

Teaching a New Negotiation Skills Paradigm

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I. INTRODUCTION

Imagine the following description of a negotiator: In the most recent sales negotiation, this negotiator was open, friendly, warm, she schmoozed at the beginning of the negotiation, asserted her legal and policy arguments as to her position, asked questions for information about the situation, asked the other side about their interests, avoided answering a few challenging questions, conceded slowly, demonstrated respect for the other side and that she was listening to them, created options, found trade-offs that became part of the solution, grabbed a larger percentage of the pie that she created, held absolutely unmovable on the delivery date, added a promise of better quality follow-up in the future, and then, to get the deal done, split the difference at the end on the insurance cost. What negotiation style is this? Collaborative because she schmoozed and created options? Competitive because she was unmovable on the date and grabbed more of the pie? Compromising because she made trade-offs?

And herein lays the problem with negotiation style labels: they hide the reality of what negotiators actually do, and need to do, in order to be effective. Effective negotiators need to choose skills that are appropriate given the context, client, and counterpart. The

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selection of skills is what matters, not the label given to them. And while the use of labels might provide guidance for students through a framework at the outset, these same labels hamstring us later as we try to teach effective negotiating.¹

I have come to this realization slowly, even reluctantly. In working with my co-authors on the first edition of our textbook, published in 2004,² each author had to bring their assumptions about the use of approach, style, strategy, and skills to the surface—and, we were not all on the same page.³ Each of our varied assumptions about what would help convey information most clearly and effectively helped me think about the overall goals of teaching. Similarly, over the past decade of negotiation trainings for professionals, I have altered the focus of my training. Ten years ago, I would talk about my negotiation study on different negotiation styles,⁴ the actual styles and results of the study, skills that supported each of the styles, and then urge participants to build skills so that they could choose among styles as appropriate over the course of a negotiation. Each of these subjects would occupy about equal time.

Now, my focus is almost completely on skills that support the styles rather than on debating effective styles. Through experience and reading more about adult learning, I realize that starting with theory (or even empirical studies that support theory) and then the practical is the wrong order. Adult professionals learn better by talking first about experiences and skills, and then focusing on framework or style selection.⁵ This realization also made me think about what we teach in law schools and whether the order or emphasis of what we teach law students should be any different.

1. For another recent view of struggling with different constructs for negotiation, see Peter T. Coleman et al., *Getting to Basics*, 28 NEGOTIATION J. 7 (2012).

2. CARRIE MENKEL-MEADOW, LELA PORTER LOVE, ANDREA KUPFER SCHNEIDER & JEAN STERNLIGHT, *DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL* (2d ed. 2011).

3. I remain exceedingly grateful to Carrie Menkel-Meadow, Lela Love and Jean Sternlight for these interesting and eye-opening conversations.

4. Andrea K. Schneider, *Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style*, 7 HARV. NEGOT. L. REV. 143 (2002).

5. Melissa Nelken, Bobbi McAdoo & Melissa Manwaring, *Negotiation Learning Environments*, in *RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE* 199, 200 (Christopher Honeyman, James Coben, & Giuseppe De Palo eds., DRI Press 2009).

Part II of this Essay explains why we have a variety of labels for negotiation approaches and styles, and gives a brief history of their creation. Part III focuses on the problems with labels: the plethora of different labels that mean the same thing; the fact that labels are both underbroad and overbroad; and that these labels do not actually describe the skills beneath, particularly how labels gloss over the impact of social skills and ethical behavior. The last section argues for a different way of teaching skills—recognizing that a framework is necessary for laying out general concepts, *and* that our real focus has to be on the skills that provide our students with the tools to engage most effectively across a variety of contexts.

II. WHY WE HAVE LABELS

There are at least three different explanations as to why we have labels. First, labels provide a way to organize our thoughts. Much like any other type of information, humans need to create categories in order to keep the information straight. Second, different labels come from different disciplines; psychology, law, business, and others have all created labels for the approaches and styles that are now used in the textbooks. Finally, as different academics and authors tackle the subject of negotiation strategies, we each create labels that we hope will be useful—*and that will be used*.

A. Labels Are Useful

As we teach negotiation to beginning students, the labels of different approaches to negotiation are helpful in trying to help students understand the general differences in how negotiators might think about, and therefore how negotiators might then act in, negotiations. To describe the different assumptions about the negotiation, authors refer to distributive or integrative negotiations. Distributive negotiation describes negotiations which are generally limited to one item; when more for you is less for me.⁶ Integrative

6. THOMAS C. SCHELLING, *THE STRATEGY OF CONFLICT* (1960); HOWARD RAIFFA, *NEGOTIATION ANALYSIS: THE SCIENCE AND ART OF COLLABORATIVE DECISION MAKING* 97–98 (2002).

negotiation generally refers to an opportunity to add different elements to the negotiation, and to find a way to have a more mutually beneficial outcome.⁷ At the outset of learning about negotiation this division is helpful to understand typical assumptions that we might have coming from a war or sports metaphor of negotiation where there is a winner and loser.⁸ Getting students to question that assumption requires that we present them with an alternative—the integrative approach—so that they can see that not all approaches encompass a winner and loser.

Similarly, we use labels to describe styles or strategies in negotiation, again to simplify complex behavioral patterns, to demonstrate contrasts and show students that they have choices. So, competing is set against accommodating where competing is focused on serving one's own interests while accommodating focuses on serving the counterpart's interests.⁹ Avoiding versus collaborating also demonstrate these opposites—having no interest at all in either yourself or the other side versus having an interest in both parties' needs.¹⁰

Labels are useful to generate these contrasts, to get students to identify certain patterns of their own behavior in addition to those of their counterparts,¹¹ and to raise the possibility that other styles or strategies might be useful, or even more useful, than their default or comfort zone.

B. Labels Come From Different Disciplines

A quick review of almost any law textbook on dispute resolution will find numerous readings from other fields. Negotiation, we all

7. MENKEL-MEADOW ET AL., *supra* note 2, at 99–100.

8. See Jonathan R. Cohen, *Adversaries? Partners? How About Counterparts? On Metaphors in the Practice and Teaching of Negotiation and Dispute Resolution*, 20 CONFLICT RESOL. Q. 433, 438 (2003); Howard Gadlin, Andrea Kupfer Schneider & Christopher Honeyman, *The Road to Hell is Paved with Metaphors*, in THE NEGOTIATOR'S FIELDBOOK 29, 31–32 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

9. Kenneth Thomas, *Conflict and Conflict Management*, in HANDBOOK OF INDUSTRIAL AND ORGANIZATIONAL PSYCHOLOGY 900–02 (Marvin D. Dunnette ed., 1976).

10. *Id.*

11. Jennifer Brown, *Empowering Students to Create and Claim Value through the Thomas-Kilmann Conflict Mode Instrument*, 28 NEGOTIATION J. 79 (2012).

argue, is best informed by a multitude of disciplinary perspectives. So, from early management theorist Mary Parker Follett, we have the choices of domination, compromise, and integration for our strategies.¹² Business and public policy professors David Lax and James Sebenius, divided the world into value-claiming or value-creating styles in their book, *The Manager as Negotiator*, reprinted in numerous texts.¹³ From psychology, we have Kenneth Thomas' five conflict-handling orientations—competitive, collaborative, avoidant, accommodative, and sharing.¹⁴ This framework is also used by current business school professors in outlining styles as demonstrated in textbooks authored by Richard Shell, Leigh Thompson, and Roy Lewicki.¹⁵ In a well-known analysis of the prisoner's dilemma by political scientist Robert Axelrod, our style choices are given as cooperation or defection.¹⁶ This plethora of labels is not even in our own discipline!

Law professors have their own series of labels. From books and articles all published in the early 1980s, we began with three choices for categorizing negotiation strategies. Roger Fisher categorized our choices as hard bargaining, soft bargaining, and principled bargaining.¹⁷ Carrie Menkel-Meadow wrote about adversarial versus problem-solving styles.¹⁸ And Gerry Williams divided his negotiators into cooperative versus competitive negotiators.¹⁹ Simplifying our choices into two or three styles (versus the five styles outlined by Thomas) might have been more straightforward. It was also likely based on the fact that lawyers, at least, do not have the option to truly

12. Mary Parker Follett, *Constructive Conflict*, in *PROPHET OF MANAGEMENT: A CELEBRATION OF WRITINGS FROM THE 1920S* 67, 68 (Pauline Graham ed., Beard Books 2003).

13. DAVID LAX & JAMES SEBENIUS, *THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN* 29–45 (1986).

14. Thomas, *supra* note 9.

15. See, e.g., G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE: NEGOTIATING STRATEGIES FOR REASONABLE PEOPLE* (2d ed. 2006); LEIGH THOMPSON, *THE MIND AND HEART OF THE NEGOTIATOR* (3d ed. 2005); ROY J. LEWICKI ET AL., *ESSENTIALS OF NEGOTIATION* (5th ed. 2011).

16. ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

17. ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* 8–15 (3d ed. 2011).

18. See Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 *UCLA L. REV.* 754 (1984).

19. GERALD R. WILLIAMS, *LEGAL NEGOTIATION AND SETTLEMENT* 18–42 (1983).

avoid the conflict that they have been hired to resolve (therefore eliminating avoiding as a style choice). Another popular division of negotiation styles included the purpose of the negotiations-dispute settlement or deal-making.²⁰

In the past decade, we have only added to the number of labels. Adding to Gerry Williams' study, I divided negotiators into true problem-solving, cautious problem-solving, ethical adversarial, and unethical adversarial.²¹ Charles Craver writes about competitive problem-solving as the most successful approach²² and in his criticism of the problem-solving style, Robert Condlin refers to "communitarian bargaining."²³

Most of us, when teaching, will end up focusing on one of these frameworks while exposing our students to many of the different labels, at least in order to increase their familiarity with the literature.

C. My Label Best Explains the Choices

Perhaps one of the reasons that we keep coming up with new labels for both negotiation approaches and styles is the dissatisfaction with previous labels. I know for me, I thought that "cooperative" just sounded too nice, so even in the adaptation of Williams' study, I shifted that to "problem-solving."²⁴ But my guess is that problem-solving by itself suffered from a similar "niceness" problem, so Charles Craver added "competitive" to be clear that a certain amount of assertiveness is also necessary.²⁵ Russell Korobkin's division of tasks into zone definition versus surplus allocation likely stemmed from the desire to be clear on what task the negotiator is trying to accomplish as well as a dissatisfaction with the competitive/

20. See Frank E. A. Sander & Jeffrey Rubin, *The Janus Quality of Negotiation: Dealmaking and Dispute Settlement*, 4 NEGOTIATION J. 109 (1988).

21. Schneider, *supra* note 4, at 143, 171, 179–81.

22. Charles Craver, *What Makes a Great Legal Negotiator?*, 56 LOY. L. REV. 337, 346–47 (2010); Gary Goodpaster, *A Primer on Competitive Bargaining*, 1996 J. DISP. RESOL. 325 (arguing that competitive bargaining is effective in certain scenarios).

23. Robert J. Condlin, *Bargaining with a Hugger: The Weaknesses and Limitations of a Communitarian Conception of Legal Dispute Bargaining, or Why We Can't All Just Get Along*, 9 CARDOZO J. CONFLICT RESOL. 1, 8–16 (2007).

24. See Schneider, *supra* note 4, at 152.

25. See Craver, *supra* note 22, at 346–50.

cooperative dichotomy.²⁶ And perhaps we come up with new labels in order to finally be the one to clarify and categorize a messy collection of behaviors and strategies.

III. BUT . . . LABELS LIMIT OUR THINKING

A. *The Labeling of Negotiation Approaches Mixes Assumptions and Tasks*

Often, the first use of negotiation labels occurs in the use of labels for negotiation approaches. For example, most textbooks discuss negotiation as a choice between the distributive and integrative approaches.²⁷ But when we use these words, we are describing both the *view* of negotiation (zero-sum or mutual gain) as well as the *task* (claiming and creating). As we teach, it becomes clear that we want our students to have the latter *view*—that negotiation can have mutual gains. This, after all, is the real revolution behind the bestseller *Getting to Yes*²⁸ and its progeny.²⁹ At the same time, we know that the *tasks*—both claiming and creating—occur in virtually every negotiation.³⁰ This becomes confusing for our students—mixing up the *view* of negotiation in which negotiators likely have one or the other perspective with the *tasks* of negotiation in which negotiators likely can engage in both.³¹

In addition, the decision on approach—whether the view of negotiation or the task at hand—does not necessarily determine the

26. See Russell Korobkin, *A Positive Theory of Legal Negotiation*, 88 GEO. L.J. 1789 (2000).

27. See, e.g., JAY FOLBERG ET AL., *RESOLVING DISPUTES: THEORY, PRACTICE, AND LAW* 73 (2d ed. 2010) (discussing the tension between creating value and claiming value); STEPHEN GOLDBERG ET AL., *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 17–43 (1992) (introducing readings that outline the distributive and then the problem-solving or principled approach to negotiation); LEONARD L. RISKIN ET AL., *DISPUTE RESOLUTION AND LAWYERS* 178 (4th ed. 2009) (discussing the differences between adversarial versus a problem-solving approach).

28. FISHER & URY, *supra* note 17.

29. See ROGER FISHER & SCOTT BROWN, *GETTING TOGETHER: BUILDING RELATIONSHIPS AS WE NEGOTIATE* (1988); ROGER FISHER & DANNY ERTEL, *GETTING READY TO NEGOTIATE: THE GETTING TO YES WORKBOOK* (1995); ROGER FISHER, ELIZABETH KOPELMAN & ANDREA KUPFER SCHNEIDER, *BEYOND MACHIAVELLI: TOOLS FOR COPING WITH CONFLICT* (1996).

30. LAX & SEBENIUS, *supra* note 13.

31. Korobkin, *supra* note 26.

skills needed to execute the negotiation. For example, if you are engaged in a distributive negotiation, you are trying to claim more of the pie. You will talk and justify your case, you might ask questions to assess your opponents' weaknesses or to explore their priorities, etc. Perhaps you will be such an egotistical, irritating negotiator that divining your true motives will be easy.³² On the other hand, you might be friendly and nice.³³ In other words, using the labels for the approach to negotiation does not completely describe what is going on at the table and can hide important nuances from our students.

B. The Approach-Style Distinction Is Confusing

Our next step after introducing the approaches is to spend time outlining various styles that negotiators may have. The first problem with this is that we use approach and style to mean two different things when common English usage does not distinguish between them. Webster's Dictionary describes approach as "a particular manner of taking steps toward a particular purpose" while style is defined as "a distinctive manner or custom of behaving or conducting oneself."³⁴ These words are virtually the same thing—a manner of behaving—and yet in negotiation we use approach to mean the assumptions and tasks of negotiation and use style to mean a particular set of behaviors used during the negotiation.

Second, even the descriptions that we use for approach and style overlap. We use "integrative" in both. And synonyms abound—claiming value as an approach does not seem that different from competing as a style. The approach of creating value appears quite similar to a collaborating or problem-solving style. The nuances between all of these distinctions are often lost on students.

32. I found in about 20–30 percent of the attorneys I surveyed that the top adjectives were those like irritating, hostile, egotistical, angry, etc. See Schneider, *supra* note 4, at 176–79; see also WILLIAMS, *supra* note 19.

33. This is a primary point in Robert Condlin's article, *Bargaining Without Law*, that competitive behavior can be combined with a completely pleasant personality. Robert Condlin, *Bargaining Without Law*, 56 N.Y.L. SCH. L. REV. 281 (2012); see also Craver, *supra* note 22.

34. *Style Definition*, MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/style> (last visited Mar. 25, 2012).

C. The Labels for Negotiation Style Are Repetitive

A third problem with existing labels, particularly in style, is the sheer number of labels that appear to say the same thing.³⁵ For problem-solving, we have integrative, principled, or interest-based. Competitive is also hard bargaining, adversarial, or distributive. Accommodating is also sharing, soft bargaining, or cooperative.³⁶ Only avoiding and compromising seem to escape the overlap.³⁷

*D. Negotiation Style Labels Are Both Overbroad and Underbroad*³⁸

Another problem with negotiation style labels is that they cover both less and more particular behaviors than we might assume looking at the name. For example, the importance of researching and relying on criteria in order to assure fairness in the outcome and to assert one's own interests was put into popular literature in *Getting to Yes*.³⁹ So, one might assume that "using criteria" would fall under a principled or problem-solving approach. Yet it is clear that this skill would also make one a more effective competitive negotiator. Business school professor Leigh Thompson categorizes this skill under distributive bargaining in her well-regarded textbook⁴⁰ as does Russell Korobkin in his article, *Against Integrative Bargaining*.⁴¹

And the concepts of tone, social skills, trust, and ethics do not automatically fail under *any* single style label. Assuming that we could even get clarity and consensus on assertive skills or empathy skills, or agree that creativity falls under a collaborative style, the

35. And again, I'll be the first one to throw myself under the bus for adding to this list!

36. Although not necessarily, as Gerry Williams' original description of cooperative negotiation included many behaviors we would also include under problem-solving. WILLIAMS, *supra* note 19, at 53.

37. The reason that I think we escape overlapping labels here is that these two labels describe more specific behaviors rather than categorizing a whole host of different elements.

38. See also Paul Kirgis, *Hard Bargaining in the Classroom: Realistic Simulated Negotiations and Student Values*, 28 NEGOTIATION J. 93, 96–97 (2012) (also lamenting the shortcomings of the current negotiation dichotomies).

39. FISHER & URY, *supra* note 17. At least popularized—no doubt other negotiation writers had also included the importance of knowing your case and researching comparables.

40. See THOMPSON, *supra* note 15, at 40–68.

41. Russell Korobkin, *Against Integrative Bargaining*, 58 CASE W. RES. L. REV. 1323 (2008).

current style framework does not take into account one's general sociability in the negotiation as well as one's level of ethical behavior. Neither of those are limited to one approach and yet many assume that being adversarial automatically includes being unpleasant and unethical.⁴² In fact, it may well be that the most effective negotiators are those who are friendly, ethical, and very firm.⁴³

E. The Labels Do Not Explain the Skills

For the final frustration with the use of labels, let's return to our purposes. Assuming that we use labels to help students both understand the process of negotiation *and* to become more effective themselves, the style labels really only serve the first goal. When trying to teach skills, we need to unpack the labels into the behaviors that they actually describe.

Part of the teaching problem might stem from early reliance on the Prisoner's Dilemma as a model of negotiation.⁴⁴ The beauty of the Prisoner's Dilemma is the clarity of choice it provides to the negotiator and, therefore, its easy use as an exercise to teach the importance of reputation, long-term relationship versus short-term gain, and clear communication. The problem is that most negotiations are not either/or choices to cooperate or defect. Once we move past the Prisoner's Dilemma—and we generally do in reality—our choices are far more nuanced. The shift from the Prisoner's Dilemma into the Negotiator's Dilemma (the choice to create value or to claim value),⁴⁵

42. Again, let me confess my sins first—it is easier to conflate them all under adversarial and, at least for some segment of the bar, it is also true. (See my study on the approximately 20 percent of lawyers who fall into the unethical adversarial category). Yet we know that is a subset of adversarial, not the complete number of negotiators who might categorize themselves that way. See Schneider, *supra* note 4.

43. See generally Craver, *supra* note 22, at 340, 350, 354, 355, 358; Condlin, *supra* note 23, at 8.

44. Many negotiation classes will run some version of the Prisoner's Dilemma exercise early in the semester. See, e.g., *Marquette Pizza Exercise* (on file with author); Russell Korobkin, *Construction Ventures*, in NEGOTIATION THEORY AND STRATEGY: TEACHER'S MANUAL AND SIMULATION MATERIALS 287–92 (2d 2009); Roger Fisher, *Oil Pricing Exercise*, in CLEARINGHOUSE TEACHING MATERIALS AND PUBLICATIONS (Program on Negotiation at Harvard Law School).

45. LAX & SEBENIUS, *supra* note 13, at 29–45.

which is generally used in most law textbooks, still does not add sufficient nuance in the choices that negotiators face.

Where we seem to have the most problems with our labels is with the competitive and problem-solving labels. A competitive negotiator could be unpleasant or friendly, could be bluffing or could be starting with a very high, justifiable offer, could be sneaky or straightforward, could share no information or could share the information most favoring her client, could ask questions to denigrate your case, or could ask questions to verify her research.⁴⁶ This would result in very different negotiations depending on the choices made by the negotiator. Similarly, our problem-solver, facing the tension of empathy and assertiveness as described by Mnookin, Peppet & Tulumello,⁴⁷ could also engage in a range of behaviors that could vary greatly. How much do you assert your case? Are you persuading them to “create value” on the strength of your option creation or the strength and longevity of your relationship or your ability to sell them on “their” terms?⁴⁸ Can a problem-solving style include someone who is not all that warm? When using a style label, we are not describing the actual behaviors or tactics.

Finally, focusing on a given negotiation style as the key choice assumes that the style does not change over the course of the negotiation. We know that most effective negotiators will moderate their behavior as needed (respond in kind or respond to change the situation, ask questions to get information or ask questions to build rapport, etc.) throughout the course of the negotiation much like we know that effective mediators will change throughout the course of a given mediation.⁴⁹ By focusing on styles rather than skills, we convey the message that style determines the responses and the behaviors. Instead, the most effective behaviors should be packaged in the most

46. See Craver, *supra* note 22, at 345–50.

47. ROBERT H. MNOOKIN, SCOTT R. PEPPET & ANDREW S. TULUMELLO, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES 55 (2000).

48. ROBERT B. CIALDINI, INFLUENCE: THE PSYCHOLOGY OF PERSUASION (rev. ed. 1993); Donna Shestowsky, *Psychology and Persuasion*, in THE NEGOTIATOR’S FIELDBOOK, *supra* note 8, at 361.

49. Leonard L. Riskin, *Decision-Making in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1, 51–53 (2003).

effective way, which might all be consistent with one style or might reflect the use of different styles throughout.

IV. THE GOAL IS EFFECTIVE NEGOTIATORS

To be able to teach students how to be more effective negotiators, we need to teach them what to do, not by generalizable labels, styles, or approaches, but by the more specific descriptions of what to do in advance of and during the negotiation.⁵⁰ What skills should they have? And how should they choose among their skills in any given situation? Digging beneath the framework that the styles provide us, we can start to outline the necessary skills.⁵¹

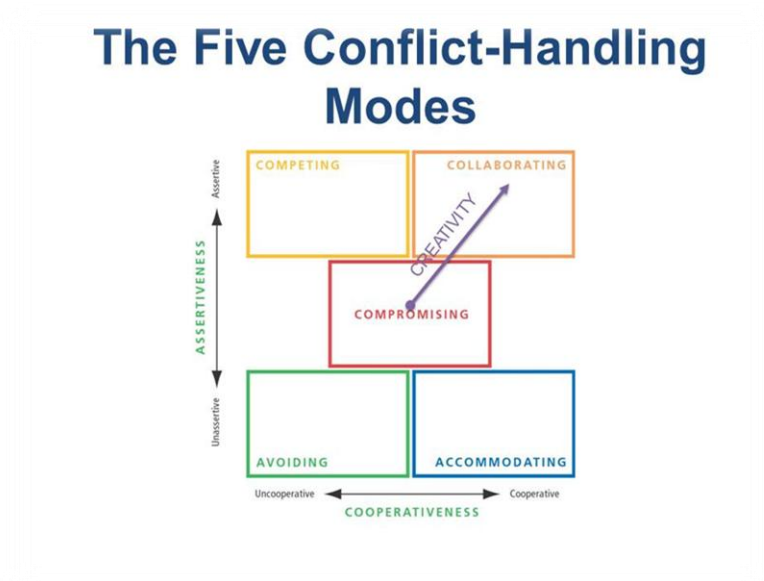
When training both lawyers and non-lawyers, I have generally used the styles framework provided by Thomas that is used in business school texts as well as law texts.⁵² Because it includes several more choices than problem-solving versus adversarial, I have found that the Thomas framework is more realistic for the variety of negotiations in which people engage. Furthermore, by including avoiding and compromising, the Thomas framework also permits a more nuanced discussion of how negotiation behavior can vary over the course of a single negotiation.⁵³ For example, you might collaborate to come up with a new element of the deal and then compromise to split the difference on the salary increase at the end. Or you might avoid discussing a particularly incendiary part of the negotiation until other easier elements have been discussed. The Thomas outline is below and I have mapped the specific skills onto the chart to show students which skills are necessary to provide students with style choices (with empathy substituting for cooperativeness).

50. For a difference on labels at the top of the ladder versus the data at the bottom, see Rick Ross, *Ladder of Inference*, in *THE FIFTH DISCIPLINE FIELDBOOK* 242–46 (Peter M. Senge et al. eds., 1994).

51. Jennifer Brown's excellent discussion of how to use the Thomas-Kilman Instrument is an example of this (and how I do it myself). See Brown, *supra* note 11.

52. Thomas, *supra* note 9. For example, Thomas' article is excerpted in MENKEL-MEADOW ET AL. *supra* note 2; RUSSELL KOROBKIN, *NEGOTIATION THEORY AND STRATEGY* (2d ed. 2009); THOMPSON, *supra* note 15.

53. *Id.*



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In other words, if a negotiator has the ability to be assertive, empathetic, and creative, then he or she will be able to move among the styles outlined and will be able to choose wisely at any given time.⁵⁵

This concept builds on Robert Mnookin's original assertiveness versus empathy tension by adding flexibility.⁵⁶ The assertiveness versus empathy tension does a wonderful job of explaining to students how they would need to balance their natural urges and skills in order to be able to move around the negotiator's dilemma—to both claim and create value well.⁵⁷ However, adding a separate skill of flexibility is the difference between basic compromise and a more interesting and nuanced collaborative outcome. Flexibility and

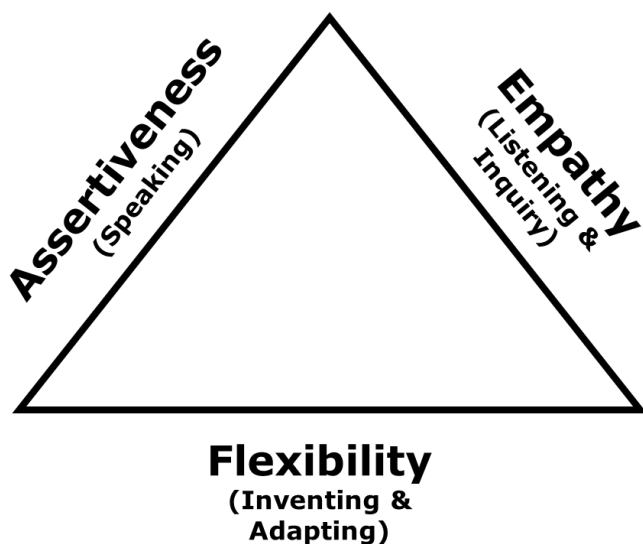
54. CONFLICT WORKSHOP FACILITATOR'S GUIDE FOR THE THOMAS-KILMANN CONFLICT MODE INSTRUMENT 21 (CPP, 1996).

55. Brown, *supra* note 11, at 81–82.

56. Robert H. Mnookin, Scott R. Peppet & Andrew S. Tulumello, *The Tension Between Empathy and Assertiveness*, 12 NEGOTIATION J. 217 (1996).

57. *Id.* at 221–22.

creative thinking are different than either assertiveness or empathy. The result is what I have called a triangle of effectiveness:



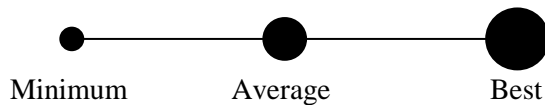
This triangle of skills is also based on what I originally found in my 1999 study.⁵⁸ As I wrote then, the most interesting difference for me was not between the adversarial and problem-solving rates of effectiveness, but rather the difference in effectiveness ratings between the two clusters, labeled “cautious problem-solving” and “true problem-solving.” The effectiveness rating difference was striking—60 percent of cautious problem-solvers were perceived as average versus 75 percent of the problem-solvers who were perceived as effective.⁵⁹ What the “true” problem-solvers had was more noticeable ability—in other words, they were perceived as higher on the adjective scale—in the three significant areas of assertiveness, empathy, and flexibility. And, as I outline further below, they also had a strong sense of ethical behavior as well as a friendly, warm personality.

58. See Schneider, *supra* note 4.

59. See *id.* at 175.

A. *Effective Skills Permit Stylistic Choices*

The key in teaching skills to students is the recognition that with more skills in their toolbox, students will best be able to prepare, start, respond, and conclude negotiations in a more thoughtful manner.⁶⁰ By teaching styles to students as the key choice, professors convey the message that the student must choose the style in advance of the negotiation. In actuality, the better message would be to teach students how to be more effective at each skill.⁶¹ In thinking about what makes any given skill more effective, one way of organizing that skill might be from the cognitive to emotionally intelligent.⁶² Another way might be to look at minimal effort versus a more thoughtful application. As a start for further discussion, I've organized our skill expectations along a spectrum of minimal to average skill level to best practices.



60. See, e.g., MICHAEL WATKINS & SUSAN ROSEGRANT, BREAKTHROUGH INTERNATIONAL NEGOTIATION (2001), on how the most effective negotiators can recognize patterns, adjust their behaviors and reflect while in action to accomplish their goals. ROY J. LEWICKI & ALEXANDER HIAM, MASTERING BUSINESS NEGOTIATION: A WORKING GUIDE TO MAKING DEALS AND RESOLVING CONFLICT (2006) (in which they review each stylistic approach counseling the reader that a master negotiator is sufficiently flexible to execute a variety of styles and sufficiently skillful that he or she has the skills to do so).

61. I am grateful to many who pointed me toward the system set up by Christopher Honeyman years ago to evaluate mediators in response to similar concerns of mixing styles with skills. Over twenty years ago, Honeyman started a similar project regarding mediators to assess a certain skill set rather than measuring settlement rates or describing styles. He first described five skills of mediation as investigation, empathy, investigation, persuasion and distraction. Christopher Honeyman, *Five Elements of Mediation*, 4 NEGOTIATION J. 149 (1988). He next established evaluation scales for these skills and two more—managing the interaction and substantive knowledge. Christopher Honeyman, *On Evaluating Mediators*, 6 NEGOTIATION J. 23 (1990). Finally, the Test Design Project, supported by the National Institute of Dispute Resolution (NIDR) built on this structure to build an entire methodology for evaluating mediators using these skills. CHRISTOPHER HONEYMAN ET AL., THE TEST DESIGN PROJECT (1995).

62. DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE ix–xviii (1995).

As additional information, the appendix to this Essay has the list of adjectives from my 1999 study according to effectiveness ratings.⁶³

1. Assertiveness⁶⁴

The ability to assert yourself in a negotiation can depend on your alternatives, your goals, your research or knowledge in the area, and your ability to speak persuasively.⁶⁵ In order to assert oneself, a minimal skill might be some level of competence and knowledge. An average skill would be to have fully researched the situation and be well-prepared. Best practices would include confidence based on competence and knowledge.⁶⁶

In measuring your skills using the concept of BATNA, a minimal level of skill would be to know your BATNA in advance of a negotiation.⁶⁷ The average skill level would be to then set your reservation price for the negotiation based on that BATNA.⁶⁸ And best practices would be to work on improving your BATNA before and during the negotiation. You could also work to worsen *their* BATNA.

A minimal skill would be to set a realistic, specific goal.⁶⁹ Average skill would perhaps be to set this goal optimistically high with sufficient research into criteria to back this up.⁷⁰ And best practices would include having mapped out framing arguments or other persuasive tools that would help sell your goals.⁷¹ For example,

63. See the study for details on cluster analysis and the entire list of adjectives from which this was taken. Schneider, *supra* note 4, at 177.

64. In describing specific behaviors under each heading, I realize this is only a first take. I expect that there are—and look forward to hearing—what else could and should be included under each.

65. There are no doubt other skills that one might put in this list.

66. Note that effective negotiators in my study were perceived to be confident and experienced, regardless of what style they chose. Schneider, *supra* note 4, at xx; *see also* app. A.

67. *See* FISHER, *supra* note 17, at 99, 101–03 (explaining BATNA).

68. *See* Korobkin, *supra* note 26.

69. SHELL, *supra* note 15, at 31–32.

70. *Id.* at 34; *see also* Korobkin, *supra* note 26, at 1794–98.

71. Laura Little, *Characterization and Legal Discourse*, 46 J. LEGAL EDUCATION 372 (1996) (noting that the most persuasive arguments think carefully about the audience); *see* DOUGLAS STONE, BRUCE PATTON & SHELIA HEEN, *DIFFICULT CONVERSATIONS* (1999).

in *The Elements of Persuasion*, the authors argue that the key to success is a good story.⁷² And, as they define it, “A story is a fact, wrapped in an emotion that compels us to take action that transforms our world.”⁷³ Minimal skill in speaking would be the ability to explain your client’s position. Average skill would include speaking clearly about why this position is worthwhile. Best practices would include researching in advance what types of arguments,⁷⁴ criteria (legal precedent, industry practice, etc.), and salesmanship techniques⁷⁵ work best with your particular counterpart. There are, no doubt, other skills as part of assertiveness that could be similarly mapped.

2. Empathy

Empathy is linked to success in a variety of careers. The skill of “empathic accuracy,” according to William Ickes, is what creates “the most tactful advisors, the most diplomatic officials, [and] the most effective negotiators.”⁷⁶ Even lawyers and economists now recognize that separating decision-making from emotions is detrimental.⁷⁷

Being empathetic in a negotiation requires a complex mix of skills—a willingness to hear the other side, open-mindedness or curiosity, good questioning and excellent listening, among others.⁷⁸ First, one needs the belief and understanding that your counterpart might have something to contribute. And so a minimal skill would be to distinguish between the rare win-lose negotiations and those that might have room for joint gain. An average skill would be the ability

72. RICHARD MAXWELL & ROBERT DICKMAN, *THE ELEMENTS OF PERSUASION* 4 (2007).

73. *Id.* at 5.

74. Shestowsky, *supra* note 48.

75. ROBERT B. CIALDINI, *INFLUENCE: THE PSYCHOLOGY OF PERSUASION* (rev. ed. 1993).

76. WILLIAM ICKES, *EMPATHIC ACCURACY* 2 (1997), cited in DANIEL GOLEMAN, *SOCIAL INTELLIGENCE: THE NEW SCIENCE OF RELATIONSHIPS* 88–89 (2006).

77. Kathryn Abrams & Hila Keren, *Who’s Afraid of Law and the Emotions?*, 94 *MINN. L. REV.* 1997, 2000–2005 (2010).

78. DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* 96+ (Chapter 7: the Roots of Empathy) (10th anniversary ed., 2006); MNOOKIN, PEPPET & TULUMELLO, *supra* note 56.

to find integrative potential.⁷⁹ Best practices would be to translate the parties' interests into realistic integrative proposals.⁸⁰

Second, one needs the skills to gather information about one's counterpart to build the relationship in order to work together substantively. A minimal skill might be to ask questions of the other side in order to get information about them to help move the process along. An average skill would perhaps be to ask questions to uncover the counterpart's interests and needs.⁸¹ Best practices would include having a learning conversation in order to better understand the counterpart's client and that client's situation in order to propose solutions that respond to those needs.⁸²

Similarly, a minimal skill in listening would be to let the other side explain their case without interrupting. An average skill would be to ask questions when they are done to both clarify and demonstrate one's listening. Best practices would include looping⁸³ or active listening to confirm that you accurately understand their perspective and that, even if you don't agree with their position, you respect their position.⁸⁴

3. Flexibility

Talented negotiators work to find a variety of ways to get the job done both in their strategic choices as well as more flexible outcomes. Being flexible in negotiation allows a stylistic move from simple compromising to more sophisticated integrative solutions. It also helps to prevent stalemate. And so a minimal skill on flexible

79. See Rubin & Sander, *supra* note 20, at 109–12.

80. See Menkel-Meadow, *supra* note 18; LEWICKI & HIAM, *supra* note 61, at 23–24; see also SHELL, *supra* note 15, at 235.

81. See Peter Reilly, *Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help*, 24 OHIO ST. J. ON DISP. RESOL. 481, 496–504 (2009).

82. See Chris Guthrie, *I'm Curious: Can We Teach Curiosity?*, in RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE, 63, 63–64 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., DRI Press 2009). Also note that negotiators with low compassion for the other side do *not* do better at claiming value. Keith G. Allred et al., *The Influence of Anger and Compassion on Negotiation Performance*, 70 ORG. BEHAVIOR HUMAN DECISION PROCESSES 175, 178 (1997).

83. GARY FRIEDMAN & JACK HIMMELSTEIN, CHALLENGING CONFLICT: MEDIATION THROUGH UNDERSTANDING 68+ (2008).

84. STONE ET AL., *supra* note 71, at 40.

strategic choices might be choosing a style based on a particular context or counterpart. An average skill would be shifting your strategy or tactics in the course of the negotiation to respond to your counterpart.⁸⁵ Best practices would include careful thinking about the reputation of your counterpart, selecting skills on that basis as well as your own skill set and your client's situation, and then adapting your skills as needed based on your counterpart and newly acquired information in the course of the negotiation.

In terms of finding creative outcomes, Leigh Thompson writes about three types of creativity: fluency (the ability to create many solutions); flexibility (the ability to generate different solutions); and originality (the ability to come up with a unique solution).⁸⁶ A negotiator will want to work on all three of types in order to be most effective and to think about the processes (for example, brainstorming) that might assist in creating different solutions.⁸⁷ A minimal skill would be simply knowing your priorities so that you could do trade-offs at the table. An average skill could be preparing one or two different tradeoffs that might work (cash payment in exchange for earlier settlement, length of contract in exchange for lower salary, etc.)⁸⁸ Best practices would be to examine a variety of creative processes both before and during a negotiation—non-specific compensation, contingent agreements, adding issues, etc.—that could provide additional solutions.⁸⁹

4. Social Intuition

We know that having a pleasant and welcoming personality helps effectiveness in life. The work of Daniel Goleman on emotional and social intelligence has made it clear that successful people manage

85. See SHELL, *supra* note 15, at 24.

86. THOMPSON, *supra* note 15, at 177.

87. *Id.* For more on unique solutions, see MICHAEL J. GELB, HOW TO THINK LIKE LEONARDO DA VINCI, 79+ (1998).

88. Dean Pruitt, *Achieving Integrative Agreements*, in NEGOTIATION IN ORGANIZATIONS, 36–41 (Max Bazerman & Roy Lewicki eds., 1983).

89. Jennifer Gerarda Brown, *Creativity and Problem-Solving*, 87 MARQ. L. REV. 697 (2004); Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problems Solving and Teachable in Legal Education?*, 6 HARV. NEGOT. L. REV. 97 (2001); THOMPSON, *supra* note 15, at 73 (discussing post-settlement settlements).

their emotions and social skills in order to get along with others. As Goleman notes from studies of primates, outgoing monkeys have lower levels of stress hormones, stronger immune function, and are best able to integrate into new social groups. In short, “[t]hese more sociable young monkeys are the ones most likely to survive.”⁹⁰ While we are unlikely to deny another negotiator life-sustaining food because they are not outgoing, Goleman outlines the significant business and life advantages to being more socially intelligent. And recent articles have focused on the importance of teaching these skills to lawyers.⁹¹

Social intelligence itself is defined as both social awareness (much of this falls under empathy discussed above) and social facility, which includes interacting and presenting ourselves to others.⁹² Others have also written about the importance of being nice⁹³ and of the “No-Asshole” rule⁹⁴ in business as being exceedingly successful.

In a more specific negotiation context, we have seen this from several angles. The research on tone in negotiation shows that positive moods can make people more creative and more likely to use integrative strategies.⁹⁵ The converse is also true—negotiators in bad moods are more likely to be competitive.⁹⁶

Similarly, in rating negotiators as effective, the appendix shows how many adjectives covering social skills fit into effectiveness: personable, rational, perceptive, self-controlled, sociable, helpful,

90. GOLEMAN, *supra* note 78, at 56.

91. Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225 (2004); Peter Reilly, *Teaching Law Students How to Feel: Using Negotiations Training to Increase Emotional Intelligence*, 21 NEGOTIATION J. 301 (2005).

92. GOLEMAN, *supra* note 78, at 56.

93. See LINDA KAPLAN THALER & ROBIN KOVAL, *THE POWER OF NICE* 1–5 (2006).

94. See ROBERT I. SUTTON, *THE NO ASSHOLE RULE* (2010).

95. Alice M. Isen et al., *Positive Affect Facilitates Creative Problem Solving*, 52 J. PERSONALITY & SOC. PSYCHOL. 1122 (1987); Clark Freshman, Adele Hayes & Greg Feldman, *The Lawyer-Negotiator as Mood Scientist: What We Know and Don't Know About How Mood Relates to Successful Negotiation*, 2002 J. DISP. RESOL. 1, 19 (2002).

96. Joseph P. Forgas, *On Feeling Good and Getting Your Way: Mood Effects on Negotiator Cognition and Bargaining Strategies*, 74 J. PERSONALITY & SOC. PSYCHOL. 565 (1998).

smooth, etc.⁹⁷ Unsurprisingly, these adjectives could be mapped onto a measure of social intelligence.

Some students might argue that a more effective personality cannot be taught—we are or are not, by the time we are adults, outgoing and sociable. Yet a closer reading of the skills should overcome that hesitancy. This is not an issue of personality but rather of working on social skills that can be taught and improved.⁹⁸ For example, in relation to setting the tone of the negotiation, a minimal skill might be to have a basic greeting. An average skill could be to think about how to set a better tone by having food, or ambiance. Best practices could include a conscious attempt to enter the negotiation in your own good mood and actively work to ensure that the other side is similarly situated.

In terms of setting rapport, for example, Leigh Thompson suggests that a “[s]avvy negotiator[] increase[s her] effectiveness by making themselves familiar to the other party.”⁹⁹ A minimal skill would be to have a level of cordiality. An average skill level would be to schmooze with the other side,¹⁰⁰ asking questions about them, and breaking the ice. Best practices would include advance research to find areas of commonality¹⁰¹ and to be genuinely friendly & curious.¹⁰²

5. Ethicality

Perceptions of a negotiator’s ethicality—his trustworthiness and willingness to follow the ethical rules—has a direct impact on reputation. And reputation—the perception of ethicality—is directly linked to effectiveness in negotiation.¹⁰³ A minimal level of skill would be to follow the professional rules of responsibility and not

97. See app. A.

98. Rosenberg, *supra* note 91; Reilly, *supra* note 91.

99. THOMPSON, *supra* note 15, at 132.

100. See Michael Morris, Janice Nadler, Terri Kurtzberg & Leigh Thompson, *Schmooze or Lose: Social Friction and Lubrication in E-Mail Negotiations*, 6 GROUP DYNAMICS: THEORY, RES., & PRAC. 89, 96–97 (2002); THOMPSON, *supra* note 15, at 135.

101. CIALDINI, *supra* note 48, at 150–52 (pointing to studies that show people are more influenced by people similar to them).

102. Chris Guthrie, *Be Curious*, NEGOTIATION J. (2010); GELB, *supra* note 87, at 55.

103. See SHELL, *supra* note 15, at 22–23.

actively deceive the other side.¹⁰⁴ An average level of skill would be to also view possible deceptive behavior through the lens of likely ramifications including your reputation.¹⁰⁵ Best practices would include being actually trustworthy and treating the other side fairly.¹⁰⁶

The levels of trust, outlined by Roy Lewicki, could also be used to measure skills as we want to be trustful as well as trustworthy.¹⁰⁷ A minimal level of skill would be to create calculus-based trust between oneself and one's counterpart. An average level would work on knowledge-based trust, where repeated interactions create more predictable responses. Finally, best practices might be striving for identification-based trust where the parties create a mutual understanding of each other's needs and can act on their behalf. This latter level of trust might not be realistic in between opposite sides of the negotiation but understanding the incentives that create this level of trust can be very helpful, particularly in repeated interactions.

Being both trustworthy and trustful includes defending yourself against the unethical. A minimal level of skill would be to assume that others might lie to you and contemplate what you can do about that.¹⁰⁸ An average level of skill would include asking defensive questions to double check their assertions and writing compliance

104. SHELL, *supra* note 15, at 201.

105. Catherine H. Tinsley, Kathleen M. O'Connor & Brandon A. Sullivan, *Tough Guys Finish Last: The Perils of a Distributive Reputation*, 88 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 621, 622–24 (2002) (discussing how outcomes are worse for those with a distributive reputation). See SHELL, *supra* note 15, at 213–14 (on the more pragmatic approach to ethics); see also SISSELA BOK, LYING: MORAL CHOICE IN PUBLIC AND PRIVATE LIFE (1999); Catherine H. Tinsley, Jack J. Cambria & Andrea Kupfer Schneider, *Reputation in Negotiation, in THE NEGOTIATOR'S FIELDBOOK*, *supra* note 8, at 204–05.

106. Nancy A. Welsh, *The Reputational Advantages of Demonstrating Trustworthiness: Using the Reputation Index with Law Students*, 28 NEGOTIATION J. 117 (2012); see Avner Ben-Ner & Louis Putterman, *Trust, Communication and Contracts: An Experiment* (2006), available at <http://www.brown.edu/Departments/Economics/experiment/Trust,%20Communication,%20Contracts.pdf> (last visited Apr. 25, 2012) (discussing studies on how perceptions of trustworthiness lead to better agreements); see also THOMPSON, *supra* note 15; Rebecca Hollander-Blumoff, *Just Negotiation*, 88 WASH. U. L. REV. 381 (2010); Jonathan Cohen, *When People Are the Means: Negotiating with Respect*, 14 GEORGETOWN J. OF LEGAL ETHICS 730 (2001).

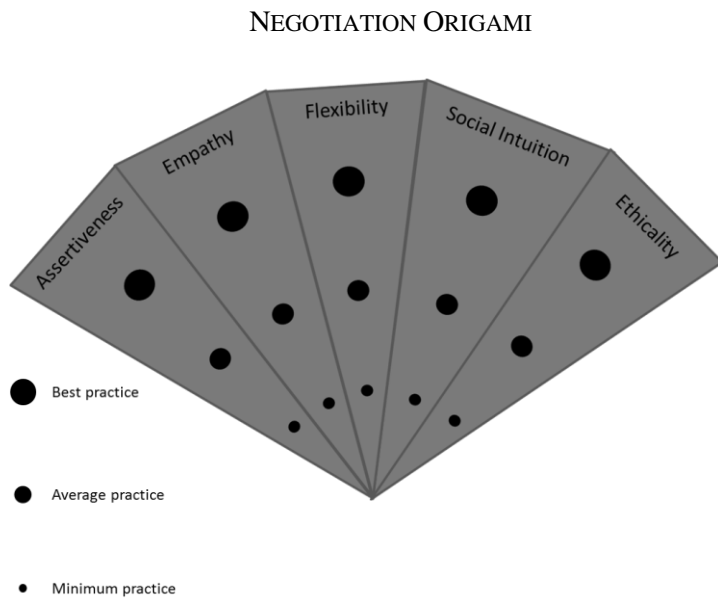
107. Roy Lewicki & Barbara Benedict Bunker, *Trust in Relationships: A Model of Development and Decline*, in CONFLICT COOPERATION AND JUSTICE 133 (1995).

108. Note that this assumption may have the problem of justifying your own deceptive practices. See Gifford, *supra* note 22, at 48–52, for reasons behind engaging in competitive behavior.

measures into the contract.¹⁰⁹ Best practices could include building a sufficiently strong relationship so that it is more difficult for others to lie to you.¹¹⁰

6. Putting the Skills Together

Ideally, we could create a three dimensional figure that demonstrates how all these skills relate to one another. A five-sided pyramid in which each skill could be measured would have been lovely. If one imagines, however, that the pyramid has been unfolded, it might look something like this:



Each person could measure themselves on each skill independently while working to broaden their skill arsenal. Each skill might not be utilized in each negotiation but the skill-set itself would always be

109. Peter Reilly, *Was Machiavelli Right? Lying in Negotiation and the Art of Defensive Self-Help*, 24 OHIO ST. J. ON DISP. RESOL. 481, 532–34 (2009).

110. *Id.* at 531–32.

available. The last section of the Essay discusses how we could make that choice.

B. Choose Skills Based on Your Client, Your Counterpart, and the Context

Negotiation books generally provide students with a framework for how to decide which style to engage. Similarly, the use of a framework for organizing our skill choices remains important. As the negotiator is the constant, at whatever level of skills the negotiator is going into the negotiation, the choice of which skills to use should be determined by examining three key “C” variables: the Client, the Counterpart, and the Context of the particular negotiation.¹¹¹ In the legal context, the interests of our clients should have an impact on our behavioral choices. How important are the relationships among the parties? What are their past interactions? What are the client’s interests in communication, reputation, and future dealings?

We also need to be aware of how certain skills interact with the other side and the stylistic and skill choices that our counterparts make in the course of the negotiation.¹¹² Different skills respond better or mesh more effectively depending on the situation. Much has been written, for example, of the concern that problem-solving behavior will be taken advantage of by a more competitive approach. The addendum to the second edition of *Getting to Yes* primarily answered questions about how to deal with someone who is *not* problem-solving.¹¹³ When teaching students, it is extremely helpful to review how different styles might interact and, therefore, what *skills* should be utilized to increase effectiveness in any given interaction.¹¹⁴

Finally, the context should have an impact on the skills chosen. What type of case is this?¹¹⁵ We would imagine that family, personal injury, neighborhood dispute, business deals, or government

111. When you are negotiating on your own behalf, you are, in effect, the client and the same questions should be addressed.

112. See SHELL, *supra* note 15.

113. FISHER, *supra* note 17, at 151.

114. See LEWICKI & HIAM, *supra* note 61.

115. See generally Rubin & Sander, *supra* note 20, at 109–10.

regulation cases would all have different expectations and different skills might be highlighted in each case. Under what substantive shadow of the law does this negotiation occur?¹¹⁶ How strong are the facts or law or finances on each side? And, what process is likely to occur if these negotiations do not bear fruit?¹¹⁷ All of these key questions influence the choice of skills and styles chosen in the course of the negotiation.

VII. CONCLUSION

So perhaps labels aren't so terrible after all. More, it is that labels can hide or overshadow the real focus of negotiation skills training. We know that we need to categorize in order to convey a significant amount of complex information. We also know that style labels are pithy and easy to understand. At the same time, we need to teach the weaknesses of labels and be sure that our students are not over reliant on the simplification that labels provide. Students need to struggle with the nuances of skills—the fact that skills can seem contradictory or counterintuitive leads us to want to oversimplify (e.g. all competitive negotiators are jerks, all accommodators are nice) rather than more effectively parsing each skill to stand on its own. This is particularly important in the areas of social intuition and ethicality which have, up to this point, been subsumed in discussions of style without holding their own style “label.”

When we focus on skills, we can provide students clear goals for improving in all areas while making them more aware of their particular strengths and weaknesses. Further, we can highlight the choices that they must make along the course of negotiation in terms of using each skill rather than sending them off with guidance only at the style level. Finally, we can give students a different construct on how to choose among the skills based on client, counterpart, and context that will give them a more sophisticated understanding of the evolving and nuanced process of negotiation.

116. See generally Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

117. I would argue that whether you are facing the failure of a deal, court-ordered mediation, trial the next day or arbitration, might also affect what type of negotiation skills you use.

APPENDIX A
TOP ADJECTIVE BY EFFECTIVENESS

INEFFECTIVE		AVERAGE		EFFECTIVE	
Stubborn	3.80	Ethical	3.65	Ethical	4.32
Headstrong	3.68	Experienced	3.52	Experienced	4.24
Irritating	3.67	Confident	3.51	Personable	3.97
Assertive	3.57	Self-Controlled	3.23	Rational	3.96
Confident	3.53	Personable	3.18	Confident	3.93
Argumentative	3.51	Rational	3.09	Realistic	3.84
Arrogant	3.49	Assertive	3.04	Perceptive	3.82
Demanding	3.43	Realistic	3.03	Self-Controlled	3.79
Egotistical	3.38			Trustworthy	3.79
Quarrelsome	3.34			Communicative	3.77
Experienced	3.29			Astute about the law	3.73
Ambitious	3.27			Dignified	3.73
Firm	3.26			Fair	3.66
Forceful	3.08			Sociable	3.65
Suspicious	3.04			Accommodating	3.64
Tough	3.03			Poised	3.64
Evasive	3.00			Agreeable	3.62
Manipulative	3.00			Adaptable	3.57
				Wise	3.49
				Analytical	3.47
				Careful	3.47
				Helpful	3.38
				Firm	3.35
				Loyal	3.35
				Deliberate	3.32
				Masculine	3.32
				Listener	3.30
				Smooth	3.30
				Objective	3.29
				Flexible	3.28
				Clarifies	3.26
				Discreet	3.26
				Patient	3.25
				Convincing	3.22
				Creative	3.21
				Organizing	3.18
				Ambitious	3.16
				Trusting	3.16
				Assertive	3.13
				Moderate	3.07
				Caring	3.05
				Obliging	3.03
				Tough	3.01