



HELPING MAKE YOU A BETTER NEGOTIATOR



## STRIVING<sup>TO</sup>SETTLE

Richard Marshall

Accredited Civil and Commercial  
Mediator

[www.strivingtosettle.co.uk](http://www.strivingtosettle.co.uk)

## WELCOME !!

Many thanks for joining me for issue 1 of a new monthly newsletter aimed at skills training for negotiation.

Let's face it, whether it's as a toddler trying to get more sweets (or should that be more screen time?), pushing for a salary increase, tiptoeing through the minefield that is relationships, or settling the big case we've been working on, it sometime feels like we're all negotiating, 24/7, all of our lives.

And no matter how much time we spend negotiating, how often do we sit back and think about the skills we use, how we can use them to better effect, and ultimately, how we can improve the outcomes?

The more we read and think about negotiation, the more we have a better understanding of how it works, the more we move towards knowing how we reached a settlement, reflecting on it, so we can repeat that process.

And avoid just throwing figures at the other side until one of them hits fertile ground, or concentrating on hitting them with everything in the litigation arsenal until they are bludgeoned into submission, by which time any possibility of extracting added value has been lost.

So join me on a journey of discovery through the skills that make a great negotiator. Some of them may be things that you look at and say 'I know that', and it never hurts to be reminded, but there are bound to be things that all of us will say 'must try that!'

## IN THIS ISSUE

**What can we learn about Biden's negotiation style?**

Biden has been around the block a few times - what can we learn from his negotiation style?

**Do you know your BATNA from your Elbow?**

Negotiation terminology starter pack

**Can the Flip of a Coin win our Loyalty?**

Research shows how fickle we can be



## Joe Biden, Negotiator in Chief and Negotiation Genius

As you can imagine from a 78-year-old, Joe Biden has been round the block a few times. Amazingly he first held political office in 1970, whilst the Vietnam War and the Apollo space program were both still underway.

Since then he has had a varied and very busy political career leading up to taking the oath of office as President earlier this year.

Following the recent return to fighting, Biden is now wrestling with a long term issue of how to try to help bring peace in the Israeli-Palestinian conflict, and history says the odds are stacked against anyone trying to resolve the 70 year old dispute. But Biden, should he choose to be involved, may have a better chance than others.

From what I have read, one of Biden's key strengths is his willingness to reach bipartisan agreements, which may be due to his long period in the Senate. In the US, the constitution means there is rarely the same party in charge of both Houses, so passing legislation is often about doing deals, and persuading the other side's representatives to vote for your bill.

That's in stark contrast to the UK where its elected chamber has primacy over the unelected House, and therefore one party tends to have a working majority to help get its legislation through.

The surprising thing that struck me about someone who is used to doing deals is just how much of a talker Joe Biden is famed to be.

Barack Obama said of him in his memoir "In a town filled with people who like to hear themselves talk, he had no peer" and was "a man without inhibition, happy to share whatever popped into his head"

Mitch McConnell, longtime adversary, said of Biden's ability to talk "if you ask [Biden] what time it is, he'll tell you how to make a watch". But McConnell soon realised that Biden didn't only talk; he also listened - the true strength of a negotiator

and someone looking to do a deal. McConnell says that Biden would avoid beginning by explaining why everyone else was wrong and instead he would accept and respect negotiating counterparts deeply held convictions. And he had first hand experience. When Biden was vice president, he and McConnell struck a deal in 2010 on tax that had evaded a solution for months. An example given by William Ury though shows the true extent of Biden's negotiating genius.

In one of Ury's seminal books "Getting Past No: Negotiating with Difficult People" Ury describes an example in 1979 featuring what Ury refers to as a "young US senator Joseph R. Biden Jr" negotiating with his Russian counterpart in the SALT2 talks, aimed at limiting the manufacture of strategic nuclear weapons.

Biden faced two challenges. The first was that he needed changes made to the potential deal in order to get the necessary two thirds Senate support, the second being despite being a junior senator he was up against an extremely determined and very experienced Russian counterpart, Andrei Gromyko. What Biden did to break that intractable deadlock is a masterclass in negotiation.

After listening for more than an hour to the Russian diplomat, Biden explained the issues which he faced. Rather than trying to put his point across, or trying to argue with the Russian, it's reported that Biden said to his counterpart "You have more experience in arms control matters than anyone else alive. How would you advise me to respond to my colleagues concerns?"

Gromyko could not refuse the temptation to offer advice to the inexperienced young American. One by one they went through the arguments that Biden would face and Gromyko tried to deal with them. Ultimately Gromyko appreciated the task facing Biden and went on to consent to the requested amendment.

What Biden did was not only flatter and appeal to the Russian, Biden reframed the conversation into a constructive discussion on how to meet the Senator's concerns. It changed from pushing their own positions into how to help to satisfy each side's interests.



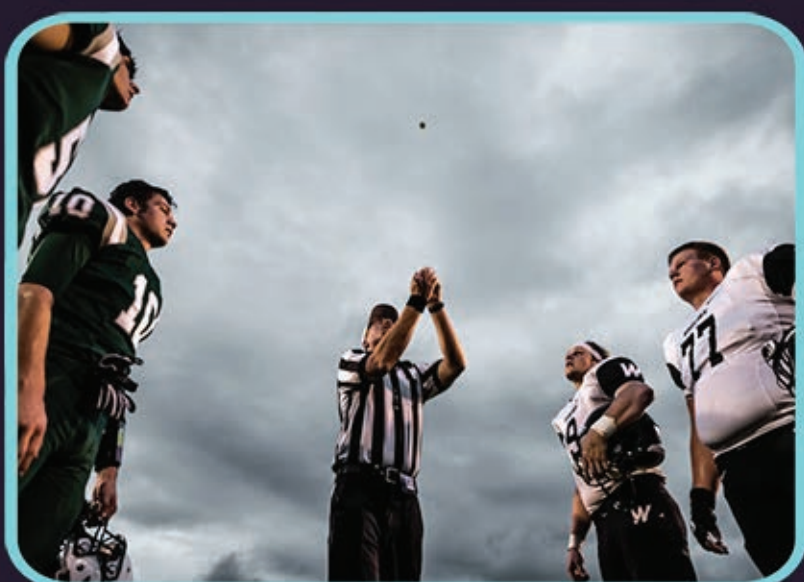
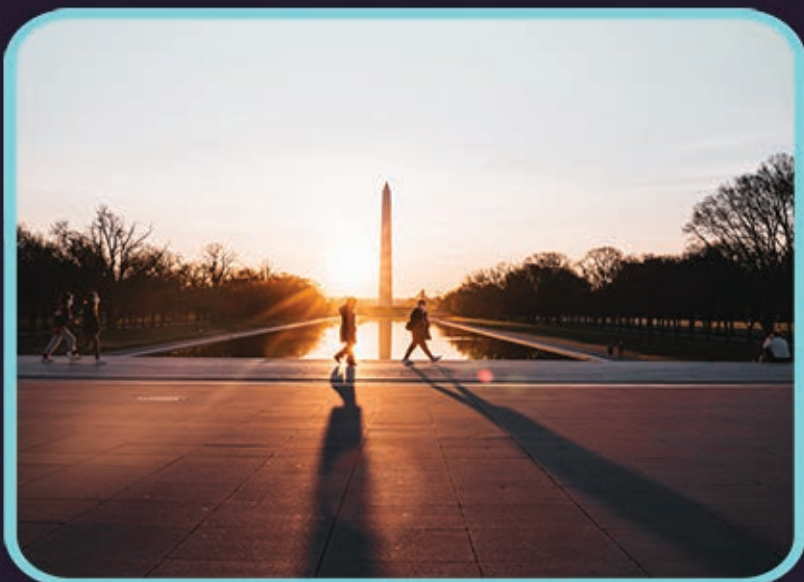


## Joe Biden, Negotiator in Chief and Negotiation Genius

With genius like that maybe Biden does stand a better chance than others of making progress in the Israeli-Palestinian conflict. Only time will tell.

However Biden's ability to reframe a conversation is not just reserved to international negotiations. Next time you are faced with an intractable negotiation, think about how you might reframe the conversation, to make it into a problem solving discussion.

Finally, it is also worth noting that as well as being so useful within negotiations, reframing is a key skill for a mediator; in every mediation there is always a point where in order to move the parties from talking about their positions to trying to satisfy their interests, the mediator will need to reframe the situation to allow the parties to move towards settlement. To reframe the conversation is to move forward.





## Can the Flip of a Coin win our Loyalty? How to get away from 'Us and Them'

We all know how random the result in Heads and Tails, we know the outcome is not something we can influence or predict with any certainty beyond knowing it will be one of two results.

And therefore I'm sure we'd all find it hard to think that a flip of a coin could make us feel more or less warmly towards someone - purely because of whether a coin landed heads or tails. But that's what research has found.

Henri Tajfel, a British social psychologist, took a group of random people who were split into two groups based on the flip of a coin. Despite no pre-existing knowledge of each other, when asked to rate the people in the room, participants preferred the members of their own group, and rated them as more likely to have pleasant personalities.

**Yes, we're that fickle!**

So in any negotiation, it's highly likely that you will ascribe intentions and characteristics to the other side that they will in turn also ascribe to you.

**What's to be done?**

There are several ways in a negotiation or within a mediation that we can try to break out of the natural groupings that we impose on the world.

**Talk.** It is surprising how often the very act of talking with someone, just making appropriate small talk, getting to know something about them, and letting them learn something about us, can break down the 'Us and Them'. Just a phone call can mean the other party may read your letters or emails with a greater understanding, as they will hear your voice and intentions rather than the ones that they may invent.

**Keep things civil.** It seems obvious but more deals are struck and more settlements reached if people are not starting an argument. And, at a lower level, any interaction that is less than civil risks proving to the other party all of the pre-conceptions they may have. This is known as the confirmation bias - that we look for information that confirms what we already think or believe to be the case.



**Find common ground.** If that is being from the same industry, town or even liking the same team, find something that builds commonality.

**We, not you.** Avoid using 'you' that reinforces 'Us and Them' thinking. Find ways of being able to use 'we' or 'us', such as 'it is incumbent on us to work out a solution to save everyone a great deal of time and money' - you may not be able to use a coin to do it, but use your words to help form a group.

These along with many other skills are used by mediators to connect and build rapport with each side, to move them away from the 'Us and Them', get everyone to a place where the parties can start to see interests, rather than positions, and concentrate on reaching a settlement that helps satisfy those interests.





STRIVING TO SETTLE

## Striving to Settle - The Business

So how did I get here? Why 'Striving to Settle'?

I've been a litigation solicitor for more than 25 years, working in private practice, advising clients on their legal positions, fighting cases through to trial, settling many more, and doing everything I can to help my clients get what they want, or defend what they have.

For about half of that period I mixed property litigation with commercial litigation, and so I've worked on a wide range of cases in that time.

Then about 13 years ago I joined what is now DAC Beachcroft LLP, and thereafter worked exclusively in property litigation.

I really enjoyed the clients and the work, but increasingly felt the need to focus more on the advice stages, and, in particular, helping them to settle their disputes.

As an accredited mediator, I can be in the middle of helping people to resolve their disputes, to find the way forward that stops them spending time and money on the battle, and helps them to move on. With that in mind, Striving to Settle was born.

Check out more information at my website [www.strivingtosettle.co.uk](http://www.strivingtosettle.co.uk)

### DO YOU KNOW?

Striving to Settle offers the services of an accredited mediator, negotiation training and coaching, all under one business

Email :

[Richard rsjm@strivingtosettle.co.uk](mailto:Richard.rsjm@strivingtosettle.co.uk)

## Do you know your BATNA from your elbow?

Like anything else, negotiation is littered with its own acronyms and shorthand, all of which we'll be delving into in future newsletters. These are a few of them.

**BATNA** - Best Alternative to a Negotiated Agreement - made famous by Fisher and Ury as considering what your best option is if you cannot reach an agreement, often linked to...

**WATNA** - your Worst Alternative to a Negotiated Agreement - not used or spoken about so much, but still worth knowing your range of options

**ZOPA** - Zone of Possible Agreement - the range in which a settlement is possible that is acceptable to both parties - can help determine where to make your first offer, and what value there is to divide amongst the parties

**Logrolling** - a negotiation exchange where each party trades off issues to maximise each sides