

## **Negotiation Power**

**By: Mari J. Frank, Esq.**

Effective negotiators use their authentic power. Genuine power is not about controlling, bullying, or strong-arming others. Instead your successful negotiations depend upon your ability *to influence* the other stakeholders to want to collaborate with you to get a deal that will work because it y satisfies everyone’s underlying interests. You can attain a top-notch settlement to gratify your clients and yourself when you are well prepared as to the facts and issues, trustworthy, positive, creative, and tenacious.

Your true negotiation power induces others to want to cooperate with you so that all stakeholders will get enough of their interests met to get a sustainable agreement. When you’re in command of your persuasion skills, you can cultivate friendly relationships, and at the same time develop a reputation for being a formidable negotiator. If you use effective communication techniques, when misunderstandings arise (which is inevitable since misperceptions are common), you can maintain trust to facilitate the resolution of misunderstandings and challenging issues.

To achieve successful settlements, consider using the six steps below to enhance your negotiation power. The acronym POWERS is an easy way to remember the key ingredients in achieving your highest potential in any negotiation or mediation process.

**P = Preparation**—You’ll need to prepare using what I call the “*CPR method* “In this approach you will focus on the issues of **C**ontent (facts), **P**rocedures, and **R**elationship building to breathe life “into your negotiation power.

**O = Options**—Consider numerous alternative options that meet everyone’s needs prior to and at the negotiation table.

**W = Worthiness**—Demonstrate that you are worthy to be trusted and test others for trustworthiness before, during and after the negotiation. It’s important for negotiators to be reliable, honest, and credible. Are each party’s words consistent with the facts and their actions? Has anyone puffed, bluffed, or misrepresented?

**E = Enthusiasm**—Show your enthusiasm, your passion, and your commitment to a favorable agreement that everyone can live with. It’s important that your client and the other parties know that you care about more than just your own needs and that you are passionate, effective, and professional. Demonstrate that you are a problem solver, not a problem maker.

**R = Relationship**—Build bridges of mutual respect, effective and active listening, and mutual civility.

**S = Satisfying solutions**— Reach for a result that creates satisfying solutions based on meeting the genuine interests of all stakeholders. Obviously, you need to be a fervent advocate, but getting your clients interests met, does not necessarily mean that the other party cannot retain dignity and a level of satisfaction that he/she can live with.

### **PREPARATION YOUR GREATEST STRENGTH**

In this article, we will focus on the issues of preparation since it is the most critical step in any negotiation. Preparation is your greatest strength in any negotiation. The party who does the most planning for the negotiation will be most influential and persuasive in getting what he or she wants. When I ask my law students if they would ever think of walking into the bar exam without studying and preparing themselves mentally, emotionally, and physically, they gasp at the thought of lack of preparedness. Clearly, without studying they know failure would be the result. But how many people walk into a negotiation and “wing it”? You’ll set yourself up for poor results if you attend a bargaining session without preparing the content of the issues, knowing the facts, the figures and the background of the various people involved. You also must consider the procedures you plan to use (who must be there, time, place, strategy, etc. and the type of process for building a congenial working relationship with the parties.

To ready yourself for any negotiation (whether it is with opposing counsel, a a business associate, your boss, your client, your spouse, or anyone else), you must get organized, develop a strategy, do research, and prepare yourself physically, mentally, and emotionally. Pre-planning is essential every time, in every negotiation; it doesn’t matter how trivial the issue may seem, or how well you think you already know the bargaining game.

To begin your plan, consider the following essential components: *Content*, *Procedures*, and *Relationship* issues. This strategy of “CPR” will enliven your negotiation power:

#### **Content Issues—What are your own underlying subject matter needs?**

What do you and your client honestly want and why? What are the content issues of your proposal? Is it money, product, services, actions, business arrangements, an injunction, loan approval, etc.? Does your proposal satisfy your client’s true interests? Are your goals consistent with the objective of your client? Could it be that your client wants to get the case finished so he can get back to business? Does the attorney on the other side have a conflict of interest in his/her goals versus the needs of his client? Are you bargaining for something that won’t gratify your client—even if you achieve it?

For example, on a personal level before you purchase a residence, even if it’s a fabulous price, you will question whether the location is easily accessible for work. You’ll check out the

neighborhood and schools to see if they meet your kids' needs. You will ascertain the property taxes, homeowner association fees, and other hidden fees and costs. You will talk with the neighbors about the community and find out the risks which might not be immediately visible. You will research the surrounding area, find out all aspects of the home, city plans, etc., and what it would mean to live there. Your due diligence will reveal any potential problems that might exist before you make an offer.

### **What are the interests of the other parties?**

What does the other party want or need? What are his or her motivations? In the previous example, why is the homeowner selling the house? What are his or her plans, problems, desires? What kind of relationship did he or she have with the neighbors? You aren't ready to make a viable proposal until you get the complete picture. The more you know about the other person's issues before the negotiation session begins the better prepared you'll be to achieve a favorable agreement. Find out who, what, where, why, and how for *each* content issue. That will help you develop persuasive proposals to obtain your objectives. Educating yourself about your "adversary's" interests is a key to effective deal-making. Showing that you are knowledgeable and care about the other party's interests and circumstances will turn your adversaries into friends. The key to any successful settlement is to meet the interests of all the parties.

### **Never act on assumptions**

Even if you find out extensive information about the other party or parties before you negotiate—there still will be much you don't know. Never **assume** anything about the other party's goals without checking out the facts. The adage is true that if you assume, you make an "*ass (of) u (and) me.*" Voicing assumptions without knowing the facts is dangerous and often embarrassing. We've all learned from bad experiences that when we speak our assumptions as facts, we may be perceived as foolish. (For example you would be embarrassed if you were to ask a woman when she's "due" for her baby to arrive, only to learn she isn't pregnant).

It's human nature to try to categorize and organize data by making assumptions in our minds to process quickly. But before you put your foot into your mouth, consider that your assumption *could be* wrong. Your sensitivity will show others that you are interested in their perspective when you ask polite, probing, open-ended questions. By listening intently to their answers, you'll gain keen insight into their concerns, needs, and negotiation approach. This knowledge gives you potential power to influence the parties' perspective.

Consider preparing these types of questions for those with whom you will negotiate:

- What is most important to you (your client) as we try to reach our agreement today?
- What would fulfill your expectations?
- How might we make this work for your client and mine?
- What are you most worried about?
- What are your client's concerns with the proposal on the table?
- What do you feel is essential to make this mutually beneficial?
- Help me understand the basis for your proposal.
- What element of our proposal is most favorable for you?
- What specifically doesn't work for you and why?

You may not receive completely transparent answers, but you'll gain a better understanding of the other parties' intentions when you gently probe and ask for clarification. After you ask these questions, it's important to listen to the answers and make sure that you keep opposing counsel focused on the answers.

### **What objective information will help you to be credible?**

To influence another party, you'll need to be credible. Ask yourself what facts and objective criteria you must gather about the subject matter to be believable. What data will you need to present to be reasonable? What trustworthy expert opinions, codes, cases, facts, treatises, law review articles, and other documents will help you to convince the other party of the fairness of your proposal?

For example, if you are going to make a demand for settlement, are you ready to show opposing counsel (or your mediator) how you arrived at that number? Have your facts and figures worked out before you arrive at your negotiation or mediation. Have you looked at comparison settlements in similar cases in your jurisdiction? Have you consulted with experts or your list serve to ask other attorneys how they might view a settlement proposal? If counsel for the other side is better prepared in mediation or your one on one negotiation, your bargaining position is weakened.

The preparation of facts, figures, etc., will give you confidence and support your settlement suggestions. Be sure to verify the accuracy of your data before you present it so you won't be perceived as dishonest. Speak transparently and be willing to share facts and supporting documents in a non-aggressive manner. Your persuasive power will increase as you respectfully show the reasonableness of your offer and the high quality of the information presented.

### **P-Procedural Issues—What procedures must be negotiated to set a collaborative approach?**

## **TIME, PLACE, ENVIRONMENT**

Time, place, and environment all affect the process of your bargaining session. Setting a convenient time, place and pleasing environment makes a huge difference in the energy of the negotiation. For example, as the mediator I always have healthy snacks available to everyone, and set up a pleasing private environment with a view of palm trees or the ocean. It's helpful to set a positive atmosphere with an "olive branch" and good hearted humor.

Even with a positive ambience if you do not have all stakeholders present, or available by video conferencing or at least by phone, there will be no settlement. Find out all who must be at the meeting or available by phone. Inquire ahead of time who has the authority to make an agreement, who has the purse strings to write a check, or make the deal happen, and make sure all stakeholders are present at the meeting or at least available by Facetime, Skype or conference calling to talk with you and if in mediation, the mediator must be able to talk directly with that person with counsel present. You' will waste time in your negotiation or mediation unless you and/or your mediator can get direct access to a CEO or owner who has the authority to make a decision. You must negotiate with someone who has the say-so to seal the pact.

### **How will you meet? What forum will you use?**

The best negotiations take place in person since body language and facial expressions communicate true intent even better than words. Video conferencing is the next best forum because you can see the body language, hear intonation and inflection, and you'll have the opportunity to clarify misunderstandings immediately. Phone may work as a last resort. Letters are more formal and are best used as a follow-up to an in-person meeting or phone conversation. E-mail or texting should generally never be used to bargain or resolve conflict. It's very precarious since it's not confidential, is usually accomplished in haste, and is very easily misunderstood since you cannot even clarify with voice inflection.

If the negotiation will take place by Facetime, skype, or phone, who initiates the call? What time will the call take place? Who will be available for the call? What documents must be sent to each other and reviewed before the phone conference? These issues initiate the negotiation process and are critical to set forth mutual accommodations. By clarifying and organizing the procedural issues, you'll begin the negotiation process amicably and competently.

### **Who are the stakeholders?**

Anyone who has an interest in the outcome should be part of the discussion and have a hand in designing the terms. If you make an agreement with only a few of the stakeholders, the other necessary parties will undoubtedly find fault because they didn't participate in the outcome that affects them. Learn who will be directly involved in implementing the agreement. You'll need to hear everyone's concerns and challenges. If a deal is to be carried out by parties who are

not at the negotiation table, be ready to work through struggles that will surface after the deal is made. It's far more efficient to engage *all* parties in the "solutioneering" process at the outset to address how the terms will be executed. When all affected parties are genuinely satisfied with the agreement, there will be commitment and better follow-through.

## **Relationship Issues**

Human nature is such that the more we like someone, the more we are willing to accommodate his or her needs. It's enjoyable to negotiate with pleasant people, and uncomfortable to deal with difficult people.

Consider what relationship issues you have with the other parties before you meet. Is the other party logical or emotional, straightforward or closed, shy or gregarious? It's important that you pay attention to the other party's style, culture, comfort zone, and approach. Being sensitive to the other person's feelings will set a respectful tone to interactions. Even if you are very prepared as to the subject matter, if you offend the other party with an approach that is perceived as insensitive or crude, you'll lose all credibility and negotiation power.

What must you find out about the other attorney or the parties to be informed and persuasive? If you're unable to learn much about the other party before you meet (by public sites on the Internet, references, phone conferencing, etc.), plan open-ended questions ahead of time to help you get at the information you need. Create questions that allow the other party to reveal his or her inner thoughts and desires. Inquire politely about family, hobbies, career, etc. Learn what you can about the "human side" of your negotiation partners.

When you better understand the other party, you'll suggest solutions that will be relevant to that person. Knowing what is comfortable for others helps you shape your proposals to put them at ease. Active listening will show you what motivates the other party. Each party has a distinct perspective, what is valuable to you may not have significance to the other party and vice versa.

To sum up how you'll attain successful negotiation power, you'll need to first and foremost focus on the P in POWER. It reminds you to *Prepare your CPR issues to breathe life into your negotiations.*

The acronym CPR will remind you how to prepare for a successful negotiation:

*Content*— What must you research regarding the subject matter of the negotiation?

*Procedures*— *What procedures will be conducive to effective "solutioneering"?*

*Relationship—How can you best relate to the other party?*

When you can answer the three questions above, you'll be prepared and empowered to influence the other party (or parties) to brainstorm mutually acceptable agreements.

In the next article, we will address the other elements of Power which are Options, worthiness, enthusiasm, relationship building and satisfying solutions (“solutioning). Knowing that your preparation is your most potent procedure to insure a successful outcome in your negotiation or mediation, the more you prepare your CPR, the more vibrant life you will breathe into your negotiations to bring about a lucrative settlement and a happy client.,

and If we move on to the second letter of POWERS- the “O” stands for OPTIONS. If you start negotiating with only one result in mind, the bargaining will end early. Negotiators who are inflexible and narrow-minded often are disappointed when they can't reach agreement. Creating several alternatives before the meeting will provide you with contingency plans so you are ready for any objections or criticisms. You'll have a repertoire of resources to satisfy yourself and the other parties to carry the negotiation forward. Develop propositions that bridge the gap between you and the other parties.

For example, when families are setting up chores for family members to complete, each person may choose from a list of all the household activities that need to be accomplished. One option for agreement would be for everyone to have a turn to choose which chore that individual would like to take. Another option would be for each to pick the choices out of a hat or to set up a rotating schedule or the individuals could agree to team up to do chores together or even pay each other to do chores they dislike. You are only limited by your own creativity.

When one negotiator comes prepared with several options for settlement, it inspires others to dream up possible solutions. Thus, the productive “solutioneering” process engages positive breakthroughs.

After brainstorming possible solutions, the next step is to focus on the most feasible suggestions. If the creative process falters, all it takes to renew “solutioneering” is for one party to ask, “How else could we make this work?” Entertaining options that incorporate the interests of all the parties creates a cohesive working group with a common goal. Adversarial parties transform into an innovative team to explore solutions. Nonjudgmental brainstorming leads to more imaginative and mutually satisfying results. When you initiate several ingenious options, you’ll achieve powerful negotiation breakthroughs.

The next letter in the word POWER is **W** which stands for **WORTHINESS**. To break through to the other side to achieve agreement, you will need to be considered worthy of their considerations. Worthiness comes from trust. If you don’t trust someone, how willing are you to negotiate a deal? Worthiness is the result of being trustworthy. If someone is dishonest or unreliable, he or she won’t merit your time. It’s critical to trust the people we do business with and it’s essential to believe in those we love.

If we are buying a car, we want to know that the dealership and factory will be dependable and reliable so that if we have a problem it will be fixed immediately.

At home, we must believe that our spouse is honest and faithful to us, otherwise we can’t trust the relationship. When we place our hard-earned funds in a bank or with a financial advisor, we must first ascertain whether the bank and/or the advisor is responsible, honorable, and honest. Whenever we engage in any relationship, it’s necessary to check out the other party’s reputation, honesty, and integrity. We’re foolish if we don’t consciously trust incrementally, and verify the veracity and morality of the people with whom we are negotiating.

There are scammers and fraudsters who may take advantage of your good faith if you’re not careful to seek out principled and respectable people to partner with. We must also safeguard our own reputations by being truthful, saying what we mean, and meaning what we say—and following through dependably. If we’re misinformed or mistaken, we must admit we are wrong, and take responsibility for our actions. By apologizing when it’s due and forgiving others’ good faith mistakes as well, we increase our own credibility. Worthiness in negotiations creates trust, which is vital to your negotiation power.

The next letter in POWER is “E” which leads us to enthusiasm. Your enthusiasm and passion about your proposal and the negotiation is infectious. When you are animated, yet credible and calm, your eagerness will entice others into doing business with you. Your zestful,



pleasing disposition will attract advantageous relationships. And when you demonstrate genuine interest in everyone's ideas, products, or manner of living, they will reciprocate.

Your enthusiasm must be authentic. If you're insincere, it will be evident.

If you believe in your product, service, or relationship, show your enthusiasm. All of us remember certain teachers in school who inspired their students. The instructor was filled with gusto and love for the subject matter and the students. The students were attentive, involved, and easily persuaded. Your passionate proposals and inspiring presentations will significantly influence the other stakeholders. Demonstrating your enthusiasm about the "solutioneering" process will make them eager to collaborate with you.

Once you establish trust and you show you are enthusiastic, it's important to focus on building on the relationship. So, the next letter in POWERS is "R" for relationship. I have learned over the years that we live on a very small planet. People you haven't seen in thirty years may suddenly hear that you will be working with them or you need to work with them on a project. You may hear about them or from them on social networking sites. or bump into them while traveling. The Internet makes us very vulnerable if we cross another person. Even if we believe we may never see a person again, the quality of our interactions creates our reputation both on a personal and career level.

No matter whether we are dealing with a small hotel manager in a third world country, a long-term contractor, a former employee, or a vendor, when we build bridges of understanding and respect, we pave the way for future appreciation and mutual benefits. Whether cooperating to create profitable deals or lasting partnerships, pooling our intellectual and financial resources expands the scope of our influence.

By sharing perspectives, effectively listening, and showing that we understand others; we cross barriers and achieve committed agreements. Our positive associations, whether long- or short-term, directly and indirectly increase our power to influence others to engage with us in "solutioneering." Your short-term positive relationships may someday lead to future lasting profitable partnerships. People remember relationships—good or bad and now, in the information age, they can easily affect your reputation with just a keystroke.

So finally, if you have established all the POWER above, you and your negotiating "partner" should be able to engage in meaningful negotiations to arrive at mutually satisfying solutions and a successful agreement. Thus, the last letter of POWERS is "S" signifying satisfying solutions. The goal of every negotiation is a satisfying solution that is successful for both parties as to the subject matter and builds congenial rapport to assure follow through. Splitting the difference or just "cutting the baby in half" may leave the parties feeling that they've all lost. When parties give in to "just to get it over with," they may feel defeated, and later sabotage the contract.

That's why to have a committed, satisfying agreement there must be a respectful meeting of the minds. By consciously listening intently to each other with the goal of understanding, the parties will feel respected. If they ask probing, polite, open-ended questions, eradicate negative arguments, and focus on problem-solving, their success rate will soar. To attain the highest quality negotiated agreements, the parties will be far more successful if they remember to use their negotiation POWERS.

Mari Frank has been an attorney since 1985. She limits her practice to negotiation and mediation. She is the radio host of Fighting for Love: Turn Conflict in to Collaboration on KUCI 88.9 FM in Irvine. She is the author of 5 books. Find out more at [www.MariFrank.com](http://www.MariFrank.com) and [www.conflicthealing.com](http://www.conflicthealing.com)