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Lessons learned from effective negotiators

By By Sidney Kanazawa

One of the advantages of being a mediator is that you can listen separately to the negotiating parties during the negotiations. From this "real-time" "fly-on-the-wall" perspective, here are a few negotiating tips I've learned.

One, be curious. Some of the best negotiators I have seen are sincerely curious about the other side's position and the underlying impetus for their position. Instead of coming into the negotiation with firm thoughts about how the negotiations "should" or "must" "justly" or "fairly" conclude, they enter curious about the other side's history, motivations, and objectives. They ask open-ended questions about the other side and, similarly, ask open-ended questions about their own client's history, motivations, and objectives. Rather than justify a predetermined position, they use the negotiations to explore the underlying desires and concerns of both sides to find an acceptable intersection.

Two, reserve judgment. Effective negotiator curiosity is usually coupled with a reluctance to draw conclusions about the motivations and intentions of the other side. Effective negotiators keep their ears and eyes open to observe what is not being said. They leave open the possibility that their intuition and assumptions may be incorrect. They are open to holding inconsistent thoughts at the same time — that the other side may be posturing or misdirecting or sincere or truthful. Instead of categorizing the other side, they ask more open-ended questions and pose "what-if" scenarios to test the possibilities of an agreement.

Effective negotiators think beyond court remedies. A court is very limited. It publicly determines guilt or innocence, liability or no liability, and can award a limited set of remedies. While a court can stop someone from doing something, it cannot order them to take actions that go beyond the available remedies under law.

Three, send intentional signals. When parties enter a negotiation, there is a hope that they can agree. In fact, in over 98% of the cases filed they do agree. Only 2% of the cases filed go to trial. As such, the possibility of an agreement is high but the parameters of that agreement can only be realized if the parties carefully choose their words and intentionally signal each other about what is possible. Their perspectives about what is "reasonable" or "desirable" or "realistic" may be vastly different. But that difference is just the beginning. Whether an agreement can be reached is dependent upon whether each side can hear, understand, and accommodate the other side in a fashion better than each side's alternatives to reaching an agreement. This requires courageous exploration, open-ended questions, and a testing of alternatives. In other words, an intentional dialogue that encourages more dialogue.

Four, be respectful. Negotiations are not a zero-sum game like sports. In sports, all of the teams agree on a set of rules, agree on a referee for enforcing those rules, and agree there will be a winner and a loser determined by those rules and the referees. Zero-sum games are rare everywhere else. The rules are usually not set and can be changed. Disputes can be resolved by multiple parties, including the disputing parties themselves. And, depending upon how the dispute is resolved, there need not be a clear winner or loser. As such, effective negotiators know behavior in sporting contests are not instructive for negotiations.

What is instructive is the reciprocal learning nature of our human species. From birth, we learn to speak, act, fear, and care by mimicking the behavior of others. It is imbedded in our species. In almost every religion and code, the Golden Rule is a central hallmark — do onto others as you would want them to do onto you. It is an underlying premise of our rule of law and democratic institutions. Effective negotiators understand this basic principle and use it to their advantage. They know timid extreme positions will beget reciprocally timid extreme positions. Accordingly, they invite reciprocal behavior by bravely, curiously, and respectfully exploring the dispute from their opponent's perspective and presenting "in-the-ballpark" proposals that will be difficult for the other side to ignore. Rather than enter negotiations solely focused on what they want or how much they can exploit, effective negotiators turn the problem around and focus on understanding the other's perspective and how they can address that perspective.

Five, build trust. Disputes arise when people distrust each other. They need something from the other — money, action, dismissal. They are fearful, frustrated, and feeling powerless. Effective negotiators know those feelings are minimized when there is a sense that the other side is

trustworthy, honest, kind, and empathetic. Such behavior tends to cause us to let down our guard. To open up. To listen. To cooperate. Sincere apologies and acknowledging vulnerabilities, where appropriate, builds trust and reduces feelings of fear, frustration, and powerlessness. By contrast, intimidating boasts of a parties' "strong position" and probability of prevailing enhances the feelings of fear, frustration, and powerlessness. Such advocacy invites reciprocal advocacy and defensiveness moving the parties further apart rather than closer together. Telling the other side why they should compromise or submit is usually futile. When a party has evaluated its case, an opponent (or mediator) telling them what they should do is rarely persuasive. It is like a team captain telling an opposing coach what play the opposing team should run. On the other hand, when an opposing party has spent time building trust with acts of honesty, kindness, empathy, transparency, and vulnerability, those seemingly "weak" acts of advocacy become strengths in helping an opponent reciprocally consider and agree to a resolution that is better than no agreement. These collaborative acts powerfully transform an opposing "team captain" into a sincere "teammate" seeking a mutually favorable path forward for all.

Six, think big. Effective negotiators think beyond court remedies. A court is very limited. It publicly determines guilt or innocence, liability or no liability, and can award a limited set of remedies. While a court can stop someone from doing something, it cannot order them to take actions that go beyond the available remedies under law. Parties to a dispute, however, have no limit. Exchanges of property. Payments over time. Apologies. Public statements. Future business. Resignation. None of these remedies can be ordered by the court. But effective negotiators know the parties can agree to all of them. As such, to think solely in terms of remedies that a court can grant unnecessarily constrains the imagination of the parties. Value can be added to a resolution by thinking big and far beyond the limits of a court.

Every negotiator should have the opportunity to hear both sides of a dispute. It will change your perspective on what is and is not effective in negotiations. ■

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