Let’s Make a Deal:
STRATEGIES AND TECHNIQUES FOR NEGOTIATING

David Dowling, Clinical Professor of Law, Chapman University Fowler School of Law and Richard Marshack, Esq., Marshack Hays LLP, Chapter 7 Trustee, Irvine, CA

He who has not first laid his foundations may be able with great ability to lay them afterwards, but they will be laid with trouble to the architect and danger to the building. – Niccolo Machiavelli, The Prince
Negotiations can seem relentless, repetitive and at times redundant. Nevertheless, they are a part of life. As children we negotiate in the playground with our friends, and at home with our parents for everything from bedtimes to TV privileges. As we get older, our negotiations become more complicated and the stakes get higher.

While negotiating comes naturally to some, for many others, negotiations seem stressful and confrontational. However, all of us can benefit from developing and enhancing our negotiation skills.

Whether we are trying to broker bedtime with a parent or restructure a multi-million dollar debt, successful negotiation (in this sense of the term) means figuring out a path that will allow each party to walk away with what they really need. Consider, for example, a settlement negotiation in a $20 million lawsuit between two companies in the healthcare industry. Both sides came to the table prepared, but expecting no settlement. After months of discussions between attorneys, the negotiations were at an impasse! In the past, the two companies had worked so well together that the creditor had been giving the debtor extensive discounts in the most recent contract. But now the defendant debtor has $9 million in unpaid invoices. The debtor company wanted to resolve the debt, but company bylaws capped annual debt payments at $7 million. With another $11 million demanded for interest and penalties, they weren’t within the zone of a possible settlement.

The situation seemed difficult because the creditor was unwilling to accept the low offer from the debtor. However, after a long day, the two sides came together settling on the $7 million payment and a new five year contract to continue working together. Employing successful negotiation techniques—including the four techniques discussed here—resulted in an outcome that no one thought was possible when they sat down at the table. The debtor was able to stay within the limits of its bylaws and the creditor got more than he expected: a new five-year contract with no future discounts for the debtor.

As Machiavelli observed centuries ago, success comes more readily when one has built the foundations for success. Successful negotiators lay the foundations by exercising four key skills. First, they develop a solid information base so that they can be prepared for every possible outcome. Second, successful negotiators build trust in order to improve the lines of communication and encourage reciprocity. Third, successful negotiators practice active listening to really understand demands, offers and counteroffers. Fourth, successful negotiators use effective persuasion techniques to enhance credibility and influence the other party.

1. Laying the Foundations with Preparation: Don’t Wing it!

Preparation is everything in negotiations. Professional negotiators spend a significant amount of time preparing for a negotiation. Preparation means building a strong information base, so that you know as much as possible about the facts and the positions of all parties. There are several important things you should know before starting any negotiation.

Every good negotiator begins with a clear understanding of his or her client’s interests and goals prior to the negotiation. What is your client’s top priority in the negotiation? What is the least favorable outcome your client is prepared to accept? Does your client have an alternative in case negotiations do not succeed?

Once you have a clear picture of your client’s needs, it is time to turn your focus to the other party. It is essential to know as much as possible about the other party’s priorities and interests, and most importantly, about their walkaway point. Armed with this information, consider what might be offered to achieve your client’s goals without offending their interests.

When gathering information at the negotiation table, it is crucial to start broad and finish narrow. Before getting into the terms and offers on the table, the successful negotiator will ask a lot of questions. It is important to gather facts and delve into issues, even if at first glance these facts and issues seem tangential. Don’t shy away from simple questions like “why?”

Going beneath the surface made all the difference in settling the $20 million healthcare case. Previous negotiations focused only on the details presented in opening statements; however, open-ended questions revealed creative solutions that were lying within the depths of the dispute. The creditor needed to do business with the debtor but was frustrated by its inability to pay on time. Asking the creditor why it needed to include discounts in future agreements changed the entire dynamic. When the creditor realized how much money it would make on future contracts for services without the discounts, the debtor’s low offer became acceptable.

2. Building Trust: A Negotiation Starts with the First Hello

Negotiations are fraught with uncertainty and anxiety. We

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may doubt the good intentions and fairness of the other side, or worry that they will mislead us by withholding or distorting information. As much as we try, it is impossible to be completely confident walking into every negotiation. For parties in a bankruptcy case, in particular, trust is difficult because there are so many unknown factors.

Trust is integral to the process of negotiation. It helps to remove barriers that prevent communication and cooperation. When we trust someone, we are more inclined to take their statements at face value and to consider the merits of their proposals. When you trust someone, you are expecting that they will cooperate with you instead of exploiting you.

Of course, trust can be both elusive and fragile in the high-stress circumstances of a negotiation. After all, trust requires taking a degree of risk. Should you share information that is important to a possible solution, but that could be used against your client by the other party?

A successful negotiator understands that the potential benefits of establishing a relationship of trust outweigh the risks. Since the outcome of a negotiation depends on the actions of both parties, each side must be prepared to deal in good faith and not exploit the situation in unfair ways.

In the example above, the parties worked within a specific business community. They needed each other to be successful in their own respective businesses. It would have been easy to litigate the dispute, but they had a longstanding relationship that became a foundation for trust in the negotiation. Once the conversation about changing the terms of any future contract began, each side warmed to the possibilities for continuing to work together.

However, time is a limited commodity in a negotiation. How can a negotiator establish a relationship of trust with people he or she has just met for the first time?

Building trust doesn’t have to be complicated. Smiling and talking in a conversational tone will help ease some fears and open the lines of communication. Connecting with the other party is key. Treating them with respect and courtesy may seem obvious, but it can be overlooked as an essential element of any negotiation. When we provide the other party with attention, information and reasonable concessions, we increase the chances that they will extend the same to us in return. Negotiations start with the first hello.

3. Active Listening: What Did They Say?

Listening allows the negotiator to gather information and understand the issues more fully. We may think listening is natural, but most of us are not very good at it. How often have you felt that the person you are talking to is not really paying attention to what you are saying? How often have you been too distracted by your smart phone, by another conversation or by rehearsing a response to pay attention to the person speaking to you? Sadly, in our fast-paced, technology-driven lives, this kind of behavior is commonplace.

Successful negotiators use the technique of active listening in which the negotiator pays careful attention to what the other party said, and then restates to the speaker in the negotiator’s own words what he or she believes the other party said. You do not have to agree with the speaker but simply re-state what you heard. The speaker can then figure out whether you really grasped what was said, or if more information is needed.

Helping the creditor feel heard and understood enabled him to consider settling. At the start of the day the creditor’s representative seemed tense and his body language was closed. He was clearly frustrated with the debtor. Open-ended questions helped him reveal that he didn’t want the business relationship to end but he didn’t want to settle for such a low amount.

Body language is important in any negotiation. Your body language signals to the speaker that you are listening closely by making appropriate eye contact, and by nodding or smiling occasionally. Cultivating an open, inviting posture and making occasional verbal comments like “uh huh” or “yes” encourages the speaker to continue and helps build trust. When restating the speaker’s words, you must be careful to be as neutral as possible. This is not the time for interpretive or judgmental commentary.

4. Persuasion: Credibility and Authority

Often we judge the message by its source. The 2016 presidential race is a perfect example of how we relate the message to the source. No matter what side you were on, it is impossible to hear what the other side had to say because everyone had such strong feelings about each candidate. How can you persuade someone to hear you out?

To persuade someone of the merits of what you propose, you must first establish your credibility and authority. It is essential to establish a position of authority in the negotiation. Preparation breeds confidence. When combined with trust, confidence will project a sense of authority. Authority works to persuade because “[p]eople are more easily influenced by those they perceive to be legitimate authorities,” especially when the expert is viewed as “a trustworthy source of information.”

All this is not easy. Your credibility is determined even before you sit down at the negotiation table. In the healthcare negotiation, the relationship of trust between the parties factored into every offer made during the negotiation. When the debtor stated that it could only book a debt of $7 million in a given year, the creditor didn’t question that position. Instead the focus shifted to other creative options that recognized that limitation but also served the interests of the creditor.

Success in negotiation requires developing and enhancing our skills. If we are willing to incorporate new techniques into our skillset, we will be prepared for anything. Through preparation, building a relationship of trust and listening, we can establish the credibility and authority necessary to be a successful negotiator.

FOOTNOTES:

Negotiation Seminar

Excellent starting point resources:

Book: *You Can Negotiate Anything* by Herb Cohen

General Comments:

Preparation- Professional negotiators spend significant time preparing for a negotiation.

- fact gathering
- developing positions
- devising supporting arguments
- understanding the personal and business interests of one's client and the opposing party.

Many negotiators make moves solely to "claim value" (getting a larger share of the pie) but a successful negotiator goes prepared to make moves that will "create value" such as:

- terms
- trade-offs
- non-monetary concessions

In order to go to a negotiation with "creating value" moves, the negotiator must spend time identifying interests and needs of the other side and planning what might be offered to satisfy those interests or needs.
It is inevitable that you do have to focus on the process.

- Negotiation is a dance and takes time.
- Some level of persuasion has to occur and this takes time to let everyone speak and respond to one another and to build up trust.

One side may have thought the whole thing through and have a good idea where the negotiation will end but the reality is that most people need/want to dance. Presenting the right answer at the wrong time is the wrong answer.

Setting up a successful negotiations

1. Trust- start building it from day 1.
2. Be respectful.
3. Be engaged. Personalize both yourself and the situation.
4. Get as much information as possible.
   - Ask opened ended questions
   - Shut up and listen.
   - Then ask more questions and shut up and listen.
   - Due diligence. Analysis
   - Try to see the problem from their point of view or frame of references. Listen with empathy, which means stop yourself from working on counter arguments while they are speaking.
   - Do not ever be abrasive, because how you say something will often determine the response you get.
5. Information is the key. Information is power.
   a. Know your case. Know their case.
   b. Know their timing
      - Do not have a deadline and if you do, do not disclose it.
      - Know their deadlines. Set negotiations up against their deadlines.
   c. Know their needs
   d. Know their motivations.
      - Know their motivations
   e. Know their financial situation
   f. Know their fears
   g. Know their limitations set by pride and ego

6. Know your case and be able to present it effectively and in the best light. Make your presentation to the decision maker.

7. Prepare for a negotiation session as you would a trial. You would never wing a trial. Go in to impress; when the time is right.

8. Get creative...maybe non monetary benefits.

9. Have the resources to go to trial. Otherwise stated; don't go to a gun fight without a gun.

10. Study someone you respect and ask yourself why he is successful. For example, Bill Lobel.
    - he is personable.
    - he builds relationships.
    - he builds trust
- he knows his case
- you fear his skills in the courtroom (or at least his relationships with the judges)

11. Limit negotiation by phone...too easy for someone to say no or to not be paying attention.

12. If you have to use the phone:
   - be the caller ...catch your opponent less prepared than you.
   - prepare your presentation

ISSUES –

1. Ethics

2. Concept of Win-Win?

3. Is a mediator a negotiator?
LET’S MAKE A DEAL

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  - 1984-Present Private Practice currently with Marshack Hays LLP
Riddle me this…

Penny has 5 children.
The first is named January.
2\textsuperscript{nd} kid is February.
Her 3\textsuperscript{rd} is called March.
4\textsuperscript{th} is April.
What is the name of the 5\textsuperscript{th}.
B.R.T
Build
Relationships
Of Trust
DEVELOP AND EXPAND THE INFORMATION BASE

- **Non-Directive Interviewing:**
  - The interviewer begins with open questions, giving primary control of the discussion to the interviewee.
  - The interviewer does not impose his or her own ideas on the interviewee and assumes the interviewee knows what information is best and what is to be discussed.

- **Directive Interviewing:**
  - The interviewer leads the discussion at his or her pace with clarifying and closed questions.
Active Listening

What qualities does a good listener possess?

- Good listeners resist distractions and take action to remove any distractions from their communication with others.
- Good listeners put aside their own views and opinions for the time being.
- Good listeners focus on a person’s feelings, thoughts, and behavior.
- Good listeners pay attention to both verbal and non-verbal cues.
## Active Listening

### What is active listening?

<table>
<thead>
<tr>
<th>Verbal</th>
<th>Non-Verbal</th>
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<tbody>
<tr>
<td>• Restating</td>
<td>• Facial expressions</td>
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<tr>
<td>• Encouragers:</td>
<td>• Eye contact</td>
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<tr>
<td>• Uh-huh</td>
<td>• Posture</td>
</tr>
<tr>
<td>• Yes</td>
<td>• Affirmative nodding</td>
</tr>
<tr>
<td>• No</td>
<td>• Hand gestures</td>
</tr>
<tr>
<td>• Okay</td>
<td></td>
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<tr>
<td>• Yeah</td>
<td></td>
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<tr>
<td>• Clarifying</td>
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<td>• Validating</td>
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Persuasive Techniques

Establish Credibility
- Often we judge the message by the source

Feelings
- Appeal to the positive (optimism, humor, flattery)
- Discuss the negative (fear, guilt)

Reciprocity
- Reciprocity is a fundamental expectation in negotiation

Consistency and Commitment
- Effectively exploit a consistent position/issue
Negotiations

- What do you negotiate for?
- Why do you negotiate?
- What are your goals of a negotiation?
Negotiating with the Trustee

4 Common Scenarios
Payment Plans for unexempt assets

- Chapter 7 Petition is filed
- Some tangible personal or real property is scheduled that is partially or completely unexempt
- Debtor wishes to pay the value of the assets rather than losing them
Protecting the Discharge

- Chapter 7 Petition is filed

- Property is discovered by the Trustee that was not scheduled

- The Debtor’s discharge is in jeopardy
When you want the Trustee to sell assets

- Chapter 7 Petition is filed
- Debtor has property, most likely Real Property, she wants sold
- The available equity is tenuous for the trustee to wish to sell
Assets received after an AP or State Law Claim

- Chapter 13 Trustee

- Debtor wins money in an Adversary Proceeding, or a state law claim such as a Personal injury Suit

- Chapter 13 Trustee and Debtor must determine what portion of the proceeds should go to unsecured creditors
<table>
<thead>
<tr>
<th>Statement Type</th>
<th>Purpose(s)</th>
<th>To Do This</th>
<th>Examples</th>
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<tbody>
<tr>
<td>ENCOURAGING</td>
<td>To convey interest and encourage the other person to keep talking</td>
<td>Don’t agree or disagree; Use neutral words; Use varying voice intonations</td>
<td>“Can you tell me more…”</td>
</tr>
<tr>
<td>CLARIFYING</td>
<td>To help you clarify what is said</td>
<td>Ask questions; Restate wrong interpretation to force speaker to explain further</td>
<td>“Are you saying…” &lt;br&gt;“Would you say more about that?” &lt;br&gt;“What does that look like?”</td>
</tr>
<tr>
<td>RESTATING</td>
<td>To show you are listening &amp; understanding what is being said</td>
<td>Restate basic ideas and facts</td>
<td>“I thought I heard you say…” &lt;br&gt;“So you would like to know more about reading strategies. Is that right?” &lt;br&gt;“We may need to check this out further…”</td>
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<tr>
<td>REFLECTING (verbal)</td>
<td>To show that you understand how the other person feels</td>
<td>Reflect the speaker’s basic feelings</td>
<td>“You seen quite passionate about this idea.”</td>
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</tbody>
</table>
| SUMMARIZING | To review progress; To pull important ideas, facts, & feelings together; To establish as basis for further discussion | Restate major ideas expressed including feelings | “These seem to be the key ideas you have expressed..”
“Let me make sure I understand you...”
“What I hear you saying is..”
“Is it about...” |
| VALIDATING | To acknowledge the worthiness of the other person | Acknowledge the value of their issues & feelings; Show appreciation for their efforts & actions | “We appreciate your willingness to delve into this difficult issue.”
“I think I understand why you’d be confused.” |
| BUILDING | To help build & continue the discussion To offer other options | Ask questions; Offer ideas or suggestions | “Have you considered...” |
| REFLECTING (nonverbal) | To convey the speaker’s nonverbal message To clarify the message of the nonverbal message | Verbalize the speaker’s body language and/or facial expression | “I’ve just been noticing that when you talk about your conclusions, you smile. That makes me think you’re comfortable with the direction.” |
**THE NEUTRAL ZONE INC. – COMMUNICATION SKILLS**

**Successful resolution** begins with people feeling their concerns are heard. There are several active listening techniques that can be used to achieve this. Each technique is used for a specific purpose, and each has its own method.

<table>
<thead>
<tr>
<th>TECHNIQUE</th>
<th>WHY YOU DO IT</th>
<th>HOW YOU DO IT</th>
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<tbody>
<tr>
<td><strong>Paraphrase</strong></td>
<td>- to show the other person you have been listening to what they are saying,</td>
<td>- restate basic ideas and facts in your own words</td>
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<td></td>
<td>- to check meaning and interpretation</td>
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<tr>
<td><strong>Example:</strong></td>
<td>“What I hear you saying is that you weren’t consulted.”</td>
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<tr>
<td></td>
<td>“So, you weren’t consulted on this.”</td>
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<tr>
<td><strong>Reflect</strong></td>
<td>- to show you understand how the person feels</td>
<td>- listen to voice tone and watch for non-verbal cues that indicate feelings</td>
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<td>- to reflect what you are observing rather than what you are hearing</td>
<td>- listen to what the person tells you about what they feel</td>
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<td></td>
<td>- to help the person evaluate their own feelings after hearing them expressed</td>
<td>- state back your sense or hunch of what they are feeling</td>
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<td></td>
<td>by someone else</td>
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<tr>
<td><strong>Example:</strong></td>
<td>“So, you are angry about what happened.”</td>
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<tr>
<td><strong>Open Questioning</strong></td>
<td>- to get more information</td>
<td>- ask questions that begin with “what,” “how,” “when,” and “where”</td>
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<td>- to avoid making assumptions about what the other person is thinking</td>
<td>- avoid asking questions that begin with “why” (or use it cautiously)</td>
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<td>- to encourage the person to talk</td>
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<tr>
<td><strong>Example:</strong></td>
<td>“What happened after you spoke with her?”</td>
<td></td>
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<tr>
<td>TECHNIQUE</td>
<td>WHY YOU DO IT</td>
<td>HOW YOU DO IT</td>
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</table>
| Acknowledging | - to convey that you appreciate the other person’s perspective  
                - to acknowledge the worthiness of the other person  
                - Note: this is not the same as agreement | acknowledge the value of their issues and feelings  
show appreciation for their efforts and actions |
| Example: | "That must have been very frustrating." |
| Summarize | - to review progress  
- to pull together important ideas and information  
- to establish a foundation for further discussion | restate the central ideas and feelings you have heard |
| Example: | "Let’s see if I have a clear understanding of your experience at this point…"  
"So basically what is most important to you is…" |
| Framing | - to communicate your message in a way the listener will be more open to hearing  
- to increase the opportunity of meeting the speaker’s goals | present your message in a hopeful, non-judgmental and open-ended way  
point to common-ground and away from differences |
| Rather than: | X "Why are you telling me all this? I don’t have time to deal with this. You should be talking to your supervisor about it and NOT me!" |
| A Different Frame: | √ "I think it would be really useful for your supervisor to hear about your ideas. Have you had a chance to speak with her? I think it would be best to speak directly with her about these issues, as she is more directly involved with implementation than I am." |
**TECHNIQUE** | **WHY YOU DO IT** | **HOW YOU DO IT**
---|---|---
**Reframe** | - to help the other person see their concerns in a new light | - recognize underlying needs
 | - to broaden the meaning of an issue to identify needs or interests | - re-word concerns from negative→neutral/positive past→future;
 | - to diffuse negative feelings | problem→opportunity;
 | - to establish the focus for resolution | interpersonal→system
 |  | rights/wrongs→impacts
|  | positions→interests
|  | singular→multiple

**Concern:** “She always talks to everyone else but me when there is a problem.”

**Reframe:** “It sounds as if you would like more direct communication to resolve concerns.”

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**Non-Verbal Behavior** | - be aware of non-verbal behavior that may facilitate the communication | - silence
 | - body language
 | - eye contact
 | - open posture
The Power to Persuade

How masters of “supersuasion” can change your mind

By Kevin Dutton

“Nothing is so unbelievable that oratory cannot make it acceptable.”

—Marcus Tullius Cicero

I don’t know about you, but most of my attempts at persuasion end up going ’round in circles: impassioned, long-winded affairs that seem as if they’re working. But aren’t. This is why I’ve become fascinated with something I call “supersuasion,” a brand-new kind of influence that disables our cognitive security systems in seconds. Animals do it [see box on page 26]. Babies do it [see box on page 29]. But for reasons that I’ve been exploring, most of us grownups seem to find it difficult. With one or two exceptions, of course.

My journey to understand the art of persuasion began a couple of years ago, with the simple idea that some of us are better at it than others. And that, just as with every other skill, there’s a spectrum of talent along which each of us has our place. At one end are those who always say the wrong thing. At the other, the supersuaders, who always get it right. These black belts in influence hark back to the days of our ancestors; their powers of persuasion effortlessly recapitulating the immediate, instinctual response sets of our primate, pre-conscious past. Their elite, flashbulb influence suffuses all before it. It is fast. It is simple. And it works. Immediately. Instantaneously. NOW.

You could call it the persuasion “hole in one.”

Take, for example, the man I encountered on a flight (business class, thanks to a film company I was working for) from London to New York. The guy across from me had a problem with his food. After several minutes of prodding it around his plate, he summoned the chief steward to his side.

“This food,” he enunciated, “sucks.”

The chief steward nodded and was very understanding.

“Oh, we’re very sorry!” he replied. “It’s such a pity! How will we ever make it up to you?”

Not bad, I thought.

“Look,” continued the man (he was, one suspected, quite used to continuing). “I know it’s not your fault. But it just isn’t good enough. And you know what? I’m so fed up with people being nice!”

But then came something that totally changed the game. That didn’t just turn the tables. It kicked ’em over.

“IS THAT RIGHT, YOU F* * *ING D* * * THEN WHY THE F* * * DON’T YOU SHUT UP, YOU F* * *ING A ** HOLE?” Instantly, the whole cabin fell silent. Who the hell...?

A guy in one of the front seats turned around. He looked at the fellow who was complaining about his food, winked at him, and inquired, “Is that any better? Cause if it ain’t, I can keep going.”
The Persuasion Instinct

"You looking at my girl?" How many times has that particular question drawn an evening out to a close? Not so with elephants. During the mating season young male elephants, when they inadvertently encroach on females in estrus, give off what is known as an innocent scent, an olfactory signal to adult bull elephants that they are going to toe the line.

How many times have houseguests outstayed their welcome, because despite all your hints they somehow just didn’t get that it was time to go? Not so with the thorny acacia tree of Central Africa. When insects start feeding on the thorny acacia too greedily, it produces a toxin that turns Michelin-starred leaves into pig swill. Not only that, it also gives off an odor, warning nearby acacias to put up the shutters themselves: an arboreal, chemical Twitter that there’s a freeloader doing the rounds.

Examples such as these provide a pretty good flavor of how persuasion works in the animal kingdom. And it leaves what we humans do in the dust. There are no mixed messages, no beating around the bush (unless that bush happens to belong to a cassowary, in which case the phrase takes on a different, more ominous meaning) and no sitting down over coffee to talk about it. Instead, in the absence of consciousness and those ephemeral containers of meaning we call words, animals rely on what ethologists call key stimuli: environmental triggers (such as the innocent scent in elephants and the not so innocent scent in acacias) that initiate, when they are activated, instinctive behavioral responses.

For a moment, nobody said anything. Everyone, quite literally, froze. But then, as if some secret neural tripline had been pulled, our disgruntled diner … smiled. And then he laughed. And then he really laughed. This, in turn, set the chief steward off. And that, of course, got us all started.

Problem solved with just a handful of simple words. And definitive proof, if ever any were needed, of what my old English teacher Mr. Johnson used to say: You can be as rude as you like, so long as you’re polite about it.

Almost without effort, this connoisseur of curses (who also happened to be a famous musician) had used persuasion to deflect an awkward situation and turn the tables another way. And he did so by uniting biology, psychology and neuroscience in a model of influence with five constituent factors—factors that may be handily arranged in the acronym “SPICE”: Simplicity, Perceived self-interest, Incongruity, Confidence and Empathy.

Studies have taken these five elements apart one by one to show us how each one works in building toward persuasion.

Simplicity
“Easy to swallow, easy to follow” is the brain’s heuristic for influence. This is one reason why the world’s great orators have always spoken in threes. Julius Caesar’s “veni, vidi, vici,” for example. Or Abraham Lincoln in the Gettysburg Address: “we cannot dedicate, we cannot consecrate, we cannot hallow this ground.”

This device, known as the tricolon, is among a number of rhetorical secrets first identified by the speakers of the ancient world, classical orators such as Cicero, Demosthenes and Socrates (who themselves form a tricolon). Its magic lies in its efficiency: a third word not only gives confirmation and completes a point, it is also economical, constituting the earliest stage at which a possible connection, implied by the first two words, may be substantiated. More than three, and you risk going on and on. Fewer than three, and your argument lands prematurely.

The bottom line couldn’t be any clearer: the shorter, sharper, simpler the message—tricolon again—the more amenable we are to its content.

Imagine I were to hand you a recipe for Japanese rolls—and that it was printed in this typeface (Times New Roman, 12 point). Next, imagine I

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FAST FACTS

Would You Like to Buy a Bridge?

1] Some people are masters of “persuasion,” but the skill is not inborn; their techniques can be taught to anyone.

2] Humor is the key, especially if it catches your listeners off guard, leaving them laughing and open to suggestion.

3] Make people believe you have their best interests at heart, and you can persuade them to do almost anything.
filled the promotional requirements and returned to the garage the stipulated eight times to claim their free car wash, compared with just 19 percent of the customers who weren't on the empirical fast track. Even though the offer was exactly the same for both groups—customers had to visit the car wash on eight occasions to earn their freebie—those initial two tokens created a powerful illusion: not only of something for nothing (a gesture of corporate goodwill triggering reciprocity) but also of client commitment. On receiving the vouchers that apparently gave them a two-point lead, customers thought to themselves: "Hey, I'm a fifth of the way there already. I might as well keep going." And so they were far more likely to continue with the scheme than those who had started supposedly from scratch.

This voucher trick is all about the art of framing—the presentation of information in a way that maximizes positive outcomes. And framing isn't just confined to advertising. Politicians do it. Attorneys do it. We all do it.

The key, as a persuader, is to present things in such a way that they appear to be not in your own

It helps if people feel like they're being offered a good deal, especially if the good deal involves getting away with something.

Twitter are today, the facility to be true to one's word, and to return favors accordingly, was synonymous with group cohesion. With individual cohesion, too: in the days before welfare and pest control, being ostracized was fatal.

But old evolutionary habits die hard—and the spectral remnants of exigencies past hover: like neural phantoms on the dark, primeval stairwells of the brain [see box on page 31]. Take loyalty cards, for example. In 2006 psychologists Joseph Nunes and Xavier Dreze of the Wharton School of Marketing at the University of Pennsylvania presented the patrons of a car wash with two different types of voucher—each of which, when completed, entitled the beneficiary to a free visit. In both cases, eight stamps (corresponding to eight visits) were required to redeem the offer. But the vouchers differed from each other in one important feature. One consisted of eight blank circles, whereas the other consisted of 10, with the first two circles already voided out.

Which of the vouchers do you think proved the more effective? You got it—the one with the first two stamps thrown in ostensibly "for free." Of the customers given the 10-circle voucher, 34 percent ful-

Make people believe that they will get an exceptionally beneficial deal by doing what you want (even if they won't), and you go a long way toward persuading them.
The best jokes are the ones we don’t see coming. Our brains do a double take, and that’s when they are most open to suggestion.

best interests—but in those of whom you’re trying to influence. Take, for example, the story of King Louis XI of France, a staunch believer in astrology. When a courtier correctly predicted the death of a member of his imperial household, the king worried that having such a powerful seer in his court might pose a threat to his authority. He summoned the man, planning to have him thrown to his death from a window ledge. But first he addressed him gravely. “You claim to be able to interpret the heavens,” King Louis said, “and to know the fate of others. So tell me: What fate will befall you, and how long do you have to live?”

The oracle thought carefully for a moment. Then he smiled.

“I shall meet my end,” he replied, “just three days before Your Majesty meets his.” A perfect, if apocryphal, example of the courtier using perceived self-interest on the king’s part as a way to save his own life.

Incongruity

The persuasive power of humor is second to none. If someone can make you laugh while trying to change your mind, chances are they’re on to a winner. Not long ago in London, I walked past a homeless man selling a copy of the magazine the Big Issue, the proceeds of which go toward helping those living on the street. “Free delivery within 10 feet!” he called out. I bought one on the spot.

Precisely why humor is so powerful an influencer is an interesting question. The answer lies in one of its key ingredients, incongruity. The best jokes are the ones we don’t see coming, and because we don’t see them coming, they violate expectation. Our brains do a double take. And in that fraction of a second, while their backs, so to speak, are turned, our brains are open to suggestion.

The neurology of incongruity—what happens inside the brain as it is doing a double take—is well documented. Single cell recordings in monkeys show that the amygdala, the emotion center of the brain, is more sensitive to unexpected than expected presentations of both positive and negative stimuli. In humans, intracranial EEG recordings reveal increased activation in both the amygdala and the temporoparietal junction, a structure involved in novelty detection, on exposure to unusual events. Such findings confirm that incongruity not only gains our attention (a crucial component of any effective persuasion—just ask the guy in business class who complained about his dinner) but that it also lobbs a stun grenade between our ears. It disables cognitive functioning and compromises, for a brief but critical time window, our neural homeland security.

Yet incongruity isn’t just about distraction. It’s also about reframing—as a study by social psychologist David Strohmetz and his co-authors at Monmouth University demonstrated rather fiendishly in 2002. The study in question was conducted in a restaurant, and Strohmetz began by dividing diners up into three groups, according to how many candies the waiter handed out with the check.

To one group of diners the waiter gave one candy. To another, he gave two. And to the third—and this is where it gets interesting—he did the following. First he gave out one candy and then walked away … then turned back around, as if he had

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Fetal Attraction

Let's say you found a wallet on the street. What would you do? Take it to the nearest police station? Mail it back to the owner? Keep it? The answer, it emerges, depends less on a question of individual morality and a great deal more on our collective evolutionary heritage.

In 2009 psychologist Richard Wiseman of the University of Hertfordshire in England left a bunch of wallets on the streets of Edinburgh, Scotland, each of which contained one of four photographs: a happy family, a cute puppy, an elderly couple and a smiling baby. Which ones, he wondered, would be most likely to find their way home? There was no doubting the outcome: 88 percent of the wallets containing the picture of the smiling baby were returned, beating all the others out of sight.

The result, according to Wiseman, is not surprising. "The baby kicks off a caring feeling in people," he says, a nurturing instinct toward vulnerable infants that has evolved to safeguard the survival of future generations.

In 2009 Melanie Glöcker of the Institute of Neural and Behavioral Biology at the University of Muenster in Germany flashed pictures of newborns to a group of childless women while they underwent functional MRI. Using a special image-editing program, Glöcker manipulated the pictures so that some of the infant faces incorporated higher "baby schema" values (large, round eyes; round, chubby face) whereas some had lower values (smaller eyes; narrower faces). It wasn't just the program that was eye-opening. Results revealed that the faces with higher baby schema values precipitated an increase in activity not just in the amygdala (the brain's emotional control tower) but also in the nucleus accumbens, a key structure of the mesocorticocolimbic system that mediates reward.

Similar findings to Glöcker's have also been demonstrated acoustically. Kerstin Sander of the Leibnitz Institute for Neurobiology in Germany compared amygdala responses to infants and adults crying and discovered something extraordinary: a 900 percent increase for babies. Additional research has taken things one stage further and revealed that although preverbal infant vocalizations do indeed increase amygdala activation, it is sudden and unexpected changes in crying pitch that convey the most emotion—further support for the role of incongruity in persuasion.

He changed his mind, and added another. So one group got one candy. And two groups got two. But the two who got two were given them in different ways. (I hope you're paying attention—there's a test later.)

Did the number of candies and the manner in which they were allocated bear any relation to tip size? You bet it did. Compared with a control group of diners who got no candies at all (charming), those who got one tipped, on average, 3.3 percent higher. Similarly, those who got two candies tipped 14.1 percent higher. But the biggest increase was shown by those who received first one candy, then another—a biblical escalation of philanthropic zeal 23 percent greater than their uncandied brethren.

That unexpected change of heart completely re-framed the situation. It instigated a whole new way of appraising the interaction. He's giving us special treatment, the diners thought to themselves. Let's give him something back.

Confidence

Confidence, misplaced or otherwise, is catching. It's a privileged, though sometimes precarious, condition, fiercely independent of reality, that's transmitted sub-radar from one individual to another via language, belief and appearance. It's why con men enjoy their appellation, and why McDonald's and Nike bring out ads that declare "Just Do It" and "I'm Loving It," as opposed to ads that say "I'm Thinking about It" or "I Kind of Like It." Influence without confidence is about as useful as an inflatable dartboard.

Context is everything: a fancy label and a high price tag can fool people into thinking that a wine tastes better than glasses from seemingly cheaper bottles.
Exhibiting empathy helps to convince people that you have their best interests at heart, a surefire way to get them on your side.

Our reliance on confidence to help divine correctness—our deployment, that is, of a confidence heuristic—has been demonstrated in the lab. In 2008 Hilke Plassman, now associate professor of marketing at INSEAD Business School near Paris, sneakily switched the price tags on bottles of Cabernet Sauvignon. For some it was valued at $10, for others at $90.

Would the difference in price be reflected in a difference in taste? It sure would.

Volunteers rated the $90 bottle considerably more drinkable than the $10 bottle—even though both bottles, unbeknownst to them, contained exactly the same wine. And that wasn’t all. Subsequently, during a functional MRI scan Plassman found that this simple sleight of mind was actually reflected anatomically, in neural activity deep within the brain. Not only did the “cheaper” wine taste cheaper and the “dearer” one, well, dearer; the supposedly more expensive wine generated increased activation in the medial orbitofrontal cortex, the part of the brain that responds to pleasurable experiences.

Similar results have also been found with experts. In 2001 cognitive psychologist Frédéric Brochet, then at the oenology research and teaching unit at the University of Bordeaux in France, took a midrange Bordeaux and served it in two different bottles. One was labeled as a splendid grand cru, the other as a vin du table.

Would the wine buffs smell a rat? Not a chance.

Despite the fact that, just as in the Plassman study, they were actually being served the same vintage, the experts appraised the different bottles differently. The grand cru was described as “agreeable, woody, complex, balanced and rounded,” whereas the vin du table was evaluated less salubriously—as “weak, short, light, flat and faulty.”

Confidence is a wormhole into truth. In ambiguous, dynamic or fluid situations, not only does it have the right air—it also has the air of being right.

Empathy

In the summer of 1941 Sergeant James Allen Ward was awarded a Victoria Cross for bravery for clambering onto the wing of his Wellington bomber and, while flying 13,000 feet above the North Sea, extinguishing a fire in the starboard engine. He was secured, at the time, by just a single rope tied around his waist.

Some time later Winston Churchill summoned the shy and swashbuckling New Zealander to Number 10 Downing Street to congratulate him on his exploits. They got off to a shaky start. The fearless, daredevil airman, tongue-tied in the presence of the prime minister, was completely unable to field even the simplest of questions put to him. Churchill tried something different.

“You must feel very humble and awkward in my presence,” he began.


“Then you can imagine,” Churchill said, “how humble and awkward I feel in yours.”

A brilliant double stroke of empathy—feeling the discomfort of his visitor and recasting it as though begging for the visitor to feel his—showed Churchill at his most disarming and persuasive. A warm, empathetic style will often convince people of your best intentions and bring them onboard.

Empathy has been shown to be important in the doctor-patient relationship, in which physicians...
Programs of Persuasion

Psychologist Robert Cialdini of Arizona State University has spent his entire career observing influence techniques not just in the lab but also in the real world. Cialdini has published his conclusions in a book, *Influence: Science and Practice*, fifth edition (Allyn & Bacon, 2008), where he identifies six core principles of social influence—all of which, he argues, have evolutionary underpinnings reaching far back into our ancestral history.

These core principles are as follows:

1. **Reciprocity**—we feel obligated to return favors.
2. **Liking**—we have a tendency to say yes to people whom we like.
3. **Scarcity**—we place more value on things that are in short supply.
4. **Social proof**—we look at what others are doing when we’re not sure what to do ourselves.
5. **Authority**—we listen to experts and those in positions of power.
6. **Commitment and consistency**—we like to be true to our word and finish what we’ve started.

All of these principles tap (somewhat self-evidently given their evolutionary origins), one way or another, into issues of primeval survival—issues that in the 21st century are perhaps recapitulated a little more often than we think. What will happen if I don’t fill up with gas? We mutter to ourselves in a fuel crisis (scarcity). Or at dinner: everyone else is using that funny-shaped spoon with the hook, so it’s got to be right. Right? (Social proof).

Because of this evolutionary lineage and of the strategies’ explicit connection to ostensibly individual reward systems, they are all subsumed within the persuasion model under the broader, more generic principle of perceived self-interest.

Have to convince patients that they care about them and have their best interest at heart. This tactic not only makes for good medicine, it also has been shown to protect doctors from malpractice lawsuits. In 2002 Nalini Ambady, now a professor of psychology at Tufts University, divided physicians into two groups: those who’d been dragged through the court and those who hadn’t. She made audio-tapes of the doctors and their patients in session and then played the tapes to a group of students. The students were asked to determine which doctors had been sued.

But there was a catch. For each of the recordings the output was “content-filtered.” All the students could hear was prosody: muffled, low-frequency garble, as if they were listening underwater.

How, linguistically, would the doctors measure up? Could the students, on the basis of intonation alone, somehow distinguish one group from another? The results were unequivocal: they could tell them a mile off. The doctors who had been sued sounded way more self-important. They had a dominant, hostile, less empathic conversational style—whereas those who had not been sued sounded warmer.

Forgive and forget? Live and let live? Only, it seems, if I like you.

The position of incongruity at the center of the SPICE model reflects its centrality to the idea of persuasion. From calming someone down to raising someone’s spirits, from closing the deal to trying to bum a quarter from strangers on the street, defiance of expectation, script reversal, anathesis—call it what you will—lies at the very heart of persuasion. Not only does incongruity enhance the aesthetic prowess of simplicity, it also knocks out the brain’s surveillance mechanisms and thereby enables the rest of the SPICE task force to secretly slip in under the radar and worm our neural pleasure centers.

**Humor Is Key**

Of course, incongruity is also the essence of humor—one of the most effective tools in disarming your interlocutor and becoming a persuader.

Take a lesson from the following:

*Jim stumbled out of a saloon right into the arms of Father McGuire. “Inebriated again!” the priest scolded him. “Shame on you! When are you going to straighten out your life?”*

*“Father,” Jim asked. “What causes arthritis?”*

*I’ll tell you what causes it,” snapped the priest. “Drinking cheap whiskey, gambling and carousing around with loose women! How long have you had arthritis?”*

*“I don’t,” slurred Jim. “But the Bishop does.” Supersuasion doesn’t just bring the house down. It clears up the rubble and carts it off in a dump truck. M*