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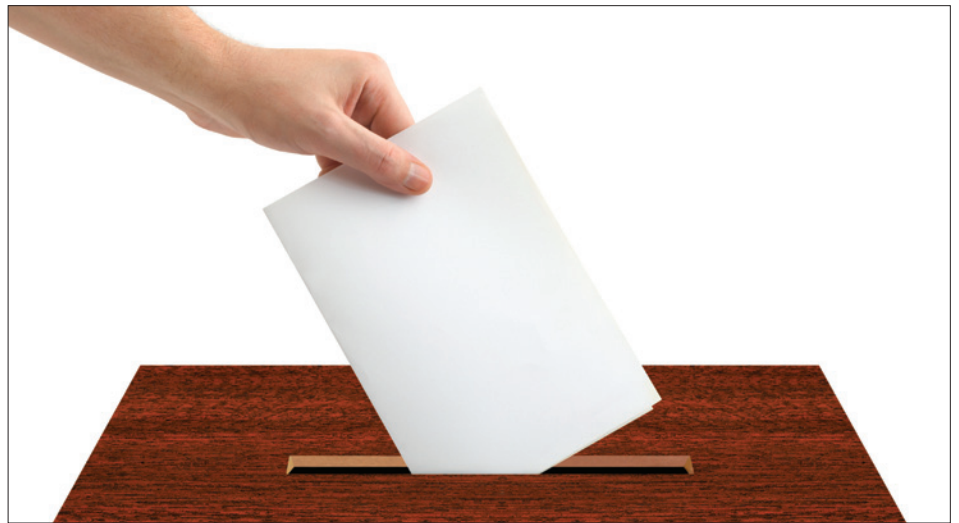
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What Campaigns Can Teach Lawyers About Negotiating

BY ALAN BUSH

LEGAL NEGOTIATIONS AREN'T too dissimilar from election campaigns, as I've learned from personal experience. Twice now, I've served as my wife's campaign manager. This time around, the experience taught me some lessons about legal negotiations. Convincing voters to pick my wife as county treasurer over a sitting incumbent isn't that far off from coaxing everyone to a deal.



Listen to your voter.

Montgomery County has a reputation as the reddest county in Texas. Even still, voters come in many flavors. Some care most about taxes, others about ethics and still others about economic development. Some aren't even Republican at all.

A political campaign must reach enough of these different interests to celebrate on election night. To do that, the campaign must listen to the voter.

The big issue in our campaign took us by surprise. We went in thinking my wife's qualifications and record would most impress the voters. But then, the incumbent chose to fight an open records request for her 700-page accounting procedures manual. The media pounced. Social media exploded. Voters of all types talked.

Message received. Voters saw a problem with transparency.

Lawyers contingency plan everything, including our negotiations. So we can fool ourselves into thinking we already know what the other side will do, say and think. News flash: We don't really know all that.

Listen hard to the other side. Really listen. In a negotiation, the other side is the voter. Don't listen merely to react, but carefully listen to ask questions. Until we've heard opposing counsel articulate

her arguments fully, we're only guessing how she'll come at us in trial.

Remember the silent majority.

Noise constantly surrounds a political campaign. Some folks have larger megaphones than others. Think the media, community activists and political groups. They make the most noise. But a campaign needs to listen closer for the silent majority. When they're talking, a message has caught on.

For us, the silent majority came from voters who'd ordinarily back an incumbent with an if-it-ain't-broke-don't-fix-it attitude. We heard that critical group talking transparency. Withholding the accounting procedures manual bothered them. We knew we had an issue on our hands to carry us to election day.

Translate that to legal negotiations. Although trial counsel talks the loudest, the client calls the shots. Listen carefully if the client speaks. It won't be very often, but I bet it's your best insight to the silent majority in your room.

Is the client frustrated with how slowly justice moves? Is he defending a reputation? Does she struggle with having to pay to defend against a claim she thinks

is garbage? There's actionable intelligence in there.

Speak the voter's language.

Our campaign pivoted its key issue—to transparency on how our county accounts for taxpayers' dollars. We listened to what got the voters' goat, then drove that message home.

Legal negotiations work the same way. Understand the other side's favorite argument, then dismantle it. Listen between the lines for what scares them, then exploit it. Determine what they want outside the lawsuit, then explain offers in a way that satisfies it.

Wield facts like a scalpel, not like a machete.

Even with the upper hand on a big issue, a campaign can still tank. Overplay a strong hand, and the campaign turns off voters in the political center.

The campaign must wield the facts like a scalpel, not a machete. The facts speak for themselves. Unadorned. Just the facts, ma'am. Inflammatory adjectives simply aren't necessary, and they can inflict more damage on the campaign's credibility than on the opponent.

Adjectives can also tank legal negotiations. Opening session

is especially dangerous. If one side overplays its strengths with bombast, negotiations can derail fast. Although lawyers are desensitized to adjectives, clients typically are not.

Adjectives just risk getting the client's back up, so the client stands his or her ground. Clients who want to avoid the courtroom will fold without the adjectives. Playing the facts alone will get there.

If you ever get the chance to manage the campaign for a political candidate you believe in, go for it. You'll hone some skills that help at the bargaining table.



Alan Bush is a mediator in Houston and Conroe. He'll listen, then shoot you straight.