

Tricks negotiators play

Taken from the Australian Commercial Disputes Centre (ACDC) commercial mediation course. The options have been changed slightly for family mediations.

“Mediators should be aware of the many and varied tricks (dirty tricks) used by experienced negotiators. Many people have taken negotiation courses specifically to learn these tricks, and to learn how to counter them.” (*Techniques & strategies used in mediation* ACDC 1995)

Trick	Option for action
One-more-thing	<p>This trick is played right at the end after everyone has agreed on all points in dispute. The trick is to then say, “Oh, there is one last thing I forgot that” An aggressive party does this in the hope that by now, everyone is so weary that they will agree to the demand.</p> <p>Mediator: Do not let your guard down until the mediation is completed. Sometimes concessions can be made in good faith but it may not be in the parties’ interests for a party just to give in. Take the parties through the many issues that have been resolved.</p>
Personal attack	<p>Aggressive parties often attack the other side personally. They turn their back on them, ignore them, question their integrity and a host of other devices to disarm them.</p> <p>Mediator: Discuss with the parties how the “personal attacks” make them feel and how their negotiations tend to go. Suggest that a change in approach may be necessary. Stop and draw attention to a personal attack each time one is made.</p>
Stonewall	<p>Some negotiators will simply not budge from their position regardless of the process under way.</p> <p>Mediator: Talk about intractability and where it might lead. Some mediations must be undertaken in good faith.</p>
Extreme demand	<p>Many aggressive negotiators make unreasonable demands believing that the other side plays the same game and has taken an equally extreme position. These people believe that negotiating is all about “splitting the difference” by a long and drawn out process of offers and counter offers.</p> <p>Mediation: Explain that this is positional bargaining and that the parties need to focus on their interests. Discuss how negotiating to “split the difference” encourages taking extreme positions.</p>
Ploys	<p>Negotiators often use ploys to finalise a deal. These ploys are like sticks and include:-</p> <ul style="list-style-type: none"> ● “It’s the best that I can do.” ● “My situation is getting worse – better settle now.” ● “I’ve been told that I can’t do that.” <p>Mediator: Maybe it is as said and maybe it is not. Reality test what has been said. Suggest that further advice needs to be obtained.</p>

Withdrawal threat	<p>Sometimes a negotiator’s threat to walk away from the process is genuine. Sometimes, however, it is just a trick. Perhaps the negotiator even planned at which stage they would use the trick.</p> <p>Mediator: Acknowledge that the person came to the mediation because it was in their best interest to do so. Call for a break. Talk to the party in private session. Remind the party of their Best alternative to a negotiated agreement (BATNA) and that it is in the interests of the parties that the negotiations continue.</p>
Ghosting	<p>This involves referring to some past business or relationship problem. The problem is usually irrelevant to the negotiations at hand. One party, either obliquely or directly, refers to the old problem in order to put the other party in a weaker position e.g. “You spoilt the family Xmas dinner in 1982” or “ You wouldn’t know what it’s like, last time we tried that you were an hour late.”</p> <p>Mediator: Suggest that the parties might be better off focusing on the future. Ask the parties how it feels when they talk about these things? How does it work out if they keep raising this stuff?</p>
Overwhelm	<p>One party attempts to confuse the process or throw the other side off guard by overwhelming the mediator and the other side with many, often irrelevant, details.</p> <p>Mediator: Note the time this is taking. List the issues and ask the parties to prioritize them.</p>
“I’m so important”	<p>One side wants the other to believe they are more important. They assume this will make the other side feel intimidated and negotiate from an inferior position. The way such people make themselves appear important is to get phone calls on their mobile phone; have urgent messages sent through to them.</p> <p>Mediator: Note that the party is not senior enough to have others to look after day-to-day operations. Suggest that mediation be postponed until someone more senior can be involved.</p>
Water torture	<p>This is an often-used negotiation strategy. The party goes on and on and on about some particular matter, often trivial. They refuse to be sidetracked. They may be using this trick to make it seem as if the process will take a very long time, so the other side might as well give in.</p> <p>Mediator: Refer to the agenda. Ask the parties to consider the priorities in the list of issues. Discuss the time that it might take to negotiate each issue.</p>
Top any point	<p>This occurs when one party constantly responds to any point or criticism made by topping the point e.g. Party A, “We always informed you if there was a change in the plans.” Party B, “We always informed you in writing if there was a change.”</p> <p>Mediator: Note that this could just be going over old ground and that it doesn’t progress the mediation. Call it as playing “Tit-for-tat”.</p>

Time pressure	<p>One party puts pressure on the other by stating, or creating the impression, that there is some urgency. This is a trick to confuse the other side and make them make fast decisions.</p> <p>Mediator: Acknowledge that time is getting away. Let the parties know that the mediation can be adjourned but this would incur costs.</p>
Sudden shift	<p>One party dramatically changes its strategy, its position, its offer, its attitude or its negotiators to confuse the other side.</p> <p>Mediator: “Call it” as a tactic and ask why they are using it? Break for a private session with the party to ask them the reason for the change in tactics?</p>