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The Evolution of a Negotiator

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I have been blessed to be able to lead a wonderfully turbulent and chaotic professional life. I get to visit a different school district almost everyday. This experience has taught me that each district is a different country, with unique traditions, protocols, cultures, and taboos. And each bargaining table is a distinct subculture within each district, with its own set of rules and traditions. It is constantly exciting, sometimes frustrating, and often infuriating. But it is always, always challenging.

I also have found, however, that this life as a troubadour negotiator can be as consuming as it is stimulating. Beneath every proposal, offer, dispute, or disagreement lie the most basic human emotions: dignity, self esteem, self-control, security, and stability. This transforms what might otherwise be objective discourses over workplace issues into subjective and emotional exchanges over matters of survival, such as whether one can provide health care for one's self and one's family. These conversations — these negotiations — day after day can be psychologically, intellectually, and even physically draining, leaving little energy to devote to other aspects of life.

In other words, the intensity of negotiating every day often leaves little time for contemplation about what you have done. This past year, however, two events caused me to take a deep, reflective breath.

First, my father died suddenly and unexpectedly. My father was a teacher by profession and by nature. Following his retirement after about 35 years, he continued to substitute teach almost to the end of his life. He was a quiet man who listened much more than he talked, and had a great sense of humor. His passing caused me for the first time to confront the fact of my own mortality.

Second, in October, I turned 52, and November marked my 26th year of working for the law firm that now bears my name. I had an arithmetic epiphany —

I have spent half of my entire life working for the firm! Half of my life has been negotiating in the public schools.

These events evoked a single question in my mind: How does one evolve into a negotiator? I have concluded that the evolution of a negotiator bears a striking resemblance to the stages of development in the journey from birth to adulthood.

Birth and Infancy

At birth and during infancy, we are pure, innocent, and untarnished. We are entirely dependent on others for our sustenance and well-being because they are older, wiser (we assume), and ambulatory. We look at these adults — these ultimate mentors — with complete trust and faith that they will do nothing less than is absolutely right and true.

We hear everyone around us speaking what appears to be a language, but it is unintelligible to us — it sounds like just so much noise, even though they all seem very intent on trying to explain something. At first, this new world is such a shock that we just watch. The comedienne Gracie Allen described it perfectly when she said, “When I was born, I was so surprised I didn’t talk for a year and a half.”

Eventually, we start to speak our own language with equal lack of success at communicating. At times, we get so frustrated at not being understood that we want to burst out screaming, and sometimes we actually do. Ultimately, we understand that we can do only one thing — be ourselves — because there is nothing and no one else we are equipped to be.

These attributes of birth and infancy describe well the life of the novice negotiator. When I sat at my first negotiations table in 1980, I had never even seen a negotiations session, yet I was the spokesperson for the district. Several things became clear to me immediately.

First, I knew nothing other than what I had heard or read about negotiations, so, drawing on my fine command of the English language, I said nothing. Instead, I was

determined to listen as much as possible. A different language was being spoken and I did not have time to take a class to learn it. I was obviously an “NLL” attorney — a Negotiations Language Learner. Yet, with my agile mind and extensive legal education, I was able to quickly deduce that “scope” was not a mouthwash, “COLA” was not a soft drink, and “EERA” was neither misspelled, nor did it refer to a period of time.

Thus, I learned my first great lesson of negotiations: Always listen more than you talk. As one philosopher stated, “To listen closely and reply well is the highest perfection we

are able to attain in the art of conversation.” To my inexperienced ears, that is exactly what negotiations appeared to be — a conversation about how people were to do their jobs. And so, out of necessity and practicality, I listened much and talked little, mindful of Calvin Coolidge’s advice that “No man ever listened himself out of a job.”

Second, I realized I needed to be confident enough to admit freely and openly to both sides of the table all that I did not know, and to ask all participants to teach me and help me understand. This was not a calculated strategy, but I see now that unwittingly, I had played straight to the hearts of teachers on both sides of the table by asking them to mentor me.

The third thing I discovered was that I could not play a role or fake a personality at the table. I was ill-equipped to do so, for I had no role model or idea of how a negotiator should act. So, with no other options, I defaulted to being just myself. This, it turns out, is another key development in the birth and infancy of a public school negotiator. The negotiations process is about discussing the needs of adults in the context of a system dedicated to serving children. Thus, on all levels, the process is about people serving people, and one must be a real person at the bargaining table, rather than a manufactured stereotype of what a lawyer or a negotiator should be. Even novice negotiators can detect insincerity, and the non-negotiators — the teachers and classified employees — can smell it instantly.

*‘No man ever
listened himself
out of a job.’*

— Calvin Coolidge

Childhood

Aristotle once said, “Young people are in a condition like permanent intoxication, because youth is sweet and they are growing.” Indeed, youth would be an ideal state if only it came a little bit later in life!

The negotiator in the childhood stage believes his or her world is the most fascinating place in the universe. There is the lively banter of the table; the challenge of weaving language into a cohesive fabric that pulls together so many thoughts, goals, and demands; and the ultimate joy of signing an agreement, often when many think no agreement is possible.

As we all know, however, childhood marks the beginning of adult-like aspects of personality, both good and bad. The child experiences feelings of competitiveness and begins to argue to prove a growing intelligence (and sometimes just for the sake of argument). In youth, we fear failure and rejection and their dampening effect on our natural enthusiasm.

As a young negotiator, I learned that there is a unique definition of winning and losing in bargaining. Some negotiators demonstrate that, while you can only be young once, you can always be immature. These individuals seem to define victory as “beating the other side” and see the process more as a forum for argument than reasoned debate. These individuals invariably demonstrate that it is not necessary to understand things in order to argue about them.

The growing negotiator, however, knows that the only true “victory” is in reaching agreement — an agreement that all participants can support. He or she knows that negotiations are not a war in which a winning side claims all spoils, and a loser is vanquished. For, unlike a war, the parties must live to work together tomorrow, next month, and for years to come.

In order to achieve these victories, the child negotiator must display the following knowledge and abilities.

Use soft words and hard arguments. As the saying goes, be soft on the people and hard on the issues. I have never understood the thinking of negotiators who try to anger the other side when their purpose, their role, is to try to persuade the other side to accept a new idea. Once you anger someone, their mind closes to new possibilities and instead focuses on defense and perhaps retribution. We are supposed to be engaged in a process to expand each other’s vision of the possible, yet “an eye for an eye” mentality only results in making the whole world blind.

Use the full scope of your growing intellect. The test of

a first-rate intellect is the ability to hold two opposing ideas in the mind at the same time and still retain the ability to function. A good negotiator must have three brains — one for intelligence and rational thought, one for subjectivity, creativity and emotion, and a third one that recognizes at all times which kind of conversation is occurring at the table. Because of the life-affecting subject matters that arise at the table, the conversation can switch back and forth between the emotional and the rational at a moment’s notice. The negotiator’s third brain must recognize immediately when the pendulum shifts, and guide

the discussion accordingly.

Do not be afraid of failure. In fact, think hard and long about what failure really means in the bargaining context. I do not know the key to success, but the key to failure, especially in negotiations, is trying to please everybody. Act as if it were impossible to fail, but know that you will not always please every member of the school board, or the superintendent, or the administration, or even your own bargaining team. However, if you get an agreement that preserves good relations and protects your core values, ask yourself if you have really failed. Teachers will remain in the classroom teaching and children will continue learning. Even if there are those who assert you have failed, as Sir Winston Churchill said, “Success is the ability to go from one failure to the other with no loss of enthusiasm.” Do not lose your enthusiasm if you know you have done your job as a negotiator.

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Adolescence

Like many of you, I would prefer to skip the teen years because they are too painful to recall. But I will persevere nonetheless because they happened.

I have two teenage daughters, so I have some credibility here. At one point, I was compelled by circumstance to read a book about the makeup of teenagers, and one premise stuck with me. This author asserted that teenagers' brains are not fully developed in one particular regard: They have not yet attained the mental capacity to foresee or even think about the consequences of their words or their actions. When they say or do what we see as "outrageous" things, and we as adults react with anger, disappointment, or disapproval, they are shocked, sullen, and even combative.

The teenager is coping with a new sensation of aggressiveness and is struggling with how to manifest the growing power of his or her self in a quest for respect. The teen is forever questioning authority and displays a split personality by either talking too much or brooding in silence. The teen is also learning the joy of creativity, beginning to trust her instincts, and refining a sense of humor, which is sometimes gentle and sometimes mean.

Our adolescent negotiator portrays many of these same attributes. With a few contracts under her belt, she begins to act a little over-confident or even cocky. Other people seem to think and move too slowly for her, so she becomes impatient, even a little intolerant. And maybe, just maybe, our teenager stops listening as much as she used to.

These are perilous times for the teen and the teen negotiator. For our adolescent is at a crossroads — she can choose to harness and understand the maelstrom of emotions exploding within and use them to grow well into adulthood, or she can let them run wild with unforeseeable results. There are many lessons to be learned in adolescence that will help develop our negotiator.

Questioning is good. Albert Einstein said: "The important thing is not to stop questioning. Curiosity has its own reason for existing. One cannot help be in awe when he contemplates the mysteries of eternity, life, of the marvelous structure of reality. It is enough if one tries merely to comprehend a little of this mystery every day. Never lose a holy curiosity."

The field in which we toil — public education — demands that we maintain a "holy curiosity" because every faction, every authority, and every constituent group claims at some point, on some subject, that they and only they have "the answer" and "the truth." In bargaining, the best advice simply may be to look at all the sentences and statements that seem true and question them, not with challenge or aggressiveness, but with a manifest desire to learn what has been written or said. A good negotiator realizes it is better to know some of the questions than to think you know all of the answers.

Do not be afraid to question authority.

This is especially true concerning the authority that employs you. You are no longer wholly dependent on the all-knowing parent. You have some knowledge now — probably less than you think, but knowledge nonetheless. Think of it this way — our parents were not perfect and they did not always make the best decisions. Part of your role as a negotiator is to challenge assumptions constructively and respectfully in the decisionmaking process.

Do not be afraid to be silent. Abraham Lincoln once said, "Better to remain silent and be thought a fool than to speak out and remove all doubt." The best negotiators know when to speak and when to let silence speak volumes. I cannot learn when I am talking, but I do when I am listening. But for goodness sake, know when to talk. In the words of Martin Luther King, Jr., "Our lives begin to end the day we become silent about things that matter."

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Trust your instincts, your creativity, and your ideas.

Creativity comes from trust. Trust your instincts. Truly successful decisionmaking relies on a balance between deliberate thinking and instinctive thinking, so use all three of your active brains! Negotiators are paid for their ideas. As one superintendent told me, “We pay you to bring an added value to our district; if you don’t, we are wasting our money.” That added value is your creativity and your ideas. Parents often do not approve when their teens push the boundaries, but that is part of the negotiator’s job.

Revel in your sense of humor.

I tell my bargaining teams that if we cannot have fun in negotiations, no matter how intense they are, then something is very wrong. In the worst of times, I console them by saying, “Don’t worry — we’ve got them right where they want us!” At this point in your career, you should be starting to think about yourself as a leader and showing some leadership qualities. Well, a sense of humor is part of the art of leadership, of getting along with people, of getting things done. Over the years, I can think of a few examples:

- After a bargaining session that lasted deep into the wee hours, the district negotiations team showed up the next morning in pajamas.
- During tense discussions over the cost of prescription drugs, just to see if anyone was paying attention, I made a written proposal that all emergency drugs could be obtained only by mail order.
- Again to test if the other team was awake, I proposed in the middle of a long document the elimination of Labor Day as a paid holiday.
- Although it was unintentional, after a long discussion of retiree benefits and GASB 45, our written proposal demanded that the union acknowledge the district’s serious “unfounded liability.”

I have found that most if not all union teams will reciprocate with humor once you demonstrate your comfort

with it. For example, many years ago, after a long day of tense bargaining, at about 10 o’clock at night, the superintendent directed me to go back into the negotiations room, pound the table, and yell at the teachers that there was no more money, and that if they couldn’t accept this, we would go to impasse. I informed the superintendent that this was not my style of negotiating. She responded, “I am the client, you are my attorney. Do it!”

I retreated to a corner of the caucus room to find my motivation for the scene in which I was about to act. Once prepared, I went back to the bargaining table and, feeling like a fool, did exactly what the superintendent had directed. The teacher team, with whom I had bargained for many years, had no reaction other than to say, “We will caucus now.”

After about 30 minutes, they called us back. At this point I should mention that the Olympics were underway. The teacher spokesperson said, “We have two responses to your proposal. First, as to substance...” and they all held up scorecards that said 0 and 1 or 2 at the most. “Second,” the spokesperson said, “as to style...” and they all held up scorecards with perfect 10s!

Obviously, they knew I had been acting. Their comfort with expressing a sense of humor in this tense situation, however, defused what could have been an escalation of our dispute and, instead, we reached a settlement the next morning — in regular clothes, not pajamas. Thus, humor can be like a rubber sword — it allows you to make a point without drawing blood.

Adulthood

Finally! Informed by vast experience and guided by extensive knowledge, our negotiator is at the top of the bargaining mountain surveying his labor relations kingdom. This is when it all comes together for our negotiator, as he travels from table to table, clutching victory from the jaws of certain defeat, forging agreements none thought possible, and waging peace when all thought war would surely erupt.

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— *Martin Luther King, Jr.*

Is this an accurate portrayal? Absolutely not.

Adulthood for many brings more doubt, with the realization of how much you still do not know. The adult realizes that he is no longer young enough to know everything. Having passed through the previous stages of growth, we begin to appreciate the inevitability of change and our struggle to cope with it. Instead of being in a constant hurry, we begin to learn the value of patience. It is ironic that the years teach us patience — that the shorter our time, the greater our capacity for waiting.

More than anything else, the growing adult begins to distill past experiences and reconcile conflicting thoughts, in an attempt to bring them into some sense of order, some structure, even a philosophy. In this manner, the adult seeks wisdom.

The adult negotiator experiences many of these feelings. After all the proposals and offers and brainstorming and conflicts and contracts, he realizes that he cannot possibly know it all, nor has he seen it all. This is true for two reasons.

First, thanks to our state legislature, we can rest assured that there will always be something new down the road regarding public education. So long as those in authority persist in the view that public education is broken, there will be never-ending efforts to fix it. Perhaps someday, reality will overcome perception and our lawmakers will accept the fact that the vast majority of citizens support our public schools.

Second, and more significantly, the negotiations process will always be unpredictable because it is inhabited by an ever changing cast of characters — people with diverse personalities, backgrounds, prejudices, hopes, and fears. Even if the issues seem to be the same year after year — salaries, benefits, work hours, etc. — the discussions, the dynamics, and the outcomes will be different every year because the people on the teams will change, even if they are the same individuals.

When the negotiator internalizes this simple yet crucial fact, he truly has reached adulthood, for he will realize the following:

The bargaining process is mostly about change — seeking it, reacting to it, or resisting it. Labor seeks to improve the conditions in which people work and to create an environment in which the work is rewarded, financially, emotionally, and spiritually. Management seeks to retain a semblance of control over a system that often seems uncontrollable.

The point, however, is that all change is threatening, and people can tolerate only a certain pace of change. That pace is slower or faster depending on the subject at hand and how deeply it affects us as human beings. For example, one might be able to negotiate new leave-of-absence language in relatively short order. But it is likely to take years if one seeks a major overhaul in health benefits for current or retired employees. The former does not concern me much, but the latter threatens my well-being now and in the future.

The adult negotiator knows it is folly to try to ignore the forces of change; instead he embraces it. As one commentator noted, “Change has a considerable psychological impact on the human mind. To the fearful, it is threatening because it means things may get worse. To the hopeful, it is encouraging because things may get better. To the confident, it is inspiring because the challenge exists to make things better.”

The adult negotiator is hopeful and confident that he or she can make things better. And yet, he knows that in order to accomplish this, he must exercise discretion. He must realize that when it is not necessary to make a decision, it is necessary not to make a decision.

In the face of constant emergencies, our negotiator recognizes that patience always will achieve more than force. Isaac Newton once said, “If I have ever made any valuable discoveries, it has been owing more to patient attention than to any other talent.” Even if the school board or

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— *Oliver Wendell Holmes*

superintendent or bargaining team never says it directly, they all are counting heavily on the negotiator to maintain focus, patience, and calm in the eye of the bargaining storm. Part of that focus is always keeping in sight what might be, rather than what is merely possible. If we limit our choices only to what seems possible or reasonable, we disconnect ourselves from what we truly want, and all that is left is a compromise. The adult negotiator knows that, strange as it may seem, the goal of negotiations is to reach solutions rather than compromises.

More than anything else, the adult negotiator seeks to infuse his practice with wisdom. In order to do this, he seems to have fewer and fewer personal viewpoints about the matters on the table, and instead scrutinizes, analyzes, and attempts to craft solutions from the input of others. He suspects that

wisdom is what is left after we have run out of personal opinions.

He realizes that the problem is never how to get new, innovative thoughts into your mind, but how to get old ones out.

Ironically, the adult negotiator, with all his experience, begins to speak less than she used to. Oliver Wendell Holmes said, "It is the province of knowledge to speak and it is the privilege of wisdom to listen." Our negotiator has acquired great knowledge through study; but to acquire wisdom, she knows she must observe.

Thus has the evolution of a negotiator come full circle, for the most important skill he possesses is the one he first learned in infancy — to listen more and talk less. For only by listening can the adult negotiator learn, create, and lead. And only by realizing that the evolution of a negotiator is ongoing can the adult negotiator continue to grow. ✱