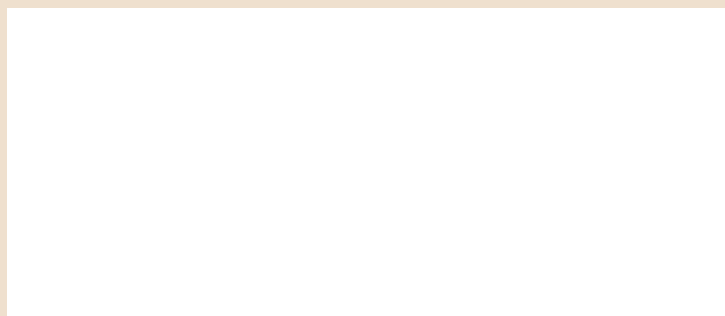


Illinois Bar Journal



The Art of Negotiating Online

A veteran negotiator on shifting from face-to-face to online negotiating.



BY ED FINKEL

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ATTORNEYS OFTEN ENTER INTO NEGOTIATIONS WITH THE OTHER PARTY without having formulated a careful strategy, says Marty Latz, CEO of Latz Negotiation. Latz, who will present Five Steps to Effective Online Negotiations, an ISBA CLE program, on June 18, sat down with the Illinois Bar Journal and shared his approach to negotiation strategies and tactics and how negotiating online differs from dealing face-to-face.

“In the past 40 to 50 years, there’s been a lot of great research in this particular area. There is a right way and a wrong way to negotiate,” says Latz, a former White House negotiator, former adjunct professor at Arizona State University College of Law, and author of “The Real Trump Deal: An Eye-Opening Look at How He Really Negotiates.” Latz also pens a monthly column on negotiating for The Arizona Republic.

During his CLE presentation, Latz says he plans to illustrate how using his set of principles has

an impact on results. For example, he will show two video clips of himself and a colleague role-playing two sides of an online negotiation and then a subsequent face-to-face negotiation (the clips are based on a real case).

“We talk about the good and bad things about that online negotiation,” Latz says. “We go through the advantages and disadvantages of the in-person one, as well. We purposefully did certain things in the negotiation that we could use from a teaching perspective to illustrate our points.”

The bottom line, Latz says, is that all of the regular components of a face-to-face negotiation apply when negotiating online. “But there’s an added complexity and challenge when you’re doing it over Zoom, or Microsoft Teams, or whatever videoconferencing platform you’re using,” he says.

Starting before you start

“The biggest mistake that people make in all negotiations is that they pick up the phone, they start to engage, and they don’t engage strategically,” he says. “They just tend to do it based on their gut, thinking this is something they can learn by doing. There’s been a great amount of proven research on what works and what doesn’t work.”

Negotiating *strategically* includes deciding *how* to engage. Over Zoom? Over the phone? Or, “now that we’re all hopefully getting vaccinated, in person,” Latz suggests. “You need to think through these questions and answers from a strategic perspective.”

Attorneys are typically more comfortable with written forms of communication, such as emails, because they’ll have a record, says Latz. But savvy transactional attorneys understand and appreciate the advantages of negotiating face-to-face. “I do think attorneys are pretty sophisticated at determining how to engage when we’re talking about email negotiations or other written negotiations,” he says. “They understand the do’s and don’ts of those. But too often, attorneys begin intuitively,” he says. “Boom—you’re off!”

Short- and long-term relationships

Does the attorney entering into a negotiation care about maintaining an ongoing, future relationship with the client or other party? If yes, it’s best to pick a communication approach that fosters longevity, Latz says. “If you’re looking for a long-term partnership, you’re going to want to hop on a plane and meet them face-to-face,” he says. “You want to take their temperature, look at their office, and build common interests. It’s about making a connection and evaluating whether that connection is sufficient to warrant moving forward.”

In contrast, when you buy a car, you don’t care about the relationship. You might not even go into the dealership, or do so only for a test drive. You also might send out requests-for-proposals to five different dealerships, Latz says. “You do it by email and work them all off against each other,” he says. “In a business partnership, you’d probably use a variety of methods: start with face-to-face; maybe a little email, phone and video; and maybe at the closing, you meet face-to-face again.”

Parties to a negotiation should strive to be very self-aware that the substance and style of their communication remain consistent over time, Latz says. “You want to be steady across the spectrum,” he says. “You don’t want to send inconsistent signals. When we do that, we tend to build distrust and have less likelihood of connecting with our counterparts.”

That’s especially important when communicating online, where it’s more challenging to build connections in the first place, Latz says. “People often times misinterpret signals when you’re online. You’re not communicating through eye contact; you’re connecting through a computer,” he says. Less-personalized communications also tend to make people more likely to lie, he adds. “You’re going to get more lying by email than phone; more lying by phone than video; and more by video than face-to-face. We have to make sure our signals are lined up and consistent.”

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Negotiating about negotiating

In addition to a broad plan for the entire negotiation, Latz says attorneys should have a “mini-goal” for each interaction. This is based partly on which communication method they are using—video, phone, email, etc.—and the inherent advantages and disadvantages of each.

“The negotiation medium changes how we act and react,” he says. “Phone is much better than video in terms of negotiations.

We’re more natural. We’re not misinterpreting signals. You’re not looking at the tiny little camera. The differences between these approaches can have a huge impact on the potential success or failure of the negotiation.”

Finally, Latz says, you need to determine the “rules of the road”—negotiating how you are going to negotiate. “Do you want to have a written agenda? Do you want to have deadlines? Do you want to take turns? There are very significant variables in play when making that determination,” he says.

Observing how these decisions are made provides insight into the interests and goals of the other party, Latz notes. “Do *they* care about a relationship?” he says. “Drill down and find out why they’re even engaging with you.” And the process also helps tease out who has leverage. “They may want to do it in person,” he adds. “You may not be comfortable doing it in person. If you have the leverage, you may be able to impose doing it on Zoom.”

Ups & downs of online negotiations

Although attorneys understand written negotiations well, they don’t typically appreciate the advantages and disadvantages of video compared with face-to-face, Latz says. But as pandemic social distancing fades away, the need to compare and contrast different negotiation settings is reemerging.

“There’s been a fair amount of conver-

sation as to whether or not it now makes sense to hop on a plane and actually go do a deposition or do a meeting in person,” he says.

Latz acknowledges that negotiating online has real downsides. But just by being aware of its pitfalls, attorneys will be more prepared to overcome them. Latz remembers reading an article in *The New York Times* titled, “Why Zoom is Terrible” (see law.isba.org/2QyWUHO). Psychologists and neuroscientists have noted how distortions and delays inherent in online conversations can make people feel anxious and disconnected, he says.

“You’re not actually making eye contact. You’re sending unconscious and often times inauthentic signals to the other side,” he says. “It changes how we act and react. Most of us tend to feel—intuitively—that there’s something different about it. They think you’re distracted. There’s a lot of research about Zoom fatigue right now.”

Attorneys, like many others, were thrown into impromptu videoconferencing environments when COVID-19 hit. As a result, they did not have the time or resources to fully adapt to doing business online. As the world eases back into hybrid mode, attorneys will at least have a choice, Latz says. If they decide to stick with online negotiating, they should embrace best practices.

Online do’s

Build rapport. Take concrete, practical steps to build rapport and relationships over common personal interests, Latz says. Latz cites social psychologist Robert Cialdini, known for his universal principles of influence, one of which is the “liking principle,” in explaining the importance of establishing rapport. “Find common interests,” Latz says. “It will get them to open up and allow you to connect in a way that will promote the appropriate atmosphere in which to engage. Over Zoom negotiations, most people don’t do that. It’s a real problem.”

Be transparent. Latz suggests that, if anything, attorneys should be even

ISBA RESOURCES >>

- ISBA Free On-Demand CLE, *Lost Your Compassion? The What, How and Why of Compassion Fatigue* (recorded April 7, 2020), law.isba.org/3gOpuj5.
- ISBA Free On-Demand CLE, *Ethics and the Settlement Process* (recorded Nov. 6, 2019), law.isba.org/3eFVD9M.
- ISBA Free On-Demand CLE, *Gain the Edge! Negotiation Strategies for Lawyers* (recorded June 7, 2019), law.isba.org/3xtoB5n.

more transparent and explore more mutual interests than in face-to-face negotiations. “Online, we tend to be more competitive, tend to be more aggressive, and tend to hold our cards closer to the chest,” he says. “We don’t do that to nearly the same extent when we’re meeting face-to-face. In online negotiations, you’ve got to bend over backward a little bit. That doesn’t mean throwing all your cards on the table, but erring on the side of sharing.”

Brainstorm. In face-to-face negotiations, attorneys often hold creative brainstorming sessions with their client and also with the other side. They should still do this online, Latz says. “When we get into Zoom, we tend to be more positional, and we tend to eliminate some of that brainstorming. You’ve got to schedule some time to do that. It’s a very important part of the negotiation process. We need to be very conscious of that.”

Provide some slack. Be aware of the awkwardness associated with videoconferencing. A lack of eye contact and other variables can create a strange vibe that you perceive is coming from the other side. “We’ve got to cut people some slack on nonverbal signals,” he says. “When it happens, you’ve got to say, ‘You know what, I’m going to put that down to the online environment. I’m not going to think they’re trying to lie. Maybe I heard it wrong.’”

Online don’ts

Don’t eliminate or abruptly cut the small-talk phase. “When we meet with someone face-to-face, what we usually do is we engage in a little bit of small talk,”

For more information about the June 18 ISBA CLE program Five Steps to Effective Online Negotiations, presented by Marty Latz, visit law.isba.org/3nUaMrD. For more information about Marty Latz, visit expertnegotiator.com.

Latz says. “We maybe spend the first five or 10 minutes talking to the other attorney, setting the stage. In the Zoom environment, we tend to eliminate that. Cutting right into the substance of the agenda before setting the stage and putting people at ease has a significant negative impact.”

Don’t rule out live video. “If they want to do video and you don’t, that creates an awkward environment,” he says.

Don’t go it alone. Negotiating as part of a team rather than individually helps to ensure you are staying on task and staying engaged, Latz says. “Being part of a negotiation team has an added value in online negotiations,” he says. “It’s harder to maintain a high level of concentration in online negotiations by yourself.”

Don’t let your guard down. For an in-person meeting, you might spend the plane flight out going over what you’re planning to do, Latz notes. “Whereas, if I’m meeting at 2 p.m. online, I might go over my notes at 1:45. Don’t do that. It’s just as important to prepare if you’re doing it by Zoom.”

Don’t check emails and texts on your phone. Latz says this “happens all the time. It really sends the wrong signals to the other side.” In person, you’re sitting across the table from someone and looking at them, and you would never start looking at your phone in that scenario. “It’s clearly rude,” he adds. “It’s a distraction. It’s sending a signal to the other side that you don’t really care about what they’re saying.”

Stick the landing—in writing

If you expect to take copious notes during a negotiation, Latz recommends the phone over videoconferencing. “I try to take detailed notes of all my negotiations when I’m on the phone,” he says. “I’m typing away on the computer. It’s a form of active listening. I also want to write down the commitments people are making. I want to accurately reflect what was said. Zoom becomes far more inefficient, unless you have a perfect memory.”

ALTHOUGH ATTORNEYS UNDERSTAND WRITTEN NEGOTIATIONS WELL, THEY DON’T TYPICALLY APPRECIATE THE ADVANTAGES AND DISADVANTAGES OF VIDEO COMPARED WITH FACE-TO-FACE, LATZ SAYS. BUT AS PANDEMIC SOCIAL DISTANCING FADES AWAY, THE NEED TO COMPARE AND CONTRAST DIFFERENT NEGOTIATION SETTINGS IS REEMERGING.

Of course, getting terms and conditions down in writing will have to happen at some point in the process, even if you’re “just talking” at first. “People believe more of what they see than what they hear,” he says. “I’m going to send a follow-up offer in writing, by email. When we start to use combinations of methods of communication, it’s important to be really strategic about it, based on proven research. Lawyers are very attuned, I think, to the importance of the written word, to the impact of written standards and benchmarks. We use expert-opinion reports. We use appraisals. We don’t just talk about it, we send people copies so they can look at it and evaluate it. That’s a very important part of the negotiation process.”

Part of being strategic is deciding how personal you want a negotiation to be, Latz says. The most personal way to engage is face-to-face; the least personal is the “archaic method that we now don’t use: We don’t send things through the mail,” he says. “In between, there’s a whole spectrum of ways to engage: there’s video, there’s phone, there’s email. We need to pick the most appropriate communication method based on what we want to accomplish in that particular negotiation.” ■