

Consider The Power Of Tactical Empathy

By **Shermin Kruse and Ursula Taylor** (October 3, 2019)

As lawyers, we are taught the path to success is through demonstrations of force or outward aggression. We should confidently articulate what we want, leave little or no room for alternative viewpoints (since they are necessarily inferior) and resort to fear and threats to gain acquiescence.

Attorneys attempt strategies of force in a variety of contexts, including deal negotiations, litigation, prelawsuit discussions, compensation decisions, changes to law firm or corporate policy, and even in sales pitches.

Oftentimes, however, instilling fear or applying other self-focused and forceful methods is not only ineffective, but stifles communication, erodes trust, threatens relationships and ultimately diminishes power.

This article explores “tactical empathy” as a more effective and less expensive path to power and influence. Understanding what the “other” sitting across the table from us really wants and needs allows far more influence over the terms of the deal than pounding our fists on the table. FBI hostage negotiators and high-level diplomats use tactical empathy to disarm terrorists and nations alike.[1] It is also employed by waiters to get the highest tips, teachers to educate children, and advertising executives use to sell us useless knick-knacks.[2]

When done ethically, this fearless technique of influence gets us the upper hand in the deal at issue, while also promoting and preserving long-term relationships with our opponent, future business partner, work colleague, judge or other counterpart. Lessons of tactical empathy are particularly applicable to attorneys, whether negotiating a deal, advocating for a client, mediating a dispute, influencing compensation, pitching a sale or managing teams.

In this article, we explain what tactical empathy is, and how to tactically utilize empathy to create paths to power and influence.

What Is Tactical Empathy?

Tactical empathy, sometimes also called intellectual empathy, is distinct from both sympathy and emotional empathy, both of which imply a harmony with the feelings of the other side. Tactical empathy, otherwise known as intellectual empathy, is the intellectual understanding of the interests behind the positions of the other side — not agreeing with them, not feeling compassion for them, but just grasping and recognizing them. It is this recognition of the other’s perspective that then allows us to knowingly and intentionally influence our counterpart’s position in a proactive and strategic manner. The focus is on the counterpart, rather than our own agenda. It is strategic, and boldly humble.

The premise behind tactical empathy is that (1) no meaningful dialogue takes place when we are not trusted or we are perceived as a threat, and (2) the discovery of information — in particular, our counterpart’s motivating emotion — is critical power in any negotiation. According to Chris Voss, a former FBI hostage negotiator and author of the book, "Never Split the Difference," most negotiations are driven by self-esteem, status, and other



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nonfinancial needs: "We are all crazy, irrational, impulsive, emotionally driven animals."

Effective persuasion hinges upon the ability to discover and then influence these underlying emotions or causes. Tactical empathy strategies provide a means for our counterpart to feel heard and, in this method, we engender feelings of safety and trust, disarm our counterpart, prompt effective communication and uncover underlying motivations and emotions.

Applying Tactical Empathy to Achieve Results

So how do we apply tactical empathy to create trust, uncover information and ultimately persuade? While skilled negotiators may employ advanced strategies such as anchoring or spotting lies, for instance,[3] tactical empathy methods are much less complicated. Three basic tenants of tactical empathy include active listening, mirroring and calibrated questions.

Active Listening

Actively listening to our counterpart is a simple means to gain trust and thereby influence. Effective active-listening strategies include: (1) being attentive; (2) leaning forward and making eye contact, (3) asking open-ended and probing questions ("how" or "what" instead of "why" or "but," which connote criticism); (4) requesting clarifications, (5) being attuned to our counterpart's feelings, and (6) articulating our counterpart's feelings back.

The right body language (leaning forward and looking our counterpart in the eye) and using a certain tone of voice (either an upward or downward inflection to show inquiring or understanding) helps our counterpart to feel heard and safe so that trust and information exchange may ensue.

It's important to avoid the misconception that we are ceding control by allowing our counterpart to talk. Quite the contrary, focusing on the other side yields information, and thus power and control, without the costs associated with distrust, fear or stifled communication. In order to successfully apply active listening techniques, it is important to release our "ego."

Be cognizant of any statements or positions likely to trigger our own emotions and defensive reactions and keep the focus on our counterpart. In doing so and in this moment, it is not important to prove we are right, or smarter, or that we have the better argument. Articulating denials or disagreement before we know our opponent's interests erodes trust without yielding much in return. If we discredit ourselves as a threatening force with a countervailing agenda, we stop the flow of information right away.

Note, however, that actively listening does not mean we agree with our counterpart either. Rather, the technique simply involves postponing our agenda until we have the benefit of understanding the other side's rationale and motivating emotion; vital information for a successful negotiation.

Upon executing the components of active listening, we should paraphrase our counterpart's position back to them to show understanding. Merely saying, "I understand" is not sufficient. We need to do the work of summarizing the position. When our counterpart says, "that's right!" or "exactly!" we know we have successfully recognized and articulated our counterpart's point of view such that he or she is now susceptible to disclosing information critical to reaching a successful result.

Mirroring

Employing active listening in tandem with mirroring techniques maximizes the impact of both. Mirroring techniques involve the use of body language and speech, or the finding of common ground, to disarm our opponent and induce effective engagement. Research studies show that mimicking yields results in nearly any context because humans have a natural affinity for and trust of people who are similar.

From buy-sell negotiations (you get a better deal from the seller if you tap your feet the way he does) to job-negotiations (asking for a raise? Try doing so while tilting your chin and scratching your forehead just the way your employer does), the practice of mirroring takes advantage of this human tendency to trust and communicate through "sameness."

Some tactical empathy experts, such as Voss, who writes extensively on the helpfulness of mirroring, advise that verbal mimicking is enough. According to Voss, we can simply repeat the last three words of our counterpart. Voss gives the following example:

'My hands are tied.'

'Your hands are tied?'

'Ok, they're not really, I just don't want to give it to you because of X.'[4]

At this point, you have discovered "X." Repeating the last three words establishes trust and invites the opponent to elaborate and reveal useful information.

Mirroring techniques also include the identification of common ground with our opponent. For example, perhaps you are in private practice pitching business to a new client, and you learn that the new client is a former athlete. In this case, you might discuss your own athletic endeavors, or use more sports metaphors in your pitch.

You should identify and exemplify commonalities while keeping the focus on our counterpart through open-ended probing questions, "how has your football experience affected your leadership style?" Mirroring, active listening and a focus on our counterpart improve the odds of successful persuasion.

Calibrated Questions

After we have established trust and dialogue through the above-described strategies, we can move the persuasion forward through calibrated questions. Calibrated questions advance our goals by: (1) changing the framework of the discussion for our benefit, (2) allowing further opportunity to uncover critical pieces of information, and (3) giving our counterpart the illusion of control while we drive the conversation. Calibrated questions introduce ideas and requests that might have seemed pushy or threatened trust earlier in the conversation, but are very effective tools once we have built dialogue through active listening and mirroring.

For example, suppose you are vying for a senior leadership position within your organization. Asking the calibrated question, "how can I earn your confidence that I am suited to lead this organization?" seemingly cedes control to the other person but, in fact, you introduce a framework that serves your objectives, namely, the notion that you will lead the organization.

In this way, the calibrated question allows for further opportunity to uncover critical pieces of information concerning our counterpart's motives and emotions. For instance, you might learn that your counterpart misunderstands your values and motives. You can then use that information to assuage concerns, avoid emotional triggers in your counterpart and develop a successful solution.

Finally, you derive the benefit of providing your counterpart the feeling of control by asking her to define the qualities that allow you to serve as a leader. The calibrated question induces trust and good feelings from the other side through an illusion of control while you control and drive the conversation toward your objectives.

Tactical Empathy Is Power

Active listening, mirroring and calibrated questions are just a few of the basic tenants of tactical empathy. Unwitting counterparts who only know how to seek power through force underestimate these seemingly counter-intuitive strategies, further strengthening the power and position of those who know how to tactically wield empathy. We enjoy the advantage because empathy — unlike fear or force — provides a power to truly influence through the creation of trust and a feeling of safety. These feelings in turn encourage a free flow of information and — since information is power in any negotiation, argument or sales pitch — the empathetic party enjoys exponential returns from her chosen strategy.

Attorneys who leverage tactical empathy strategies benefit themselves, their clients, their law firms and their companies whether they advocate before judges or arbitrators, negotiate deals, prevent expensive litigation, garner authority from senior leadership, empower teams or otherwise create effective dialogue with business partners. Perhaps most importantly, tactical empathy strategies support, rather than undermine, successful future dealings by creating feelings of trust. Successful leaders — whether attorneys, diplomats, politicians or counter-terrorism experts — employ the stealth weapons of tactical empathy to maximize the benefits of each individual negotiation while preserving long-term fruitful relationships. You can too.

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[1] Marcus Holmes and Keren Yarhi-Milo, The Psychological Logic of Peace Summits: How Empathy Shapes Outcomes of Diplomatic Negotiations, *International Studies Quarterly* (2016), available at https://scholar.princeton.edu/sites/default/files/kyarhi/files/the_psychological_logic_of_peace_summits.pdf; Chris Voss, *Methods of Persuasion: How to Use FBI Empathy*, *The Negotiation Edge* (June 12, 2017), available at <https://blog.blackswanltd.com/the-edge/how-to-use-fbi-empathy>.

[2] Rick B. van Baaren, Rob W. Holland, Bregje Steenaert, and Ad van Knippenberg, Mimicry for Money: Behavioral consequences of imitation, *Journal of Experimental Social*

Psychology (Academic Press June 2002), available at <http://j.b.legal.free.fr/Blog/share/M1/Articles%20INC/Mimicry/Mimicry%20for%20money.pdf>; Benedict Carey, You Remind Me of Me, The New York Times (Feb. 12, 2008), available at <https://www.nytimes.com/2008/02/12/health/12mimic.html>; Wolken, A. S., Brain-based learning and Whole Brain Teaching methods at 6 (Master's thesis, Northwestern College, Orange City, IA, 2017), available at http://nwcommons.nwciowa.edu/education_masters/43/.

[3] Anchoring is the setting of expectations from your opponent. It includes making the first offer to control the range of potential outcomes. It also includes strategically preceding an articulated position with a warning or other statement, i.e. "you're not going to like this," to move expectations and control emotional reactions. Methods to spot lies involve recognizing cues in body language, i.e. locked ankles or crossed arms, as signals of defensiveness.

[4] A.V. Williams, What an FBI hostage negotiator can teach you about getting a better deal (Aug. 5, 2017), available at <https://www.news.com.au/finance/work/at-work/what-an-fbi-hostage-negotiator-can-teach-you-about-getting-a-better-deal/news-story/c2f6bf28ba1284590f3bbea28f76ad8f>.