

Interests

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SPEAKERS

Chris Casillas, Emily Martin, Matt Greer

- C** Chris Casillas 00:09
In her seminal 1984 law review article titled, "Toward Another View of Legal Negotiation, the Structure of Problem Solving", Professor Carrie Menkel-Meadow makes the following observation about the basic structure of what she refers to as the problem solving model of negotiations. She says, although litigants typically ask for relief in the form of damages, this relief is actually a proxy for more basic needs or objectives. By attempting to uncover those underlying needs, the problem solving model presents opportunities for discovering greater numbers of and better quality solutions. It offers the possibility of meeting a greater variety of needs both directly and by trading off different needs, rather than forcing a zero sum battle over a single item. The now widely adopted term used to describe those more basic needs or objectives just described by Professor Menkel-Meadow is known as interests. As students of negotiation theory and practice. We often hear this term interests used. But it's not always clear what interests are, how we discover them, and how they can help achieve the possibility just mentioned by Professor Menkel-Meadow. In this episode of PERColator, join Matt, Emily and Chris, as we take a deep dive into the world of interests in an effort to help you answer these questions and develop some skills for unlocking interests in your next negotiation. Hey, Emily, Hey, Matt, how's it going?
- E** Emily Martin 01:54
Great. How you doing today, Chris?
- M** Matt Greer 01:56
Doing pretty good. Yeah.
- E** Emily Martin 01:58
Cool. Let's get going. What are we talking about?

C**Chris Casillas 02:01**

Yeah, so I thought we would talk about interest today. And just to kind of set the scene for us a little bit here. At the negotiation project, we've been dabbling with a lot of different ideas and topics and ways of presenting that information. And a while back, we did this video on expanding the bargaining pie, thinking about ways to add value to your negotiation and your bargaining. And as part of that, we had an episode on the topic of interests. And as trainers and educators and folks who talk about this stuff a lot we we always bring up this term, interests. And I think, kind of intuitively, people kind of know what what it is, and and how to discover these things. But we thought it would be a good idea to kind of take a deep dive into the topic. And just and just think about it, amongst the three of us. So I guess I'd start with asking kind of what are interests, can we define it, and understand it better? And why is it so important to think about them?

E**Emily Martin 03:09**

So I usually think about interest as well, like a hope, a fear, a concern, a need, a desire? But I also think about it as like, what might keep you up at night? What are you worried about? And why you might support a solution? Or why you might oppose a solution? So not what the answer is or what your proposal is, but, but why this would be a good one, or why this might be a bad one, to meet the needs. Because I think if you think about it, that way, you can often figure out what interests might be. How do you guys talk about interests? How do you define it?

M**Matt Greer 03:45**

I take a similar approach. And, you know, it comes up. And I think, Chris, you're right, I think it is on some level intuitive. But I think it's also somewhat challenging in some ways to kind of figure out what interests are, because it is really hard to kind of necessarily identify really tangible items. And it's very easy, especially when you're in a heated bargain, or in a conversation where things are getting kind of, you're really kind of ingrained in certain thoughts and positions to kind of conflate interests with positions. And so to kind of find a way to distinguish the majority importance. So I think, the key points he put out there about, you know, kind of the needs, concerns, hopes and fears, and I use your, Emily, your things that keep you up at night. But I think it can be both things that you worry about, but also things that you're excited about like this, this can be a challenge in a positive way too. So sometimes I lay awake, and I'm really every once a while excited about something and thinking of all the positive things there too. And that could be those things as well as the fears and the more negative things too. So but yeah, kind of being able to distinguish them from your positions can be surprisingly challenging. And because one of things we want to talk about today is how to do that and figure out what the interests are and and how you can kind of distinguish them from your positions and maybe find better solutions if you kind of frame things in that in that respect.

E**Emily Martin 05:00**

And I think the one of the reasons why it's so challenging. And then maybe you guys think of

And I think one of the reasons why it's so challenging. And then maybe you guys think of that differently. But I think when human beings see a problem, their brain will go and think, Okay, here's a solution. Right? I got a problem, I got an answer. And that is sort of how we normally speak and talk. And we don't normally slow down and think about how do they get from point A to point B. But the how did you get from point A to point B? And what factors are you thinking of, are really important to understand why that point B solution is where you jump to, or where you're holding on to or where you think might be a good idea. And interests is a way to kind of explore that path that you went on from the problem to the solution that jumped into your brain, because not everybody's going to have, if everybody in the bargaining table jumps from point A to point B, and you're all there, that's great. You don't even talk about the interests, it's clear where you should go. But so often people have different answers of what what the answer should be. So understanding that path is really important. It's just not how we normally think or process or say out loud. And instead, people will say things like I have an interest in and then say their solution. And that doesn't make it an interest. That's still a proposal. That's still an idea. That's a solution. It's not an interest. But But how did you get to that point, thinking that was why you thought was a good idea. That's what interests to me is about.

C

Chris Casillas 06:21

Yeah, I think you highlight there, Emily, some really good reasons why there seems to be some obstacles for folks in terms of having those interests conversations, but you also point to some reasons why you'd want to do that. And, you know, you mentioned kind of, sometimes people think like, Well, I see the problem, here's how to solve it. And like, you just want to kind of rush to get to that point, you want to be direct. And taking some time to kind of step back and think about kind of those underlying motivations seems like a waste of time sometimes. But as you point out, I think if you do that, in a lot of cases, you know, a number of positive things can come from taking, taking that time in the moment, which in the long run can really benefit everybody. And as you mentioned, kind of, it can help the parties unlock some value that maybe they didn't know was there. But by taking the time to kind of think through those things, they can discover some aspects of the potential agreement that they didn't originally think existed. And at the end of the day, it can, it can be really helpful in moving you past an impasse or a point in which you're kind of stuck by taking the time to have those conversations. And so, in the short run, maybe it seems like it's a little bit of extra time or a waste of time to do it. But in the long run, you can save a lot of time. And and in the process actually create a more kind of durable agreement and one that benefits everybody,

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Emily Martin 08:01

it strikes me this might be a good time to have an example of like, what what I was thinking maybe like, how do we schedule vacation time, I often see that as a bargaining table conversation, right? Like picking out who gets to have vacation when is often a topic in either a labor management committee or in a in a collective bargaining agreement. And and that can be the problem. And then you could have different answers to the problem. But I think you could have the idea of seniority, people have been around for a longer time might feel like, like, it's that's one of the benefits of being around longer is having more flexibility about picking picking what time you want to have off. I've also heard of interests of people who are maybe not there a lot of time, but have young kids that, you know, how do you balance that seniority with the idea that like, sometimes people at a different stage of their life have some value of

being able to take some time off around certain days of the year, there's that piece as well. And then a different interest I sometimes hear is like, how complicated is this going to be? Is this going to be a workable solution? Or is it going to be a nightmare to administer? So those are three different interests, and they can conflict in a way. But they also you don't have to really worry necessarily about how these three interests might sort of collide against each other at this stage, if you just try to understand the interests. And then you try to think about what solutions that might be there, knowing that these things are in a background. Does that resonate with any of you?

M

Matt Greer 09:25

It does? And you know, that makes total sense. I'm going to give an example because I think that for people who are maybe new to the idea of interests, it is helpful to have that kind of concrete example. So I think that was a good one. I do, you know, I do, you know, when I train on interest based bargaining especially, which we'll talk about in a little bit. I tell everyone that, hey, you have to kind of shut off, you know, we're all problem solvers, the bargaining table or brains are trained and we're kind of intuitively reaching for a solution. And, you know, that process kind of requires you to kind of reverse that a bit and start with your interests before you try get solutions. I think a lot of time people will even their use if they're using a more positional model and they are kind of going from that position where they're starting with positions. And then maybe after the fact, when they get to a hard, hard spot, or they kind of come to a roadblock in the negotiations, I think the interest conversations can be helpful there too. But it's just harder, I think, at that point to kind of reverse and say, okay, hey, we've gone to a bad spot. Let's talk about why we're here. What are some of the things that resulted in us being in this place, and having a conversation about that can be challenging, but also really powerful. Like, for an example, I had a mediation where we got to really hard part on an issue, and we came together, and I think it was a sidebar was just the leads and me. And one of the leads said to their side, it's like, you know what, let's take a break, we kind of pass back and forth the same positions on this issue a few times, maybe a little tweaks here, we're all kind of assuming why it's important. But let's just take a pause. And we're going to tell you that, you know, the specifics of our proposal are less important than these five interests. And they did a really good job of saying the position, let's put that to the side, our solution that we proposed, you know, it's important to us in a sense, but here's what we're really we're trying to get at, and they laid out, in a very explicit way, some of the things that were driving why they had a position out there, and that totally reframed the conversation, the other other lead went back to their bargaining team had a different conversation with them. And they were able to come up with a proposal that kind of was, met their needs, and, and also kind of repositioned it for the other team as well, and then made some progress there. So it can be really helpful, either at the outset, or even during the process when you're at a hard spot to use to reframe your conversation. So just want to throw that out there as well.

C

Chris Casillas 11:39

Great, what a great example. And that, that kind of makes me think too Matt and Emily, you know, sometimes we can be deliberate and conscious about kind of identifying these interests and and, and go through that exercise and make that effort. But if either your side or the opposing side isn't really kind of willing, or thinking about kind of having that explicit

conversation, how do you go about identifying or discovering interests? Are there some tools or tips that we can talk about to uncover those, particularly when someone's not really thinking in those terms are kind of aware of that. Any thoughts there?

E

Emily Martin 12:19

Yeah, I think a good negotiator can do a lot to try to get a conversation to be about, to uncover some interests, even when the other side isn't thinking about that framework, or doesn't necessarily show up at the table thinking, "This is this is where we should start the conversation." And I think it's, it's a lot about inviting, asking questions in a way that that can dig deeper, and show that you're curious to understand, and like sincerely curious, you know, you're not like cross examination questions, not like putting on the spot questions. But questions that invite the other side to explore and, and tell you more about what's going on and why these proposals that they're making, are what they're making. So if you can, if you can try to get to those levels with some questions. Act like more like your journalists and less like a cross examiner, I think sometimes you can get somebody to tell the story or to tell the background behind why they think something is where the party should, or what should be in the agreement, or where the party should go. And I think that's, that's key, because you just explaining your interests and beating them over the head with it isn't going to necessarily get there. I mean, it's good to model it's good to model some examples of that. But it's also really good to make sure that you care what they're thinking. And I think questions are a great way to do that.

M

Matt Greer 13:41

I think this might be a good place to segue into like, you know, the interest conversation kind of boils down to why, right? A question and you know, the big W question why? Why are we making this proposals? Why are we even talking about this issue? So why is really kind of what you're getting to, but why can be also a very challenging question. And it can kind of turn people off to when it was not framed in the right way. That's really what you're trying to get to. So I think that really is the kind of the balancing act that is negotiators are out there, you're trying to figure that out. You might have be across the table from somebody who is not interested in having a, Interests with a capital I, conversation. So you kind of to be a little bit of a, nuanced and how you might approach that and try to try to tease out the interest in their side and share your interests in a way that doesn't seem like it's challenging, or the woowoo moments, people can get turned off if things are a little too too squishy. And they kind of think or assume, I don't agree, that interests conversations are a little more squishy than positional conversations. So, so it is a challenge. So

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Emily Martin 14:43

I agree with you, Matt, "Why" is such an insight of the collective the the conflict resolution circles. I've been in so many trainings where it says never ask why. Why is a toxic question. Why makes people feel defensive? You can never, that's the worst question to ask when actually it's kind of what you're trying to figure out in a way that's like, not as an accusation, but trying to figure out what's going on. And so I've been told, Oh, no, you should never say why, you should say, how does this help you achieve your goal? That supposedly feels better

than why? I kind of think it kind of depends on the tone, the body language, the overall overall context, is why going to be offensive or not, you know, I think the five W's are something some people talk about are the five w's and h is sometimes things that people talk about, so that you have a more of a menu than just the why question. So who wants to explain the five W's or the five w, four w's and h?

C

Chris Casillas 15:41

Yeah, well, you know, those are who, what, where, when, why, and how type questions, which are really important, I think in terms of kind of sussing out from the other side, you know, what's, what's really motivating here? You hear what's, what's the underlying concern? Where, where are you really trying to get? How has this been a problem in the past? And I think, you know, with with why I totally agree with you there, Emily, is it's a it's a type of question, or it's a lead into a question that is potentially problematic. And a lot of folks out there because of that are very guarded in its use, but, but your point is exactly right, that it really comes down to kind of tone and other nonverbal cues. And how you ask that question, if it's, if it's a why with a real kind of curiosity and desire to learn? I think that's a that's a great question. And it often gets to the heart of the matter. If it's a, on the other hand, if it's a why, like, why would you want that, or something of that nature? We all we all know what the the subtle, or perhaps not so subtle inferences behind that question. And those those are not constructive interest base type questions. And so

E

Emily Martin 17:01

And you can turn a who question to just as much of a barb too, like, who really thinks this is a problem? That is not a way to understand the interest. And if it's designed to really like, be a barb, you know, really to be in an interrogation versus a really a conversation. So I think conversations more the key, because we can, we can twist lots of questions, depending on all of the tone, and the tenor and all of that, into not so productive. But thinking about the overall point and really, really showing up with curiosity and listening and, and giving the other side a chance to talk about what they care about without jumping down their throat.

C

Chris Casillas 17:40

I really like that kind of journalist versus litigator or cross examiner kind of framing, that really helps me kind of cement that in my brain in terms of thinking about kind of where we want to be or in where we don't want to be, Matt, you know, I don't know, if you have anything else you want to add there. But I did want to ask, you know, because you've probably seen this time and time again, where, you know, maybe you as the mediator or facilitator have been kind of encouraging these conversations. But, you know, one or both parties are kind of reluctant to really kind of get into this interest based conversation. And, you know, there may be a variety of reasons for that. But is there is there a way to kind of do this without kind of putting your, you know, flag in the ground and saying, we're having an interest based conversation? Can you still can you still engage in some of these tactics without kind of declaring as much?

M

Matt Greer 18:36

I, yeah, definitely. In fact, I think that whether or not you're consciously doing that, you're probably subconsciously doing it anyway. So I think that you can only benefit by kind of thinking about it in a little more proactive way. And realizing that even if you aren't explicitly having that capitalized interest conversations, both parties are either, are either, either know, their side well enough, that they can kind of guess what the interests are behind positions, or worse, less, less, less positively, you might be inferring or making negative inferences about, because you're in a tough negotiation, about what the interests are, why the other side is making the proposal they're making. So I think that when you get into those positions, it's really hard to go in there and say, Hey, we're gonna have an interests conversation about this issue, right? At that point, it's just kinda that that's just probably not going to happen when you're in a tense negotiate positional negotiation, but you're still, it's still gonna be very valuable, in fact, maybe even more valuable to try to figure that out at that point than it would be even in a different approach. So I think that it becomes more challenging and I think that's where you have to be creative and know the other party and and the negotiator that you're you're up against, and know what kind of tactics and styles is going to resonate more with them. Is it going to be are we gonna have a joint session? Are we gonna have a sidebar where we just kind of get together and have a have a conversation side by side to kind of reframe things and try to try to get a little more sense of where, where people are regarding their positions, their interests behind their positions? I don't know, there's not really a, I don't think, I haven't found a one size fits all type of approach to have that conversation. Although I will say that going in there at that point when things are hot and saying, "Oh, we're going to have an interest conversation," is probably going to turn somebody off in those rooms, because they, they may be not in the position where they want to have that conversation or feel like they want to have the conversation. Some people may have had a bad experience with the interest based bargaining process in the previous past, and so when they hear the word interests, that might maybe, kind of trigger that kind of response. So it really does require creativity in how you approach that. So I'm curious if either of you have any specific, more tangible things, I don't think it's really a super specific, but I think it's just really requires a lot of thought in and into how you approach that.

E

Emily Martin 20:54

You know, as you were talking, it reminded me of some mediations I've had where the parties wanted to have some time, we were in mediation, we were mostly doing shuttle. But we reached some point where they decided they needed to have some face to face and need to ask each other questions. And they really, really were struggling from turning it into, like really asking questions to get information to like, just whacking each other over the head, right. And so like we talked about it, we knew that like questions that just whacked each other over the head, weren't going to, weren't going to help us at that point. But there was so much tension, and there was so much frustration that it was really hard not to do that. And I have a couple memories of as a mediator where I very specifically, and consciously, and told the parties, alright, if we're going to do this, instead of having like, both sides sitting at tables facing each other, like a face off, where the room has a isn't a square. So yeah, once I can sit on one side of the other side's gonna sit on the other side. But I'm literally going to sit in the middle of the square. And it was sort of my job as the mediator in those circumstances to try to like, kind of thought of it as like, there's some bows, there's some slings and arrows that are going back and forth. And if I can try to like blunt them by having maybe having the speaker look at me, rather than stare down the other side when they were asking the questions, or creating some body language so that the, the, and some pauses so that people could really listen to the questions

and not just react, that might be a way to sort of diffuse the fact that we needed to have a chance to ask them direct questions. But actually asking direct questions across the table wasn't getting us anywhere, so we had to change it up. So I don't have like an easy solution to that. But I think negotiators might want to pay more attention or pay some attention to the overall dynamics of the room. And not just to like, what is being said. But also think about how is it being said? Or how might it? How might they might the conversation go? That the other side actually might be able to hear the question and be able to respond to the question, and not just push back against a question, which is, which is difficult and hard to give a recipe for. But sometimes thinking about that bigger picture of, "are these questions, actually going to be able to be heard," is a way to think about how do we have a good interests conversation, when we don't want to sit around and say let's have an interests conversation.

C

Chris Casillas 23:32

Some great examples from both of you there, I really appreciate those. And I'll think about using them myself. And I think, you know, just to kind of wrap up here, the last thing I wanted to say, on that point is just, you know, my students often ask when we talk about these concepts, like, you know, what do I do when the other side is just being really positional. And, you know, we're kind of stuck in that back and forth of, you know, exchanging proposals. And I always remind people, you know, you can't control kind of what the other side's doing or how they're approaching things, but you can control your responses to those situations. And just because, you know, the other side is being really positional and just wants to talk in the context of specific proposals. That doesn't mean that you have to respond in kind and you can come back to those proposals with, with some questions about, you know, explain to me kind of why this piece is important to you, or, what are you trying to accomplish here? How was that meeting some of your goals and, and ask those questions, and I, and I think, you know, you're not flagging for the other side in those situations that you're having an interest based conversation. But there's, there's going to be kind of a social pressure in that situation to respond to those questions. And, and that leads to, hopefully some interest. So I think, you know, that's an important thing to keep in mind, as well. So, well go ahead Matt.

M

Matt Greer 25:00


I was just going to throw in one last thought, a quick plug for mediation. I think that as mediators, we we, whether or not we're necessarily consciously thinking because we kind of fall into the same patterns that parties do sometimes and thinking about what their positions and the issues, but we also come in as neutrals and impartial, and kind of fresh the process of at a point when things are kind of at a stalemate a bit. And part of our job and what we do is kind of try to suss out what is going on here. Why is it going on here and sharing that in a different way. So I just want to put it out there that sometimes you know, we get to that point, and if you do feel like that is where you are, a mediator can be a great way, another way to resolve that. And so maybe not your first first necessarily response to that, but it can be a helpful process, or at least I think so. So, yeah, not that I'm biased or anything.


C

Chris Casillas 25:51

I was gonna say that wasn't a personal plug for Matt's mediation services, but I think your your your point is an excellent one, that that can really help kind of refocus the conversation

sometimes and reset things. Well, great, great conversation, Emily and Matt, I always, I've probably talked about this subject hundreds of times in various trainings and classes and stuff, but every time I talk about it, and hearing from you, I always learned something new. So I really appreciate that, and I hope all of our listeners can take that to heart as well. So thank you to you both.

 Matt Greer 26:30
Yeah, I agree.

 Emily Martin 26:31
Thank you, Chris.