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FEATURE

Investigative Negotiation

The best way to get what you're after in a negotiation—sometimes the only way—is to approach the situation the way a detective approaches a crime scene.

by *Deepak Malhotra and Max H. Bazerman*

Chris, a *Fortune* 500 executive, is known in his firm as a gifted negotiator who can break impossible deadlocks. Consider his performance in the following deal.

A few years ago, Chris's company entered into negotiations with a small European firm to buy an ingredient for a new health care product. (Some details have been changed to protect the companies involved.) The two sides settled on a price of \$18 a pound for a million pounds of the substance annually. However, a disagreement developed over terms. The European supplier refused to sell the ingredient exclusively to the U.S. firm, and the U.S. firm was unwilling to invest in a product that was based on an ingredient its competitors could easily acquire. With considerable hesitation, the U.S. negotiators sweetened the deal, offering guaranteed minimum orders and a higher price. To their shock, the supplier still balked at providing exclusivity—even though it had no chance of selling anything close to a million pounds a year to anyone else. The negotiation seemed to be at a dead end, with the U.S. negotiators out of ideas for pushing through a deal. Even worse, the relationship had deteriorated so much that neither side trusted the other to continue bargaining in good faith.

At that point the stymied U.S. team brought in Chris to help improve relations. He did more than that. After listening to the facts, he asked the Europeans a simple question: *Why? Why* wouldn't they provide exclusivity to his corporation, which would buy as much of the ingredient as they could produce? The response surprised the Americans. Exclusivity would require the supplier's owner to violate an agreement with his cousin, who bought 250 pounds of the ingredient each year to make a locally sold product. Armed with this new knowledge, Chris proposed a solution that allowed the two firms to quickly wrap up a deal. The European firm would provide exclusivity with the exception of a few hundred pounds annually for the supplier's cousin.

In retrospect, that solution seems obvious. But as we've seen in real-world negotiations, as well as in classroom simulations with seasoned deal makers, this type of problem solving is exceedingly rare. That's because most negotiators wrongly assume that they understand the other side's motivations and, therefore, don't explore them further. The U.S. team members initially failed because they thought they knew why the supplier was being difficult: Clearly, they assumed, the Europeans were holding out for a higher price or didn't want to lose out on future deals with other customers.

Would you have made the same mistake? We have presented this case to hundreds of experienced executives in negotiation courses at Harvard Business School. When we asked them to strategize on behalf of Chris's team about how to break the impasse, roughly 90% of their answers sounded like these: "Consent to a larger minimum purchase agreement." "Ask for a shorter exclusivity period." "Buy out the supplier." "Increase your offer price." "Threaten to walk away." All those suggestions share the same flaw: They are solutions to a problem that has not been diagnosed. Moreover, even if one of them had been effective in securing exclusivity, it would have been more costly than Chris's solution.

Chris succeeded because he challenged assumptions and gathered critical information regarding the other party's perspective—the first step in what we call "investigative negotiation." This approach, introduced in our new book, *Negotiation Genius*, entails both a mind-set and a methodology. It encourages negotiators to

enter talks the same way a detective enters a crime scene: by learning as much as possible about the situation and the people involved.

Getting Information from Distrustful Negotiators (Located at the end of this article)

Though the solution to every negotiation may not be as straightforward as Chris's, his approach can help in even the most complex deals. In this article, we delineate five principles underlying investigative negotiation and show how they apply in myriad situations.

Principle 1: Don't just discuss *what* your counterparts want—find out *why* they want it.

This principle works in fairly straightforward negotiations, like Chris's, and can be applied fruitfully to complex multiparty negotiations as well. Consider the dilemma facing Richard Holbrooke in late 2000, when he was the U.S. ambassador to the United Nations. At the time, the United States was more than \$1 billion in arrears to the UN but was unwilling to pay it unless the UN agreed to a variety of reforms. As a result, U.S. representatives were being sidelined in UN committee meetings, and the country faced losing its vote in the General Assembly. Meanwhile, U.S. senators were calling for a withdrawal from the organization.

Why the turmoil? For decades the United States had paid 25% of the regular UN budget. Believing that was too large a share, Congress decided to hold the \$1 billion hostage until the UN agreed to, among other changes, reduce the U.S. assessment from 25% to 22% of the budget. The other UN member states saw this as a nefarious tactic.

Ambassador Holbrooke faced a tough challenge. According to UN regulations, a change in the allocation of dues needed the approval of all 189 members. What's more, a hard deadline was fast approaching. The Helms-Biden bill, which had appropriated close to \$1 billion to cover much of what the United States owed, stipulated that if a deal was not struck by January 1, 2001, the money would disappear from the federal budget.

Holbrooke's team had hoped that Japan and some European countries would absorb most of the U.S. reductions. Unfortunately, the Japanese (who were already the second-highest contributors) rejected that idea outright. The Europeans also balked. How could Holbrooke break the impasse?

With the clock ticking, he and his team decided to concentrate less on persuading member states of the need for change and more on better understanding their perspectives. Whenever a member resisted an increase, Holbrooke, instead of arguing, would push further to discover precisely why it could not (or would not) pay more. Soon, one entirely unanticipated reason became salient: Many countries that might otherwise agree to increase their contributions did not have room to do so in their 2001 budgets, because they had already been finalized. The January 1 deadline was making the deal unworkable.

This new understanding of the problem gave rise to a possible solution. Holbrooke's proposal was to immediately reduce U.S. assessments from 25% to 22% to meet Congress's deadline but delay the increase in contributions from other nations until 2002. (The 2001 shortfall was covered by CNN founder and philanthropist Ted Turner, who agreed to make a onetime personal contribution of \$34 million to the UN.) The key to resolving the conflict, however, was discovering that the dispute entailed not one issue but two: the timing of assessments as well as their size. Once the negotiators broadened their focus to include the issue of the timing, they could strike a deal that allowed each side to get what it wanted on the issue it cared about most.

Principle 2: Seek to understand and mitigate the other side's constraints.

Outside forces can limit our ability to negotiate effectively. We may be constrained by advice from lawyers, by corporate policies that prohibit making concessions, by fear of setting a dangerous precedent, by obligations to other parties, by time pressure, and so on. Similarly, the other side has constraints that can

lead it to act in ways that don't seem rational—and that can destroy value for both sides—but unfortunately, the constraints of the other side are often hidden from (or ignored by) us.

Smart negotiators attempt to discover the other party's constraints—and to help overcome them—rather than dismiss the other side as unreasonable or the deal as unworkable. Above all, investigative negotiators never view the other side's constraints as simply “*their* problem.”

The experience of a company we'll call HomeStuff demonstrates why. At HomeStuff, a producer of household appliances, the CEO was negotiating the purchase of mechanical parts from a supplier we'll call Kogs. The two key issues were price and delivery date. HomeStuff wanted to pay a low price and get immediate delivery; Kogs sought a high price and more time to deliver the goods.

Eventually, the parties agreed on a price of \$17 million and delivery within three months. “Meeting that deadline will be difficult for me,” said the supplier, “but I'll manage.” The CEO of HomeStuff was tempted to let the discussion end there—the deal was already done and meeting the deadline was now the supplier's problem—but she decided to explore matters further. Aware that a delivery after three months would cost her company close to \$1 million, she offered to accept a delay if Kogs would drop the price by that amount. “I appreciate the offer,” the supplier responded, “but I can't accommodate such a large price cut.”

Curious, the CEO pressed on. “I'm surprised that a three-month delivery would be so costly to you,” she said to the supplier. “Tell me more about your production process so that I can understand why you can't cheaply manufacture the parts in that time frame.” “Ah! But that's not the problem,” the supplier explained. “We can easily manufacture the products in three months. But we have no way of cheaply shipping the order so it would arrive on time.”

When the HomeStuff CEO heard this, she was thrilled. Because her firm often had to transport products quickly, it had arranged favorable terms with a shipping company. Using that service, HomeStuff could have the parts delivered in *less than* three months for a small fraction of what the supplier would have paid.

The CEO made the following offer, which the supplier immediately accepted: HomeStuff would arrange for its own shipper to deliver the parts in two and a half months, the supplier would pay the shipping costs, and the price would drop from \$17 million to \$16.5 million.

As this story illustrates, the other side's problem can quickly become your own. This is true not only when the other party is quietly accepting its constraints but also when it's being disagreeable. Often, when the other side refuses to meet demands, its intransigence is interpreted as a sure sign it's acting in self-interest, but in fact its hands may be tied. Through investigation, negotiators may find that they can help mitigate the other side's constraints to their own advantage.

Principle 3: Interpret demands as opportunities.

The CEO of a successful construction company was negotiating a deal to build a number of midsize office buildings. After months of talks—but just before the contract was signed—the developer approached the CEO with an entirely new and potentially costly demand: a clause that would require the builder to pay large penalties if the project fell more than one month behind schedule. The CEO, understandably, was irritated by this last-minute attempt to squeeze more concessions from him.

The builder weighed his options. He could accept the new clause and seal the deal, he could reject it and hope the deal would survive, or he could try to negotiate lower penalties. As he thought more deeply, he began to focus less on possible responses and more on what the demand revealed. At the very least, it showed that the developer had a strong interest in timely project completion. But might it also suggest that the developer valued *early* completion? With that in mind, the CEO approached the developer with a new proposal: He would pay even higher penalties than the developer wanted if the project was delayed. If the project was completed earlier than scheduled, however, the developer would give the construction company a bonus. Both sides agreed to that clause and were happier with the new terms. The builder was confident that his company would finish ahead of schedule and receive the bonus, and the developer minimized his downside risk.

Typically, when the other side makes seemingly unreasonable demands, negotiators adopt a defensive mind-set: “How can I avoid having to accept this?” In contrast, investigative negotiators confront difficult demands the same way they confront any statement from the other party: “What can I learn from the other side’s insistence on this issue? What does this demand tell me about this party’s needs and interests? How can I use this information to create and capture value?” The construction company CEO’s breakthrough came from his ability to shift his efforts away from fighting the other side’s demand and toward investigating the opportunities hidden beneath it.

Principle 4: Create common ground with adversaries.

Negotiation professors often engage their students in a complex simulation called “The Commodity Purchase,” written by Leonard Greenhalgh of Dartmouth’s Tuck School of Business. In it, one student plays the role of the seller of 100,000 pheasant eggs, and five other students play potential egg buyers. The buyers have different motives (for example, some want chemicals in the eggs to manufacture health products) and need a variety of quantities, encouraging the formation of coalitions among them. The alliance that will create the most value, however, involves two competing pharmaceutical firms that, by cooperating, have the potential to outbid the other three buyers. The problem is that one of the firms needs at least 80,000 eggs, the other needs at least 70,000, and it is not obvious how both can get what they want, given that there are only 100,000 eggs. In fact, only about 5% of MBA students and executives that participate in this simulation manage to discover the solution.

To find it the company reps must first realize that the needs of their respective pharmaceutical firms are complementary, not competitive. Specifically, one firm needs the whites of the eggs, and the other needs the yolks. Once they know this, the two firms can split the cost of the eggs and each take what they need from the acquired product. However, few come to this conclusion, because to develop it the parties must adopt an investigative negotiation approach, overcome their reluctance to seek common ground with someone who is considered the enemy, and attempt to understand their competitor’s perspective. The naive assumption that other firms in the same industry are strictly competitors typically prevents negotiators from taking an investigative approach.

As professors Adam Brandenburger of New York University and Barry Nalebuff of Yale University demonstrate in their book *Co-opetition*, it is often possible to simultaneously cooperate and compete with others. Investigative negotiators understand this. Those who view their relationship with the other side as one-dimensional—“He is my competitor”—forgo opportunities for value creation, whereas those who appreciate the complexity of relationships and explore areas of mutual interest are able to find common ground.

Principle 5: Continue to investigate even after the deal appears to be lost.

How many times have you tried to close a deal only to have your final offer rejected? If you are like most people, once someone has said no to your best offer, you presume there is nothing left to do. Often, this is the case. Sometimes, however, you are wrong—and you lose the deal not because there was no viable agreement but because you did not negotiate effectively.

A few years ago the chief executive of a specialty-gift-item manufacturer learned that a *Fortune* 500 company she had courted for months had decided to purchase from her competitor. Though she had no further plans for winning the deal, the CEO placed one final call to the prospect’s vice president, asking why her offer was rejected and explaining that an answer could help her improve future offerings.

To the CEO’s surprise, the VP explained that the competitor, despite charging more, had beaten her offer by including product features that his company valued. Under the false assumption that the prospect cared mostly about price, the CEO had made a final offer that reduced the prospect’s cost as much as possible. The CEO thanked the VP for his explanation and added that she had misunderstood his position earlier. “Knowing what I know now,” she told him, “I’m confident that I could have beaten their offer. Would you consider a revised offer?” The answer was yes. One week later the CEO won over the prospect—and signed the deal.

After being rejected, an investigative negotiator should immediately ask, “What would it have taken for us to reach agreement?” Though it may appear costly to continue negotiating when a “no deal” response appears certain, if you’re confused about the *reason* your deal fell through in the first place, it could be even more costly to abandon the discussion.

Even if you find that you cannot win the deal, you may still acquire important information that will help in future negotiations. By staying at the table, you can learn about this customer’s future needs, the interests and concerns of similar customers, or the strategies of other players in the industry. Keep in mind that it is often easier to get candid information from the other side when you are not in selling mode and there is little reason to distrust your motives. Next time you’ve lost the deal and been asked to leave the room, see if you can stick around and investigate further. You may be surprised by what you find out.



As these five principles demonstrate, successful investigative negotiation requires challenging some time-honored negotiation approaches. Chief among these is the reflex to “sell” your position.

Imagine that you’re observing a salesperson at work. What is he doing? Most people picture a smooth talker with a briefcase making a pitch—arguing his case and trying to persuade a potential target to buy what he has to offer. Now imagine that you’re observing a negotiator at work. What is he doing? If, once again, you picture a smooth talker with a briefcase making a pitch, you are missing a crucial distinction between selling and negotiating.

Selling involves telling people about the virtues of your products or services, focusing on the strengths of your case, and trying to induce agreement or compliance. While effective negotiating requires some of those activities, as the previous cases demonstrate, it also requires a strong focus on the other side’s interests, priorities, and constraints. Investigative negotiators—like truly effective salespeople—keep this focus top of mind. They also understand that constructing a value-maximizing deal often hinges not on their ability to persuade but on their ability to listen.

In the end, negotiation is an information game. Those who know how to obtain information perform better than those who stick with what they know. In the situations described here, the decision to challenge assumptions, probe below the surface, and avoid taking no for an answer helped negotiators improve their options and strike better deals. More generally, the investigative negotiation approach can help you transform competitive negotiations into ones with potential for building trust and cooperation, creating value, and engendering mutual satisfaction.

Getting Information from Distrustful Negotiators

Negotiation entails risk. If you share private information with the people on the other side, they might use it to their advantage. Guess what? The other side feels the same way. When other parties seem to be hiding information and evading your questions, you are likely to see them as deceptive or conniving rather than simply nervous and afraid. Try giving them the benefit of the doubt, recognizing that most people are reluctant to open up in negotiations because they don’t know whether you can be trusted. The following three tactics can help you elicit information when trust is in short supply.

Share information and encourage reciprocity.

If you are up against a reticent negotiator, be the first to share information, making it clear that you expect reciprocity. For example, you might say: “I know that there are many things we need to discuss. If you prefer, I can get the ball rolling by describing some of my key interests, concerns, and constraints. Then you can do the same. Does that sound like a reasonable way to proceed?” Such an approach helps reduce the other side’s anxiety, because the other party knows that both sides will be vulnerable.

Keep in mind two things. First, you want to explicitly state the ground rules up front: I will start, and then you will follow suit. Make sure that the other side commits to reciprocating. Second, if the parties don’t have full confidence in each other, share information incrementally, taking turns with the other side. That minimizes your own risks. If the other party fails to be forthcoming, you can hold back.

Negotiate multiple issues simultaneously.

In most complex negotiations, issues are discussed one at a time. You might start by discussing what's presumed to be the most important (for example, price). When you have reached some agreement on price, you turn your attention to another concern (such as contract length), and then another (such as exclusivity). However, when there is only one issue on the table at any given moment, both sides behave as if it is the most important issue to them. When you move to the second concern, that concern appears to be the most critical. And so you continue to clash on each issue and never learn what the other party truly values or needs most.

Often, it's better to negotiate multiple issues simultaneously. That is, identify all the issues up front and put everything on the table at the same time. Then, go back and forth between the issues as you make offers and counteroffers. Doing so allows you to get information regarding the other side's true interests and priorities.

To determine what is really most important to the other side, look at the following signs:

- Which issue does the other party want to return to constantly?
- Which issue makes him or her the most emotional, tense, or stressed?
- Which issues are most likely to lead your counterpart to try to control the conversation, rather than listen?
- What is the other side most obstinate about when you ask for a concession or compromise?

Make multiple offers at the same time.

Not only is it useful to negotiate multiple issues simultaneously, but it is also useful to make multiple *offers* at once. The next time you are preparing to make an offer to the other side, stop. Instead, make two offers at the same time that are equally valuable to you but differ on the details of one pair of issues.

Consider the case of a business owner who was negotiating with an ex-employee. The ex-employee was threatening to sue for having been fired without cause. The business owner preferred to settle out of court and soon discovered that the ex-employee was offering to settle for \$15,000 in cash plus six months of temporary employer-paid health insurance. The business owner felt this amount was unjustified but was willing to negotiate. He started by asking whether the ex-employee cared more about the cash or about the health coverage. The ex-employee refused to offer this information. The business owner, having first calculated that the cost of providing the insurance would be approximately \$2,500 for three months, decided to propose two options.

Offer X: \$7,500 plus three months of health insurance.

Offer Y: \$5,000 plus six months of health insurance.

The ex-employee was unwilling to accept either of the offers outright but voiced a preference for something closer to Y than X. This revealed that health insurance was more valuable to him than the cash. Offering him two options had prompted him to divulge his relative preferences. The final arrangement, then, could be made more attractive to the ex-employee and less costly to the business owner if further concessions were more heavily weighted toward insurance than toward cash.

Making multiple offers simultaneously is a great tactic for other reasons as well. It allows you to discover the interests of reticent negotiators, and it also makes you appear flexible and empathetic. It signals to the people on the other side that you are willing to be accommodating and interested in understanding their needs.

