

Interview with Dr Claudia Winkler

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Last October, the Law Society presented practitioners with the special opportunity to learn from leading international negotiation instructor Dr Claudia Winkler at our seminar The Great Legal Negotiator. Brief took the opportunity to find out more about Dr Winkler’s experiences while travelling the world to teach communication and negotiation.

What first attracted you to working in the law and how did you get involved with Negotiation training?

I am a first-generation lawyer, originally from a family of wineries. When I was 14, I started interning with different law firms every summer and became fascinated with the incredible tool law provides to make a difference in people’s lives. That’s how I decided to pursue law. A few years later, during a visit to Boston, I visited Harvard Law School, and again, fascinated, set my mind to studying there one day. During my entire Master’s and Doctorate studies, I never questioned the goals I had set. At the same time, working with big firms, international institutions and eventually in academia, I realized that traditional legal careers were not resonating with me as much as I thought they would. Fortunately, in 2012, a Fulbright scholarship helped me accomplish my goal and I got an acceptance from Harvard Law School for an LL.M. Another wink of faith brought me to the Harvard Negotiation Project. The year at Harvard was like a reboot for my career. The Negotiation Project turned around my thinking about what makes

successful lawyers. It made me realize that once we have reached a certain level in our career, WHAT we know, is no longer our biggest leverage. It becomes about HOW we use it. I realized that by teaching lawyers and students how to make the most out of their legal skill by becoming more effective negotiators, I will be able to make much more of a difference than by teaching any subject of law. So I called my university in Austria, quit my tenure track offer, and have never looked back, I have since trained thousands of lawyers and students across the US, Europe, Africa, Asia and Australia.

You have a varied and interesting career history, having worked in Europe, the United States, Australia and Africa. Have you noticed differences in how lawyers from different jurisdictions approach to communication and negotiation?

Of course there will be very different approaches to any given challenge requiring communication or negotiation,

and a lawyer from Ethiopia will handle a situation very differently from the way a lawyer from the US, the Czech Republic or India would handle it. We all have our deeply rooted cultural norms, invisible scripts and customs that have a huge impact on our communication. How a person has been socialized will majorly determine the way his or her values fall in tune with the conflict to decide the tone of his negotiation. However, what surprises me the most, is how similar we all are in the approach we have, the mistakes we make and the challenges we face, despite these cultural differences. Lawyers from all the 4 continents I have taught in, work out very similar results in our negotiation case studies, face similar challenges and have similar preferences as to who should make the first offer or how they should prepare for it. They are just as competitive and just as collaborative as their colleagues in other countries. While the framework (i.e. the ways in which business is done), may vary widely, the approach to negotiation at its core is often not as different as we may have expected. The difference lies merely in the expression.

What are some of the mistakes lawyers make or bad habits you perceive in their communication? How can these be overcome?

One common mistake that falls into this category of international uniformity is the assumption that “winning” means

getting more than the other side when the objective of negotiation is the exact opposite. As negotiation trainers, our goal is to help advocates, clients and students realize that winning instead, is about satisfying more of your OWN interests. Unless overcome, this positional bargaining approach to winning will only lead to dissatisfactory lose-lose outcomes (commonly referred to as 'compromise') with no added value.

The second common belief I find faulty is the notion that in order to negotiate successfully, one must try and get as much speaking time as possible and try to persuade the other side of our position. Many lawyers believe they can lead a conversation by claiming more air time for themselves and by advocating why their position is the only valid one. Instead, the best negotiators know how to lead the conversation by asking smart questions to gather information and by finding ways to uncover the underlying interests of both parties that would enable them to work with those in finding an amicable solution taking into account needs and concerns of both sides.

The third biggest challenge for lawyers is usually finding out the true interest of their clients and digging into what their

real concerns and motivations are. Clients will, more often than not, not readily share those motivations and concerns. Failure to persistently inquire about them or not taking the time to do so, will effectively harm the lawyer's ability to get the results the client was truly hoping for.

How can lawyers improve their communication skills?

Communication is not just about what you say, but is a process that consists of four very important parts: preparation, non-verbal communication, listening and speaking. The first three are too often overlooked and deserve an increased attention to improve one's overall communication skills.

- 1) Before any negotiation, preparing one's goals, information to share, questions to ask and priorities to follow are critical to enable precise and clear communication once in the negotiation.
- 2) Non-verbal communication should not be underestimated. For young lawyers, this might mean making sure not to send deferential or insecure signals in front of more

senior professionals by ways of their body language (for instance, how will anyone believe you if you don't look like you believe in what you say yourself?). For more senior lawyers open body language, signs of paying close attention, showing respect to the negotiation partner and listening carefully will improve the negotiation dynamic and subsequently the chance to close a deal. More significantly, opposite signals or not doing these things will significantly hinder one's chances of closing a deal. Worse is when one is not aware while sending them.

- 3) Truly focused and attentive listening has become a real scare gift that few people offer to their negotiation partners these days. Paying close attention to what the other side is saying without distraction or interruption with an aim to fully understand and not just to respond, goes a long way in making the interaction worthwhile. Offering suitable and creative solutions at the right time, is a skill that deserves constant work in order to become a better communicator.

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- 4) And finally, verbal skills take us back to my earlier point about how asking the right questions instead of seeking to persuade can make all the difference. Real skilled negotiators spend twice the time gathering information. Rather than focusing mainly on arguing and persuading, they ask smart questions about the drivers of the negotiation and during this process they bother to inquire, clarify, and summarize.

What steps are most important in preparing for a negotiation?

There are a few default elements that one always needs to consider before entering a negotiation like underlying interests of both the parties, goals and priorities, walkaway points and bargaining power (BATNA). But many elements will depend a lot on the situation on the table. The good news is, whatever one's preparation looks like, it can never be wrong. The important step is the preparation in itself. Research has shown that preparation can make up to 80% of the negotiation outcome. Let me share a few additional, not so obvious tips (like the extent of information to be shared or speculating what the other side is seeking from the table) that can have vast importance in making a negotiation successful:

- 1) Interest based negotiation, or 'win-win' as many call it, needs to strike a balance between information we must reveal – in order to build value – and information we must withhold – in order not to sacrifice our negotiation position. By default, negotiators will often opt to share only what's necessary. However, for win-win negotiation to work,

we need to learn to withhold only what's necessary. Thinking ahead of time about what information to share and what information to withhold helps negotiators to take a more balanced approach in what they are willing to communicate and therefore how much value they will be able to build. An unprepared negotiator will always have a passive approach in sharing which can be harmful to the overall value that can be built. A common misconception during the process of preparation is that we believe we only need to prepare for what our side wants to achieve. We think about our needs, our goals, our plans, our interests. We believe thinking about their needs, their goals, plans and wants is "their job". But that is not so. While we are of course mainly responsible for achieving what we want to get out of the negotiation, we can only get there if the other side also reaches its goals and get a deal that makes sense to both the parties. Realizing we can only have a deal if it works for both of us helps us to start preparing for what we think they might want to achieve. Eventually negotiation is always about "giving the other side what they want – on your terms".

What can lawyers and law students do to improve their negotiation skills?

The beautiful thing about negotiation is that we get to practice it every day. The problem is that despite being such an indispensable part of our daily lives, we often fail to have the expertise when it comes to professional bargaining on the table. Negotiation skills can be honed by

practice, reflection and feedback – but only once people have a basic framework for how to think and reflect about their experiences. It is for this exact reason why even experienced lawyers around the world join my trainings despite having decades of legal experience.

For law students I recommend taking up negotiation courses as early in their studies as they can and start practicing, competing in negotiation competitions, coaching and even judging competitions. One extensive full semester course on negotiation with lectures, negotiation cases, expert interviews, case studies, debriefs, forums, quizzes and more can also be found on our platform www.necademy.com

Claudia Winkler is an international Negotiation Trainer, the founder of The Negotiation Academy™, and the Director of the IBA-VIAC CDRC Vienna Mediation and Negotiation Competition. Claudia received her Master's and Doctor's degree in European and International Law from the University of Linz and her LL.M. from Harvard Law School. Her professional experience reaches from law to government, non-for profit, start-up, university and international institutions. She has worked as the ADR Development Coordinator with the New York International Arbitration Center during her time as a Fulbright scholar and is a licensed Mediator in New York. As a trainer, Claudia has worked with law firms, businesses, associations and universities in the United States, Europe, Africa, Asia and Australia. For more information see www.ClaudiaWinkler.net and www.necademy.com. For any questions get in touch at claudia@necademy.com.
