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99 Negotiating Strategies

TIPS, TACTICS & TECHNIQUES USED BY WALL STREET'S TOUGHEST DEALMAKERS

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About the Author

David Rosen has been described by his peers as one of the toughest negotiators in the United States. Rosen has negotiated deals involving major legal disputes involving the world's largest companies; represented individuals on the Forbes 400 list of the wealthiest Americans; and helped close commercial real estate deals in some of the most popular destinations in the country. He is often asked to consult on upcoming negotiations being handled by others, and to join negotiations already in progress where it appears an impasse is likely. Professional negotiators themselves often quote and use Rosen's strategies to help bring disputes to an end. He has handled hundreds of federal and state cases on behalf of both plaintiffs and defendants in multiple courts and jurisdictions.

Author's Note & Disclaimer

As I began nearing the end of a long career as a top dealmaker, I decided to write this book to share the confidential, extremely-successful deal-making techniques I and my colleagues used to out-negotiate everyone we encountered. These tactics are in use in Wall Street's most elite firms and have been for decades. Negotiating is part art, part science and part street fight. Unfortunately, many negotiators who see themselves as savvy, aggressive persuaders are nothing of the kind. At least one key study showed that negotiators who self-identified on questionnaires as "aggressive," shrewd" or "highly-effective" were viewed as bordering on ineffective when scored in confidential peer reviews. I decided to share the tactics I have used to great effect with the hope of contributing to the body of knowledge in the field.

New York City has a reputation for being the toughest place in the world for good reason. Almost every deal negotiated on Wall Street involves huge sums of money and can make or break companies on a national and global scale. Dealmakers inside Wall Street's elite legal and financial institutions are shrewd, hard-core negotiators who steamroller lesser adversaries. For the first time, this book collects their best insider negotiating tactics and strategies. Every one of them works, individually or in combination.

You and you alone must decide whether a specific technique will work in, and is appropriate for, a specific situation. Not all are suitable for every circumstance. Legal or ethical rules may govern what is fair game and what is not. In my own practice I pick from among, choose and often combine strategies to ensure that in the deal at hand, I remain fully compliant with the rules that bind me.

I use the generic term “target” throughout the book to describe the person or organization with whom you are negotiating. I do this because in some cases you will be negotiating with an adversary and in some with your own client, your colleague, a neighbor or a family member. The principles work across all spectrums. You should adapt them as you deem fit.

Let’s talk about lying. Lying is bad business. I do not advocate lying within my own organization, I do not tolerate it from colleagues, and I do not tolerate it from my own family. You might in some cases see a deal as a one-off encounter with the target, but you would be wrong. We all run into each other over and again, sometimes directly and sometimes indirectly (through dealings with affiliates or friends of the target). Outright lies will ruin you. To paraphrase a popular saying, people won’t be upset you lied to them; they’ll be upset that from now on they can’t believe you. Bluffing, on the other hand, is distinguished from outright deception because, as in the case of adversarial negotiations, for example, both sides know the other is likely engaging in some degree of misstatement, is concealing some facts, and is likely exaggerating about those facts it is revealing. Some even consider bluffing to be lying, and further claim even “white lies” – those intended to protect others from emotional distress, for example – are still unacceptable dishonesty, plain and simple. These folks may also say poker players are liars (because they equate bluffing with lying), diplomats are liars (for not revealing government secrets) and that all criminals are liars when they plead “not guilty.”

This is a book on negotiating, not ethics. If I intertwined the two, it would be a thousand pages long. Bluffing is situational and contextual, but, of course, can devolve into lying depending on the situation and context. Whether, when and to what degree you opt to bluff a target is your decision and responsibility. Plainly, most negotiators, colleagues and family know there will be instances where full disclosure is unlikely. Given this reality it seems inappropriate to infuse all negotiations with bright-line morality principles. As a British statesman once said, falsehoods cease to be falsehoods when it is understood by all involved that absolute truths are not likely to be spoken.

Two other thoughts.

First, I recommend you use this book to develop your own negotiating style. Choose an approach and toolbox of techniques that work for you. As

you build your skill set, I recommend that you avoid asking others whether to use a particular technique. Many professionals you may associate with are surely good in their fields, but they might be poor negotiators. Thus their opinions may not have the value you perceive as to the utility and effectiveness of a particular tactic. Others may also disapprove of a tactic you like merely because of their own, unduly restrictive view of negotiations – which may be hampering their own effectiveness – or because they didn't think of it first. I generally do not ask others to tell me what works for me.

Some negotiators may find ideas in this book too aggressive, but that is a matter of perspective. Remember author and X-Prize Foundation chairman Peter Diamandis' famous observation: "The day before something is truly a breakthrough, it was a crazy idea." It is not a matter of right versus wrong, or ethical versus unethical. One may be a principled and hardcore competitive negotiator or an unprincipled, unethical collaborative negotiator. So a given negotiator's description of a tactic as too "aggressive" is really nothing more than his or her marking of the spot on the style continuum beyond which he or she no longer feels comfortable. Another negotiator might feel discomfort far short of that first negotiator's comfort spectrum. Others still may feel no discomfort even at the extremes. To illustrate how differences in approach are often mere matters of opinion, it bears noting that negotiators from other countries and cultures often describe even mild American negotiators as "blunt," "disrespectful", "arrogant," "abrasive," "impatient" and "condescending." This is because American-style negotiations tend to be direct and to the point, contrasting sharply with negotiation styles from other cultures. You must worry less about offending others and more about success. You will offend others no matter what you do. Put feelings aside. Focus on winning.

The techniques I lay out here are primarily competitive or "distributive," meaning they are intended to result in the best possible deal for me without specific concern for the target. Most can also be used in so-called cooperative or "integrative" negotiations – where each side is seeking to help the other achieve their goals – but that is not my focus. I know many negotiators speak of caring about the feelings and needs of their adversary, but I also know that when the speeches stop and the negotiating begins, most negotiators are doing everything they can to win. That is my approach. That is the approach of this book.

Second and finally, if you want to become a better negotiator in broader terms, using the strategies in this book, I recommend reading books in related fields, such as psychology and marketing. Most books on negotiating teach you basic principles and do so in the context of war stories that add little. This book contains no war stories. It is a catalogue of the top techniques from the top fields where negotiating is integral to success. I personally recommend books such as The Black Swan, and Antifragile, by Lebanese-American essayist, scholar, statistician and former trader Nassim Nicholas Taleb. These works focus on problems of randomness, probability, and uncertainty. They are excellent thought provokers for professional negotiators. I also recommend the book Influence: Science and Practice, 5th Ed., by Robert B. Cialdini. Professor Cialdini has done groundbreaking research on the science of compliance – of getting others to do what we want. It is not necessarily a book touching directly on negotiating but, like The Black Swan and Antifragile, it is laden with principles of great importance to dealmakers.

David Rosen

Contents

CHAPTER 1

Walk Out (Tactical) –Temporary Halt (1-30 days)

We're conditioned to view walkouts as a jolting, harsh end to deal-making. This is precisely why abruptly leaving in the midst of in-person negotiations can actually be a powerful "next move." It sends a message that you are more than willing to kill the deal if the terms don't get better fast. An abrupt walk-out can leave your target stunned, and struggling to decide what it means.

A tactical walkout should be followed by a follow-up phone call or inquiry in the days or weeks following the departure. I use the range of one to thirty days as a rough gauge for waiting before following up. Don't wait longer than that if you need to get the deal done. For tactical walkouts I generally recommend follow-up within 48 hours. But a longer delay is still within the realm of reason, depending on circumstances.

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CHAPTER 2

Walk Out (Strategic)– Intermediate Halt (1-3 months)

This variation on the walk-out tactic is useful if you must begin negotiations but are not yet fully prepared to strike a deal. In some instances, practical, contractual or legal rules may require that you begin negotiations by a certain date, but not necessarily require that you complete them by that date.

So consider the strategic walk-out. It will allow you the benefits from the target's shock when you walk out, but also buy you time to refine your positions and make use of the intelligence you gathered before you walked out. It will also allow you to test more extreme negotiating positions that you would be afraid to try if you had to complete the deal that day (because the target would be too angry or emotional to recover and keep negotiating). By walking out, you gain advantage by showing you are unafraid to walk away. By participating in the negotiation, however, you may gain valuable insights that will prove useful down the road, both in future negotiations and in the event you cannot settle and must engage in legal or political fights. Substantial delay following a negotiation session allows time for deep evaluation of the information gleaned.

This is why strategic walk-outs are so useful. You may find resistance to this technique, because most negotiators are wedded to the traditional approach of conducting a single session. But there is great value in strategically splitting your negotiation sessions like this, using the calculated halt I describe.

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CHAPTER 3

Be the First to Propose the Terms (Anchoring)

This plays to an elemental negotiating and psychological principal known as anchoring. Anchoring is the term used to refer to the tendency of most people to rely too heavily on the first pieces of information (the "anchor") offered in a negotiation. During decision making, anchoring happens when the participants in a negotiation use that initial piece of information to make subsequent decisions or judgments. For example, if you first suggest the value of an item up for sale is $1,000.00, the negotiations that follow will tend to revolve around the initial valuation of $1,000.00.

Is this always true? Of course not. But the anchoring concept is so embedded in our minds that it has an effect much of the time. If you are unfamiliar with the psychological research on anchoring, you can find many excellent easy-to-understand articles online. I rarely allow the opposing party to outline the proposed terms for this reason. It is a simple and exceedingly powerful negotiating tactic.

Remember you need not wait until the start of formal negotiations to anchor a number; you can communicate the opening demands at any time before the day negotiations are scheduled.

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CHAPTER 4

Plan on Five Rounds

Any top car salesman will tell you it takes an average of five contacts with a potential buyer to close the deal. It's a good rule of thumb. Great if you can close a deal faster, but mentally you should assume any negotiation will take five encounters, contacts or rounds to close. This presumes you are not scheduled for a single negotiation and that you are involved in more informal talks.

Why is pacing important? Because some people need to be persuaded and should not be forced. So when I begin a negotiation, I tell myself it will take five contacts or rounds to make the deal happen. This way I don't unnecessarily pressure targets who need the space.

Of course if I can move faster, I do. But this rule of thumb gives me a good framework. Pressuring a target – whether an adversary, buyer, seller or your own client or customer – can build a problem into the deal that might cause you problems later. So build some time into the negotiations, and if it wraps up sooner than you allotted, all the better.

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CHAPTER 5

Seek Agreement on Broad (Favorable) Principles

I often start negotiations by looking for some external, pre-existing criterion or standards, and then asking my target to agree those basic principles govern our negotiations. “External” rules are those already in place prior to the start of the deal at hand. They might be prior contracts, prior deal terms, sale prices, or the terms of some binding legal document, such as a collective bargaining agreement, the rules of the American Arbitration Association, or maybe a federal law.

I can usually find some authoritative frameworks or standards that will benefit me in negotiations. Lawyers are masters at this, but many business and lay people are not. They start with no framework, failing to appreciate there may be powerful arguments to be found in some pre-existing, objective set of criteria.

There are two key benefits in doing this. First, you may be able to control the governing framework by being the first to advocate it. Second, you will have moved the negotiating forward by reaching agreement on at least one point already.

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CHAPTER 6

Know Your Target's Probable Limits

I can typically learn a surprising amount of information about my target's limitations – whether in time, money or authority to deal – just by searching online, checking government records, or even by just asking the target. Even sophisticated people will freely disclose otherwise confidential information, sometimes simply to prove their good faith. It may not always be wise for them, but it is incredibly useful for me. And it's a legitimate request.

You need to know if your target has the power to make a deal. This is true whether it is a business owner, a manager, a customer or an insurance adjuster. Few play negotiations close to the vest. So press for the contours and limits of your counterpart's deal-making limits, and use them to advantage.

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CHAPTER 7

Friend and Foe/Good Cop, Bad Cop (Constant)

This strategy utilizes at least two negotiators on a team, one or more who take a friendly, cooperative approach to negotiations, and one or more who take an aggressive, extreme or antagonistic approach. The "bad cop" or "foe" on my team argues (with full apparent sincerity) for truly outrageous terms, and may do so in a loud, agitated manner. In contrast, but at the same time, I take a more relaxed, trusting approach. In fact, my position may also be extreme, but less so than my partner's.

The purpose of this tactic is to allow me to make demands that are objectively extreme but that are likely to be perceived subjectively as reasonable because of their juxtaposition against my partner's off-the-edge demands. Obvious as it often is, it can be surprisingly effective.

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CHAPTER 8

Friend and Foe/Good Cop, Bad Cop (Intermittent/End Game)

This is a variation of Good-Cop/Bad-Cop (Constant). I sometimes find it effective to negotiate alone, but to occasionally bring in a "bad cop" partner at key points during a negotiation. I might phone my partner at key junctures and let the mediator or target get an earful. Or I may wait until the last round of negotiations and then call for "final authority" to make a deal. At this point, involvement of a hostile bad cop/foe partner can be quite unnerving. Often everyone is exhausted and ready to wrap things up. So the sudden appearance of an obstructive "final authority" who appears to be a disruptive force without another major concession can be a nightmare. As a tool for gaining last-minute concessions big and small, however, it is very useful.

You should make clear at the pertinent point in the negotiation that you will need to check with someone for final approval. If you are asked to obtain that approval before the negotiations are done, you may legitimately explain, if it is accurate, that you are instructed not to bother the final authority until all terms were negotiated. Perhaps the final authority is also unavailable until the end of the day.

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CHAPTER 9

Demand Active Involvement of All Ultimate Authorities

To avoid wasting time and to immunize yourself from unpredictable changes in agreed terms, you should insist that the person you are negotiating with has full authority to deal without further consultation. This is a basic rule of all negotiations. No spokesmodels in my negotiations. In other words, you should take steps to prevent your target from using rule number 8, above, against you.

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CHAPTER 10

Never Agree to Last-Minute Add-Ons

You might be asked to agree to minor terms demanded after the negotiations are done and the deal is being inked. Don't do it. Your reputation as a dealmaker will suffer. Agree to nothing new once the deal is done, and I mean nothing. You might lose a deal or two over modest concessions, but you'll benefit in the long run. Of course, there may be situations where it makes sense to do so, and I'm not advocating that you refuse for the sake of principle that otherwise gets in the way of a good deal. But tolerating the addition of last-minute terms will hurt your reputation as a negotiator.

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CHAPTER 11

Keep the Pressure Steady

World-class anglers tell me they wear out the big gamefish by keeping the pressure and tension on the line steady throughout the fight. The fish is never given a chance to regain its strength. The same principle holds true in negotiations. If you are negotiating in person, try to avoid breaks for lunch or other unrelated interruptions. Keep your target's focus on the deal. Breaks and distractions can cost you the deal. Keep the negotiations rolling, and the pressure steady. This wears fish, and people, out.

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CHAPTER 12

Keep Intermediaries in The Dark

If you're using a middleman, like an assistant, to relay messages back and forth, never tell the middleman your final numbers or positions. Never trust so-called "neutrals" with information you would not openly tell the target. Message carriers are people, too. You are asking too much if you expect them to avoid verbal or nonverbal leaks.

Intermediaries can leak valuable intelligence about your positions in many ways, intentionally and inadvertently. It can be something as discreet as a wink, a smile, a pause or complete silence. Dishonest middlemen might wink to your target when asked about your bottom line, and still tell you (correctly, but unethically) that they did not "say "anything. Even trustworthy middlemen may not realize their leakage, through facial tics, for example.

Here's my own working rule for sharing information: If you're not a full-blown member of my negotiating team, you are in concept in the same position as my target. I cannot and will not share sensitive information with you. What you don't know, you can't leak. It's that simple.

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CHAPTER 13

Always Pause Before Responding to an Offer

Don't respond to a counteroffer, stance or demand too quickly. It's important to realize how your target may see a quick response. They may take it as evidence your initial demands weren't sincere and this is why you change positions so quickly. A hasty response might also imply that you are tired of negotiating and ready to concede. Remember that the target does not know what you are actually thinking.

So inferences will be based on whatever the target can discern. This includes how fast you respond in each round. Yes, that is slim pickings, if this is all you are giving them, but the speed of response has meaning nonetheless. Slow down to create the impression that you are losing interest, struggling to give anything up, or even deciding whether to simply quit and go elsewhere. Slow responses generally send better nonverbal signals than fast ones.

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CHAPTER 14

Set an Artificial Deadline

Deadlines, like delays in responding, are a key element of successful negotiation. A deadline instantly creates pressure on your target. The deadline can be whatever you choose and that makes sense. The deadline should be an artificial deadline because it should be something you can move as needed to keep the negotiating going. Never reveal real deadlines that you are operating under unless revelation is essential to your ability to get a deal done. Disclosure of confidential deadlines will weaken your leverage, because your target may then play you against your own deadline.

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CHAPTER 15

Take Charge of Drafting Any Written Agreement

Every Wall Street negotiator insists on responsibility for drafting any written agreement. I know of no one that would let a target do so. As I indicated elsewhere, much kicking under the table takes place in the drafting of an agreement. Even simple agreements can result in 50- or 100-page documents memorializing the parties' supposed intentions. Why? Because a shrewd drafter will insert dozens of additional terms into the agreement, in the process making them sound as boring and unimportant as possible. I never let a target draft the agreement under any circumstances.

In appropriate circumstances I may bring a mostly-complete agreement with me to ensure that my agreement anchors the negotiations and ultimate deal. The mere fact that I brought one with me, and that it is largely complete, often ensures that the parties don't even discuss the issue of drafting responsibility.

There is nothing necessarily wrong with adding terms that were never discussed, of course. Why? First, because many contractual terms are assumed and not discussed in negotiation. Can you imagine a negotiation over each and every clause in a standard agreement? My idea of a standard term is likely to be different from yours, and the fact that I included it without discussion is of no moment. Second, if the target sees something objectionable in reviewing your draft, it has the absolute power to object and to refuse to agree.

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CHAPTER 16

Use Ambiguity to Prevent Premature Commitment

In some situations, a target will insist on binding agreement on each term as you work through the elements of a deal. This way, they presume, it will not be necessary to go back and re-argue a point for which there is already commitment.

But making commitments to individual provisions can prove disastrous if, as you move through the list of issues, you discover a prior commitment will actually hurt you once you make further, necessary agreements. In other words, making commitments to specific terms in isolation, without fully appreciating how that commitment will affect you once all the terms are resolved, can be disastrous. You should avoid binding commitment until you have the final big picture.

For this reason, you may consider using "constructive ambiguity" to create the air of agreement without binding obligation. A Harvard Business Review article from October 2003 titled "The Chinese Negotiation" touched on how Chinese negotiators used this tactic for advantage against Western negotiators: "Rather than just saying no outright, Chinese businesspeople are more likely to change the subject, turn silent, ask another question, or respond by using ambiguous and vaguely positive expressions with subtle negative implications, such as *hai bu cuo* ("seems not wrong"), *hai hao* ("seems fairly all right"), and *hai xing* or*hai ke yi* ("appears fairly passable")."

Using this approach, a shrewd negotiator could work through many hours of negotiation without making a single commitment. Only when all of the pieces appear to be in place will such a negotiator actually make a legally-binding commitment.

CHAPTER 17

Never Start at or Near Your Real Position

Experienced negotiators understand the previous rule about the importance of building in non-essential terms, because they know targets expect concessions. As result, you must include terms that can be negotiated away without consequence to you.

You will encounter stiff resistance to a deal if you simply declare your real bottom line. No one will believe it. Nor will anyone accept it, because doing so will be seen as evidence they did a poor job of negotiating a deal against you.

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CHAPTER 18

Ignore "Final Offer" Declarations

Excellent negotiators will often declare the end of their authority - their final offer - long before they've actually done so. They will even carefully structure their lead-up rounds to create a persuasive impression that this false bottom or false top is genuine.

Ignore such declarations. More often than not, they are untrue. Assume for negotiation purposes that you have five to seven more rounds of robust negotiations before you have satisfactorily tested the truth of the target's "final offer" declaration. Many ordinary negotiators accept "final offer" pronouncements as fact and give up. Much is lost that way.

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CHAPTER 19

But Use "Bottom Line" As Your Own Effective Bluff Technique

"Final offer" has such power and credibility in our society that the mere use of this phrase will improve your outcomes.

To ensure such declarations at least appear credible, you must properly frame prior rounds to credibly end with a "final offer" ploy. Simply blurting out "final offer," when it clearly is not, will achieve nothing in the way of results and cost you valuable credibility points.

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CHAPTER 20

Break Chain of Command

My grandfather was fond of saying, "If your target says 'no,' it does not mean you cannot negotiate a deal. It simply means you started your negotiations with someone ranked too low to help you achieve your objectives."

Do not hesitate to go above the head of your target if appropriate. Sometimes he or she lacks legitimate authority to deal. I will not waste my time in such situations. In some cases, if permitted by the rules governing my negotiation, I will dial the person I believe has actual authority for the target even if he or she is not involved. This is a wonderful tool for getting results, especially when word trickles down to the target's team that I reached out to their superiors. Talking to the waiter will not help if the waiter is the problem. Talk to the manager.

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CHAPTER 21

Small Gifts Trigger Reciprocity

Psychological research has long proven that giving a gift or offering, regardless of size or value, will trigger a sense of obligation to reciprocate in the recipient. Further, the reciprocal response sometimes vastly exceeds the value of the thing received.

This is why charities include free address labels in solicitation mailings, and why certain religions may offer you a flower or Bible before pitching you for a donation. As I wrote this book, I received a solicitation letter from the March of Dimes organization, and guess what was prominently displayed in a see-through window in the envelope? A dime. That was it. A single dime. Not enough to buy anything anywhere, but the charity's fundraising team knows the psychological sense of obligation such a gift triggers. It works, and it works extremely well.

I have opened high-stakes negotiations by giving my opposing number a quality fountain pen, in a somewhat ostentatious manner, stressing that I wanted them to use the pen to sign the agreement we were about to reach. I find this an excellent gesture to create a sense of reciprocal obligation. Other suitable gifts could include baked goods, notepads, mousepads and the like. Caution: Small inexpensive gifts are best. High-value gifts send the wrong message and may even suggest an inappropriate bribe-like intention. Research shows no difference in triggering a feeling of obligation between an inexpensive gift and a costly one. Small is best.

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CHAPTER 22

Limit and Confine Bystander Involvement

Beware the role of those behind the scenes as it relates to your target or the person on whose behalf you are acting. Spouses, for example, sometimes exercise outsized influence as you negotiate, even in business deals involving hundreds of millions or billions of dollars. If your client or principal is talking to a spouse, friend or other person during negotiations, you must affirmatively clarify and confine or limit that person's role. Even the best-intentioned third party can put the kibosh on a deal through uninformed commentary about the progress of your efforts.

This reminds me of boxing matches, where only one person is taking the punches to the head, but thousands in the audience are nonetheless shouting "Fight! Fight! Fight!" Those folks have no stake in the outcome. It doesn't stop them from having an opinion, however uninformed. In negotiations, these lookie-loos can cause great damage.

Feedback from the audience is always nice, but it's the folks in the ring that enjoy or suffer the consequences, and they and they alone must make the decisions.

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CHAPTER 23

Beware of Phantom Justifications

Adversaries may claim they cannot do better because this is the "best they've ever done" in similar situations. This is untrue more often than not. Even if prior deals were no better, there are likely critical differences between your facts and the purported "past deals." Perhaps the prior negotiator did an exceedingly poor job. Perhaps the "prior deal" was a decade earlier. Perhaps there were legal principles that limited the negotiations. You have no idea.

I aggressively insist on actual documents from any prior deal mentioned as a limitation on what can be done in my negotiation. I will not credit any such claim at all absent proof and, as needed, additional, highly-detailed explanations and documents. Superficial claims of "best we've ever been able to do" may lead me to derail a negotiation, if I am not given satisfactory proof (and similar binding representations in the agreement, if appropriate.) Trust but verify.

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CHAPTER 24

Use Behavioral Mimicry to Create Sense of Affiliation with the Target

Behavioral mimicry – sometimes loosely referred to as mirroring – refers to the typically-nonconscious and subtle phenomenon of mimicking another person's facial gestures, speech patterns, mannerisms and gestures. Psychological research shows this "prosocial" behavior instinctively takes place to create rapport and affiliation with the other person.

But the principle works just as well when done intentionally, for the specific purpose of creating a positive feeling and affiliation with a target in negotiations.

Elite negotiators use this technique heavily. The key is subtlety. Overt, conspicuous mimicry will have the opposite effect – it will likely be seen as mockery, not mimicry, and it will strike the target as very offensive. Just as mimicry within norms will positively resonate on a subconscious level, excessive mimicry will be picked up by the target's radar and be deemed suspicious.

Some examples of behavioral mimicry I've seen in use by top negotiators and persuaders:

- Assembling a negotiation team that at least partially matches the demographics of the target's key decisionmaker(s). Thus the team assembled to negotiate with Asian males in their 50's will include one or more Asian males in the same age range; a female target will lead to assembly of a team including females; and so on. This is a common approach for trial lawyers. In race discrimination cases, for example, the trial team will include lawyers that match the demographics of the person suing. Once a jury is selected, top

lawyers will rely for in-courtroom assistance on office staff that matches the characteristics of the jury members. The assistants may be a blend of demographics, each matching a particular juror's age, race or gender.

- Wearing clothing that matches the style of the target, either in terms of style or level of conservatism.
- Wearing an article of clothing, such as a scarf or tie, that matches the colors of the target's college or graduate school. Thus your lead negotiator may wear a violet-themed tie if the target (which could include the opposing decision-maker, a government regulator, or judge) is an NYU graduate, maize and blue if a Michigan graduate, or crimson if from Harvard. Color matching should not continue a second day because of the likelihood the mimicry will be spotted as an artifice.
- Disposing with a menu at mealtime and ordering the identical meal as the target.
- Expressing affinity with hobbies, sports teams, travel experiences and other personal likes and dislikes of the target or decisionmaker.
- Using expressions to which the target will relate. Metaphors can be used during conversations that tie into known occupations or hobbies.

Sophisticated negotiators know that affiliating with the target in this manner will lower a target's opposition or resistance. It is an extremely effective technique.

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CHAPTER 25

Use the "Tourist Trap" Advantage

Many targets bring negotiating teams – experts, lawyers, advisors – in from out of town to strike a deal. This gives you a substantial leg up if your target is operating without local knowledge. They will not know the local government officials' temperament, or the judge's propensities on certain issues, or the mood and outlook of local voters or juries. Even if they've done some research, it is not the same as true hard-earned local knowledge.

Use this disconnect to great advantage. You can test your target's true depth of knowledge about local conditions by making an offhand, but somewhat preposterous, statement about how a building official, politician, judge or jury has reacted in the past to a similar situation. Bluffing and puffery about such matters are legitimate negotiating tactics and should be deployed appropriately. Many deals depend on judgments about how government officials or courts will respond to a situation.

Superiority of insight here can greatly influence your deals.

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CHAPTER 26

Use Social Proof

"Social proof" is the phrase that refers to the impact of the opinions of those whom your target values. If your target values the opinions of certain key individuals, mention that the individuals have long supported the same views you do. Obviously, this must be absolutely true if you make such a representation. You must not misstate such views.

Social proof also works where your target respects the views of certain organizations, religions, or political parties. Aligning your arguments with persons or groups that your target admires will greatly ease your negotiating path.

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CHAPTER 27

Reject All Suggestions That the Price Is Fixed

No price is ever fixed. Ever. You can and should negotiate the price and terms of everything - restaurant meals, ticket prices, industrial supplies, store-bought items and used items. It makes no difference. And the negotiation should not end once the purchase is complete. If you are not satisfied with the product or service provided, you should demand a price cut or additional compensation or product.

The point here is that you should ignore quote sheets, printed matter or web-based information as to the cost of purchase. I have yet to find anything that cannot be negotiated if desired.

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CHAPTER 28

Bet on Your "Poker Face"

Our faces leak confidential information constantly. Even the best poker players leak valuable insights through their eyes, mouths and head movements. This is why many wear gesture-masking sunglasses or face covers.

Show no emotion. Everyone feeds off facial gestures as a guide for what to do next to accomplish their objectives. Whether you're making progress or not, don't tip your hand with facial gesture "leakage." If you're not good at controlling facial gestures, consider assigning the lead role in a negotiation to someone else. Alternatively, consider doing most of your negotiation over the phone or by email.

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CHAPTER 29

Call for A Penalty On Delay of Game Tactics

I train my negotiating team to use delay and deadlock tactics to control the pace of negotiations. Pace here is as critical as it is in professional sports. Clock management is an astonishingly powerful tool most average negotiators never use, much less use effectively. When it is used on you, however, be ready to call foul and to do so loudly. Delay of game penalties are called in virtually every professional sport, and for good reason.

In football, for example, championships have been won or lost based on the way coaches slowed the game down. The ball carrier runs wide across the field but never runs out of bounds, burning up precious time on the clock when his team is ahead. Quarterbacks waste every available second before starting the play. Players walk slowly back to the huddle. These tactics are used to waste time when the team is ahead and the opposition needs to catch up before the game ends. The delay tactics are mostly beyond the control of the other team because that's what the rules allow. The sheer delay alone helps win the game.

You should never allow a target to bog you down as a tactic. Call them out and force their hand.

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CHAPTER 30

Use Delay of Game Tactics, Or The Hurry-Up Offense, To Disrupt Target Strategies and Flexibility

Just as your target might try to slow the pace to put you at disadvantage, you can use the same tactics. You might build in time delays for performance (e.g., 30 days for you to begin complying), or you might insert provisions that halt further obligations until certain conditions are met. Through proper drafting of appropriate provisions, you can easily drag out performance, payment or compliance for long periods. This is a critical tactic that I rarely find even very good negotiators using. You have probably run into targets that have rushed through their review of an agreement you drafted. They assume there is nothing in there that will hurt them. Of course, your targets will often be your adversaries and they have no business making assumptions or operating on principles of trust. Such negotiators will not take the time they need to see how you may have drafted delay-of-game provisions. It is not your responsibility to do their job for them. Your sole responsibility is to protect you or your principal or client.

Similarly, you can borrow hurry-up tactics used in many sports to *speed* the pace of compliance by your target. To borrow football analogies again, coaches using a hurry-up offense will have players racing to the point of the ball after a play has ended so another play can be started immediately. Players will huddle right near the line of scrimmage – where the ball will be snapped – so they can break from the huddle and immediately start the play. (Normally, players must walk from the huddle about 10 feet to the line of scrimmage. Huddling close to the line will allow the immediate start of a play without the usual pause.) Or, the ball will be snapped on very short counts. This accelerated pace can greatly disrupt the opposing team.

Similar tactics can be used in negotiation to greatly accelerate compliance or payment by your target. You can sharply shorten deadlines. You can undertake actions in minutes or hours during the performance of the agreement, even though the agreement allowed you days or weeks to begin the next stage; your swift response might trigger contractual obligations by the target to act much faster than it planned.

Sudden acceleration of the process can work wonders to keep targets off guard, even in negotiations. Targets may not be able to conduct the level of analysis they'd hoped. Key thinkers may not be available on this new, faster schedule. Or, perhaps, the opposing bench is staffed by minor-league players entirely unnerved by a change of pace. One Wall Street lawyer compares negotiations to the dance between baseball pitchers and batters. The pitcher is, by throwing the ball, he says, making an offer to the batter. To gain advantage, the pitcher's "offering" might cross the plate at 105 miles an hour, or much slower. It might wobble. It might change direction up, down or sideways. It might even threaten the batter for intimidation purposes. In all cases, the pitcher's "offer" is meant to keep the target off balance and to end negotiations in the pitcher's favor.

You? Do this, too.

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CHAPTER 31

Bundle Terms Together

Bundling terms is an effective strategy to gain advantage. You might bundle terms in unexpected ways, perhaps coupling critical terms the target must have with terms that greatly favor you. (This is a common tactic used by US senators to get legislation passed. They will add a rider to a major piece of legislation, forcing the Senate to either approve the legislation with the pork-barrel rider or to vote the entire thing down, which may cause grievous harm to government operations.)

You might couple a critical provision you fully intended to give away with dozens of seemingly minor demands. There is no limit to bundling, if done thoughtfully. You might bundle solely for the purpose of dropping or substituting. Or you might do it to gain a concession that is particularly important. You and you alone determine what is to be included in the bundled demand, based chiefly on how you perceive the advantage to be gained and the impact on your target.

As with many of the other tactics I describe in this book, the majority of professionals who describe themselves as “negotiators” give little thought to the tactics of bundling. It is a tremendous advantage often wasted.

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CHAPTER 32

Convey Indifference

Many adversaries and middlemen will hit you with shock proposals that are intended to gauge your reaction or to otherwise disrupt your team. This is where having a master's-level poker face comes in handy, because shock proposals often trigger unplanned physical and facial gestures that reveal a negotiator's unspoken thought.

But here, I am not merely suggesting that you maintain a poker face. Of course you should. But beyond that, you must verbalize your indifference as well. To a shock proposal, I act as though I have just heard that my local building supply store has a new shipment of wallpaper paste. Who cares?

Done properly, many such tactics by your target will fall away. I also often suggest that if my target wishes to pursue the thing just shared with me, they should go ahead, because I have other things back at the office to work on. The objective here is to convey utter and complete indifference. Believe me, if you are using a third-party as an intermediary or mediator, your indifference will be reported back to the target whether the intermediary says they will or not.

Studied indifference is high art.

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CHAPTER 33
Divide and Conquer

In negotiations involving more than a single person, keep in mind that every person on that team will have their own agenda, ego, level of authority and reputation vis-à-vis her or his own other team members. You should assume that each team member differs in how they view the negotiations. Look for opportunities to exploit these cracks and crevices on the target's team. Some are likely to be more favorable to you than others, and they have an agenda that places value on striking a mutually-beneficial deal. Some may even strongly support your position.

Pains should be taken to identify those team members and single them out for preferential treatment, particularly and especially in front of their other team members. Your elevation of those favored negotiators can powerfully impact the weight your favored negotiator's voice and opinions have in the other room. In some cases, there are several on the opposing team who may support your positions. You must never assume the "opposition" team is in fact uniformly opposed to you. Look for and maximize these opportunities.

It is also often the case that you are negotiating against multiple targets, whose interests are only nominally aligned. It is not terribly difficult to develop proposals that begin to separate opposing groups and that exploit their own disagreements. Caution should be used in doing so, if a split is likely to result in deal failure that would cause you harm in a larger sense. Your proposals should be developed to take these factors into account, and to exploit dissension for your benefit. But you may be able to use those differences and positional disagreements to weaken opposition to your key proposals, or even to incentivize one of your opponents to do your bidding in the opposing camp. Perhaps one group on the opposing side needs the deal

more than someone else on the opposing side. If so, you might be able to take advantage of that and make proposals that would induce them to pressure their other participants to strike a deal.

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CHAPTER 34

Some Negotiators Do Lie; Use Contingencies to Protect Your Interests

There will be occasions where the target or the target's negotiators will misstate key facts in order to strike a deal with you. Sometimes the misstatement is unintentional, i.e. the target genuinely believes the statement is true and is just wrong. Sometimes it is negligent, in the sense that the target does not know if the statement is true or not, but has some slim basis to think it is true. In a worst-case situation, the target knows the statement is false and purposely misleads you.

However, if you suffer harm because you relied on a target's material misstatement of fact, it will not immediately matter what degree of deception was involved. The damage is done, and you must fix it or minimize the harm. If it cannot be fixed, grievous harm may fall on your and/or your client. Your reputation may also suffer lasting damage.

How to minimize the risk of being misled? I have two pointers. First, never rely on your instincts to spot deception in a negotiation. You may have excellent instincts, but there is no assurance you will catch a dishonest statement when it is made. Study after study shows that even skilled negotiators and interrogators cannot reliably do so.

Second, force your target to commit in writing to the truthfulness of those specific factual representations that (a) that are material to your agreement, (b) that the target has made to induce you to strike a deal, and (c) that you do not know and cannot verify prior to the moment the deal must be made or abandoned.

Here's a generic example how I might do this. Suppose I were buying an industrial machine. The sales rep tells me the price being offered is the lowest offered to any of its customers in the last six months. The rep says this

to persuade me to buy the machine, and, further, to discourage me from doing my own research on what others have paid. It is nice that the sales rep tells me this, and if true it would probably lead me to buy. But I don't want to commit and then discover a week later that it wasn't true.

So when the opposing negotiator makes an important statement of fact for the purpose of causing me to rely on it, I do four things:

1. First, I do my own thorough research to see if I can verify it on my own. I never rely on my opposition to provide me material facts if I can find the correct answer myself. This is in part a function of proper preparation ahead of time and in-session research by my team.
2. Second, I personally ask the target as many questions as possible to satisfy myself that I have exhausted my own personal skills in evaluating the truth of the statement. This includes questions allowing me to determine whether the target actually has the first-hand (or otherwise reliable) knowledge to accurately make such a statement. This includes specific requests that documentation supporting the statement be provided to me during the session for evaluation.
3. If - after steps 1 and 2 - I have not been able to verify the information, but have found nothing to suggest the target is being untruthful, I will require a provision in the final agreement about the statement. It will set forth the specific representation made and further say both (a) that it is material to my decision to enter the deal and (b) that I have been unable to verify the information myself despite diligent effort. If appropriate it will require the target to provide supporting proof by a date certain following execution of the agreement.
4. I will also require an escape hatch in the agreement, meaning a paragraph containing language giving me specific rights if the information given proves untrue or has not been proven by the target within a certain time after the agreement was signed. It may allow me to cancel the deal, or may entitle me to a specific refund, or may trigger specific penalties or delays. Each and every consequence will be spelled out exactly. Nothing will be left to

chance, faith or hope. This clause will be mechanical in nature, meaning all contingencies are spelled out in full detail. There will be no "soft" language that requires further negotiation or debate.

This disciplined approach to material statements of fact from a target will protect you in the event the statements were untrue. (As I said above, it matters not to me whether a target meant to deceive me. It is my obligation to protect my own interests, and to (a) verify those facts I can verify, and (b) to ensure there are contingencies built into a deaI for those facts I cannot). Blind trust has no role in my decisions. Nor should it yours.

Bad things can happen when you trust your opposition or fail to document and impose clear consequences for misstatements. This reminds me of an art deal in New York City that went sour because, in my opinion, the buyer failed to document promises made to him, and further failed to negotiate specific consequences if the promises proved untrue. An article I read in the New York Times said the buyer, a famous actor, learned that a painting he loved called "Sea and Mirror" was in the hands of a private collector. He then asked a gallery owner he knew to help him buy the painting. After some back and forth, the gallery owner delivered "Sea and Mirror." In exchange, the actor gladly wrote a check for $190,000.00. As it happens, the "Sea and Mirror" painting the actor received was not the same "Sea and Mirror" he thought it was. The article reports that the private owner who owned "Sea and Mirror" would not sell it, so the gallery owner allegedly commissioned the same artist – who is still alive and still creating paintings - to create a slightly different version, but also called "Sea and Mirror." The gallery owner says the actor knew he was getting a different version and got what he paid for. The actor says he was defrauded. It is unclear whether there was a written purchase agreement or whether the deal was verbal. But you can see how a seemingly simple deal can go very badly. The actor tried to have criminal charges filed, and is talking about a lawsuit. All of this could have been avoided if the deal was the subject of a written contract, spelled out the promises made, and imposed specific automatic consequences.

How hard would that have been? Wouldn't a single sentence have avoided this problem? Maybe "Buyer is buying the original painting 'Sea and Mirror' that is currently in the hands of private collector XYZ"? Criminal charges and lawsuits are sometimes necessary, but they weren't in that

situation.

Listen carefully to factual representations in your negotiations. Never assume they are true. Verify them. If you cannot, make sure you document them, impose penalties, and make sure the penalties have teeth. If you cannot take these steps, consider whether making the deal without verification and against a target who may be immune to the penalties is a wise ideal.

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CHAPTER 35

Present a Proposed Final Agreement at the Start of Negotiations

Immediate presentation of a fully-drafted agreement at the start of negotiations can be very effective in shaping the negotiations from the outset. Few negotiators do this. In post-negotiation discussions, I sometimes ask why this is so. The most common answer is, "There is no point in drafting an agreement until the deal has been reached."

That is an unnecessarily-pessimistic view. As my grandmother used to say, a pessimist, when faced with two bad choices, usually chooses both. Such a negotiator thus chooses to waste an invaluable opportunity in preparing for negotiations – and isn't drafting an agreement in advance simply *preparation?* - and wastes the opportunity to use such an agreement throughout the negotiation.

Drafting the agreement in advance of negotiations will sharpen your focus on the terms that matter, and will influence negotiations from the moment it is presented. Top negotiators will jam a draft agreement full of objectionable provisions, will declare the agreement "just our standard form," or will write the agreement with such precision that the other side will fail to appreciate the extent to which they are getting steamrolled. There are many occasions where drafting the agreement in advance will prove supremely beneficial. Never waste this opportunity.

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CHAPTER 36

Is Your Target Low on Resources?

It is not terribly difficult to determine whether or not your target is desperate for cash. Pay close attention to their words. Most ordinary negotiators or company representatives will provide you all the verbal clues you need to make this determination. This is true even if they are taking great pains to conceal such information. Internet searches can be very useful in determining your target's financial condition. So can simple phone calls, placed to the right person, prior to the start of negotiations.

Are they hiring? Are they near the fiscal year end of their budget? (Do you know the end of their fiscal year? Have you ever bothered to find that out?) Have there been layoffs, or lawsuits, or reports of changes in management? Use this information to determine the weak spots and potential desperation for a deal. A good negotiator knows what the target does not say.

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CHAPTER 37

Have A Backup Plan

Always have a Plan B, C, D and E. You should never go into a negotiation without a plan in the event no deal can be made. I routinely work to have five layers of viable alternatives – the ideal plan, and four levels of alternatives. You can eliminate most anxiety and pressure from the possibility of a failed deal if you have clearly-developed, attractive alternatives.

Poor negotiating often stems from a fear that the deal at hand will not develop. This causes average negotiators to deal from a place of desperation, and that is fatal to a good outcome.

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CHAPTER 38

Focus On Interests, Not Just Needs

What does your target really need? The best example I ever heard was in a course with Harvard Law professor Roger Fisher, who passed, regrettably, in 2012.

Two sisters were fighting over an orange. There was only one left, and the fight rose to a pitch. After cooling off, though, they realized one wanted to eat it, and the other needed the rind, the skin, for making candied orange peels. In other words, one only needed the outside, and the other only needed the inside. But if there had not been calm reasoned discussion between them, neither would have ever known they could have fully achieved their own objectives with just one orange.

Listening is everything. An old proverb holds that no one is as deaf as a person who will not listen. Don't let that be you.

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CHAPTER 39

Beware The Floodgates

Targets often avoid deals by claiming that a flood of other possible parties will come forward and make claims if they strike a deal with you. Floodgate arguments are rarely true. There are many reasons for this, but that is beyond the scope of this book.

You must aggressively challenge floodgate arguments when they surface. Research this ahead of time if you anticipate it. Immediately ask for supporting data. Who are the potential claimants? What evidence is there of this? When has it ever happened in the past? What actual claimants have already come forward? How long has it been since any claimant could have stepped up and, of the potential pool, how many have done so?

This red herring argument is usually very easy to overcome.

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CHAPTER 40

Invest Your Target in The Deal

It is human nature to become increasingly invested in an outcome, a deal, as the time spent toward it grows. The more time someone spends in negotiating the more compelled they will feel to make a deal. You might schedule many meetings, write many emails and arrange for many conference calls and working lunches. Each such contact is entirely legitimate, but is done in a way that draws your target further into negotiations and toward a deal.

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CHAPTER 41

Develop a Profile On Your Target

When you talk to friends you've known for a long time, you do so based on your intimate knowledge of their backgrounds and life experiences. You know how to avoid sensitive matters that might offend them. You talk about their spouses or children, about their hobbies, and about your own. This is how you built, and how you maintain, your relationships. Your attention to the details of your friends' lives helps you successfully navigate through the relationships and steer clear of hazards.

So why don't you spend time exploring the background and experiences of your target or of the opposing negotiators? Why wouldn't you do that every time? Why would you think – for those of you who do not do this – that you can successfully work with and against targets and opposing forces when you don't know anything about them?

I cannot tell you how many times I have heard negotiators talking casually to a target or opposing negotiator and say something they did not realize would be deeply offensive. It might have been a references to a football team, or a political belief. It might be a well-meaning but poorly-chosen reference to another culture, country, or sexual orientation. I've heard negotiators make a joking reference to children without realizing the opposing negotiator lost his children in a terrible car accident, or jokes about a disability without realizing the opposition's spouse suffered from that specific condition. It takes precious little to offend someone if you know nothing about them. Maybe you make jokes about animals, without realizing your target is a devout pet lover. Or maybe you say something that touches on religious beliefs without realizing that your opposition's religion defines them as a person.

You must have a thorough understanding of the life dynamics, for lack

of a better word, of your target, in order to effectively pitch your messages and positions. You will likely suffer from a substantial disconnect otherwise. You may also deeply offend your targets if you do not have a sense for their education and training, publications, certifications, birthplace, neighborhood of residence, religious beliefs, hobbies, children, organizational memberships and related matters.

So you should also strive to learn more about the target, the target's spouse, if possible, and about their work and home life, to tailor and fine-tune your message. It will also allow you to present using a tone and demeanor that best suits the target.

Assembling such a biography has never been easier, and there is nothing wrong in doing so. Wall Street negotiators would not even consider beginning a negotiation without one. Most professionals freely offer up this information, or much of it, on LinkedIn, Facebook, their employer's websites, and in a range of ways searchable online. Use multiple search engines to do your due diligence, because every search engine has a different database and searches differently. Use a meta-search engine like search-22.com to save time. You can also search for the target's residence – simply as a gauge of their relative station in life, and perhaps how they see themselves – using publicly-available property appraiser websites. Search your state's government database for companies your target may own, run or started. Check court databases for involvement in litigation. They may have grown children whose life dynamics may have defined your target as well. The same is true of your target's spouse or parents. You can also use paid databases available online, although you may be required to certify that you have a legal basis for doing so.

A nominally-competent investigator or researcher inside your organization should be able to assemble this information and deliver a file with printouts in less than an hour.

You may discover your target attended a football powerhouse, in which case sports talk and metaphors will serve you well. Perhaps your target loves photography, studied English Literature, or is into marathons, religion, politics, or pets. You will without question adapt your pitch once you understand who you are taking to. With a clear portrait of your target's life dynamics, you might now avoid profanity or, depending, use it heavily. You might adjust your pitch upward to appeal to the intellect, or down to appeal to

emotion. In rare occasions, you may discover your target has regrettably suffered a life-altering personal tragedy, which might help you avoid well-meaning but painful jokes or offhand comments.

Portfolios like this used to take weeks to assemble and required the costly services of a private investigator. Now it costs nothing and takes minutes.

You should never enter a meaningful negotiation without knowing who your target is.

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CHAPTER 42

Get Public Commitment

Public commitment – and by this I refer to simple declared agreement, not a speech to the masses – is a powerful incentive for someone to follow through on a deal. This can include a commitment to negotiate in good faith, an agreement to work toward a deal by a specific deadline, and agreement to honor each term approved as the negotiations proceed.

We are all taught that our word is our bond and that honoring our own word is critical to our reputation. Thus drawing a target into a series of declared public commitments to prior terms has a critical impact on deal making. You should of course use caution when making promises of your own, lest you be drawn into the same problem of being seen as dishonest in shifting your commitments once made.

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CHAPTER 43

Write Your Target's Negotiation Talking Points

Just as you gain leverage by taking charge of responsibility for drafting the settlement agreement, you gain leverage by providing your target a list of effective talking points on how to sell your terms to their principal or organization.

Never rely on your target to persuasively and accurately articulate your positions to their own constituency. Instead, draft them yourself, and provide the opposing negotiation team with a comprehensive series of talking points with appropriate backup, including documentation. This should not be an email as it may present as having less gravitas. It can be an attachment to an email, but it should not be in the body of an email itself.

Craft a set of talking points no more than two pages long. The key is to write them for quick absorption. Your target may find your talking points extremely useful but may not want to have them out for others to see. This means they need to be short, punchy and memorable. If needed, you may want to attach (to the email, but not as an integral part of the talking points) documents from prior deals, appraisals, court rulings, public records or simply web-based information.

It is a fact that many opposing negotiators you will encounter would rather strike a deal then continue to fight. This attitude will not always obvious to you. Regardless, you should assume this opportunity exists and that you can make substantial progress by arming your opposing numbers with the tools they need to persuade their own clients.

You should not provide these openly, since the opposing principal may grow suspicious. Rather, you should provide them in advance so the opposing negotiators can review them, study them and, if needed, rewrite or reformat them.

More often than not, your target or opposing negotiator will appreciate and make use of your talking points whether they admit this or not. Don’t miss this opportunity.

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CHAPTER 44

Compliment The Target

We all respond positively to compliments, even when we have good reason to believe they are not sincere. Few people can resist the impact of a compliment, of unabashed flattery, especially when made in the presence of others.

Compliments cost nothing and can have a very high return on your investment. Do not hesitate to complement your target's knowledge, preparation, skills or reputation.

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CHAPTER 45

Frame Positions Using Prospect Theory

"Prospect theory" is a behavioral economic theory developed by two psychologists, one of whom won a Nobel Prize, on the science of decision-making and judgment. There is no reason to explain the theory here in detail; more information that you could ever want is online. But the reasoning behind it accurately reflects decision-making in negotiations, and so top negotiators understand Prospect Theory and apply its core principals in negotiations. Lesser negotiators may not even appreciate that the theory is driving the negotiations.

But here are some basic rules, driven by Prospect Theory principles, to use in your negotiations:

1. **Stress That Your Proposal Offers Huge <u>Potential</u> Upside Coupled With Small <u>Potential</u> Loss.** You need not guarantee anything will in fact happen if your target accepts your proposal. You need only stress possibilities and, in particular, huge potential upsides and small potential downsides. Many decision makers reach decisions based on the <u>potential</u> value of gains and losses, rather than the <u>actual</u> final outcome. This is why people play the lottery. Lottery tickets are a terrible financial investment likely to result in financial loss. But the possibility of a huge positive outcome overwhelms the buyer's ability to decline the opportunity because the potential loss is small compared to the potential gain. Lottery ticket buyers thus buy because of the mere possibility of a huge upside and the possibility of a small downside. Some describe this in more base terms - as simple greed - but it goes much deeper than that. Again, people make decisions based on the potential value of losses and gains rather than the final outcome. You must

take this into account when framing your proposal.

2. **Stress The Certain Benefit Over A Mere Possibility of a Better Outcome To Your Target.** Most decision makers have a marked bias in favor of deals that provide certainty, and they will often turn down a chance of a better deal in favor of a somewhat inferior deal that offers certainty of outcome. To illustrate, if Choice A is a guaranteed win of $100, and option B is an 80 percent chance of winning $140 but a 20 percent chance of winning nothing, most decision-makers will prefer option A. They will take the certain outcome and give up the possibility of a somewhat better outcome.
3. **Stress The Many Risks of Loss – To the Point that Any Alternatives to A Deal With You Is A Loss, Even if Labeled A Win - Because People Weigh Losses More Heavily Than Gains.** Most people are loss averse. In other words, they will take more steps to avoid a loss than to achieve a gain. This is why many people do not gamble. In negotiations, consider stressing the higher risk of losses, and the fact that even if they have alternatives, the alternatives themselves either result in losses that outweigh gains or involves losses of such an extent that the gains cannot really be said to be gains. A party in a lawsuit might defeat a claim against them for $100,000.00 but it may cost them $80,000.00 to "win."
4. **Stress That Your Proposed Terms or Deal Will Gain the Target a Key Advantage Relative to Others.** We all care about our position relative to our peers, or neighbors, for example. If we buy a new car and park it in the driveway next to our neighbor's old car, we feel great. But if our neighbor shows up with the exact same car the next day, suddenly we don't feel so good. We've lost our advantage. This is because "value" is a social construct. Put simply, we assign a social and environmental value (as in our environment or our world, not environment in a scientific sense) to things relative to other things and the positions of others. This is a basic principle in some fields of anthropology. So actual outcome and final position may be less important than the relational impact of the outcome. In negotiations, stress the advantages of your deal to your target as compared to the lesser deals or lesser positions that others will be in.

CHAPTER 46

Aggressively Question Your Target About All Aspects of Their Position

An effective technique in negotiations is to ask a flood of questions about every facet of your target's positions. This should be done from the outset to set a normative baseline and tone. Topics of examination should include every fact of significance, the names of anyone who will support the positions, and the identification of and details of any documents supporting the target's claims.

You should also ask for documentation supporting the target's position, any known prior deals that are believed similar to this one, any government or court rulings that may affect the deal, and any laws, rules or regulations that may impact your negotiation. Many dealmakers are shy about pressing aggressively for every piece of information the target has, but this is a mistake.

If you have not been exposed to the negotiating styles of other cultures, it may surprise you that research studies found this tactic common outside the U.S. A well-known study, for example, found that Chinese negotiators were consistently more aggressive than their Western counterparts in using negotiations as opportunities to collect information of every kind from their opposition. (Study results are available online.) The study also shows that Chinese negotiators were more likely to actively use periods of silence for strategic and tactical advantage, and to consistently use ambiguous language when responding. There is evidence they negotiate slowly and repeatedly return to the same topics over and again.

A study on negotiation-based information requests (Ervin-Tripp 1976) reported multiple ways to seek what you need from your target, sometimes described as embedded imperatives ("Can you be more specific about your

goals?), non-explicit question directives (“Do you know the specific goals?”), permission (“May we hear your objectives in this deal, please?), direct imperatives (“Please tell us what the total costs of each item will be”), need statements (“We need to know how the costs break down for each item”), and hint (“We’ve tried to calculate the costs on our own, because that is information we need, but we have not been able to do so”).

Which approach you use will depend on your personal level of fortitude and aggression. Your mindset should be both of advocating your positions and collecting every relevant piece of information held by the target and pertinent to the deal.

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CHAPTER 47

Attack Overconfidence by Challenging Underlying Assumptions

You should prepare - prior to the start of negotiations - to challenge the assumptions upon which your target's positions are based. This requires you to ferret out their positions through preliminary dialogue. Once those are known, you can prepare specifically to attack those principles. ("You're basing your views on X, but that's actually not something anyone can predict and a negative outcome is just as likely. Here's why.")

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CHAPTER 48

Use Occasional Humor or Lighthearted Examples

Some degree of humor is always appropriate in negotiations, depending. Use your best judgment as to when an injection of laughter or light humor will achieve your objectives. I generally do not encourage humor, or much of it, because it detracts from the gravity of your negotiating position and team.

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CHAPTER 49

Push Your Own Actual Experience

Have as many examples from prior specific experiences as possible to support your positions. Prior outcomes in negotiations, like legal precedent in a courtroom, carry great weight.

You should bring appropriate documentation from prior deals (redacted as necessary to protect confidential terms) as well as prior court rulings in which you were involved. Leave to lawyers actual discussion of legal principles, but you may certainly discuss your own experience in lawsuits if it benefits you. Precedent carries significant weight in negotiations, because past results are often a reliable predictor of future outcomes. History repeats itself.

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CHAPTER 50

Never Acknowledge Concessions

Never agree or acknowledge that the target has made concessions on any point. Speak instead of the points they have not conceded.

Suggestions by the target or a middleman that the target has in fact given some of what you asked for usually form the basis for an immediate like concession on your part. Fair is fair, no?

Absolutely never acknowledge concessions. Any hint that the target has been reasonable or flexible should immediately be met with aggressive counterargument that the target has failed to give in on X, Y and Z critical terms. Successful negotiation for the most part requires that you keep your target under pressure to continue making concessions.

You should also refrain from making offhand comments suggesting you are pleased with the progress or that you appreciate concessions from the target. Finally, beware of such comments by middlemen, such as mediators. They love to make calculated but seemingly-offhand comments about how much progress has been made. This is often a tactical ploy designed to gain further concessions from you. You must push back immediately.

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CHAPTER 51

Use Documents to Persuade

Most people will accept the truth of something in print. This makes little sense to me, but there are psychological principles behind it. Nevertheless, you should always have some kind of printed matter or documentation to back up each of your key points. What you rely on matters less than the fact you have some printed authority.

Obviously, you should not present something that is frivolous or from a lightweight source. On the other hand, as long as it is not something that can be rejected out of hand as untrustworthy, it will have value. Never underestimate the value of printed material as a tool of persuasion.

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CHAPTER 52

Quote Authorities Extensively

Most people give greater weight to the views of non-participants than those of the negotiating teams and principals, for obvious reasons. One such reason is that those with a stake in the outcome have an incentive to take one view or another. Those who have no stake presumably say what they genuinely believe and, so, the thinking goes, their views are inherently more reliable.

Thus, quote others who have expressed views mirroring your own, even if you do not have printed materials handy to support them. It can be something like, "The Commission has said more times than I can count that…" or "The courts have rejected that point for years on these facts." In other words, cite to external authority as often as possible.

The opinions of disinterested parties always carry greater psychological impact than the same views expressed as the belief of the negotiating team. You must never make such claims if they are untrue or if you believe they are true but you lack a good-faith basis for describing the external authority as you do.

Beware when this is done to you, however, as there are unfortunately many unscrupulous messengers. Demand verification on any asserted point that is not supported by reliable documentation. In other words, it is fine if you make such claims without documentation, because of your own ethical standards, but you should never accept such unverified representations from others, regardless of the perceived credibility of the speaker.

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CHAPTER 53

The Mediator is Your Frenemy

Often we think of the mediator, the neutral or negotiator, if there is one, as our friend. Sometimes we choose a mediator we've used many times before, and we may even think of the mediator as beholden to us because of the business we send their way.

The overwhelming majority of mediators will feel no such compulsion, of course, and properly so, but we may still perceive them that way. This is true in particular with smaller mediation operations, whose volume and financial stability ebbs and flows.

You must never forget that the mediator is as much a potential enemy as a friend. The mediator may leak information all the same as an ordinary middleman, such as an assistant or staffer. Mediators may leak directly through outright improper disclosures, or may leak information indirectly through nonverbal behavior, gestures or, sometimes, a notepad "inadvertently" left on a table where the target can see the mediator's confidential notes. The mediator can cause you terrible damage this way. The mediator is also a potential witness to mediation misconduct, if it is reported to the governing body either by the mediator or by a target. So you must never lower your guard. Use caution in disclosing anything to the mediator, and never invite, implicitly or explicitly, a mediator to engage in inappropriate behavior.

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CHAPTER 54

Ignore Negativity

You must avoid negativity in your own mind, in the minds of your team or principals, and in the minds of the targets. You must firmly stay on track and on message until you alone decide your objectives cannot be met.

Even if you feel some measure of defeatism yourself, you must ignore it and never voice or otherwise betray such an emotion. I have closed hundreds of deals that others said could not be closed, and I have done so even though I sometimes had grave doubt. Mentally, I stayed in the game. I cannot overstate this. You have a higher obligation to your principal, your team and yourself.

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CHAPTER 55

Use Indecision

An appearance of indecisiveness can be a useful tool in negotiations. Your choices therefore aren't simply for or against a point, but somewhere in the middle - in effect "I am uncertain what I think about it." Indecision is very effective in gaining concessions, and in buying time – in many ways and in many settings. You should have candid discussions with your principal in the use of apparent indecision (and in the use of most strategies) to ensure that your own principal isn't similarly alarmed by your apparent indecisiveness.

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CHAPTER 56

Invade Personal Space

Borrow a technique from some of the most aggressive negotiators in the business: NYPD detectives. When meeting with target negotiators, they configure the seats so there are no barriers – desks, chairs, tables – between them and the suspect. Physical barriers are psychological security blankets. Police interrogators strategically arrange the seating to remove anything that allows suspects to insulate themselves from the examiners.

The absence of barriers heightens the target's sense of vulnerability and increases the odds of a truthful exchange. This law enforcement technique is equally effective in negotiations for all the same reasons.

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CHAPTER 57

Use Complete Silence as A Loud Response

Few things are more devastating to our relationships and interactions with others than silence. Organized religions have been using silence, often referred to as shunning, for centuries. In that setting, the primary objective is to shame the target and to cause harm to their reputations and social status.

In the context of negotiations, silence can have many powerful meanings. But it is so inherently ambiguous that it typically causes chaos in your target's evaluation of the negotiations. Does it mean the negotiations are over? That you have dropped your objections? That your objections are so powerful that your targets should soften their position even without a response from you?

The instantaneous speed of most modern forms of communication, through email and other digital mediums, has led many to undervalue silence as a negotiation strategy. It is an extremely powerful tool.

You should actively consider silence as a negotiating tool, both in in-person negotiations and those done remotely. It can be used intermittently and at calculated stages throughout the process.

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CHAPTER 58

Never Acknowledge Weaknesses

Just as you must never acknowledge concessions from your target, you must likewise never admit weaknesses in your position. It is not good strategy to do so, no matter what you have read or been told about doing so.

Both targets and mediators will press you to admit shortcomings. Often they do this to press for concessions from you. Sometimes they do it because they have their own views about where your weaknesses lie and need you to validate their beliefs. In those situations, once you confirm their perception, they can put that behind them and move on to attack other elements of your position.

You may feel that conceding the correctness of a target's challenge gives you credibility and will strengthen your overall stance. But it does not. Your credibility isn't dependent on admitting weaknesses. It is in maintaining the strength of your case and cause. Concede no weaknesses.

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CHAPTER 59

Use Acquaintances of the Target as De Facto Negotiating Team Members

If your target has a business associate, spouse or friend that you believe may have a persuasive impact on the target, and you have a working or social relationship with the acquaintance, draw them into the mix and invite their views, if you suspect they will support your positions.

This is a variation of the affiliation strategy I have discussed elsewhere. In that context, linking yourself to a well-liked and respected affiliate of the target will assist you in striking a deal. People like those who have the same personal and professional acquaintances and backgrounds as they do. Your odds are better still if you can actively utilize one of those mutual acquaintances. It might be a family member, or could be a coworker. It could also be someone that you know your target respects.

Expanding your formal negotiating team to include third parties is an outstanding strategy for closing a deal.

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CHAPTER 60

Linguistically Frame Your Position to Match a Position Demanded by Your Target

It is possible in many situations to craft your needs to mirror or closely resemble the needs of your target. Framing matters. By example, the way you describe your travel expenses will determine whether the expense is tax-deductible or not. It is all in the characterization; gaining deductibility is often a simple matter of description.

The same is true in negotiation. You can describe your needs and proposals as they matter to you, or you can describe them in a way that resonates with the needs and proposals of the defendant. You are more likely to achieve your objectives if you linguistically frame them as an objective of the defendant. This technique is overlooked in virtually every negotiation that takes place.

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CHAPTER 61

Location, Location, Location

You should carefully choose the location of your negotiations based on tactical and strategic considerations. Tactical considerations may dictate a physical location close to the site of the thing being bought or sold, or close to records or files needed during the negotiation. Strategic considerations may suggest a location chosen for its psychological impact on the target – a beautiful hotel or historical venue, for example. Some targets are moved to strike a deal simply because of their perception from the location that they have been taken seriously.

This holds true whether you are negotiating a $10 billion property or a used car. If I were a used car salesman, I would take every serious prospect to lunch, even somewhere cheap (think McDonald's) and, I assure you, I would blow the doors off my sales goals every month.

Many negotiators leave the location of a negotiation to others or, just as neglectful, to simple chance or happenstance. A mediator may serve notice that the negotiation will occur at his or her offices without so much as a courtesy inquiry whether this meets the parties' interests. If there is no intermediary, your target may offhandedly suggest the discussion take place at their offices.

Happenstance locations are neither tactical nor strategic, so opportunity is lost. I believe some deals do not close because of the negotiators' failure to appreciate the influence of location on outcomes. Location is a key piece of the process. Like other pieces, it must be managed and optimized. Successful dealmaking is the culmination of a concerted effort to aggregate gains big and small from the outset.

You should always actively discuss and appraise location as a factor in your efforts to close the deal. And it isn't a matter of "my place, their place or

a neutral place." These are starting points, but they are by no means the complete list. When I evaluate location, I consider the value and relative importance of the transaction, the participants and their backgrounds, and the nature of the deal itself.

Once I have a sense for these factors, I then develop a list of possible negotiation venues. It could be (a) an upscale restaurant with tables that permit confidential discussions, or a downscale restaurant, depending, (b) a hotel conference or ballroom, (c) a large hotel suite (or multiple, separate suites), which could be quite luxurious, (d) an outdoor, open-air meeting spot, (e) an art gallery, (f) a location or building with historic significance, or (g) a sporting or other event, where skyboxes or other fairly grand rooms are available. These are illustrative and by no means the only choices. Catering is available in most such venues, and must be arranged to ensure all participants may freely order food and refreshments.

A noteworthy location will clear minds, impress targets, and close many deals. The incremental cost of a bespoke location is well worth it. Most mediators charge upwards of $500 an hour and offer little more than small rooms and cheap sandwiches in a box. The bill by day's end may be $3,000 to $5,000. For another $1,000, plus or minus, you can negotiate in grand style. This is not an expense to short if closing the deal is important to you.

A few final thoughts on location.

First, be wary of negotiations in a room controlled by an adversary. Wireless microphones are a dime a dozen, and they work extremely well. Some plant and use them. Even if the opposing negotiator is ethical, his or her clients or principals – or another member of their team acting in a rogue manner but hoping to shine in the moment - may not be, and may use such devices. *Many people have them and use them, so beware.* Deals are based on shrewd thinking, not trust. Never allow a mediator, a target or an adversary to have unaccompanied access to the room where you will conduct private discussions. Unless you are an expert in electronic surveillance detection, you will never find these devices. If you discover a neutral or other non-member of your team has accessed your private room, you must treat the room as compromised and move to another.

Second, test the privacy of the room where you will be working thoroughly. I have been in mediator offices where the walls were paper thin, where the interior doors were hollow and failed to mask sound, where the

opposing negotiating teams were forced to work in adjoining rooms, and where the ceiling air ducts carried sound into other rooms.

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CHAPTER 62

Stress That Delay Will Lead to Worse Terms

In some situations, your target may feel there is no rush to strike a deal and that additional time will permit better evaluation. In other words, they may legitimately believe delay serves both parties' interests.

This is something you should ferret out in advance of the negotiations. Be prepared to squarely address the harm your target will experience from a failure of the parties to negotiate a deal now.

You can present this from both perspectives. You can stress that your target actually has a critical need to reach a deal now for whatever reasons you develop. You can also stress that your own principal or client has an incentive now that it will not have in a week or two. Stress that if your target allows time to pass, the odds of a deal on these terms will vanish. You must have legitimate examples to support these arguments. Perhaps your client is short on cash and has an incentive to strike a deal. Perhaps your client is flush with cash but will invest it elsewhere if a deal cannot be made.

There is a limitless supply of legitimate arguments in favor of urgency.

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CHAPTER 63

De-Legitimize External Factors of Concern to Your Target

You may find yourself in a negotiation with a target that is concerned about press coverage, about the reactions of more senior executives, or some other external source. This is something that should be on your radar screen from your pre-negotiation, preparatory intelligence-gathering.

It is important that you be prepared to effectively dismiss these concerns the moment they surface. Press coverage, for example, is a fact of life for many of us, but it is also true that press coverage is unlikely in most negotiations. Reporters don't have the time, energy or inclination to cover most of what takes place every day, even if the information is newsworthy. Concerns by your target about negative reactions from more senior organizational executives, or from their own principal, should also be swiftly addressed.

This is where your preparation of talking points to give your target becomes important. Keep in mind that your target likely has a 360° range of concern about covering his or her own backside as agreements are reached. Helping your target, possibly even by stressing that the real threat of second-guessing will come from a failure to strike a deal and not from making one, will serve your own interests handsomely.

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CHAPTER 64

View "Objections" As Complaints

Treat voiced opposition to your positions as complaints - something to merely acknowledge, not something to actually resolve. Give it lip service, ignore it, and keep moving.

Minimizing voiced opposition - effectively downgrading them from hurricanes to tropical storms or even simple spring showers - will allow you to jujitsu your way past a problem that you might not be able to resolve.

This is a staple of customer service employees everywhere. I have gone to department stores and complained until nightfall about something I bought, without getting anything more than a sympathetic but practiced nod and smile. Stores do this because it works most of the time. Most customers abandon their formal objections because they see no point in pushing further. Some large companies provide scripts to their telephone representatives that are purposely designed to do nothing but express nominal regret about your experience. They will not solve your problem. They will acknowledge your complaint, and then move around it. Statistics show that most customers will simply drop their complaints and keep whatever they bought that triggered a complaint.

Use this approach in negotiation to your advantage. Treating "objections" as complaints allows you to acknowledge the comment and keep moving toward your objective, without solving it. An objection has to be dealt with. And once you treat it as a formal objection, you must deal with it. Now you have both an objection and an obstacle. Get into the habit of treating objections as complaints to maneuver around obstacles Here's an example. Your customer says, "This is not what I wanted." You respond with, "I couldn't agree more. That's why we proposed these alternatives and are helping you get a great outcome here that beats the pants off that." This is

an excellent way to maneuver your way past what might be insurmountable concerns.

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CHAPTER 65

Propose Terms If Lump-Sum Resolution Isn't Possible

Sometimes your target does not have the on-hand wherewithal to meet your demands, even if it wants to do so. This is a common problem at the end of an organization's fiscal year. Next month your target may be flush with cash, but that will not help you today.

Be creative in proposing alternatives. You might suggest that payment be made over a number of months or years. You might suggest that the payment terms be structured to begin in X months. If the terms are nonmonetary, you might suggest that the target be allowed a period of X days or months before it must begin to perform under the terms of the agreement.

We tend to think of resolutions in absolute terms. Virtually any term or condition, monetary or nonmonetary, can be sliced into individual components or made the subject of forbearance for a specified period of time.

Avoid compromising on your monetary or nonmonetary demands if a brief hiatus in commencement of your targets' obligations will allow them to fully meet your needs.

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CHAPTER 66

Ignore Target Demands to Drop Terms

Opposing negotiators are fond of demanding that I drop certain conditions as soon as I assert them. I never do so. I may table them – agree to set them aside for the moment, in search of possible broader agreement - but I never consent to dropping or withdrawing conditions because the target says so. It is a sign of weakness to do so.

Never allow your target to control your positions in this manner. This is true even if the condition was a throw-away condition you included solely to give away later in lieu of compromising on an important condition. (On the other hand, you may and should test the target's savvy and fortitude by making a similar demand on them.)

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CHAPTER 67

Ignore Threats by a Target to Sell or Go Elsewhere

In some situations, your target, if a seller, may tell you there are other buyers who are actively bidding and about to steal the deal out from under you. If your target is a buyer, you may be told another seller is willing to make a deal immediately if you do not make agreement on your target's terms. Real estate agents, commercial or residential, it matters not, are famous for this. Once you show actual interest in a property, they'll immediately claim others are about to make a great offer and you'll lose the property.

My response? "I'm going to step aside and let them take a shot at it. It's too expensive. Good luck to you. I sincerely hope you sell it at that price." By doing this I make clear from the outset that the asset is a commodity and I will go elsewhere if needed. In most instances, the phantom buyer will "vanish" into thin air, and the realtor will be dialing me within a day or two. At this point, I have tremendous leverage because I made clear I was not susceptible to pressure and because I can now use the failed transaction of the phantom buyer to show that the price is above market.

Obviously, you must be prepared to walk away in order to use this tactic. In some cases you cannot, but in the world of negotiation, you should strive to have multi-layered, alternative plans. Those alternatives – the ones that allow you to strike a similar deal elsewhere - are part of the preparation that allows you to negotiate more strongly. I prefer to have four or five alternative plans I can immediately implement if the deal at hand comes unglued.

CHAPTER 68

Gold-Plate The Target's Outcome for Consumption by The Target and Others

It is always useful to understate your benefits from the completed deal and to overstate the target's outcome. This may not be your last encounter with the target. In order to maximize your odds of negotiating another excellent deal with the same person, it is always wise to overtly congratulate your target for achieving such an outstanding result at your expense.

It is the same principle used by car sales people as their customers are about to drive their cars off the lot. The salesperson always congratulates buyers for their savvy negotiating skills and for taking the dealer for a ride. Chances are that buyers did no such thing, but they most certainly leave the lot feeling that way. The smartest salespeople make a show of this, and do so in front of family and friends accompanying the buyers. Where will these buyers go first when they're ready for their next car? To the dealer they "out-negotiated" before.

You can lay the groundwork for future negotiations with the target using this same technique. It costs nothing to laud the achievements of your opposition, and there is no reason to do otherwise. Let them feel like a million bucks. The benefits from this are potentially unlimited and long-lasting. They may extend post-deal concessions to you. They might deliver more than the deal required. They are also likely to deal with you in a more relaxed manner next time.

Why not? They took you for a ride, right?

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CHAPTER 69

Never Take No

Perhaps the two most abused words in the history of negotiation are "final offer." I proceed as if these words were never spoken.

My rule of thumb? I will continue to pursue negotiations five to ten more rounds following an alleged "final offer" or walk-out by the target. Both are tactics top negotiators recognize as common stratagems, and they should be ignored.

There are of course circumstances where you will conclude that the negotiations are indeed over and cannot be revived. But that is the rare case. I have something in the range of an 85% success rate in striking a deal after a target has recited these magic words. Your rule of thumb should be to ignore them as meaningless.

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CHAPTER 70

Appreciate How Little Your Target Knows

A top negotiator will determine how much information the target actually has. My experience is that most everyone overestimates the pool of data the other side has at the outset of import negotiations.

There are several explanations for this. One is that the negotiators for the target have prepared poorly. That is common. A second explanation is that you have done an excellent job of holding information close to the vest. But regardless of the explanation for your target's lack of information, it is something you must take into account.

You will often be surprised at how little your target actually knows. I must sometimes chastise negotiators on my team for wrongly assuming certain information can be disclosed because the target "already knows it or can find it out easily." This is wrong. In fact, most targets are so poorly prepared that I rarely offer a substantive overview of my position and supporting evidence in formal negotiations. I am simply unwilling to give away free critical analysis.

I am often criticized for doing so, both by the target and by mediators, but I dismiss this with the wave of the hand. Unless and until it is crystal clear to me that a target is committed to the deal - as evidenced by a broad agreement in place or specific agreement on multiple critical terms - I will share nothing but an optimistic generality that I would like to see resolution.

As with most of these strategies, you should invite, and listen to, detailed analyses from the target's negotiators. There are those who say that refusing to disclose confidential information serves only to impede a deal, I respectfully submit this is wrong and naïve. If the target is prepared and the negotiations are timely, the target will have the information it needs to strike a deal.

It does not need my confidential analyses and intelligence. Nor will it get it.

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CHAPTER 71

Conduct a Mock Negotiation

Many lawyers speak of conducting a mock trial to help them prepare for the real thing. A mock trial is simply a practice run through, but a realistic one, with volunteers acting as the jury. The goal of this exercise is to work out the kinks in the presentation of evidence and to see how six or twelve strangers, functioning as a real jury, will vote on the evidence.

Only the top lawyers, however, conduct a mock negotiation. This tactic is so obvious that I first considered omitting it from this book. And yet in speaking with ordinary negotiators I found not one person who did this. Why not?

Conduct a mock negotiation and choose someone to function as the opposing negotiator. The odds are good they will make many of the same arguments that your real target will make. Make your presentation and your best arguments. Just as mock trials allow the best lawyers to sharpen and refine their arguments, mock negotiations will allow you to properly frame your positions for best effect.

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CHAPTER 72

Empower Your Target to Say No/Walk Out

A technique I sometimes use is to state with some force, at the beginning of a negotiation, that the target is absolutely free to get up and walk out at any time, because it makes no difference to me whatsoever. I tell them that if at any point during the negotiations they decide this is not for them, they should immediately head for the door. And I tell them I will not be offended in the least.

While you may see this as an exceedingly dangerous tactic, because the target might actually leave, the reality is quite different. I have never had a target leave the room after I extended this bold invitation. If they had, it would have told me the negotiations were a waste of time anyway.

The fact that they remain in the room, on the other hand, is a powerful statement that they want to strike a deal. This declaration puts an adversary in a very awkward position, because if they remain in the room, it tells us they are motivated to do a deal. You can thus effectively undercut any assertion that they do not care about the outcome by putting them on the spot in the opening moments of the negotiation.

Here's a sample statement: "Look, I will be quite honest with you. This might not be a deal you want to make. If it isn't, let's stop this right now and we can all spend our time working on something else. I would not be offended in the least if you got up right this minute and walked through that door. I might do that myself. If you are serious, let's keep going. If it's not for you, let's kill this thing off right now."

I have never had anyone walk out.

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CHAPTER 73

Speak From Emotion

People are less willing to challenge arguments or positions if doing so requires them to offend the other party. We live in a time of great, sometimes exaggerated sensitivity. Indeed, in many situations, it is the faux sensitivity, not the remarks in question, that offends me most. Regardless, speak with deep and great emotion, as if you are presenting to a jury, but negotiating with your target.

Decades of psychological research shows that the intensity of a speaker's emotions is often equated with credibility and sincerity. Greek philosophers referred to this as *pathos.* You could be selling ice in Antarctica, but if you do it with deep emotion, it is more likely to be accepted than if presented without emotion.

I have encountered some younger negotiators, still learning the ropes, who are reluctant to display emotion. They see it as a sign of weakness. But the opposite is true. Displays of deep emotion are often a sign of strength. You are far less likely to be challenged on a point presented with deep emotion than you would if you presented it in a cool, dispassionate and analytical manner.

People will argue with your facts. They will rarely argue with your emotion.

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CHAPTER 74

Use the Internet

There is no greater general resource of deep knowledge than the Internet. You must use the Internet prior to any negotiation to ensure that you are up to speed on the backgrounds and work of every known member of the negotiating team and of the opposing organization or principal. You must also ensure you are aware of any recent developments that might affect the deal.

To be effective, you or a member of your negotiating team should be expert in conducting search queries using all the major search engines and meta-search engines. Google does not store the exact same information as Bing and Yahoo. Nor do these major search engines retrieve them the same way or use identical search technology. You miss critical information if you limit your search to Google, or if you merely run the identical search across multiple search engines. You are not looking for recipes to bake cookies. You are looking for critical insight and intelligence.

Properly-crafted searches can even retrieve documents and presentations from your target that you might not have expected would be available through the search engines. Sometimes even the targets and their negotiators do not realize the information retrievable through effective Internet searches. (I do not use the term “publicly-available information” because an ineffective search will not retrieve information even if it is retrievable.)

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CHAPTER 75

Hire an Expert Solely for Your Negotiation Session

World-class negotiators inside Wall Street's top law firms, banks and investment firms routinely hire experts to advise them during a scheduled negotiation or mediation. Sometimes the experts remain behind the scenes and their involvement is not disclosed to the mediator or target. Sometimes the expert is disclosed; if so, the disclosure often occurs in the opening session, where the target is caught off guard and has not retained its own expert. The expert can attend in person or participate by phone.

Either way, this tactic can create a shocking mismatch in negotiating power, and throw the target's negotiators into disarray. Expect claims of foul play, to which you must immediately respond that it is nothing of the kind and that you are astonished the target came to mediation without one. Sometimes the expert is called on to render an opinion by phone, for all participants to hear, in the opening session. It does not matter whether the expert is formally used in any ensuing proceedings, or even whether applicable deadlines for the formal disclosure or use of experts has expired. Such experts are retained simply for off-record conferral - which does not require disclosure – and are fairly drawn into negotiations just as any aide, consultant or staffer might be.

Expert input has value in all settings, but particularly in negotiations. It can be a devastating tactic, more so if the target has no prior hint of your use of an expert.

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CHAPTER 76

Bluff About the Extent of Your Knowledge

It is human nature for people to speak freely about information they believe others already know. Keep that in mind when negotiating with a target. If the target believes you already know otherwise-unavailable information, it is much more likely to discuss it openly with you.

Law enforcement interrogators know this and use it often to obtain legitimate confessions. The interrogator may start by telling the suspect that others have already provided a wealth of information and that it's time for the suspect to come clean. I've also seen situations where investigators flip through a file they're holding as if the file contains photographs or witness statements that point to the suspect. The file might actually contain nothing more than recipes for chocolate chip cookies. As often as not, suspects who believe the police already have key information will then discuss it, since there is nothing at that point to hide. Many suspects sink their own ship this way.

So it is in negotiations. Confident declarations that suggest you already have the information at hand – or have already talked to others who shared details - may well trigger voluntary disclosures of great value. I am not suggesting that you mislead the target into revealing trade secrets, proprietary information and the like. Rather, I am suggesting that information which might be available, but which you do not currently have, might be voluntarily revealed to you if the target thinks you already have it or are about to get it.

For example, the target may have previously struck a deal to buy or sell an identical asset for price X. The purchase and sale data might be publicly available, and it may simply be that you could not access it prior to the start of negotiations. You may be able to frame your discussions during negotiation in such a manner as to cause the target to infer that you already

have the data or are about to get it, either in the form of documents or through conversations with key individuals.

If so, chances are good that the target will begin to share that information with you. The fact that this technique is in heavy use in law enforcement as a bluff, and often results in the disclosure of facts the police would have never obtained otherwise, tells us that it works, and works well.

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CHAPTER 77

Negotiate To Avoid Transactions Costs (To You)

The most efficient negotiations are those that impose no transaction costs on either side. I define a transaction cost as an externality that affects efficient outcomes for both sides. Externalities for this purpose may include government regulation or taxes. In some cases, a deal that is otherwise profitable and attractive may become unattractive if the deal is subject to government regulation or taxes.

External factors or pressures can easily kill a deal. This consideration pertains to an economic and legal principal known as the Coase Theorum (which provides that "In the absence of transaction costs, if property rights are well-defined and tradeable, voluntary negotiations will lead to efficiency.**")** The details are well beyond this book, but it's important to be aware of external costs when striking a deal.

Your target, for example, may insist on characterizing the transaction a certain way in order to shift tax consequences to you. Or, it may frame the deal in such a way as to limit the value to you because of applicable government regulations (e.g., zoning regulations**).** The point here is to be aware of unintended consequences of a deal structure. If the deal can be legitimately structured to avoid negative tax consequences, you must insist on it.

Do not allow the target to structure the deal in a way that shifts transactional costs to you, especially if the costs need not be borne by anyone and are the product of fanciful fears by the target that the government or another third party might otherwise challenge some facet of the deal. This is almost never true. More likely, it is based on sheer hypothetical developments.

You can test this by insisting the target provide you proof of actual

situations where the feared risk came true. It will be the rare case where your targets can offer evidence of even a single such event. And if they do, ask for the remaining known situations. It will again be the rare case that your targets can muster proof. (And in cases where they do, move next to the number of deals where no such contingency happened. This will allow you to show that the contingency is an extremely rare event, a so-called Black Swan, that in no way justifies the imposition of transactional burdens on you.)

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CHAPTER 78

Use The Ping-Pong Technique

Borrow a negotiating technique from other cultures and switch back and forth among essential terms of the agreement. Many American negotiators are trained to work sequentially through the issues that must be resolved in order to reach agreement.

Negotiators from some countries, on the other hand, sometimes jump around, moving from lesser provisions to more important ones, and then back again. They will do so without reaching binding agreement on any single provision until all of the essential terms have been resolved. This technique can be effective in keeping your target off-balance. It is also useful for disguising or masking the terms you consider most important.

This approach can create legitimate confusion for both sides, so be careful how you use it. But it is nonetheless an extremely useful strategy and can be very effective.

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CHAPTER 79

Scarcity Sells

The so-called FOMO (Fear Of Missing Out) motivates us to act in ways we might not otherwise if we thought there was abundant time or supply. Use the concept of scarcity during negotiations to sell (e.g., stressing the limited availability or one-of-a-kind nature of the asset) or to buy (by stressing that there are no other buyers, that they do not have the assets needed, or that you are about to buy from someone else and then no deal at all will be possible.)

Scarcity is a concept similar to, but materially different from, exclusivity. You are missing out if you don't use both concepts, individually or in tandem. Exclusivity means only select people, or people in a select class, will have access to the asset or resource. Scarcity means there is a limited supply, although the product could be a jug of water, a bus pass or an appointment with a public-health doctor who only sees patients twice a week (but who will allow anyone to book). Those appointments have a scarcity element, but distinctly lack an exclusivity element.

The fear of missing out drives many people to make deals, and you should consider how you might structure the thing you are offering to take advantage of this deeply-researched psychological phenomenon, proven by study after study and in heavy use by marketers and compliance professionals everywhere.

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CHAPTER 80

Obtain Binding Authority from Your Own Principal

If you are negotiating for someone else, get that person's firm commitment in writing before you begin. Verbal authority has no value. It must be in writing. You must determine whether an email is sufficient, or whether you need something more binding and authoritative, such as a formal agreement, contract or notarized statement.

It is essential that you also verify that the person giving you the authority has their own authority to do so. Courts are overflowing with cases where a negotiator was given authority by someone who lacked the organizational approval to do so. You could find yourself in a very difficult situation if your contact or client has overextended their reach. You may even be held personally liable.

You should also ensure that the scope of your authority is sufficient to allow you to negotiate fully through to the end. You should not negotiate under conditions that require you to constantly return to your principal for more authority. That is not only disruptive to your efforts, but it could result to instances where you are embarrassed or where you have inadvertently committed your client to a deal that the organization did not approve.

Your authority to negotiate should be complete and in writing. That agreement should make clear that you have full authority to negotiate the deal to conclusion and that you have the independent judgment and discretion as needed to negotiate effectively and to conclusion.

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CHAPTER 81

Snowball Fight Technique

A "snowball fight," in hard-edged negotiating parlance, is the tactic of beginning negotiations with a near-preposterous list of topics to be negotiated. It might be fifty topics. It might be a hundred. It could be more.

This is easy to do. You simply divide and subdivide issues into increasingly discrete points until you have the desired lengthy list of positions. This tactic can easily overwhelm and burden the target, can bog negotiations down from the outset, and can distract the target from zeroing in on what would have otherwise been a manageable set of real issues.

Targets that cannot focus on a clear goal are more likely to stay off balance, and this can make your objectives much easier to achieve.

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CHAPTER 82

Fracture Single-Issue Deadlocks into Negotiable Sub-Issues

Break issues pertaining to which there appears to be deadlock into negotiable subsets. Often parties deadlock on a seemingly-intractable issue, and consider the deal dead. An excellent strategy for resolving "single-issue deadlocks" – meaning situations where you can't quite close because of one final sticking point - is to take the issue causing the breakdown and carve it into subsets.Once you do that, you can begin negotiating the subsets individually.

Often, this opens the door to creative solutions that resolve the other sub issues and the deadlock falls away. Just as often, as well, the parties begin to tire of negotiating such minutiae and opt to strike a deal on the broader, singular issue. Both are legitimate paths to agreement.

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CHAPTER 83

Last-Minute Hesitation

An excellent bluff for gaining end-stage concessions, and for keeping a target off balance, is to inform the mediator or target of major, grave last-minute doubts about key elements of the agreement. This is chiefly a maneuver to control the pace – to buy more time, to reach principals for final approval, or to legitimately double-check elements of the deal. Negotiations can move along at high-speed (sometimes by design, which itself is a useful technique) and sometimes a pause or delay is appropriate. By the end of a session, the mood is often one of exhaustion. Everyone is ready to go home, has urgent calls or messages to respond to, or a family agitated by the late hours. (Much of this anxiety, by the way, results from poor advance thought. Negotiations often run very late. Top negotiators clear the deck of obligations and alert relevant colleagues and family to possible late hours to prevent the clock from becoming their enemy.)

This technique exploits clock and scheduling conflicts and is useful for genuine final-stage vetting and concessions big and small. One study I read suggested that these kinds of end-stage pressures will result in at least some material concessions more than eighty percent of the time.

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CHAPTER 84

Use a Friends-and-Family Program of Your Own

Use your relationships with the target's friends, family and colleagues to make inroads and gain concessions. We work best with people we know and like. Next best are people that are liked by our friends, family and colleagues.

Referencing your excellent relationships with the target's own close contacts will normally soften your target's demeanor and stance. It is difficult for a person to maintain a hostile attitude once they know you are neighbors, former classmates or fellow church members with someone close to them.

Suddenly your target is no longer anonymous or divorced from his or her personal life. The mask is lifted, and your target will find it very difficult to return to the charade that was her or his "professional" side.

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CHAPTER 85

Eye Contact is Critical to Credibility

Another well-established basic psychological principle holds that people use eye contact, or the avoidance of it, as major determinants of credibility. The expression that our eyes are the windows to our souls is true, it turns out. We know it is important in our own relationships – between spouses, between parents and children, between interrogators and suspects – but many of us forget how important it is in negotiations.

I have seen even experienced lawyers read entirely from their notes during negotiation sessions, or look away from the person with whom they are negotiating. It is not effective.

Look directly into your target's eyes. Look at both the principal and the principal's negotiating team. Look directly at the mediator. Speak in an intentional, firm tone. You should rarely, if ever, read from notes. I never do.

Never look only at the mediator. Burn a hole in the pupils of your adversary, from direct, purposeful eye contact. Your targets must know you are fully engaged and determined to achieve victory. Negotiators who avoid eye contact are sending an unfortunate message.

I divide my eye contact equally between the target and opposing negotiating team, and I never use notes.

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CHAPTER 86

Use Consistency Principles

Research shows that people place great value on consistency. They want to be seen as consistent in the things they do and the positions they take. Inconsistency is to be avoided. This mindset can be exploited by getting your target to agree on small points initially, and then building on those points to obtain agreement on increasingly large issues.

To illustrate, I'll give the example of a study I once read about, although I can't remember where. In the study, homeowners in a particular area were approached by researchers posing as members of a safe-driving group. The researchers first asked each homeowner if they thought safe driving was important. Most said yes. Those who did were asked, consistent with this declared belief, to post a very small "Drive Slow – We Care" sign in their front yard. These signs were visible to passing cars, but otherwise too small to affect the property's appearance. These homeowners were then approached again a few weeks later, this time with request that they post a slightly larger sign and a slightly more aggressive message ("Drive Slow – We Report Speeders"). This process continued for a few months, until many homeowners had eventually agreed to post huge, obnoxious warning signs.

The researchers were exploiting a psychological truth about consistency. People consider it extremely important to appear consistent, and will sometimes go to extreme lengths to preserve this perception. None of the homeowners, the study showed, would have initially agreed to that final sign each wound up putting in their front yard. But the researchers got them to do so by carefully exploiting their innate need to appear consistent.

I rely heavily on this technique, always by *carefully describing my first desired point of agreement in a way that lets me build on that in successive rounds.* That's how to use this method for maximum benefit.

CHAPTER 87

Explain Aggression as Excitement

If your targets complain that your demeanor or push for a deal is too aggressive, sidestep this by explaining that what they see as aggression is really excitement. Explain that you believe the deal is excellent for the targets and don't want them to miss out on the opportunities.

Even extremely forceful moves and behavior can be reframed as eagerness and anticipation. You're not pushing the target. You are excited and convinced the deal is the right one for all sides. This reformulation works wonders in explaining away assertiveness that even borders on the preposterous.

Better still, it suggests to your target that you see it as a very desirable partner.

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CHAPTER 88

Telephone and Email Negotiations

Negotiating remotely, such as by phone and email, is now common, but this requires some slightly different tactics. I am not a particular fan of distance-based negotiations, and avoid it where the stakes are high. But in many other situations it may be unavoidable. Some general thoughts:

- Use videoconferencing if possible, whether it is sophisticated software or simply FaceTime on your iPhone. Video chat is a reasonable substitute for being in person.
- If you are not using video software, be certain you know who is listening in or is in the room. You should also reach agreement that your target will immediately disclose the presence of anyone not already identified, whether others are coming into the room or listening in electronically.
- Make arrangements for appropriate documents to be available for each of you to review. These can be attached to emails being exchanged.
- Make sure that appropriate authority has also been obtained.
- Strike agreement with the target that phone negotiations will begin and end at times certain. You should also ensure that any third parties who may need to be consulted are also committed to remaining available for the duration of the negotiations.
- Avoid making hasty judgments about comments made during telephone or email negotiations. There are no visual cues to the meaning of statements being made, and you might be misjudging innocent remarks. On the other hand, some people are more aggressive when they are on the phone or sending emails, so it is admittedly possible the comments are intended exactly as you

suspect. Take your time in deciding the difference.

- Turn off computer screens and cellphones in your office if they may distract you during live segments of the phone negotiation.
- Have a clear understanding whether it is permissible to record the call.
- Circulate an agenda on points to be negotiated ahead of time. There is a tendency by some to spend less time preparing for telephone negotiations, in part simply because the lack of preparation may be less evident. Add a formal framework to phone negotiations by insisting on a detailed agenda of issues to be confronted.
- Some studies suggest there is a greater prevalence of dishonesty in telephone negotiations. This is something to bear in mind, both in deciding whether to negotiate by phone at all and in deciding how to address this possibility once negotiations are under way.
- If you are negotiating by phone and the call is not recorded, consider exchanging emails as the negotiation proceeds so there is interim written confirmation of key terms. This will minimize the risk that time will be wasted arguing over terms for which agreement was clearly already reached. Do not wait until the negotiation has ended to exchange confirming emails of the agreement.

Telephone and email negotiations are more likely to be disrupted by distractions, and require careful rules to ensure that they are effective and a wise use of time.

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CHAPTER 89

Appeal to Your Target's Sense of Vanity

Top negotiators are well aware of their own capabilities and do not need, want or respond well to compliments on their skills and abilities. The opposite is true for negotiators who are new to the field or who may have doubts about their abilities. They are more likely affected by both subtle and overt compliments. So are, possibly, their principals and clients.

Compliments are a powerful tool for disarming a target or opposing negotiator, especially those who may not be up to the task at hand. Appropriate compliments might include a respectful acknowledgment of your target's skills, past accomplishments and/or reputation. You might say, for example, there will be no bad deals struck in this negotiation because the target has a well-deserved reputation for his or her skills. Remarks like this are plausible and not so effusive as to appear disingenuous.

This is the key to complimenting your target – plausible, reasonable, and genuine in presentation. Compliments are often most effective in the opening round of a negotiation, and occasionally throughout the negotiation process. Plausible compliments sincerely made will affect your target even if they seem orchestrated to you. Most people are far too vain to see compliments as a ruse, or to admit that tributes to their talents could be anything except accurate.

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CHAPTER 90

Speak as If the Deal Is Inevitable

Confidence in presentation can have a powerful impact on the negotiations. Top negotiators speak of the outcome as absolutely inevitable and always speak as if there is no possibility of a different outcome. Similarly, they will speak of must-have terms and clauses as inevitable and incapable of modification.

Supreme confidence is the art of kings and con men alike, because of its powerful impact. Infomercials have made their creators billions because of the powerful message presented, specifically that there could be no outcome except eternal fitness and beauty.

You may have doubts inside, but you must never betray them. The mediator and your target(s) will feed off your facial gestures, tone and strength of voice, and words. You must be powerful and supremely confident. Targets will sometimes abandon objectives in part because of their perception that they cannot persuade you otherwise, based on the confidence and power you projected.

Confidence kills.

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CHAPTER 91

Change Mediators as Needed, Even Mid-Session

In keeping with the habits of elite negotiators to manage and control every element of a negotiation for advantage, consider terminating the services of the current mediator, neutral or negotiator (if you are using one to reach a deal with the target) and immediately substituting another.

Sometimes it becomes apparent the choice of mediator was unwise. It may be something as simple as the fact that the mediator has a personality conflict with you, your principal or with the target. Perhaps the mediator's demographics are a mismatch with a key participant. Perhaps you have reached the point where the mediator has exhausted his or her supply of techniques to move the parties, or is even exhausted himself or herself.

It happens, and it is no reflection on the quality of the mediator. Like professional boxers, there are only so many moves mediators can make before they either tire or are knocked out, sometimes because the other fighter has figured out his game plan.

I have on occasion halted a mediation with the consent of the target and with the further understanding that we will reconvene immediately, the next day or even later that same afternoon, with a different mediator. In most cities there are many mediators that have availability on zero notice.

A change in mediators can be a very effective technique for jumpstarting a mediation that has stalled. Further, changing mediators is also appropriate if for some reason you have determined that the current mediator is leaking information or has otherwise figured out your game plan and is not helping you achieve your goals.

To take this tactic a step further, consider in some cases having a second mediator lined up with a mind toward a planned decision to replace the mediator. You might have reluctantly agreed to the mediator at hand and had

doubts before the mediation began. Perhaps both sides were doubtful about the selection but could not find a more suitable choice who was available. This is not uncommon.

Top negotiators always have a plan in place to replace the mediator or middleman, and this should be part of your pre-negotiation checklist as well. Many negotiators have never considered this, which for my purposes means your investment in this guide was well spent. How such a purposeful replacement might be achieved requires little imagination and I will not spend time discussing this further. But there are many instances where a negotiation has proceeded to a point where you justifiably believe the mediator is not seeing your point of view or is otherwise harming your interests. You are under no obligation whatsoever to press on and allow the negotiations to go sideways because mediator or middleman X began the process. Reach out to the target or opposing negotiator, explain your views and make it clear the intermediary must go. Then propose the alternative(s) you lined up. I have done this several times, and it is not as difficult as you may believe if you have not pursued this before.

If you play tennis, you know that sometimes the ball wears out, loses pressure and bounce, or simply develops cracks. You replace the ball the moment you realize it is affecting the match, and you resume play. You would never consider continuing to play with a ball just because it is the one you began the match with. Yet you have also likely never considered replacing an intermediary even after you realized he or she was negatively affecting the match. Why?

Add this to your arsenal, and begin including the selection of backup intermediaries or mediators to your negotiation preparations.

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CHAPTER 92

Ensure That Your Principal Gets the Bluff

It is essential, to avoid conflict between you and your clients or principals, to ensure they are on board with your negotiating strategies.

Early in my career I had developed some truly ingenious bluffs to use in a complex, multi-party negotiation. To my later regret, I did not fully brief my client on the techniques I planned to use. As a result, the client inadvertently fell in love with the breathtaking scope of proposals that I told the target, in the opening sessions, would be our absolute minimum. He loved them, and even began immediately recalculating his budget based on his belief that I would achieve a windfall settlement beyond anything mortals could achieve.

My proposal was, of course, intended to anchor the negotiations to very high numbers, to help me achieve my objective of excellent but realistic final terms. But there was simply no possibility of achieving the initial demands. My beginner's error was that I failed to fully explain to my client in advance, the real contours of the deal. I should have explained what an average negotiator would get, what a court would likely rule if we did not reach a deal and had to wind up in litigation, and then *my* plan, which was far above any of the alternative options.

But, having neglected to draw the client into my confidential strategy, I allowed him to develop the perception that my extreme numbers were somehow the <u>minimum</u> he should expect. We got the deal done, but not without some very difficult conversations that were entirely unnecessary.

Be certain you properly frame your negotiations with your client ahead of time, so that he or she does not believe your bluffs and complicate your ability to reach agreement.

CHAPTER 93

Promote The Exclusivity of the Deal

Promote one or more terms of the agreement as something available exclusively to your target. Decades of psychological research into the motivations behind purchasing decisions informs that people not only want things that are better than what the average person or their friends and neighbors have, they also want things that no one else can have, or that is available only to a limited or select group of people.

This research explains why airlines have first-class seating sections, why American Express created Platinum cards, and why stadiums have skyboxes. Skybox owners are watching the same game as everyone else, and in many cases have worse views. First-class passengers on airlines arrive at the exact same time as passengers in the coach section. And platinum-card holders buy their lettuce and milk – the same lettuce and milk you buy – at the same grocery store where you shop.

So why do people pay $500 a year for the Platinum card, an extra thousand dollars for airline seats, and $50,000 or more each year for stadium seating that is far worse than you can get on a bar stool at the local dive? The answer is exclusivity. Every day smart people knowingly make terrible financial decisions on principles of exclusivity.

This is an excellent principle for use in negotiations. Pitch your deal, or as many components of it as possible, as an exclusive opportunity for the target alone, for amazing results.

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CHAPTER 94

Trust No One

It is essential to understand that the essence of most negotiations is to achieve gain at the expense of the target. This does not mean that you are cheating them, or treating them unfairly, or that the outcome will be unseemly. Indeed, you are negotiating because the target has something you need, or there is something you want them to do.

Typically, you will have information the target does not have, and vice versa. Access to that information often tips the balance in favor of one or the other in a negotiation. You should take great pains to ensure that your confidential information is not leaked, by your staff, by other members of the negotiating team, or by the mediator. Some would call this a seal of approval for healthy paranoia, but as journalist Hunter S. Thompson is attributed as having said, “There is no such thing as paranoia. Your worst fears can come true at any moment.”

The only way to minimize leakage of any kind is to hold all your critical information close to the vest.

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CHAPTER 95

Use Bracketed Moves for Speed, Valuable Insights

Bracketing is a tool for testing the limits of your target's willingness to deal. In a proposal using this device, you will extend your next offer conditioned on the target's agreement to do X [your desired response from the target to your offer]. Think of it as a proposal to make two moves at a time, rather than one.

So, for example, if you have offered to pay $10,000.00, and the target has offered to accept $100,000.00 – and the negotiations are moving slowly – you might propose a "bracket" of $25,000.00 to $75,000.00. This means that you will increase your offer to $25,000.00 if the target agrees to drop its demand to $75,000.00. If the bracket is accepted, then the two of you are now at those respective positions and will move ahead from there. If the bracket is declined, it is as if no proposal was made, and the two of you remain at your prior positions.

Brackets can be used to force a target to make a sudden jump, and it can also tell you whether the target is ever willing to come down into that range. So it can provide you valuable intelligence as to whether you are simply wasting your time. Brackets are also useful for speeding negotiations along, in part because a bracket proposal essentially results in two moves at a time, rather than the back-and-forth, ping-pong style of most negotiations, one round at a time.

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CHAPTER 96

Being Naïve Is A Sin. Acting Naïve Isn't

Much can be gained by acting naïve in a negotiation. But this is a practiced skill.

We all naturally want to appear as sharp as possible. So we do and say things so others will perceive us that way. As a result, we give away advantages we would have had by keeping this information close to the vest. We freely give away secrets because we want to appear "in the know." We give away tactics we could have used to gain an advantage - to show the other side just how good we are. We think this will frighten the opposition into giving up.

In fact, this regrettable show of force and aptitude, when undertaken in negotiations against an extremely sharp target, is likely to cost you valuable ground. Top negotiators will gladly take that information and begin to dissect and analyze it. The disclosures you thought would frighten them actually wind up being the information they use to destroy you.

So go easy. Use disclosures and displays of tactical power judiciously. Forrest Gump, the movie character, spent no time portraying himself as master of his domain. Rather, he showed great humility and simple-mindedness. In truth, Forrest Gump was a fire-breathing dragon that slayed all who crossed him. You may laugh at this, and if you do, I say, be my guest. But there is a powerful lesson to learn about his modesty and self-deprecation, and it is used every day of the week on Wall Street to wipe the floor with wise guys.

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CHAPTER 97

Bring A Negotiating Team Double or Triple the Size of the Target's Team

In some cultures, team-based negotiating is expected. In other words, the norm is that you will bring many people to the negotiation. That is generally not true in negotiations here in the United States. But bringing an unusually large team is a very effective tactic both for having a diverse range of skills with you and for overwhelming the target.

I have some clients who insist on knowing the specific attendees coming on behalf of the target solely so they can bring double that number. For them, it does not matter whether a large negotiating team is necessary or not. They consider it critical from a perception standpoint to overwhelm the target on every level, including the sheer number of bodies in the room.

This tactic has another side benefit as well. Team members can each speak in the opening session, voicing their own specific grounds for supporting your positions. Team members can nod as others speak, creating compelling visual reinforcement for your arguments. This can influence the opposition by subtly messaging that many people, in fact, agree with your stances.

This plays into something known as the Asch Conformity Principle, which holds that people are less likely to disagree with an argument or point if others in the room – even adversaries - have already expressed strong support for it. Many people are disinclined to directly challenge what others have said, even if they disagree with it. To avoid confrontation, they simply go along with the point that others have already supported.

CHAPTER 98

Never Give Things of Value to The Target Before a Final, Binding Deal

If you are selling a car, for example, never let the buyer drive off with the car before you have full final payment in full in hand. Otherwise, the last thing you see will be the tail lights of your car as they fade into the distance.

The same is true in both simple and sophisticated business deals. You must not sign any document or agreement that allows the target to move forward on any front until you have binding agreement on your demands as well. Targets may promise you an agreement is forthcoming to complete the deal, but you may quickly find yourself in hot lava if you bite on this kind of promise.

I have known lawyers who agreed to dismiss actual pending lawsuits, because they were close to a deadline, based on a verbal agreement to settlement terms. Once the case was dismissed by the court, however, the target refused to honor the terms precisely as agreed. This is a disaster in almost every situation.

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CHAPTER 99

Never Tolerate Overt Disrespect, Taunts or Threats

For all the acceptable and aggressive tactics and strategies in negotiating, you must never tolerate open disrespect, taunts or threats.

At the first sign of such misconduct, I will immediately call for a halt to it if I am negotiating person-to-person, or turn to the neutral or mediator, with raised eyebrow as if to say "Are you going to stop this or are you going to punt that task to me?" Excellent mediators will stop it without hesitation. Lesser mediators will sit mute.

One way or another, though, it is going to stop immediately or I am going to end the discussion. If I am negotiating one-on-one I will ask the target to stop the offending behavior; if he or she does not I will continue the discussion another time. If it continues again, I will look elsewhere for a deal.

If I am in a group session, such as a formal mediation, I will firmly interrupt the person engaging in this conduct and demand a halt in no uncertain terms. If it continues, I will excuse my principals and team and go to a separate room. If that is not sufficient, I will again end the negotiation on the spot.

You must never tolerate this conduct in any form. You will lose face, lose the negotiation at hand, and lose reputation points and credibility in future negotiations.

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Postscript

I hope you found this book useful and interesting.
There are few topics that generate more interest, and controversy, than negotiating strategies and tactics. We all fancy ourselves as deal-makers, whether striking billion-dollar deals between multi-national corporations or buying a used car. And in our own ways, each of us are in fact deal-makers. Where we differ, respectfully, is in our effectiveness. This, in turn depends on a host of variables: our own personality, our client's needs, the identity of the other party, the identity of the opposing negotiators, and the stakes. The outcome of a negotiation can also depend on the participant's highly-individualized perceptions about ethics, morality and fairness.

Disagreements about negotiating tactics arise because these and other variables are situation and context dependent. As I said at the outset, use your own judgment, and moral compass. Do not rely on what others say. Input from others is always useful as a gauge, but not as a mandate.

I wish you well, my friend.
David Rosen
New York City

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