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Charles B. Craver

George Washington University Law School, ccraver@law.gwu.edu

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IMPACT OF NEGOTIATOR STYLES ON BARGAINING INTERACTIONS*

Charles Craver*

I. INTRODUCTION

Attorneys and businesspeople negotiate constantly. They negotiate within their own organizations, with prospective and current clients and customers, and with other parties. Most negotiators employ relatively “cooperative” or relatively “competitive” styles. Cooperative bargainers tend to behave more pleasantly, and they strive to generate mutually beneficial agreements. Competitive bargainers are often less pleasant, and they work to obtain optimal results for their own sides. Individuals look forward to interactions with cooperative opponents, but often dread their encounters with competitive adversaries.

Negotiator styles significantly affect bargaining interactions. Which styles are used by more negotiators? Which styles are associated with more proficient negotiators and with less effective bargainers?

II. COOPERATIVE/PROBLEM-SOLVING AND COMPETITIVE/ADVERSARIAL STYLES

Most negotiation books divide bargainers into two stylistic groups: (1) Cooperative/Problem-Solvers and (2) Competitive/Adversarial. Cooperative/Problem-Solving negotiators move psychologically *toward* their opponents, try to maximize the *joint returns* achieved by the bargaining parties, seek reasonable results, begin with realistic opening positions, behave in a courteous and sincere manner, rely upon objective standards to guide discussions, rarely resort to threats, maximize the disclosure of relevant information, are open and trusting, work diligently to satisfy the underlying interests of themselves and their opponents, are willing to make unilateral concessions, and try to reason with people on the other side. Competitive/Adversarial negotiators move psychologically *against* their opponents, try to maximize their *own returns*, seek extreme results, begin with less realistic opening offers, behave in an adversarial and insincere manner, focus primarily on their own positions rather than rely on objective standards, frequently resort to threats, minimize the disclosure of their own information, are closed and untrusting, seek to satisfy the interests of their own side, try to make minimal concessions, and manipulate opponents.

Cooperative/Problem-Solvers readily disclose their critical information, explore the underlying interests of the respective parties, and seek results that maximize the return to both

* Charles Craver is the Freda Alverson Professor of Law, George Washington University. Over the past thirty years, he has taught negotiating skills to 70,000 lawyers and business people throughout the United States, Canada, Mexico, Puerto Rico, England, and China. He is author of *The Intelligent Negotiator* (Prima/Crown 2002) and *Effective Legal Negotiation and Settlement* (4th ed. 2001 Lexis).

sides. They often explore alternatives that may enable the bargainers to expand the overall pie through tradeoffs that simultaneously advance the interests of both sides. For example, when money is involved, they may agree to future payments or in-kind payments that satisfy the underlying interests of the different participants. Competitive/Adversarial engage in disingenuous games-playing. They conceal their negative information, and try to manipulate opponents into giving them deals that maximize the returns for themselves. They may even ignore alternative formulations that might benefit their opponents if those alternatives do not clearly advance their own interests.

In the early 1980s, Gerald Williams conducted a study among attorneys in Phoenix and Denver to determine what percentage of legal negotiators behave in a Cooperative/Problem-Solving and a Competitive/Adversarial manner [Williams, *Legal Negotiation and Settlement* (1983)]. He found that lawyers considered 65 percent of their colleagues to be Cooperative/Problem-Solvers, 24 percent to be Competitive/Adversarial, and 11 percent to be unclassifiable.

III. COMPARATIVE EFFECTIVENESS OF COOPERATIVE/PROBLEM-SOLVING AND COMPETITIVE/ADVERSARIAL NEGOTIATORS

When I ask Effective Legal Negotiation course participants to describe the styles of effective negotiators, they usually indicate they are aggressive persons who openly indicate a desire to obtain better results for themselves than they give to their opponents. They often suggest that these advocates may employ discourteous behavior to intimidate weaker opponents. I then ask these respondents what they would do if someone came to their office that afternoon, openly indicated that they were there to clean them out, and exacerbated the circumstances with some gratuitous insults. Would they think that someone has to lose and it might as well be themselves – or would they get up for the interaction to avoid exploitation by such a manipulative adversary? They laugh when they realize how quickly they would change their own demeanor to avoid exploitation. They indicate that they would be hesitant to disclose their critical information, lest their opponents take advantage of their one-sided openness. They also suggest that they would employ more strategic tactics designed to neutralize the competitive behavior of their adversary.

I then ask them how they would react to someone who came to their office, and politely indicated an interest in achieving mutually agreeable terms that would satisfy the underlying interests of both sides. They usually suggest that they would respond in an open and cooperative manner designed to maximize the joint results achieved. By this point, they begin to appreciate how much easier it is to obtain beneficial negotiation results from others when people act in an open and seemingly cooperative fashion. They also recognize how much more difficult it is for openly Competitive/Adversarial bargainers to achieve their one-sided objectives.

Gerald Williams asked the respondents in his study to classify opponents as “effective,” “average,” and “ineffective” negotiators. They indicated that while 59 percent of

Cooperative/Problem-Solvers were “effective” negotiators, only 25 percent of Competitive/Adversarial were so proficient. On the other hand, while only 3 percent of Cooperative/Problem-Solvers were considered “ineffective” negotiators, 33 percent of Competitive/Adversarial bargainers were placed in that category.

In the late 1990s, Andrea Kupfer Schneider replicated the Gerald Williams study using attorneys in Milwaukee and Chicago as her data base. Her findings reflect changes that have affected our society in general over the past two decades. People are less pleasant to one another today than they were twenty years ago. Many persons have become more impatient and less courteous [Schneider, “Shattering Negotiation Myths,” 7 *Harvard Negotiation Law Review* 143 (2002)]

I would expect the less courteous and more repugnant Competitive/Adversarial negotiators described in Professor Schneider’s study to be less effective than the less negatively described Competitive/Adversarial bargainers in the Williams study, and this is exactly what Professor Schneider found. While Professor Williams found 25 percent of Competitive/Adversarial negotiators to be “effective,” Professor Schneider found only 9 percent of such bargainers to be “effective.” This change should be contrasted with the relatively slight decline in the percentage of Cooperative/Problem-Solvers considered to be “effective” negotiators from 59 percent in the Williams study to 54 percent in the Schneider study.

The findings with respect to persons considered “ineffective” negotiators are starker. Professor Schneider found almost no change in the small percentage of Cooperative/Problem-Solvers considered “ineffective” bargainers, but she found a profound change with respect to the percentage of Competitive/Adversarial considered “ineffective” negotiators – rising from 33 percent in the Williams study to 53 percent in her own study. This increase in perceived ineptitude among Competitive/Adversarial negotiators would most likely be attributable to their overt competitiveness and more unpleasant demeanors.

In the thirty years I have taught Legal Negotiating courses, I have not found proficient Cooperative/Problem-Solvers to be less effective than proficient Competitive/Adversarial. The notion that one must be uncooperative, selfish, manipulative, and even abrasive to be successful is erroneous. To achieve beneficial negotiation results one must only possess the ability to say “no” forcefully and credibly to convince opponents they must enhance their offers if agreements are to be achieved. They can accomplish this objective courteously and quietly, and be as effective as those who do so more demonstrably.

I have only noticed three significant differences with respect to the outcomes achieved by different style negotiators on my course exercises. First, if a truly extreme agreement is reached, the prevailing party is usually a Competitive/Adversarial negotiator. Since Cooperative/Problem-Solving bargainers tend to be more fair-minded, they generally refuse to take unconscionable advantage of inept or weak opponents. Second, Competitive/Adversarial advocates generate more *nonsettlements* than their Cooperative/Problem-Solving cohorts because of their extreme

positions and frequent use of manipulative and disruptive tactics. Third, Cooperative/Problem-Solving negotiators tend to achieve more efficient combined results than their Competitive/Adversarial colleagues – *i.e.*, they tend to maximize the joint return to the parties.

IV. INTERACTIONS BETWEEN PERSONS WITH DIFFERENT NEGOTIATING STYLES

When Cooperative/Problem-Solving bargainers interact with other Cooperative/Problem-Solvers, their encounters are usually cooperative. The participants are relatively open with their critical information, and they seek to achieve terms that maximize the joint return of the parties. Interactions between Competitive/Adversarial negotiators are generally competitive, with minimal information disclosure and the use of manipulative tactics to advance each side's own interests.

When Cooperative/Problem-Solvers negotiate with Competitive/Adversarials, their transactions tend to be more competitive than cooperative. If Cooperative/Problem-Solvers are naively open with less forthcoming Competitive/Adversarials, information imbalances develop which favor the more strategic Competitive/Adversarials. As a result, Cooperative/Problem-Solving participants must employ a more competitive approach to avoid exploitation. These cross-style interactions generate less efficient agreements than encounters involving only Cooperative/Problem-Solvers, and they increase the likelihood of nonsettlements.

V. THE COMPETITIVE/PROBLEM-SOLVING APPROACH

In their studies, Professors Williams and Schneider found that certain traits are shared by both effective Cooperative/Problem-Solving negotiators and effective Competitive/Adversarial bargainers. Successful negotiators from both groups are thoroughly prepared, are perceptive readers of others, and wish to *maximize their own client's return*. Since client maximization is the quintessential characteristic of Competitive/Adversarial negotiators, this common trait would suggest that many effective negotiators who are identified by their peers as Cooperative/Problem-Solvers are really wolves in sheepskin. They exude a cooperative style, but seek competitive objectives.

Most successful negotiators combine the most salient traits associated with the Cooperative/Problem-Solving *and* the Competitive/Adversarial styles. They seek to maximize client returns, but attempt to accomplish this objective in a congenial and seemingly ingenuous manner. Unlike less proficient negotiators who view bargaining encounters as "fixed pie" win-lose endeavors, effective bargainers realize that in multi-item interactions the parties value the various terms differently. They may attempt to claim more of the distributive items desired by both sides, but they also look for shared values. They recognize that by maximizing the joint returns, they are more likely to maximize the settlements achieved for their own clients.

Despite the fact that effective bargainers generally hope to attain as much as they can for

themselves, they are not “win-lose” negotiators. They never judge their own success by asking how poorly their opponents have done. They recognize that the imposition of bad terms on their adversaries does not necessarily benefit themselves. All other factors being equal, they hope to maximize opponent satisfaction. They realize that if they are satisfied with what they obtained, they have had successful encounters – even if their opponents are equally satisfied.

Proficient negotiators do not seek to maximize opponent returns for purely altruistic reasons. This approach effectively allows them to advance their own interests. First, they have to provide adversaries with sufficiently generous terms to induce them to accept agreements. Second, they want to be sure opponents will honor the deals agreed upon. If they experience post-agreement “buyers remorse,” they may try to get out of the deal. Finally, they acknowledge the likelihood they will encounter their adversaries in the future. If those persons remember them pleasantly as courteous and professional negotiators, their future bargaining interactions are likely to be successful.

Effective Cooperative/Problem-Solvers and effective Competitive/Adversarial realize that people tend to work most diligently to satisfy the needs of opponents they like personally. Overtly Competitive/Adversarial bargainers are rarely perceived as likeable. They exude competition and manipulation, and they generate similar responses from opponents. Seemingly cooperative negotiators, however, appear to seek results that benefit both sides. Since others enjoy interacting with them, these individuals find it easier to induce unsuspecting opponents to lower their guard and make greater concessions.

Over the past several decades, lawyers and business people have become less polite toward one another. Many have become more win-lose oriented. They seem to fear that if their opponents get what they want, they will be unable to achieve their own goals. Negotiators who encounter rudeness from opponents should recognize that such inappropriate behavior is *not* a sign of negotiator proficiency, but just the opposite. Uncivilized behavior is a substitute for bargaining competence. Skilled negotiators do not employ offensive conduct. They recognize that such behavior is unlikely to induce adversaries to give them what they desire.

Another critical reason for behaving professionally during bargaining encounters concerns recent studies indicating that people who commence negotiations in positive moods bargain more cooperatively, while individuals who begin in negative moods bargain more adversarially. As a result, negotiator pairs who begin bargaining interactions with positive moods achieve larger joint gains than negotiator pairs who begin with negative moods.

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