

The Art of Communication

NEGOTIATIONS: LISTEN MORE, TALK LESS

BY JAY SULLIVAN

With your game face on, you walk into the conference room to meet opposing counsel. Your client has given you the guidelines for what they want to achieve from the negotiation. It's the first time you are on your own with the other side. You've always known you were tough, and now you get to prove you can play hardball with the big guys.

If you're like most young attorneys, however, probably two things are missing: You haven't put in nearly enough time trying to understand the needs of the other side and you don't yet have any professional reputation with opposing counsel. But both goals can be achieved by simply asking the right questions.

A negotiation is one of the more structured forms of business communication. When you communicate in a professional setting you do so to get what you want from



others. And we get what we want from others when we give them what they need. The trick is to figure out what the other side needs, which isn't always the same as what they have demanded during discussions.

The only way to figure out what the other side needs is to ask, and then to listen well. Lawyers tend to be very good at asking a lot of questions, and then not so good at truly listening to the answers.

If you have ever attended a deposition training course, you know the value of asking open-ended questions—what? why? and how? rather than did you? could you? have you? The same open-ended questions that work so well in depositions help tremendously during negotiations.

Open-ended questions gain much more information because they require

the other side to respond with more than a simple yes or no. The more you learn about the other side, the better prepared you are to provide possible solutions.

We tend to stop too soon when we question the other side because we make assumptions about their thoughts and motivations. The primary assumption we make is that it's all about the money. Although sometimes it is about the money, often there are other, more important, issues at stake. For instance, if we are representing a manufacturing client in discussions with a key supplier, we need to understand the larger context of our client's relationship with the other side.

While "success" in the immediate negotiation may be important, what qualifies as success may be determined, in part, by maintaining stability of the parties' relationship. That means applying a negotiation style that conveys to the other side a true interest in meeting mutual objectives, rather than a take-no-prisoners approach. Demonstrate that approach by asking probing questions of the other side.

If Smith demands X, for example, Jones can agree, refuse or proffer Y. Now the

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ball is back with Smith, who will counter, and the conversation is more akin to a ping-pong match than a discussion between two professionals who want to accomplish a goal for their clients.

If instead of making a counter demand, Jones were to ask, "What about X is of interest to your client?" or "How does X relate to the other demands your client is making?" Jones has a much better chance to uncover deeper needs of the other side. While Smith may have thought he needed X, it could turn out that X was Smith's way of accomplishing another goal, such as saving face, looking good to his boss, or meeting an immediate business objective.

By uncovering the deeper need, Jones may be able to accomplish his real goal at a much lower cost.

Preparing and asking a few key questions is a great start, but it doesn't get us far enough.

Rather than plowing ahead with prepared questions, listen carefully to the other side's responses. Jotting down occasional notes will help you stay focused on what opposing counsel is saying. As you pay close attention to her answers, you may hear opportunities to delve deeper into motives, needs or

issues. Pursue those opportunities.

A helpful tool for keeping the other side talking and conveying a sense of commitment to meeting those needs is using encouraging phrases such as "Tell me more about that issue" or "You've mentioned X is a concern. What else?" Notes will help you mark subtleties in the other side's position that you can use to respond effectively.

Lack of Stature

A second challenge new lawyers face in negotiations is a lack of stature. Early in our careers, we have no credibility. We have to earn it. When we walk into a negotiation, we not only represent our client, we represent ourselves as professionals and the profession as a whole.

One reason laymen hire lawyers is that we can participate in the discussion in a professional manner, rather than with all of the emotional baggage that otherwise creeps into some negotiation discussions. Asking open-ended questions changes the tenor of the conversation and helps change the discussion from combative to cooperative, where more progress can take place.

Remember, the other negotiator is just that, another negotiator. His client has legitimate needs that must be met as a result of this discussion. Communicating a sense of trying to achieve those objectives for both sides shows a maturity and understanding of the issues that will help build rapport with today's opposing counsel, and a reputation for tomorrow's.

By asking probing questions during a negotiation, you gain additional information that will help you craft a better deal for your client. In addition, you appear to be more interested in meeting long-term solutions rather than accomplishing a quick fix.

By approaching a negotiation from the perspective of wanting to achieve fairness and equity, you establish a reputation for yourself as an attorney who accomplishes the needs of your client without bruising the other side. Such a reputation can only help with future business and with future stature as a professional.

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