

Trust and Rapport; Sharing Information

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C. Initial Interaction

1. *Trust and Rapport*

How we feel about those with whom we negotiate is a critical element to whether an agreement will be reached. Just as you may feel you can quickly “read” the character and trustworthiness of those you face, so others are forming a quick impression of you. The maxims that “you never get a second chance to make a first impression” and “first impressions matter” need to be considered as you prepare for and commence a negotiation.

The impression you make on an opponent will probably be formed, in part, before you meet. If the negotiation is of significance you and your opponent will find out what you can about one another. Your reputation will precede you into the negotiation. In addition to informal inquiries among those with whom you have previously negotiated or had other professional contact, the Internet opens your public history, both accomplishments and mistakes, for all to see. So your preparation for a negotiation, in terms of the impression you make and whether you can be trusted, involves your entire professional life. Although a misimpression can be corrected, it is an uphill struggle because of what we know about self-fulfilling prophecies and the selective way we view evidence to support earlier impressions. Trust is more likely to develop between negotiators if they see one another as similar. Similarity of backgrounds, experience, values, tastes, or group identity helps develop rapport and smoothes the way to trust. There is a delicate balance when opening a negotiation session between engaging in “small talk” that might establish a shared interest, affiliation, or acquaintance for the purpose of creating rapport, and getting to the point regarding the issues in dispute. However, taking time to learn enough about your counterpart to find commonalities and the opportunity to establish a personal connection as the basis for trust is usually time well spent.

The flip side of trust, distrust, inhibits negotiation. Distrust tends to be reciprocated and becomes a self-fulfilling prophecy engendering negative behavior and selective perceptions that confirm the reasons for not trusting one another. Distrust is an obstacle to the exchange of information and collaboration or joint problem solving.

Unless negotiators know one another socially or have had positive professional experiences together, mistrust is more the norm at the beginning of a negotiation because you know the other side can prevent you from getting something you want. So, setting a positive tone and early moves to build trust are important. If you can start on a positive note, you can build a momentum of trust that can carry the negotiations through difficult times. Trust initiated through good listening, sincere compliments, or small opening concessions builds upon itself through reciprocity. Consider the following dramatic example of creating trust by paying attention to local custom and the offering of a small gift.

Robert Benjamin, *TERRY WAITE: A STUDY IN AUTHENTICITY*

Adapted from <http://www.mediate.com>, Summer 2002

Terry Waite has been both hostage negotiator and hostage. He was instrumental in gaining the release of two Anglican [p]riests held captive by the Libyan leader Omar Khadafy, and subsequently was himself taken hostage for five years by a militant group associated with the Ayatollah Khomeini in Iran. As a negotiator, Waite had to deal face to face with a man who fit the mold of most negotiators' "worst-fear scenario" when his and other people's lives were on the line.

In 1983, in the course of ongoing hostilities between the United States and the United Kingdom and Libya, Colonel Omar Khadafy lashed out at the West by taking hostages. The conventional wisdom about the Colonel was that he was quite simply a "madman" —the principal "evildoer" of his time. If trust, as it is often stated, is a pre-requisite for negotiation, then Khadafy was a poor prospect. Many cautioned against trying to negotiate with someone so erratic, unpredictable and downright evil. Given the situation, Waite, of course, saw little alternative except to negotiate; Khadafy was the only one who had the authority to order the hostages' release.

After making contact through circuitous sources, Waite's introductory meeting with Khadafy could not have inspired less confidence. Just getting to the meeting was daunting. Without benefit of car, body guard, or protection of any kind, he was required to walk across a sports stadium playing field, where the bodies of those executed or tortured the night before by Khadafy security forces were laid out from one side to the other.

Waite abided by cultural tradition and presented Khadafy with a gift—a book on Islam. Given the circumstances and gravity of the situation, that act seems absurdly silly and out of place, but was not. It served to alter the atmosphere of the discussions and set the stage. Waite knew he could not just "cut to the chase" and any chance he might have of success required awareness and attention to ritual. A delighted Khadafy was thus offered the opportunity to talk about Middle East history and reciprocate Waite's initial gesture. The Westerner Waite had to stifle his urge to talk directly about the situation at hand. They bided time, talking only indirectly around the present circumstance. This was, however, a necessary dance paying homage to Koranic traditions and building a measure of trust.

Question and Note

8. What are some of the ways that a negotiator in the United States can create trust with a counterpart that he knows only by reputation or by Googling? Might your answer be different if the context is the negotiation of a transaction, rather than the settlement of a lawsuit?

Considerable research has been done on ways to build rapport and influence attitudes for purposes of marketing and sales. Much of this research has applicability to negotiation and can be put to good use, provided it is implemented subtly enough that you appear sincere and don't

come across as a salesman. One core finding of the research is that people tend to reciprocate small favors and concessions by giving more than they receive (see Cialdini, 2001).

In our chart of negotiation stages at the beginning of this chapter, we listed first demands and offers as part of initial interactions under the competitive/adversarial approach, but omitted them in the interest-based approach. Interest-based negotiators seek to establish a positive relationship and exchange information before discussing proposals. We will return to demands and offers after the following discussion about gathering and managing information.

D. Exchanging and Refining Information

The task of finding out all that you can about the other side, their needs, their case, their BATNA, and other factors affecting their reservation point is a significant part of the preparation stage and pervades the entire negotiation process. Similarly, disclosing and managing information in your control that may shape the other side's perceptions or that they want to know is also a continual part of the process. Exchanging and refining information are listed as a separate step only to emphasize their importance in the process and to recognize that there are points in the negotiation where information is expected to be exchanged formally or informally. This "stage" could just as well have been listed before initial interactions and offers. Exchanging and refining information is a dynamic that continually shapes expectations and effects negotiation and decision making. Information may be bargained before negotiating over outcomes.

A hallmark of effective negotiators, whether competitive or cooperative, is their ability to listen, their propensity to ask questions, and their desire to continually gather information. (As will be presented later, information is power in negotiations.)

1. Listening and Questioning

Lawyers are often characterized as good talkers, who love to argue. In court, being a "silver-tongued" attorney may be valued. In negotiations, as in conversations, being a good listener and knowing how to obtain information through the use of questions is more important than talking. This is true in interacting with clients when preparing to negotiate for them, as well as in negotiating. The old wisdom that "we were born with one tongue and two ears so that we can hear from others twice as much as we speak," is good advice for negotiators.

If you can learn what is in the brain and heart of an opponent, you can make a personal connection, satisfy their needs, and get what you want at the lowest possible cost. If you actively allow others to openly express themselves, they usually will tell you what you want to know. The more you talk, the less they can say, and the less you can listen and learn. We seldom learn anything new by speaking. The key lesson here is easy: Talk less and listen more. When you do speak in a negotiation, do so in a way that elicits more information, directly or indirectly, or that helps shape the negotiation. Sometimes giving information is a way to get information, but know when and how to listen.

Research results confirm that effective negotiators are better at eliciting information and do more of it than less effective negotiators. Disclosing information, whether by arguing the merits of your case or asserting your position early on, generally results in worse outcomes than first asking questions and listening. Neil Rackham and John Carlisle studied the behavior of English labor and contract negotiators. The more successful negotiators asked twice the number of questions asked by less successful negotiators and spent twice as much time acquiring information. Effective negotiators tested their understanding of what was said and summarized what they heard (Rackman and Carlisle, 1978).

Their research supports what psychologists and interviewers have known: The most effective listening is active listening. Active listening is the opposite of deadpan, silent, passive listening. During active listening you focus your energy on what the speaker is communicating and provide responses that encourage the speaker to open up and say more. In active listening you hear not only the content, but also identify the emotion or sentiment expressed. You then briefly restate in your own words the feeling and some of the content you heard communicated so the speaker can confirm, clarify, or amplify. Most important, your response lets speakers know you heard what they said and that you care about how they feel.

The following selection provides a guide for active listening and purposeful questioning when you are negotiating.

Lee E. Miller and Jessica Miller, *A WOMAN'S GUIDE TO SUCCESSFUL NEGOTIATING*

66, McGraw-Hill (2002)

Active Listening

There are numerous ways to encourage others to talk so you can find out what their real concerns are. These techniques are referred to as active listening and include the following:

Reflect Back

Restate what the other person has said in your own words. This ensures that you correctly understand what has been said, and it also shows the other person that you are trying to see things from their perspective. For example, if someone says, "I can't understand how you could come up with such an unworkable solution to our problem," you might paraphrase that by stating, "I guess we don't understand what your real needs are here."

Clarify

When something is not clear or you want a better understanding of what has been said, you can ask for clarification. For example, in response to the previous statement, you might say, "I don't understand. What do you mean by unworkable?" Or you could ask them to explain: "Why do you think it's unworkable?" In addition to giving you additional information, clarifying signals that you care about their concerns.

Encourage

Nod and smile, lean forward when others are talking, look them in the eye, and occasionally interject phrases such as “I see,” “Go on,” or “Really.” This will encourage those who are speaking to expand upon what they are saying. The more they speak, the more information you will get. Again, by engaging in this behavior, you signal your willingness to listen and your interest in what is being said.

Acknowledge Effort

Provide positive reinforcement when the speaker tries to work with you or says something you agree with. For example, you might respond by saying “I appreciate your efforts,” or “That’s a good point.” This will encourage further efforts to find common ground with you.

Recognize Feelings

It often helps to address the feelings that people may be experiencing but not openly sharing. In response to the statement that “The proposal is unworkable,” you could reply, “I see that you’re frustrated with how the discussions are proceeding.” Recognizing others’ feelings often defuses anger and allows them to open up. This is frequently necessary before you can move on to problem solving.

Summarize

When you believe that you understand the other person’s point of view, summarize your understanding of what has been said and ask whether your understanding is correct. Do the same when you reach an agreement on a particular issue. Summarizing helps to prevent misunderstandings, and you should use it continually throughout the course of negotiations. When done on an ongoing basis, it reinforces that the parties are making progress and encourages continued efforts toward reaching an agreement.

It doesn’t do much good to listen, however, if you don’t act on what you hear. Don’t be afraid to stray from what you had planned to say if you get signals the other side is not receptive to the approach you are taking. Moreover, nothing works better than using what the other side says. You can achieve many of your objectives just by listening carefully to what is being said and agreeing to those points that are helpful. That is why it is always best to listen first.

Purposeful Questioning

Good negotiators ask different types of questions for different reasons, from open-ended, information-gathering questions to focused questions intended to lead someone to a specific conclusion. The two primary reasons for asking questions during negotiations are to get information or to support your argument. How you ask a question will depend on what you are trying to achieve.

Ask Open-Ended Questions

You should ask open-ended questions if your goal is to obtain information or to find out what the other person is thinking. Open-ended questions can't be answered with a yes or a no. They usually begin with "who," "what," "where," "when," "why," or "how," which allow for wide latitude as to responses. Their unstructured nature often enables you to find out what the real issues are and how you might satisfactorily resolve them. Open-ended questions such as "Tell me how you reached that conclusion" can also give you an insight into how someone else thinks.

Often, asking the right question at the right time can give you the information you need to completely turn around a negotiation. I recall one such situation.... I was practicing law, representing an executive who was taking a job with a new company and being asked to relocate from California to Connecticut. We had worked out the major issues—salary, bonus, stock options—to his satisfaction. The new company had a generous relocation policy, but it provided for only a 30-day temporary living allowance. My client's daughter was a senior in high school and he was not going to move his family until after she graduated. So he asked the company to pay his temporary living expenses for one year. The company representative insisted that they could not deviate from their relocation policy. My client was equally adamant and felt that if the company was taking such a bureaucratic approach to his request, it was probably not a place where he would want to work. Just when I thought the deal was about to fall through, I asked a question that allowed us to successfully conclude the negotiation. What was this brilliantly insightful question? It was simply "Why?" More specifically, I told the vice president of human resources that I couldn't understand why we were arguing about this issue. He explained that the relocation policy was written that way because the company had been burned by a senior executive who, after being paid temporary living expenses for well over a year, could not get his wife to move and rejoined his previous company. Having been embarrassed once, the vice president was not about to ask for another exception to the policy. Understanding his reasons for refusing our seemingly reasonable request enabled us to readily resolve the problem. We agreed that if my client did not move his family to Connecticut, he would repay the company for his temporary living expenses. This allowed the vice president to ask for and receive a modification to the relocation policy without the fear of looking foolish if things didn't work out....

One purpose of asking open-ended questions is to keep the other side talking. The more someone talks, the more likely they are to provide valuable information. An added benefit is that it helps you develop a relationship with that person, which, in and of itself, is helpful. When you ask questions of others, people feel that you are working with them to find solutions, not negotiating against them.

Ask "Why?"

As mentioned above, often the most useful question you can ask is "Why?" Asking why works particularly well as a response to statements such as, "We can't agree to that" or "That would be contrary to policy." When you ask, "Why can't you agree to that?" or "Why do you have that policy?," you are calling for a reasoned response. After you are given a reason, you can make a case that the reason is not applicable in this instance. Alternatively, you have an opportunity to satisfy the other side's objections.

Repeat Back in Question Form

Another way to ask why is to use a variation on the reflecting back technique described above. Simply repeat what has just been said, but in question form...reflecting back the other side's own words when a proposal is not reasonable can be very effective. Similarly, when people make unqualified statements such as, "We never do that," a simple "Never?" will force them to either confirm that this is really the case, or, more likely, cause them to retreat to something like, "Except in very unusual circumstances." Once you get that kind of admission, you are well on your way to making your case because now you know what argument to make: that yours are unusual circumstances and require an exception to the normal practice. Once someone concedes that exceptions have been made in the past, it becomes much harder to claim that you don't deserve the same treatment.

Answer Questions with Questions

Sometimes you can answer a question with a question. If you don't want to respond to a particular question or you want to understand why someone is asking a particular question, you can respond by asking, "Well, what do you think?" If you do this too often you may appear evasive and argumentative, but using this approach sparingly can be effective.

Ask What They Would Do

Finally, if you find yourself at an impasse, you can always ask what they would do if they were in your position. This can sometimes completely change the dynamics of the negotiations by forcing the other side to come up with a solution to the problem, rather than trying to convince you that there is no problem. In doing so, a solution may emerge that would be acceptable to you or could be made so with slight modification.

Questions

9. The selection above on active listening and questioning is excerpted from a book written as a guide for women. Do you consider the advice given to be gender specific? Do you think men or women are generally better listeners? Why?
10. Are there times when active listening or responding to a question with a question should not be used? When would you find these techniques annoying or counterproductive?
11. The use of silence to elicit additional information after someone stops speaking can also be effective in situations other than negotiation. The silence should be accompanied by continued eye contact to convey an expectation or invitation for more information. Have you used this method with friends, a spouse, or children? Do you think you are susceptible to this technique when used by others?

2. *Managing Information*

Effective negotiators also know how to manage information and thoughtfully determine when and what information to provide. Generally, it is better to receive more information than you

provide, but this is not an absolute. The distinction between managing information and purposely deceiving is a thin line and will be examined in the section on negotiation ethics.

The following selection provides advice and discusses issues regarding obtaining and providing information. Professor Nelken first focuses on managing and bargaining for information in distributive situations and then on the benefits and concerns of sharing information in more integrative negotiations. The separation between distributive and integrative negotiation is not always clear, so her comments may apply to both.

Melissa L. Nelken, *NEGOTIATION: THEORY AND PRACTICE*

41, Anderson Publishing (2007)

In the course of the negotiation, you will try to learn things about the other party's case, and about his perception of your case, that you don't know when the negotiation starts. He, of course, will do the same with you. Another important aspect of preparation, then, is deciding what you need to find out before you actually make a deal. Without considering what information you need to gather in the early stages of the negotiation, you will not be able to gauge how well the actual situation fits the assumptions you have made in preparing to negotiate. You may have overestimated how much the other party needs a deal with you, or underestimated the value he places on what you are selling. Only careful attention to gathering information will enable you to adjust your goals appropriately. In addition to what you want to learn, you also have to decide what information you are willing, or even eager, to divulge to the other party—for example, the large number of offers you have already received for the subject property—and what information you want to conceal—for example, the fact that none of those offers exceeds the price you paid for the property originally. Managing information is a central feature of distributive bargaining, and you have to plan to do it well.

A beginning negotiator often feels that she has to conceal as much as possible, that virtually anything she reveals will hurt her or be used against her.... [Y]ou are more likely to feel this way if you have not thought through your case and prepared how to present it in the best light that you realistically can. If you choose when and how you will reveal information, rather than anxiously concealing as much as possible, you gain a degree of control over the negotiation that you lack when you merely react to what your counterpart says or does. Increasing the amount of information you are prepared to reveal, and reducing the amount you feel you absolutely must conceal, will help you make a stronger case for your client. In addition, the more willing you are to share information that the other party considers useful, the more likely you are to learn what you need to know from your counterpart before you make a deal.

Using Outside Sources

As part of your preparation, you need to consult outside sources of information to help you understand the context of a given negotiation. You will need data about the subject of the negotiation—market prices, alternate sources of supply, industry standards, market factors affecting the company you are dealing with, and so on. In addition, information about the parties and their representatives from others who have negotiated with them in the past will be helpful in

planning your strategy. You will also want to learn about any relevant negotiation conventions, for example, the convention in personal injury litigation that the plaintiff makes the first demand....

Bargaining for Information

A central aspect of distributive bargaining is bargaining for information. In the course of planning, you have to make certain working assumptions about the motives and wishes of the other side, as well as about the factual context of the negotiation. In addition, we all have a tendency to “fill in” missing information in order to create a coherent picture of a situation. For a negotiator, it is imperative to separate out what you know to be true from what you merely believe to be true by testing your assumptions during the early stages of the negotiation. Otherwise, you risk making decisions based on inaccurate information and misunderstanding what the other side actually tells you....

Many negotiators forget that they start with only a partial picture of the situation, and they push to “get down to numbers” before learning anything about the other side’s point of view. Yet the relevant facts of a situation are not immutable; they are often dependent on your perspective. Knowing the other side’s perspective is a valuable source of information about possibilities for settlement. The most obvious way to gather that information is by asking questions, especially about the reasons behind positions taken by the other party. Why does a deal have to be made today? How good are her alternatives to settlement with you? What is the basis for a particular offer? Asking questions allows you to test the assumptions that you bring to the negotiation about both parties’ situations. Questions also permit you to gauge the firmness of stated positions by learning how well supported they are by facts. In addition, the information you gather can alert you to issues that are important (or unimportant) to your counterpart, opening up possibilities for an advantageous settlement if you value those issues differently.

In addition to asking questions, you have to learn to listen carefully to what the other party says, to look for verbal and nonverbal cues that either reinforce or contradict the surface message conveyed. If someone tells you that he wants \$40,000-50,000 to settle, you can be sure that he will settle for \$40,000, or less. If he starts a sentence by saying, “I’ll be perfectly frank with you...,” take whatever follows with a large grain of salt and test it against other things you have heard. Asking questions is only one way to gather information, and not always the most informative one. You also have to listen for what someone omits from an answer, for answers that are not answers or that deflect the question, for hesitations and vagueness in the responses that you get. There is no simple formula for what such things mean, but the more alert you are for ways in which you are not getting information in a straightforward way, the better able you will be to sort through the information that you get....

One of the most effective and underutilized methods of bargaining for information is silence. Many inexperienced negotiators, especially lawyer-negotiators, think that they are paid to talk and are not comfortable sitting quietly. If you can teach yourself to do so, you will find that you often learn things that would never be revealed in response to a direct question. When silences occur, people tend to fill them in; and because the silence is unstructured, what they say is often more spontaneous than any answer to a question would be. Since you are interested in gathering

new information in the course of the negotiation, it is useful to keep in mind that if you are talking, you probably aren't hearing anything you do not already know. Therefore, silence is truly golden....

Sharing Information

All that has been said so far about integrative bargaining suggests that lawyers will only be able to do a good job if they share substantive information about their clients' needs and preferences and look for ways to make their differences work for them in the negotiation. According to Follett (1942, p. 36), "the first rule...for obtaining integration is to put your cards on the table, face the real issue, uncover the conflict, bring the whole thing into the open." This is a far cry from the bargaining for information that characterizes distributive negotiations, where each side seeks to learn as much as possible about the other while revealing as little as it can. The more straightforward and clear the negotiators' communications are, the fewer obstacles there will be to recognizing and capitalizing on opportunities for mutual gain. This means, first, that they must be clear about their clients' goals, even if they are open as to the means of reaching those goals. In addition, there must be sufficient trust between them so that both are willing to reveal their clients' true motivations. Such trust may be based on past experience, but it may also be developed in the course of a negotiation, as the negotiators exchange information and evaluate the information they have received. It does not have to be based on an assumption that the other side has your best interest at heart, but only that he is as interested as you are in uncovering ways that you can both do better through negotiation. Self-interest can keep both sides honest in the process, even where there might be a short-term gain from misrepresentation. Of course, the need to share information in order to optimize results creates risks for the negotiators as well....

Flexibility, rather than rigid positions, is key to integrative bargaining, since the outcome will depend on fitting together the parties' needs as much as possible. When the negotiators share adequate information, they may end up redefining the conflict they are trying to resolve. For example, what seemed a specific problem about failure to fulfill the terms of a contract may turn out to be a more fundamental difficulty with the structure of the contract itself. A better outcome for both sides may result if the contract is renegotiated....

Strategic Use of Information

There is also anxiety because the amount of shared information needed for integrative bargaining to succeed may be more than a distributive bargainer wants to reveal. For example, a distributively-inclined buyer may prefer that his counterpart think that time of delivery, which he does not care much about, is very important to him, so that he can exact concessions on other aspects of the deal by "giving in" to a later delivery to accommodate the seller. Since it is hard to know in advance what issues will be most significant to the other side, it can be difficult to decide how much information to share and how to evaluate the quality of the information you receive about your counterpart's priorities. The fear of being taken advantage of often results in both sides' taking preemptive action focused on "winning" rather than on collaborating. Sometimes such strategies are effective; but they are also likely to impede or prevent what could be a fruitful search for joint gains.

