



*The Women's Bar Association
of the State of New York*

presents

*Convention 2026
Continuing Legal Education Series*

**Understanding as Strategy:
An Understanding-Based Approach to
Negotiation and Client Decision-Making**

May 30, 2026
1:30 pm - 3:00 pm

Presenter: Katherine Eisold Miller, Esq.

THE LOOP OF UNDERSTANDING

Step 1: **A inquires of** \longrightarrow **B**

Step 2: **B responds, asserts** \longrightarrow **A**

Step 3: **A demonstrates and confirms**
Understanding \longrightarrow **B**

Step 4: **B responds** \longrightarrow **A**

If yes, loop is complete. To further understanding, Looper can ask: “Is there more?” and return to step 1.

If no, go back to Step 1 and ask: “What am I missing?”

The Paradoxical Theory of Change

We do not change by denying what we are, but by acknowledging what we are. We do not change by insisting that we feel no internal struggle when parts of ourselves are in conflict. The very act of acknowledging that there are impulses within us that we do not like is the beginning of coming to terms with them. The very act of acknowledging the legitimacy of aspects of us that we do not like is the beginning of ending their tyranny over us.

A statement of the theoretical basis for the operation of this process is contained in the following excerpt:

[Frederick Perle's change theory] underlies much of his work and implied in the practice of Gestalt techniques. I will call it the *paradoxical theory of change*, for reason that shall become obvious. Briefly stated, it is this: *That change occurs when one becomes what he is, not when he tries to become what he is not.* Change does not take place through a coercive attempt by the individual or by another person to change him, but it does take place if one takes the time and effort to be what he is - to be fully invested in his current positions. By rejecting the role of change agent, we make meaningful and orderly change possible.

Change does not take place by "trying" coercion, or persuasion, or by insight, interpretation, or any other such means. Rather, change can occur when the patient abandons, at least for the moment, what he would like to become and attempts to be what he is. The premise is that one must stand in one place in order to have firm footing to move and that it is difficult or impossible to move without that footing.

The person seeking change by coming to therapy is in conflict with at least two warring intrapsychic factions. He is constantly moving between what he "should be" and what he thinks he "is", never fully identifying with either. The Gestalt therapist asks the person to invest himself fully in his role, one at a time...

The Gestalt therapist believes in encouraging the patient to enter and become whatever he is experiencing at the moment. He believes with Proust "To heal a suffering one must experience it to the full."

Arnold Beisser, "The Paradoxical Theory of Change" in Fagan & Shepherd. eds. *Gestalt Therapy Now*, pp. 77-78 (Science and Behavior Books, 1970)

Excerpt by Howard Lesnick from Dvorkin, Himmelstein and Lesnick, Becoming A Lawyer: A Humanistic Perspective on Legal Education and Professionalism. (1981)

7 Habits Quotes

Seek First to Understand, Then to Be Understood

“It is better to listen in order to understand than to listen in order to reply.” ~Unknown

“One must talk little and listen much.” ~African Proverb

We have two ears and one mouth so that we can listen twice as much as we speak. ~Epictetus

Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen. ~Winston Churchill

Wisdom is the reward you get for a lifetime of listening when you'd have preferred to talk. ~Doug Larson

If you don't listen, you're never gonna learn. Frank Lero

Talk about yourself as much as you like, but do not expect others to listen.

Mason Cooley

There is only one rule for being a good talker - learn to listen.

Christopher Morley

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Understanding Interests in Divorce Negotiations

NOW THAT you've learned how to communicate effectively, the next step is clarifying what truly matters to you. In negotiation, it's easy to get stuck on demands—but our demands are often surface-level positions. As I discussed in chapter 2, deeper *interests*—the needs, fears, and motivations driving those demands—are what truly shape decision-making. Understanding the difference between positions and interests allows for more creative and effective negotiations.

A demand is *what* you say you want, but an interest is *why* you want it.

For example, insisting on keeping the house might not just be about the property itself—it could be about preserving a sense of security or maintaining stability for your children. Identifying these underlying interests opens the door to alternative solutions that might serve you even better.

In this chapter, I'll delve into defining your interests more precisely than we did earlier in the book, uncovering your spouse's interests (even when they appear at odds with your own), and using this understanding to craft agreements that reflect what

truly matters to you. I'll also introduce tools like reframing and the hypothesis of generosity, which can shift tense discussions from conflict to problem-solving.

Behind the Scenes

When going through a divorce, focusing on each party's deeper motivations—instead of just the demands each person brings to the table—can lead to more amicable and effective negotiations. Interests are the underlying reasons behind a position. They encompass the needs, desires, and concerns that drive your choices (and your ex's as well). Unlike positions, which are specific demands or solutions (“I want full custody” or “I want the house”), interests reveal the motivations behind the demands, and understanding them is crucial to achieving better outcomes.

Remember Marcy, who was determined to keep the house when she started working with me? She was angry at Steve for his choices and their impact on her life and the children's. She also worried her children would feel anxious and that her ability to be a good mother was under threat. To Marcy, staying in the house felt like the best way to protect her kids' sense of security. As you might recall, she also made a chart to identify her own interests and those she believed Steve had (chapter 3). Those “behind the scenes” reasons, the interests, are what truly drive negotiating positions—both yours and your ex's.

Divorce often creates anxiety and anger, so many of us naturally look for solutions that offer quick emotional relief in a challenging situation like divorce. Once we find something that we believe will ease our worries, we tend to cling to it—and that becomes our negotiating position. These positions can be very specific: “I want \$5,000 in monthly alimony” or “I want full custody of the children.” Although such demands may be the first thing to surface in negotiations, they can obscure the real interests behind them. Worse, positions are often rigid and encourage a false win-lose dynamic, which can derail any hope of collaboration.

Positions Versus Interests	
Position	Interest
I want the house.	I want stability for the children and continuity in their lives.
I want \$5,000 a month in alimony.	I need financial security while I transition back into the workforce.
I want full custody of the children.	I am concerned about providing a stable environment for the kids.
I want the car.	I need reliable transportation for work and other daily responsibilities.
I don't want my ex to have any of our savings.	I am worried about having enough money for retirement and to cover future expenses.

The Four-Point Test for Interests

As you start thinking about potential solutions in your divorce negotiations, make a list of your own interests to guide the process. Each interest will be most useful if it meets the following criteria developed by Gary J. Friedman and Jack Himmelstein as part of their Understanding-Based Model of mediation:

- 1 **Emotional resonance:** It's something you genuinely care about.
- 2 **Multiple options:** It points to more than one possible solution (not overly specific).
- 3 **Tangibility:** It's concrete enough to be acted upon rather than just a vague desire.
- 4 **Positive framing:** It focuses on what *you* need instead of what your ex should lose.

Take, for example, ensuring “a stable environment for the children.” This concern resonates emotionally, reflecting a deep concern for

the children's well-being. It also allows for multiple options, such as shared custody arrangements, maintaining the family home, or selecting a school district that suits both parents. The interest is tangible, focusing on the clear and specific objective of stability, and it is framed as a benefit for the children's lives rather than as a gain for one parent at the other's expense.

In contrast, a goal like "I want the car" might fail this test by being too narrow and focusing on a single possession instead of the deeper need—reliable transportation. Similarly, "I don't want my ex to get any of our savings" is about depriving the other person rather than ensuring a specific benefit for yourself.

Once you've run your interests through the test, do the same exercise for your spouse. Marcy did this beautifully when she wrote that one thing that was important to Steve was to have common interests with his life partner. She recognized that this was something that had broken down in her marriage and that it was a very important interest of his.

Finding out *why* your spouse values certain outcomes can help you shape proposals that address their underlying concerns as well as yours. One way to find out what is important to your spouse is to ask them. Marcy could ask Steve, "What matters to you when you think about the best outcome around the house?" This inquiry is a good example of how she might find out more information about Steve's priorities. Similarly, you can ask your ex what it is that is important to them around an issue that is important to you. But be sure to adopt a calm tone and open body language—and be genuinely curious. If you take this approach, you can discover your ex's real motivations, making it easier to find common ground.

The Hypothesis of Generosity

Most people view themselves as good, ethical individuals. Yet, during a divorce, it's common to attribute your spouse's actions to malicious intent and make the assumption they're out to punish or harm

you. This is a classic example of the fundamental attribution error—blaming someone’s character (“they’re spiteful!”) rather than considering that their actions may stem from their own needs or fears.

While it’s possible that someone might occasionally act out of revenge, more often each spouse is simply aiming to secure what matters most to them: maintaining financial stability, preserving a relationship with the children, or holding on to a newfound personal freedom. These goals can feel threatening, but they’re often not a deliberate attack on you.

The “hypothesis of generosity,” a term popularized by the Harvard Negotiation Project in the book *Difficult Conversations*, encourages a more constructive perspective. It invites you to assume your ex’s behavior is driven primarily by their own needs or challenges rather than intentional malice. For instance, if they’re pushing for personal freedom, it may be about their own journey—and probably not about you, or even with the intent to cause hurt, at all.

When you acknowledge that your spouse’s words and actions may be more about fulfilling their needs than inflicting pain on you, you can craft proposals that consider their underlying interests and, ultimately, increase your chances of reaching an agreement that also satisfies yours. When you avoid attributing every action to spite, communication tends to improve and you’re better positioned to negotiate with clarity and empathy.

It’s also possible that your spouse might hear *your* interests as an attack on them. This disconnect can feel deeply frustrating when all you’re trying to do is express legitimate concerns. Misunderstandings like these happen all the time in divorce negotiations. Reframing can bridge this gap.

Reframing Your Perspective for Constructive Dialogue

At its core, reframing involves looking at a situation—or a statement—from a different angle and shifting the tone away from strict positions and conflict to underlying interests and solutions. Reframing allows

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both perspectives to be included, easing the competitive dynamic and fostering more productive discussions. While the hypothesis of generosity helps you see your ex's motives through a more empathetic lens, reframing is how you demonstrate that understanding in the negotiation itself.

Imagine a scenario where one spouse insists, "I need the house because I want our children to stay with me." The other spouse may interpret this as a power grab or an attempt to control the situation, leading to feelings of resentment and a breakdown in communication. However, through reframing, you could present the same concern differently, saying, "I believe it's important for the kids to feel stable and secure in their environment. How can we make sure they have continuity in their lives?"

This reframed statement focuses on shared interests—what's best for the children—rather than rigid demands, allowing for more open, cooperative discussions. The conversation shifts from adversarial to collaborative, making it easier to work toward mutually acceptable solutions. Reframing is not just about changing the words you use—it's about adopting a mindset of collaboration, where both parties' interests are acknowledged and valued. Try this brief exercise to help you get comfortable with reframing.

- 1 **Identify a contentious point:** Think of a topic that feels fraught or one where you've felt misunderstood.
- 2 **Write down your current framing:** Take note of how you typically express your concerns.
- 3 **Reframe with underlying interests:** Shift the focus to your underlying interests and consider the other party's interests.
- 4 **Reflect on the impact:** Consider how the reframed statement might change the tone of the conversation and help you collaborate rather than clash.

In the following table, I present a few snapshots of how reframing can soften a rigid position and invite a more productive exchange:

What You Want to Say	What Your Ex Might Hear	Reframing Your Interest
"I want more time with the kids to stay involved in their daily lives."	You're trying to take the kids away from them.	"I believe it's important for the kids to have strong relationships with both of us. How can we create a schedule that supports that?"
"I need to keep the house because it's important for the kids' stability."	You want the house to gain an advantage over them.	"Stability for the kids really matters to me. What are some ways we can make sure they feel secure, wherever they live?"
"I need financial support to maintain my current standard of living."	You're trying to take advantage of them financially.	"I'd like to find a financial arrangement where we both feel stable and secure as we move forward."
"I want to continue being part of the kids' school and extracurricular activities."	You think they don't care about the kids' activities.	"Let's talk about how we can both stay actively involved in the kids' school and activities so they feel supported by both of us."

Reframing Your Spouse's Perspective

If you are struggling to think about your spouse's perspective separate from an attack on you, here are some ways to think about this.

- When you hear your spouse say something like "You're just trying to take the kids away from me," it may indicate that they feel threatened about losing their relationship with the children. To

address this concern, you might reframe your response along the lines of, “It sounds like you’re worried about your connection with the kids. How can we both remain active and present in their lives?”

- If you encounter a statement such as “You’re only interested in the money,” this could suggest that your spouse feels insecure about their own financial future. A helpful reply could be, “I sense that financial security is important to you. Let’s talk about how we can both achieve stability after the divorce.”
- If your spouse says “You never listen to my concerns,” that may indicate that they feel unheard or dismissed. In this situation, you could respond by saying, “It sounds like you want to make sure your concerns are acknowledged. What’s the most important issue we should focus on?”
- Similarly, if your spouse says “You always make decisions without me,” they may be communicating a sense of exclusion from the decision-making process. You can acknowledge this by offering, “I understand you want to be involved in decision-making. How can we create a process that ensures we both have a say?”
- Finally, if you hear them say “You’re just being difficult to get back at me,” it might mean your spouse perceives the negotiation as driven by past grievances. A compassionate way to respond is by reframing: “It sounds like you’re feeling hurt. How can we focus on finding solutions that work for both of us?”

By presenting each statement, considering what it might really mean for your spouse, and offering a reframed response, you can shift the conversation from defensiveness to a more empathetic, solution-focused dialogue.

Another way to consider your spouse’s perspective is to ask yourself, What would I be thinking or feeling if I were in their shoes? That tactic helped me in my own divorce when I was once late dropping off my kids because the traffic was terrible. My ex accused me of

interfering with his parenting time, and I felt unfairly judged and defensive. But when I imagined myself in his place—worried about losing valuable time with the kids—I realized his anxiety was about preserving his relationship with them, not an attack on me personally. Responding with that in mind allowed me to address his real concern, defuse the tension, and find a scheduling adjustment that worked for both of us.

This wasn't easy for me. I was angry and insulted that he could think I was intentionally trying to interfere. Over time, I came to realize he was dysregulated by the divorce. His world felt upside down, and I had played a role in causing that upheaval, so it was no wonder he lacked sympathy for my struggles with traffic.

Reframing isn't about conceding your needs; it's about presenting them in a way that makes others more likely to listen. By replacing a power-driven or blame-focused dynamic with a tone of curiosity, empathy, and cooperation, both sides can feel heard, which sets the stage for more equitable solutions.

WITH A CLEARER SENSE of your interests and practical ways to reframe tough conversations, you're ready to take your negotiation skills to the next level. In the upcoming chapters, let's build on these tools and explore additional techniques that will empower you to navigate complex dynamics and craft outcomes aligned with your core values and goals.

KEY TAKEAWAYS

- **Focus on underlying interests rather than rigid positions:** Because surface demands (positions) often mask your and your spouse's deeper fears and needs (interests), try to shift the focus to the interests.
 - **Use the four-point test:** Deploy emotional resonance, multiple options, tangibility, and positive framing to clarify how genuine your interests are.
 - **Apply the "hypothesis of generosity":** Assume that your spouse's actions stem from their own anxieties, not malice.
 - **Reframe rigid statements:** Emphasize shared goals and seek collaborative solutions.
 - **Cultivate empathy and curiosity:** Learn more about your spouse's perspective to reduce defensiveness and open pathways to mutual agreement.
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