

Introduction to Negotiating Styles and Their Relative Effectiveness

(1 hour)

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LEGAL NEGOTIATION AND SETTLEMENT

GERALD R. WILLIAMS

Chapter Two

THE NEGOTIATING PATTERNS OF PRACTICING LAWYERS

I. INTRODUCTION

In his examination of clinical education, one law professor refers to "the major unstudied variable in the justice of the legal system—the patterned behavior of individual lawyers".⁹ This chapter reports the results of a large-scale study of the negotiating patterns of practicing attorneys. The objective throughout the chapter is therefore very practical: to describe how lawyers negotiate.

II. DESCRIPTION OF THE LEGAL NEGOTIATION RESEARCH PROJECT¹⁰

The results of empirical research are no better than the methods used to collect them. For this reason, a brief outline of our research methods is presented in this chapter, followed by a discussion of the lawyer negotiating behavior described by the study. For those who are interested, a more detailed explanation of the research methodology is given in Appendix I.

Four basic research methods were used. The first was the survey questionnaire, a standard feature of social science. It was prepared, and sent with a cover letter by the president of the pertinent bar association, to approximately two thousand attorneys practicing in Denver, Colorado and Phoenix, Arizona. Conducting research in two cities allowed us to test for significant differences in attorney perceptions or behavior between two metropolitan areas.

After compiling the results of the mailed questionnaire, we returned to Denver, Colorado and conducted one-hour interviews with 45 attorneys. These were tape recorded and subsequently

9. Robert J. Condlin, "Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction," 40 Maryland L.Rev. 223, 227 n. 10 (1981) (italics added).

10. For a report of the research leading to the project proposal, see

Williams Leg.Neg. and Settlement—2

Williams, England, Farmer, and Blumenthal, "Effectiveness in Legal Negotiation", in Harry T. Edwards and James J. White, *The Lawyers As A Negotiator* (West, 1977) (Hereinafter Williams et al. 1977).

transcribed for analysis. The purpose of these interviews was to build on the base of data accumulated by the questionnaires.

We next used an original technique developed to investigate the dynamics of negotiation over time as viewed by both sides to the negotiation. Up to this point in the project, our data consisted only of reports by attorneys on characteristics of other attorney-negotiators and the negotiation process among attorneys. The next step was to learn how attorneys actually carried out the negotiation or litigation of particular cases. This information needed to come from attorneys on both sides of each case, so the perceptions, expectations, and actions of the opposing attorneys could be compared. Therefore, we asked attorneys on both sides of selected cases to maintain an oral, tape-recorded account of their actions as they moved step by step through the cases. With the approval of the Ethics Committee of the Bar Association, we tested the technique using four attorneys from our advisory committee. They each selected a case that was scheduled to go to trial within the next three months, obtained the client's permission and gave us the name of opposing counsel (so we could contact him and ask him to keep a similar record of his dealings with the case). Using a tape recorder we provided, the attorneys then dictated an account of each significant step taken in handling the case (e.g., exchange of letters or telephone calls with opposing counsel, discovery, meeting with the client, legal research, pretrial procedures, etc.).¹¹

After six months, the four cases were completed and we received the records from seven of the eight attorneys involved. These tape recordings were transcribed and analyzed. To our delight, the reports were rich in useful information about the perceptions and motives of both sides in the negotiating process. Encouraged by this result, we selected 50 more pairs of attorneys in Denver to conduct similar case studies. We also obtained additional funding and conducted approximately 100 similar case studies in Phoenix. The studies have been completed, collected, and transcribed, and we are in the process of analyzing them.

11. To maintain confidentiality and prevent improper transfer of information between the two sides of each case by the researchers, the actual names of the clients were kept out of the record, and attorneys kept the

records until both sides were satisfied that the case had been terminated to their satisfaction. Only then was the information made available to the researchers.

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After the research project was completed, it became apparent that we had overlooked a major source of information and understanding: videotape recordings of experienced attorneys engaging in negotiations. To meet this need, we prepared a total of seven cases (personal injury, breach of contract, products liability, divorce, criminal law, land-tenant, and business transactions) for negotiation by experienced lawyers.

Fourteen attorneys from across the United States agreed to participate. They were given ten days to prepare their cases and were then brought together in pairs to conduct their negotiations on videotape. The attorneys received no coaching on how to proceed; they were simply asked to negotiate the cases exactly as they would do in a real situation. These seven videotaped negotiating sessions add a crucial visual dimension to the data received through the other research techniques by illustrating what those data mean in behavioral terms.

As we began our research, the questions foremost in our minds were these: What are the characteristics of effective legal negotiators? Are there identifiable patterns to their negotiating behavior? What strategies do lawyers most commonly use? What objectives do lawyers have in mind when they negotiate? What attitudes? What combinations of traits are found in the most effective (and most ineffective) negotiators? What are their strong points, and what are their weak points?

The first phase of our research project was designed to answer these questions. The results are among the most dramatic and useful of the entire project.

In the Phoenix version of the survey questionnaire, which is reported here, attorneys were asked to think of their most recently completed case or transaction, to briefly describe the matter, to think of the attorney representing the other party in the matter, and to describe that attorney according to 137 characteristics listed in the questionnaire. When they had completed the descriptive ratings, they were asked to rate the negotiating effectiveness of the attorney they had described. This rating scale was divided into three categories: ineffective, average and effective.

The results were compiled and analyzed according to standard statistical routines, including the standard R-factor analysis, Q-factor analysis, multiple regression analysis, and discrimi-

nate analysis.¹² The results reported here were obtained by means of the Q-factor analysis.¹³

III. HOW LAWYERS NEGOTIATE: LESSONS FROM ATTORNEYS

The Q-factor analysis was used to look for stable patterns in the negotiating behavior of attorneys. The results indicate that legal negotiation proceeds quite consistently within the parameters of two basic approaches. Both approaches are described in considerable detail by the analysis, providing exceptionally powerful insights into the nature of bargaining processes generally and the behavior of individual negotiators in particular. The pattern identified in a majority of the negotiators (65%) is best described as a *cooperative* approach to negotiation, while the second pattern (identified in 24% of attorneys) represents a *competitive* approach. These labels, *cooperative* and *competitive*, will be used to refer generally to attorneys of each type. Toward the end of the discussion it will become apparent that these labels are somewhat imprecise and that finer distinctions can be made. Knowledge of two basic patterns provides an exceptionally powerful tool for analyzing and understanding how individuals operate in the negotiation setting.

The strength of the two patterns was so pervasive that only 11% of the attorneys failed to identify with one or the other. The analysis failed to identify any consistent pattern in the characteristics of this latter (11%) group of attorneys, suggesting that they do not represent a third pattern of negotiation. A complete listing of results of the Q-factor analysis is given in Appendix II, while the most important findings are described in the text and tables below.

The distribution of attorneys among all categories is shown in Diagram 2-1. As indicated in the Diagram, neither pattern

12. A technical description of these analyses and their results is being prepared for publication in the periodical literature in collaboration with J. Lynn England, Professor of Sociology at Brigham Young University.

13. Steven R. Brown, *Political Subjectivity: Applications of Q Methodology in Political Science* (New Haven and London: Yale University Press 1980). Q-factor analysis is an exceptionally impartial method

of analysis, because it avoids biases the researchers might have about what patterns will be found to exist. There is no attempt to tell the computer what kind of patterns to find, or to give special emphasis to one set of characteristics or another. The program merely looks for any identifiable patterns in the descriptions of attorneys. It ignores the pet theories and preferences of the researchers in favor of a more free form of analysis.

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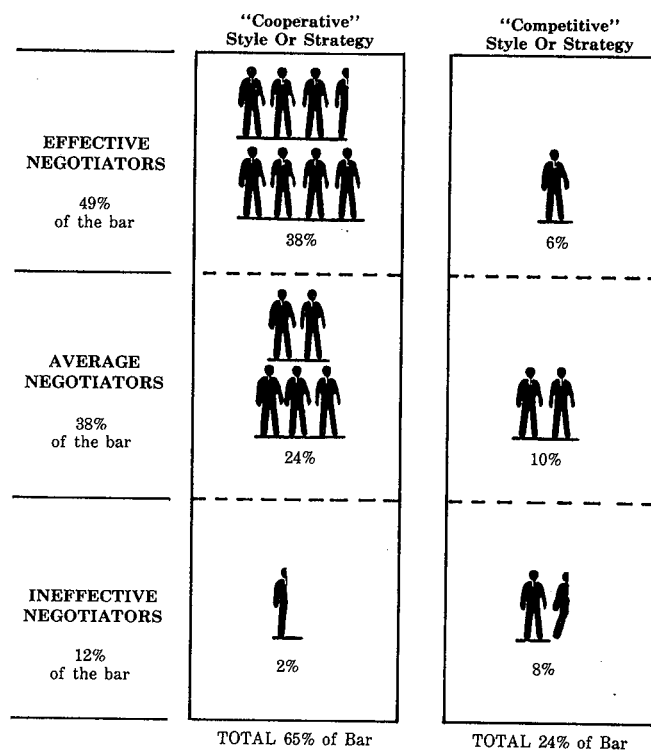
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has an exclusive claim on effectiveness. Use of the cooperative pattern does not guarantee effectiveness, any more than does the use of the competitive pattern. An attorney can be very effective or very ineffective within the constraints of either. The higher proportion of cooperative attorneys who were rated effective does suggest it is more difficult to be an effective competitive negotiator than an effective cooperative.

Diagram 2-1
Approximate Number of
Each Negotiator Type Among the
Practicing Bar



= Approximately 5% of the Bar

Note: Eleven percent of the rated attorneys fell outside these two categories.

Note: The silhouette figures are male because less than 3% of the sample was female. This percentage is too low to provide reliable statistics on distribution of women among these categories. None of the females in the sample were rated as ineffective, however.

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Persons concerned about lawyer competency will be interested to observe that in our random sample of attorneys, 49% were rated as effective negotiators, 38% were rated as average negotiators, and 12% were rated ineffective.

The value of these findings comes in learning the major components of each strategy. What are the characteristics of the effective negotiators of each type? What do they do that differentiates them from the average and ineffective negotiators? How are the effective types different from each other, and how are they similar?

To answer these questions we selected the most strongly-rated descriptors of each group and sorted them into logical clusters to make their meaning more clear. The following analysis demonstrates this method. For more detailed information about the data, see Appendix II.

A. CHARACTERISTICS OF EFFECTIVE NEGOTIATORS

1. Effective/Cooperative Negotiators

The highest-rated characteristics of effective/cooperative negotiators fall into six informal clusters. The first cluster describes, in order of importance, their motivational objectives:

CLUSTER ONE

Conducting self ethically

Maximizing settlement for client

Getting a fair settlement

Meeting client's needs

Avoiding litigation

Maintaining or establishing a good personal relationship with opponent

It is surprising to find the predominant concern is with *ethical conduct*. This theme recurs among cooperative negotiators at all levels of effectiveness. The second concern is with *maximizing settlement for the client*, but this must be interpreted in light of item number 3, concern for *getting a fair settlement*. Attorneys of this type feel constrained in their conduct by a standard of fairness and ethical dealing. They want to know

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Friendly

Tactful

Sincere

Organizing

Wise

Careful

their clients' needs and, if possible, meet those needs without the necessity of litigation. They are also concerned with maintaining a good personal relationship with the opposing attorney.

Their strategy for meeting these goals is straightforward, as reflected in the following descriptors:

CLUSTER TWO

Accurately estimated the value of the case
Knew the needs of the client
Took a realistic opening position
Probed opponent's position
Knew the needs of opponent's client
Willing to share information
Forthright
Trustful
Willing to move from original position
Objective
Fair-minded
Reasonable
Logical (not emotional)
Did not use threats

CLUSTER THREE

Courteous
Personable
Friendly
Tactful
Sincere

CLUSTER FOUR

Organizing
Wise
Careful

Facilitating

Cooperative

The third cluster relates to personableness: effective/cooperative negotiators are seen as friendly, personable, courteous, and tactful. However, some degree of caution is called for in interpreting these words. A person unfamiliar with legal negotiation is likely to picture a "soft" negotiator who is, as a consequence of personableness, a pushover. This cannot be a correct interpretation, because the adjectives describe *effective* negotiators at work in the legal context. A richer sense of meaning will develop as additional adjective clusters are considered.

Effective/cooperative attorneys are also seen as fair, objective, reasonable, logical, and willing to move from their established positions. Interpretation of these adjectives is aided by the other Cluster two descriptors, which indicate these attorneys take realistic opening positions, support their position with facts, and are forthright.

While these traits are quite general, there are a number of descriptors that are focused on negotiating situations. For example, cooperative effectives seek to facilitate agreement, they avoid use of threats, they accurately estimate the value of cases they are working on, they are sensitive to the needs of their clients, and they are willing to share information with their opponent. It appears from these items that their strategy is to approach negotiation in an objective, fair, trustworthy way, and to seek agreement by the open exchange of information. They are apparently as concerned with getting a settlement that is fair to both sides as they are with maximizing the outcome for their own client.

The attitude of effective/cooperatives is reflected in attorney comments. For example, one attorney wrote: "The vital item in negotiation for me is trust in the other attorney. If an attorney has a good reputation and/or I have dealt with him before and found him honest, I can and will negotiate pragmatic settlements, hopefully to the long term benefit of both parties." In a similar vein, another attorney said, in speaking of his relationship with opposing counsel, "our relationship was constructive . . . we both tried to reach a fair settlement, which we did without trial." Finally, an attorney described his opponent (an effective/cooperative) in these words: "The attorney I negotiat-

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2. Effective/Competitive Negotiators

The differences in approach between cooperative and competitive attorneys is most quickly illustrated by comparing motivational objectives. In order of their importance, competitive/effectives have as their goals:

CLUSTER ONE

- Maximizing settlement for client
- Obtaining profitable fee for self
- Outdoing or outmaneuvering the opponent

Obviously, the goal of getting a maximum settlement value for the client means something different to a competitor than to a cooperater. To competitors, the goal includes a reward to self both in monetary terms and in satisfaction from outdoing an opponent. The difference in view between these two types becomes more apparent from examining other competitor traits. They are seen as:

CLUSTER TWO

- Tough
- Dominant
- Forceful
- Aggressive
- Attacking

CLUSTER THREE

- Ambitious
- Egotist
- Arrogant
- Clever

CLUSTER FOUR

- Made a high opening demand

- Took unrealistic opening position
- Used take-it-or-leave-it approach
- Rigid
- Disinterested in needs of opponent's client
- Did not consider opponent's needs
- Unconcerned about how opponent would look to his client
- Willing to stretch the facts
- Knew the needs of own client
- Careful about timing and sequence of actions
- Revealed information gradually
- Used threats
- Obstructed
- Uncooperative

In contrast to the friendly, trustworthy approach of cooperative effectives, effective/competitives are seen as dominating, competitive, forceful, tough, arrogant, and uncooperative. They make high opening demands, they use threats, they are willing to stretch the facts in favor of their clients' positions, they stick to their positions, and they are parsimonious with information about the case. They are concerned not only with maximizing the outcome for their client but they appear to take a gamesmanship approach to negotiation, having a principle objective of outdoing or outmaneuvering their opponent. Thus, rather than seeking an outcome that is "fair" to both sides, they want to outdo the other side; to score a clear victory.

Fees are obviously important to this type of negotiator. Obtaining a profitable fee is rated as the second highest priority on their agenda, a priority that can lead to conflicts. One attorney, describing an effective competitive opponent, said the case would have settled if the other attorney had approached the matter "from a realistic standpoint, i.e., the welfare of the children and future relationships of the parties (the divorcing parents) instead of being primarily interested in increasing his fee."

Competitive/effectives are careful about the timing and sequence of their actions which underscores the gamesmanship element of competitive negotiating behavior. This reflects a high level of interest in tactical or strategic considerations, suggesting that they orchestrate the case for best effect. One ef-

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fective/competitive attorney laughed when his cooperative opponent said the objective of negotiation was to accomplish a just outcome. He said, "This is a poker game, and you do your best to put the best front on your case and you try to make the other fellow think that his weaknesses are bigger than he really ought to consider them." Another attorney reported that the insurance defense attorney opposing him "could have appraised the case more on injury to the plaintiff rather than on difficulty of plaintiff in putting on a good case at trial." These comments show the unbridgeable gap in perceptions and attitudes between cooperative and competitive attorneys. Cooperatives feel that cases should be evaluated objectively, on their merits, and that both sides should seek to find the most fair outcome. Competitive attorneys view their work as a game in which they seek to outwit and out-perform the other side. The tension between these two styles raises major ethical, moral, and public policy questions, many of which will be dealt with later in this book.

This description of effective/competitives makes them sound somewhat machiavellian, in the "gunslinger" image of lawyers, just as the description of effective/competitives makes them sound surprisingly "soft". However, the descriptions in both instances are incomplete, because they give only the extreme differences between the two patterns without filling in the similarities. As indicated below, the additional information creates a much more satisfactory picture of both types.

3. Similarities Between the Two Effective Types

While there are clear differences in approach between the two types of effective negotiators, both types are, in fact, rated as highly effective. Our interest is in what makes them effective, i.e., what traits they have in common. Common traits have particular importance, since law students and attorneys can seek to understand and emulate them irrespective of which pattern they prefer to follow.

COMPARISON ONE: THE ADJECTIVE CHECKLIST

	Effective/ Cooperative Rankings	Effective/ Aggressive Rankings
Experienced	(1)	(2)
Realistic	(2)	(10)
Ethical	(3)	(15)
Rational	(4)	(4)
Perceptive	(5)	(3)
Trustworthy	(6)	(20)
Convincing	(7)	(1)
Analytical	(8)	(5)
Creative	(10)	(6)
Self-controlled	(11)	(12)
Versatile	(12)	(18)
Adaptable	(14)	(17)
Poised	(17)	(14)
Legally astute	(20)	(16)

COMPARISON TWO: THE BIPOLAR SCALES

	Effective/ Cooperative Rankings	Effective/ Competitive Rankings
Honest	(1)	(11)
Adhered to customs and courtesies of the bar	(2)	(14)
Intelligent	(3)	(4)
Thoroughly prepared on the facts of the case	(12)	(7)
Thoroughly prepared on the law of the case	(18)	(15)
Effective trial attorney	(22)	(3)
Skillful in reading oppo- nent's cues	(23)	(18)
Active	(24)	(8)

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COMPARISON THREE: OBJECTIVES

	Effective/ Cooperative Rankings	Effective/ Competitive Rankings
Conducting himself ethically	(1)	(4)
Maximizing settlement for client	(2)	(1)
Satisfaction in exercise of legal skills	(5)	(5)

These descriptors apply to effective negotiators regardless of which patterns of negotiation they follow. They may be considered a reliable statement of the characteristics of effective legal negotiators. Assuming that we all wish to improve our effectiveness as negotiators, it is important to learn the meaning of these terms.

Both types of effective negotiators are ranked as highly experienced. This comes as no surprise, since we normally assume that negotiating effectiveness improves with experience. Its meaning here is illuminated by the comment of a responding attorney, who wrote: "it is important to have enough experience in order that you have confidence in yourself and be able to convey that confidence."

More importantly, both types are seen as ethical, trustworthy and honest, thus dispelling any doubt about the ethical commitments of effective/competitives. However, the priority of these traits is ranked much higher for cooperatives (3rd, 6th and 1st in priority) than for competitives (15th, 20th and 11th in priority). Given the current interest and concern about professional responsibility in the Bar, the high ratings on ethical and trustworthy for both effective groups are worthy of notice. Although literature on professional responsibility generally argues that high ethical standards are a precondition to success in practice, many law students and some practicing attorneys continue to believe or suspect that they must compromise their ethical standards in order to effectively represent their clients and attain success in practice. The findings of this survey suggest such compromises may be not only unnecessary, but actually counterproductive to one's effectiveness in negotiation situations.

In the same vein, we see that both types are careful to observe the customs and courtesies of the bar. While some attorneys have argued that there are tactical advantages in deliber-

ately departing from the etiquette of the profession, as a general rule effective negotiators observe it. The Model Code of Professional Responsibility indicates lawyers have an ethical duty to "follow local customs of courtesy or practice" unless they give timely notice to opposing counsel of their intention not to do so (EC 7-38).

Although effective/competitives were seen as taking unrealistic opening positions, in general they share with cooperatives the traits of being realistic, rational, and analytical. These three attributes become very important in interpreting negotiator behavior. They mean more than the idea of "thinking like a lawyer"; they impose limits on how far a negotiator may credibly go in such things as interpretation of facts, claims about damages and other economic demands, and levels of emotional involvement in the case.

Both effective types are seen as thoroughly prepared on the facts and the law of the case. They are also described as legally astute. This, again, is something to be expected. But it bears emphasis because, as we shall see, ineffective negotiators lack these qualities. One attorney had these traits in mind when he wrote, "In my experience, the most important part of negotiation is thorough preparation and a complete knowledge of the strengths and weaknesses of your position. . . . I feel individual personality traits (e.g. loud, forceful, quiet, reserved) are unimportant."

Legal astuteness means they have not only done their homework by informing themselves about the legal and procedural ramifications of the case, but they also have acquired good judgment about how and when to act with respect to this information.

Both types of effective attorneys are rated as creative, versatile, and adaptable. This is true even though competitive effectives are also labelled rigid. Apparently there is a distinction between being tough (which competitive attorneys are) and being obstinate. An attorney should not be so rigid that he is unable to seek creative solutions to problems. The flavor of the terms is suggested in a comment by an attorney representing a party who was involved in a very acrimonious dispute with a neighbor over an irrigation ditch. He wrote, "Our problem was solved by a simple relocation agreement executed by the parties and recorded. The opposition attorney and myself, after great

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Both types are self-controlled. This is not a word all will welcome as an attribute of effectiveness; it somehow calls to mind the rigidity and tenseness we prefer to associate with engineers and accountants, not with lawyers. We will appreciate its meaning and importance after considering the characteristics of ineffective negotiators.

One of the more important marks of effective negotiators is skill in reading their opponent's cues. This refers not only to the ability to judge an opponent's reactions in negotiating situations, but to affirmatively learn from the opponent. The old saying is that experience is the best teacher. Experience is only a good teacher for those who are skillful at learning from it. In the course of interviews connected with Denver attorneys, they were routinely asked what they did when they were faced with an inexperienced opponent—an opponent fresh out of law school. Their responses were very informative. One group of attorneys would get a sly grin on their face, their eyes would light up, and they would say "I hammer them into the ground". By far the larger number of attorneys responded quite differently, however. They said that when they had a "green" opponent, they slowed the case way down, tried to spell everything out as they went, and tried generally to show the younger attorney the right way to go about handling a case.

Consider this problem from the perspective of law graduates recently admitted to the bar. During the first few months of practice, they encounter some attorneys who hammer them into the ground, exploiting and taking advantage of them at every turn, and others who are trying to teach them how to be good lawyers. The experience is not calculated to engender trust in fellow officers of the court. Rather, the tendency in young lawyers is to develop a mild paranoia and to distrust everyone. This is unfortunate, because *some* opponents are providing valuable information, albeit in subtle ways. The key, then, is to learn to observe and "read" the opposing attorney and know who can be trusted and who cannot and then learn from both types without being misled by either.

Competitive and cooperative effectiveness are rated as perceptive, a term that goes hand in hand with skill in reading cues. It relates in part to the ability to perceive an opponent's strategy and his subjective reaction to your strategy. It also has a larger

connotation, referring to the accuracy of one's perception of the whole case. One attorney in our study gave a telling description of his perception of a recently completed case: "I lost the case. Though my opponent was ineffective in preparation and presentation—and was a drunk—the judge *disbelieved* my key witness, a fundamentalist Minister, and the plaintiff got every cent he had wrongly demanded from my client."

Finally, it must be stressed that both types of effective negotiators are also rated as effective trial attorneys. As mentioned earlier, the alternative to settlement is trial. If an attorney is known as a weak trial attorney, it will often be more profitable for his opponent to take him to trial than agree to a reasonable settlement. This creates an awkward and troublesome dynamic, because the weak trial attorney knows that his client would be poorly served by an inept trial of the case. The weak attorney discounts the case as an inducement to the other side to settle and avoid the costs (and benefits) of trial. The interplay between fear of trial and discounting of the case is not healthy. There appears to be only one solution: to be taken seriously, lawyers who negotiate legal disputes (as opposed to non-actionable matters) must either develop substantial expertise as trial attorneys, or must openly associate themselves (whether by partnership, a referral system, or some other way) with very effective trial counsel.

B. CHARACTERISTICS OF AVERAGE NEGOTIATORS

As we move down the effectiveness scale to the "average" negotiator level, we find that differences between the two negotiating patterns types are much more pronounced. They differed from each other on 13 of the 20 adjectives, in 25 of the 26 bipolar pairs, and all but 2 of the motivational objectives.

1. Average/Cooperative Negotiators

Selected characteristics from the adjective checklist that distinguish the average/cooperative negotiator from his competitive counterpart include the following:

Realistic
Self-controlled
Careful
Discrete
Objective
Analytical
Fair
Loyal
Perceptive
Helpful
Deliberate
Experienced
Organizing
Average/cooperative negotiators have characteristics of effective negotiators, experienced, etc., and they raise the question of whether these characteristics are distinctive of negotiators. Part of the answer is that they are not. In addition to the characteristics listed above, they are also characterized by sociability, and dampening effect. In describing the average negotiator, the author wrote, "The lawyer has 15 years of practical ability."

SELECTED CHARACTERISTICS:
AVERAGE COOPERATIVES

Realistic
Self-controlled
Careful
Discrete
Objective
Analytical
Fair
Loyal
Perceptive
Helpful
Deliberate
Experienced
Organizing

Average/cooperative attorneys reflect many of the characteristics of effective/cooperative attorneys, such as trustworthy, experienced, ethical, and realistic, and their high ratings here raise the question of why they were seen as only average negotiators. Part of the answer may lie in their lower ratings on such characteristics as analytical, perceptive, convincing, and legally astute. In addition, they are noted for their caution, discretion, sociability, and obliging behavior, some of which may have a dampening effect on their effectiveness.

In describing an average/cooperative opponent, one attorney wrote, "The lawyer is a sincere, honest member of the bar with 15 years of practice; but [has only] moderate legal and intellectual ability."

2. Average Competitive Negotiators

In contrast, the average/competitive negotiator has the following characteristics:

SELECTED CHARACTERISTICS: AVERAGE COMPETITIVES

Argumentative
Ambitious
Demanding
Bluffer
Egotist
Evasive
Suspicious
Greedy
Headstrong
Impatient
Complaining
Quarrelsome
Unpredictable

Average/competitive attorneys show a dramatic shift in the quality of the characteristics noted, since all the adjectives describing them have predominantly negative connotations: bluffer, demanding, headstrong, argumentative, and irritating. Interestingly, the behavior connoted by these adjectives has certain similarities to the style of advocacy sometimes associated with public interest advocacy and other "causes." The fact that these adjectives occur for the first time in the average groupings should not be taken as a demonstration of their effectiveness or ineffectiveness as styles in negotiating, since one's style or competitiveness may vary according to the demands of a particular situation. It is probable, for example, that strong and even irritating tactics are highly effective when selectively used. However, the preponderance of these characteristics in the average and ineffective range of competitive attorneys does suggest that as a matter of routine style or approach, they seriously detract from one's effectiveness.

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Sociable
Legally a

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In trying to understand the personality of average/competitive negotiators, it may be seen that greed, ambition, and egotism are associated with their style. None of these selfish or self-centered characteristics are seen as characterizing either of the effective groups, but rather were seen as decidedly *uncharacteristic* of effective attorneys.

One attorney described his average/competitive opponent in this way: "Obviously, this was an unpleasant and poor attorney, and I should say that he is in a minority; he just happened to be [my most recent opponent] . . . and unfortunately, there are still too many [like him]."

3. Similarities Between the Two Average Types

Of the 20 highest characteristics from the adjective checklist scales, only 7 are shared by both types. Since the most interesting comparisons come at the ineffective level, relatively little discussion will be given about average negotiators. The listing of characteristics, with their rank orderings, is sufficient.

	Average/ Cooperative Rankings	Average/ Competitive Rankings
Ethical	(1)	(7)
Trustworthy	(2)	(19)
Rational	(3)	(20)
Personable	(4)	(15)
Cautious	(5)	(12)
Sociable	(10)	(6)
Legally astute	(12)	(9)

There are substantial differences in the strength of these characteristics in the two average types, with cooperatives being rated more strongly on ethical, trustworthy, rational, personable, and cautious, while competitiveness were ranked as more sociable and more legally astute.

C. CHARACTERISTICS OF INEFFECTIVE NEGOTIATORS

The two ineffective types are a study in contrasts. We did not see this degree of difference between cooperatives and competitiveness at the effective level because they had a crucial similarity: they were *effective negotiators*. At the bottom level, the two types do not have that in common. What we have, then, is a

description of the extremes of both styles, both of them ineffective, but in quite opposite ways. The ineffective extremes hold essential clues to the underlying dynamics of the cooperative and competitive strategies. Assuming that negotiators at the effective level have somehow discovered aspects of each strategy that are successful, we can assume that negotiators at the ineffective level are either omitting essential aspects of the strategies, or else they are defeating their own strategies by going too far with them or otherwise negating their effectiveness.

1. Ineffective/Cooperative Negotiators

Ineffective/cooperatives are characterized by many socially desirable traits.

SELECTED CHARACTERISTICS: INEFFECTIVE/COOPERATIVES

Honest
Forthright
Trustful
Willing to share information
Courteous
Adhered to customs and courtesies to the bar
Sincere
Friendly
Cooperative
Knew the needs of his client
Logical
Did not use threats
Facilitated
Tactful
Was willing to move from original position
Intelligent
Reasonable
Got to know my personality
Thoroughly prepared on the factual elements
Flexible

Informal
Emotionally
Probed my
Revealed in
Modest
Accurately

Conducting
Maximizing
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a. Similarities I
Negotiators
Effective and
characteristics.
personable, and

Informal
Emotionally detached
Probed my position
Revealed information early
Modest
Accurately estimated the value of the case

OBJECTIVES

Conducting himself ethically
Maximizing settlement for his client
Meeting his client's needs
Getting a fair settlement
Maintaining or establishing a good personal relationship
with opponent
Satisfaction in exercise of legal skills

The ineffective/cooperative does not have the skills or attitudes of an effective/cooperative, such as being perceptive, or convincing, or having the reasonableness cluster (realistic, rational, and analytical). Nor is he creative, self-controlled, versatile, objective, organizing, or legally astute. The ineffective is apparently unsure of himself or of the value of his case (conservative, staller, cautious, deliberate). He is torn between being gentle, obliging, patient, moderate, and forgiving, on the one hand, and demanding, "masculine", and argumentative on the other, and tends to be something of an idealist. The idealism may account for lack of versatility, adaptability, creativity, and wisdom.

a. Similarities Between Effective and Ineffective Cooperative Negotiators

Effective and ineffective cooperatives share five important characteristics. They are both seen as ethical, trustworthy, fair, personable, and experienced.

Selected Comparisons

	Effective/ Cooperative Rankings	Ineffective/ Cooperative Rankings
Ethical	(3)	(1)
Personable	(13)	(3)
Fair	(9)	(4)
Trustworthy	(6)	(7)
Experienced	(1)	(14)

Since these traits are shared by effective and ineffective cooperatives, they are apparently no guarantee of success as a negotiator. Rather, they should be interpreted as notable characteristics of the cooperative pattern of negotiation.

b. Differences Between Effective and Ineffective Cooperative Negotiators

It is helpful to compare the differences between effective and ineffective cooperatives:

SELECTED DIFFERENCES

Effective/ Cooperative with Rankings		Ineffective/ Cooperative with Rankings	
Realistic	(2)	Complaining	(2)
Rational	(4)	Gentle	(5)
Perceptive	(5)	Conservative	(6)
Convincing	(7)	Masculine	(8)
Analytical	(8)	Staller	(9)
Creative	(10)	Obliging	(10)
Self-controlled	(11)	Demanding	(11)
Versatile	(12)	Cautious	(12)
Adaptable	(14)	Deliberate	(13)
Wise	(15)	Patient	(15)
Objective	(16)	Moderate	(16)
Poised	(17)	Forgiving	(17)
Careful	(18)	Argumentative	(18)
Organizing	(19)	Idealist	(19)
Legally astute	(20)	Sociable	(20)

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2. Ineffective/

Competitive/ive traits, and strength of this compares with the effective attorney (2.82), and exper

The ineffective a type of person level bureaucrat him) and have tive/cooperative,

Headstrong
Impatient
Intolerant
Rigid
Loud

Greedy
Demanding
Unreasonable
Uncooperative
Arrogant
Tactless

Complaining
Sarcastic
Insincere

Devious
Conniving

2. Ineffective/Competitive Negotiators

Competitive/ineffective attorneys are characterized by negative traits, and can be generally described as *irritating*. The strength of this irritating characteristic (2.80 on a 3.00 scale) compares with the strength of the outstanding characteristics of effective attorneys: trustworthy for cooperative/effectives (2.82), and experienced for competitive/effectives (2.83).

The ineffective/competitive is also a case study, representing a type of person we have all met (perhaps trapped in some low-level bureaucratic position making life miserable for all around him) and have occasionally emulated. Like the ineffective/cooperative, he is complaining. He is also, in rank order:

CLUSTER ONE

Headstrong
Impatient
Intolerant
Rigid
Loud

CLUSTER TWO

Greedy
Demanding
Unreasonable
Uncooperative
Arrogant
Tactless

CLUSTER THREE

Complaining
Sarcastic
Insincere

CLUSTER FOUR

Devious
Conniving

Impulsive
Unpredictable
Evasive

Disinterested
Unconcerned
his client

CLUSTER FIVE

Suspicious
Distrustful
Unskillful in reading my cues

Maximizing s
Outdoing or
Obtaining pro

The ineffectiv
fective/competiti
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CLUSTER SIX

Unsure of value of the case
Took unrealistic opening position
Made a high opening demand
Used take-it-or-leave-it approach
Narrow range of bargaining strategies
Bluffer
Unwilling to share information
Disinterested in opponent's position
Took one position and refused to move from it
Used threats
Emotional
Quarrelsome
Rude
Hostile
Obstructive

The reason
highly irritating
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ant, argumentat
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be other element
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neys. Unlike co
thy, fair, person
share in common
tion, they are ra
sociable, dignifie
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seen as ineffecti
disregard of the
negotiating effe

CLUSTER SEVEN

Ineffective trial attorney

In describing
"My experience
er negotiations
favorable or rea
with an ineffect
opinion, . . .
futile when the
serving, unbend

CLUSTER EIGHT

Disinterested in the needs of my client
Did not consider my needs

Disinterested in my personality

Unconcerned about how opponent would look in the eyes of his client

CLUSTER NINE

Maximizing settlement for client

Outdoing or outmaneuvering you

Obtaining profitable fee for self

The ineffective/competitive shares only *one* trait with his effective/competitive counterpart: egotist. The problem of the ineffective/competitive is relatively easy to define: he is obnoxious. This type of negotiator rates extremely low on such professionally-mandated standards as ethical and trustworthy. They are also rated extremely low in rational, perceptive, realistic, and convincing.

The reason ineffective/competitive attorneys are seen as highly irritating may be explained in part by the nature of their other notable characteristics: they were seen as hostile, intolerant, argumentative, demanding, bluffing, headstrong, egotistical, and quarrelsome. Because these adjectives typify socially undesirable behavior, a question arises as to whether there may be other elements lacking from their behavior which account for their ineffectiveness. This question is brought into better focus by considering the ratings of the ineffective/cooperative attorneys. Unlike competitiveness, they are seen as ethical, trustworthy, fair, personable, and self-controlled, which are traits they share in common with cooperative/effective attorneys. In addition, they are rated as being gentle, patient, obliging, adaptable, sociable, dignified, and forgiving. Since cooperative/ineffective attorneys appear to observe the social graces and yet are still seen as ineffective negotiators, it appears that it is not regard or disregard of the social graces which determines an attorney's negotiating effectiveness.

In describing an ineffective/competitive, one lawyer wrote, "My experience with this attorney was not typical of most. Other negotiations have been open and candid with generally favorable or reasonable results." Reflecting on his negotiations with an ineffective/competitive, another attorney said, "In my opinion, . . . negotiations break down or are fruitless and futile when the opposing attorney's attitude is arrogant, self-serving, unbending, and unrealistic." A similar view is reflected

by the attorney who wrote, in describing his opponent, "In his initial evaluation of the merits, the inept negotiator sells himself on the virtues of his position, sets unrealistic objectives, and falls in love irreversibly with his position."

The adjectives we have been considering here suggest a possible hypothesis as to what makes ineffective/competitives ineffective. They lack such characteristics as perceptive, analytical, realistic, convincing, rational, experienced, and self-controlled, which both types of effective attorneys share in common. Indeed, it may be due to the positive effects of these attributes that competitive/effective attorneys are seen as ambitious, forceful, and dominant in their assertiveness rather than egotistical, argumentative, and bluffing. What is suggested here, then, is that a forceful person who has low regard for social amenities may function effectively as a legal negotiator *if* he can show himself to be perceptive, analytical, realistic, and self-controlled in negotiations. On the other hand, if the same forceful person does not demonstrate the skills of perceptiveness, analytical ability, and realistic evaluation of his position, yet tries to maximize his position by competitive tactics, he will be seen as argumentative, quarrelsome, and irritating, and as someone who, in lieu of skilled preparation, resorts to bluffing, bullying or evasive tactics in an effort to maximize his outcome.

Somehow, competitive/effective legal negotiators are able to apply their expertise without being seen as greedy or conniving, but rather as reasonable and realistic. Again, these comparisons seem to point to the quality of the legal work being performed, including the expertise with which an attorney has investigated the facts of his case, studied and understood the legal rules applicable to it, taken a realistic position with respect to the value of the case, and presented his position in ways that other attorneys accept as being rational, fair, and persuasive (convincing). It may follow that an attorney in this posture has little cause to be argumentative, quarrelsome, rude, and hostile, since he is prepared to effectively go forward on the merits of his position rather than to seek advantage by being personally offensive to the opposing attorney, or by stalling, bluffing, or quarreling.

IV. WHICH COOP

Individual negotiators have a basic approach to their own personal style of preference.

Still one wonders if an effective negotiator. There is no difference between competitive/cooperative and competitive/cooperative. Therefore, that is obtaining the high ratings. A greater number of than of the competitive

V. WHICH

As you studied effectiveness, you negotiator you tell many people, the author did) a clear competitive/ineffective. gamesmanship, and many people are likely to be very can be highly competitive we can all shift between under sufficient

Law students: the propriety of a play; that the negotiation, rather than ever, the data supported the capabilities true, then this kind desired. One attorney

IV. WHICH APPROACH IS MORE EFFECTIVE: COOPERATIVE OR COMPETITIVE?

Individual negotiators may not have much choice about the basic approach they use, which may be determined largely by one's own personality and experience. Attorneys should probably be more concerned with improving effectiveness within their style of preference than with changing styles.

Still one wonders whether one approach or the other is more effective. The answer provided by our Phoenix data is that there is no difference in degree of effectiveness attributed to effective/cooperatives and effective/competitives. They received comparably high ratings for effectiveness. It does not appear, therefore, that either approach has the edge when it comes to obtaining the highest (as compared to greatest number) of effectiveness ratings. On the other hand, there are a substantially greater number of effective attorneys of the cooperative type than of the competitive type.

V. WHICH TYPE OF NEGOTIATOR ARE YOU?

As you studied the various negotiating styles and levels of effectiveness, you probably began to ask yourself what type of negotiator you tend to be. This is an important question. For many people, the answer is clear. Some recognize (as the author did) a clear tendency to be a milquetoast, a classic cooperative/ineffective. Others see a clear pattern of successful gamesmanship, characteristic of an effective/competitive. But many people are not so sure; in one kind of situation they are likely to be very cooperative, but in other circumstances they can be highly competitive. In fact, the evidence suggests that we can all shift from one style to another or anywhere in between under sufficient encouragement or provocation.

Law students and attorneys often have strong feelings about the propriety of shifting "roles". Cooperatives are particularly prone to believe that it is dishonest to calculate which role to play; that the honest person must respond "naturally" to a situation, rather than plan in advance how to gain advantage. However, the data suggest that many effective attorneys have developed the capability to adopt either style convincingly. If this is true, then this kind of versatility is probably something to be desired. One attorney said, "Being a compromising person at

heart, I am becoming more impressed all the time how much more one can get by being mean and nasty (within bounds)." If some attorneys are learning to be "mean and nasty" to get their own way, then all attorneys need to learn to deal effectively with that strategy. It is not enough to rely on pure instincts. It is not enough to get mad and fight back with a vengeance. The effective negotiator needs to develop an approach that satisfies two conditions: (1) it should protect and be compatible with the interests of the client and society; and (2) it should provide adequate protection against the gamesmanship of others.

Versatility is more of an issue for lawyers than other professionals, because their primary function is to represent the legitimate interests of other people. If an attorney feels morally obligated to be irritating, hostile, and intolerant in all his dealings on behalf of clients, he will rarely serve their interests well because he is locking himself into a generally ineffective mode. Similarly, if an attorney feels morally obligated to be gentle, forgiving, patient, and unassertive in every situation (no matter how tough the opponent), he will by definition be unable to protect the client who is being pursued in an unscrupulous or overbearing way. This problem cannot be resolved here, but should be kept in mind for later discussion.

CHAPTER NOTES

1. *Further Thoughts About Negotiator Effectiveness*

The lack of consensus in the literature about the meaning of "effectiveness" in negotiation creates a problem for every researcher and practitioner. Anyone searching the authorities for definitions is forced to choose between inconsistent definitions and assumptions. In preparing our research, we developed a set of hypotheses about effectiveness, and where we found conflicting theories we opted for those favoring a cooperative model of effectiveness. These hypotheses are important *NOT* because they were correct (they were not correct), but because they led us to the classic error that virtually all researchers and commentators in the field of negotiation generally have made: The error of taking observations or hypotheses that are valid for *SOME* negotiators, and generalizing from them as if they were valid for all negotiators. Our hypotheses make this error in favor of

"cooperative" behaviors of cooperation here.

We hypothesized the following informal rules:

A. *Dynamic*

1. make serious gain in goals
2. when preparing; rarely;
3. avoid emotional
4. maintain
5. be prepared
6. avoid decisions impolite and
7. avoid interests of
8. avoid causing

B. *Effective*

be distinguished on traits such as

1. legal accuracy
2. preparation
3. reputation
4. creativity
5. skillful use of reciprocity flow; and
6. awareness of position.

C. *Objective*

suits lawyers try that, for effectiveness

"cooperative" behavior. Because they are fairly good statements of cooperative assumptions, they are worth reproducing here.

We hypothesized that among effective attorneys the following informal rules are observed:

A. *Dynamics*. Both sides will:

1. make serious attempts to reach agreement (will bargain in good faith);
2. when presenting a client's position, represent it accurately;
3. avoid emotionalism;
4. maintain trust, candor, confidentiality, and flexibility;
5. be prepared on the facts and on the applicable law;
6. avoid deception, insults, flagrant lies, rudeness, and impolite acts;
7. avoid interrupting or obstructing the routinized aspects of interpersonal relations; and
8. avoid causing the other attorney to lose face.

B. *Effectiveness Traits*. Effective legal negotiators can be distinguished from the less effective by superior ratings on traits such as:

1. legal acumen (skill in knowing and applying the law);
2. preparation;
3. reputation and ability as trial attorneys;
4. creativity (ability to invent or create new alternatives);
5. skillful use of tactics such as commitment, toughness, reciprocation, initial offers, and control of information flow; and
6. awareness of and skillful use of the strength of their position.

C. *Objectives*. In examining the objectives or end results lawyers try to achieve in negotiations, we hypothesized that, for effective negotiations, the dollar value of the out-

come for the client would be important, but that they would also take into account such concerns as:

1. the client's overall needs and desires;
2. the need for a favorable economic return to the negotiator; and
3. the need to maintain a favorable reputation within the bar.

D. *Variations Within the Bar.* We also hypothesized that there are more specific or technical expectations among practicing lawyers, and that these develop in unique ways within geographic areas and within legal specialties. For example, attorneys specializing in personal injury work in a particular city or region of the country develop a set of informal practices and assumptions different from the informal practices of lawyers within other specialties. This creates difficulties for attorneys who are not specialized, who are new to practice, or who come from other regions of the country, because failure to know and observe these unwritten rules reduces an attorney's negotiating effectiveness.

E. *Global Hypothesis.* We summarized these various concerns into a global hypothesis, which was stated as follows:

"the most effective legal negotiators will be characterized by positive social traits and attitudes and by the use of more open, cooperative, and friendly negotiating strategies."¹⁴

These projections were generally correct in describing the attitudes and skills of one type of effective legal negotiator, but they failed completely to anticipate the possibility of *two* major patterns, the competitive being left out.

2. *Research on Negotiation in Other Disciplines*

Outside of the legal context there has been an explosion of interest in the phenomenon of negotiation. Over the past thirty years the conception of negotiation has grown from that of an etherial art practiced discretely by diplomats to that of a fundamental decision-making process in democratic societies. In this short time span, the amount of scholarly attention paid to nego-

14. Williams, England, Farmer, and Blumenthal, "Effectiveness in Legal Negotiation", in Harry T. Edwards and James J. White, *The Lawyer As A Negotiator* (West, 1977).

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3. *Predictability*

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tiation in such disciplines as economics, sociology, psychology, communications, political science, and international relations has increased significantly. Although this interest is still relatively recent and much of the literature is still somewhat removed from practical application, it has nevertheless produced a wealth of experimental and theoretical work that is of potential value to the lawyer. Equally important, this work has brought with it the development of research techniques that can be directly applied by legal scholars to the legal negotiating context.

Four particularly useful collections are:

- O. Young, *Bargaining* (1975)
- J. Rubin & B. Brown, *The Social Psychology of Bargaining* (1975)
- I. W. Zartman, *The 50% Solution* (1976)
- D. Druckman, *Negotiations* (1977)

For persons interested in labor negotiations, see:

- I. Morley & G. Stephenson, *The Social Psychology of Bargaining* (1977) (published in Great Britain by George Allen & Unwin)

3. *Predictability of Negotiating Behavior*

All human beings have characteristic patterns of behavior. We see evidence of this in the habits and mannerisms of close friends and family members. We would see evidence of these patterns in others if we could observe them long enough and with sufficient attention to detail.

Coaches in college and professional football take advantage of this principle, and the better prepared among them apply it when preparing for each team they meet. The way they discover the patterns of an opposing coach is not necessarily by studying the coach, but by studying recent films of his games and charting the offensive and defensive plays executed by his team. Typically a coach will have a rather small number of basic plays, and his game is built around variations on those plays. One coach has referred to this set of plays as the "comfort zone", which consists of the plays a team does best and the coach feels most comfortable with.

Lawyers can apply this concept to negotiations, and begin to look for the patterns being followed by each opponent they face. These patterns generally represent a "comfort zone" for that negotiator, within which he or she is likely to want to keep the negotiation.

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Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style

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Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style

Andrea Kupfer Schneider†

I. Measuring Negotiation Effectiveness	148
A. The 1976 Williams Study	148
B. The Need for a New Study	150
1. Demographics	150
2. New Theories and Confusing Terms	150
C. Updates to the Study Instrument	152
1. Rating Scales	153
a) Adjective Scales	153
b) Bipolar Scales	154
c) Goals and Objectives	155
d) Effectiveness Rating	155
2. Self-Assessment Section	156
3. Negotiation Training and ADR Experience ...	156
II. Background and Population Characteristics	157

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A.	Administration of the Survey	157
B.	Demographics	158
1.	Response Rates and Geography	158
2.	Diversity	158
3.	Experience Level	159
4.	Subject Matter	160
III.	Substantive Results of the New Study	162
A.	Problem-Solving and Adversarial Styles of Negotiating	162
1.	Adjective Ratings	163
2.	Bipolar Ratings	164
3.	Goals	165
4.	Effectiveness Ratings	166
B.	Judging the Effectiveness of Problem-Solving Behavior—Two Approaches	167
1.	Two Cluster Analysis	168
a)	Adjective Ratings	168
b)	Bipolar Ratings	168
c)	Goals	169
2.	Three Cluster Analysis	171
a)	Adjective Ratings	171
b)	Bipolar Ratings	173
c)	Goals	174
d)	Effectiveness	174
C.	Judging the Effectiveness of Adversarial Behavior—Two Approaches	176
1.	Two Cluster Analysis	176
a)	Adjective Ratings	176
b)	Bipolar Ratings	177
c)	Goals	179
2.	Four Cluster Analysis	179
a)	Adjective Ratings	180
b)	Bipolar Ratings	181
c)	Goals	183
d)	Effectiveness	184
IV.	Changes in Effective Negotiating Over the Past 25 Years	184
A.	Effective Problem-Solving	185
B.	Effective Adversarial	186
C.	Effective Behavior on the Goals Ratings	187
D.	Effectiveness Regardless of Style	187
E.	Comparing Effectiveness Ratings over Time	189

V. Potential Limitations on the Study	190
A. Self-Selection	190
B. Projection and Punishment	192
C. The Definition of Effectiveness	195
VI. Conclusion	196
VII. Appendices	198
A. Appendix A	198
B. Appendix B	210
C. Appendix C	219
D. Appendix D	231

Dwight D. Eisenhower once said, "Firmness in support of fundamentals, with flexibility in tactics and method, is the key to any hope of progress in negotiation."¹ While he was referring to foreign policy, this advice could equally apply to lawyers in their day-to-day negotiations. Many lawyers, however, find themselves drawn more to the words of Niccolò Machiavelli: "The prince who relies upon their words, without having otherwise provided for his security, is ruined"² In other words, trust no one.

These two very different approaches to negotiation are mirrored in popular literature regarding negotiation as well. Best-sellers like *Getting to Yes*³ and *Bargaining for Advantage*⁴ stress the importance of understanding the other side, being creative, and using legitimate standards, whereas *Guerilla Negotiating*⁵ and *Sue the Bastards!*⁶ market themselves to people more concerned with crushing the other side than working with them.

Even the body of academic literature on negotiation sends mixed messages about negotiation styles. ADR textbooks outline several approaches to negotiation without necessarily trumpeting one over the other.⁷ Students lament that while this might be helpful in

1. *Text of Eisenhower Speech on His European Trip*, N. Y. TIMES, September 11, 1959, at 8.

2. NICCOLÒ MACHIAVELLI, *THE PRINCE* (W. K. Marriott trans., Alfred A. Knopf 1992).

3. ROGER FISHER ET AL., *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2d ed. 1991).

4. G. RICHARD SHELL, *BARGAINING FOR ADVANTAGE: NEGOTIATING STRATEGIES FOR REASONABLE PEOPLE* (1999).

5. JAY CONRAD LEVINSON ET AL., *GUERRILLA NEGOTIATING: UNCONVENTIONAL WEAPONS AND TACTICS TO GET WHAT YOU WANT* (1999).

6. GERARD P. FOX & JEFFREY A. NELSON, *SUE THE BASTARDS!* (1999).

7. LEONARD L. RISKIN & JAMES E. WESTBROOK, *DISPUTE RESOLUTION AND LAWYERS* 170-206 (2d ed. 1997); STEPHEN B. GOLDBERG ET AL., *DISPUTE RESOLUTION: NEGOTIATION, MEDIATION, AND OTHER PROCESSES* 19-71 (3d ed. 1999); CHARLES B.

outlining their choices, it provides little guidance as to what to do. For every text that advocates problem-solving behavior,⁸ another touts the advantages of sitting in bigger chairs than your opponents⁹ or the dangers of being too idealistic in negotiation.¹⁰

Articles advocating adversarial behavior confirm the latent fears of most young lawyers—what if I am too nice? While there are plenty of tales of lawyers being taken advantage of—they were too nice, they just wanted to get along, etc.—we do not have similar tales about the dangers of being unpleasant or combative. Few law students are afraid of being too adversarial. After all, society (and clients) seems to expect this behavior. Given the choice between being too soft and too hard, most lawyers would opt for being too hard. They might be unpleasant jerks, but at least they did “what they were supposed to do.”

Popular culture feeds into lawyers’ tendencies to be more adversarial. Movies and television often depict legal gamesmanship as the primary focus of the legal practice; lawyer-characters communicate with an “in your face” attitude meant to convey power more than knowledge.¹¹ These are the models of lawyering to which law students have the most exposure. Adversarialism pervades other aspects of the legal culture as well.¹² Politics and even the press have also become more adversarial in recent years.¹³ Public figures are more likely to attack than accommodate; more likely to dispute than discuss.

Law school provides an opportunity to modify this trend, but the opportunity is too often wasted. First, the first year curriculum reinforces the importance of adversarialism by the very cases it teaches. A first year curriculum typically presents only the small

WIGGINS & L. RANDOLPH LOWRY, *NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS* 43-97 (1997).

8. FISHER ET AL., *supra* note 3; MAX H. BAZERMAN & MARGARET A. NEALE, *NEGOTIATING RATIONALLY* (1992).

9. Michael Meltsner & Philip G. Schrag, *Negotiating Tactics for Legal Services Lawyers*, in *NEGOTIATION AND SETTLEMENT ADVOCACY: A BOOK OF READINGS* 52 (1997).

10. See James White, *The Pros and Cons of Getting to Yes*, 34 J. LEGAL EDUC. 115, 116-18 (1984).

11. See, e.g., *Ally McBeal* (Fox 2001), *JAG* (CBS 2001), *The Practice* (ABC 2001), *LIAR LIAR* (1997), *THE FIRM* (1993), *THE CLIENT* (1994), *A FEW GOOD MEN* (1992).

12. See Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture: A Tale of Innovation Co-opted or “The Law of ADR,”* 19 FLA. ST. U. L. REV. 1, 1-2 (1991); Leonard Riskin, *Mediation and Lawyers*, 43 OHIO ST. L.J. 29, 45 (1982).

13. See DEBORAH TANNEN, *THE ARGUMENT CULTURE: MOVING FROM DEBATE TO DIALOGUE* 27-130 (1998).

percentage of disputes that are so contentious that they are litigated to decision at the appellate level, which focuses students on adversarial combat as the preferred means of dispute resolution while neglecting the other 95% of cases that are resolved prior to litigation.¹⁴

Second, the teaching methodology still used by some first year professors appears quite adversarial to the students.¹⁵ When the Socratic method works, the result is a challenging, enjoyable battle of wits. When it does not work for the student, it is highly uncomfortable and embarrassing. Either way, it is combat—it just depends on how the student responds. This, too, sends the signal that adversarialism is acceptable and expected.

Finally, our ethical code provides little guidance as to what type of behavior is appropriate in negotiations.¹⁶ The duty to zealously represent is often interpreted to mean that lawyers should negotiate by any means possible.¹⁷ While the ethical rules prohibit outright fraud,¹⁸ they explicitly permit exaggeration and puffed up claims.¹⁹ The code therefore does not discourage the expectation of adversarial behavior.

This article provides a current look at how lawyers actually negotiate and should serve to shatter the myth that adversarial bargaining is more effective and less risky than problem-solving. The data reported herein is based on a wide-ranging study that asked lawyers to evaluate the negotiation styles and the resulting effectiveness of other lawyers. First, the study shows that effective negotiators exhibit certain identifiable skills. For example, the research indicates that a negotiator who is assertive and empathetic is perceived as more effective. The study also reveals distinctive characteristics of ineffective negotiators, who are more likely to be stubborn, arrogant, and egotistical. Furthermore, when this adversarial negotiator is unethical, he is perceived as even less

14. See Janet Cooper Alexander, *Do the Merits Matter? A Study of Settlement in Securities Class Actions*, 43 STAN. L. REV. 497, 524-25 (1991).

15. See, e.g., Alice K. Dueker, *Diversity and Learning: Imagining a Pedagogy of Difference*, 19 REV. LAW & SOCIAL CHANGE 101, 107 (1991-92); Lani Guinier et. al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 45-48 (1994); Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System?*, 35 J. LEGAL EDUC. 167 (1986).

16. See Gerald B. Wetlaufer, *The Ethics of Lying in Negotiation*, 75 IOWA L. REV. 1219 (1990); see also Jonathan R. Cohen, *When People are the Means: Negotiating with Respect* 14 GEO. J. LEGAL ETHICS 739 (2001).

17. MODEL CODE OF PROF'L RESPONSIBILITY Canon 7 (1979).

18. MODEL RULES OF PROF'L CONDUCT R. 4.1 (2001).

19. *Id.*

effective. Third, the study found that problem-solving behavior is perceived as highly effective. This information should help focus negotiation training toward the task of learning these new skills or modifying ineffective habits.

The first section of this article reviews the original Williams study examining negotiation styles conducted in 1976.²⁰ This is followed by an outline of relevant changes in the negotiation field since that time and the corresponding revisions made to the original study intended to reflect those changes.

The second section discusses how the study was administered and the demographic characteristics of the population.

The third section analyzes the substantive results of the survey employed. I first discuss the results and implications of the study when lawyers are divided by negotiation style—problem-solving and adversarial. I then focus on the skills that comprise effective problem-solving and adversarial negotiation. When the assessed lawyers are grouped by negotiation style, the most effective are the problem-solvers. Those attorneys who were more cautious in their approach to problem-solving and less able to implement this strategy were perceived as much less effective than their “true” problem-solving peers. Strikingly, the perceived difference in adversarial effectiveness appeared to be directly linked to ethical behavior. Those attorneys who are both ethical and adversarial are perceived as more effective than unethical adversarial attorneys.

The fourth section compares this study’s results with those from Williams’ 1976 study. The comparison indicates that adversarial attorneys have become more extreme and less effective in the last twenty-five years.

Finally, the fifth section considers some inherent problems associated with this type of study, which relied both on voluntary responses and lawyers’ perceptions of others.

I. MEASURING NEGOTIATION EFFECTIVENESS

A. *The 1976 Williams Study*

While much has been written in theory as to what makes an effective negotiator, there have been few empirical studies of the negotiation behavior of lawyers. The most frequently cited and well-

20. GERALD R. WILLIAMS, *LEGAL NEGOTIATION AND SETTLEMENT* 15-46 (1983).

known empirical study is that by Gerald Williams in 1976.²¹ Williams sent a survey to 1,000 lawyers in the Phoenix area asking them about their most recent negotiation experience. Each attorney was asked to use three sets of scales to rate the negotiation skills of the other party's lawyer. The first scale was a list of seventy-five adjectives on which attorneys were rated from zero (not characteristic) to five (highly characteristic). The second scale was a list of forty-three bipolar adjective pairs from which attorneys could rate the other side from one (extremely characteristic of one end of the pole) to seven (extremely characteristic of the other end of the pole). Finally, the third scale was a list of twelve potential goals and objectives that the respondent was asked to attribute to his assessed counterpart. After the adjective ratings, the attorney was asked to rate the general effectiveness of the assessed attorney on a scale of one (ineffective) to nine (highly effective).

The second section of the survey asked for a general description of the subject matter of the negotiation and an evaluation of the outcome. Did the case settle if it was a legal dispute? Will the parties likely comply if it was a transaction?

This study was not only the basis for a textbook,²² but also is still the premier empirical study of negotiation styles and effectiveness. It has been cited in every major negotiation and ADR textbook.²³ Williams and his co-authors concluded that there were two primary styles of negotiation, which they labeled "cooperative" and "competitive." These styles were so pervasive that only 11% of the bar population studied did not fall into one of these categories. While a more detailed analysis of Williams' results will follow, this table introduces the positive relationship between the problem-solving style of negotiation and perceived effectiveness found in the 1976 study.

NUMBER OF LAWYERS PER GROUP BY EFFECTIVENESS

	Ineffective	Average	Effective
Cooperative (now labeled Problem-Solving)	7	84	133
Competitive (now labeled Adversarial)	28	35	21

21. WILLIAMS, *supra* note 20.

22. WILLIAMS, *supra* note 20.

23. See, e.g., RISKIN & WESTBROOK, *supra* note 7 at 205-06; GOLDBERG ET AL, *supra* note 7, at 63; JOHN S. MURRAY ET AL., PROCESSES OF DISPUTE RESOLUTION: THE ROLE OF LAWYERS 117 (2d ed. 1996).

Based on these numbers, and his other survey results, Williams concluded that:

[N]either pattern has an exclusive claim on effectiveness. Use of the cooperative pattern does not guarantee effectiveness, any more than does the use of the competitive pattern. An attorney can be very effective or very ineffective within the constraints of either. The higher proportion of cooperative attorneys who were rated effective does suggest it is more difficult to be an effective competitive negotiator than an effective cooperative.²⁴

B. *The Need for a New Study*

It has been twenty-five years since Williams conducted his ground-breaking research. In the meantime, much has changed in the legal profession and in legal education. There are several specific issues that I believed a contemporary study should address.

1. *Demographics*

When I read the Williams study in my first year of law school, one of the first details that leapt off the page was a footnote to the chart that depicted the results of the study. To demonstrate the number of attorneys in each category, a small man was used. The footnote explained that a male figure was used because less than 3% of the sample population was female.²⁵ I immediately wondered how a survey conducted today would result. I was also curious about minority lawyers and whether there would be discernible differences in negotiation styles based on a more diverse population.

2. *New Theories and Confusing Terms*

The Williams study was conducted just as the ADR movement began to explode in the U.S. The publications of *Getting to Yes*²⁶ and *Toward Another View of Legal Negotiation*²⁷ crystallized academic

24. WILLIAMS, *supra* note 20, at 18-19. Williams and his colleagues updated their survey in 1986 and published the results of "Phoenix II" in 1991. Lloyd Burton et al., *Feminist Theory, Professional Ethics, and Gender-Related Distinctions in Attorney Negotiating Styles*, 1991 J. DISP. RESOL. 199. As this second survey was not analyzed using the same cooperative-competitive measurements, comparisons in this article are to the original 1976 study. However, the current survey instrument was based on the revised instrument the group used in 1986. These changes are described below in conjunction with my own changes to the original survey.

25. WILLIAMS, *supra* note 20, at 19. It also noted that none of the women were rated as "ineffective."

26. FISHER ET AL., *supra* note 3.

27. Carrie Menkel-Meadow, *Toward Another View of Legal Negotiation: The Structure of Problem Solving*, 31 UCLA L. REV. 754 (1984).

negotiation theory by promoting a problem-solving method of negotiation. Would the growing popularity of ADR and problem-solving approaches in law schools and legal practice change the negotiation behavior of lawyers and how other lawyers perceived them?

As the body of negotiation-related literature grows, we are beginning to experience label confusion. Williams divided the lawyers in his study into two group—cooperative and competitive.²⁸ Other negotiation literature has also referred to two different styles or techniques of negotiating, but it does not always use the same terminology. Carrie Menkel-Meadow divided behaviors into problem-solving and adversarial.²⁹ David Lax and James Sebenius categorized negotiation strategies as value-creating and value-claiming.³⁰ Roger Fisher outlined three types of behavior: the hard bargainer, the soft bargainer, and the preferred alternative of principled bargaining.³¹ Donald Gifford also lists three types of behavior: competitive, cooperative and integrative.³² In the new book *Beyond Winning*, the authors outline four types of behavior—accommodating, avoiding, competing, and problem-solving.³³ Yet another tool for categorizing behavior, the Thomas-Kilman scale, describes five types of behavior when dealing with conflict: accommodating, avoiding, concerned with fairness, concerned with relationships, competitive.³⁴ What underlying skills are encompassed in these labels?³⁵ Are all of these labels describing the same behaviors? Are some consolidated with others in the two or three category modes?

28. He noted that 11% of the respondents fell outside these two groups but did not label them separately. WILLIAMS, *supra* note 20, at 19.

29. Menkel-Meadow, *supra* note 27.

30. DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN* (1986).

31. FISHER ET AL., *supra* note 3.

32. Donald Gifford, *A Context-Based Theory of Strategy Selection*, 46 OHIO ST. L. J. 41, 43 (1985).

33. ROBERT MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* 50-68 (2000).

34. Ralph H. Kilman and Kenneth W. Thomas, *Developing a Forced-Choice Measure of Conflict Handling Behavior: The 'Mode' Instrument*, 37 EDUC. & PSYCHOL. MEASUREMENT 309 (1977); see also G. Richard, *Bargaining Styles and Negotiation: The Thomas-Kilman Conflict Mode Instrument in Negotiation Training*, 17 NEGOTIATION J. 155 (2001).

35. Richard Shell argues that a negotiator cannot really change their style dramatically. Instead, he advises "Just be yourself—and work at using the style you have effectively." SHELL, *supra* note 4, at 9.

I think the seed of label confusion was sown in the original Williams study. Published in 1982, the study appeared before the terminology of principled bargaining³⁶ or problem-solving³⁷ had taken hold. Therefore, Williams relied on labels from the social sciences that seemed to describe the two groups—cooperative and competitive. While there is little question that competitive equals hard bargainer equals adversarial, the labels at the other end of the spectrum are not as clear. Problem-solving as an integrative approach is similar to principled bargaining, but few scholars or students today would equate “cooperative” with all three. In contrast, “cooperative” seems soft, acquiescent, willing to concede in order to get along. “Cooperative” also suggests a willingness to split the pie rather than focus on making it larger. Perhaps not in 1982, but clearly by now, lawyers look at the label “cooperative” and fear becoming the worst kind of doormat.

Two problems arise as a result of this ambiguous terminology. First, lawyers read the study results focusing on the labels without understanding the actual skills that the labels imply. Lawyers make false assumptions about how lawyers were actually described (including descriptors such as maximizing settlement, experienced, rational, and analytical) and assume that cooperative only describes personable push-overs. Thus, when they read the Williams study that says 60% of all cooperative negotiators are considered effective, they fear becoming the other 40%. Second, because of their fears about the cooperative label, they may not fully weigh the far greater risks of being a competitive negotiator. Only 25% of competitive negotiators were considered effective, yet this number is hardly discussed. The Williams study needed to be updated to reflect current terminology and usage, making its results more persuasive to a contemporary audience.

C. *Updates to the Study Instrument*

There were three goals in updating the study.³⁸ The first was to add new adjectives, bipolar pairs and goals that reflected the latest theoretical developments in negotiation. The second was to add a self-evaluation section so that I could compare the respondents' goals to those they attributed to their counterparts. The third was to measure the extent of negotiation training and ADR experience in order

36. FISHER ET AL., *supra* note 3.

37. Menkel-Meadow, *supra* note 27.

38. The original study can be found in WILLIAMS, *supra* note 20, at Appendix I.

to better understand the respondents' backgrounds and perspectives. Finally, I removed any questions from the study that Williams had not focused on in his analysis.³⁹

1. *Rating Scales*

Williams' rating scales were developed from social science personality rating scales, with additions made based on interviews and videotapes of lawyers negotiating.⁴⁰ My goal was to update these scales to include the modern vocabulary used by negotiation scholars, particularly the vocabulary used in describing problem-solving behavior. To that end, I shared the survey with numerous colleagues in the field soliciting their edits and suggestions.⁴¹

a) *Adjective Scales*

The entire list of eighty-nine adjectives used in the study can be found in Appendix A. The following adjectives were added to the new survey: accommodating, angry, arrogant, assertive, compassionate, confident, empathetic, flexible, listener, sensitive, and stubborn.⁴² The new terms come from several places. "Assertive" and "empathetic" are found in *The Tension Between Assertiveness and Empathy*,⁴³ which contends that assertiveness and empathy are not incompatible, and that both are important tools of a skilled negotiator. Both "accommodating" and "avoider" were added to the study based on the Thomas-Kilman scale, which measures five different types of responses to conflict.⁴⁴ Other words were added to look for specific skills, such as "listener" and "flexible," while the rest searched for particular personality types. "Caring," "compassionate," and "sensitive" were added to capture the empathetic side of problem-

39. In addition to condensing some of the demographic and case description questions, I also eliminated questions comparing the attorney's effectiveness in this negotiation to the attorney's general reputation and questions regarding the outcome of the negotiation (i.e., Were the parties satisfied? If this was a transaction and you settled, would the parties be likely to perform the contract? etc.). The published analysis in the Williams study did not directly address the answers to these questions, leaving no basis for comparison.

40. See Williams for a complete discussion of the methodology. He cites to Gough and Heilbrun (1965) for the adjective checklist and Sherwood's Self Concept Inventory (1962) for the bipolar pairs. WILLIAMS, *supra* note 20, at 137-39.

41. My thanks again to Richard Birke, Janine Geske, Christopher Honeyman, Russell Korobkin, Bobbi McAdoo, Carrie Menkel-Meadow and Leonard Riskin for reviewing the study.

42. See Appendix A for the full list of adjectives used.

43. Robert Mnookin et al., *The Tension Between Assertiveness and Empathy*, 12 NEGOTIATION J. 217 (1996).

44. Kilman & Thomas, *supra* note 34.

solving behavior. "Angry," "arrogant," and "stubborn" were added to further clarify the definition of adversarial behavior.

b) *Bipolar Scales*

The survey's second rating tool was a scale of bipolar pairs describing potential negotiation strategies. The study listed the strategies as opposite polar choices and each attorney was rated as to how closely the attorney came to one pole or the other. The list of sixty-three bipolar pairs used in the study can be found in Appendix A. As with the adjective ratings, I added some pairs to the bipolar scales to facilitate the search for problem-solving behavior as currently conceptualized in the negotiation literature. The new bipolars are as follows:

1. Did not demonstrate accurate understanding of my client's underlying interests/Demonstrated accurate understanding of my client's underlying interests
2. Viewed negotiation as a process with winners and losers
Viewed negotiation as a process with a possible mutually beneficial outcome
3. Conceptualized problem in terms of bargaining between positions/Conceptualized problem in terms of underlying interests, motivations, and needs
4. Conceptualized problem solely in terms of legal entitlements/
Used legal entitlements as one of several factors in determining a solution
5. Had a broad view of the case/Had a narrow view of the case

Understanding the other side in the negotiation is a key component in problem-solving⁴⁵ and was tested by the first pair. Similarly, bipolars two, three, and four ask how the other lawyer appeared to conceptualize the negotiation process based on his or her negotiation behavior. All three of these characteristics: (1) viewing the process as one with winners and losers versus one with a possibly mutually beneficial outcome; (2) conceptualizing the problems in terms of bargaining between positions versus terms of underlying interests, motivations, and needs; and (3) conceptualizing the problem solely in terms of legal entitlements versus using legal entitlements as one of several factors in determining a solution; come from the literature describing problem-solving behavior.

45. See FISHER ET AL., *supra* note 3; ROGER FISHER ET AL., *BEYOND MACHIAVELLI: TOOLS FOR COPING WITH CONFLICT* (1994).

Finally, Professor Leonard Riskin's article on mediators' orientation⁴⁶ provided the last new bipolar pair. Professor Riskin's grid uses two measurements of mediator skills. The mediator may tend toward a more facilitative approach or a more evaluative approach. The other axis describes how the mediator views the problem. A narrow view of the problem solely looks at the legal issues in dispute. A broader view will include the business, personal and professional interests, and, at the broadest end, the community interests at stake in this dispute. This broad-narrow axis can clearly be applied to negotiation and can also help to indicate the extent of one's problem-solving behavior. Without a broader view of the problem that includes at least related business issues, value creating becomes more difficult.

c) *Goals and Objectives*

The last ratings scale was used to examine possible goals the other attorney brought to the negotiation. The list of fourteen goals used in the survey can be found in Appendix A. The respondents were also asked about their own goals and objectives. I added two goals to the original survey: (1) maintaining or establishing good relations between the parties; and (2) reaching an agreement that met the underlying interests of both sides. Again, these were added in light of current problem-solving theory to see whether these goals might be perceived and measured in a negotiation.

d) *Effectiveness Rating*⁴⁷

After completing the three ratings scales, respondents were then asked to rate the assessed attorney on general effectiveness. This scale and its prompt were left in their original form to effectuate a better comparison between Williams' results and mine:

Please rate the selected attorney's effectiveness as a negotiator compared with other attorneys with whom you have negotiated. Note that the scale ranges from 1 to 9 and is divided into three parts labeled "Effective," "Average," and "Ineffective." Your rating will thus indicate your general evaluation of the attorney's effectiveness, and the degree to which you saw him or her as effective, average or ineffective.

Please rate this attorney's performance in the negotiation by circling a number on the scale below.

46. Leonard L. Riskin, *Understanding Mediators' Orientation, Strategies and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 18-26 (1996).

47. The lack of clarity as to the meaning of effectiveness is discussed in section IV, part C, *infra*.

INEFFECTIVE NEGOTIATOR			AVERAGE NEGOTIATOR			EFFECTIVE NEGOTIATOR						
/	1	2	3	/	4	5	6	/	7	8	9	/

Directly following the rating scale respondents were asked why they felt the other attorneys were ineffective, average or effective. Their answers will be used throughout this article to illuminate further the results.

2. *Self-Assessment Section*

The new study includes several sections designed to collect more information on the population sample. One of the methodological criticisms of the Williams study⁴⁸ is that it measured the respondents' perceptions of the other negotiator's skill rather than using some more objective means. Respondents may have been predisposed to rate an attorney similar to themselves as effective and one unlike themselves as ineffective. In order to control for this possibility in the new study, attorneys were asked to assess their own goals in the negotiation. This section used the same list of goals and objectives against which the assessed attorneys were measured to better detect any "like-minded" effect. I also added a question in the demographic section asking respondents upon what was their information based (i.e., did you guess at how many lawyers are in their firm, did you consult an outside source, or did they tell you?).

3. *Negotiation Training and ADR Experience*

The new version also asked respondents whether they had received any negotiation training and about any other involvement with alternative dispute resolution. The relevant section asked whether respondents: (1) took a negotiation course in law school; (2) if no, why not; (3) if yes, what were the goals of the class; and (4) if yes, was the class helpful? The same series of questions were then asked regarding Continuing Legal Education (CLE) negotiation classes as well. The "ADR experience" section asks: (1) which methods of ADR the respondent has used and how often; (2) which party usually proposes the use of ADR; (3) whether the respondent has served as an ADR neutral and, if so, how often; and (4) if the respondent is a member of any ADR organizations and, if so, which ones?

Information about the respondents' exposure to negotiation training and ADR was collected for two reasons. First, it provides a demographic snapshot of the bar. How widespread is negotiation

48. See Section IV *infra* in general for criticisms of this study.

training at law schools and in the bar? How broad and how deep is ADR experience in the bar? Second, such information helps to address criticisms of the Williams study. There is clearly a self-selection factor to consider in a study like this, the findings of which are dependent on anonymous attorneys choosing to take the time and effort to complete a survey. Arguably, attorneys will be more likely to do so if they are avid students of negotiation or otherwise active in the ADR movement. This information about the sample gives us a clearer picture of exactly who did choose to take the time to send this survey back and can help us gauge to what extent these results can be generalized to the bar at large.

Finally, the survey asked the race of the respondents and assessed attorneys. Given the increasing diversity of the bar, differences in responses between members of different racial groups could be statistically significant. At the very least, the information would further clarify our picture of the sample.

II. BACKGROUND AND POPULATION CHARACTERISTICS

A. *Administration of the Survey*

The survey was sent to 1,000 lawyers in Milwaukee and 1,500 lawyers in Chicago in January 1999. The Wisconsin State Bar is integrated, meaning that every lawyer who practices in the state must belong to the bar association. Thus assured that all practicing lawyers would have an equal chance of being included in the study, I asked the bar association to generate a random list of 1,000 attorneys practicing in Milwaukee County and two neighboring counties. This list accounted for approximately one of every six lawyers practicing in the area. In Illinois, practicing attorneys are not required to belong to the Illinois State Bar Association. I was advised that it was more likely that lawyers practicing in Chicago would belong to the Chicago Bar Association than the Illinois State Bar. Therefore, I asked the Chicago Bar Association for a random list of 1,500 lawyers practicing in Chicago and nearby suburbs. This list comprised one of every seven lawyers practicing in the area.

Lawyers on the lists received three items. First, two weeks prior to sending the survey, I sent a letter introducing the study and encouraging their participation.⁴⁹ The survey was then sent with another cover letter asking for participation. Finally, two weeks later, a

49. Several colleagues and the social scientists with whom I was working at the Institute for Survey and Policy Research recommended this approach to achieve a higher response rate. In Milwaukee, the advance letter was sent from the former

reminder post card was sent to all those on the list. Because the surveys were completely anonymous,⁵⁰ there was no way to tell who had actually returned the survey.

B. *Demographics*

1. *Response Rates and Geography*

While 727 attorneys returned their surveys for an overall response rate of 29%,⁵¹ there was a notable difference in responsiveness between Chicago and Milwaukee lawyers. Of the 1,000 Milwaukee lawyers, 395 responded. This comparatively high response rate of almost 40% is understandable given a number of factors including loyalty to the local law school and the prestige of the letter writers in the Milwaukee area. On the other hand, the 269 Chicago attorneys who responded constituted a return rate of 18%.⁵² The survey results discussed herein are based on all responses to the survey, 40% of which came from Chicago and 60% from Milwaukee.

2. *Diversity*

The growing diversity of the bar was reflected in both the gender and racial make-up of the responding attorneys and their counterparts. Over 30% of respondents were women. However, women comprised only 17.8% of the attorneys whose negotiation behavior was evaluated. This discrepancy may merely indicate that women were more likely to respond to the survey,⁵³ since the 17.8% is more reflective of the actual female population of the bar. Nonetheless, this percentage is clearly higher than in previous studies. The first Williams

president of the Milwaukee Bar Association who was a respected retired judge and practitioner and a former Wisconsin Supreme Court Justice serving on Marquette's faculty. In Chicago, this letter was signed by both the president and by the executive director of the Chicago Bar Association.

50. This was important both to ensure complete retention of attorney-client privilege and to comply with the Institutional Review Board guidelines overseeing human experimentation. Most importantly, it was hoped that the promise of complete anonymity would make attorneys more likely to respond to the survey.

51. Though a majority of attorneys did not respond, the response rate for the original Williams study which used follow-up telephone calls to encourage participation was only 35%. Here it was felt that phone calls may compromise anonymity, so no follow-up calls were made. The second Williams study conducted in 1986 had a return rate of 23%.

52. Twenty-six respondents did not fill out their geographic practice area.

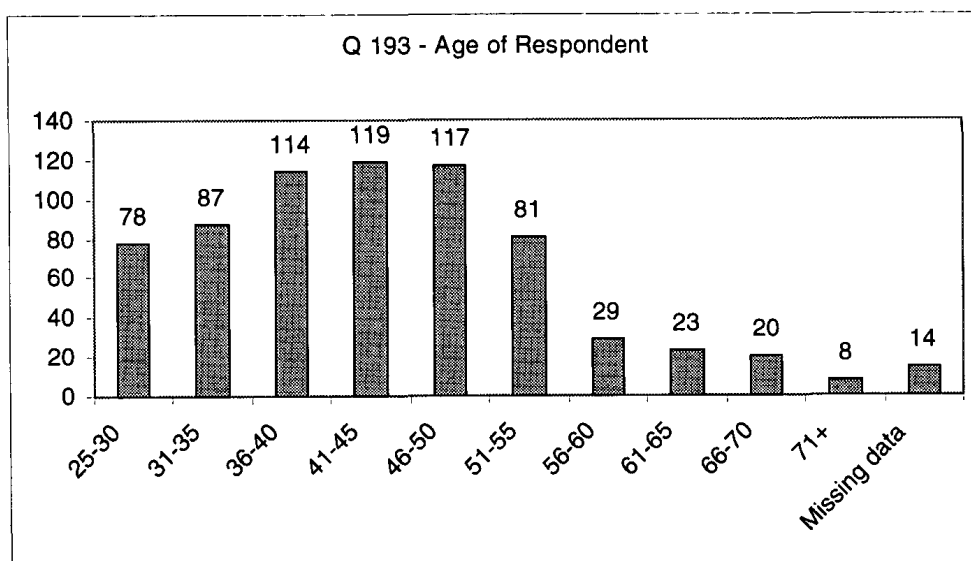
53. In Milwaukee, 27.7% of attorneys who responded were women while in Chicago the percentage of women was 36.7%. Perhaps the higher number in Chicago demonstrated more loyalty or affinity to a female professor which motivated the response, while in Milwaukee this effect was more muted since loyalty to Marquette may have been more of a factor.

study had only 3% women in its sample population. Even Williams' 1986 study surveyed only 8.6% women. Furthermore, the number of women surveyed here (121) is a sufficiently large group to enable further statistical analysis.

Minorities comprised over 7% of the respondents, with African-Americans at 3.7% and Hispanics at 2.1%. The minority rate of the assessed attorney population was slightly lower at 6%.

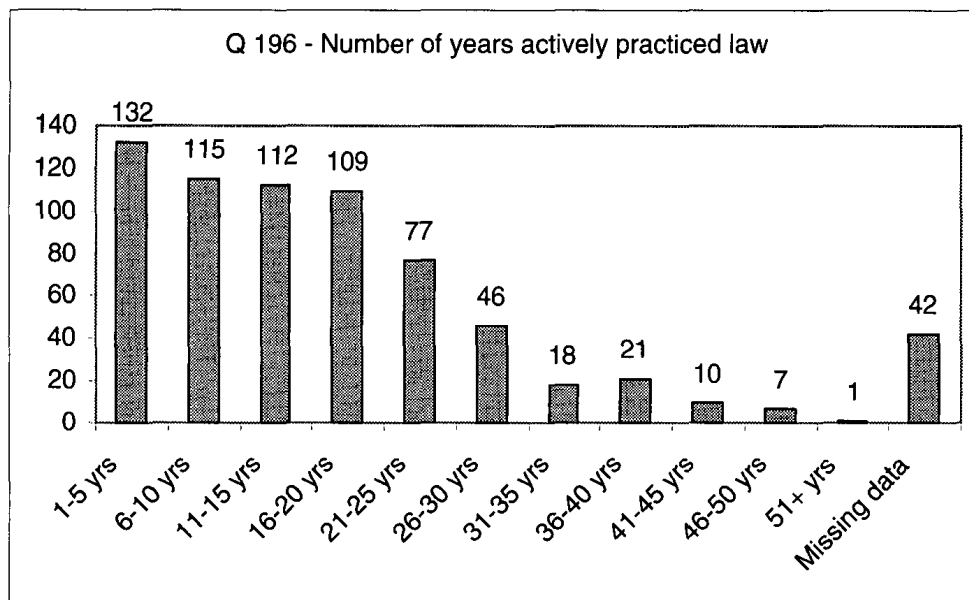
3. *Experience Level*

The two charts below relate the respondents' age and years in practice:



The age distribution indicates that most respondents were in the earlier years of their career. There was a clear drop-off in responses from attorneys over fifty-five years old. Just over 50% of the respondents fell in the middle fifteen year range of thirty-six to forty-nine. This range would likely mark the heart of a legal career for many attorneys. The youngest attorneys comprised approximately 24% of the respondents.

Years of experience tell a slightly different story as there is a steady decline in respondents as their experience increases. This may reflect attrition as lawyers drop out of practice, so we could expect fewer practicing attorneys at each stage. Slightly fewer than 20% of respondents had only practiced for five years or less. Again, close to 50% represent the middle fifteen years of practice.



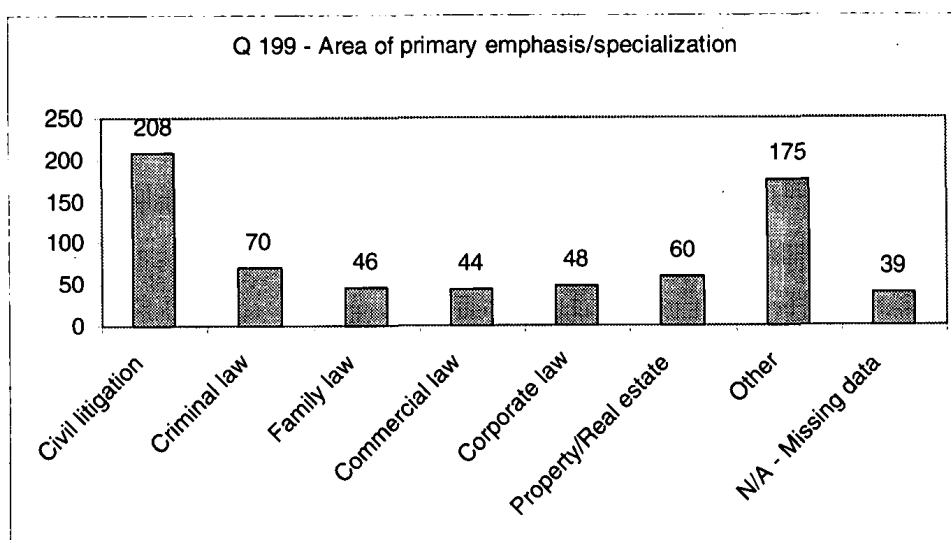
4. Subject Matter

Finally, as depicted in the next two charts, the respondents came from a variety of practice areas and practiced in a number of different types of organizations. Furthermore, the subject matter of the selected case or transaction was also quite diverse, representing a variety of matters.

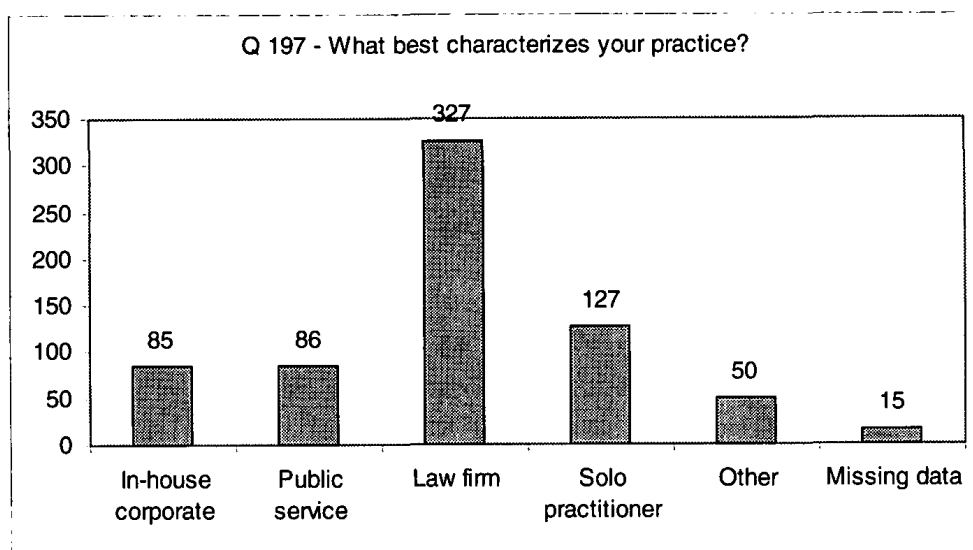
Of the 690 matters discussed in this article, 71% were potential or actual litigation disputes. The remaining 29% were transactional negotiations. The majority of the 490 disputes were resolved prior to a trial verdict. Sixty-six reached a mediated settlement (13.5%) and 291 reached a negotiated settlement (59.4%). Seven were decided on summary judgment (1.4%) and fifty-one were decided by trial verdict (10.4%). Seventy-five of these matters were still pending at the date of the study.⁵⁴ In sum, close to three-quarters of the disputes (72.8%) had already settled prior to a court decision. If we remove the pending cases from consideration, the settlement rate jumps to 86%. The other 194 negotiations involved transactions. Of these, 164 reached an agreement (84.5%).⁵⁵ These statistics mirror the findings of other

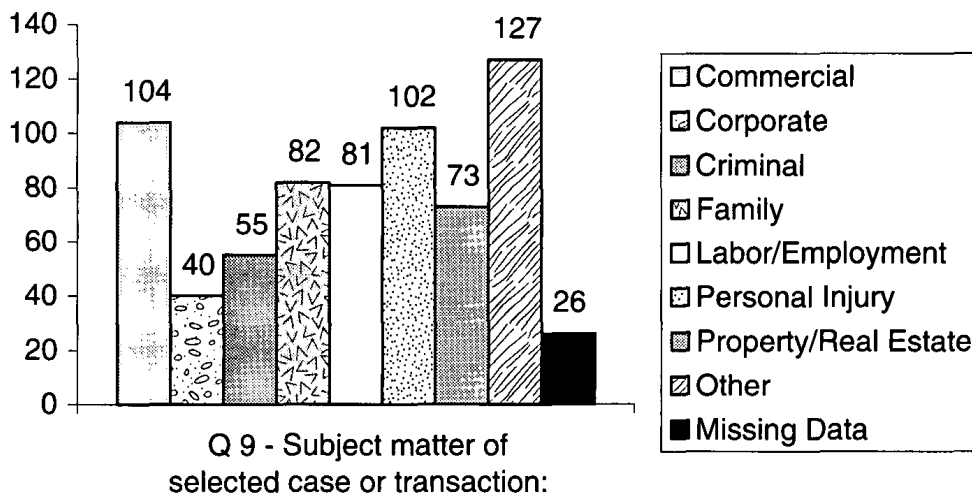
54. These numbers appear consistent with most estimates of the percentage of cases that settle. See Alexander, *supra* note 14.

55. Six respondents failed to note whether agreement was reached in their transactional negotiations.



studies on settlement, and also indicate that the negotiations evaluated here were neither more nor less likely to settle than other disputes.





III. SUBSTANTIVE RESULTS OF THE NEW STUDY

A. *Problem-Solving and Adversarial Styles of Negotiating*

I worked with statisticians at the Institute for Survey and Policy Research at the University of Wisconsin-Milwaukee to perform cluster analysis on the results. Cluster analysis uses a computer to break down data into natural groups by finding similar patterns in descriptions given by a survey. The original Williams study had used Q Methodology, which is a technique of factor analysis.⁵⁶ The cluster analysis used here is a similar type of analysis but updated to take advantage of greater computer capacity. In both types of analysis, the factors representing the various negotiation characteristics outlined on the three ratings scales are used to determine the behavioral groupings. The data is used to divide the attorneys into their groupings or clusters as contrasted to pre-determined groupings. In other words, I did not tell the computer that empathetic should be linked with perceptive or that all people with a certain adjective highly rated should fall into one group. There is no attempt to tell the computer what kind of patterns to find or to give special emphasis to one set of characteristics. The program merely looks for any identifiable patterns in the descriptions of the attorneys.⁵⁷

For the cluster analyses, I decided to omit respondents who had not answered more than one-third of the questions in one or more of

56. See WILLIAMS, *supra* note 20, at 138.

57. See WILLIAMS, *supra* note 20, at 18, note 13 explaining Q methodology.

the three scales used to describe the selected attorney. The result of this decision was that a respondent was not included in the cluster analyses if he or she had not responded in: (1) thirty or more of the eighty-nine adjectives (thirty-five respondents had not); (2) twenty-six or more of the sixty-one bipolar pairs (thirty-one respondents had not); and/or (3) four or more of the fourteen negotiation goal items (twenty-seven respondents had not). In all, sixty-four cases were dropped from the cluster analyses, while 627 cases were included. However, nine of these 627 respondents have missing data for the effectiveness rating, so the number of cases for analyses that involve both a cluster and effectiveness is 618.

The survey results divided the assessed attorneys into two clusters of approximately 64% and 36%, which, given their respective characteristics, I have labeled problem-solving and adversarial.⁵⁸

1. *Adjective Ratings*

The table below is a list of the 20 most frequently selected adjectives for each cluster.⁵⁹

The problem-solving adjectives encompass several different elements of behavior. The problem-solving negotiator is upstanding (ethical and trustworthy), pleasant (personable, agreeable, sociable) and interested in the other side (fair-minded, communicative, perceptive, helpful). The problem-solver is also flexible (accommodating, adaptable) and prepared (experienced, rational, confident, realistic, astute, poised).

The adversarial adjectives stand in strong contrast. The adversarial negotiator is inflexible (stubborn, assertive, demanding, firm, tough, forceful) and self-centered (headstrong, arrogant, egotistical). This negotiator likes to fight (irritating, argumentative, quarrelsome, hostile) and the method of fighting is suspect (suspicious, manipulative, evasive). Only two adjectives appear completely positive—confident and experienced—and these are the only two adjectives also

58. I changed the names of Williams' original labels of "competitive" and "cooperative" for two reasons. First, I believe that the label "cooperative" has come to imply a level of passivity that is not reflective of what Williams' study actually showed. Someone labeled "cooperative" is more likely to be associated with soft-bargaining (roll-over-and-play-dead) in common usage, a very different conception than what these adjectives actually describe. Second, "problem-solving" and "adversarial" are labels more in current use in the negotiation literature. See discussion *supra* Part I.B.2.

59. We looked for adjectives in which the cluster had a rating of three or higher out of the five point scale and then ranked the adjectives in order from the highest-rated to the lowest. The full list of adjectives with numeric ratings for each cluster can be found in Appendix B, Table 1, *infra*.

TOP 20 ADJECTIVES PER CLUSTER

Problem-Solving Adjectives	Adversarial Adjectives
1 Ethical	Stubborn
2 Experienced	Headstrong
3 Personable	Arrogant
4 Rational	Assertive
5 Trustworthy	Irritating
6 Self-controlled	Argumentative
7 Confident	Egotistical
8 Agreeable	Confident
9 Realistic	Demanding
10 Accommodating	Quarrelsome
11 Sociable	Ambitious
12 Fair-minded	Experienced
13 Dignified	Firm
14 Communicative	Tough
15 Perceptive	Forceful
16 Adaptable	Suspicious
17 Astute about the law	Manipulative
18 Poised	Hostile
19 Careful	Masculine
20 Helpful	Evasive

ascribed to problem-solving negotiators. Thus, two very different approaches to negotiation appear from the descriptors alone.

2. *Bipolar Ratings*

The bipolar rating scale can offer more insight into the particular negotiation strategies employed in each approach because the pairs are more descriptive of behavior. A list of the most frequently selected behaviors for each cluster appears below.⁶⁰

At first glance, the problem-solving bipolars contain descriptions that fit our general expectations of what constitutes a good negotiator. An attorney should be assertive while remaining ethical and following the standards of the bar, intelligent, and prepared. Problem-solving negotiators also appear to understand their clients very well (interested in the needs of the client, actions were consistent with the best interests of the client, accurately represented client's position), are easy to work with as seen on the adjective ratings (courteous, friendly, tactful, cooperative), and are ethical (honest, forthright, trustful, sincere, represented client zealously and within the bounds of the law). We also see a description that highlights communication (facilitated the negotiation). Finally, a problem-solving negotiator

60. We only considered bipolar scores above 1.5 to be significant in terms of distinguishing behavioral choices.

TOP BIPOLAR RATING PER CLUSTER

Problem-Solving Bipolars	Adversarial Bipolars
1 Did not make derogatory personal references	Disinterested in my client's needs
2 Interested in his client's needs	Extreme opening demand
3 Courteous	Unrealistic initial position
4 Did not use offensive tactics	Interested in his client's needs
5 Honest	Arrogant
6 Zealous representation within bounds	Unconcerned how I look
7 Pursued best interest of client	Rigid
8 Intelligent	Aggressive
9 Friendly	Had a fixed conception of the problem
10 Adhered to legal courtesies	Narrow view of problem
11 Reasonable	
12 Tactful	
13 Cooperative	
14 Prepared	
15 Forthright	
16 Accurate representation of position	
17 Sincere	
18 Trustful	
19 Facilitated	
20 Did not use threats	

does not make unfair representations, use haranguing or offensive tactics, make threats, or advance unwarranted claims.

The picture of the adversarial negotiator is also further clarified by these bipolar descriptions. Leading the descriptions of this negotiator is the impression that an adversarial negotiator is not concerned with the other side (not interested in my client's needs, and unconcerned how I would look in the eyes of my client). Second, there is evidence that this negotiator acts in a classic adversarial mode⁶¹ by being rigid, aggressive and starting off high (made extreme opening demand and took an unrealistic initial position). As indicated in the adjective ratings, this negotiator is also arrogant. Again, the survey responses point to clear differences in the approaches taken by lawyers in each cluster.

3. Goals

Negotiators' goals can give us additional insight into their respective approaches. This next table relates the goals most frequently attributed to the assessed attorneys in each cluster.

The first thing to note is that both types of negotiators want to serve their clients well. Maximizing the settlement for the client and seeing that the client's needs were met are goals for both groups of

61. See, e.g., Meltsner & Schrag, *supra* note 9; MNOOKIN ET AL., *supra* note 33, at 51.

TOP GOALS PER CLUSTER

Problem-Solving Goals	Adversarial Goals
1 Ethical conduct	Maximizing settlement
2 Maximizing settlement	Outdoing you
3 Fair settlement	Profitable fee
4 Meet both sides interests	Meeting client's needs
5 Meeting client's needs	
6 Avoiding litigation	
7 Good relations with you	

negotiators. The remaining goals highlight the difference in approaches. For problem-solving negotiators, the highest goal is conducting oneself ethically. This is consistent with findings in the other two scales, which both showed an emphasis on ethical behavior. The goal of obtaining a settlement that is both fair and that meets the underlying interests of both sides is exactly what one would expect from a problem-solving negotiator.⁶² The goal of good relations between the attorneys is consistent with the results of the other scales and also with negotiation literature highlighting how good relationships between the lawyers can serve the client.⁶³ Avoiding litigation is also consistent with problem-solving behavior.

The second and third goals (outdoing the other side and obtaining a profitable fee) attributed to adversarial negotiators reveal quite a lot about these lawyers. Both are self-centered rather than client-centered and raise concern about the difference in interests between attorneys and the clients they ostensibly serve. If the negotiation becomes focused on ego or making money for the lawyer, one could legitimately wonder if the client's interest is being well served.⁶⁴

4. Effectiveness Ratings

The following comments both describe effective behavior, but very different styles:

"The attorney was realistic, had a good grasp of the law and of the practical (or in this case impractical) aspects of taking the case to litigation as opposed to negotiating a settlement. He

62. See FISHER ET AL., *supra* note 3.

63. See Ronald J. Gilson & Robert H. Mnookin, *Disputing Through Agents: Cooperation and Conflict Between Lawyers in Litigation*, 94 COLUM. L. REV. 509, 516 (1994); ROGER FISHER & SCOTT BROWN, *GETTING TOGETHER: BUILDING RELATIONSHIPS AS WE NEGOTIATE* 13 (1989).

64. MNOOKIN ET AL., *supra* note 33, at 69-91; Herbert M. Kritzer, *Fee Arrangements and Negotiation*, 21 LAW & SOC'Y. REV. 341 (1987).

was also firm and represented his client's position well, but was courteous and straightforward at all times, which created a productive basis for reaching settlement when the time came for negotiations."⁶⁵

"He was effective because he wore us down. He used all types of dirty tactics such as having various attorneys contact the state's Attorney, bringing in an attorney who was friendly with the judge, and filing numerous meritless motions."⁶⁶

The following table groups all lawyers by effectiveness and style, and is just as revealing.

NUMBER OF LAWYERS PER GROUP BY EFFECTIVENESS

	Ineffective	Average	Effective
Problem-Solving	14	166	213
Adversarial	120	84	21

Several items stand out from these results. Only 9% of those lawyers seen as adversarial were rated as effective by their peers and only 9% of all effective lawyers were described as adversarial. Furthermore, 90% of lawyers perceived as ineffective were also adversarial. In contrast, 91% of lawyers seen as effective took a problem-solving approach to negotiation. More than half of problem-solving lawyers were seen as effective and only 4% of these problem-solving lawyers were seen as ineffective. Contrary to the popular (student) view that problem-solving behavior is risky, it would seem instead that adversarial bargaining represents the greater risk. A lawyer is much more likely to be viewed as effective when engaging in problem-solving behavior.

B. *Judging the Effectiveness of Problem-Solving Behavior—Two Approaches*

"He advocated for his client—kept coming back to the table—and proposing alternatives—was effective in making emotional appeal—got a good deal—was friendly and courteous—never took it personally."⁶⁷

"I felt the attorney was effective because she was assertive and aggressive in attempting to maximize the settlement for her client, but at the same time she was a good listener and kept an

65. Citations to comments by survey participants will be referred to by their survey number. This comment is Comment #1.

66. Comment #3.

67. Comment #93.

open mind regarding my proposals. She was willing to be accommodating while not forsaking her client's goal."⁶⁸

Two forms of cluster analysis were used to reach conclusions about effective problem-solving behavior. The first part of this section describes the first, two cluster analysis, in which the problem-solving group is divided into ineffective, average, and effective negotiators. The second part of this section examines the responses under a three cluster analysis in which a behavioral difference arises between cautious problem-solvers, true problem-solvers, and adversarial attorneys.

1. *Two Cluster Analysis*

The following charts show the most frequently selected adjectives, bipolar descriptions and goals for problem-solving bargainers, grouped according to their level of perceived effectiveness.

a) *Adjective Ratings*

There are several adjectives attributed to effective problem-solvers, but not to ineffective problem-solvers, which should give us some insight into what makes the difference. Four of these adjectives—realistic, astute, careful and wise—are traits of an experienced and prepared negotiator. None of these appear on the ineffective top twenty list, and only realistic appears for average negotiators. Two other adjectives—perceptive and adaptable—highlight important elements of problem-solving behavior. If one is going to come up with integrative solutions, understanding the other side and being flexible in how one meets the client's interests are crucial skills. Perceptive was not listed for either ineffective or average negotiators, and adaptable was not attributed to ineffective negotiators.

b) *Bipolar Ratings*

The bipolar descriptions attributed to each group of problem-solving negotiators continue to highlight their differences.

The effective negotiator received twenty-six highly rated bipolar pairs (Appendix B, Table 6). As with the adjectives, the effective negotiator was perceived as better handling the case in terms of intelligence, acting in their client's best interests, and preparation. He was also described as cooperative, facilitating the negotiation and viewing

68. Comment #101.

TOP 20 PROBLEM-SOLVING ADJECTIVES

Ineffective	Average	Effective
1 Self-controlled	Ethical	Ethical
2 Ethical	Personable	Experienced
3 Sociable	Experienced	Personable
4 Personable	Self-controlled	Rational
5 Trustworthy	Agreeable	Trustworthy
6 Experienced	Confident	Realistic
7 Fair-minded	Accommodating	Confident
8 Dignified	Trustworthy	Perceptive
9 Accommodating	Rational	Communicative
10 Agreeable	Realistic	Fair-minded
11 Confident	Sociable	Dignified
12 Discreet	Fair-minded	Self-controlled
13 Moderate	Dignified	Accommodating
14 Poised	Adaptable	Astute about the law
15 Communicative	Communicative	Agreeable
16 Patient	Patient	Sociable
17 Rational	Flexible	Adaptable
18		Poised
19		Careful
20		Wise

the negotiation as a mutually beneficial process. Finally, the effective problem-solver was distinguished for being reasonable, trustful, and for not advancing unwarranted claims.

In contrast, both the ineffective and average negotiators only received fourteen highly rated bipolar pairs out of the sixty-one listed. The two bipolar descriptions listed exclusively on the ineffective negotiator's list are inaccurately estimating the value of the case and having a narrow range of bargaining strategies. Also, it is interesting to note that while the most noteworthy characteristic of the effective negotiator is interest in the needs of the client (listed second for average negotiators), this placed eleventh under the ineffective negotiator. We could also hypothesize that the ineffective negotiators rely too much on being accommodating and agreeable since they are noted for having a limited range of bargaining strategies.

c) *Goals*

Finally, we turn to the different goals attributed to problem-solving negotiators.

The differences on the following charts invite three interesting observations. Only the effective and average negotiators were interested in reaching an agreement that met the underlying interests of both sides, avoiding litigation and having good relations with the other negotiator. The absence of these goals from the ineffective list

TOP PROBLEM-SOLVING BIPOLARS

Ineffective	Average	Effective
1 Did not make derogatory personal references	Did not make derogatory personal references	Interested in his client's needs
2 Honesty	Interested in his client's needs	Did not make derogatory personal references
3 Adhered to legal courtesies	Did not use offensive tactics	Honesty
4 Courteous	Courteous	Courteous
5 Friendly	Zealous representation within bounds	Intelligent
6 Did not use offensive tactics	Pursued best interests of client	Did not use offensive tactics
7 Zealous representation within bounds	Honesty	Pursued best interests of client
8 Accurate representation of position	Adhered to legal courtesies	Zealous representation within bounds
9 Did not use threats	Friendly	Friendly
10 Forthright	Intelligent	Tactful
11 Interested in his client's needs	Reasonable	Reasonable
12 Inaccurately estimated case	Cooperative	Adhered to legal courtesies
13 Narrow range	Forthright	Prepared
14 Sincere	Tactful	Cooperative
15		Forthright
16		Sincere
17		Trustful
18		Accurately represented own client's position
19		Facilitated
20		Did not make unwarranted claims
21		Viewed negotiation as possibly having mutual benefits

negates my previous hypothesis that ineffective negotiators were too concerned with relationships and a fear of litigation. The ineffective negotiator also failed to show the goal of reaching a mutually satisfying agreement. Either the ineffective negotiator was not sufficiently

TOP PROBLEM-SOLVING GOALS

Ineffective	Average	Effective
1 Maximizing settlement	Ethical conduct	Ethical conduct
2 Ethical conduct	Maximizing settlement	Maximizing settlement
3 Fair settlement	Fair settlement	Fair settlement
4 Meeting client's needs	Meeting client's needs	Meet both sides interests
5 Use legal skills well	Avoiding litigation	Avoiding litigation
6	Meet both sides interests	Meeting client's needs
7	Good relations with you	Good relations with you
8		Use legal skills well
9		Good relations between parties

assertive on his own behalf to protect his interests or he paid no heed to the interests of the other side. Given the descriptions from the

earlier ratings scales, we can hypothesize that one reason ineffective negotiators are so is their failure to search for mutually beneficial solutions.

One of the effective negotiator's goals not shared by the average negotiator was taking satisfaction in the exercise of legal skills. Might this difference in legal skills be the difference between effective problem-solvers who can successfully execute their negotiation strategies and average problem-solvers who cannot quite manage to do so? In other words, perhaps both the ineffective and average problem-solvers are not really problem-solvers in the true sense of the term. They may aspire to employ that strategy, but may lack the traits that make problem-solving effective.

2. *Three Cluster Analysis*

The data can also separate negotiation styles into three clusters, which I have labeled true problem-solving, cautious problem-solving, and adversarial. Unlike the two cluster approach, lawyers were divided far more evenly among the three clusters with approximately 36% in the true problem-solving group, 36% in the cautious problem-solving group, and 28% in the adversarial group. The new middle group appears to have come primarily from the original problem-solving group that consisted of 64% of lawyers. This suggestion is reinforced since the cautious problem-solving group's adjectives overlap with the problem-solving group. Therefore, rather than a separate style of negotiation, it appears that the third group is really just comprised of lawyers who are relatively nondescript and average in terms of effectiveness.

a) *Adjective Ratings*

When compiling the list of adjectives to describe each group, we looked for ratings of three or higher on the five-point scale. The following table shows the top twenty adjectives for the three new clusters.

We should note a few things about these new clusters. First, the true problem-solving group is basically the same as the original problem-solving group in terms of description. The order of adjectives has changed and "flexible" substitutes for "careful," but the remaining nineteen adjectives are the same. The greatest difference in this new cluster is that the adjective ratings increased by an average of .25 to

TOP 20 ADJECTIVES FOR THREE CLUSTERS

True-Problem Solving	Cautious Problem-Solving	Adversarial
1 Ethical	Ethical	Irritating
2 Personable	Experienced	Headstrong
3 Experienced	Confident	Stubborn
4 Trustworthy	Personable	Arrogant
5 Rational	Self-controlled	Egotistical
6 Agreeable	Rational	Argumentative
7 Fair-minded	Sociable	Assertive
8 Communicative	Dignified	Demanding
9 Realistic	Trustworthy	Quarrelsome
10 Accommodating		Confident
11 Perceptive		Ambitious
12 Sociable		Manipulative
13 Adaptable		Experienced
14 Confident		Hostile
15 Dignified		Forceful
16 Self-controlled		Tough
17 Helpful		Suspicious
18 Astute about the law		Firm
19 Poised		Complaining
20 Flexible		Rude

.40 on the five-point scale.⁶⁹ This indicates that these problem-solvers are even stronger at those skills. Second, the same analysis applies to the adversarial grouping. "Complaining" and "rude" substitute for "masculine" and "evasive" at the bottom of each list. The only other difference between the lists is the negative adjectives that lead off the list. The most interesting result in this analysis is the middle category. Clearly this middle group is comprised of "good" lawyers in that all of the adjectives are positive. Again, all nine are included in the true problem-solving group. In comparison, however, the true problem-solving group had forty-nine highly rated adjectives. Consequently, I have labeled the middle group "cautious problem-solvers" to highlight the fact that most of these traits are problem-solving, yet this group seems hesitant to utilize all of the problem-solving attributes.⁷⁰ By "cautious," I do not mean to suggest that these negotiators are themselves cautious, but rather they are cautious about adopting a completely problem-solving approach to the negotiation.

69. See Appendix C for the full list of adjectives with ratings.

70. I am grateful to Sarah Cole for suggesting this term.

b) *Bipolar Ratings*

The bipolar descriptions reveal more about the differences among these three types of negotiators. First, the adversarial negotiators

THREE CLUSTER BIPOLARS

True Problem-Solving	Cautious Problem-Solving	Adversarial
1 Did not use derogatory personal references	Did not use derogatory personal references	Aggressive
2 Honest	Interested in my client's needs	Not interested in my client's needs
3 Courteous	Zealous representation within bounds	Arrogant
4 Interested in my client's needs	Courteous	Extreme opening demand
5 Friendly	Intelligent	Rigid
6 Best interests of client	Honest	Unrealistic
7 Intelligent	Adhered to legal courtesies	Unconcerned how I look
8 Zealous representation within bounds	Best interests of client	Interested in my client's needs
9 Reasonable		Negotiation = Win/Lose
10 Prepared		Narrow view of problem
11 Adhered to legal courtesies		Fixed conception of problem
12 Tactful		Narrow range of strategies
13 Accurate representation of position		Fixed on a single solution
14 Cooperative		Uncooperative
15 Forthright		Did not consider my needs
16 Trustful		
17 Sincere		
18 Facilitative		
19 Viewed negotiation as possibly having mutual benefits		
20 Did not make unwarranted claims		

from this approach appear very similar to the adversarial negotiators from the previous two cluster approach. Every bipolar description listed is also listed previously for adversarial negotiators. The only notable difference is that aggressive has moved to the top of the list as the most defining characteristic. The number ratings have increased for each of these characteristics, indicating that this group is even stronger in these characteristics.

Second, the true problem-solving group is similar to the original problem-solving group. As with the adjective ratings, the actual number rating for each description increased. This shows the additional strength of these characteristics despite the descriptions themselves being virtually the same. The true problem-solving negotiator

understands the case well (reasonable, prepared, accurate representation of client's position, did own factual investigation) and wanted to work with the other side (friendly, tactful, cooperative, facilitated the negotiation, viewed the negotiation process as one with mutual benefits, understood my client's interests). This negotiator was flexible (movable position, did not use take it or leave it) and did not engage in manipulative tactics (did not make unwarranted claims, did not use threats, avoided needless harm to my client). The true problem-solving negotiator believed in the good faith exchange of information (cooperative, forthright, trustful, sincere, shared information, probed).

Again, the most interesting analysis is of the cautious problem-solving group. The cautious problem-solving group, as in the adjectives ratings, did not stand out in most of the characteristics and is only rated more than slightly characteristic in eight descriptions. These eight are all positive and also appear on the problem-solving list, but the cautious problem-solving category lacks twenty-two descriptions that true problem-solvers display.⁷¹ As described above, these absent characteristics describe negotiation qualities that add depth and breadth to a negotiator's skills.

c) *Goals*

True problem-solvers also have different goals than cautious problem-solvers. Both ethical conduct and a fair settlement are higher goals for the problem-solver than maximizing settlement, which is the highest goal for cautious problem-solvers. In this vein, the cautious problem-solver is more like the adversarial bargainer in terms of their first priority. Further demonstrating this negotiator's ambivalence about style is the fact that the cautious problem-solver was also perceived as having goals such as obtaining a profitable fee and outdoing his opponent.

d) *Effectiveness*

The study of effectiveness can demonstrate the impact of these differences in the rating-scale.

71. See Appendix C for the full list of bipolar descriptions.

TOP THREE CLUSTER GOALS

True Problem-Solving	Cautious Problem-Solving	Adversarial
1 Ethical conduct	Maximizing settlement	Maximizing settlement
2 Fair settlement	Ethical conduct	Outdoing you
3 Maximizing settlement	Fair settlement	Profitable fee
4 Meet both sides interests	Meeting client's needs	Meeting client's needs
5 Meeting client's needs	Avoiding litigation	Use legal skills well
6 Avoiding litigation	Meet both sides interests	Improving firm reputation
7 Good relations with you	Good relations with you	Ethical conduct
8 Use legal skills well	Use legal skills well	Fair settlement
9 Good relations between parties	Profitable fee	Improving bar reputation
10 Improving reputation with you	Good relations between parties	Avoiding litigation
11	Outdoing you	
12	Improving firm reputation	

First, approximately 25% of the negotiators in the new cautious problem-solving group are effective, whereas 75% of the true problem-solvers are described as effective. The missing negotiation elements between the groups must cause this difference.⁷² Adjectives

NUMBER OF LAWYERS PER GROUP BY EFFECTIVENESS

	Ineffective	Average	Effective
True Problem-Solving	3	53	164
Cautious Problem-Solving	29	139	55
Adversarial	102	58	15

found in true problem-solving but not in cautious problem-solving highlight empathy (communicative, accommodating, perceptive, helpful), option creation (adaptable, flexible), personality (agreeable, poised), and preparation (fair-minded, realistic, astute about the law). These skills make the difference between average skills and truly effective skills. Contrary to popular belief, behaviors described by these adjectives are not risky at all. The traditional fear of problem-solving is that problem-solvers will be taken advantage of by more adversarial bargainers, yet only 1% of true problem-solving negotiators were considered ineffective.

72. Several comments highlight the difference. These negotiators were found to be average. "Could have been more proactive in exploring solutions that helped both sides get where they needed to be. Could have stood in our shoes a bit more." Comment #45. "Attorney is extremely knowledgeable on the law and the facts of the case but a little rigid and lacked skills to maximize a "win-win" settlement." Comment #137.

A second lesson concerns adversarial bargainers. Nine percent of adversarial bargainers still remain effective—that percentage has not changed. The ineffectiveness rating of adversarial bargainers, however, has increased by 5% making it even more likely that lawyers choosing this style would be considered ineffective. The shifting of the fifty or so least adversarial bargainers into the cautious problem-solving category make the remaining adversarial group comparatively more extreme and correspondingly even less effective.

C. *Judging the Effectiveness of Adversarial Behavior—Two Approaches*

“The attorney did a good job of preparing for trial, then taking a blistering and extreme position in negotiations and then, upon seeing a favorable settlement, pressured the client to settle immediately.”⁷³

As in the last section of this article, we can also examine the data from two different analyses to draw lessons about effective adversarial behavior. The first part of this section looks at the two cluster analysis. In that analysis, the adversarial group is divided into ineffective, average, and effective negotiators. The second part of this section examines the data when attorneys are divided into four clusters. This analysis highlights the different behavior between ethical adversarial and unethical adversarial.

1. *Two Cluster Analysis*

The charts below highlight the differences among those negotiators falling into the adversarial categories based on levels of perceived effectiveness.

a) *Adjective Ratings*

We can examine the few adjectives that do not appear in all three categories to see if this provides any insight into the difference in effectiveness. Unlike the difference among the problem-solvers, these different adjectives are all listed at or near the bottom of the lists, implying that they have less significance. The two adjectives listed for an effective adversarial negotiator that are not on the other two lists are dominant and bluffer, numbers 15 and 20 from the effective list, respectively. The difference in effectiveness could be related to how well the negotiator controlled the negotiation in general or through the particular tactic of bluffing. On the other hand, the two

73. Comment #291.

TOP 20 ADVERSARIAL ADJECTIVES

Ineffective	Average	Effective
1 Stubborn	Headstrong	Egotistical
2 Irritating	Assertive	Demanding
3 Headstrong	Stubborn	Ambitious
4 Arrogant	Arrogant	Experienced
5 Argumentative	Argumentative	Confident
6 Assertive	Confident	Assertive
7 Egotistical	Egotistical	Forceful
8 Confident	Demanding	Arrogant
9 Demanding	Irritating	Headstrong
10 Quarrelsome	Experienced	Tough
11 Ambitious	Ambitious	Firm
12 Firm	Quarrelsome	Irritating
13 Experienced	Tough	Stubborn
14 Manipulative	Adaptable	Argumentative
15 Suspicious	Forceful	Dominant
16 Hostile	Masculine	Manipulative
17 Forceful	Suspicious	Masculine
18 Evasive	Firm	Quarrelsome
19 Tough	Hostile	Suspicious
20 Complaining	Complaining	Bluffer

adjectives listed on the ineffective and average lists but not on the effective list are hostile and complaining. This difference seems to be based on the degree to which the adversarial bargainer was difficult. Being egotistical, arrogant, irritating and quarrelsome can be viewed as effective as long as you are not additionally annoying by complaining or being overly hostile.

b) *Bipolar Ratings*

The bipolar descriptions highlight the differences in effectiveness more clearly.

The bipolar descriptions focus more on the strategies chosen by the negotiators and demonstrate some very important differences among the effectiveness levels. First, only the effective adversarial negotiator was perceived as acting in the best interests of his or her client. We can hypothesize that the ineffective adversarial bargainer was perceived as allowing his strategies or ego to get in the way of the client's needs. Second, the effective adversarial bargainer was perceived as representing the client zealously *and* within the bounds of the law. While this is not the same as being perceived as ethical, it is as close as we get to a recognition that effective adversarial bargainers understand the ethical limits while other adversarial bargainers

TOP 20 ADVERSARIAL BIPOLARS

Ineffective	Average	Effective
1 Disinterested in my client's needs	Interested in his client's needs	Disinterested in my client's needs
2 Extreme opening demand	Disinterested in my client's needs	Interested in his client's needs
3 Unrealistic initial position	Unconcerned how I look	Arrogant
4 Rigid	Arrogant	Aggressive
5 Fixed conception of the problem	Unrealistic initial position	Pursued best interest of client
6 Negotiation = Win/Lose	Extreme opening demand	Intelligent
7 Narrow view of problem	Aggressive	Active
8 Narrow range of strategies		Extreme opening demand
9 Unconcerned how I look		Zealous representation within bounds
10 Arrogant		
11 Fixed on single solution		
12 Inaccurately estimated case		
13 Unmovable position		
14 Used take it or leave it		
15 Aggressive		
16 Interested in his client's needs		
17 Obstructed		
18 Did not consider my needs		
19 Unreasonable		
20 Uncooperative		

do not.⁷⁴ Finally, the effective adversarial bargainer was also perceived as intelligent and active. This could relate to the difference noted above in terms of controlling the course of the negotiation.

On the other hand, the ineffective adversarial bargainer is perceived as engaging in all sorts of tactics that his effective peers do not. Both the average and ineffective adversarial start high (extreme opening demand and unrealistic initial position) and are particularly uninterested in the other attorney (unconcerned how I would look in the eyes of my client). The ineffective adversarial bargainer also was perceived as viewing the case narrowly (fixed conception of the problem, narrow view of case) and bargaining in a positional manner (rigid, fixed on single solution, took one position and refused to move, used take it or leave it, narrow range of bargaining strategies). They ultimately viewed negotiation as a case of winners and losers and, therefore, did not feel the need to work with the other side (did not consider my needs, uncooperative, obstructed the negotiation.) Finally, the ineffective adversarial negotiator was perceived as unreasonable and to have inaccurately estimated the value of the case. We

74. This point is discussed further *infra* Part III.C.2.

can hypothesize that the extreme forms of adversarial behavior make this type of negotiator appear ineffective rather than average or effective.⁷⁵

c) Goals

The difference in goals sheds a little more light on the differences among the effectiveness ratings. The one goal listed for an ineffective

TOP ADVERSARIAL GOALS

Ineffective	Average	Effective
1 Maximizing settlement	Maximizing settlement	Maximizing settlement
2 Outdoing you	Outdoing you	Outdoing you
3 Profitable fee	Profitable fee	Profitable fee
4 Improving firm reputation	Meeting client's needs	Meeting client's needs
5 Meeting client's needs	Use legal skills well	Use legal skills well

negotiator not listed for the other two categories is that this negotiator is concerned with improving his or her reputation among the members of the law firm. This goal bolsters our earlier hypothesis that ineffective adversarialists are more concerned with themselves at the expense of their clients. In addition, the goal listed for average and effective negotiators but not listed for the ineffective negotiator is taking satisfaction in the exercise of legal skills. We can infer that the ineffective bargainer is perceived as having few legal skills in general.⁷⁶

2. Four Cluster Analysis

To further highlight differences in negotiation patterns, I also had the computer run four cluster analysis on the data. As earlier, I did not instruct the computer to construct groups based on effectiveness or any cluster of adjectives. The natural groupings reveals that

75. Several comments illustrate this point. "He refused to mediate; he bullied, his client eventually came directly to my client, the landlord and together the parties came to a negotiated resolution that was very close to our opening proposal. Each side gave a little. The tenant went around his attorney to resolve the issues with the landlord." Comment #49. "He took a fixed position early and didn't budge until just before trial. The extra work that he forced me to do by not moving hurt him when he attempted to compromise. If we had settled 6 months earlier he would have done better. It wasn't that I wouldn't have prepared for trial, it was that once I was set to go, all of the work short of trying the case was done, including experts and their fees." Comment #307.

76. For example, "Unprepared; unfocused; frequent shifting of positions; unable to recognize client's interests; unable to control client; unable to read my signals; stubborn." Comment #461.

the attorneys divided as follows: 38.5% true problem-solving negotiators, 27.5% cautious problem-solving negotiators, 21.5% ethical adversarial negotiators, and 12.5% unethical adversarials. Two interesting results occurred in the four cluster analysis. First, the true problem-solving cluster and the cautious problem-solving cluster stayed relatively constant in terms of description and effectiveness rating as in the previous analysis. Second, this approach divided the adversarial bargainers further into ethical adversarials and unethical adversarials. These new labels were chosen based on the descriptions of each group show below.

a) *Adjective Ratings*

As can be seen from the numbers, true problem-solving here basically mirrors the cluster from the three cluster division labeled true problem-solving. All top twenty adjectives overlap. The cautious problem-solving group also looks very similar to the cautious problem-

TOP 20 ADJECTIVES FOR FOUR CLUSTERS

True Problem-Solving	Cautious Problem-Solving	Ethical Adversarial	Unethical Adversarial
1 Ethical	Ethical	Confident	Irritating
2 Experienced	Experienced	Assertive	Stubborn
3 Personable	Personable	Arrogant	Headstrong
4 Trustworthy	Self-controlled	Headstrong	Argumentative
5 Rational	Confident	Experienced	Quarrelsome
6 Fair-minded	Rational	Demanding	Arrogant
7 Agreeable	Agreeable	Egotistical	Egotistical
8 Communicative	Dignified	Ambitious	Manipulative
9 Realistic		Stubborn	Assertive
10 Accommodating		Argumentative	Demanding
11 Perceptive		Tough	Complaining
12 Confident		Irritating	Hostile
13 Sociable		Forceful	Suspicious
14 Self-controlled		Firm	Conniving
15 Adaptable		Quarrelsome	Greedy
16 Dignified		Masculine	Rude
17 Helpful		Dominant	Angry
18 Astute		Ethical	Confident
19 Poised		Deliberate	Ambitious
20 Flexible		Hostile	Deceptive

solving group in the three cluster analysis. Although the number in the group has dropped somewhat (223 to 170), there is overlap in the

adjectives and the division in perceived effectiveness ratings is very similar.⁷⁷

The more revealing result from this approach concerns the further division of lawyers in adversarial behavior. The unethical adversarial mirrors the three cluster adversarial group in adjectives but with three new additions: deceptive, loud, and foolish.⁷⁸ On the other hand, the new cluster labeled ethical adversarial has some important differences from both the adversarial group from the three cluster analysis and the new unethical adversarial group from the four cluster analysis. Though many of the adjectives do overlap, the rankings of adjectives are ordered differently. The top five adjectives in the ethical group are confident (number 18 in the unethical group), assertive (number 9 in the unethical group), arrogant (number 6 in the unethical group), headstrong (number 3 in the unethical group and therefore the only overlap between the categories' top five lists), and experienced (not listed for the unethical group). Furthermore, unlike the other groups, the ethical group is *not* described as manipulative, conniving, deceptive, evasive, complaining, rude, angry, intolerant, sarcastic, greedy or stern. The ethical adjectives therefore are not particularly negative nor do they suggest the table-banging style of negotiation.

b) *Bipolar Ratings*

A review of the bipolar pairs further shows the difference between the two adversarial groups. Attorneys falling in the unethical adversarial group had numerous adjectives and behavior ascribed to them that were not ascribed to attorneys in the ethical adversarial group. First, attorneys in the unethical adversarial group were unpleasant: discourteous, unfriendly, and tactless. Second, they were untrustworthy: insincere, devious, dishonest and distrustful. Third, these attorneys were uninterested in the client or lawyer on other side: no understanding of the opposing client, unconcerned how opposing counsel would look, no consideration of opposing counsel's needs, infliction of needless harm. Fourth, these attorneys were inflexible in their view of the case and their strategies: narrow view of case, rigid,

77. 62.3% of the earlier cautious problem-solving group was rated with average effectiveness. 64.7% of this cautious problem-solving group is also rated with average effectiveness.

78. For example, "A lot of times he was loud and somewhat rude—traits which are not signs of a good negotiator (rather traits of a person with a bad disposition). Like that old phrase 'you can get more flies with sugar than vinegar.'" Comment #139.

TOP 20 BIPOLARS FOR FOUR CLUSTERS

True Problem-Solving	Cautious Problem-Solving	Ethical Adversarial	Unethical Adversarial
1 Did not use derogatory personal references 2 Courteous 3 Interested in his client's needs 4 Honest 5 Pursued best interest of client 6 Friendly 7 Zealous representation within bounds 8 Intelligent 9 Reasonable 10 Tactful 11 Cooperative 12 Adhered to legal courtesies 13 Prepared 14 Forthright 15 Trustful 16 Sincere 17 Accurate representation of position 18 Facilitated 19 Viewed negotiation as possibly having mutual benefit 20 Did not use threats	Did not use derogatory personal references Interested in his client's needs Did not use offensive tactics Courteous Zealous representation within bounds Honest	Interested in his client's needs Unrealistic initial position Extreme opening demand Not interested in my client's needs Aggressive Arrogant Prepared	Not interested in my client's needs Rigid Arrogant Unreasonable Single solution Uncooperative Narrow range of strategies Narrow view of problem Extreme opening demand Did not consider my needs Negotiation = win/lose Unrealistic initial position Unconcerned how I look Aggressive Inaccurately estimated case Insincere Fixed conception of problem Distrustful Obstructed Inflicted needless harm

took one position, narrow range of strategies, focused on a single solution, fixed concept of negotiation. Fifth, they used manipulative tactics: attacked, used take it or leave it, inaccurate case estimate, advanced unwarranted claims. Finally, their general view of the negotiation process was competitive: uncooperative, unreasonable, viewed negotiation as win-lose, obstructed the negotiation. The ethical adversarials, as compared to the unethical adversarials, had a broader view of the case, a different negotiation style, and were more pleasant.

c) *Goals*

Finally, in a comparison of the goals for these two adversarial groups, the ethical adversarials have two significant additions to those goals

TOP GOALS FOR FOUR CLUSTERS

True Problem-Solving	Cautious Problem-Solving	Ethical Adversarial	Unethical Adversarial
1 Ethical conduct	Maximizing settlement	Maximizing settlement	Maximizing settlement
2 Fair settlement	Ethical conduct	Improving firm reputation	Outdoing you
3 Maximizing settlement	Fair settlement	Outdoing you	Profitable Fee
4 Meet both sides interests	Meeting client's needs	Meeting client's needs	Improving firm reputation
5 Avoiding litigation	Avoiding litigation	Use legal skills well	Meeting client's needs
6 Meeting client's needs	Meet both sides interests	Ethical conduct	Use legal skills well
7 Good relations with you	Good relations with you	Profitable fee	Improving bar reputation
8 Use legal skills well	Use legal skills well	Fair settlement	
9 Good relations between parties	Profitable fee	Avoiding litigation	
10 Improving reputation with you	Good relations with you	Improving bar reputation	
11 Profitable fee	Improving firm reputation	Good relations with you	

they have in common. First, attorneys in the ethical adversarial group were interested in exercising their legal skills well. Second, and more notably, they were also interested in conducting themselves ethically.

These differences in adjective descriptions, bipolar pairs, and goals suggest a qualitative difference in the type of negotiator being assessed in the ethical adversarial group. These negotiators may still

be adversarial in the traditional definition of hard bargainers (assertive, demanding, tough, firm, etc.), but they are also ethical. The lawyers falling in this cluster did not engage in manipulative tactics or deception, nor were they mean or nasty.⁷⁹

d) *Effectiveness*

The further breakdown of numbers in each cluster and effectiveness help to identify these clusters even more.

EFFECTIVENESS IN FOUR CLUSTERS

	Ineffective	Average	Effective	Totals per Cluster
True Problem-Solving	3	64	171	238
Cautious Problem-solving	20	110	40	170
Ethical Adversarial	53	59	21	133
Unethical Adversarial	58	17	2	77
Totals by Effectiveness	134	250	234	618

The effectiveness rating of the unethical adversarial cluster compared to the effectiveness rating of the ethical adversarial cluster completes the story. Seventy-five percent of the unethical adversarial group is considered ineffective. Only two attorneys out of the seventy-seven attorneys in this group, 2.5%, were considered effective. In comparison, the ethical adversarial bargainer is more likely to be average if not effective. Forty percent of ethical adversarials were ineffective, 44% were average and 16% were effective. These are still clearly lower ratios for effective and average behavior than the problem-solving negotiator and even the cautious problem-solving negotiator. On the other hand, they are notably better than the unethical adversarial bargainer is.

IV. CHANGES IN EFFECTIVE NEGOTIATING OVER THE PAST 25 YEARS

After looking at the results for the new study, it is important to compare the behavioral traits of those negotiators perceived as effective today to the traits that were revealed in the earlier Williams study. Have the characteristics of "effective" lawyers changed over the years? What are the characteristics of effective problem-solvers and effective adversarials? Simply showing that the problem-solvers are generally perceived as more effective is insufficient; attorneys need to understand why problem-solving is effective.

79. "He was prepared and forceful in advocating the rights of his clients, but in an ethical and courteous way." Comment #507.

A. *Effective Problem-Solving*

The following tables compare the adjective rankings from the new study to the placement of the same adjectives in the Williams study.

EFFECTIVE PROBLEM-SOLVING—TOP 20 ADJECTIVES

Rank	Adjective in the New Study	Placement of the Adjective in the Williams Ranking
1	Ethical	3
2	Experienced	1
3	Personable	13
4	Rational	4
5	Trustworthy	6
6	Realistic	2
7	Confident	New Item Added
8	Perceptive	5
9	Communicative	New Item Added ⁸⁰
10	Fair-minded	9
11	Dignified	Did Not Make Top 20
12	Self-controlled	11
13	Accommodating	New Item Added
14	Astute about the law	20
15	Agreeable	New Item Added ⁸¹
16	Sociable	Did Not Make Top 20
17	Adaptable	14
18	Poised	17
19	Careful	18
20	Wise	15

The lists are very similar and describe a negotiator who is both assertive (experienced, realistic, fair, astute, careful, wise) and empathetic (perceptive, communicative, accommodating, agreeable, adaptable). This mirrors what Professor Robert Mnookin and his co-authors have described as effective negotiation behavior.⁸² Furthermore, the effective problem-solver is also good (ethical and trustworthy) and offers enjoyable company (personable, sociable, poised). It should be no surprise that this negotiator is seen as effective.

The fact that the description of effective problem-solving behavior has not really changed suggests some interesting insights. First, it appears that the negotiation literature advocating problem-solving behavior as effective close to twenty years ago was accurately

80. Gerald Williams and his colleagues added this adjective and several others to a 1986 version of his study. Unless otherwise noted on these tables, new items were added by me. The published results of the 1986 study did not divide attorneys in this way and are not discussed here. See Burton et al., *supra* note 24, at 226-29.

81. Added by Williams in 1986. *Id.*

82. See Mnookin et al., *supra* note 43.

describing behavior then and is worthy of consideration now.⁸³ Second, despite the public perception of lawyers, it appears that close to two-thirds of lawyers continue to engage in non-adversarial modes of communication and that these lawyers are perceived as highly effective by their peers.

B. *Effective Adversarial*

The following table shows the top twenty adjectives for the small percentage of attorneys who were perceived as both adversarial and effective, along with corresponding rankings from the Williams study.

EFFECTIVE ADVERSARIAL—TOP 20 ADJECTIVES

Rank	Adjective in the New Study	Placement of the Adjective in the Williams Ranking
1	Egotistical	Did Not Make Top 20
2	Demanding	Did Not Make Top 20
3	Ambitious	7
4	Experienced	2
5	Confident	New Item Added
6	Assertive	New Item Added
7	Forceful	9
8	Arrogant	New Item Added
9	Headstrong	Did Not Make Top 20
10	Tough	11
11	Firm	New Item Added ⁸⁴
12	Irritating	Did Not Make Top 20
13	Stubborn	New Item Added
14	Argumentative	Did Not Make Top 20
15	Dominant	8
16	Manipulative	Did Not Make Top 20
17	Masculine	Did Not Make Top 20
18	Quarrelsome	Did Not Make Top 20
19	Suspicious	Did Not Make Top 20
20	Bluffer	Did Not Make Top 20

Unlike the similarity in problem-solving adjectives, the adjectives describing the effective competitive or adversarial negotiator have changed greatly.⁸⁵ The new study includes five completely new adjectives and ten adjectives that were below the top twenty in the Williams study. The new adjectives are, by and large, negative.⁸⁶

83. *E.g.*, FISHER ET AL., *supra* note 3; Menkel-Meadow, *supra* note 27.

84. Added by Williams in 1986. Burton et al., *supra* note 24, at 226-29.

85. This label describes about 35% of the assessed lawyers in both my study and Williams'.

86. However we could also assume that our culture in 25 years has grown to accept these words more.

The competitive negotiator described by Williams was not nearly so unpleasant and negative. The top five adjectives describing the effective competitive negotiator in the Williams study were: (1) convincing; (2) experienced; (3) perceptive; (4) rational; and (5) analytical.⁸⁷ None of these adjectives has a particularly negative connotation. In fact, perceptiveness can demonstrate interest in one's opponent's position. Now the top five adjectives describing an effective adversarial negotiator are: (1) egotistical; (2) demanding; (3) ambitious; (4) experienced; and (5) confident. Clearly things have changed for the worst when the most important description given to a lawyer is egotistical. In fact, the rest of the top twenty list is even more undesirable. Out of the entire list of adjectives, over half have negative connotations. Lawyers therefore have a poor view of their adversarial opponents despite their negotiation effectiveness.

C. *Effective Behavior on the Goals Ratings*

We can also compare the goals attributed to the assessed attorneys in each study.⁸⁸ As with the adjectives, the goals for problem-solvers appear to be similar across time. The only new goal, to meet the interests of both sides, is consistent with the idea of an integrative negotiation.

The effective adversarial also appears to have changed little in goals with one key exception. In Williams' study, the goal of ethical conduct was ranked fourth for an effective adversarial bargainer. Here that goal is no longer in the top five and has fallen to seventh.⁸⁹

D. *Effectiveness Regardless of Style*

Another type of analysis is to compare the similarities and differences among those negotiators perceived as effective regardless of

87. WILLIAMS, *supra* note 20, at 26.

88. Unfortunately, we cannot compare bipolar descriptions directly because of different number scales used to analyze the data. However, an informal review of the data reveals much the same information as found in the analysis of the adjectives. There is little difference in the behavior of problem-solvers then and now. In examining the bipolar descriptions of the adversarial bargainer then and now, most of the differences are in new elements added to the study such as not being interested in the other side's interests or representing the client zealously and within bounds. One interesting note is that the description of "reputation as effective trial attorney" ranked third in the Williams study for effective competitive negotiators. That description does not appear in the seven bipolar descriptions in which the effective adversarial negotiator stood out (received a score showing that this characteristic was more than slightly true).

89. See Appendix B.

EFFECTIVE PROBLEM-SOLVING—TOP GOALS

Rank	Goal in the New Study	Placement of the Goal in the Williams Ranking
1	Ethical conduct	1
2	Maximizing settlement	2
3	Fair settlement	3
4	Meet both sides' interests	New Item Added
5	Avoiding litigation	6
6	Meeting client's needs	4
7	Good relations with you	7
8	Use legal skills well	5

their negotiation style. There is relatively little overlap between adjectives describing effective problem-solving behavior and adjectives describing effective competitive behavior. In the Williams study,

EFFECTIVE ADVERSARIAL—TOP GOALS

Rank	Goal in the New Study	Placement of the Goal in the Williams Ranking
1	Maximize Settlement	1
2	Meeting Client Needs	6
3	Outdoing You	3
4	Profitable Fee	2
5	Exercise Legal Skills	5

fourteen adjectives made the top twenty in both groups.⁹⁰ This provided helpful advice to lawyers because, regardless of their overall styles, as long as they displayed these characteristics, they would be considered effective. In the new study only two adjectives overlap: experienced and confident. This lack of overlap suggests that the two styles of negotiation have clearly diverged in the last twenty-five years and that it is unlikely for a negotiator to be able to move between these antithetical types of negotiation styles.

There are several common strategies revealed by the top bipolar descriptions, however. Both effective problem-solvers and effective adversarials were perceived as being interested in the needs of their client,⁹¹ acting consistently with the best interests of their client, and representing their client zealously and within the bounds of the law. Both were also perceived as intelligent. Finally, the goals in common

90. Experienced, realistic, ethical, rational, perceptive, trustworthy, convincing, analytical, creative, self-controlled, versatile, adaptable, poised, legally astute. WILLIAMS, *supra* note 20, at 26.

91. This bipolar description applied to all lawyers in all categories of effectiveness.

were maximizing the settlement for the client, seeing that the client's needs were met,⁹² and taking satisfaction in the exercise of legal skills. It is easy to see that what effective lawyers have in common. They are assertive, smart, and prepared.

E. Comparing Effectiveness Ratings over Time

Finally, we can compare the effectiveness rating of Williams' two groups to this study.⁹³

NUMBER OF LAWYERS PER GROUP BY EFFECTIVENESS

	Ineffective	Average	Effective
Cooperative (now labeled Problem-Solving)	7	84	133
Competitive (now labeled Adversarial)	28	35	21

Compared to the Williams study, the percentage of problem-solving negotiators who were deemed to be effective has dropped from 59% to 54%. The changes in the percentage of adversarial bargainers, however, is much more striking. Twenty-five percent of competitive negotiators were seen as effective in the Williams study as compared to 9% in this study. Alternatively, only 33% of competitive negotiators were seen as ineffective in the Williams study while 53% were in this study.

In the Williams study, 73% of negotiators fell in the cooperative group and 27% were in the competitive group. In this study, only 64% of attorneys were clustered in the problem-solving group and 36% of attorneys were in the adversarial group. In comparing general effectiveness of the lawyer population, the Williams study stated that 49% of the attorneys were considered effective, 38% were rated as average, and 12% were rated as ineffective. In contrast, only 38% of attorneys in this study were rated effective, 40% were rated as average, and 22% were rated ineffective. As the vast majority of those attorneys who were considered ineffective were also adversarial negotiators (90% of ineffective lawyers were adversarial), we can hypothesize that the increase in ineffective lawyers over twenty-five years from 12% to 22% comes from the increase in adversarial bargainers from 27% to 36%.

92. These two goals applied to all lawyers in all categories of effectiveness.

93. WILLIAMS, *supra* note 20, at 19. These numbers are extrapolated from Williams' graph and do not include the 11% of the bar that his study found to fall outside his two categories.

We can draw a few different lessons from this development in negotiation behavior. First, it looks like the gap between these styles is widening. While the problem-solving or cooperative group has remained much the same, the adversarial or competitive group seems to be growing more extreme and more negative. Second, as adversarial bargaining has become more extreme, it has also become far less effective. This is a key lesson for those hoping to become effective "Rambo" negotiators.

V. POTENTIAL LIMITATIONS ON THE STUDY

There are two primary weaknesses with this type of study. First, because return of the survey was voluntary, respondents are self-selected. In other words, the responding population may not be representative of the entire population. Second, the data discussed here relies on attorneys' perceptions of one another. This is clearly not an objective standard—each of the survey-takers subjectively determines what the adjectives, bipolar scales, goals, and effectiveness rankings ultimately mean. Respondents could either be projecting certain qualities onto their counterparts or punishing them for not acting consistently with the responding attorney's expectations. Each of these weaknesses will be addressed in turn.

A. *Self-Selection*

The question in any voluntary survey is how much the responding population resembles the population as a whole. In this survey, can we assume that those attorneys who filled out the survey are representative of all attorneys? We can easily generate a number of reasons why certain attorneys would be more likely to respond to this survey. Perhaps they are graduates of Marquette University and, therefore, more likely to fill out the survey on the basis of loyalty. We know that the response rate was higher in Milwaukee than in Chicago. This probably occurred because of loyalty to the local law school and the higher number of Marquette graduates among the populations that received the survey. This disparity raises the possibility that the results of the study may be skewed because a higher percentage of Milwaukee attorneys participated than the percentage of Chicago attorneys.

We also saw that a higher percentage of women filled out the survey than the percentage of women attorneys in the bar. This too,

we might speculate, comes from a loyalty to a female professor conducting the survey, or perhaps from a greater interest in communication. Interestingly, while the percentage of female respondents was over 30%, the percentage of women discussed as negotiators was less than 18%. This 18% is far more reflective of the actual percentage of women in the bar.

Perhaps attorneys were more likely to respond to this survey if they had a pleasant experience in their most recent negotiation. After all, they may not want to relive something that was either embarrassing or uncomfortable. Many of the written comments reflect a positive experience.⁹⁴ On the other hand, perhaps attorneys were more likely to report negative experiences as this survey gave them the opportunity to vent their anger. Clearly, some of the submitted comments sent from the survey could support this inference.⁹⁵

One might also worry that only more cooperative attorneys returned the survey since these attorneys would be more interested in the legal community as a whole and more willing to devote their time to such an exercise. The egotist reflected in the adversarial approach to negotiation probably does not care as much about a study of peers and, therefore, would be less likely to return a survey. In this way, the results could reflect the assessment of an overly large percentage of problem-solving attorneys who would skew the results in favor of this style of negotiation.

Another area where we might expect higher participation is from attorneys that are involved in ADR or who have taken negotiation classes. In fact, we might worry that high response rates in this group could skew the results of the study since the "ADR believers" might negotiate differently than the rest of the attorney population. However, it appears that the vast majority of respondents to the survey have neither been greatly exposed to ADR nor taken negotiation

94. "He saw the problem from both sides and worked with me in achieving a win-win situation for his client as well as for mine." Comment #4. "She kept calling on a desire to attempt resolution. She did a good job of quickly resolving problem of losing initial arbitration. She knew the paper part of the file better than I did and had a great and personable client." Comment #43.

95. "He was better than average because he got a good result for his client. That being said, however, I feel I overpaid on this claim. In overpaying, this attorney's style was so rude, offensive and chauvinistic that I have to question whether, on some level, I settled just to get this attorney out of my life or to avoid running him over with a car." Comment #198. "Attorney didn't consider the trauma to my client, his client's 90-year-old mother, whom he was trying to evict from a home he owned and she had lived in for 45 years. He was harsh, legalistic and gave the impression that he just wanted her out so his client, who was in serious debt, could move in. It fractured the family and caused my elderly client extreme distress." Comment #319.

classes. Close to 87% of respondents do not belong to any ADR organization.⁹⁶ Ninety percent of respondents had never served as a mediator and 86% had never served as an arbitrator.⁹⁷ Therefore, the vast majority of people responding to this survey were not “ADR believers” who could skew results.

In regards to negotiation classes, again the lawyers responding to the survey are not only those educated and believing in a “problem-solving” method of negotiation. Only 16% of respondents had taken a semester-long negotiation class. Of the 470 attorneys who had no negotiation training, 60% have not taken a CLE class on negotiation later on in their careers. In fact, most attorneys out of the responding attorneys did not take any CLE classes in negotiation.⁹⁸ Only sixty-five attorneys (9%) have taken a multiple day CLE class in negotiation (including forty-four who had not taken any class in law school).

Therefore, it does not appear that respondents were part of a group of attorneys particularly inclined to study or learn negotiation skills nor had many of them had any exposure to particular theories of negotiation. Thus it appears that self-selection on the basis of negotiation training or exposure to ADR had little impact in the total number of surveys received.⁹⁹

B. *Projection and Punishment*

A second issue regarding this type of study is that the study data relies on perceptions. Therefore, we could question the accuracy of

96. 573 out of 661 respondents to the question “Are you a member of an ADR organization?” answered no. Twenty-eight of those responding yes belonged to the ADR section of the local bar, seventeen belonged to the ADR section of the state bar, four belonged to the ABA Section on Dispute Resolution, three belonged to the Society for Professionals in Dispute Resolution (SPIDR) (now the Association for Conflict Resolution), five belonged to the Wisconsin Association of Mediators, and thirty-one belonged to some other ADR organization.

97. In answering the question “Have you served as a mediator?” the responses were as follows: No—623 responses; one time—twenty responses; two times—fourteen responses; three times—five responses; four times—two responses; five—ten times—eleven responses; eleven—twenty times—five responses; over twenty times—seven responses. In answering the question “Have you served as an arbitrator?” the responses were as follows: No—589; one time—twenty-six responses; two times—thirteen responses; three times—thirteen responses; four times—ten responses; five—ten times—twenty-seven responses; eleven—twenty—three responses; over twenty times—three responses.

98. 417 out of 677 responding to this question had not taken a CLE class in negotiation.

99. One area for further research is to study those attorneys who have taken negotiation training or are involved in ADR and to correlate this data with the type of negotiation behavior they perceived and how they rated the other attorney.

each lawyer's perception of the other side. Were the respondents more likely to rate someone as effective who negotiated just like them or who was pleasant? Respondents could project their own negotiation skills on the other side and assume that those skills lead to effective negotiating. Similarly, respondents could punish those negotiators who negotiated differently from them or who were unpleasant by rating them lower on the effectiveness scale.

There are a number of ways to test for this kind of bias. First, we can look at the written comments given by respondents in the survey. Second, we can examine the goals of both the respondents and study population to see how these overlap and relate to the effectiveness rating. Third, we can examine other empirical work done on attribution theory.

The last measure used to rate attorneys in the study was their goals in a negotiation. This rating scale listed fourteen potential goals that a lawyer could have in a negotiation.¹⁰⁰ This rating scale was also filled out by respondents after they had finished all of the ratings scales and effectiveness scale on the other attorney.¹⁰¹ The scale asked the respondent to rate the importance of the goal on a scale from one to five. We can hypothesize that attorneys with a similar approach to negotiation will have similar goals in the negotiation. For example, attorneys who have a more problem-solving approach to negotiation will be more likely to give high ratings to the goals of meeting the underlying interests of both sides and of getting a fair settlement. Similarly, problem-solving attorneys did not display the goals of outdoing the other side or of obtaining a profitable fee. On the other hand, there would be a difference in how problem-solving attorneys rate themselves versus more adversarial lawyers and vice versa. By looking at the average difference between the responding attorney and the studied attorney, we can roughly assess the differences between them as negotiators. Furthermore, by comparing these average differences to effectiveness rating, we can try to see whether that difference in negotiation approach led to lower effectiveness ratings. The table below demonstrates this comparison:

100. See discussion *supra* Part I.C.1.c.

101. This scale was filled out after evaluating the other attorney in order to minimize potential projection from the respondent onto the other attorney. After completing the evaluation of the other attorney, the respondent would then fill out the self-evaluation part of the survey. See Appendix A for the self-evaluation form.

EFFECTIVENESS BY GOAL SIMILARITY

Avg Difference in Goals	Ineffective	Average	Effective	Row total
<1	7	78	141	226
1-1.50	36	109	75	220
1.50-1.99	40	58	23	121
2-2.49	30	10	4	44
2.50-2.99	21	3	1	25
>3	9	1	0	10
Column Total	143	259	244	646 valid responses

We can draw a number of conclusions. First, the majority of respondents had little difference in terms of goals with the attorneys that they rated. Close to 70% of respondents had less than a 1.5 point difference per question. Almost 35% of respondents had less than an average one point difference per question. On the five-point scale, most people were not rating themselves at one end and the other side at another end. This is actually not surprising given the numbers in each cluster. If we assume that 65% of the legal profession is problem-solving, then two-thirds of this group would encounter a negotiator like themselves. Similarly, one-third of the adversarial negotiators would also encounter a negotiator like themselves.

Second, it appears that there is some correlation between similarity in goals and perceived effectiveness. The majority of those perceived as effective averaged less than one point difference in goals. And close to 70% of those perceived as ineffective averaged over 1.5 point difference in goals. On the other hand, over 72% of those perceived as average only had a difference of 1.5 in goals. Furthermore, those attorneys perceived as ineffective are spread out along the spectrum of different point averages and are not clustered at the other end of the spectrum. Nonetheless, it appears that there probably is some projection of effectiveness onto the negotiators that behaved consistently with the goals and expectations of the attorney who rated them.

A second item to assess in terms of examining how accurately attorneys rated the other side is to examine the written comments filled out by respondents. Out of the 215 comments on effective negotiation behavior, 30 of them dealt with adversarial behavior. Comments such as "he wore us down" or "he had leverage" in combination with other descriptions were used to describe effective adversarial behavior. Although it was clear the respondent did not like the other

attorney or enjoy the negotiation, the respondent nonetheless rated this attorney as effective because of how the attorney served the client. At the same time, comments discussing why the other attorney was ineffective are also revealing.¹⁰²

Finally, we can examine research done on attribution theory.¹⁰³ Psychologists and social scientists use attribution theory to explain the processes that the observer (or respondent in this case) goes through in explaining the behavior of others. First the observer perceives the action (I saw that); second, the observer judges the intention (you meant to do that); and third, the observer makes an attribution of disposition (you are nice). The observer is more likely to correctly assess the action when three criteria exist: experience, intelligence, and empathetic ability.

These criteria have different weight in this study. First, we have no way of assessing the intelligence of each respondent although we might assume that graduating from law school is at least one potential indicator of such. Second, we might expect that most lawyers would have at least some understanding of the other side's motivations even if the respondent were not particularly empathetic. It is the criteria of experience here that we implicitly count on in this study to provide us with useful data. Under attribution theory, experience means having similar cultural backgrounds or familiarity with idioms and customs. Clearly lawyers will have similar backgrounds in terms of schooling that provide them with the familiarity of legal customs and practices. We expect that lawyers will be more accurate in describing and evaluating effective negotiation behavior than non-lawyers in general because of this similar experience.

C. *The Definition of Effectiveness*

The findings in the survey depend greatly on how lawyers define effectiveness. And yet, there is no clear definition provided in the survey or elsewhere. Like every other descriptive term in the survey, the meaning of effectiveness is left to each responding attorney to determine. We might assume that effectiveness in negotiation means

102. "Attorney had inaccurate view of the litigative merit of case and attorney over valued damages." Comment #382. "Never evaluated appeal of case to jurors. Never conceptualized our legal theory; i.e. got stuck on his and never looked at ours. More interested in billing his client than settling case. In above case offered to settle for \$160,000—verdict was 2.4 million in our favor. Subsequently settled for non-disclosable amount." Comment #500. "(Ineffective) because he refused to negotiate at all. We went to trial and the jury entered a verdict in favor of my client." Comment #551.

103. KELLY G. SHAVER, AN INTRODUCTION TO ATTRIBUTION PROCESSES 21-34 (1975).

"on behalf of a client." In other words, did the other attorney appear to meet the needs and interests of their client in this negotiation? Effective could also mean a variety of other things including efficient, persuasive, or accomplished. Any of these terms are open to interpretation. Furthermore, to measure any of this properly, we should interview the client as well. Therefore, we are left to assume that effectiveness is generally a good thing that we want in negotiators, whatever it might actually mean to each individual respondent to this survey.

VI. CONCLUSION

Perceptions of effectiveness are an important measure of what actually occurs in a negotiation. At most, lawyers' perceptions of other lawyers are the closest we can get to objective conclusions about effective negotiation behavior. At least, these perceptions create the tone and atmosphere of a particular negotiation and can also affect a lawyer's reputation in the future. Either way, these perceptions are valuable tools for lawyers seeking to improve their own negotiation skills.

The empirical results help respond to the negotiation myths outlined at the beginning of the article. The myth of the effective hard bargainer should be destroyed. In each cluster analysis, increasingly adversarial behavior was perceived as increasingly ineffective. In the two cluster analysis, over 50% of the adversarial bargainers were ineffective. This number increased with each breakdown into a smaller cluster. Close to 60% of the adversarial bargainers from the three cluster analysis were considered ineffective. Finally, 75% of the unethical adversarial bargainers from the four cluster analysis were considered ineffective. As these negotiators become more irritating, more stubborn, and more unethical, their effectiveness ratings drop. The historical analysis comparing these results to Williams' results also teaches the same lesson. As adversarial bargainers became nastier in the last 25 years, their effectiveness ratings have dropped.

At the same time, the empirical results provide clear lessons from the data on what skills make more effective negotiators. Fifty-four percent of the problem-solving negotiators from the two cluster analysis were considered effective. When this group is narrowed to the true problem-solving negotiators in the latter clusters, 75% of them are considered effective. Furthermore, the analysis of the cautious problem-solving group of negotiators confirms that the skills

used by problem-solving negotiators make these negotiators more effective. Missing many of the attributes of problem-solving negotiators, the cautious problem-solving group is perceived as average in their skills; only 25% of the cautious problem-solving negotiators were considered effective.

In the end, the lessons from this study support basic common sense and demonstrate that lawyers who are ethical can be effective. Those lawyers who belittle, antagonize, and deceive seem to be more concerned with themselves than with their clients. These lawyers are more concerned with the battle itself than whether the outcome actually serves their clients. The results of this study show that lawyers themselves condemn this behavior as generally ineffective. On the other hand, it is no surprise that lawyers who are pleasant, courteous, astute, and well prepared do well in negotiations. When lawyers are able to maximize their problem-solving skills balancing assertiveness and empathy, they are more effective on behalf of their clients. They are able to enlarge the pie through creativity and flexibility. They are able to understand the other side with listening and perceptiveness. They argue well for their clients with confidence, poise, and zealous representation. In short, these lawyers set the standard to which other lawyers and law students should aspire.

VII. APPENDICES

A. APPENDIX A

I. GENERAL INSTRUCTIONS

We have designed this questionnaire to obtain your perceptions of the attorney you most recently dealt with in a case that involved negotiations. This should take only 15 - 20 minutes. Your anonymity will be fully preserved.

In selecting the case or transaction, please use the following criteria:

1. Select your most recently concluded case or transaction in which some negotiations occurred, regardless of whether it was resolved by mutual agreement, by plea-bargaining, by trial, on appeal, or in some other way.
2. We are equally interested in your experiences in civil or criminal litigation or in transactions (commercial contracts, real property transactions, business agreements, or other types of business or private negotiations), so do not hesitate to select a case from any of these areas.
3. If you did not have sufficient contact with the attorney in your most recent case or transaction to be able to describe him or her, please select the next most recent case or transaction in which negotiations were significant and describe the opposing counsel.
4. If the last case or transaction you concluded involved multiple parties and attorneys, please rate the one attorney with whom you had the most contact.

II. ATTORNEY & CASE DESCRIPTION

To protect the confidentiality of this information, we ask that you NOT name the attorney whom you describe in this questionnaire. Please provide the following information about the attorney you have selected.

1. Approximate age _____
2. Male _____ Female _____
3. Race: _____ African-American/Black _____ Asian
_____ Caucasian _____ Hispanic _____ Native American
_____ Other (Specify): _____
4. Estimate how many years this attorney has been in practice:
1-3 _____ 4-10 _____ 11-20 _____ 21-30 _____ 31+ _____
Don't know _____
5. Check the one item below that best characterizes the attorney's practice:
_____ In-House Corporate Law Office _____ Public Service
_____ Law Firm _____ Solo Practitioner _____ Don't know
_____ Other (Specify): _____

6. Approximately how many attorneys work in his or her firm or department?

1 _____ 2-10 _____ 11-50 _____ 51-100 _____ 101+ _____

Don't know _____

7. What is the attorney's area of primary emphasis?

_____ Civil Litigation _____ Criminal Law _____ Family Law

_____ Commercial Law _____ Corporate Law

_____ Property/Real Estate Law _____ Don't know

_____ Other (Specify): _____

8. On what did you base your answers to questions 1 – 7 above?
(Please check all that apply.)

_____ Asking the other attorney _____ Educated guesses

_____ Information from colleagues _____ Observation

_____ Martindale-Hubbell _____ Other (Specify): _____

9. Indicate the subject matter of the selected case or transaction by checking one of the following:

_____ Commercial _____ Labor or Employment _____ Corporate

_____ Personal Injury _____ Criminal

_____ Property/Real Estate _____ Family

_____ Other (Specify): _____

10. Which party did the other attorney represent?

_____ Defendant _____ Plaintiff (or Prosecutor) _____ Buyer

_____ Seller _____ Other (Specify): _____

Please answer question 11 or 12.

11. If this matter involved a *transaction* rather than an actual or potential litigation dispute, did you reach agreement?

_____ Yes _____ No

12. If the matter involved an *actual or potential litigation dispute*, how was it resolved?

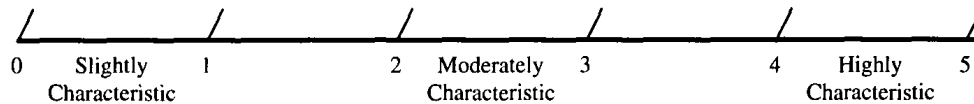
_____ Mediated Settlement _____ Negotiated Settlement

_____ Still Pending _____ Summary Judgment

_____ Trial Verdict _____ Other (Specify) _____

III. ATTORNEY RATINGS

- A. Use the following list to describe the attorney you've selected. The adjectives may be characteristic or uncharacteristic of his or her behavior. Rate the degree to which each adjective was characteristic of this attorney *in the negotiations with you*. Do this by marking an "X" over the appropriate number between 0 and 5 for each term. A zero indicates that the adjective is uncharacteristic. A five indicates the adjective is highly characteristic. Please be certain to rate this attorney with *each* adjective.



0	1	2	3	4	5	accommodating
0	1	2	3	4	5	adaptable
0	1	2	3	4	5	agreeable
0	1	2	3	4	5	ambitious
0	1	2	3	4	5	analytical
0	1	2	3	4	5	angry
0	1	2	3	4	5	argumentative
0	1	2	3	4	5	arrogant
0	1	2	3	4	5	assertive
0	1	2	3	4	5	astute about the law
0	1	2	3	4	5	avoider
0	1	2	3	4	5	bluffer
0	1	2	3	4	5	careful
0	1	2	3	4	5	caring
0	1	2	3	4	5	clarifies
0	1	2	3	4	5	communicative
0	1	2	3	4	5	compassionate
0	1	2	3	4	5	complaining
0	1	2	3	4	5	conciliatory
0	1	2	3	4	5	confident
0	1	2	3	4	5	conniving
0	1	2	3	4	5	convincing
0	1	2	3	4	5	creative
0	1	2	3	4	5	deceptive
0	1	2	3	4	5	deliberate
0	1	2	3	4	5	demanding
0	1	2	3	4	5	dignified
0	1	2	3	4	5	discreet
0	1	2	3	4	5	dominant
0	1	2	3	4	5	egotistical

0	1	2	3	4	5	elucidating
0	1	2	3	4	5	empathetic
0	1	2	3	4	5	ethical
0	1	2	3	4	5	evasive
0	1	2	3	4	5	experienced
0	1	2	3	4	5	explorer
0	1	2	3	4	5	fair-minded
0	1	2	3	4	5	feminine
0	1	2	3	4	5	firm
0	1	2	3	4	5	flexible
0	1	2	3	4	5	foolish
0	1	2	3	4	5	forceful
0	1	2	3	4	5	gentle
0	1	2	3	4	5	greedy
0	1	2	3	4	5	headstrong
0	1	2	3	4	5	helpful
0	1	2	3	4	5	hostile
0	1	2	3	4	5	impulsive
0	1	2	3	4	5	intolerant
0	1	2	3	4	5	irritating
0	1	2	3	4	5	listener
0	1	2	3	4	5	loud
0	1	2	3	4	5	loyal
0	1	2	3	4	5	manipulative
0	1	2	3	4	5	masculine
0	1	2	3	4	5	moderate
0	1	2	3	4	5	objective
0	1	2	3	4	5	obliging
0	1	2	3	4	5	organizing
0	1	2	3	4	5	patient

0	1	2	3	4	5	perceptive
0	1	2	3	4	5	personable
0	1	2	3	4	5	picky
0	1	2	3	4	5	poised
0	1	2	3	4	5	praising
0	1	2	3	4	5	prober
0	1	2	3	4	5	quarrelsome
0	1	2	3	4	5	rational
0	1	2	3	4	5	realistic
0	1	2	3	4	5	reckless
0	1	2	3	4	5	rude
0	1	2	3	4	5	sarcastic
0	1	2	3	4	5	self-controlled
0	1	2	3	4	5	sensitive
0	1	2	3	4	5	sociable
0	1	2	3	4	5	smooth
0	1	2	3	4	5	spineless
0	1	2	3	4	5	staller
0	1	2	3	4	5	stern
0	1	2	3	4	5	stubborn
0	1	2	3	4	5	suspicious
0	1	2	3	4	5	sympathetic
0	1	2	3	4	5	timid
0	1	2	3	4	5	tough
0	1	2	3	4	5	trusting
0	1	2	3	4	5	trustworthy
0	1	2	3	4	5	unpredictable
0	1	2	3	4	5	warm
0	1	2	3	4	5	wise

- B. Use the following list to further describe this attorney's approach to the negotiation. Read each pair of descriptive terms, and then circle the number which reflects your evaluation of the attorney you are rating. Note that "favorable" items may be at either end of the scale.

I. SCALE

	Extremely 3	Moderately 2	Slightly 1	Neutral 0	Slightly 1	Moderately 2	Extremely 3	
Prepared on the factual elements of the case	3	2	1	0	1	2	3	Unprepared on the factual elements of the case
Took an unrealistic initial position	3	2	1	0	1	2	3	Took a realistic initial position
Defended	3	2	1	0	1	2	3	Attacked
Informal	3	2	1	0	1	2	3	Formal
Active	3	2	1	0	1	2	3	Passive
Revealed information early	3	2	1	0	1	2	3	Revealed information gradually
Willing to stretch the rules	3	2	1	0	1	2	3	Unwilling to stretch the rules
Discourteous	3	2	1	0	1	2	3	Courteous
Arrogant	3	2	1	0	1	2	3	Modest
Insincere	3	2	1	0	1	2	3	Sincere
Did not use threats	3	2	1	0	1	2	3	Used threats
Inaccurately estimated the value of the case	3	2	1	0	1	2	3	Accurately estimated the value of the case
Forthright	3	2	1	0	1	2	3	Devious
Did not demonstrate accurate understanding of my client's underlying interests	3	2	1	0	1	2	3	Demonstrated accurate understanding of my client's underlying interests
Used take it or leave it	3	2	1	0	1	2	3	Did not use take it or leave it
Concerned about how I would look in the eyes of my client	3	2	1	0	1	2	3	Unconcerned about how I would look in the eyes of my client
Unintelligent	3	2	1	0	1	2	3	Intelligent
Tactless	3	2	1	0	1	2	3	Tactful
Considered my needs	3	2	1	0	1	2	3	Did not consider my needs
Disinterested in my Personality	3	2	1	0	1	2	3	Got to know my personality
Had a broad view of the case	3	2	1	0	1	2	3	Had a narrow view of the case

	Extremely 3	Moderately 2	Slightly 1	Neutral 0	Slightly 1	Moderately 2	Slightly 1	Extremely 3	
Interested in the needs of his or her client	3	2	1	0	1	2	1	3	Disinterested in the needs of his or her client
Interested in the needs of my client	3	2	1	0	1	2	1	3	Disinterested in the needs of my client
Did own factual investigation and preparation	3	2	1	0	1	2	1	3	Hired an investigator to conduct the factual investigation and preparation
Unskillful in reading my cues	3	2	1	0	1	2	1	3	Skillful in reading my cues
Made extreme opening demand	3	2	1	0	1	2	1	3	Made reasonable opening demand
Uncooperative	3	2	1	0	1	2	1	3	Cooperative
Unwilling to stretch the facts	3	2	1	0	1	2	1	3	Willing to stretch the facts
Probed my position	3	2	1	0	1	2	1	3	Disinterested in my position
Rigid	3	2	1	0	1	2	1	3	Flexible
Viewed negotiation as a process with winners and losers	3	2	1	0	1	2	1	3	Viewed negotiation as a process with a possible mutually beneficial outcome
Willing to share information	3	2	1	0	1	2	1	3	Unwilling to share information
Adhered to customs and courtesies of the local bar	3	2	1	0	1	2	1	3	Disregarded customs and courtesies of the local bar
Emotional	3	2	1	0	1	2	1	3	Logical
Aggressive	3	2	1	0	1	2	1	3	Passive
Dishonest	3	2	1	0	1	2	1	3	Honest
Careful about the timing and sequence of his or her actions	3	2	1	0	1	2	1	3	Not careful about the timing and sequence of his or her actions
Took one position and refused to move from it	3	2	1	0	1	2	1	3	Was willing to move from original position
Facilitated the negotiation	3	2	1	0	1	2	1	3	Obstructed the negotiation

	Extremely 3	Moderately 2	Slightly 1	Neutral 0	Slightly 1	Moderately 2	Extremely 3	
Reputation as an effective trial attorney	3	2	1	0	1	2	3	Reputation as an ineffective trial attorney
Reasonable	3	2	1	0	1	2	3	Unreasonable
Conceptualized problem in terms of bargaining between positions	3	2	1	0	1	2	3	Conceptualized problem in terms of underlying interests, motivations, and needs
Distrustful	3	2	1	0	1	2	3	Trustful
Emotionally involved	3	2	1	0	1	2	3	Emotionally detached
Unfriendly	3	2	1	0	1	2	3	Friendly
Had a wide range of bargaining strategies	3	2	1	0	1	2	3	Had a narrow range of bargaining strategies
Dealt with issues in a piecemeal fashion	3	2	1	0	1	2	3	Tied issues together into packages
Explored a variety of alternative solutions	3	2	1	0	1	2	3	Fixed on a single solution
Used trial and error to find a solution	3	2	1	0	1	2	3	Avoided trial and error solution
Used a fixed conception of the problem	3	2	1	0	1	2	3	Explored a variety of ways to conceptualize the problem
Accurately represented own position	3	2	1	0	1	2	3	Distorted own client's position
Able to control the client	3	2	1	0	1	2	3	Unable to control the client
Had limited authority	3	2	1	0	1	2	3	Had broad authority
Portrayed own client as being reasonable	3	2	1	0	1	2	3	Portrayed own client as being unreasonable
Represented client zealously somewhat beyond the bounds of the law	3	2	1	0	1	2	3	Represented client zealously but and within the bounds of the law

	Extremely 3	Moderately 2	Slightly 1	Neutral 0	Slightly 1	Moderately 2	Extremely 3	
Actions were consistent with the best interests of own client	3	2	1	0	1	2	3	Actions were not consistent with the best interests of own client
Conceptualized problem terms of legal entitlements	3	2	1	0	1	2	3	Used legal entitlements as solely in one of several factors in determining a solution
Avoided inflicting needless harm on my client	3	2	1	0	1	2	3	Inflicted needless harm on my client
Knowingly advanced claims or defenses unwarranted under existing law	3	2	1	0	1	2	3	Did not advance claims or defenses unwarranted under existing law
Did not make unfair or derogatory personal references about me	3	2	1	0	1	2	3	Made unfair or derogatory personal references about me
Used haranguing or offensive tactics	3	2	1	0	1	2	3	Did not use haranguing or offensive tactics

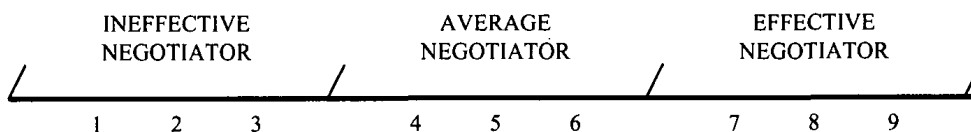
- C. To provide us with a more complete description of the selected attorney, use the list below to assess the attorney's goals in the negotiation. Please indicate how important you believe each of the following goals was for him or her in this case or transaction based on their actions and statements. Please read quickly through the whole list before responding.

	Not at all Important		Moderately Important		Extremely Important	
a. Getting a "fair" settlement	0	1	2	3	4	5
b. Improving own reputation among members of the bar	0	1	2	3	4	5
c. Obtaining a profitable fee for self	0	1	2	3	4	5
d. Improving own reputation among the members of his or her firm (leave blank if a solo practitioner)	0	1	2	3	4	5
e. Improving own reputation with you	0	1	2	3	4	5
f. Maximizing the settlement for his or her client	0	1	2	3	4	5
g. Outdoing or outmaneuvering you	0	1	2	3	4	5
h. Seeing that his or her client's personal or psychological needs were met	0	1	2	3	4	5
i. Taking satisfaction in exercise of legal skills	0	1	2	3	4	5
j. Conducting self ethically	0	1	2	3	4	5
k. Avoiding litigation	0	1	2	3	4	5
l. Maintaining or establishing good personal relations with you	0	1	2	3	4	5
m. Maintaining or establishing good relations between the parties	0	1	2	3	4	5
n. Reaching an agreement that met underlying interests of both sides	0	1	2	3	4	5

IV. ATTORNEY EFFECTIVENESS

- A. Please rate the selected attorney's effectiveness as a negotiator compared with other attorneys with whom you have negotiated. Note that the scale ranges from 1 to 9 and is divided into three parts labeled "Effective," "Average," and "Ineffective." Your rating will thus indicate your general evaluation of the attorney's effectiveness, and the degree to which you saw him or her as effective, average or ineffective.

Please rate this attorney's performance in the negotiation by circling a number on the scale below.



- B. What were the primary reasons you felt the attorney was ineffective, average or effective?

V. NEGOTIATION SELF-EVALUATION

Use the list below to assess *YOUR* goals in the negotiation by indicating their importance to you. Please read quickly through the whole list before responding.

	Not at all Important		Moderately Important		Extremely Important	
a. Getting a "fair" settlement	0	1	2	3	4	5
b. Improving your reputation among members of the bar	0	1	2	3	4	5
c. Obtaining a profitable fee for yourself	0	1	2	3	4	5
d. Improving your reputation among the members of your firm	0	1	2	3	4	5
e. Improving your reputation with the other attorney	0	1	2	3	4	5
f. Maximizing the settlement for your client	0	1	2	3	4	5
g. Outdoing or outmaneuvering the other attorney	0	1	2	3	4	5
h. Seeing that your client's personal or psychological needs were met	0	1	2	3	4	5
i. Taking satisfaction in exercise of legal skills	0	1	2	3	4	5
j. Conducting self ethically	0	1	2	3	4	5
k. Avoiding litigation	0	1	2	3	4	5
l. Maintaining or establishing good personal relations with the other attorney	0	1	2	3	4	5
m. Maintaining or establishing good relations between the parties	0	1	2	3	4	5
n. Reaching an agreement that met underlying interests of both sides	0	1	2	3	4	5

VI. INFORMATION ABOUT YOURSELF

For purposes of understanding the demographics of survey respondents, please respond to the following questions about yourself.

1. Age_____

2. Male_____ Female_____

3. Race: ☐ African-American/Black ☐ Asian
☐ Caucasian ☐ Hispanic ☐ Native American
☐ Other (Specify): _____
4. Approximately how many years have you actively practiced law? _____
5. Check the one item below that best characterizes your practice:
☐ In-House Corporate Law Office ☐ Public Service
☐ Law Firm ☐ Solo Practitioner
☐ Other (Specify): _____
6. Approximately how many attorneys work in your firm or department? (Check one)
☐ 1 ☐ 2-10 ☐ 11-50 ☐ 51-100 ☐ 101+
7. If you specialize, what is your area of primary emphasis? (Check one)
☐ Civil Litigation ☐ Criminal Law ☐ Family Law
☐ Commercial Law ☐ Corporate Law
☐ Property/Real Estate Law ☐ Other (Specify): _____
8. In what geographic area do you primarily practice?
☐ Chicago ☐ Milwaukee

VII. NEGOTIATION TRAINING

1. Did you take any negotiation classes in law school?
☐ Yes, one semester ☐ Yes, as part of another class (mediation, ADR, clinical course etc.) ☐ Yes, mini-semester
☐ No
2. If not, why not? (Check all that apply and skip to question 5.)
☐ Not a priority ☐ Did not believe class would help
☐ Lack of interest ☐ Not offered
☐ Other (Please explain): _____
3. If yes, please RANK these possible goals of the class from 1-5, with 1 being the most important and 5 being the least important.
☐ To teach students how to win
☐ To teach students "problem-solving" negotiation
☐ To teach students tactics and strategies
☐ To teach students ethical behavior
☐ To teach students negotiation theory
☐ Other (Specify): _____
4. Do you believe this law school negotiation training has helped you improve your skills?
☐ Yes ☐ No

5. Have you participated in any Continuing Legal Education negotiation workshops?
- ____ Yes, half-day ____ Yes, multiple days ____ Yes, one day
____ Yes, as part of another class (mediation, ADR, clinical course, etc.) ____ No
6. If not, why not? (Check all that apply and skip to Section VIII.)
- ____ Lack of time ____ Did not believe class would help
____ Lack of interest ____ Other (Please explain): _____
7. If yes, please RANK these possible goals of the class from 1-5, with 1 being the most important and 5 being the least important.
- ____ To teach participants how to win
____ To teach participants "problem-solving" negotiations
____ To teach participants tactics and strategies
____ To teach participants ethical behavior
____ To teach participants negotiation theory
____ Other (Specify): _____
8. Do you believe this CLE negotiation training has helped you improve your skills?
- ____ Yes ____ No

VIII. ALTERNATIVE DISPUTE RESOLUTION EXPERIENCE

1. Which methods of alternative dispute resolution have you used in your practice? (Please check all that apply and give an approximate number of times per year.)
- ____ Mediation ____ times per year
____ Arbitration ____ times per year
____ Summary Jury Trial ____ times per year
____ Minutrial ____ times per year
____ Early Neutral Evaluation ____ times per year
____ Other (Specify): _____ ____ times per year
____ None of the above
2. Who usually proposes the use of ADR?
- ____ I usually propose it ____ Opposing counsel usually proposes it ____ The court suggests it ____ The court orders it
3. Have you served as a neutral in an ADR process? (Please check all that apply and give an estimated number of times per year.)
- ____ Mediator ____ times per year
____ Arbitrator ____ times per year
____ Other (Specify): _____ ____ times per year
____ No

4. Are you a member of any ADR organization? (Please check all that apply.)

☐ No
☐ ADR section of your local bar
☐ ADR section of your state bar
☐ ADR section of the American Bar Association
☐ SPIDR
☐ NIDR
☐ Wisconsin Association of Mediators
☐ Other (Specify): _____

IX. THANK YOU SO MUCH FOR YOUR ASSISTANCE. WE WELCOME ANY ADDITIONAL COMMENTS YOU WOULD LIKE TO MAKE.

X. OPTIONAL

Please indicate your name, address and telephone number below if you would be willing to participate in a *very* brief follow-up study. Please also indicate below if you would like a copy of this data when it is published. Thank you.

Thank you very much for your cooperation with this study. Please place the completed study in the enclosed envelope and return it to:

Professor Andrea K. Schneider
Legal Negotiation Project
Marquette University Law School
P.O. Box 1881
Milwaukee, WI 53201-1881

B. APPENDIX B

TWO CLUSTER ADJECTIVES—TABLE B1*

Problem-Solving Adjectives		Adversarial Adjectives	
Ethical	4.25	Stubborn	3.83
Experienced	3.92	Headstrong	3.81
Personable	3.91	Arrogant	3.74
Rational	3.73	Assertive	3.72
Trustworthy	3.73	Irritating	3.72
Self-controlled	3.71	Argumentative	3.69
Confident	3.69	Egotistical	3.67
Agreeable	3.64	Confident	3.64
Realistic	3.64	Demanding	3.63
Accommodating	3.63	Quarrelsome	3.50
Sociable	3.60	Ambitious	3.45
Fair-minded	3.58	Experienced	3.42
Dignified	3.56	Firm	3.28
Communicative	3.55	Tough	3.27
Perceptive	3.51	Forceful	3.25
Adaptable	3.46	Suspicious	3.18
Astute about the law	3.38	Manipulative	3.17
Poised	3.32	Hostile	3.14
Careful	3.26	Masculine	3.05
Helpful	3.24	Evasive	3.04
Flexible	3.22	Complaining	3.03
Patient	3.22	Bluffer	3.02
Discreet	3.21		
Analytical	3.17		
Objective	3.17		
Listener	3.16		
Loyal	3.14		
Wise	3.13		
Masculine	3.10		
Firm	3.08		
Obliging	3.08		
Moderate	3.06		
Smooth	3.06		
Trusting	3.06		
Deliberate	3.04		

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score above three are listed.

TWO CLUSTER BI-POLARS—TABLE B2*

Problems-Solving Bi-Polars		Adversarial Bi-Polars	
No derogatory personal references	2.65	Disinterested in my client's needs	2.07
Interested in his client's needs	2.37	Extreme opening demand	1.91
Courteous	2.30	Unrealistic initial position	1.90
No offensive tactics	2.28	Interested in his client's needs	1.82
Honest	2.25	Arrogant	1.75
Zealous representation within bounds	2.19	Unconcerned how I look	1.71
Pursued best interest of client	2.12	Rigid	1.69
Intelligent	2.11	Aggressive	1.63
Friendly	2.09	Fixed problem conception	1.61
Adhered to legal courtesies	2.05	Narrow view	1.51
Reasonable	1.96		
Tactful	1.90		
Cooperative	1.86		
Prepared	1.85		
Forthright	1.83		
Accurate representation of position	1.78		
Sincere	1.77		
Trustful	1.73		
Facilitated	1.63		
No threats	1.61		
No unwarranted claims	1.58		

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score above 1.5 are listed.

TWO CLUSTER GOALS—TABLE B3*

Problem-Solving Goals		Adversarial Goals	
Ethical conduct	3.85	Maximizing settlement	3.96
Maximizing settlement	3.69	Outdoing you	3.16
Fair settlement	3.50	Profitable fee	2.82
Meet both sides interests	3.01	Meeting client's needs	2.70
Meeting client's needs	2.87	Use legal skills well	2.48
Avoiding litigation	2.86	Improving firm reputation	2.40
Good relations with you	2.64	Ethical conduct	2.08
Use legal skills well	2.48	Getting fair settlement	1.82
Good relations between parties	2.26	Avoiding litigation	1.63
Profitable fee	1.63	Improving bar reputation	1.61
Improving firm reputation	1.43	Good relations with you	1.12
Improving reputation with you	1.43	Meet both sides interests	1.09
Improving bar reputation	1.22	Good relations between parties	0.85
Outdoing you	1.19	Improving reputation with you	0.83

* Goals are calculated on a five-point scale. All goals are listed.

ALL PROBLEM-SOLVING ADJECTIVES—TABLE B4*

Ineffective		Average		Effective	
Self-controlled	4.00	Ethical	4.02	Ethical	4.45
Ethical	4.00	Personable	3.67	Experienced	4.24
Sociable	3.93	Experienced	3.55	Personable	4.10
Personable	3.79	Self-controlled	3.53	Rational	4.03
Trustworthy	3.43	Agreeable	3.51	Trustworthy	3.99
Experienced	3.43	Confident	3.45	Realistic	3.92
Fair-minded	3.29	Accommodating	3.44	Confident	3.92
Dignified	3.29	Trustworthy	3.42	Perceptive	3.90
Accommodating	3.21	Rational	3.41	Communicative	3.87
Agreeable	3.14	Realistic	3.39	Fair-minded	3.85
Confident	3.14	Sociable	3.36	Dignified	3.84
Discreet	3.14	Fair-minded	3.25	Self-controlled	3.83
Moderate	3.14	Dignified	3.22	Accommodating	3.80
Poised	3.14	Adaptable	3.20	Astute about the law	3.80
Communicative	3.00	Communicative	3.20	Agreeable	3.78
Patient	3.00	Patient	3.04	Sociable	3.77
Rational	3.00	Flexible	3.01	Rational	3.73
				Adaptable	3.71
				Poised	3.68
				Careful	3.57
				Wise	3.57
				Helpful	3.54
				Analytical	3.51
				Loyal	3.45
				Flexible	3.44
				Discreet	3.42
				Objective	3.42
				Clarifies	3.40
				Listener	3.40
				Patient	3.38
				Trusting	3.34
				Deliberate	3.33
				Smooth	3.33
				Masculine	3.30
				Convincing	3.27
				Organizing	3.26
				Creative	3.24
				Caring	3.24
				Moderate	3.17
				Obliging	3.16
				Warm	3.09
				Sensitive	3.07
				Ambitious	3.05
				Assertive	3.05
				Conciliatory	3.01

* Adjectives are calculated on a five-point scale. Only adjective receiving a score above three are listed.

ALL ADVERSARIAL ADJECTIVES—TABLE B5*

Ineffective		Average		Effective	
Stubborn	3.93	Headstrong	3.76	Egotistical	4.24
Irritating	3.88	Assertive	3.75	Demanding	4.20
Headstrong	3.83	Stubborn	3.70	Ambitious	4.19
Arrogant	3.76	Arrogant	3.67	Experienced	4.14
Argumentative	3.70	Argumentative	3.67	Confident	4.10
Assertive	3.66	Confident	3.62	Assertive	4.05
Egotistical	3.62	Egotistical	3.61	Forceful	4.05
Confident	3.58	Demanding	3.60	Arrogant	3.95
Demanding	3.57	Irritating	3.48	Headstrong	3.90
Quarrelsome	3.55	Experienced	3.46	Tough	3.85
Ambitious	3.35	Ambitious	3.41	Firm	3.81
Firm	3.34	Quarrelsome	3.40	Irritating	3.76
Experienced	3.28	Tough	3.39	Stubborn	3.76
Manipulative	3.20	Adaptable	3.20	Argumentative	3.71
Suspicious	3.18	Forceful	3.17	Dominant	3.62
Hostile	3.18	Masculine	3.07	Manipulative	3.62
Forceful	3.17	Suspicious	3.07	Masculine	3.62
Evasive	3.13	Firm	3.06	Quarrelsome	3.57
Tough	3.08	Hostile	3.06	Suspicious	3.57
Complaining	3.08	Complaining	3.01	Bluffer	3.52
Bluffer	3.01	Manipulative	3.01	Self-controlled	3.33
				Greedy	3.29
				Poised	3.24
				Rational	3.24
				Hostile	3.24
				Sarcastic	3.19
				Conniving	3.15
				Deliberate	3.15
				Picky	3.14
				Stern	3.14
				Analytical	3.05
				Astute about the law	3.05
				Intolerant	3.00
				Smooth	3.00

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score of three or above are listed.

ALL PROBLEM-SOLVING BI-POLARS—TABLE B6*

Ineffective	Average	Effective		
No derogatory personal references	2.86	Interested in his client's needs	2.53	2.82
Honesty	2.36	No derogatory personal references	2.25	2.73
Adhered to legal courtesies	2.31	Interested in his client's needs	2.15	2.49
Courteous	2.29	No offensive tactics	2.09	2.47
Friendly	2.29	Courteous	2.01	2.43
No offensive tactics	1.86	Zealous representation within bounds	1.98	2.40
Zealous representation within bounds	1.86	Pursued best interests of client	1.93	2.35
Accurate representation of position	1.71	Honesty	1.86	2.34
No threats	1.64	Adhered to legal courtesies	1.83	2.26
Forthright	1.64	Friendly	1.83	2.23
Interested in his client's needs	1.64	Intelligent	1.73	2.21
Inaccurate case estimated	1.57	Reasonable	1.54	2.19
Narrow range	1.57	Cooperative	1.54	2.16
Sincere	1.50	Forthright	1.52	2.14
		Tactful		2.07
				2.04
				2.04
				2.03
				1.92
				1.87
				1.87
				1.72
				1.69
				1.60
				1.60
				1.54

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score of 1.5 or above are listed.

ALL ADVERSARIAL BI-POLARS—TABLE B7*

Ineffective	Average	Effective	
Disinterested in my client's needs	2.23	Disinterested in my client's needs	2.48
Extreme opening demand	2.18	Interested in his client's needs	2.33
Unrealistic initial position	2.18	Arrogant	2.00
Rigid	2.11	Aggressive	1.95
Fixed problem conception	1.99	Pursued best interest of client	1.95
Negotiation = Win/Lose	1.91	Intelligent	1.86
Narrow view	1.89	Active	1.81
Narrow range	1.82	Extreme opening demand	1.71
Unconcerned how I look	1.78	Zealous representation within bounds	1.57
Arrogant	1.77		
Fixed on single solution	1.74		
Inaccurate case estimate	1.71		
Unmovable position	1.70		
Used take it or leave it	1.67		
Aggressive	1.64		
Interested his client's needs	1.62		
Obstructed	1.59		
Did not consider my needs	1.58		
Unreasonable	1.58		
Uncooperative	1.52		

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score above 1.5 are listed.

ALL PROBLEM-SOLVING GOALS—TABLE B8*

Ineffective	Average	Effective	
Maximizing settlement	3.43	Ethical conduct	4.07
Ethical conduct	3.29	Maximizing settlement	3.78
Fair settlement	3.29	Fair settlement	3.70
Meeting client's needs	3.00	Meet both sides' interests	3.37
Use legal skills well	2.71	Avoiding litigation	3.03
Good relations with you	2.21	Meeting client's needs	2.96
Avoiding litigation	2.14	Good relations with you	2.77
Meet both sides' interests	2.14	Use legal skills well	2.69
Good relations between parties	1.93	Good relations between parties	2.60
Outdoing you	1.71	Profitable fee	1.57
Profitable fee	1.43	Improving reputation with you	1.49
Improving bar reputation	1.23	Improving firm reputation	1.46
Improving firm reputation	1.08	Improving bar reputation	1.24
Improving reputation with you	1.07	Outdoing you	1.08

* Goals are calculated on a five-point scale. All goals are listed.

ALL ADVERSARIAL GOALS—TABLE B9*

Ineffective	Average	Effective	
Maximizing settlement	3.86	Maximizing settlement	4.52
Outdoing you	3.30	Outdoing you	3.24
Profitable fee	2.71	Profitable fee	3.14
Improving firm reputation	2.56	Meeting client's needs	2.96
Meeting client's needs	2.53	Use legal skills well	2.86
Use legal skill well	2.38	Ethical conduct	2.44
Ethical conduct	1.80	Fair settlement	2.33
Improving bar reputation	1.57	Improving firm reputation	2.33
Fair settlement	1.43	Avoiding litigation	1.95
Avoiding litigation	1.32	Improving bar reputation	1.57
Good relations with you	0.97	Meet both sides' interests	1.52
Meet both sides' interests	0.78	Good relations with you	1.33
Improving reputation with you	0.71	Good relations between parties	0.86
Good relations between parties	0.68	Improving reputation with you	0.67

* Goals are calculated on a five-point scale. All goals are listed.

C. APPENDIX C

THREE CLUSTER ADJECTIVES—TABLE C1*

True Problem-Solving		Cautious Problem-Solving		Adversarial	
Ethical	4.58	Ethical	3.73	Irritating	4.09
Personable	4.24	Experienced	3.51	Headstrong	4.01
Experienced	4.21	Confident	3.41	Stubborn	3.95
Trustworthy	4.17	Personable	3.35	Arrogant	3.93
Rational	4.07	Self-controlled	3.31	Egotistical	3.88
Agreeable	4.03	Rational	3.13	Argumentative	3.86
Fair-minded	4.03	Sociable	3.09	Assertive	3.83
Communicative	4.02	Dignified	3.06	Demanding	3.82
Realistic	4.01	Trustworthy	3.04	Quarrelsome	3.73
Accommodating	3.99			Confident	3.66
Perceptive	3.97			Ambitious	3.56
Sociable	3.96			Manipulative	3.45
Adaptable	3.95			Experienced	3.44
Confident	3.95			Hostile	3.41
Dignified	3.90			Forceful	3.38
Self-controlled	3.90			Tough	3.36
Helpful	3.76			Suspicious	3.35
Astute about the law	3.75			Firm	3.33
Poised	3.71			Complaining	3.21
Flexible	3.65			Rude	3.16
Careful	3.60			Angry	3.14
Objective	3.60			Intolerant	3.14
Wise	3.58			Evasive	3.13
Listener	3.56			Sarcastic	3.13
Patient	3.56			Bluffer	3.12
Clarifies	3.53			Conniving	3.09
Analytical	3.51			Dominant	3.08
Loyal	3.50			Masculine	3.06
Trusting	3.50			Greedy	3.05
Discreet	3.48			Stern	3.05
Caring	3.45				
Obliging	3.45				
Smooth	3.45				
Organizing	3.40				
Deliberate	3.33				
Firm	3.32				
Convincing	3.31				
Moderate	3.30				
Sensitive	3.29				
Masculine	3.29				
Warm	3.28				
Creative	3.25				
Compassionate	3.14				
Conciliatory	3.11				
Ambitious	3.06				
Empathetic	3.05				
Sympathetic	3.05				
Elucidating	3.00				
Prober	3.00				

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score above three are listed.

THREE CLUSTER BI-POLARS—TABLE C2*

True Problem-Solving Bi-Polars	Cautious Problem-Solving Bi-Polars	Adversarial Bi-Polars
No derogatory personal references	No derogatory personal reference	Aggressive
Honest	Interested in my client's needs	Not interested in my client's needs
Courteous	Zealous representation within bounds	Arrogant
Interested in my client's needs	Courteous	Extreme opening demand
Friendly	Intelligent	Rigid
Best interests of client	Honest	Unrealistic
Intelligent	Adhered to legal courtesies	Unconcerned how I look
Zealous representation within bounds	Best interests of client	Interested in my client's needs
Reasonable		Negotiation = Win/Lose
Prepared		Narrow view
Adhered to legal courtesies		Fixed problem concept
Tactful		Narrow range of strategies
Accurate representation of position		Single solution
Cooperative		Uncooperative
Forthright		Did not consider my needs
Trustful		
Sincere		
Facilitated		
Negotiation = mutual benefit		
No unwarranted claims		
No threats		
Avoided needless harm		
Shared information		
Understood my client's interests		
Movable position		
Active		
No take it or leave it		
Did own investigation		
Probed		
Flexible		

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score above 1.5 are listed.

THREE CLUSTER GOALS—TABLE C3*

True Problem-Solving Goals	Cautious Problem-Solving Goals	Adversarial Goals		
Ethical conduct	4.17	Maximizing settlement	3.76	3.95
Fair settlement	3.80	Ethical conduct	3.38	3.42
Maximizing settlement	3.69	Fair settlement	2.89	3.09
Meet both sides interests	3.46	Meeting client's needs	2.71	2.68
Meeting client's needs	3.01	Avoiding litigation	2.50	2.57
Avoiding litigation	3.00	Meet both sides interests	2.25	2.51
Good relations with you	2.91	Good relations with you	2.17	1.77
Use legal skills well	2.74	Use legal skills well	2.17	1.74
Good relations between parties	2.64	Profitable fee	1.85	1.71
Improving reputation with you	1.56	Good relations between parties	1.67	1.56
Profitable fee	1.46	Outdoing you	1.65	0.95
Improving firm reputation	1.36	Improving firm reputation	1.63	0.94
Improving bar reputation	1.23	Improving bar reputation	1.22	0.73
Outdoing you	0.96	Improving reputation with you	1.20	0.71

* Goals are calculated on a five-point scale. All goals are listed.

THREE CLUSTER TRUE PROBLEM-SOLVING ADJECTIVES—
TABLE C4*

Ineffective Adjectives		Average Adjectives		Effective Adjectives	
Ethical	5.00	Ethical	4.42	Ethical	4.63
Experienced	4.33	Agreeable	4.15	Experienced	4.34
Self-controlled	4.33	Personable	4.11	Personable	4.29
Trustworthy	4.33	Trustworthy	4.11	Trustworthy	4.19
Wise	4.33	Accommodating	4.09	Rational	4.17
Dignified	4.00	Adaptable	3.91	Perceptive	4.12
Fair-minded	4.00	Sociable	3.89	Communicative	4.10
Organized	4.00	Fair-minded	3.85	Realistic	4.10
Patient	4.00	Experienced	3.81	Fair-minded	4.09
Personable	4.00	Communicative	3.79	Agreeable	4.01
Sociable	4.00	Realistic	3.79	Dignified	3.99
Analytical	3.67	Rational	3.77	Adaptable	3.98
Astute about the law	3.67	Confident	3.70	Sociable	3.98
Careful	3.67	Helpful	3.70	Accommodating	3.97
Compassionate	3.67	Self-controlled	3.69	Self-controlled	3.96
Discreet	3.67	Obliging	3.66	Astute about the law	3.92
Empathetic	3.67	Flexible	3.62	Poised	3.86
Explorer	3.67	Dignified	3.58	Helpful	3.79
Loyal	3.67	Objective	3.58	Careful	3.75
Perceptive	3.67	Perceptive	3.55	Wise	3.72
Rational	3.67	Listener	3.53	Clarifies	3.66
Sensitive	3.67	Patient	3.45	Flexible	3.66
Accommodating	3.33	Trusting	3.38	Analytical	3.65
Adaptable	3.33	Smooth	3.30	Loyal	3.63
Assertive	3.33	Organizing	3.26	Objective	3.61
Communicative	3.33	Poised	3.26	Patient	3.59
Confident	3.33	Astute about the law	3.24	Discreet	3.58
Creative	3.33	Compassionate	3.24	Listener	3.57
Deliberate	3.33	Caring	3.19	Trusting	3.54
Helpful	3.33	Discreet	3.19	Caring	3.53
Listener	3.33	Warm	3.17	Smooth	3.52
Moderate	3.33	Careful	3.15	Creative	3.48
Objective	3.33	Clarifies	3.15	Deliberate	3.47
Poised	3.33	Moderate	3.15	Organizing	3.44
Probed	3.33	Sensitive	3.15	Masculine	3.39
Tough	3.33	Wise	3.15	Obliging	3.39
Trusting	3.33	Analytical	3.09	Moderate	3.35
Agreeable	3.00	Loyal	3.09	Warm	3.33
Ambitious	3.00	Masculine	3.06	Sensitive	3.32
Firm	3.00	Sympathetic	3.06	Conciliatory	3.16
Flexible	3.00	Conciliatory	3.02	Ambitious	3.14
Realistic	3.00	Firm	3.02	Elucidating	3.13
				Compassionate	3.10
				Tough	3.08
				Empathetic	3.08
				Prober	3.07
				Sympathetic	3.05
				Assertive	3.04

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score of three or above are listed.

**THREE CLUSTER CAUTIOUS PROBLEM-SOLVING
ADJECTIVES—TABLE C5***

Ineffective Adjectives		Average Adjectives		Effective Adjectives	
Sociable	3.31	Ethical	3.80	Experienced	3.89
Ethical	3.24	Experienced	3.43	Ethical	3.80
Stubborn	3.21	Confident	3.41	Confident	3.55
Experienced	3.17	Self-controlled	3.37	Rational	3.51
Masculine	3.17	Personable	3.35	Personable	3.47
Confident	3.14	Rational	3.14	Self-controlled	3.42
Personable	3.10	Agreeable	3.06	Astute about the law	3.35
		Realistic	3.04	Realistic	3.33
		Sociable	3.04	Dignified	3.27
		Dignified	3.01	Trustworthy	3.24
		Trustworthy	3.01	Perceptive	3.18
				Assertive	3.15
				Communicative	3.13
				Poised	3.13
				Accommodating	3.09
				Sociable	3.07
				Analytical	3.06
				Wise	3.02

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score above three are listed.

THREE CLUSTER ADVERSARIAL ADJECTIVES—TABLE C6*

Ineffective Adjectives		Average Adjectives		Effective Adjectives	
Irritating	4.16	Irritating	3.96	Masculine	4.00
Headstrong	4.03	Headstrong	3.93	Tough	3.93
Stubborn	4.02	Arrogant	3.91	Manipulative	3.87
Arrogant	3.92	Stubborn	3.86	Stubborn	3.87
Argumentative	3.84	Argumentative	3.83	Suspicious	3.80
Egotistical	3.84	Assertive	3.83	Quarrelsome	3.53
Assertive	3.79	Egotistical	3.79	Sarcastic	3.40
Demanding	3.77	Quarrelsome	3.79	Rational	3.27
Quarrelsome	3.73	Demanding	3.74	Self-controlled	3.27
Confident	3.65	Confident	3.57	Poised	3.13
Ambitious	3.50	Tough	3.55	Stern	3.13
Firm	3.45	Ambitious	3.49	Picky	3.00
Hostile	3.39	Experienced	3.47	Rude	3.00
Manipulative	3.38	Manipulative	3.46		
Suspicious	3.35	Angry	3.40		
Forceful	3.31	Hostile	3.40		
Experienced	3.29	Rude	3.34		
Complaining	3.26	Forceful	3.32		
Tough	3.17	Sarcastic	3.28		
Conniving	3.12	Suspicious	3.24		
Evasive	3.12	Complaining	3.17		
Intolerant	3.12	Intolerant	3.12		
Deceptive	3.08	Masculine	3.11		
Rude	3.08	Bluffer	3.03		
Bluffer	3.05	Conniving	3.02		
Stern	3.05	Dominant	3.02		
Greedy	3.03	Stern	3.02		
Angry	3.02	Firm	3.00		
Dominant	3.01				
Sarcastic	3.00				

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score of three or above are listed.

THREE CLUSTER TRUE PROBLEM-SOLVING BI-POLARS—TABLE C7*

Ineffective Bi-Polars	Average Bi-Polars	Effective Bi-Polars
Forthright	3.00	No derogatory personal references
Honest	3.00	Honest
No derogatory personal references	3.00	Interested in his client's needs
No threats	2.67	Courteous
Accurate representation of position	2.67	No offensive tactics
Adhered to legal courtesies	2.67	Intelligent
Friendly	2.67	Pursued best interests of client
Interested in his client's needs	2.67	Zealous representation within bounds
No take it or leave it	2.67	Friendly
Courteous	2.33	Prepared
Did own investigation	2.33	Reasonable
No offensive tactics	2.33	Tactful
Pursued best interests of client	2.33	Adhered to legal courtesies
Sincere	2.33	Cooperative
Trustful	2.33	Accurate representation of position
Unwilling to stretch rules	2.33	Forthright
Prepared	2.00	Trustful
Shared information	2.00	Sincere
Tactful	2.00	Facilitated
Careful timing	1.67	Negotiation = mutual benefit
Facilitated	1.67	Avoided needless harm
		No threats
		No unwarranted claims
		Avoided needless harm
		Negotiation = mutual benefit
		Shared information
		Flexible
		No take it or leave it
		Did own investigation
		Movable position
		Did own investigation
		Flexible
		No take it or leave it
		Skillful in reading my cues
		Portray own client as reasonable
		Able to control client
		Broad view
		Logical

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score above 1.5 are listed.

THREE CLUSTER CAUTIOUS PROBLEM-SOLVING BI-POLARS—TABLE C8*

Ineffective Bi-Polars	Average Bi-Polars	Effective Bi-Polars		
Interested in his client's needs	1.93	No derogatory personal references	2.24	2.49
No derogatory personal references	1.93	Interested in his client's needs	2.07	2.29
Unrealistic initial position	1.76	Zealous representation within bounds	1.95	2.16
Inaccurate case estimate	1.59	Pursued best interests of client	1.80	1.98
Courteous	1.52	Courteous	1.78	1.85
Fixed problem conception	1.52	No offensive tactics	1.78	1.81
		Intelligent	1.68	1.71
		Honest		1.67
				1.61
				1.60
				1.55
				1.55
				1.52

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score above 1.5 are listed.

THREE CLUSTER ADVERSARIAL BI-POLARS—TABLE C9*

Ineffective Bi-Polars	Average Bi-Polars	Effective Bi-Polars
Interested in my client's needs	Arrogant	Disinterested in my client's needs
Narrow view	Interested in his client's needs	Interested in his client's needs
Extreme opening demand	Disinterested in my client's needs	Pursued best interests of client
Rigid	No threats	Arrogant
Unrealistic initial position	Aggressive	Aggressive
Negotiation = win/lose	Unconcerned how I look	Extreme opening demand
Fixed problem conception	Rigid	Intelligent
Arrogant	Extreme opening demand	Zealous representation within bounds
Narrow range of strategies	Unrealistic initial position	Did not consider my needs
Unconcerned how I would look		Active
Fixed single solution		Unrealistic initial position
Unmovable position		Attacked
Aggressive		
Used take it or leave it		
Unreasonable		
Inaccurate case estimate		
Uncooperative		
Did not consider my needs		
Inflicted needless harm		
Distrustful		
Obstructed		
Understood my client's interests		
Interested in his client's needs		

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score of 1.5 or above are listed.

THREE CLUSTER TRUE PROBLEM-SOLVING GOALS—TABLE C10*

Ineffective Goals	Average Goals	Effective Goals		
Use legal skills well	4.67	Ethical conduct	3.94	4.27
Fair settlement	4.33	Fair settlement	3.63	3.85
Meeting client's needs	3.33	Maximizing settlement	3.47	3.78
Ethical conduct	3.00	Met both sides' interests	3.32	3.53
Maximizing settlement	2.67	Meeting client's needs	2.98	3.10
Met both sides' interests	2.33	Good relations with you	2.92	3.01
Avoiding litigation	2.00	Avoiding litigation	2.75	2.93
Good relations with you	1.67	Use legal skills well	2.47	2.79
Improving reputation with you	1.67	Good relations between parties	2.33	2.78
Improving bar reputation	1.33	Improving reputation with you	1.57	1.55
Outdoing you	1.00	Profitable fee	1.38	1.50
Good relations between parties	1.00	Improving firm reputation	1.22	1.41
Improving firm reputation	1.00	Improving bar reputation	1.15	1.26
Profitable fee	1.00	Outdoing you	0.89	0.98

* Goals are calculated on a five-point scale. All goals are listed.

THREE CLUSTER CAUTIOUS PROBLEM-SOLVING GOALS—TABLE C11*

Ineffective Goals	Average Goals	Effective Goals	
Maximizing settlement	3.62	Maximizing settlement	3.75
Ethical conduct	3.07	Ethical conduct	3.47
Meeting client's needs	2.72	Fair settlement	2.88
Fair settlement	2.41	Meeting client's needs	2.64
Good personal relations with you	1.97	Avoiding litigation	2.53
Avoiding litigation	1.83	Good personal relations with you	2.20
Use legal skills well	1.83	Meet both sides' interests	2.18
Outdoing you	1.72	Use legal skills well	2.15
Meet both sides' interests	1.62	Profitable fee	1.94
Good relations between parties	1.52	Outdoing you	1.69
Profitable fee	1.38	Improving firm reputation	1.59
Improving firm reputation	1.35	Good relations between parties	1.58
Improving bar reputation	1.04	Improving bar reputation	1.24
Improving reputation with you	1.00	Improving reputation with you	1.21

* Goals are calculated on a five-point scale. All goals are listed.

THREE CLUSTER ADVERSARIAL GOALS—TABLE C12*

Ineffective Goals	Average Goals	Effective Goals	
Maximizing settlement	3.90	Maximizing settlement	4.60
Outdoing you	3.60	Profitable fee	3.47
Profitable fee	2.97	Outdoing you	3.40
Improving firm reputation	2.70	Meeting client's needs	3.27
Use legal skills well	2.52	Use legal skills wells	2.87
Meeting client's needs	2.51	Ethical conduct	2.20
Avoiding litigation	1.80	Fair settlement	2.13
Improving bar reputation	1.68	Improving firm reputation	2.08
Ethical conduct	1.61	Avoiding litigation	1.80
Avoiding litigation	1.26	Improving bar reputation	1.47
Good personal relations with you	0.83	Good personal relations with you	1.33
Meeting both sides' interests	0.68	Meet both sides' interests	1.00
Good relations between parties	0.61	Improving reputation with you	0.60
Improving reputation with you	0.60	Good relations between parties	0.40

* Goals are calculated on a five-point scale. All goals are listed.

D. APPENDIX D

FOUR CLUSTER ADJECTIVES—TABLE D1*

True Problem-Solving		Cautious Problem-Solving		Ethical Adversarial		Unethical Adversarial	
Ethical	4.53	Ethical	3.68	Confident	3.95	Irritating	4.45
Experienced	4.19	Experienced	3.36	Assertive	3.86	Stubborn	4.21
Personable	4.19	Personable	3.34	Arrogant	3.83	Headstrong	4.18
Trustworthy	4.11	Self-controlled	3.24	Headstrong	3.80	Argumentative	4.16
Rational	4.03	Confident	3.21	Experienced	3.78	Quarrelsome	4.06
Fair-minded	3.98	Rational	3.09	Demanding	3.77	Arrogant	4.04
Agreeable	3.96	Agreeable	3.01	Egotistical	3.77	Egotistical	3.97
Communicative	3.96	Dignified	3.00	Ambitious	3.71	Manipulative	3.96
Realistic	3.95			Stubborn	3.70	Assertive	3.90
Accommodating	3.94			Argumentative	3.63	Demanding	3.82
Perceptive	3.93			Tough	3.59	Complaining	3.77
Confident	3.92			Irritating	3.58	Hostile	3.68
Sociable	3.91			Forceful	3.45	Suspicious	3.66
Self-controlled	3.90			Firm	3.43	Conniving	3.62
Adaptable	3.89			Quarrelsome	3.37	Greedy	3.62
Dignified	3.86			Masculine	3.28	Rude	3.62
Helpful	3.71			Dominant	3.26	Angry	3.55
Astute	3.70			Ethical	3.20	Confident	3.47
Poised	3.68			Deliberate	3.15	Ambitious	3.46
Flexible	3.59			Hostile	3.05	Deceptive	3.45
Careful	3.57			Bluffer	3.00	Evasive	3.45
Objective	3.55			Suspicious	3.00	Bluffer	3.44
Patient	3.54					Forceful	3.36
Wise	3.53					Firm	3.31
Listener	3.52					Intolerant	3.30
Analytical	3.48					Sarcastic	3.23
Loyal	3.48					Tough	3.18
Clarifies	3.45					Experienced	3.13
Discreet	3.45					Foolish	3.01
Trusting	3.43					Loud	3.01
Caring	3.41					Stern	3.01
Obliging	3.40						
Smooth	3.40						
Organizing	3.34						
Moderate	3.31						
Firm	3.29						
Deliberate	3.28						
Warm	3.28						
Sensitive	3.26						
Convincing	3.25						
Creative	3.22						
Masculine	3.22						
Compassionate	3.11						
Conciliatory	3.06						
Ambitious	3.02						
Empathetic	3.01						
Sympathetic	3.01						

* Adjectives are calculated on a five-point scale. Only adjectives receiving a score of three or above are listed.

FOUR CLUSTER BI-POLARS—TABLE D2*

True Problem-Solving	Cautious Problem-Solving	Ethical Adversarial	Unethical Adversarial
No derogatory personal references	No derogatory personal references	Interested in his client's needs	Not interested in my client's needs
Courteous	Interested in his client's needs	Unrealistic initial position	Rigid
Interested in his client's needs	No offensive tactics	Extreme opening demand	Arrogant
Honest	Courteous	Not interested in my client's needs	Unreasonable
Pursued best interest of client	Zealous representation within bounds	Aggressive	Single solution
Friendly	Honest	Arrogant	Uncooperative
Zealous representation within bounds		Prepared	Narrow range of strategies
Intelligent			Narrow view
Reasonable			Extreme opening demand
Tactful			Did not consider my needs
Cooperative			Negotiation = win/lose
Adhered to legal courtesies			Unrealistic initial position
Prepared			Unconcerned how I look
Forthright			Aggressive
Trustful			Inaccurate case estimate
Sincere			Insincere
Accurate representation of position			Fixed problem conception
Facilitated			Distrustful
Negotiation = Mutual benefit			Obstructed
Did not use threats			Inflicted needless harm
No unwarranted claims			Devious
Avoided needless harm			Used take it or leave it
Shared information			Immovable position
Understood my client's needs			Discourteous
Movable position			Unwarranted claims
Did own investigation			Did not understand my client's interests
No take it or leave it			Attacked
Active			Tactless
Probed			Unfriendly
Flexible			
No offensive tactics			

* Bi-polar pairs are calculated on a three-point scale. Only bi-polar descriptions receiving a score above 1.5 are listed.

FOUR CLUSTER GOALS—TABLE D3*

True Problem-Solving	Cautious Problem-Solving	Ethical Adversarial	Unethical Adversarial
Ethical conduct	4.16	Maximizing settlement	3.84
Fair settlement	3.79	Improving firm reputation	3.69
Maximizing settlement	3.69	Outdoing you	3.47
Meet both sides' interests	3.39	Meeting client's needs	2.69
Avoiding litigation	3.00	Use legal skills well	2.57
Meeting client's needs	2.98	Ethical conduct	2.36
Good relations with you	2.90	Profitable fee	1.58
Use legal skills well	2.72	Fair settlement	1.48
Good relations between parties	2.61	Avoiding litigation	1.21
Improving reputation with you	1.54	Improving bar reputation	1.08
Profitable fee	1.51	Meet both sides' interests	0.66
Improving firm reputation	1.37	Improving reputation with you	0.49
Improving bar reputation	1.26	Good relations between parties	0.48
Outdoing you	1.00	Good relations with you	0.47

* Goals are calculated on a five-point scale. All goals are listed.

