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# Kluwer Mediation Blog

## Step-In to Improvisational Negotiation

Jeffrey Krivis (First Mediation Corporation) · Thursday, August 16th, 2012

### The Problem with Conventional Wisdom in Negotiation

Conventional wisdom in negotiation provides specific responses to stimuli that are categorized as competitive or cooperative behavior. Depending on the identity of the behavior, the negotiator is taught to distribute a set value through a series of moves and concessions, or create value through ideas and transformative behavior. Historically, negotiation theorists remarked that competitive mindsets are based on ‘positional’ bargaining – something is gained only if something is given up. These theorists encourage concentrating on the ‘interests’ or needs of the parties, with the hope that the solution will somehow rise to the surface on its own like oil on water.

The problem with conventional wisdom is that the world is not broken down into simple behavior categories that respond the same way to predictable incentives. Instead, the world of negotiation mirrors the complexities of society, in which relationships emerge based on past experience and the pursuit of new opportunities with each other. The memory associated with a person’s experience allows for the building of mutual understanding, while the response received to positive and negative change results in a solution to conflict. It is against this backdrop that negotiating through an improvisational lens allows people to work together to create something larger than the sum of its parts.

The improvisational orientation and approach to negotiation is characterized by adapting to a set of circumstances in a strategic yet unconventional way. The strategic side of improvisational negotiation provides acknowledgement and integration of the gems offered by conventional wisdom while the unconventional side permits incorporation of these traditional techniques in a manner that yields an unconventional negotiation repertoire. By adjusting one’s pattern of negotiation to the behaviors presented in the moment, we move away from the predictable and move closer to the improvisational. The success of this technique stems from the willingness to replace the traditional ‘one size fits all’ textbook approach with a style that encourages creativity in an obvious moment of uncertainty; making certain that the concept of risk is portrayed in a light that makes it a useful tool instead of a dreaded challenge.

The essence of improvisation is the act of creating something as it is performed on the spur of the moment. For example, an actor improvising a scene must trust his own instincts to define a character’s response to internal and external stimuli. Although this term is usually used in the context of music and theater, it applies equally well to the negotiation setting where spontaneity and intuition are critical components. Negotiators find themselves in rapidly changing


unpredictable environments where they are required to react and respond to information as it is being presented, which makes it difficult to draw from a set of standard techniques and responses.

The brilliance behind integrating improvisational techniques into negotiation is that the apparent lack of structure actually allows for the use of strategies that are well thought out in advance but are not bound by precise formulas or equations. The objective is to steer away from the conventional wisdom that produces a rigid and uniform negotiation methodology. This is not to say that improvising means, 'Anything goes.' Instead, improvisation in negotiation relies on this structure for developing and mastering skill sets that support the uniqueness of each individual negotiation, its parameters, participants, challenges and objectives.

Predictable patterns by their very nature lead to impasse. By layering the strategic unpredictability of improvisation over conventional wisdom, traditional competitive and collaborative approaches are sheltered from exploitation under the umbrella of improvisational negotiation. The effectiveness of this overarching principle derives from its unique integration of concepts previously well defined with innovative models that allow for creative and broader thinking.

Competitive and collaborative techniques will continue to serve the negotiator well under the traditional set of circumstances for which they were designed. Unfortunately, taken individually their application in less-established circumstances is limited and will encourage a breeding ground for impasse. In these situations where the benefits offered by conventional wisdom have been exhausted, the negotiator is invited to explore the next layer of negotiation technology and STEP IN to Improvisational Negotiation.

## **Step In to the Solution**

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- Shape the Marketplace for Risk
  - Trade Knowledge for Instinct
  - Examine the Tea Leaves of Uncertainty
  - Paint the Canvas of Creativity
  - Illuminate the Negotiation Landscape
  - Nurture Team Synergy

### **Shape the Marketplace for Risk**

The environment surrounding a negotiation serves as a marketplace where individuals come to buy and sell a product or service, while simultaneously managing their risk of being exploited. When entering a marketplace, be it a shopping mall, market or upscale boutique, the first task at hand is to determine where to go to find the item or service being sought after. This process begins by gathering information about the surroundings through verbal or written data points. Once the

information is received and diagnosed, an internal compass sets the direction for the rest of the experience. This internal compass is actually intuition at work.

Intuition is an intellectual aspect of human thinking that operates at the subliminal levels of awareness. Using intuition, one can gather valuable data by interpreting tones of voice, facial expressions, body language and other symptoms of the internal condition of the speaker that can then be used to shape the negotiation marketplace. This is contrary to instinct, which is a conditioned physiological reflex and is used only after appropriate information and knowledge is obtained about the parameters of the negotiation. Entering the negotiation environment free of misconceptions and judgments about what should or should not be, allows intuition to flourish and serve as a tool that might help guide the discussion.

Traditional negotiators often dive in head first trying to control and change the environment to suit their interests, rather than taking the time to assess and absorb one's surroundings. In the short run, this tact may prove profitable. However, the environment by nature is in a state of constant change, making any benefit reaped short lived at most. The more prudent approach requires taking a step back and allowing the environment to be the teacher through the stream of information it provides rather than trying to control or change it.

### **Trade Knowledge for Instinct**

Every person is born with a set of inborn patterns of behavior in response to specific environmental stimuli. For most individuals, this innate capability or aptitude lies dormant because the focus rests generally on the conventional process of developing substantive knowledge, acquiring experience and fine-tuning skill sets that may or may not be useful in a particular situation. These inborn patterns or 'instincts' exist below the surface of each individual and are easily overlooked and brushed aside; on the rare occasion that they are noticed, its buzz is often muted as unwelcome noise.

Instincts serve as a personal roadmap guiding us in one direction or another. Reflecting inward from time to time during the negotiation will serve as a reminder that those nagging gut feelings serve a purpose and are there to help chart a course for future decision making. 'I think we've pushed enough,' 'I should accept the offer,' 'We should do what it takes to close this deal.' These internal statements are instincts talking ... listening to them can help keep the negotiation on course toward one's desired outcome.

That is not to say that knowledge, experience and skill sets are to be ignored. To the contrary, an awareness of the internal statements that occur during a negotiation should serve as a speedometer that gauges when the timing is right to move in a particular direction. A careful balance between the spontaneous use of instinct when the psychological risk is great and the drawing on knowledge and experience will enhance the possibility of success in the negotiation.

In sum, psychological risk results from not knowing what to expect and having to react to an unknown quantity. In this situation, many use their base of knowledge to determine how best to respond; their actions following a pattern that is consistent and comfortable. Challenging oneself to trade this fallback on knowledge for the uncertainty and ambiguity that derives from allowing one's instincts to be the guide is not easy and is certainly not comfortable but can yield significant and worthwhile results.

## **Examine the Tea Leaves of Uncertainty**

The central moment in a negotiation occurs when things begin to feel familiar and the parties are locked in a pattern of trades that is consistent and reliable. Unfortunately, this moment doesn't always occur early in the negotiation. The challenge comes into play when dealing with the uncertainty and ambiguity of the moment, and the need to make decisions based on partial or inadequate information. This is where bad judgment rears its head ('I'm walking out of here;' 'That offer is insulting'), leading to a likely breakdown in the negotiation.

Rather than seek out the familiar pattern of moves in the negotiation, embrace the uncertainty so that the conflict can surface naturally. This occurs by relinquishing a small fraction of control in order to redirect the negotiation moves the way a magician redirects attention by slight of hand. The result ... the other person is given reassurance of a quiet acceptance of their point of view, opening the door for one to read the tea leaves and gain further direction as the negotiation takes on steam.

Once uncertainty is accepted as part of the challenge of negotiation, clarity of thinking begins. The fluidity of improvisation allows for moves that distract and confuse, as well as problem solve.

## **Paint the Canvas of Creativity**

An artist starts with a blank canvas and with a vision of what they would like their creation to look like. Michelangelo found the image of David already in the block of stone he was working on — in much the same way a negotiation has the solution waiting to be unearthed. The creative process in art and in negotiation begins with an assessment of one's present situation, and a vision of where one would like to be. The conventional approach of realizing the vision has its applications and at times works very well. There are many artists who have imitated Michelangelo, but have never created a masterpiece. Developing an original path that is tailor-made to fit the circumstances of any negotiation is the essence of creativity, and integrates improvisational approaches with ease.

Ideas do not need to be novel or never before thought of for them to be creative. In fact, incorporating at least some familiar elements into one's improvisational repertoire can help set the other side at ease and make it easier to negotiate with them. The role of creativity in improvisation is to take the familiar and combine it with the unfamiliar so that the pattern is no longer one of convention but rather one of invention. This can be accomplished by adding elements that differ and are unexpected or approaching the situation in a way that takes traditional techniques and combines them in such a way to make their application unconventional. The sophisticated negotiator has anticipated and planned for the opportunity when creative tools are useful and necessary to move the negotiation along. This means making a list of choices before the negotiation of every possible scenario that is likely to present itself. While it is improbable that every base will be covered, the planning for disaster creates the structure that is ultimately needed when a creative moment surfaces.

In almost any creative activity, the tension rests on the delicate balance between the expected and the unexpected. Culinary art is an example of this. Consider the chef who creates a successful dish by combining simple elements in an unexpected way or with an unexpected twist. Of course,

before ingredients can be balanced against one another, their characteristics must be understood. Similarly, improvisational negotiators thrive when they understand the traditional elements in play and are comfortable with incorporating the unexpected and delivering it in their own personal style.

### **Illuminate the Negotiation Landscape**

Light is all around us. Everywhere we look, light allows us to see things in perspective. Artists, cinematographers and photographers all recognize the importance of using light to evoke a certain mood, add dimension, or as a means of directing one's attention either toward or away from a particular object or portion of a scene. With proper planning and imagination, lighting can enhance the beauty of an artist's work by drawing attention to lines, colors and shapes that might otherwise be overlooked.

Like art, the shape and depth of one's perception of the positions in a negotiation can greatly be affected by how the situation is lit or presented. Reflectors work by reflecting light onto the darker side of a subject helping create a balance between the shadows and highlights, or in the negotiation arena, the positives and negatives of the circumstances. At the same time, focusing too specifically on a subject with the use of harsh direct light will serve to eliminate details and flatten a subject. Trying too hard to persuade the other side of a particular point in a negotiation might prove counterproductive. While an artist can control the tone of the message and mood they intend their creation to convey, the interpretation of the artist's creation lies squarely in the eye of the beholder. The ideal lighting depends on the artist's willingness to become sufficiently detached from their creation to allow for acceptance of the beholder's interpretation, even if it is at odds with their own – that is the beauty of art.

Similarly, negotiators like artists can control the intensity and movement of the negotiation by packaging each moment in the light that best satisfies the negotiator's objective. Developing an awareness of the now is a critical component for appreciating the ever-changing negotiation landscape and being able to effectively gauge when to press on a subject and when to hold back.

### **Nurture Team Synergy**

To improvise successfully in a negotiation requires a high degree of teamwork and the ability to build on, rather than block, each other's ideas. Improvisational theatre uses a technique known as 'Yes, and' to build on the other person's position. This technique demonstrates that when a person denies an idea or suggestion offered by their counterpart, the scene stalls. When the person accepts and offers something in return, the action continues to unfold. Using this technique when negotiating allows the ball to continue moving forward rather than causing the negotiation to come to a standstill and fail.

Another critical aspect of building teamwork in this setting is the ability to quickly develop rapport with another by accepting that each person's perception is valid and the truth for them. Being in this position does not require agreement with everyone all the time. Rather, it offers an understanding of the situation from another's vantage point, making clearer the reasons for their choices or particular behaviors. The technique involved begins with opening the door and letting

them in and ends with making sure they know you understand their point of view.

While it may seem counterintuitive to think of teamwork as an element that is important for negotiation success, the masterpiece that resides inside the block of marble, will lay dormant until people are willing to work together to bring the masterpiece to life. Improvisational negotiation replaces the coercive tug of war inherent in conventional negotiation with the subtle power of enticement, indirectly pulling the other side closer to where one would like them to be.

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