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How to Improve Negotiations, Part 3: Communication Factors & Barriers

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Communication in negotiations is complicated. Even when we think we're making explicit offers and demands, we often send unintended messages that can hurt our bargaining position—whether regarding the flexibility of our offer, our motives, or our honesty. The opposing party can infer such messages based on our offers or concessions, what we say, and how we say it.

Previously in this series, we covered tips for [negotiation planning and strategy](#), followed by a discussion of [three key psychological biases](#) you can leverage. Now, we turn to the subtle communication strategies that can influence the direction of your negotiations.

Effective Communication in Negotiations

Among the available communication techniques, three areas stand out as particularly useful for our negotiation purposes:

- Making Offers Sound More Concrete
- Avoiding or Overcoming Barriers to Communication
- Communicating with Openness, Intent, and Clarity

1. Making Offers Sound More Concrete

Provide a Rationale for Your Offer

An offer will be more convincing and serve as a stronger anchor if you provide a *rationale* for the offer.

If the counterparty thinks that your defense team is picking numbers out of thin air, and that the defendant has deep pockets, the plaintiff may just pick a much larger number out of thin air. However, if plaintiff's counsel sees that their client's needs are met by the defense's offer—and that it was based on concrete, logical values—they will be more likely to accept.



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One way to accomplish this is by itemizing the offer so the tangibles are the focus, rather than differences in the total amount of money. Doing so can also help signal to the plaintiff that there isn't much leeway in your offer. Even if they reject the offer, it will likely decrease the ask of any counterdemand.

Use Exact v. Round Numbers

Exact numbers are more persuasive than round numbers. Similar to providing a rationale, an exact number signals that there isn't much wiggle room and that you have a good justification for the offer.

For example, consider the message sent by a round number like \$220,000, in comparison to \$219,400. The round number could just be based on a feeling, whereas the more exact number was likely reached through some form of calculations—you've put *effort* into determining the number, thereby conveying its credibility and your good faith.

This will be especially apparent if, at some point in the process of negotiating, the offers switch from round numbers to a more exact number. Doing this when getting close to an agreement can signal that there's nothing more to give—a message you can reinforce by stating that it's the best your client can do.

2. Avoiding or Overcoming Barriers to Communication

There is a human element to negotiations that cannot be ignored, particularly when someone has suffered. Taking steps to have an open conversation can cause the counterparty to be less hostile and defensive, and ultimately, more amenable during settlement talks.

Acknowledge the Plaintiff

One potential barrier to communication is if the plaintiff feels that nobody is even acknowledging their suffering. It can therefore be helpful for the defense to start the conversation with an apology to reduce any hostility the plaintiff may be feeling.

This can still be done without admitting fault, by expressing, “We’re sorry for the pain that you feel and the experience you had with our client.” Sometimes, this is really what a plaintiff wants.

Of course, to signal your sincere desire to reach an agreement, actions need to support these words. As discussed in Part 1 of this series, initial offers that are too low can cut off negotiations. The plaintiff might read it as an attempt to get the defendant out of a tough situation for cheap. More reasonable offers—along with rationales for those offers—will communicate a motive of helping out an injured party and righting a wrong.

Show That You’re Listening

People can be so wrapped up thinking about what they are saying that they forget to listen. Nobody likes feeling ignored, so acknowledging what the counterparty says can reinforce their perception that you are motivated to reach a settlement. One great way to do this is to verify what the plaintiff said.

For example, “I’m hearing that you think \$___ is fair because of X, Y, and Z, is that right?” This question shows the plaintiff they are being listened to and their needs are being considered, making it more difficult for them to turn down the defense’s offer under the knee-jerk assumption they aren’t being heard.

Disagree Without Casting Blame

Respecting the counterparty’s point of view will help lower their guard. There will be disagreements, but it’s important to disagree in a way that won’t offend someone.

When people disagree, they often use what are called “You-statements.” A “You-statement” is a phrase that begins with “you” and implies that the listener is responsible for something.

For example, “You’re wrong,” “Your demand is too high,” or “You don’t know what you’re talking about.” Such statements put the counterparty on the defensive; they’ll be less likely to want to reach an agreement.



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On the other hand, “I-statements” make the *speaker* take responsibility for what they are saying, rather than attributing blame to the listener: “I don’t see it that way,” “I think \$X is more reasonable,” “I disagree. I think that...,” etc. These statements allow for disagreement without blame and show a willingness to work things out.

3. Communicating With Openness, Intent, and Clarity

Certain communication “best practices” aid the speaker in seeming more likeable and trustworthy. In negotiations, they can help create and leave the impression that you’re trying to have an open conversation to reach an agreement and help the plaintiff.



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Verbal and non-verbal cues that help send a strong, positive message include:

- A positive tone
- Friendly mannerisms (e.g., smiling, maintaining eye contact, leaning in toward the person speaking)
- Good posture, open shoulders
- “Powerful” speech (use voice inflections, speak up, minimize verbal fillers such as “umm,” “like,” or “uh”)
- Not interrupting, crossing your arms, or putting your hands in your pockets

Next, clear communication is critical. Any disagreements should be the result of differences between the demand and the offer, not errors or mix-ups.

A few tips to help avoid misunderstandings include:

- Provide detail for anything that might be confusing
- If anything seems ambiguous, ask the counterparty to clarify
- Write down numbers for yourself and the counterparty so nobody misremembers
- Verify that the counterparty understands your position

Final Thoughts

As you can see, we send out far more messages than simply the words we use. Use the guidelines above to ensure your communication style doesn't betray your ultimate negotiation goals.

Lastly, although the tips we've provided over the course of this series should improve your likelihood of reaching an agreement, that doesn't mean every discussion will be successful. Just remember that even if negotiations break down, it was never a waste of time.

Consider what you learned about the counterparty and how to communicate with them going forward. What worked? What didn't work? Note these items for upcoming settlement discussions. Doing so makes for a better chance at reaching an agreement in the future.

Hone your negotiation skills alongside our credentialed team of psychology and legal professionals. Let's work together: contactus@expertservices.com.

References

¹ Mason, M. F., Lee, A. J., Wiley, E. A., & Ames, D. R. (2013). Precise offers are potent anchors: Conciliatory counteroffers and attributions of knowledge in negotiations. *Journal of Experimental Social Psychology*, 49(4), 759-763.

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