

## Negotiating lessons from law students

Last autumn, I had the privilege of teaching client counseling and negotiating at the University of Maryland Francis King Carey School of Law. For a final project, students were required to participate in a nationwide practicum where they negotiated with other law students from around the country in an effort to resolve an actual civil case filed in federal court.

As often happens in educational settings, the teacher learned a great deal from the students. My class was comprised of smart, considerate, and creative thinkers who reminded me of the great responsibility lawyers, claims professionals, and mediators share when working with people who face critically important choices at difficult moments in their lives.

In this column, I will share student insights from the practicum as positive reminders about the kind of advocacy that can work well in settlement negotiations. Perhaps their insights will enlighten some of us who have plenty of settlement negotiation experience, but could use gentle reminders about the effectiveness of civility, cooperation, and good communication.

Students cited the effectiveness of “building rapport with opposing coun-

sel” and “setting a positive tone” before discussing the merits of the case. Not only does this make negotiating less contentious and irritating, it leads to better results for clients and counsel.

Students remarked how much “easier” it is “to get things done” when opposing counsel treat each other respectfully. Often this results in a smoother closing at the end, as opposed to a tit-for-tat drawing of bright lines in the sand, trading threats, and perhaps losing the deal over a relatively small concession.

It seems crazy to think cooperation is possible in the context of litigation with difficult personalities who may not be communicative or trustworthy. Nonetheless, if the case is going to settle, cooperation and reciprocation will drive the process at some point – even when participants thoroughly hate each other.

Cooperation in settlement negotiations is not about diminishing whatever leverage you think you have over the other side. It’s about incentivizing and rewarding good negotiating behavior – the kind of behavior you want from your opponent. This is where strategy and execution matter most.

All too often, parties obscure what they really want, “bang heads” with the



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other side, and grow frustrated by not getting what they want. In the practicum, students recognized how their bargaining positions were augmented and supported by cooperative behavior.

One student took time to recognize his opponent’s position before stating his counterargument because “it added rationale” to his position. Another student commented that arguments need not “run the show entirely.” We need not agree, but we can listen and that can work wonders for your client’s interests.

Rather than “point the finger at opposing counsel’s client personally,” students cultivated the benefits of objectivity, self-assuredness, silence, and slowing down the process. Taking the time to learn about shared interests can lead to mutually beneficial exchanges – even in a distributive context where insurance proceeds are the only form of currency.

Another student astutely commented that shared interests “may not be apparent in the written record, so listening is critical to your client’s goals.” This can lead to surprising results. As another student concluded, “Each side’s interests were more aligned than I thought.”

One student observation in particular summarizes the intention of this column: “You can be a jealous advocate without being ugly or stubborn with opposing counsel.” For practitioners, it’s worth remembering that settlement talks need not be as contentious as they often are. Better results can come from a better process that will not jeopardize your client’s goals.

After graduation, these students will develop their own style and practice. Hopefully, they will retain some of these lessons for the sake of their future clients and their practices. The rest of us who have been around for more than a few years can benefit from their realizations, as we continue to develop and grow, striving to improve at every age.

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