETITIVE NEGOTIATION

Each party focuses on its own gain, with an aim towards “winning”

PROBLEM-SOLVING NEGOTIATION

Parties focus on satisfying needs and goals of all parties

FACE-NEGOTIATION

Parties’ negotiation styles are driven by their self-image in social contexts

Competitive-Negotiation Theory

Core Assumptions

1. There is a fixed set of resources (likely false)
2. All parties value the resources equally (almost certainly false)
3. The negotiation will end with a winner and a loser

This is also known as the “**zero-sum**” game

Problem Solving Negotiation Theory

- Identifying complementary needs
- Expanding the “pie”
- Requires creativity and increased transparency (and, in turn, trust)
- Finding new sources of value in the stated and unstated
- Considering short- & long-term

Potential Categories of Needs*

Economic
Legal
Social (relationships)
Psychological (feelings, risk aversion)
Ethical/ moral (fairness)

*Toward Another View of Legal Negotiation: The Structure of Problem Solving, Carrie Menkel-Meadow (1984).

Negotiation Guidelines

- SEPARATE THE PEOPLE FROM THE PROBLEM
 - USE OBJECTIVE CRITERIA
- FOCUS ON INTERESTS, NOT POSITIONS
 - KNOW YOUR BATNA
- GENERATE OPTIONS FOR MUTUAL GAIN



How we see (or hear) things depends on who we are.

Face-Negotiation Theory

Whether a culture is more individualistic (*i.e.*, US) or collectivistic (*i.e.*, China) could explain one's negotiating behavior

Individualism: Individuals view themselves as independent of the collective and prioritize personal goals

Collectivism: Individuals view themselves as part of a group and are willing to prioritize goals of the larger group over their own

U.S. Negotiators, as described by...

Mexican Negotiators

- Pushed, Time-Conscious
 - Reserved
 - Realistic
- Teamwork-Oriented
- Quality-Conscious
 - Unemotional
- Serious, Business-Like
 - Self-Controlled

Taiwanese Negotiators

- Relaxed, Easy-Going
 - Friendly, Outgoing
 - Optimistic
 - Independent
- Output-Oriented
 - Emotional
- Fun-Loving, Joking
 - Self-Indulgent

Culture in Negotiation

10 Factors Often Influenced by Culture in Negotiation

- Negotiating goals
- Attitudes to the negotiating process
- Personal styles
- Styles of communication
- Time sensitivity
- Emotionalism
- Agreement form
- Agreement-building process
- Negotiating team organization
- Risk taking

Getting to “Yes”

1. Adapt Your Expressions of Disagreement

2. Tailor Your Expressions of Emotion

3. Identify the Approach to Trust-Building

4. Avoid Yes/No Questions

5. Identify the Preferred Agreement Form

Negotiation Bias*

Negotiation biases may cause parties to make decisions and judgments that are driven by cognitive misperceptions.

■ Framing

How a problem is posed

■ Fixed-pie

Assuming all parties want the same things

■ Self-serving

Perceiving an issue in a self-serving way

■ Anchoring

Estimating values, often using unreliable info

■ Overconfidence

Believing in infallibility of one's own judgments

■ Emotional bias

How mood affects judgments

■ Relationship bias

How the, often prior, relationship between counterparts impacts judgments

* A Literature Review of Cognitive Biases in Negotiation Process, Andrea Caputo (2013).

Active Listening

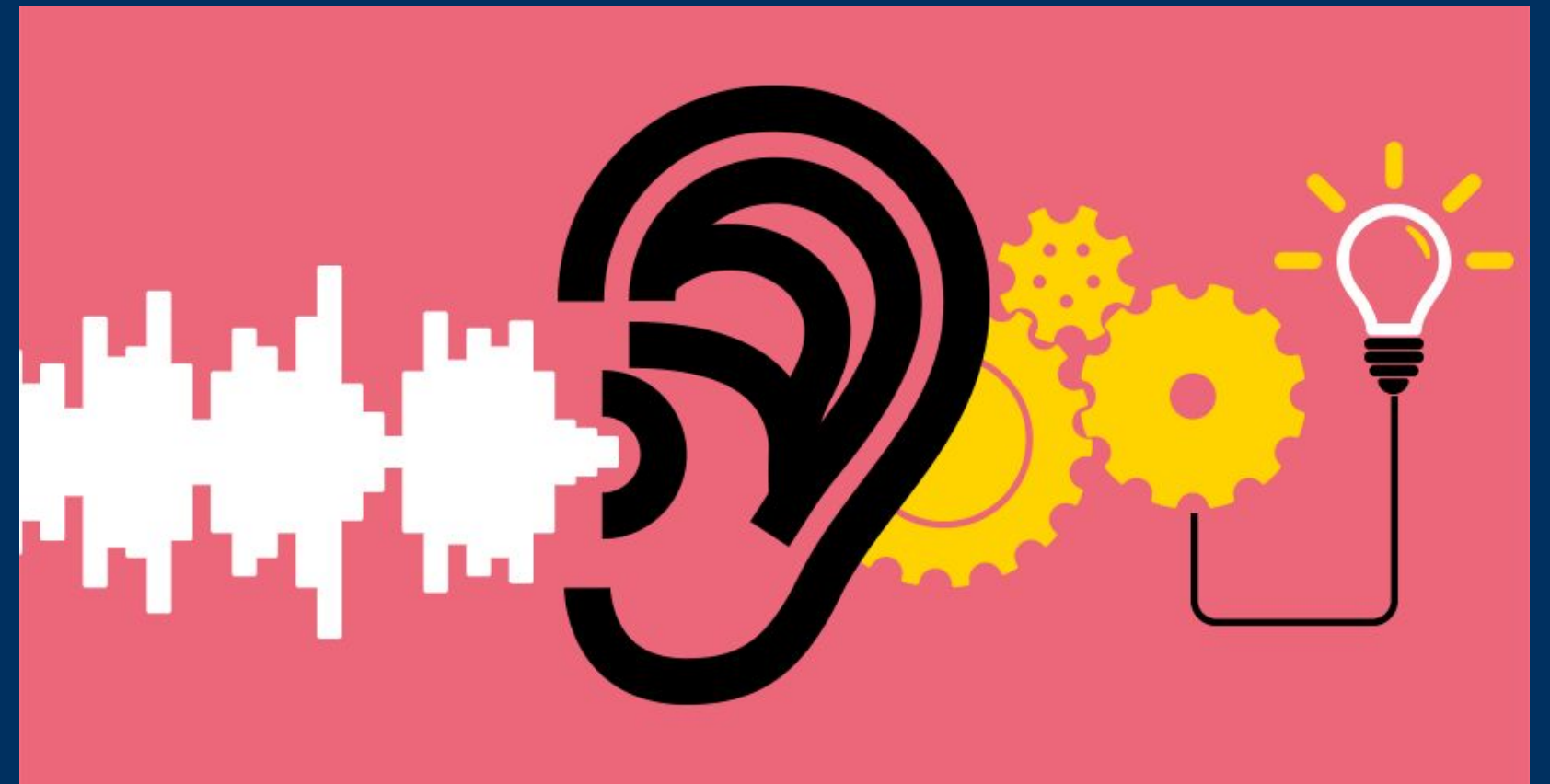
How to Listen

- Be genuinely **curious**
- Listen to **understand** participants'
 - Concerns
 - Needs
 - Wants
- NOT to prepare your response
- What are ways to demonstrate you are listening?



Active Listening: Non-Verbal

- **Non-Verbal**
 - Stop talking
 - Make eye contact
 - Think about posture/
facial expression



Active Listening: Verbal

- **Verbal**

- Clarify
- Acknowledge what is being said
- Acknowledge feelings
- Summarize the **facts, feelings, issues, and interests** of individuals as they discuss their conflicts



Facts

The “what”

- Attention to detail
- Take notes
- Allow the other person to tell their story



Feelings

The emotions underlying a view of the facts

- The feelings experienced by parties and those affected
- The feelings the negotiation invokes

Issues

A point of tension in need of resolution

- 5 Types of Issues:
 - Control over resources
 - Preferences and nuisances
 - Values
 - Beliefs
 - The nature of the relationship between the parties

Interests

An interest is the need represented by an issue or position.

Basic Needs:

- Economic
- Social
- Psychological
- Legal
- Political
- Moral/Ethical



Facts, Issues, Feelings, and Interests

“Your President said she would implement a cease-fire but then did not follow through with that assurance. How can I trust you if your government says one thing but does another?”

Facts, Issues, Feelings and Interests

Facts: The President said she would implement a cease-fire but this did not occur

Facts, Issues, Feelings, and Interests

“Your President said she would implement a cease-fire but then did not follow through with that assurance. How can I trust you if your government says one thing but does another?”

Facts, Issues, Feelings and Interests

Issues: Communication, trust

Facts, Issues, Feelings, and Interests

“Your President said she would implement a cease-fire but then did not follow through with that assurance. How can I trust you if your government says one thing but does another?”

Facts, Issues, Feelings and Interests

Feelings: Disrespected, angry, afraid, confused, violated

Facts, Issues, Feelings and Interests

Interests: Honesty, reliability, good relations, trust, respect

Facts, Issues, Feelings, and Interests

“Your President said she would implement a cease-fire but then did not follow through with that assurance. How can I trust you if your government says one thing but does another?”

Facts, Issues, Feelings and Interests

Facts: The President said she would implement a cease-fire but this did not occur

Issues: Communication, trust

Feelings: Disrespected, angry, afraid, confused, violated

Interests: Honesty, reliability, good relations, trust, respect

Questions & Information Gathering

Asking the Right Questions

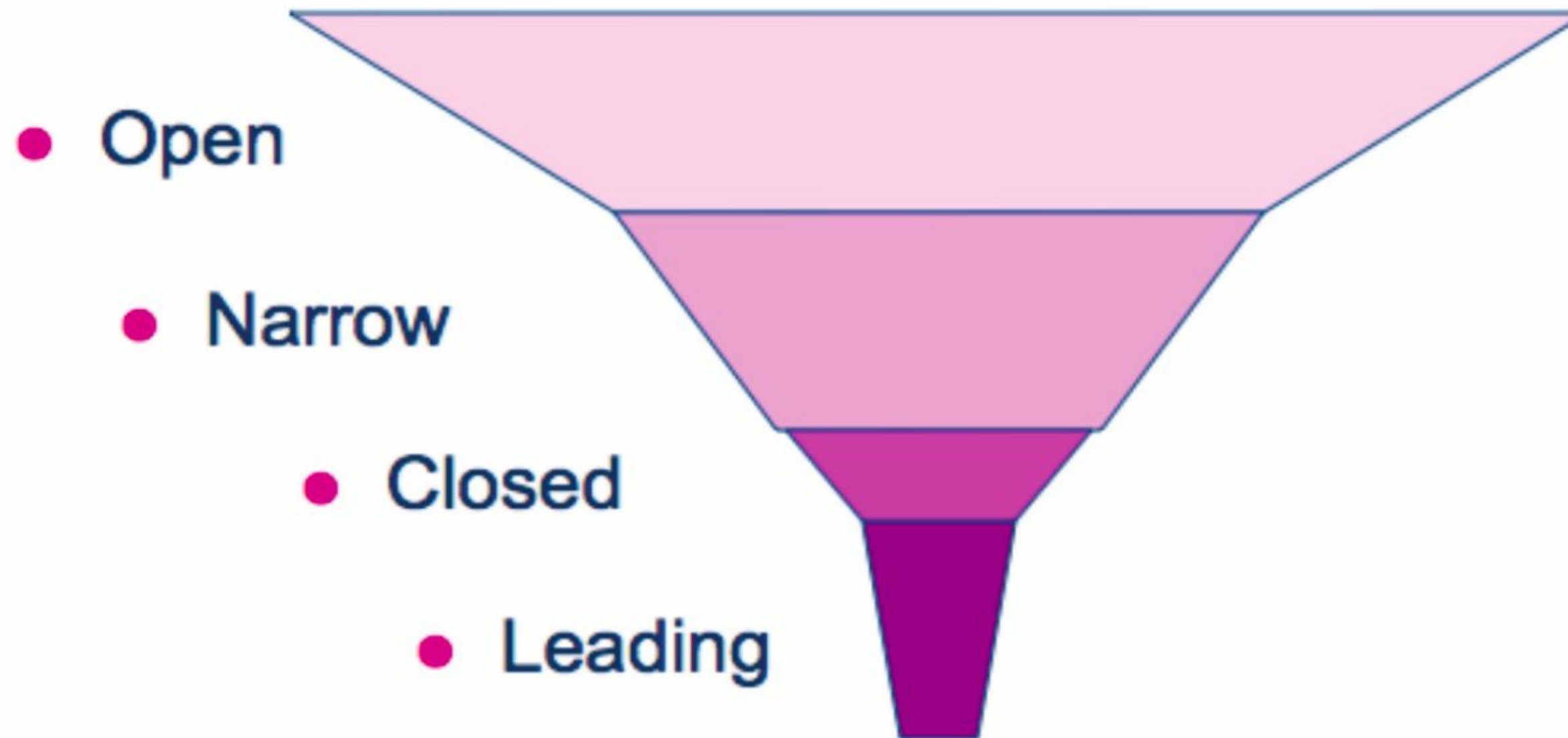
What is the purpose of asking questions?



Goals of Questioning

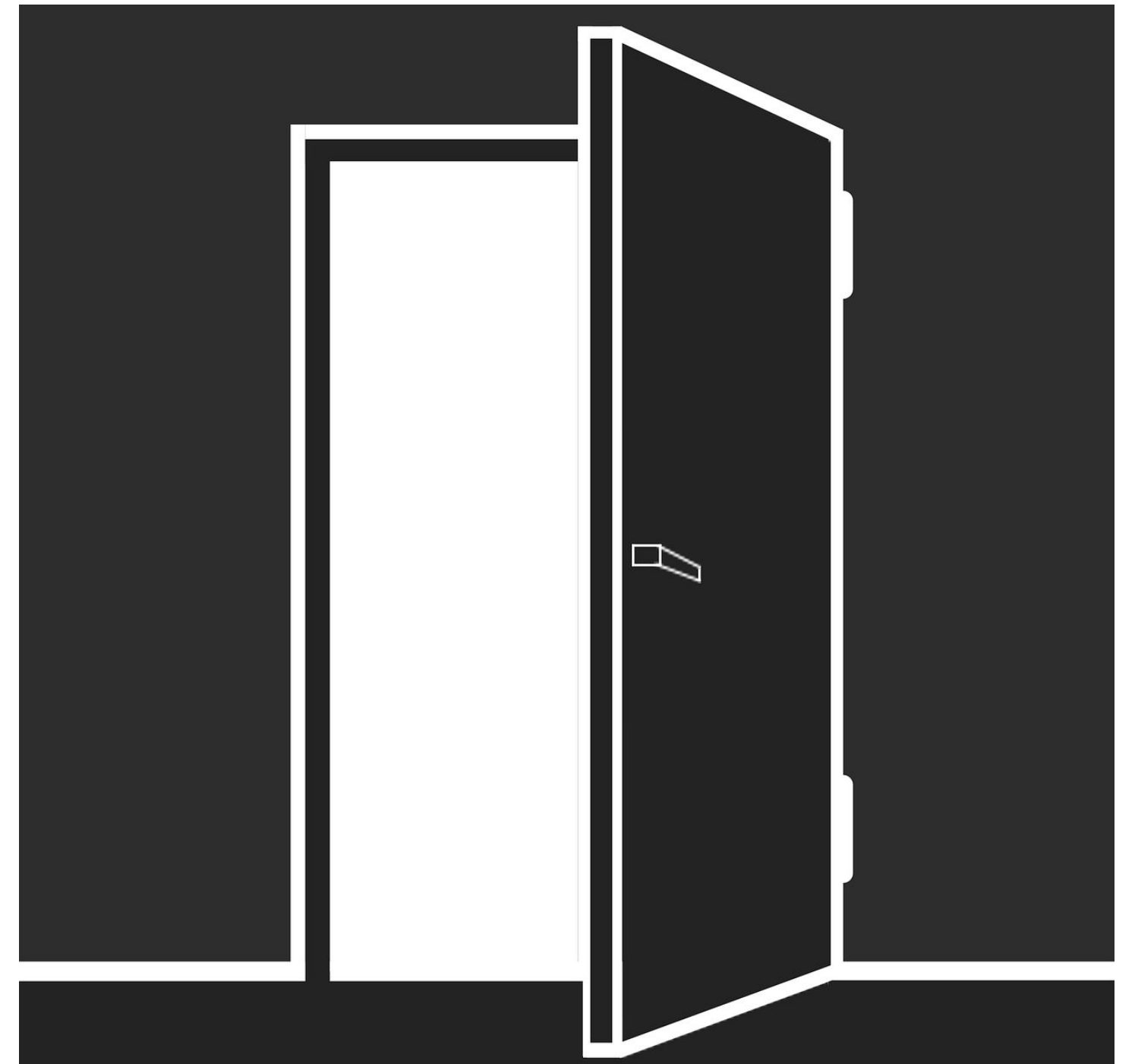
- Clarifying
- Suggesting
- Stimulating
- Encouraging participation
- Focusing
- Exploring and evaluating alternatives
- Gather Information
- Moving toward closure

The Different Kinds of Questions



Open vs. Closed

- **Open-Ended questions** place the focus and attention on the other person
- **Closed-Ended questions** are more leading and more targeted



Closed and Open Questions

Open Questions	Closed Questions
Cannot be answered with yes or no	Limited response/point of view
Allows respondent to express point of view	Answers are either right or wrong
Can be time-consuming	Quick responses
Builds trust and allows unrestrained response	Can feel interrogating or threatening

How would you make this an Open Question?

1. Do you think this performance evaluation reflects your work?

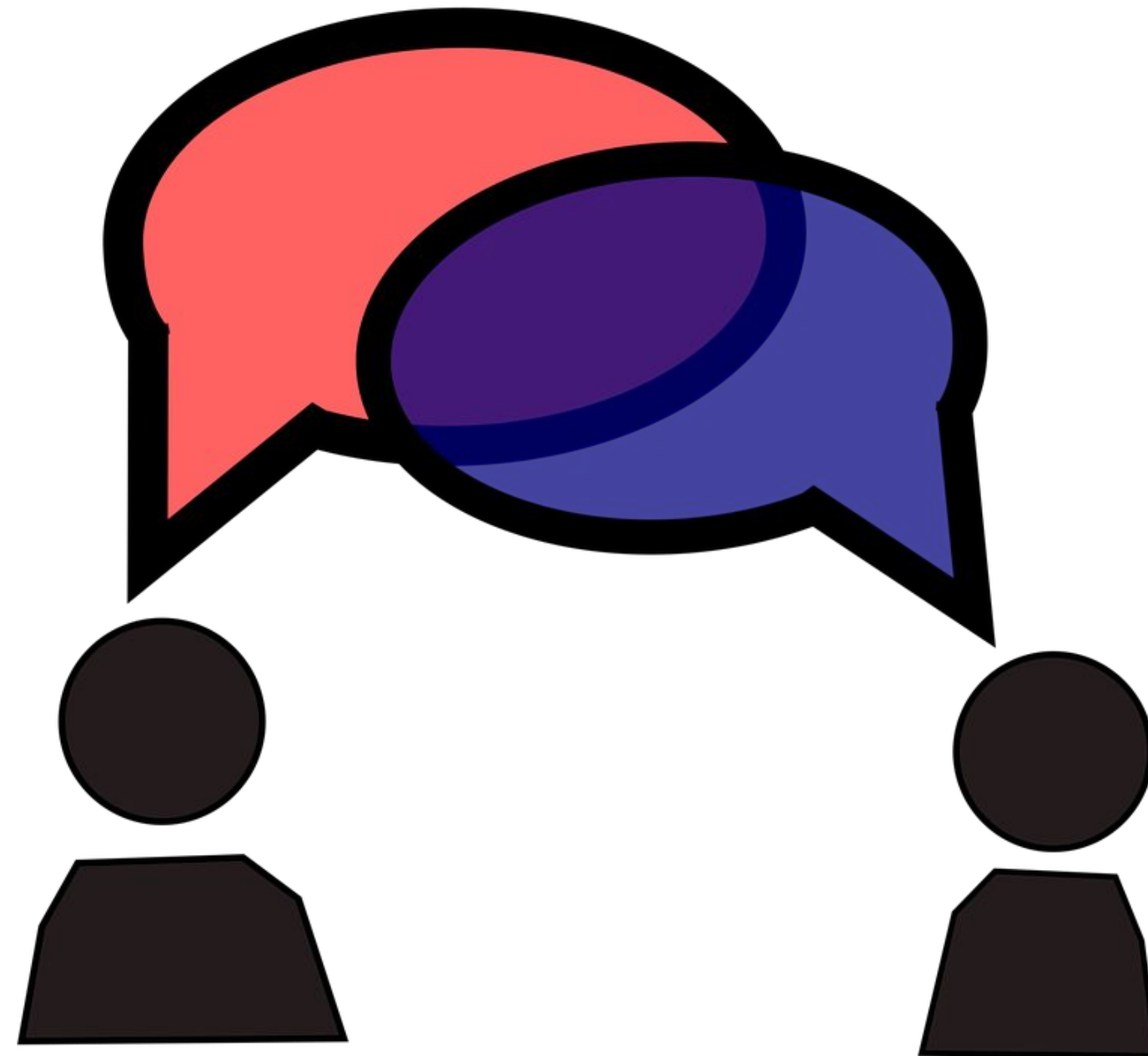
How would you make this an Open Question?

1. Do you think this performance evaluation reflects your work?
- 2. Are you happy with our agreement?**

How would you make this an Open Question?

1. Do you think this performance evaluation reflects your work?
2. Are you happy with our agreement?
- 3. Is everything okay?**

When might we want to use open v. closed questions?



When to Ask Open Questions

<u>Usage</u>	<u>Example</u>
To develop an open-ended conversation	<i>How did you approach this task?</i> <i>How do you remain focused on your work?</i>
To find out more about a person: their wants, needs, thoughts, and beliefs	<i>What motivated you to make that decision?</i> <i>Why is that so important to you?</i>

When to Ask Closed Questions

<u>Usage</u>	<u>Example</u>
Testing understanding (asking yes/no questions)	<i>So, you want to move into our apartment—right?</i>
For setting up a desired positive or negative frame of mind in them	<i>Are you happy with the current state of the Global Compact on Migration?</i> <i>Would you like to focus on the Gender-Related SDGs?</i>
Moving to action (seeking assent)	<i>If I can deliver this tomorrow, will you sign for it now?</i>

Information Gathering

Information Gathering

- “What brings you here?” or “Tell me about your concerns” ...
“Anything else?”
- “If it is ok, could we talk about...”
- “Could you describe/explain...”



Framing the Question

Use **neutral language**

- How could you make XYZ mistake?
 - → Tell me about this project
- Why do you manage your team like that?
 - → How is managing the team going?
- Why didn't you get XYZ done before the meeting?
 - → What happened? Tell me about your preparations for the meeting
- Why did you change our plans?
 - → What motivated you to implement XYZ?

Discussion

Discussion

- What negotiation skills did you find most useful?
- How will you negotiate differently after today's presentation?
- In what situations do you see yourself implementing these negotiation skills?

QUESTIONS?