PROGRAM ON NEGOTIATION
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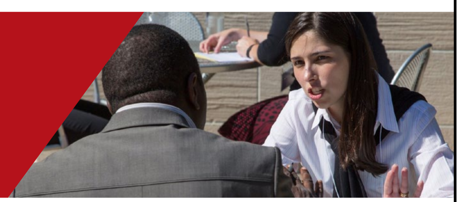

HOW TO GET TO WIN-WIN

PROGRAM ON NEGOTIATION
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1. Why Silence May Be the Best Argument of All

When presenting the first offer in a negotiation, you might assume that your counterpart will find the offer more persuasive if you back it up with a justification. A carefully reasoned argument is bound to be more compelling than just a cold, stark number, right?

Negotiation scholars often cite the results of a well-known experiment as evidence of this intuition: Ellen Langer, Arthur Blank, and Benzion Chanowitz's 1978 "copy machine study." In the study, an experimenter approached someone who was about to use a copier in a university building and asked to cut in to make five copies. The researchers found that when the experimenter provided a justification for cutting, even if it was rather lame—"May I use the Xerox machine, because I have to make some copies?"—a striking 93% of those approached allowed the individual to go first. By contrast, when the experimenter simply asked to make five copies without providing a justification, only 60% acquiesced. The experimenters theorized that people mindlessly accepted the word *because* as a signal that a compelling justification was forthcoming.

Applying these results to negotiation, scholars (and this newsletter) have advised bargainers that adding even a weak justification to a request can dramatically increase the odds that your counterpart will accept it. Yet the results of the copy machine experiment are actually more complex—and less applicable to negotiation than we might think, write Tel Aviv University researchers Yossi Maaravi, Yoav Ganzach, and Asya Pazy in a recent article in the *Journal of Personality and Social Psychology*. As it turns out, when experimenters made a larger request in the copier study—to cut in to make 20 copies—accompanied by the same weak argument, only 24% of those approached agreed. It seems the trivial nature of the original request generated compliance, rather than the use of a justification.

What is the implication for negotiators? Maaravi and colleagues set out to answer this question.

Persuasion and backlash. Consider that the typical first offer in a negotiation consists of much more than a request to make 5, 20, or even 1,000 copies out of turn. As the person making the first offer, you are dropping an "anchor" that probably will form the basis of discussion. You might ask a counterpart to accept a low salary, a rock-bottom price for her beloved home, or a reduced work order during a renegotiation. Should you or shouldn't you provide a justification for your first offer?

Maaravi and colleagues conducted four experiments to find out. In their studies, participants engaged in online-purchasing negotiations. Across the studies, the researchers found that when it was easy for negotiators to generate counter¬arguments, they were less receptive to the other side's initial offer, or anchor.

In one experiment, for example, a seller presented participants (who were playing the role of buyer) with an opening offer for an apartment:

"I ask $190,000 for the apartment." Sometimes the offer was accompanied by a supporting argument, including reference to a recent renovation, the presence of an elevator, etc.; sometimes it was not. Buyers were asked to respond with a counteroffer. When sellers justified their first offers, buyers with easy access to the same facts about the apartment made significantly lower (tougher) counteroffers than did participants who had been distracted from these facts by an unrelated computer task. That is, the seller's persuasion efforts were more successful when buyers had to work harder to remember the seller's arguments.

According to the experimenters, the results suggest that when a negotiator gives a justification for an initial offer, his counterpart is likely to respond negatively to the attempt "to limit their negotiation freedom by pushing them or doing the thinking for them." In other words, if you remind a prospective buyer that your apartment has an elevator and was recently renovated, she might remind herself that it lacks parking and a washing machine. Thus, easy-to-counter arguments trigger a backlash in the form of simple counterarguments.

Checking the impulse to persuade. The results of Maaravi, Ganzach, and Pazy's study suggest four prescriptions for negotiators, depending on whether you are making a first offer or responding to one:

1. Pause before persuading. When counterarguments are easily available to your counterpart, your persuasion efforts can backfire in a negotiation. On the other hand, negotiators may be more receptive to novel information you might provide, such as a newly lowered price or confidential data.

2. Consider the opposite. When the other side makes an initial offer, it can be quite difficult to see past it. Yet these findings reinforce the power of "considering the opposite"—in other words, seeking out and considering information that is inconsistent with the other party's first offer—and presenting it as a counterargument.

In one study, researchers Adam Galinsky (Northwestern University) and Thomas Mussweiler (University of Cologne) found that weighing information that contradicted the other side's first offer allowed negotiators to overcome the anchoring effect. (For more advice on overcoming anchors, see page 8.)

3. Be ambitious and reasonable. Though it generally pays to aim high, try to avoid making an opening offer that could offend or stress your counterpart. Unreasonably extreme offers likely will drive the other side to search for counterarguments.

4. Don't avoid the challenge. Making the initial offer poses clear risks. Yet research suggests that in many contexts, those who drop the first anchor do better than those who must try to overcome it.

By Katherine Shonk, Editor, *Negotiation* newsletter.
First published in the *Negotiation* newsletter, October 2011.

2. The Mythical Fixed Pie

In the business world, why is competition so often the norm, while cooperation seems like an impossible goal? Why do we fail to recognize opportunities for creative problem solving that would develop joint gain, settling instead for "better than nothing" compromises?

One of the most destructive assumptions we bring to negotiations is the assumption that the pie of resources is fixed. The *mythical-fixed-pie* mindset leads us to interpret most competitive situations as purely win-lose. Of course, the pie of resources is limited in some cases—in athletic competitions, admission to academic programs, and some corporate promotion systems. A small percentage of negotiations are *distributive*—the parties are restricted to making claims on a fixed resource. For instance, if price is the only issue on the table, your gains come at the expense of the other side's and vice versa. Haggling over a piece of jewelry in a bazaar is one type of distributive negotiation.

But in organizational negotiations, far more issues than price are involved, including delivery, service, financing, bonuses, timing, and relationships. For those who recognize opportunities to grow the pie of value through mutually beneficial tradeoffs among issues, the complexity of such negotiations is an asset. Tradeoffs allow you and your negotiating partner to achieve more than you would if you merely compromised on each issue.

Finding tradeoffs can be easy when negotiators know to look for them, yet our assumptions about the other party's interests often keep us from this search. The problem is, we tend to apply the fixed-pie mentality too broadly, assuming that any gain for the other side comes at our expense. When I ask executives why they failed to make mutually beneficial tradeoffs in a simulated negotiation, they tell me they didn't know such tradeoffs were possible. The fixed-pie assumption limited their options.

Some compromises are unimportant. When planning a night out with friends, settling for your second or third restaurant choice won't cause you long-term harm. But if you get into the habit of compromising, you'll miss out on important opportunities when the stakes are higher. Consider this Cold War–era quote from Congressman Floyd Spence regarding a proposed nuclear agreement between the United States and the Soviet Union: "I have had a philosophy for some time in regard to SALT, and it goes like this: the Russians will not accept a SALT treaty that is not in their best interest, and it seems to me that if it is in their best interests, it can't be in our best interest." Such overly simplistic reasoning has contributed to many unnecessary conflicts.

Expanding the pie. While claiming resources is important, you can often find much greater value by expanding the pie of resources. A buyer and seller negotiating a purchase might both be satisfied by increasing the order size and slightly decreasing the price per unit. In business development talks, there are many issues on the table. Far too often, partners in an alliance compromise on each one, rather than growing the pie by trading across issues. When the other side asks you for "just one more concession," she sets you up for a difficult choice between saying "Yes" (and losing value) or "No" (and risking losing the deal). Here's an alternative response: "I'll grant that request, if you'll accept a tradeoff on an issue more important to me."

This strategy is ideal when negotiators value issues differently. But what if you have identical preferences on the same issue? Imagine a company that wants to increase employee training to increase work flexibility, while its employees want to be better trained to increase their employment security. Even when both sides want the exact same outcome—in this case, better employee training—negotiators will compromise on a lesser outcome, writes Leigh Thompson, a professor at Northwestern University's Kellogg School of Management who specializes in dispute resolution. "If I want more training," an employee might reason, "management probably won't want to give it to me." The assumption that the other side has directly opposing interests is known as the *incompatibility bias*.

In a negotiation simulation involving eight issues, Thompson included two that were compatible—the parties had the exact same preference. Rationally, there was nothing to negotiate; no conflict existed. Yet 39% of negotiation pairs failed to agree on their shared preferred outcome for at least one of these two issues. Even when they did agree, they often erroneously believed that they "beat" the other side on that issue, not realizing the other party had also come out ahead. The danger of such misperceptions is that they can falsely inflate your confidence in your persuasion and bargaining abilities.

Another negative effect of the mythical-fixed-pie mindset is the tendency to downplay any concession your adversary makes. In a 1990 study, Lee Ross, a psychology professor at Stanford University, and Connie Stillinger asked two groups of people to assess how favorable an arms reduction proposal was to the

United States and to the U.S.S.R. In one group, the interviewer correctly attributed the proposal to President Gorbachev. In the other group, the interviewer implied that President Reagan had made the proposal. Fifty-six percent of those who believed the proposal originated with Gorbachev thought that it dramatically favored the Soviet Union, 28% thought it favored both sides equally, and just 16% felt it favored the United States. When participants believed that President Reagan had initiated the proposal, 45% thought it benefited both sides equally, 27% thought it favored the U.S.S.R., and 27% thought it favored the United States.

Clearly, the terms that your side is proposing might seem suspect to you if they had been proposed by your competitor. And as soon as an opponent concedes on an issue, you may be tempted to devalue its worth: "If they're willing to give it up, it must not be so important." This faulty reasoning is consistent with the mythical-fixed-pie perception that "what's good for them is bad for us."

Finding trades. Once negotiators have broken the assumption of a mythical fixed pie, the search for value can begin. To create value, you need to learn about the other party's interests and preferences. The five proven strategies that follow will increase your likelihood of uncovering value in the negotiation process.

1. Build trust and share information. The most direct way for parties to create value is to share information in an open, truthful manner. But even in negotiations within companies, parties fail to follow this strategy. The value created by sharing information with your most trusted customers will often outweigh the risk of having that information misused. If the two parties can put their tendency to claim value on hold, they may well be able to share valuable information about how much each side cares about each issue. "On-time delivery is critical to us," you might tell a representative of a technology consulting firm in a negotiation over new business. "Our old contractor did good work, but couldn't meet deadlines. Now tell me some of your key concerns."

2. Ask questions. Your goal is to understand the other party's interests as well as possible, yet both parties may be unwilling to fully disclose confidential information. What should you do next? Ask lots of questions! Many executives, especially those trained in sales persuasion tactics, view negotiating primarily as an opportunity to influence the other party. As a result, we do more talking than listening. And when the other side is talking, we tend to concentrate more on what we'll say next than on the information being conveyed—a tendency that only assists the other party in collecting information from you. Listening and asking questions are the keys to collecting important new information. "What mechanisms does your firm have in place to make sure you meet our deadlines?" you might ask the consulting rep.

3. Give away a bit more information. What do you do when trust between parties is low? Give away some information that focuses on the trades you are willing to make. Doing so can enable you and the other party to expand the pie of outcomes. Plus, behaviors in negotiation are often reciprocated. When you yell, the other party will yell back. When you apologize, he may do the same. And when you share useful information, he may return some of his own. This strategy can turn interactions between antagonistic parties in a positive direction. The key is to give away information that will inspire wise tradeoffs, rather than simply slice up the pie. In your negotiation over the technology consulting contract, this might mean saying, "Let's talk about how referral incentives might benefit us both."

4. Make multiple offers simultaneously. Most negotiators tend to put one offer on the table at a time. If it's turned down, they learn very little that will help move the process forward. Instead, imagine making three offers that are very different but all equally profitable to your side. If the other party rejects all the offers but is particularly negative about the first and the last, you have learned what's most important to them and where potential trades are located. For example, after you learn what's most important to a consulting firm you're talking to, present three preemptive offers that demonstrate your flexibility and your commitment to sealing the deal.

5. Search for postsettlement settlements. Even after negotiators have reached an agreement that pleases them both, there's often ample opportunity for contract improvement. If you aren't confident that you've uncovered all the value in a negotiation, negotiation analyst Howard Raiffa recommends you propose a "postsettlement settlement" process. Under this approach, negotiators hire a third party to help seek out a superior agreement—one that's even better for both sides. Each negotiator reserves the right to veto any new settlement proposed by the third party and revert to the original agreement. This process offers a last, low-risk attempt to discover new trades. "Let's revisit this contract in three months, after the initial project is up and running," you might tell the technology consulting rep after you've hammered out a contract. "I'm sure we'll find room for improvement."

By Max H. Bazerman (professor, Harvard Business School).
First published in the *Negotiation* newsletter, November 2003.

3. How to Win a "Beauty Contest"

Dear Negotiation Coach: My company is going through a "beauty contest" to try to win a major contract with a buyer of corporate wear. The target's employees have tested our samples and eliminated several other suppliers based on quality, price, and other issues. As one of the two suppliers still in the game, we have been invited to attend a "finale day." We have also been asked to "review our offer as much as possible" in advance. On the big day, we expect that we and the other supplier will sit in separate rooms, and the buyer will go back and forth between us, trying to pressure both of us and squeeze out the best deal. How should we approach this process?

Answer: Competitive bidding processes like the one you describe are becoming increasingly commonplace as markets become more global, high-tech, and price sensitive. Neither pure auctions nor pure negotiations, these processes lie in the middle ground that I call a "negotiauction." In such situations, you face price pressure from the buyer across the table, but you're also vying with competitors on the same side of the table.

Here are three suggestions to help you get the business without giving away the store:

1. Clarify their interests and alternatives. Learn as much as you can about the buyer—both the company and the person or people running the process. Are they solely concerned about price, or are other issues more important? If you were them, who else would you be talking to? How is the person making the buying decision evaluated and compensated?

Consider the recent case of Fairstar Heavy Transport N.V., a Dutch shipping company that participated in a yearlong negotiauction to provide transportation services for the Gorgon energy project in Australia. In the final meeting, Fairstar CEO Philip Adkins was confronted with the make-or-break question: "What's your best price?" Based on deep preparation, Adkins knew that cost was not a significant issue for his counterpart; Fairstar's contract would be a drop in the bucket for a $42 billion energy project. And since BP's oil spill in the Gulf of Mexico had just occurred, he also knew that the project manager would be very concerned about quality and reliability. Finally, Adkins knew that Gorgon had weak alternatives, as Fairstar's major competitor had recently dropped out of the process. As a result, Adkins stuck to his demand: $95,000 per day. After a "very lonely 10 minutes" in the hallway, he got the deal.

2. Make multiple simultaneous offers. Your buyer has asked you to "review your offer as much as possible." You might assume this means you've got to cut your price, but then you risk bidding against yourself if they are lying and there is no other bidder. Instead, try providing a few options: "Here is the best we can do on our current package; here's another package we can offer at a lower price but with some quality adjustments," and so on. If price is critical for the buyer, but your current package is not the low-price alternative, such multiple simultaneous offers (as my colleagues Max Bazerman and Deepak Malhotra call them) keep you in the game.

3. Look for a "shut-down move." You note that your buyer is likely to shuttle between you and your competitor on finale day. Don't accept this process as given; rather, look for opportunities to make a "shut-down move." As your buyer is about to shop your offer back to the other guy, you might say, "What would it take for us to get this done now?" If a negotiation ensues, be clear that any concessions you make may expire if the buyer leaves the room. In effect, you are giving your customer a bit extra in exchange for exclusivity.

By Guhan Subramanian, Joseph Flom Professor of Law & Business, Harvard Law School and Douglas Weaver Professor of Business Law, Harvard Business School

4. Trying to Make a Sale? Gain an Edge by Avoiding These Common Pitfalls

In the current marketplace, whether you're planning to put your home up for sale, trying to unload excess merchandise, or searching for new clients, you've got your work cut out for you. Fortunately, there are ways to stand out from your competitors—namely, by sidestepping the most common errors to which sellers are prone.

In this article, we summarize four traps that routinely prevent those on the sell side of a negotiation from pulling ahead of the pack. Though all these pitfalls can imperil buyers as well, we'll look at them in light of the special risk they pose to sellers.

Pitfall No. 1: Overvaluing your possessions. Why is it that even in sluggish markets, some homes are plucked off the real estate listings within days or weeks, and others sit for months, even years? Location and curb appeal have something to do with it, of course, but there's another factor, one that sellers can avoid: the tendency to overvalue their property. Ignoring their real estate agents' valuations, some sellers insist on asking for at least what they originally paid for the property, and often much more.

At least two common psychological phenomena explain the tendency to overvalue our possessions, according to Harvard Business School professor Max H. Bazerman. First, there's the *endowment effect*, or the tendency to overvalue just about anything we own, no matter how trivial. One famous study led by Nobel laureate Daniel Kahneman found that students given nondescript coffee mugs set much higher selling prices for the mugs than students playing the role of buyer were willing to pay.

Second, emotional attachment to sacred possessions often causes sellers to price items beyond their market value. According to this *sacredness effect*, the fonder the memories you attach to an object, the more valuable you'll consider it to be. Lacking this attachment, most buyers will value the item at a much lower—and more rational—price.

Remedy: To avoid overvaluing your possessions, seek out appraisals of their worth from third-party experts such as real estate agents, jewelry appraisers, or financial experts—but be aware of the agency issues we describe below. Lest you discount these experts' informed opinions, Bazerman advises you to imagine how you will feel in several months or a year if your item fails to sell. By focusing on the future, you may be able to look at your possession more rationally.

Pitfall No. 2: Focusing too much on price. What's your most important goal when making a sale? If you're like most of us, getting the best price possible is foremost on your mind.

It's normal for sellers (and buyers, too) to place a high premium on meeting their target price in a negotiation. Research from a variety of fields suggests that when making decisions, we tend to focus on only a fraction of the information that's relevant and available, according to Bazerman.

A self-interested focus on price haggling prevents us from viewing negotiation as a collaborative enterprise. When stuck in a competitive mindset, you're unlikely to probe your counterpart's needs or to add more of your own interests to the mix. If you're trying to lock in a new customer, for example, your focus on price could cause you to overlook issues such as delivery timing, payment schedules, and other sources of synergy that could enhance the agreement *and* your bottom line.

Remedy: When you find yourself obsessing about price, take time to brainstorm ideas for adding more value to the deal, both on your own and with your negotiating counterpart. In addition, consider bringing others to the table with you, suggests Bazerman. Though team talks add new complexities, they also are likely to broaden your perspective.

Pitfall No. 3: Compromising your ethics. Whether you're selling a used car, your professional services, or one of your company's products, you are bound to know more about the item for sale than potential buyers do. No matter how much research a buyer does, she will probably know at least a little bit less than you do about how a product will perform over time; or, in the case of services, she won't know how much attention you will be devoting to her.

Because of this *information asymmetry*, you need to be careful not to take advantage of buyers during your negotiations. Even negotiators who consider themselves to be highly ethical are at risk of compromising their moral principles, research shows.

Conflicts of interest can be a particular challenge for sellers of goods and services, according to Bazerman. Because real estate agents receive a percentage of a home's sale price, for instance, it's hard for them to give completely objective bidding advice to buyers. The same is true of accountants who sell consulting services to the firms whose books they are supposed to audit objectively. It's not that agents, accountants, and other sellers are intentionally trying to scam anyone. Rather, they are susceptible to convincing themselves that the deal they're offering is the best a client could get—even if that's not objectively the case.

Remedy: Armed with the knowledge that unethical behavior is not always intentional, you are well positioned to examine whether your negotiating behavior is in line with your ethical standards. If a buyer is skeptical of your claims, you might propose adding a contingency agreement to your contract—basically, backing up your claims with financial incentives. For example, a building contractor might promise to pay a penalty or accept a lower payment if he can't meet construction deadlines.

Pitfall No. 4: Presenting unappealing offers. Even if you've spent a good deal of time researching a potential buyer's needs and putting together proposals that meet her interests, you could slip up by failing to present your offers in the best possible light.

To take one example, sellers often err by failing to frame information concerning gains and losses appropriately. As we've noted, in a typical purchasing negotiation, each side has a target price that it is aiming to meet. A buyer will view any compromise away from his target as a loss. Sellers often unwittingly reinforce such negative frames when they present proposals in terms of losses away from the buyer's ideal price.

Remedy: Try to frame your offers as gains over the status quo instead of as losses away from the buyer's target. Take the case of an office-supply salesperson who is wooing a potential customer. Rather than saying, "I sense you were hoping to get my price down to $100,000, but that's impossible for me," the salesperson might say, "I have a good idea of what you're paying now for your supplies. We can shave $20,000 off that amount—a significant savings, I think you'd agree."

4 takeaways for savvy sellers

1. Seek expert appraisals to compensate for the very human tendency to overvalue one's possessions.
2. Get beyond price considerations by listening to the other side's needs.
3. To guard against behaving unethically, consider adding contingencies to the deal.
4. Make your offers more appealing by framing them as gains, not losses.

By Katherine Shonk, Editor, *Negotiation* newsletter.
First published in the Negotiation newsletter, April 2010.

5. Pull Ahead of the Pack with a "Negotiauction"

Robert Barnett, a corporate attorney based in Washington, D.C., moonlights as a book agent for celebrity politicians—including Barack Obama, Laura Bush, and Bill and Hillary Clinton. New York editors line up to sign Barnett's clients and, they hope, rake in blockbuster profits.

Barnett's technique is to introduce his latest superstar to the major publishing houses and then hold a multi-round auction, writes Guhan Subramanian, a Harvard University professor and Negotiation's academic editor, in his new book, *Negotiauctions: New Dealmaking Strategies for a Competitive Marketplace* (Norton, 2010). After the first round of bidding, Barnett gives low bidders a chance to top the high bid, until an unbeatable offer emerges.

Back in 1993, Barnett's auction format took a new turn when he was shopping James Carville and Mary Matalin's joint memoir of the 1992 presidential campaign. As you'll recall, the two improbably fell in love while fighting each other as lead political operatives for Bill Clinton (Carville) and George H. W. Bush (Matalin).

After a few rounds of bidding, the auction reached a fever pitch. Then things got interesting. At a party, Richard Snyder, the chairman of Simon & Schuster, bumped into Harold Evans, the head of Random House's adult trade division.

Both were competing in the Carville-Matalin auction. Snyder suggested a novel strategy: Why not team up and submit a joint bid?

Soon the announcement came that rivals Simon & Schuster and Random House would be copublishing Carville and Matalin's memoir for an impressive (but undisclosed) sum. The two firms would make decisions on the book together and split its profits and losses equally. "It's like the Hatfields and the McCoys publishing the Montagues and the Capulets," a delighted Barnett told the *New York Times*. Carville and Matalin's book, *All's Fair: Love, War, and Running for President*, was a bestseller, thanks in part to the free publicity surrounding the unorthodox business arrangement.

Was the deal a negotiation or an auction? Clearly, it was both. A number of parties bid in an auction; two of them negotiated with each other and then jointly with Barnett. The deal was what Subramanian terms a *negotiauction*—

How do you sell a toxic asset?

The conventional wisdom that an auction is the best way to get a good price doesn't always hold up, the U.S. Treasury Department recently discovered.

During the financial crisis of late 2008, the hastily enacted Troubled Asset Relief Program (TARP) allowed then-U.S. Treasury Secretary Henry Paulson to spend $700 billion to buy up so-called toxic assets from troubled U.S. financial institutions. Paulson and his staff were faced with the question of whether to negotiate deals with banks individually or hold a "reverse auction." In a reverse auction, the Treasury Department would specify a class of security to be purchased; then the banks would compete in the auction to sell qualified securities to the government.

The government has had success auctioning its Treasury securities in this manner, Subramanian writes in Negotiauctions, but treasuries are a homogeneous asset with many potential buyers. By contrast, the banks' toxic assets represented at least 100,000 different mortgage-related securities with widely different interest rates, geographic locations, payment histories, and so on.

The government was in a bind. The more it specified an asset, the more auctions it would have to run and the fewer sellers it would face. But if it didn't specify the assets, then the seller with the most toxic assets would win any given auction, and the government would get a raw deal. Moreover, banks that participated in the government's reverse auctions would have to mark down their unsold assets to bargain-basement prices.

What about negotiation? As we've noted, assets that are hard to specify lend themselves to negotiations rather than auctions. But the sheer volume of toxic assets made one-on-one negotiations unappealing.

To get out of this trap, Paulson ditched the TARP plan in November 2008 and switched to injecting TARP funds directly into banks. When this plan failed to spur lending, the Treasury Department, now led by Timothy Geithner, tried to revert to the original auction idea. But in June 2009, it was dropped again due to lack of participation from banks, which were unwilling to mark down their assets. By this point, the banks were clamoring to repay TARP funds and reduce their dealings with the government.

a transaction in which both auction-style bidding and one-on-one negotiation occur in the course of a single deal.

In fact, many (if not most) complex deals between buyers and sellers—from home sales to purchasing auctions to corporate mergers—qualify as negotiauctions. Yet because negotiation and auction advice tend to come from two different camps, real-world dealmakers have had to navigate this rocky terrain intuitively. Here we review Subramanian's guidance on thriving in this challenging yet potentially rewarding environment.

What's a "negotiauction"? A negotiauction has the following features, according to Subramanian:

1. One-on-one negotiations. At some stage during a negotiauction, the seller engages one or more buyers in private discussions about the asset on the table.

2. One or more rounds of bidding. At a certain point during a negotiauction, the seller pits potential buyers against one another in an auction.

3. Several, but not too many, potential buyers. Typically, between three and 10 potential buyers are needed for a negotiauction—enough parties to spark an auction but not so many that one-on-one negotiation would be difficult for the seller to manage.

4. Information disparity. In a negotiauction, the seller usually knows more about the situation and the asset at stake than potential buyers do. Buyers face the challenge of overcoming this information asymmetry.

5. Process ambiguity. In a traditional auction, the seller determines the process (whether there will be a single round of bidding or multiple rounds, for instance), and buyers are passive participants. In a negotiauction, by contrast, the process is up for grabs. Canny buyers seize opportunities to change the process to their advantage, as the two publishers did in our opening example.

A negotiauction often begins as an auction that narrows the field, followed by one-on-one negotiations with the highest bidders. But that's not always the case. Someone shopping for a new car could hold an Internet auction and then try to negotiate better terms with the lowest bidder. Alternatively, she could first meet with dealers individually to discuss options and only later encourage them to engage in auction-style competition for her business. As this example illustrates, perhaps the key trait of negotiauctions is flexibility.

The seller's perspective: Setting the process. Imagine that as the seller of an asset, you're in charge of setting up a negotiauction. How should you determine when to negotiate and when to hold an auction? In *Negotiauctions*, Subramanian presents a comprehensive framework to help you decide. Here and in the table on the previous page, we review four key points:

1. Profile of potential bidders. Don't assume that you should automatically negotiate if you have few potential buyers and hold an auction if you have many. Although the number of bidders is important, other bidder characteristics matter, too. In general, if the bidders are well known to you, if they have strong alternatives to negotiating with you, and if they value your asset very differently, negotiation makes more sense than an auction.

2. Asset characteristics. Three key features of your asset can guide you toward the right process: (1) if you can clearly specify the asset you're selling (whether boxes of paper or an heirloom necklace), it's time to auction, but if an asset is hard to pin down (such as business services or "toxic assets"), focus on negotiation; (2) if issues other than price are at stake (such as delivery time and new business), use negotiation to add value to the deal; (3) if you want to build a long-term relationship with the winning buyer, lean toward negotiation.

3. Seller profile. Next, examine your profile as the seller. If you're in a hurry, an auction might seem like a natural choice, as auctions are generally quicker than negotiations. But note that with speed comes risk. If no bidders or only one bidder shows up to your auction, you've doomed yourself to a bad deal. So if risk is a concern, lean toward negotiation.

4. The broader context. If it's important to you to keep your potential deal a secret, as might be the case if you're selling your business, the privacy of negotiation may be a better fit than the more public nature of an auction. By contrast, if transparency is important, hold an auction. Governments, for example, often choose to auction off contracts to avoid accusations of corruption or bias.

When planning a negotiauction, determine which factors are most important to you and plan your process around them, giving yourself flexibility to adapt the process as it unfolds. Consider allowing your potential buyers to innovate as well. As Robert Barnett learned in his auction of the Carville-Matalin memoir, bidders may make moves that not only improve their own fortunes but also the seller's.

The buyer's perspective: Changing the game. "The relentless pursuit of game-changing moves" is what sets great negotiators apart from very good negotiators in negotiauctions, writes Subramanian. As a buyer, rather than assuming that you must abide by the seller's deal-making process, consider whether you can implement one or more of these three moves and pull ahead of the competition:

1. Setup moves. Imagine that you've conducted one-on-one negotiations with a customer for many years. Out of the blue, the customer informs you that your contract is being put up for bid. You and a host of other suppliers are being invited to participate in a single-round online auction in which the lowest bidder will walk away with the contract.

Should you accept the customer's terms without comment? Absolutely not. "It is very rare for the rules of an auction to actually be rules," the late dealmaking legend Bruce Wasserstein told one of Subramanian's Harvard classes. "When there are rules, you always have to think of the way you want to play it and what degree of hand you want to show."

With this advice in mind, you might schedule a meeting with your longtime customer and deliver this message: "My company may not be participating in your new auction format. You've depended on us for a quality product for many years, but we predict that whoever wins your auction will have to sacrifice quality to deliver on price. I propose that instead of haggling, we discuss new ways of improving our contract to our mutual benefit."

This type of setup move establishes your terms of entry into the negotiauction. Remember that your participation in a deal can have value. Rather than giving that value away, extract concessions for it.

2. Rearranging moves. Either at the outset of a negotiauction or as the process unfolds, you can try to rearrange the assets, the parties, or both in a way that adds value to the deal. That's what Simon & Schuster and Random House did when they teamed up in Robert Barnett's book auction. Note that this move benefited all parties in the deal (except for the losing bidders).

Forming alliances with other bidders is one way to gain leverage in a negotiauction. Another way is to solicit help from outsiders. In Negotiauctions, Subramanian tells the story of a group of women enrolled in one of his Harvard Business School MBA classes who teamed up to try to beat a group of their male classmates for a coveted prize—dinner at the home of a well-connected professor—in a charity auction. Knowing the men would bid high, the women asked Subramanian (and presumably others) for a donation to their cause. Though ultimately the women were outbid by the men, the point is that this type of creative thinking can transform you from an underdog into a front-runner.

3. Shutdown moves. A shutdown move prematurely cuts off competition on the same side of the table. A last-minute stealth bid in a traditional auction that allows the bidder to negotiate exclusively with the seller is one example.

When Primedia put *New York* magazine up for sale in 2003, Bruce Wasserstein initially disavowed interest in bidding—yet he submitted a stealth bid just minutes before the deadline and won the prize. Wasserstein's shutdown move succeeded because of his edge in the negotiauction: a long-standing relationship with the indirect owner of the magazine and a background in journalism. Two of Wasserstein's chief competitors for New York, billionaire media mogul Mort Zuckerman and American Media, later said they were prepared to outbid Wasserstein, but the seller wouldn't give them the opportunity.

To carry out a shutdown move, first figure out if you have an edge—unique expertise that allows you to evaluate the asset's value better than your competitors. Second, make sure your offer improves on the seller's perceived alternatives—or worsens them. For example, threatening to withdraw from an auction if your final offer is turned down might inspire a seller to accept it if she'd be left with a much less appealing option. Finally, time your move carefully, lest it backfire. A shutdown bid delivered at the start of an auction, for instance, could inspire a bidding frenzy that drives you out of the race.

By Katherine Shonk, Editor, *Negotiation* newsletter.
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6. When Your Agent Works Against You

With newspaper sales sliding nationwide, the Tribune Company—owner of the *Chicago Tribune,* the *Los Angeles Times*, and numerous other media outlets—put itself up for sale in 2007. Vowing to whip the company into shape, Chicago-based real estate mogul Sam Zell, who had no experience running newspapers, submitted a winning bid of $8.2 billion to take the public company private.

The deal was brokered by JPMorgan Chase, which, along with other banks, participated in the two rounds of funding needed to raise the billions Zell borrowed to purchase the Tribune Company. Backing the deal was an employee stock-purchase plan that left the company $13 billion in debt. JPMorgan Chase and the other banks involved in the leveraged buyout received a total of $283 million in fees for their work.

In his new book, *The Deal from Hell: How Moguls and Wall Street Plundered Great American Newspapers* (PublicAffairs, 2011), James O'Shea, a former managing editor of the *Chicago Tribune* and former editor in chief of the *Los Angeles Times*, uncovers some of the little-known details of the Tribune Company sale, including an apparent desire within JPMorgan Chase to do the deal despite clear evidence that it was unlikely to be profitable for Zell in the long run.

According to O'Shea, the bank's chairman and CEO, Jamie Dimon, expressed doubts about whether the deal was a wise one, given the Tribune Company's troubled state, but decided Zell's business was too lucrative to lose. And in an e-mail to a colleague, one junior analyst at JPMorgan Chase described the bank's determination to "suck $$$ out of the (dying or dead?) client's pocket"—that is, the Tribune Company.

According to O'Shea, a JPMorgan Chase vice president advised Zell on whom to fire and whom to hire for top positions at the Tribune Company. Just a year after the sale, the Tribune Company filed for bankruptcy. Like its parent company's finances, the editorial reputation and circulation of the *Chicago Tribune* had plummeted under the inexperienced management team Zell put in place.

Think of the last time an agent represented you in a negotiation. Perhaps you hired a lawyer to review the terms of a new contract. Maybe you enlisted a real estate agent to help you bargain over the price of a house, or you assigned a subordinate to take charge of talks on behalf of your department.

As the negotiation unfolded and your agent reported back to you, did you pause to think about his personal interests in the negotiation and how well they were aligned with your own? Or did you simply take his decisions and advice at face value?

When we lack the knowledge, connections, or time needed to conduct a particular negotiation, agents can be invaluable partners. They can give us entrée and insight into closed societies, from the New York literary world to the National Basketball Association. They can bring years of experience in their field to bear on our most important transactions.

But the prospect of negotiating in an unfamiliar realm—whether a business merger, a legal settlement, or a book deal—can cause us to give a great deal of power to our agents. Lacking understanding of how an industry works, we may end up revealing too much to them, giving them too much decision-making power in our negotiations, and, as may have been the case with Zell, rewarding them for telling us what we want to hear.

Mismatched incentives. One reason the relationship between you and your agent can be challenging is that your incentives will almost never line up perfectly, write Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello in their book *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Belknap Press, 2000). The agent's fee structure is to blame. No matter how your agent is rewarded for her work, she usually will face "perverse incentives" to act contrary to your interests.

Suppose that a man named Phil enlists Janice, a real estate agent, to help him sell his house. Typically, Janice would receive a commission of 6% when she sold the house, which she would split in half with the buyer's agent, if there was one, and then split again with her firm. So if Phil received and accepted a $500,000 final offer from a seller, Janice would earn $30,000, approximately $7,500 of which she would keep.

If Phil held out for a better offer, with a great deal of effort, Janice might be able to sell the house for $525,000, which would earn her an additional $1,500—perhaps only $375 of which she would keep. Would this extra work be worth it to Janice? Perhaps not, if she instead spent that time trying to sell someone else's house. Consequently, she might counsel Phil to accept the $500,000 offer.

Who should do what?

You and your agent can allocate roles in the negotiation by answering the following questions, Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello write in *Beyond Winning*:

- What skills does your agent bring to the table?
- What skills could you, as the principal, lend to the negotiation?
- Which of you has more information relevant to the negotiation?
- Who has more negotiating experience?
- Who has more time or desire to engage in the necessary prenegotiation preparation?

Indeed, in their study of 100,000 home sales, University of Chicago professors Steven D. Levitt and Chad Syverson found that real estate agents kept their own homes on the market about 10 days longer than their clients' homes, on average, and sold their own homes for 3.7% more. (Note that this type of bias is often not conscious; Janice, for instance, might reason to herself that Phil shouldn't pass up a disappointing offer in the midst of a housing crisis.)

Fee structures other than a sales commission could be equally problematic in this situation. If Phil paid Janice by the hour (an unlikely arrangement in the real estate industry but a more common one in fields such as consulting and litigation), she would have a reason to drag out her work to maximize her fee. What if Phil promised to pay Janice a set fee, such as $30,000? Once again, Janice would have little motivation to get Phil a price higher than $500,000.

Other fee structures are possible as well, including combinations of the arrangements we have described. All entail at least some mismatch between the principal's incentives and those of his agent. Compounding this problem, it can be difficult for clients to monitor their agents' behavior to ensure that they are doing what they promised to do.

Returning to the Tribune Company deal, JPMorgan Chase acted as if its primary incentive was to maximize its fees. Zell, by contrast, had an interest in buying a company that could become profitable. The bank's short-term goal appeared to conflict with and override Zell's longer-term goal.

In situations where it would be best to negotiate through an agent, how can you overcome the potential pitfalls of mismatched incentives? There are several concrete steps you can take to improve your agent's accountability.

1. Negotiate contract terms. Don't assume that you have to accept an agent's standard contract terms and then worry about whether she will put your interests first. Instead, share your concerns, and work with the agent to tailor a fee arrangement specific to the context, Mnookin and his coauthors recommend.

If you want your agent to thoroughly research all the market opportunities, paying by the hour might make the most sense. But if you want him to do his job quickly at a low cost, it might be best to agree on a fixed fee.

If you expect to have a particular agent work with you on multiple negotiations over time, you (or your organization) could put him on salary. When an agent is paid at regular intervals over time (that is, in the form of a paycheck), he may have greater motivation to work toward long-term goals, such as your company's financial health, than if he were to receive a one-time payment.

Finally, keep in mind that incentives need not be financial. The possibility of future business, a glowing endorsement to your network, or a promotion are other carrots you might dangle to ensure that an agent stays focused on your goals.

2. Negotiate how you'll negotiate. You can also attempt to control your agent's incentives by negotiating the roles each of you will play in the upcoming talks. As the authors of *Beyond Winning* write, you might choose to do all the negotiating yourself and simply use the agent as a behind-the-scenes coach. At the other end of the spectrum, the agent might be at the bargaining table without you, filling you in and getting your approval for key decisions as needed.

Industry conventions often dictate the degree to which you will be involved. In real estate, sports, entertainment, publishing, and litigation, for example, agents typically do all or most of the negotiating on behalf of their clients. This doesn't mean you can't challenge convention, of course. An open discussion of your individual strengths can ensure that you maximize your power at the table.

In the Tribune Company deal, both Zell and his advisers at JPMorgan Chase were hampered by a lack of knowledge about the newspaper business. When both

When it's better to be in the dark

When your agent negotiates on your behalf, it's generally smart to have her keep you in the loop throughout the process with regular phone calls, e-mails, or meetings. But in a recent article in Poets & Writers magazine, literary agent Betsy Lerner identified conditions in which you might prefer to be uninformed.

When a writer signs with a literary agent, the agent typically sends the writer's work to a handpicked group of editors at the major New York publishing houses—from as few as three editors to as many as 20, depending on the book's prospects and the agent's submission strategy. After pitching the book's virtues, the agent must sit tight and wait for the phone to ring.

For both the agent and his client, this is an intensely nerve-racking time. As the hours and days tick by, the agent might get a call or two from editors who have fallen in love with the manuscript. Should the agent share such promising news with her client? Not necessarily. "I explain that they can either get on the ride with me or go off on a retreat," one agent told Lerner. This agent prefers to get in touch with her writers when she has news—"a rejection or an offer, but nothing in between."

Why would an agent keep information from her client? Because in an era of slumping book sales, an editor's enthusiasm for a manuscript stands a good chance of being dampened by her company's editorial board or sales or marketing department. In such cases, the writer's desire to stay on an even keel may outweigh the benefits of being up-to-date.

you and your agent are unqualified to make judgments about certain issues that will be factors in the negotiation, you might either find a more knowledgeable agent or supplement your agent's advice by seeking help from experts in these realms.

If your agent will be negotiating on your behalf, you will want to spend some time discussing her authority to reveal information and make decisions. Mnookin and his coauthors advise against revealing your reservation value, or bottom line, to your agent and allowing him to bargain down to that point. Not only is your bottom line just one factor that will fluctuate as other issues are discussed, but you also will be tempted to inflate it to motivate your agent to aim higher. A better plan may be to give your agent the freedom to brainstorm creative solutions at the table while requiring him to consult with you before making any binding commitments on your behalf.

3. Account for the other side's agent. An often-overlooked aspect of negotiating through an agent is the effect of the other side's agent on your talks. Just as your interests and your agent's are imperfectly aligned, so are those of the parties across the table. For the reasons we have discussed, if someone has made an offer on your house, you can be fairly confident that the potential buyer's agent will be motivated to close a deal—and earn his commission—more quickly than his principal will be.

You, your agent, or both of you can take advantage of the misaligned incentives across the table. In the real estate example, your agent may be able to make inroads by appealing to the desire of the buyer's agent to wrap up the deal. And if you feel the other agent is representing his principal's interests poorly, you could threaten to go over his head to his principal. This strategy will threaten your relationship with the agent, but it could be worth the risk when you are at an impasse. Your own agent may be especially adept at identifying potential agent-principal problems on the other side of the table.

3 tips for keeping your agent in line

1. Match your agent's fee structure with your needs as closely as possible.
2. Allow your agent to brainstorm but limit her decision-making power.
3. Ask your agent to help identify perverse incentives across the table.

By Katherine Shonk, Editor, *Negotiation* newsletter.

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