

HIRING A NEGOTIATOR: Some qualities to consider..



*The 10 Powers of Negotiation:
Beyond the Technical*

Michael Friedlander

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Hiring a negotiating team or to represent you in a negotiation is tricky business—particularly if you've never worked together before. And if its an attorney you have your eye on to represent you at the table, we should begin by stating the obvious: not all attorneys are great negotiators. Indeed, there are some specific pitfalls you might want to keep in mind before you hire one...

Analyzing someone's professed negotiating skills is a little like analyzing the risks posed by an iceberg when all you can see of the iceberg is *above the water*. Often, the real dangers posed can lie *beneath the water*—out of sight.

What separates the negotiating superstars from the rest of us is generally *what lies out of sight*. It is their *intangible* qualities and skills that often make the difference between success and failure. A real-life example is Nelson Mandela whose intangible qualities and skills made him such a formidable negotiator.

In interviewing and hiring a negotiator to join your team, therefore, you will need to assess not only whether or not he or she has the necessary intangible qualities and skills to get the job done, but also whether or not he or she reflects *your values* and *your approach* to the negotiation process...



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*The 10 Powers of Negotiation:
Beyond the Technical...*

By Michael Friedlander

A STARTING POINT

In deciding who to hire to join your negotiating team, you might want to reflect on the whole negotiating process—and to consider what you are looking for in your negotiating team. Whether you are leaning towards hiring an attorney, accountant, plumber or magician to join your team, you also might want to consider the 10 Powers of Negotiation that Nelson Mandela displayed in his historic negotiations with the South African apartheid government.

A NEGOTIATION IS A WINDOW...

You might want to begin by thinking of a negotiation as *a two-way window*. Look through that window at those with whom you are negotiating and you might just experience something almost magical. You might just get a sense of what it will be like to work with them *after* your deal is signed.

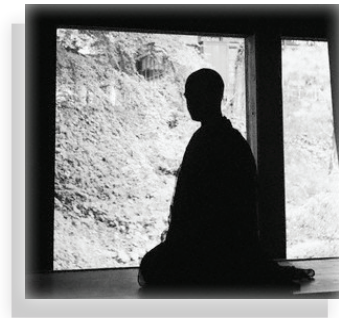
Here is something I've come to learn over the years: *Most people never behave better than when they want something from you.* And in most negotiations people want something from you.

So, here is what you can take straight to the bank: *If someone behaves badly in a negotiation before the deal is done, you can bet the farm they'll behave badly after your deal is done.* Conversely, if they behave professionally and reasonably with you, there is every reason to feel optimistic about your future relationship with them. And that is what is almost magical about the negotiating process...

That being said, a word of caution: Keep in mind the magic works both ways. The window is not a one-way window. Just as you are watching them, *they too are watching you—and those you hire to represent you.* Just as you are reaching conclusions from the way they behave, they too are reaching conclusions about you and your team.

In hiring a negotiator for your team, therefore, you might want to consider not just his or her technical negotiating skills, but also *the impression he or she might leave with the other side* and whether or not you are comfortable with that impression. Whoever you hire, you had better be sure that your team is in sync and can create the atmosphere that will be conducive to you being able to reach your goals.

On the subject of hiring an attorney, you might have experienced that many of us are quite charming and pleasant with great people skills. Other attorneys, I'm sad to state, are neither charming nor pleasant. These folks tend to prefer negotiate using a scorched earth approach. If this is your preferred style, I can save you some time. None of what follows will apply to you...



WHAT ARE YOU LOOKING FOR BEYOND THE TECHNICAL?

To understand the negotiating process is to understand that a negotiation is *neither a battle nor a war*. Instead, it is a multi-layered and nuanced *problem-solving process* that requires you to identify the problems that each side needs solved.

To identify and solve problems you face in a negotiation requires some special talents that extend beyond just those technical negotiating skills taught by in a high-powered negotiating course or a prestigious law school. Instead, it requires mastering the art of divergent thinking and multi-tasking. It requires you to be able to walk and chew gum concurrently, while holding more than a single thought in your head. It also requires people skills and common sense.

To add to the complication and complexity of the process, your negotiating team will have to navigate *multiple* inter-woven ongoing mini-negotiations while often dealing with multiple personalities on the other side. In particular, it will require them to know when to speak and when to stay very quiet—and to know who to watch and who to listen to. And it will require them to hear not just what is said—but *what isn't said*.

During his historic negotiations with the South African apartheid regime, Nelson Mandela showcased his profound negotiating skills. In researching those skills and his historic negotiations for my book, *Detecting the Scam: Nelson Mandela's Gift*, I identified ten beacons of knowledge or “powers” of negotiation he had mastered. I called them “*The 10 Powers of Negotiation*.” What intrigued me about these Powers was how many were *non-technical*. Equally intriguing was how he applied these powers *simultaneously*. In passing, I might note an often-overlooked fact: Nelson Mandela was also a formidable attorney.

Many of these 10 Powers highlight some personality traits you might want to consider in seeking out in the negotiator you want to hire. Unfortunately, unless you've worked with the person before, it might be quite difficult to know if they have the qualities you are looking for.

THE 10 POWERS OF NEGOTIATION

- The power of understanding the negotiating process.
- The power of preparation.
- The power of positioning.
- The power of common sense and logic.
- The power of dignity, congeniality, humility and humor.
- The power of truth and fairness.
- The power of observation—of listening and seeing.
- The power of morality, courage and attitude.
- The power of patience.
- The power to walk away.

For example, you will have to ask probing questions to learn if the person you hire understands the importance of patience, humility and dignity. Similarly, your questions will have to extract a sense of whether or not he has a sense of morality and the courage to apply it and if he knows how to listen and observe what is happening around him. Either he has the ability to empathize with the other side or he doesn't. Either he can "read" the folks on the other side of the table or he can't. This is not an easy process.

Do some attorneys and accountants have all of these skills? *Absolutely*. Do all have these skills? *Absolutely not*. Are all these skills technical? *Absolutely not*. In some cases, your children may have all of these skills and, indeed, may be more proficient at people skills that some highly qualified and well-paid professionals sorely lack.

I would note that even the best law schools do not teach the kind of non-technical negotiating skills that you will certainly need on your team. For example, most law schools teach that negotiation occurs only in the context of "conflict resolution." As George and Ira Gershwin's classic song is entitled: *"It ain't necessarily so."* While negotiations obviously do occur in the context of conflict resolution, *they also occurs in the context of problem-solving without any clear conflict in sight*. Understanding this can be a game-changer for you.

Because the negotiating process is so complex, and with so many balls to juggle, you will have no choice but to assemble a team to help you. Also, the process that requires divergent thinking often requires you to gather together the smartest folks you can find. Its all about the collaborative process and that wonderful quote from George Bernard Shaw:

If you have an apple and I have an apple and we exchange these apples then you and I will still each have one apple. But if you have an idea and I have an idea and we exchange these ideas, then each of us will have two ideas.

HUMILITY ...

"The first test of a truly great man is his humility. By humility I don't mean doubt of his powers or hesitation in speaking his opinion, but merely an understanding of the relationship of what he can say and what he can do."

John Ruskin

"Flattery is all right so long as you don't inhale."

Adlai Stevenson

"It is unwise to be too sure of one's own wisdom. It is healthy to be reminded that the strongest might weaken and the wisest might err."

Mohandas K. Gandhi

The question now is what specific qualities you are looking for in your team and in your team leader?

What now follows is not an exhaustive list of preferred character and personality traits and non-technical negotiating skills you might want to seek out in the person you hire —whether or not he or she is an attorney. Instead, it is based on my personal non-scientific observations gained from almost 30 years negotiating deals around the world and watching some remarkable negotiators in action—up close and personal.

MAKE SURE HE HASN'T DRUNK THE PUNCH...

Humility is the real deal, folks. It is just an absolute necessity as a quality in your negotiating team, it is also a quite endearing quality. It is therefore no coincidence that, while the best negotiators all remain confident in their abilities and skills, they also all work hard to remain grounded. Simply stated, they don't drink the punch...

Unlike their less-skilled colleagues, they see no point in trying to persuade others of their brilliance in the hope of intimidating them. They know this rarely works and only serves to annoy the other side. Instead, and for sound strategic reasons, they go to great lengths to remain low-key and to fly below the radar. If this reminds you of some attorneys you know, you might want to go and hire them.

So, why do other attorneys trumpet their perceived brilliance? Perhaps its because they think they must justify their hourly rates. Perhaps they hope that, if they keep repeating how brilliant they are, we'll hire them. For these particular attorneys (or anyone else that displays this particular trait), if you hire them, you'll get what you deserve...

For those who disagree with me, you should appreciate the risks associated with overconfidence and arrogance. For example, you can take this to the bank: As our self-professed brilliant negotiators focus on their perceived superiority, they will inevitably begin *to focus less on the other side*. And as they do, they will almost always discount and

HUMILITY ...

"True wisdom comes to each of us when we realize how little we understand about life, ourselves and the world around us."

Socrates

It is far more impressive when others discover your good qualities without your help.

Anonymous

LISTENING ...

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

Winston Churchill

"The reality of the other person lies not in what he reveals to you, but in what he cannot reveal to you. Therefore, if you would understand him, listen not to what he says, but rather to what he does not say.

Kahlil Kibran

REALITY

"We must always think about things, and we must think about things as they are, not as they are said to be."

Sir Isaac Newton

underestimate their views and positions. And as they do, they will almost inevitably begin to denigrate them. And as they denigrate them, they will become less likely to take seriously their reasons for taking whatever positions they have taken. And as this begins to unfold, you will find yourself on a slippery slope. And as you begin to slide down that slope, you will inevitably lose clear opportunities to address and improve the deal you might really want to reach.

But lack of humility, overconfidence and arrogance creates yet another potentially even more serious and potentially fatal problem. Because it is so important *to create a sense of trust and comfort* with the other side, *and because you will always need them to share information with you*, conveying a sense of superiority and arrogance will make this sharing almost impossible. After all, who really wants to collaborate with a condescending arrogant twit?

As Socrates once wrote, *true knowledge is knowing what you don't know*. The best negotiators are acutely aware of what they don't know—and particularly what they don't know about the other side. They also all have a singular focus on how to get the information they need about the other side. They are all grounded in the reality of the moment. And they all understand that reality is the way things are—not the way they want them to be.

Whoever you hire in your team, look for someone with a *profound sense of humility* and, unbelievable as this may sound, there are many attorneys with that particular attribute...

EMPATHY AND THE IMPORTANCE
OF ASKING AND LISTENING...

The key to success in any negotiation is to understand the importance of empathy—the ability to put yourself in the shoes of the other side and to see every aspect of the proposed deal through their eyes. If your team cannot empathize with the other side, you are

ASKING...

“He who asks is a fool for five minutes, but he who does not ask remains a fool forever.”

Chinese proverb

“Judge a man by his questions rather than by his answers.”

Voltaire

“To raise new questions, new possibilities, to regard old problems from a new angle, requires creative imagination and marks real advance in science.”

Albert Einstein

“You can tell whether a man is clever by his answers. You can tell whether a man is wise by his questions.”

Naguib Mahfouz

“A sudden bold and unexpected question doth many times surprise a man and lay him open.”

Francis Bacon

“When someone says, That's a good question. You can be sure it's a lot better than the answer you're going to get.”

Unknown Source

negotiating in the dark. And, even for attorneys, it is very difficult to see in the dark...

The problem with some negotiators is that they talk too much—and don't listen enough. This listening deficiency amongst these folks is understandable. Studies have shown that it is difficult to listen with your mouth open. With attorneys in particular, with the clock always ticking, perhaps they believe that their clients won't appreciate their hourly value if they sit too quietly and listen too much.

Key to understanding the importance of empathy, however, is to understand that to empathize requires you to have information about those with whom you are empathizing. While you can obtain some of that information through online and other traditional sources, other information may only be available *directly from the other side*. To mine that information, *you will have to build trust*. You will also have to ask thoughtful questions. But even that may not be enough, because, as you listen to the answers, you will need the talent to listen carefully not just for what is said, but for *what is not said*.

There is yet another great advantage in being a good listener. By conveying a sense that *you are really listening* to the other side, this will help you build *trust and comfort*. And trust and comfort will result in far more benefits and far more information being revealed than any hard-nosed negotiating technique.

So, if a member of your negotiating team tends to talk too much and listen too little, and if he or she brings to the table only a win-lose hard-nosed approach, understand that this might not contribute to an atmosphere conducive to information sharing and problem-solving. You might then want to pull the plug on that team member and consider a replacement.

In thinking about the questions you will need to have asked, you might want to consider hiring someone who understands the distinction between what the other side *wants* and what they *need*.

While we will certainly want to know what the other side *wants*, what we will also really want to know is *why they need it*. Without



knowing *why* they are taking the position they are taking, we might well be negotiating based on incorrect assumptions. Therefore, how questions are framed and then how they are asked become a vital skill in the process. A skilful attorney with people-skills can really help here.

Finally, a mistake that some negotiators make is to assume that the questions they want answered won't be answered, so those questions are never asked. This can offer you an interesting opportunity as you interview your candidate. You might want to ask, for example, how he might approach this situation. For example, if he tells you that he might sometimes volunteer information that he is comfortable giving away in the same broad area in which he hopes to get information from the other side, and if he explains that he will do so in the hope that this will result in a *reciprocal gesture* from the other side, you are talking to someone who really knows what he is doing. Hire him...

WHAT IS "SUCCESS" IN A NEGOTIATION?

As the Cheshire Cat intimated to Alice, if you don't know where you are going, it doesn't matter which route you choose. Unless you and the person you are hiring are on the same page as to where you are hoping to go and as to what constitutes "success" in a negotiation, you might find yourself on a steep and slippery slope.

To answer the question of what constitutes a "successful" negotiation, therefore, you and she will have to agree on the specific goals you are seeking in the negotiation. *And this is where an attorney who is not in sync with you can cause irreparable harm.*

Many attorneys regard a successful negotiation as one in which the parties have signed a document. The negotiation is deemed a "success" even before the ink has dried on the parties' signatures. For many of them, it doesn't matter what carnage might have resulted to reach that point, nor does it matter if feelings were hurt and egos were bruised along the way. *All that matters is that the document was signed...*

KNOWING WHERE YOU ARE GOING...

One day, Alice was lost. She came to a fork in the road and saw a Cheshire cat in a tree.

"Which road do I take?" she asked.

"Where do you want to go?" was his response.

"I don't know." Alice answered.

"Then," said the cat, "it doesn't matter."

Alice in Wonderland

"Before beginning a Hunt, it is wise to ask someone what you are looking for before you begin looking for it."

Winnie the Pooh

Obviously, the problem with this scorched earth approach is that, while it certainly might result in a signed agreement, its long-term implications are sometimes disastrous to the very relationships that are critical to the success of the venture. So, why do some attorneys (and particularly litigators) use this approach? Probably because this has been their modus operandi forever.

Why do litigators in particular often make the worst business negotiators? It is because they are used to negotiating by strength, intimidation and threat. It is because they always have an overwhelming need to “control” the room and the process. For them, it is often a take-no-prisoners approach. Their sole goal is to get the agreement signed by any means.

For this reason, you should avoid having litigators on your team. They rarely see the big picture. They rarely understand that, because nobody likes to feel controlled, this approach is not conducive to creating a long-term business benefit you are seeking.

So, while the goal of many attorneys is to have the parties sign a document that reflects their agreement, your goal might well be far more practical and long-term. For you, what constitutes a “successful” negotiation might be one that serves to build both a long-term ongoing relationship and an agreement that each side will value long after the agreement is signed. As a result, the “success” of the negotiation can only be judged sometimes years after the agreement is signed. After all, how successful could the negotiation have been if the parties are locked in litigation a year after the agreement was signed? The only person who could possibly be happy with this result is your litigator/negotiator—and he’ll be very happy...

THE NEED TO MULTI-TASK AND COLLABORATE...

Is your prospective new hire able to walk and chew gum at the same time? Does he understand the power of collaboration? *And does he really understand why this is so important?* If so, hire him.



Negotiation is about *multi-tasking*. It is about addressing many complex issues concurrently while also creating a patient working environment in which you and the other side can work together to reach your goals. Some attorneys can pull this off. Many can't, which is why a negotiation can become unpleasant or confrontational. Unfortunately, when this occurs you are on a slippery slope because it becomes more difficult to work together and to exhibit enormous people-skills.

Specifically, here's the problem the best negotiators have mastered: The more complex the negotiation, the more balls they must juggle and the more issues they must address. And the more balls there are in the air, the more difficult it is to (a) absorb what is going on around you, (b) analyze the available options, (c) decide on a course of action to pursue and (d) implement whatever decision you've reached. And the very best negotiators understand they just can't do this alone. They all understand they will need help...

The selection of your negotiating team is critical. You must feel comfortable, for example, selecting independent thinkers *who will challenge you and other team members*. You must therefore fill your team with the people who understand that reality is the way things are, and not the way you want them to be. *They must all have open minds. They must be skilled questioners, listeners and analysts. And they must be likable...* And if you know any attorneys who have these qualities and who also radiate humility, hire 'em...

The importance of your team being able to multi-task and collaborate is highlighted as you consider the dynamics of every negotiation—and particularly as they relate to the relationship between those on the other side of the table. This often requires someone on your team to focus almost exclusively on the non-verbal communication that is occurring while others on your team state your position on various issues.

Here is an example that we have all experienced at one time or another:

ON COLLABORATION

"If I have seen further than others, it is by standing upon the shoulders of giants."

Sir Isaac Newton

"If you leave the smallest corner of your mind open for a moment, other people's opinions will rush in from all quarters."

Sir Isaac Newton

"The moment we want to believe something, we suddenly see all the arguments for it, and become blind to the arguments against it."

Sir Isaac Newton

ON KNOWING WHO TO SPEAK TO

"Never hold discussions with the monkey when the organ grinder is in the room."

Winston Churchill

When the other side in a negotiation is represented by more than one negotiator at the table and when one of their team takes a position on a particular issue that appears to you to be quite aggressive and confrontational, understand this: *That member of their team might actually not be talking to you.*

Instead, he might be talking indirectly to other members of his team. He might be reassuring them that he's doing his job. This might just be an issue of internal politics—and you may be well-advised not to get in the way.

By watching the interaction between the folks on the other side of the table, therefore, you will gain valuable clues as to where each stands in the hierarchy of their organization. And that will tell you to whom you might want to address specific issues. Finally, and I can say this with a level of confidence based on many years experience, *keep a very close watch on the quiet ones around the table.* They are often the most dangerous...

The moral of this particular story is clear: If your new hire can't keep his eye on more than a few balls at a time, while also keeping his eye on what the other side is doing, while also assessing what is going on around him, *he ain't the guy for you...*

THE OBSESSION OF "GETTING TO YES"...

Does your prospective new hire understand that sometimes the best deals we do *are the deals we don't do*? Getting a deal done—*any deal*—does not always constitute "success." Does he or she truly understand that sometimes you have to walk away either to make progress or to escape disaster?

In this respect, some attorneys represent the worst of all worlds. On the one hand, because they might view a successful negotiation as being one in which a deal is closed, they focus solely on closing the deal no matter what. On the other hand, some attorneys are so afraid of being sued by their clients for advising them to sign a poor deal, their safest

position is for their clients never to complete a deal and these folks are almost relieved when deals break down.

A classic book on negotiation, entitled “*Getting to Yes*,” was written Roger Fisher and William Ury from Harvard University. While the book itself offers a balanced approach to negotiation, the title highlights a flaw in the approach of some negotiators. who believe that if they do not reach a deal, if they do not “*Get to Yes*,” they have somehow failed. This suggests that reaching any deal is a better than not reaching a deal. Needless to say, those negotiators are dead wrong.

I can say with absolute certainty that, over the 30 years I have negotiated deals around the world, some of the very best deals we did were those we didn’t do. But, when we walked away from those deals it was not because of fear, it was because the proposed deals were lousy deals.

The power to walk away remains the ultimate negotiating tool, but, once you have threatened to walk away, you should be ready to walk-the-walk. Ask yourself if your prospective new hire can pull this off.

FINALLY: WHAT ABOUT THOSE ATTORNEYS?

Attorneys are potentially game changers, not because they are attorneys, but because they are either great or awful negotiators. An inherent and fundamental problem that most attorneys bring with them to the negotiating table is that many see themselves primarily as *advocates* of their clients’ positions. This can often create a confrontational and adversarial relationship that will often dampen any desire of the other side to collaborate. This can put their clients at a massive disadvantage when the focus shifts to problem-solving. If they focus only on a negotiation as an “us-versus-them” process with battle lines clearly drawn, they might well be drawn into battles you don’t want to fight. As any experienced negotiator will tell you, while it is important to hold your ground on important issues, it is also important to avoid fighting the wrong battles.

ABOUT THE AUTHOR



For over 30 years as a business attorney and corporate executive, Michael Friedlander has structured and negotiated sophisticated business transactions around the world. Both as an attorney and later as CEO of an international music company and CEO of an international architectural design firm, he has encountered many of the ethical issues that today's corporate executives face.

Michael has recently written *Detecting the Scam: Nelson Mandela's Gift*, in which he offers an intriguing and distinctive perspective on the recent high-profile scams by studying them through the lens of Nelson Mandela's life, skills, and moral authority.

In his book, he describes the scam as a negotiating duel between the scammer and his mark. As he looks at Mandela's life and his historic negotiations to end apartheid, he extracts 10 Powers of Negotiation and illustrates how they can be used not just to detect scams, but in any type of negotiation. He emphasizes the need for a moral compass and the courage to follow it. Using his own Duck School of Common Sense, he raises some provocative questions about the high-profile scams and failure of our finest and brightest to do the right thing.

Michael received a law degree in South Africa and then studied at the Sorbonne in Paris and at the McGill Law School in Montreal. He is a member of the California Bar.