

MARQUETTE UNIVERSITY LAW SCHOOL LEGAL STUDIES RESEARCH PAPER SERIES
RESEARCH PAPER NO. 14-10



MARQUETTE
UNIVERSITY

LAW SCHOOL

COOKING UP A DEAL: NEGOTIATION RECIPES FOR SUCCESS

*Andrea Kupfer Schneider, Jim Coben, Robert Dingwall, Dan Druckman,
Noam Ebner, Howard Gadlin, Chris Honeyman, Sanda Kaufman,
Michelle LeBaron, Roy Lewicki, David Matz, Carrie Menkel-Meadow,
Michael Moffitt, Jen Reynolds, John Wade & Nancy Welsh*

(April 2014)

This paper can be downloaded without charge from the Social Science Research Network Electronic Paper Collection: <http://ssrn.com/abstract=2419712>.

Andrea K. Schneider
Professor of Law
Marquette University Law School
Eckstein Hall
P.O. Box 1881
Milwaukee, Wisconsin 53201-1881



COOKING UP A DEAL: NEGOTIATION RECIPES FOR SUCCESS

Jim Coben

Robert Dingwall

Dan Druckman

Noam Ebner

Howard Gadlin

Chris Honeyman

Sanda Kaufman

Michelle LeBaron

Roy Lewicki

David Matz

Carrie Menkel-Meadow

Michael Moffitt

Jen Reynolds

Andrea Kupfer Schneider

John Wade

Nancy Welsh

Jim Coben

3 C	Curiosity
Heavy Dose	Humility
2 C	Listening
1 C	Questioning to learn
1 C	Creativity
1 C	Relentless flexibility
½ C	Unjustified optimism
½ C	skepticism (trust but verify)
Add	As much generosity as is available
Pinch	Humor

Robert Dingwall

- Creativity
- Imagination
- Access to linguistic and cultural resources
- International skills
- Improvisational skills
- Flexibility
- Methodological skills
- Critical analysis of data
- Curiosity
- Skepticism
- Taking role of other
- Respect for difference
- Patience
- Persistence
- Adhesiveness
- Bloody-mindedness

Dan Druckman

- Treasure the moments of silence for reflection
- Develop a framework to guide the negotiation process; define goals
- Interaction between opposed negotiators prior to formal negotiations – for familiarity and, perhaps, liking/shared identity
- Define the process as a problem to be solved rather than as a contest to win
- Separate broad values/ideologies from interests when discussing issues
- Define possible agreements as integrative (vs. compromise)
- Consider how the process can be structured to produce integrative agreements
- Be sure agreements obtained are voluntary, not coerced
- Discuss implementation issues and strive for agreements on these issues to ensure a durable agreement.
- Be cognizant that the negotiation is also about relationships

Noam Ebner

Option A

- Extract a cup of anxiety from your heart and pack in down to the size of an almond. Put it in your pocket and forget about it
- Take a double handful of aspiration, and then add a bit more, for good measure
- Open the oven and don't be concerned that it is hotter than you expected. It always is.
- Remember that the heat is ultimately helpful, and you're not the only one feeling it.
- Baste with a spritz of chutzpah and a pinch of optimism
- Be prepared to knead into a different shape and form, but do your best not to lose mass.
- Walk away for a few minutes, remember you can always walk away.
- Come back to the oven, and remember you can always come back.

Option B

- Make due with whatever is in the fridge.

Option C (co-chef Michael Moffitt)

- Order out

Howard Gadlin

Preparation – establish context through story, background, history

Mix

$\frac{1}{2}$ C Listening

$\frac{1}{4}$ C Curiosity

$\frac{1}{8}$ C Sympathy

Occasional dash of humor

- Mix until trust begins to jell
- Remove, separate or dilute hostility, skepticism
- Add communication: describe and explain aims and needs,
- Identify ingredients: explore and compare similarities and differences in narratives
- Look for converging stories and shared or compatible interests.
- Blend compatible ingredients, balance contrasting elements
- Add or substitute new ingredients for those discarded (remember all ingredients serve a purpose)
- Bake until ingredients cohere

Chris Honeyman

Start with:

1 C Ignorance

1 C Fear

1 C Doubt (you will anyway)

- Pour the fear down the drain right away. Set the doubt aside. Put the ignorance in a pot over low heat.
- Add knowledge in increments (from listening to your counterparty and also doing your own background research) till the remaining ignorance tastes acceptable. Add in a small amount of doubt with each new proposal by the other party; balance it with 1 part research and 1 part creative counter-offer. Add a pinch of humor each time, but not too much. When all the doubt has been used up, ask counterparty to taste the dish. If counterparty pronounces it ready, let it cool (while showing it to the other stakeholders) till all parties can sign without getting their fingers burned. Serve.

Sanda Kaufman

1 C	Having those who matter present
1 C	Agreement on process
1 lb	Creature comforts
1.5 lb	Knowing what I want, AND
2 C	Different ways to get it
2 C	Knowing what might be satisfying to others
$\frac{3}{4}$ C	Leverage
$\frac{1}{2}$ C	A way out
$\frac{1}{4}$ C	Humility
2 tbsp	Tolerance for ambiguity
1 loaf	Understanding what others mean
3 pinch	Humor

In a large bowl, mix the first three ingredients. Slowly pour in the next three. Have the leverage and the way out ready at hand. Crumble the loaf over understanding and incorporate into the mix. Glaze liberally with humor and bake in pan lined with humility and tolerance of ambiguity. Expect surprises and douse them with leverage. Only use the way out in case it burns.

Michelle LeBaron

- Prepare a fecund space where there is ample light, fresh air and opportunities for movement. Be sure there are beauty and views.
- Invite people into the space and welcome them to bring something precious that helps them anchor creativity and connection.
- Engage by focusing on being before focusing on doing.
- Dance in ways that accent interdependence, nuance, self and other awareness.
- Pepper with silence to “break set” and give everyone moments to clear heads and bodies.
- Taste interim progress and correct spices and trajectories. Aim for spicy but edible food.
- Enjoy the mélange of flavors with an appreciative frame and in an atmosphere of hospitality.
- Gather nuggets while cooking, savoring flavors and welcoming unanticipated alchemy.

Roy Lewicki

- Figure out what you want
- Understand what would and could not be a mutually acceptable agreement
- Get to know and understand the other party
- Frame an opening statement
- Ask the other to reciprocate and listen to them carefully
- Ask each other lots of questions to assure understanding
- Work toward a common understanding
- Treat the other with respect and dignity

David Matz

- Roll out a layer of confidence in face of uncertainty and confusion
- Mix equal parts patience (enhanced with stamina), learning and openness
- Pour over the confidence and taste it regularly and reflectively, allow aroma to spread throughout house and check on their responsiveness

Carrie Menkel-Meadow

- 1 C Attention to others and listening skills
- 3 C Empathy
- 5 Tbsp Openness, intelligence and personal curiosity
- 5 C Creativity
- 1 C Quantitative Analysis
- 1 C Legal and substantive analysis, depending on context
- 3 Tbsp Calm
- 1 C Persistence and patience
- 1 C Ability to ask questions
- 3 C Knowledge of self and own goals
- 2 C Flexibility and optimism

Mix together, cook and stir, and don't divide!

Michael Moffitt

- 1) Prepare a back-up glass by thinking about what you'd do without them. Pour something good in it.
- 2) Prepare simple syrup by reducing "what's my purpose," "what can I control," "what could we achieve in this meeting," until all the "what I wish they would do but probably won't" has all gone.
- 3) Make the drink
 - 1 shot each of curiosity and creativity
 - 1 shot each of empathy and persistence
 - 2 shots of self-awareness
 - Add simple syrup (above)
- 4) Aftermath of the drink – learn from what happened

Jen Reynolds

1. Count
2. Prep
3. Stir (not too hard)
4. Sort
5. Bake
6. Cool
7. Serve

Andrea Schneider

1/3 C Assertiveness

1/3 C Empathy

1/3 C Flexibility

- Blend with $\frac{1}{2}$ C trustworthiness and $\frac{1}{2}$ C trustfulness
- Add dash of charm and pinch of courage
- Sprinkle liberally with patience and good humor

John Wade

20% Practiced and adaptable process

20% Strong and practiced CORE SKILLS (listening, acknowledging emotion, reframing, summarizing, questioning (LARSQ))

10% CARE about people

20% Ability to NAME HURDLES and respond with options

20% Systemic preparation (questions, sheets, visuals) especially risk analysis and alternatives

10% Habitual reflections and learning systematically

Mix and stir slowly

*Change any percentages based on local tastes

Nancy Welsh

Find and mix the following:

- Recognition of the opportunity to negotiate
- Readiness to negotiate
- Knowledge of your counterpart, available remedies, relevant law and facts
- Confidence in your own skills and options
- Ability to convey your knowledge persuasively
- Understanding of your own and your counterpart's needs and interests
- Ability to listen effectively and express your understanding
- Clarity regarding your aspiration
- Clarity regarding your reservation point
- Self-possession (at least most of the time)
- Credibility
- Ability to strategize, and step back
- Sufficient time
- Work ethic

As you stir, creativity may bubble up. Be sure to step away and evaluate whether the resulting dish still meets your needs and interests—and whether it meets the needs and interests of your counterpart sufficiently well to be sustaining.

And always, always, always be ready to put the lid on your pot, turn off the stove, and walk out of the kitchen.