



By Linda B. Bulmash

Winning in negotiation

Have you ever walked away from a good deal because an agreement could not be reached ... or wondered whether you paid too much ... or accepted too little ... or felt so rattled by the other side's hardball tactics that you lost sight of your main objectives? Have you ever wondered why Donald Trump gets the best deals? Have you ever negotiated a great deal but can't figure out why you succeeded so that you can replicate the "win" again?

Now you can be a negotiation winner. Now you can stop yourself from paying too much, settling for too little, losing the deal you want or letting the other side get the upper hand. Never again will you show up at mediation or a negotiation wondering how to handle the mediator or the other side.

Why litigators need to become winning negotiators

Prior to the popularity of mediation as a dispute-resolving tool, litigators often had difficulty resolving cases short of trial. This resulted in increased costs, the uncertainty of juries and, too often, stressed-out and unhappy clients. Today, litigation still retains its adversarial punch, but litigation has evolved to include mediation and negotiation as a significant part of the process. Effective neutrals now facilitate negotiated settlements while counsel retain their adversarial edge yet gain greater control over the outcome, lessen stress and reduce costs for their client.

But, as we all know, the litigator is not only negotiating with the other side, they are negotiating with the mediator as well as with their own client. Therefore, all litigators need to become more effective negotiators in order to get the best possible deal for their clients.

Winning litigators can become winning negotiators by developing their cases using a two-pronged approach: preparing for battle while setting the case up for mediation and a negotiated settle-

ment. Every step in trial preparation is designed to strengthen a client's success at trial as well as the client's bargaining position. This approach helps bring the litigators to the bargaining table, prepared to win the best possible deal for their clients.

Just as there are secrets to effectively winning over a jury or a judge in a trial, there are secrets to winning at negotiation as well. Most attorneys come to the negotiation with some idea of what has worked in the past but are not sure how to replicate their success. This is called "*unconscious competence*." Bring your skills to a "*conscious competence*" level by practicing the following strategies.

Building credibility is one of your best negotiating tools

Winning attorneys and negotiators know that getting the best deal often hinges on their ability to persuade the other side. And the cornerstone of one's ability to persuade is based on one's level of credibility with the other person. So the first step in any negotiation is to build your credibility.

In today's world, everyone is inundated by advertising hype. This results in a natural reluctance to believe most of what is heard. You must therefore work on building your credibility in every negotiation.

People only buy what you are selling when they believe you. Credibility follows the law of diminishing returns: the moment your message dips below the point of credibility, your chance of persuading another person abruptly diminishes. Whenever you are in a negotiation, you should always ask yourself whether the other side believes you. It is axiomatic that you should be well-prepared for every negotiation. But creating credibility requires more than mere preparation. Here are a few simple techniques that will help build it.

- **Build rapport and credibility through mirroring and matching their voice and body language.** The very first step in building credibility is to build rapport. It is commonly known that people relate better to and believe people who are similar to them. That is the essence of the concept of neuro-linguistic programming (or NLP).

One of the most easily used techniques is mirroring and matching your other side's language, voice inflection and body movement. It is similar to the game of "copy cat" that you played when you were a child: if they lean forward, you imperceptibly lean forward; if they speak slowly, you speak slowly, and so on. The secret is to be very aware of them, how they sit and speak but to do it so carefully that they are not aware of it. The bottom line is that if you *act* very much like the other person, a state of rapport will be established and credibility will follow.

- **Tell a secret.** There is a magical three-step formula that has been used throughout history, and especially by our spies in World War II: tell a secret, make a confession and then ask a favor. If you want to convince someone of something you don't think they'll believe, begin by saying, "I'm telling you this in strictest confidence" or "I shouldn't be telling you this, but..." or "If you promise to keep it a secret." Secret information always seems more valid than public information.

- **Tell them only as much as they will believe at that time.** People can only absorb and accept limited amounts of information at a time. Anything more will put your credibility into doubt. When preparing for a negotiation, winning negotiators determine exactly how much information they will reveal at each step. They know how to build toward the result they want. It is much like arguing a case in front of a jury or

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writing a great mystery novel. You have to keep them involved and build toward a crescendo.

- **Use precise numbers.** Everything you say or do during a negotiation gives off a subliminal message. People tend to believe precise numbers more than they believe rounded off numbers. That is why Taster's Choice coffee is "99.7 percent caffeine free" and Ivory soap is "99 and 44/100ths per cent pure." So the next time you are negotiating, make your counteroffer an odd number that looks as if you took a lot of time calculating it.

- **Simple solutions are often the easiest to agree to.** People yearn for simplicity. They tend to focus on numbers and relationships that seem natural. That is why they gravitate toward splitting the difference and sharing things equally. Part of the hidden agenda of many people is settling on something that is easy to explain to others. Simple solutions often work where complex solutions don't, because they are simple.

For instance, studies indicate that simple round numbers command the most attention like \$1, \$10, \$100, \$1,000, \$10,000. This is because our number system is based in multiples of 10 so that is what people are most comfortable with. People will also pick a multiple of five because they have learned to count by 5s (5, 10, 15, 20 etc...). So, the next time you want to resolve a matter at \$10,000, demand \$10,250 and they will automatically respond with \$10,000.

- **Put your offer in writing.** The power of the printed word is amazing. It is a key element in building credibility. People tend to believe more of what they see in writing than what they hear. This stems from the fact that most people rely more on their visual senses than on their other senses. We have also learned to accept the authority of what is written to such an extent that we often do not question their validity even when circumstances change. Seeing things in writing is comfortable, validates our beliefs and gives tremendous credibility.

Many businesses create a presentation folder for use in selling their goods or services. The best litigators create visual presentations for the mediator, the judge and the jury so they can follow

along with the verbal testimony and evidence.

In preparing for the negotiation, gather as much information as you can about comparable deals, jury verdicts or settlements that favor your position. Bring copies of these to the negotiation, but don't present them until just the right moment – when the other side is most reluctant to accept your offer. They will be impressed with your preparation and will have a difficult time arguing that your demand or offer is unreasonable.

- **Never assume they understand you.** Quite often people do not understand what you are saying but are too embarrassed to admit that they are confused. When people are confused, they automatically blame you and then stop believing you. A person with a confused mind automatically reacts with *no*, if for no other reason than to protect his or her own ego. So take responsibility for making sure everyone is clear about what you are proposing. Make sure you clear up any confusion by gently asking them to repeat back to you their understanding of your proposition. And if you yourself are feeling confused, ask for clarification. You don't want to say *no* just because you do not understand something yourself.

Influence the other side to see it your way

In a negotiation, your job as a persuader is to influence the other side to change their point of view so it more closely aligns with yours. This process of changing points of view and opinion is prerequisite to changing behavior because people tend to act in ways that are consistent with their opinions. As a persuader you can change the other side's opinion and develop an agreement only when your message is heard and accepted.

To increase the chance of having your message heard and accepted, you must pay attention to more than the facts. Therefore if you want to influence the other side, you must take into account how people receive, process and attach to the messages that are being sent. The opportunity for your other side to accept your message improves significantly when you consider the human psyche, social forces and values of your audience.

Experts focus on four important aspects of human behavior and persuasion that make it difficult for the other side to resist your influence.

- **Focus on getting your other side to bond to a course of action.** One of your magic keys to persuasion is getting the other person to bond to a position or course of action. You do this slowly, layer by layer. With patience and good strategic bonding techniques, you can persuade them to do almost anything – their need to be consistent will cause them to reinforce their earlier decision.

Brainwashing is actually based on this bonding technique to mold the statements of the prisoners denouncing their own country. During the Korean conflict, the Chinese used this deceptively simple procedure by starting small and building on it: get the prisoner to take a small stand on an issue and build on their desire to remain consistent with their position.

They merely asked a prisoner to agree that not everything was perfect in the Western world. This was a very simple request with which the prisoner could agree to without feeling unpatriotic. After some time they would then ask the prisoner to agree that the unemployment rate in Communist countries was less than in the United States. Again, this was a statement that was easy to agree with. After some time they would then ask him to list a few of the reasons he had agreed with the last statement.

All of these apparently harmless and inconsequential statements were used to influence the prisoners to commit to a pro-Communist point of view. Eventually, many of the prisoners signed petitions condemning the war and the United States.

- **Focus on supporting their need to maintain their sense of balance.** Human beings are uncomfortable with ambiguity, uncertainty and unpredictability. They become uneasy, tense and hostile when their status or security is threatened. In the face of unease, ambiguity and tension, human beings often prefer closure at any price rather than living with the tension and discomfort of indecision and ambiguity.

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You can take advantage of this need to reduce ambiguity and uncertainty by giving your other side an easy way to save face by *first* agreeing to less important terms most favorable to them; then wait to present the terms that favor you. Only then do you stand a chance of them agreeing to those terms.

• **Focus on their need to be rewarded rather than their need to avoid punishment or pain.** Human beings respond better to messages that suggest some form of reward. They relate better to information that reinforces their values and opinions. They understandably like listening to information that makes them feel worthwhile. They are hostile to messages that threaten their status or security.

The best salespeople know that people buy when the salesperson answers the question, "What's in it for me" (*WIIFM*) and allay their fears. Therefore, winning negotiators stress the similarities of their positions and the desirability of agreement rather than stressing the downside of not agreeing.

• **Focus on their need to be consistent.** Once you can get the other side to commit to a course of action, you can play on their need to remain consistent. The phrase, "Catch them doing something right!" is a perfect example of this concept at work. You can change the way people behave by complimenting them when they do something right and withholding compliments when they don't.

Studies indicate that most people describe themselves as fair, caring, good, moral, ethical people. Building on this can help you overcome one of the greatest concerns during negotiations: that the other side will be dishonest and take advantage of you.

You can increase the chance of the other side being more fair-minded if you tell them, "I've always seen you as a fair person. Would you agree with my assessment?" You will be amazed that by getting them to commit to that statement positively influences their future behavior toward you during the negotiation. It makes it more difficult for them to be as deceptive as they might otherwise have been.

How to use intuitive expectations and conventional wisdom to your advantage

The best negotiators know and rely upon conventional wisdom and intuitive expectations about how people behave and respond. Consequently, when making offers and counter offers, you should determine your strategy based upon predetermined expectations about how the other side will respond to a particular offer or piece of information.

To use these predetermined strategic moves and psychological traps to your greatest advantage, you need to take into account all intuitive and counter-intuitive moves before deciding on a strategy. Your success will be measured by how well you circumvent the limitations of the myths promoted by popular culture and avoid getting caught in mind traps. You can increase the efficiency, speed and success of a negotiation by becoming familiar and comfortable with a variety of intuitive thought processes.

For the lawyer who wants to *win* at negotiation, the following are some of the intuitive expectations that should be dealt with provocatively, uniquely and carefully.

• **Overstate your demand but only at the maximum plausible number.**

Henry Kissinger once said, "*Effectiveness at the conference table depends on overstating one's demands.*"

The most obvious reason you should overstate your demand is that you just might get it. But the best reason you should overstate your demand is that *the other side expects you to*. And because they expect you to, they will not only understate their offer but expect you to come significantly down from your first demand. Intuitively, people tend to settle on a number that splits the difference between each party's *maximum plausible* positions, even though they have made numerous offers and counter-offers.

Knowing this, you can set up the other side to arrive at the number you want by *bracketing* this number. Try to get the other side to state their position first. Then you can comfortably state your position equal distance from the goal number. For instance if a car dealer is ask-

ing \$20,000 for a car and you want to pay \$18,000, you should make an opening offer of \$16,000. In this example, each of you would make three to five more counter-offers in increasing/decreasing amounts that match until you end up splitting the difference.

• **Flinching.** "Seeing is believing" so what people see is more important than what they hear. Remember the example of Alan Funt, on his famous show, "*Candid Camera*," where he wore a state trooper's uniform and stood next to a sign on an interstate off-ramp to Delaware that said "Delaware Closed." This shows that the great majority of people believe more of what they see than what they hear or even makes sense.

So all good negotiators look more at the body language than relying on words alone. This is why *flinching* is critical to achieving success in negotiation. Use this knowledge to help read the other side or to throw them off track about what you really intend.

There is an old story of a very successful optometrist in a town where there were many optometrists, but no one was as successful as he was. When time came for him to retire, the other optometrists were quite relieved that he would no longer be their competition.

He had a little too much to drink at his retirement party, so when they asked him to share his secret of success, he was quite agreeable. "When a customer finds the right frames and asks how much they cost, I look him straight in the eye and say 'That will be \$200' and then I pause. If the customer doesn't flinch, I continue '...for the frames. Then of course it is \$75 . . .' and if he doesn't flinch 'for one lens' and if he doesn't flinch, 'and \$75 for the other lens' and so on until he flinches. Then I know I am selling them for the right price."

• **Involve them in the negotiation and then "nibble" away.** Whenever anyone goes into a negotiation, they build up a psychological resistance to any suggestions by the other side. Car salesmen use this to their advantage by getting the buyer to agree to purchase just about anything, even if there is little profit in the

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actual car. Once the purchaser has invested time and energy in the purchase, the rest is easy. Off they go to the closing room where the “closer” adds all the little extras that really give them the profit. This is called “nibbling”.

Nibbling is an effective technique because our mind works in mysterious ways to always reinforce a decision it has just made. *Nibbling* does not just work at the end of a negotiation when you throw in the extras that you want, it is also evident in the entire process.

Each time you present an offer or counter-offer, focus on what you need to do to get them to respond. People change the way they see things in small constant increments. The more rounds you get

them to participate in, the better your chance of getting them to seal the deal. They will be resistant to losing the deal over something they would have rejected out of hand if it were the first demand on the table.

Top negotiators use this at the end to *nibble* away at the deal banking on your unwillingness to lose the deal. Usually, they can get the other side to agree to additional demands to which they would not otherwise have agreed earlier. So use this to your advantage and avoid it when the game is being played on you.

Conclusion

What’s in it for you? Although there are no guarantees in life, the above strate-

gies can bring you to a level of negotiating success that you have not experienced before. Take these strategies home, consciously practice them and you can raise your skill level to “*conscious competence*” and increase your success rate by at least 50 percent.

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