

Excerpt from:

"When David Meets Goliath: Dealing with Power Differentials in Negotiations."

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SUMMARY:

... Negotiation power depends less on the other side's strength than on one's own needs, fears, and available options. ... Almost without exception, parties preparing for or engaged in negotiation seek greater power to improve the outcome for themselves. ... Dealing with power disparities-even as the party with greater power-also requires developing and improving one's negotiation skills. ... Disproportionately greater power on the part of one party in a negotiation often reduces the likelihood of a favorable outcome for the powerful party, producing what Professor William Ury calls the "power paradox": "the harder you make it for them to say no, the harder you make it for them to say yes." ... In similar fashion, accurate information about an opponent's intentions, strength, or vulnerabilities can dramatically alter the power dynamic of a negotiation. ... Virtually all negotiation experts advise this, although they often use different terms to describe walkaway point. ... Given the prospective employee's potent walkaway point, the power equation in the negotiation has shifted dramatically. ... What is critical is not just a reading of the opponent's power in a given negotiation, but also of his or her perception of the power dynamic. ... Effective mediation can also help a weaker party become more realistic about what he or she seeks in a negotiation. ...

V. Bargaining With More Powerful Parties: Specific Approaches

We now turn to specific advice for those facing opponents with greater power. As a starting point, we stress several thoughts about this negotiation challenge. First, our suggestions cannot change certain features of the bargaining landscape. Although taking particular steps, such as acquiring greater information, can enhance one's leverage in a given situation, there are usually aspects of the underlying power differential that remain fixed. This means that even when optimizing opportunities in a negotiation, one may still end up with an agreement that tilts substantially in the other side's favor when substantial power disparities exist. A "weak" agreement may be the best obtainable option under this circumstances-perhaps better than no agreement. This result does not necessarily mean that one is a poor negotiator.

Conversely, merely because one is able to force a one-sided deal on a relatively weaker party does not mean that one is a good negotiator. What matters in these situations is whether one has achieved the optimal agreement under the circumstances.

Moreover, our suggestions do not guarantee a "happy" ending to most negotiations. In fact, paradoxically, they may lead to less contentment than not following them. For instance, we advise negotiators to raise their aspirations, which is an approach that may produce fewer joyous bargaining moments, but better overall deals. In this sense, happiness will depend more on achieving one's goals than on attaining a particular objective outcome.

Further, everyone approaches negotiation with a unique personal style, which he or she must strive to understand and master. To be an effective bargainer, one must work within one's given personality and negotiation style. But, one must be careful not to make hasty or unduly pessimistic judgments about style and one's ability to improve it. Aside from the fact that negotiators sometimes do not truly understand how others perceive them, they also do not always realize the capacity that they have for improvement. It is possible for those who believe themselves timid to become more assertive and for those who view themselves as aggressive to become more sensitive.

Finally, we note that there is no omniscient scorekeeper who will blow a whistle when one has underperformed or ring a bell when one has done well. Once a deal has been struck, asking the other side whether we have extracted all of the concessions they were prepared to give is unlikely to trigger a full and honest response. In short, one has to operate somewhat blindly in the real world when it comes to assessing success or failure.

With these caveats in mind, we now turn to a set of suggestions for negotiators facing more powerful opponents.

A. Determine Whether the Other Side Really is More Powerful

Determining one's power in a negotiation requires more than a simple calculation and comparison of each party's individual power. Power depends on a complex interplay of the parties' perceptions about what each can do to or for-or without-each other. Accordingly, one always needs to assess how much each side needs or fears the other, and what each side's alternatives are to striking a deal.

How does one make this determination? As a starting point, one must set aside any tendency to translate his or her anxiety about negotiating into an unproven assumption that the other side carries greater power. Moreover, even if the other side is powerful, we must still decide whether the opponent has power over us. To make this judgment, one must ask the following questions:

- What is it that I want and need from the other side?
- What negative action can the other side take against me if no agreement is reached?
- What alternatives do I have to entering into this agreement?

Asking these questions helps avoid the natural, but misguided, approach of simply assessing the other side's power in the abstract. The fact that the other side is rich, handsome, and famous has little relevance to a power determination where we hold something that they desperately want, and they have little that we desire. But, there is more. Equally important, but often overlooked by nervous bargainers, is an assessment of the other side's dependence on us. Accordingly, one needs to question further:

- How badly does the other side want or need something that I have?
- What negative action can I take against the other side if no agreement is reached?
- What alternatives does the other side have to reaching an agreement with me?

One who has calmly and realistically addressed these questions will have a far better sense of the underlying power dynamic in a negotiation than one who merely looks to how powerful an opponent is in the abstract. In some cases, having undertaken such an analysis, one may conclude that one's power with respect to the upcoming transaction is greater than previously estimated.

B. Determine Whether Adversaries Understand and Will Use Their Power

Given what we believe to be a negotiator's natural tendency to assume that the other side has superior power in a given situation, negotiators should look to whether their opponent has entered into the bargaining in an extremely fearful or awed manner. This possibility seems so far-fetched to some bargainers that they miss obvious signs of their opponents' anxiety or misread them as indicators of hostility. At such moments, opportunities for gain will be missed if one fails to assess the other side's perception of the power dynamics accurately. What is critical is not just a reading of the opponent's power in a given negotiation, but also of his or her perception of the power dynamic.

Similarly, if the other party, although aware of his or her power, is nonetheless unwilling to use it, then the opponent lacks effective power. Effective power requires the realistic likelihood that some sort of forcing action will be taken if necessary. For example, during World War II, German General Dietrich von Choltitz, commandant of occupied Paris, received a direct order from Adolf Hitler to burn the city and to blow up all of its bridges. Mindful of Paris' grandeur and of the inevitability of Germany's defeat, von Choltitz refused and evacuated his troops, leaving the city intact. Lacking the will to destroy the city, von Choltitz had only the option of retreat. In short, if one wishes to make an accurate assessment of the power dynamics of a negotiation, he or she must determine both the other side's leverage and the opponent's willingness to use it.

C. Use Opening Moves to Set the Tone and to Deflect Power Plays

First impressions matter. Research suggests that parties typically establish the entire tone of a negotiation through the first array of moves and gestures. This so-called "primacy effect" means that negotiators concerned about a power imbalance in an impending deal need to be particularly concerned about how they come across to the other side. If they demonstrate nervousness, tentativeness, or hesitation in their introduction or if their voice trembles and they cannot give proper eye contact, their opponents may seize upon their perceived weakness and seek to exploit it. Accordingly, one needs to prepare physically and psychologically for making an appropriate first impression. The trick, if one exists, is not so much to look intimidating as it is to appear thoroughly comfortable in the negotiation setting.

Deciding on the proper tone of a first meeting is critical. If one wishes to have the bargaining proceed in a cooperative manner, one needs at the outset to take steps to set a mood of trust and collaboration; if one wishes to use a "power-dominant" approach, one needs to set that tone at the earliest stage of the interaction. Different openings will depend on the setting in which one wishes the negotiating to proceed. Regardless of the mood one selects, however, one must generally attempt to appear strong and confident. This does not mean that one

needs to attack or display hostility. It does mean that one should present a demeanor indicating that one is prepared for all eventualities and able to cope easily with the pressures of the bargaining.

Most experts counsel that one of the first goals of impression management is creating trust between the parties. Trust is essential for effective negotiation in all settings, even those involving elements of competition and aggression. Although trust more often than not arises when positive feelings exist between parties, liking someone is not the same as trusting that person. Trust involves more. Trust means that one is willing to become vulnerable to action by the other side. As Professor Thompson points out, trust generally arises when the parties risk exploitation by each other, not when they remain isolated and protected. Accordingly, to trust the other party, one must believe that the opponent will not take advantage when one's guard is dropped.

How is trust established? Available research indicates that negotiators tend to approach those whom they do not know (or know about) warily. Until given evidence that the other side can be trusted, many will not risk making themselves vulnerable. This suggests a cautious strategy involving a high degree of reciprocity—one trusts on small matters and looks to see whether the other side takes advantage of one's vulnerability. One then sees whether the other side will take a similar trust-creating step. In this way the bonds of respect and support grow.

Suppose, instead of seeking to create trust, the other side appears to want to establish his or her dominance through threats and demands? We believe that this is the point where an appropriate response can make or break the negotiation. First, one needs to be certain that an opponent truly intends a power play. In some cases, our anxieties can lead us to conclude that we have been attacked when the other side simply wishes to make a point or ask a question.

For example, consider the statement, "We don't seem to be getting anywhere. Let me make a suggestion." Depending on the circumstances and context of this statement, one might be justified in concluding that the other side is attempting to seize control of the situation or that he or she is simply trying to be helpful. It is critical to understand which approach is contemplated.

Second, assuming that a power play is at hand, one needs to suppress any immediate reaction to respond in kind, to submit, or to abandon the negotiation. Instead, according to Professor Ury, without showing fear or acting defeated, one needs to respond in as positive a manner as possible to advance the negotiation rather than to derail it. Because power is so much a matter of perception, one must show confidence even if one does not feel it.

Third, one needs to reveal one's own power in careful fashion to demonstrate that a pure power approach to resolving the issues will be costly for both sides. Merely because the other side carries a power advantage rarely means that one is completely without power. As we shall discuss, one often has more leverage than might be initially thought.

D. Use Information Strategically to Increase Power

We reiterate that information is crucial to the bargaining process. More so than any other power source, information provides the greatest opportunity to shift the dynamics of a negotiation. Properly gathered information permits negotiators to discern their opponents' weaknesses, vulnerabilities, likes, dislikes, strategies, and aspirations. This permits negotiators to meet the other side's needs effectively, and to anticipate and block power plays by the other side. Accordingly, one facing a more powerful opponent needs to devote extraordinary effort prior to the day of bargaining to acquire information that might enhance his or her leverage. For example, consider the impact of careful preparation in a negotiation between a South African coal company and Nippon Steel Company, as reported by one of the coal company executives:

We arrived at the venue well prepared (we thought) and soon got down to business, quoting our price, which we knew was cheaper than anything else in the world. Then the dreaded words from Mr. Shibuya that I'll remember until my retirement "Please, Mr. Smith, explain to us how you worked out your price, because we also worked out your price for you and get a different figure Shibuya then commenced to put an impressive document on the table: on that they had detailed figures of SATS tariffs, on tonnage, on insurance, on the cost of our administration. What audacity! Yet they were right: on closer inspection we could not fault them on a single point. Their figures were even more recent than ours. They had better information on our own product than we ourselves! How on earth do you counter this across a table?

What makes this example so illustrative of the strategic use of information is that, prior to entering the negotiation, the South African coal company appeared to enjoy a substantial power advantage, given that it could offer Nippon Steel the lowest price of coal obtainable in the world. Notwithstanding that, Nippon Steel, invoking its research results, seized the power advantage.

Assuming that one has done sufficient homework and acquired critical information, one needs to ponder carefully how to put such information to use. One of the most effective approaches is to test the other side's trustworthiness. For example, prior to the Cuban missile crisis in 1962, President John Kennedy met with Soviet Foreign Minister Andrei Gromyko. Prior to the meeting, Kennedy had obtained Air Force photographs of Russian missiles in Cuba. At the meeting, Gromyko repeated his country's insistence that they would never introduce offensive weapons into Cuba. With clear evidence to the contrary, Kennedy concluded that the Russians had acted duplicitously and, several days later, imposed a United States' "quarantine" on the introduction of offensive weapons into Cuba.

In other instances, one needs to share information openly and immediately, especially at a point where one has learned of the other side's needs and interests. In such cases, revealing that one can meet those needs will hasten the development of an excellent deal. For example, if a real estate agent who has unsuccessfully sought waterfront property for a couple determines that they seek such property only for the view (as opposed to recreational use), the agent might be able to sell them a lot that overlooks a lake but does not actually abut the water.

In still other cases, one might disclose some, but not all, of the information one holds at an early stage of the negotiation. One might disclose more as the negotiation progresses. Revealing more and more of what one knows can impress the other side and convince him or her that one holds more information than one might actually have.

E. Develop Additional Alternatives to Improve One's "Walkaway Point"

As we have discussed, one extremely effective way of dealing with more powerful parties is by creating attractive alternatives to an agreement with the stronger party. Creating alternatives, i.e., improving one's "walkaway point" or BATNA, enhances power by reducing one's dependence on the other side. By seeking additional alternatives, one may look for other ways to meet one's needs or to counter the negative actions that an opponent can take. In so doing, one can substantially affect the relative power of each party. That is, one who has acquired new alternatives becomes more powerful, and the other party less so, with respect to the transaction at hand.

One of the most positive aspects of developing alternatives is that in many cases they can be pursued outside of the immediate negotiation setting, without a high-powered adversary's knowledge or interference. For example, an employee who has quietly secured several attractive job offers before asking for a raise has enhanced his or her leverage without having to confront the employee's boss. With a tightfisted or overbearing superior, this may be the most effective strategy available. Not only has the employee improved the prospects for a raise, he or she may appear more valuable to the company because of the outside hiring interest.

Because attractive alternatives may take time to create, one who seeks to develop them needs to plan in advance what they will be and how to secure them. In addition, one needs to prepare for whether and when one will reveal them to the other side. Sometimes, parties openly and aggressively seek alternatives. In the case of the 1980 Olympics hosted by the Russian government, for example, the Soviets insisted that there be multiple bidders, ensuring that if one network dropped out, another would be available to buy. Publicly pitting the three major American television networks against one another, the Russians substantially enhanced Soviet leverage in the negotiations.

One should also be alert to the possibilities of an opponent trying to maintain his or her leverage by eliminating one's alternatives. Suppressing or eliminating an opponent's alternatives affects power dynamics in reverse fashion to that of adding them. The party who succeeds in doing so effectively increases his or her power by making the other weaker. To illustrate, we cite another example of Russian negotiating tactics. In the mid-1950s, the Soviets wished to purchase a tract of land on Long Island, New York to provide a recreation site for its embassy employees. As an initial step, they obtained an exclusive one-year option on the land for a small amount of cash, and insisted that the option be kept secret. They then began negotiating with the land owners, but, to the owners' dismay, the Russians offered only pitifully small amounts. Slowly, it dawned on the owners that, by signing the option, they had given up any ability to turn to other purchasers. Saddled with no immediately available alternatives and needing cash immediately, the owners eventually sold to the Russians at a substantially reduced price.

Sometimes even the unsuccessful pursuit of alternatives can produce positive results if it intimidates an opponent or demonstrates the tenuous nature of an opponent's power position. For example, in 1937, after the U.S. Supreme Court had declared eleven of President Roosevelt's New Deal laws unconstitutional, the President took the extraordinary step of seeking legislation to expand the number of Justices on the Court. Expanding the Court would have permitted him to appoint enough liberal Justices so that his legislation would be upheld. Despite Roosevelt's immense popularity, the Congress refused to pass the bill. Nonetheless, the initiative evidently unsettled the Court enough so that it suddenly reversed itself and began upholding legislation that it had previously invalidated.

We cannot overemphasize the power of seeking alternatives. The more desperate a weaker party's position, the more aggressively we would advise him or her to seek alternatives. For example, the British almost overnight assembled a rag-tag fleet of ships and boats to rescue the 300,000-plus soldiers stranded in Dunkirk, France at the beginning of World War II. Without such an alternative, those soldiers would either have been killed or captured, perhaps turning the tide of war for the Nazis. Faced with imminent defeat, the British crafted a last-minute alternative that few would have thought possible. The worried negotiator should similarly search for options in the midst of adversity.

F. Research Available Legal Protections

As we have discussed, although common law protections for weaker parties exist, they typically require the stronger party to have inflicted some form of overreaching or abuse. While our review suggests that the number of instances in which courts will invalidate agreements is limited, we still counsel a careful examination of existing law when one confronts a more powerful party—particularly when one is a consumer facing a commercial entity.

In many instances, federal and state legislatures have enacted specific consumer rights protections in response to consumer complaints about imbalances in bargaining power with merchants. As a result, many common consumer transactions are covered by some sort of protective legislation. Purchases of real estate, cars, consumer durables, cable and satellite television services typically fall under one or more consumer protection statutes. In many cases, the statutes require specific disclosures designed to reduce overreaching by sellers. In others, legislation provides specific redress that goes far beyond common law protections. One can substantially enhance negotiation leverage by determining that the other side must comply with specific statutory provisions before entering into a contract.

G. Explore Interests as Alternatives to Power Plays

As unabashed admirers of Fisher and Ury's "principled negotiation" model, we endorse the approach of actively seeking to satisfy mutual interests, whenever possible, over engaging in power displays. Under a principled negotiation approach, bargainers seek ways, regardless of which side holds a power advantage, to sidestep conflict and to focus on exploring and meeting each other's needs. Anything that distracts the parties from pursuing interests undermines the likelihood of reaching agreement. In fact, the parties may discover that their

interests do not conflict and that both may be satisfied. Moreover, few negotiators enter a round of bargaining with the goal of simply overwhelming the opposition.

That is not to say that negotiators never seek to pulverize the other side. Clearly, they sometimes do (triggering one's walkaway point if one is prepared). But, annihilation, if attempted, is usually a means to reach negotiation goals, not an end in itself. Powerful parties, lacking patience or negotiation expertise, may resort to brute force if not shown another way. They may, however, be drawn to more collaborative means if convinced that these means will satisfy their goals. This is where principled negotiation, if done well, proves to be so powerful. Because it focuses on meeting needs, not on power plays, it should hold more allure for the parties truly interested in reaching substantive agreements.

H. Avoid Unnecessary Conflict, But Retaliate If Necessary

One way to ensure that the parties will stay focused on pursuing interests is to avoid unnecessary conflict. We stress the term "unnecessary" because we realize that some level of conflict neither can be nor should be avoided. Our point is that if one loses his or her temper in a negotiation, the likelihood of an acceptable agreement diminishes rapidly. In particular, one should try to avoid reacting destructively to another's annoying style, especially when the other side attempts to play a power game. One generally needs to react, but in a way that promotes positive movement. Rather than accuse, one should describe the situation and one's feelings to alert the other side that the bargaining has become more tense. We offer the following advice for communicating displeasure to another:

- explain the behavior that upsets you in specific and objective terms;
- describe your feelings about what bothers you;
- try to get your opponent to view the matter from your perspective;
- do not accuse your opponent of misbehavior;
- show respect for your opponent; and
- apologize for any misunderstanding that your own behavior might have caused if that will help move the discussion without making you appear weak.

What is critical in situations where one party has unleashed a power play or has acted in a way that offends an opponent is to provide feedback that the behavior will not be tolerated, but to do so in a manner that does not begin a cycle of attack and retaliation. Much of Professor Ury's book, *Getting Past No*, focuses on ways of doing this. He freely acknowledges that power plays often occur in negotiations and, in fact, advocates that one employ power in appropriate ways. But, he argues for a judicious and strategic approach:

Treat the exercise of power as an integral part of the problem-solving negotiation. Use power to bring the other side to the table. Instead of seeking victory, aim for mutual satisfaction. Use power to bring them to their senses, not to their knees Use your power to educate the other side that the only way for them to win is for both of you to win together. Assume the mind-set of a respectful counselor. Act as if they have simply miscalculated how best to achieve their interests. Focus their attention on their interest in avoiding the negative consequences of no agreement.

The way one brings the other side to their senses is by using power to educate, to convince the other side that a negotiated agreement that satisfies both sides' interests is a more sensible solution than mutual destruction. How does one do this? There is no guaranteed approach, of course, but we advise that one speak in sadness about how a resolution through conflict would be deplorable-making sure to describe the tools in one's arsenal that could be deployed in such a circumstance. Doing this sends a signal that although one is not defenseless, one prefers a negotiated settlement.

Moments when power ploys have been attempted or when emotions run high require careful attention to subtle signals from the other side. By pushing hard for concessions in a visible manner, the other party has made it difficult for himself or herself to back down without embarrassment. This is the point when one needs to provide an easy way for the other side to retreat and to look for small, indirect signs that one's opponent has decided to do so.

In those cases where a subtle approach does not deter a power ploy, one may well have to move from hints of dire consequences to more explicit approaches. Even here, however, we urge a low-key approach. Research suggests that careful warnings are less likely to escalate conflict than express threats. The trick is to show the capability to take effective action against an opponent, but always to indicate a preference for a negotiated agreement.

Finally, in some instances, one may have no choice but to take punitive action against an opponent who has launched an attack as a means of gaining advantage in a negotiation. Failure to retaliate, unfortunately, invites exploitation. The form of punitive action that one takes is critical. One should always characterize one's action as defensive in nature and point explicitly to the action that provoked it. Simultaneously, one should insist that one seeks to resolve differences by negotiation, not by power plays. Defensive actions lessen the chance for conflict escalation (in contrast to offensive actions designed to establish dominance).

I. Identify and Counter Power Ploys

Perhaps the most commonly cited reason given by our students for taking a course about negotiation is to learn how to use and to counter bargaining "tricks" and "ploys." Virtually every expert who has written on the topic of negotiation has offered advice on negotiation tricks. The number of potential ploys is enormous, leading some, we fear, to conclude that those who learn the largest number of tricks will "win" the negotiation. We disagree. Although one should certainly be alert for power ploys and tricks, we remain skeptical that most can prove successful against negotiators who have planned carefully and who have thought out their strategies thoroughly.

Most power ploys and tricks aim to gain a psychological advantage. Some do so by tricking opponents into lowering their guards and revealing valuable information; others seek to intimidate or disorient adversaries so that they lose focus and open themselves to exploitation; still others attempt to maneuver other parties to negotiate against themselves, i.e., to engage in a series of unilateral offers that are not reciprocated. We briefly describe below several of the more commonly used ploys and then offer some suggestions for countering them.

1. Intimidating Atmosphere - Because negotiation power arises from perceptions, those who effectively manage the image they present can substantially enhance their leverage when they bargain. They seek "impression management" through a combination of tactics. They dress in "power" clothing, they work in large, elegant offices, and they sprinkle their discussion with important names and events with which they have personal connections.

Other more aggressive measures include: insisting that meetings be held on one's home turf, scheduling meetings for inconvenient times, seating opponents in uncomfortable chairs, seating opponents with the sun in their faces, making opponents wait for extended periods for meetings to start, interrupting meetings with "important" phone calls to impress or intimidate opponents, engaging in side conversations that demonstrate "toughness" while knowing that one's opponents are overhearing the conversations, or asserting that certain issues are "non-negotiable."

Perhaps the most effective way to deal with these annoying ploys is to act confidently and ignore them. In some cases, however, it may be necessary to take specific steps to counter them. In most cases, merely identifying the tactic and asking that it cease will put an end to the ploy. For example, if one has been kept waiting for a meeting to start, one might pleasantly, but firmly, inform the other side that one does not appreciate being kept waiting and ask whether future meetings will start late.

2. "Good Guy/Bad Guy" - One of the most widely recognizable power ploys, the so-called "good guy/bad guy" technique, appears to command a large following despite the fact that its use rarely surprises any of those subjected to it. The approach is simple: A team of at least two negotiators subjects the target to "tough" and then to "kind" treatment. Or, one negotiator treats the person harshly while another treats him or her gently. The trick is for the "bad guy" to get the victim sufficiently intimidated, disoriented, or angered that the person looks to the "good guy" for guidance or support. The victim, bonding with the good guy, then makes damaging concessions or admissions to his "buddy." Numerous "B-movies" have depicted this technique as invariably effective during police interrogations.

Despite the popularity of the ploy, we know of no empirical research demonstrating that it produces anything other than annoyed or amused reactions among those subjected to it. Most negotiations in which "good guy/bad guy" is used occur outside of police custody, which means that, unlike the criminal suspect, most negotiators can walk away from the table. Given that the ploy is almost instantly recognizable, we find ourselves skeptical that it operates very effectively with negotiators of even moderate sophistication.

We offer two responses for dealing with this technique. The most simple is to identify its use and to call for the parties to end the ploy. Another, more subtle, response is to adopt a "divide and conquer" approach by negotiating primarily with the more accommodating party. The benefit of this latter approach is that occasionally one will encounter opponents who genuinely carry differing personality traits and who are not

trying a power play. In this case, focusing on the accommodating party may well produce an agreement heavily weighted in one's favor.

3. Anger, Threats and the Madman's Advantage - We can think of no greater deal breaker than runaway emotions. In fact, we suspect that as many negotiations terminate because of lost tempers and hurt feelings as from irreconcilable goals. Once triggered, emotional spirals tend to follow predictable patterns, typically escalating rapidly and often irretrievably. Given the explosive nature of emotions, one might imagine that negotiators would hesitate to use angry displays to achieve negotiation results. Yet, this seems to happen all the time.

Most negotiators at one time or another have encountered opponents who react angrily at even the slightest objection to their offers-often with great success. Anger, it seems, can be extremely effective at times by breaking impasses, emphasizing points, and dissolving opposition. Anger may work because parties see angry opponents as being particularly sincere and committed on the points that have triggered their temper loss. Facing such strong feelings, the parties may seek to accommodate them by making concessions that they otherwise might not have made.

At the more extreme levels of fury lies what Professor Schoonmaker refers to as the "Madman's Advantage." That is, negotiators can sometimes achieve their goals by acting irrationally. This approach works, he notes, because irrational parties appear indifferent to the possibility of retaliation or revenge that might deter others, thus raising the cost of conflict to potentially unacceptable levels.

Effective responses to anger vary widely. If an opponent's anger has disoriented a negotiator, it makes sense to call a break in the negotiation in order to give both sides an opportunity to regain their composure. In some cases, ignoring the temper tantrum can embarrass and quiet the angry opponent. In other instances, responding with a temper display of one's own can lead the angry opponent to abandon the approach. Humor can also defuse a tense situation. Similarly, an apology may dissipate tension. An apology, however, may be misperceived as weakness or concession and therefore must be done in a way that avoids an appearance of weakness. Finally, if one's opponent has a reputation for angry outbursts, it may be wise at the outset to negotiate the "rules of engagement"-such as no personal attacks, no yelling, and no smirks or scowls.

4. Boulwarism, or "Take It Or Leave It" - The "take-it-or-leave-it" approach to bargaining undoubtedly goes back to antiquity, but seems to have been refined to an unprecedented degree by Lemuel R. Boulware, head of labor relations for General Electric from the late 1940s through the late 1960s. Prior to each labor negotiation, Boulware would meticulously research the company's productivity, the cost of living, and other financial factors and then would enter each negotiation with a fixed-and what he believed, fair-offer to the union.

Thereafter, Boulware would invite the union to examine his analysis, but would not budge from this number unless his facts and figures were shown to be incorrect. This

take-it-or-leave-it approach worked for nearly twenty years until G.E.'s thirteen unions joined forces and undertook a long and costly strike against the practice. Simultaneously, they filed a complaint with the National Labor Relations Board alleging that Boulware's approach constituted a failure to bargain in good faith and obtained a ruling that this approach violated the National Labor Relations Act.

What made Boulwarism unique compared to many other take-it-or-leave-it negotiations is that Boulware opened the bargaining with the "final" offer. Although the unions put up with this approach for many years, ultimately it led to intense labor strife. The reason, we suspect, was that the approach appeared to be arrogant and demeaning. Most people have a need to play a role in the final outcome of a deal.

Boulware's approach rendered them almost irrelevant-not a helpful feeling for one side to be left with when bargaining. In contrast to Boulware's approach, one who gently unveils a "take-it-or-leave-it" offer near the end of the negotiation after extensive back-and-forth discussion may not trigger a negative reaction. Instead, this approach signals to the other side that one has approached the walkaway point.

To counter a "take-it-or-leave-it" approach, one needs first to probe the underlying assumptions of the party who has made such a statement to see whether such assumptions can be disproved. Demonstrating the fallacies underlying an offer can open the negotiation to further bargaining. One should also assess the commitment that the other side has made to a take-it-or-leave-it approach. In some cases, this is merely a power ploy that can be ignored or rejected out of hand. If the other side seems emotionally committed to the approach at the moment, calling a halt to the proceedings may permit both sides to return at a later date and re-commence negotiations.

Further, depending on the circumstances, one might appeal to the other side's sense of fairness, asking how a deal can ever be struck if one side becomes or remains intransigent. Finally, if the other side refuses to budge, one needs to consider in as calm a fashion as possible, whether accepting the offer is better than walking away.

If this negotiation is the beginning of a long-term relationship, one needs to assess the precedential value of agreeing to this type of offer. It may be that one simply does not want to encourage the other side to assume that such tactics will work in future dealings, so one may reject a deal that otherwise appears acceptable.

5. Limited Authority - Those who bargain with "limited" authority present a power paradox. That is, the less authority they carry in bargaining, the greater their power actually may be. Limited authority negotiators cannot make concessions, thereby forcing the other side to accept deals to which they might not otherwise agree. We have all encountered the sales clerk or company representative who is fully authorized to refuse every alternative we might offer, but who has no power to grant even reasonable requests for contractual adjustments. In effect, these low-level personnel carry substantial power-the ability to say no.

Automobile sales representatives sometimes practice a particularly toxic and unethical form of the limited authority ploy known as "low-balling." Under this approach, the salesperson reaches the best deal that he or she can with a customer. The salesperson then indicates that the manager must approve the deal. Of course, the manager rejects it, insisting that the customer must pay more. In the meantime, the customer, encouraged by the salesperson, has become emotionally committed to the purchase. If so, the salesperson may be able to lead the customer to pay hundreds or thousands of dollars more to buy the car.

What makes the ploy so effective is that the customer never blames the salesperson for the deal's rejection. The salesperson plays the customer's friend, which permits the salesperson to gain the customer's trust and perhaps discover the customer's walkaway point, thereby exploiting the deal for every last dollar.

We recommend several responses to these "limited authority" ploys. In some cases, a useful reaction is to request a meeting with the individual who has been identified as having the authority to reach an agreement on the terms that one seeks. In cases where one suspects that the other side truly has adequate authority, one might simply continue negotiating as though the other person had adequate authority, all the while insisting that one retains the right to modify one's own offer so long as the other side has not committed to the deal. The key to most authority issues is to avoid becoming either legally or psychologically committed while the other side remains free to reject or modify the deal.

A final word of advice: negotiators who face bargaining with high power opponents should seriously consider entering the talks with some limits on their own authority. This will give them time to ponder offers made by the other side and may well moderate the heavy pressures exerted by the other side to reach an agreement.

6. Artificial and Actual Deadlines - Time limits in negotiation can arise in a number of ways. The parties can set them or an outside authority can do so. Time limits may be explicit or implicit, and they may be flexible or rigid. A solid body of research confirms that deadlines often play a significant role in leading parties to agreements. Deadlines increase the likelihood of favorable deals because, as time grows short, "bargaining aspirations, demands, and the amount of bluffing that occurs" diminish substantially.

Depending on how a deadline has been set and by whom, weak parties in negotiations may either benefit or suffer. If one faces a party with superior bargaining power who has set a deadline on a "take-it-or-leave-it" basis, one might be forced to agree to terms that might have been avoided if more bargaining time been available. On the other hand, if the benefits of an agreement substantially outweigh the benefits of the powerful party's BATNA (or if the costs of no agreement appear particularly large), the powerful party may be especially accommodating when faced with an unavoidable deadline.

One of the most effective "deadline" ploys that we have encountered arises when one of the parties has scheduled a flight home at a specific time. If the other side knows

this, he or she may focus endlessly on minor details and then, at the penultimate moment, make a marginally reasonable offer heavily stacked in his or her favor. One who faces this tactic may have concluded that no deal was possible.

Realizing that a deal might be struck after all, but facing a need to race to the airport, one may have little choice but to make a number of substantial concessions that he or she otherwise would not have made. If one knows of the other side's use of deadlines with airlines, one should consider making a reservation for a later flight without informing the other side. If the ploy is attempted, one can then indicate one's willingness to stay and continue negotiating.

There are numerous other examples of using deadlines to enhance power. One of the most effective instances occurred during the negotiations between the United States and the North Vietnamese during the War in Vietnam. Under marching orders from President Lyndon Johnson to secure an immediate peace accord, Ambassador Averell Harriman rented a suite at the Ritz Hotel in Paris on a week-to-week basis.

In contrast, Vietnamese negotiator Xuan Thuy, in a deliberately public manner, secured a two-and-one-half year lease on a villa in the French countryside. The message was clear: the Vietnamese had all the time in the world to bargain and took advantage of the election pressures that weighed heavily on the U.S. negotiators.

Negotiating under a deadline requires skill, persistence, patience, and brinkmanship to be successful. Because deadlines can help as well as hurt weaker negotiators, we cannot offer a "one remedy fits all" suggestion. When facing deadlines, one needs constantly to weigh the benefits of agreeing versus not agreeing.

One particularly needs to monitor the other side to see how much harm they will suffer, or how much benefit they will receive, from the deadline. Those who suspect that the other side is playing the deadline game, need to call the opponent on the tactic and indicate that one's flexibility will lessen as the time approaches.

7. Other Power Ploys and General Responses - We note the existence of numerous other power ploys-some with delightfully exotic names such as the "Nibble," the "Salami," the "Krunch," "Brer Rabbit," the "Bogey," the "Flinch," the "Puppy Dog," the "Belly-Up," and so on. All seek in some fashion, with varying degrees of dishonesty, to mislead or disorient unprepared negotiators into one-sided agreements in the ploy-user's favor.

It is not possible-nor is it necessary in our view-to devise specific counterploys to the entire multitude of tricks and tactics that an opponent might attempt to perpetrate in a negotiation. Instead, we offer several general thoughts to consider when powerful opponents use annoying or unethical tactics:

Negotiate about the negotiation: Try to agree on how the negotiation will be conducted. For example, the parties might agree that only one person at a time will be permitted to get angry or that no personal attacks will be permitted.

Ignore the ploy: Recognizing that an opponent is engaged in a negotiation "trick" is often sufficient to render it ineffective. One can then simply take quiet steps to deflect whatever the ploy is.

Call the ploy: Sometimes it is useful to call one's opponent on the ploy as a way of showing that one recognizes the trick and will not be either intimidated or taken in by it.

Halt the negotiation: Sometimes one should simply leave the room when a ploy is being attempted as a way of stopping it. It is very hard for an adversary to act outrageously in an empty room.

In all negotiations, one needs to be on guard to the possible use of ploys. On the other hand, not every slight or act that annoys is deliberate on the other side's part. Before responding, one needs to be certain that an act truly is a ploy. We believe that far too much time is spent devising or worrying about negotiation ploys. We reiterate: carefully prepared negotiators will rarely suffer from the other side's tricks.

J. Involve Mediators to Balance Power Differentials

Mediation is "facilitated negotiation." In mediation, the parties retain the right to make their own decisions, but look to a mediator to help move the disputants to agreement through a process of prodding and cajolery. Although mediation occupies a central role in various "alternative dispute resolution" commentaries, our focus lies in its ability to moderate power disparities in negotiations.

Given that the parties typically are not bound to anything proposed in a mediation, one might assume that power shifts are unlikely to occur in this process. Once a party, however, has agreed to participate in a mediation, he or she has ceded power to the process and to the mediator. As one experienced mediator argues, "the mediator ... has the most power in the room," and can use this power to move the parties to work out an agreement. The ways a mediator exercises power include:

- creating the ground rules
- choosing the topic for discussion
- deciding who may speak
- controlling the length of time each party may speak
- determining which party may present a proposal to the other
- interpreting what each party has said
- ending the negotiation, and
- writing down the agreed-to proposal

Because mediators control much of the process and can comment on each party's position, they are particularly well placed to discourage raw power plays, emotional outbursts, and deceptive ploys. This serves to equalize the parties' power. In addition, mediators often can

often help weaker parties understand the power they actually possess, thereby enhancing their leverage in the negotiation. While this may not make the parties' power equal, it can shift it significantly in the weaker party's favor.

Effective mediation can also help a weaker party become more realistic about what he or she seeks in a negotiation. This is typically done through a series of hypothetical questions such as "what if," "what about," "do you think," and "why do you believe." These questions help parties rise above the emotions of the moment and to see the consequences of unduly stubborn positions.

Accordingly, one of the most difficult negotiations that one faces may be convincing a more powerful party to agree to have a dispute mediated in the first place. To do this successfully, one should seek to persuade the other side that mediation is sought for grounds other than evening out the power disparities. For example, one might argue that a mediator could add useful expertise in an area or that a mediator might expedite the process. Or, if negotiations to date have proceeded in a contentious manner, one might persuade the other side that a mediator will help reduce the level of acrimony in the process.

K. Form an Alliance Against the More Powerful Party

The adage that there is strength in numbers holds particularly true for negotiations. One way to equalize or exceed the power of a stronger party is to form an alliance with others who share an interest in working against the stronger party. This principle extends from those who are friendly allies through those who dislike a common enemy only slightly more than they dislike one another.

Organizing a coalition against a common adversary requires careful planning and openness, particularly if one is seeking allies from unlikely sources. For example, one may ask what the American Paper Institute, National Coffee Association, Milk Industry Foundation and American Council on Education ever had in common. The answer in this case is: opposition to "sewer user charges." At one time, all of these groups objected to the industrial cost recovery provisions of the Federal Water Pollution Control Act. Acting jointly, they worked effectively to oppose the federal government's method of imposing charges.

In similar fashion, we suggest that those who face a powerful adversary in an upcoming negotiation consider whether it would be useful to organize a coalition against the other side. In particular, one needs to consider approaching even those with whom one does not have a good relationship if they might be inclined to put aside their hostility in the interest of facing a common enemy.

There is a step short of coalition building that one should consider in negotiating with a powerful opponent. Sometimes it helps to organize a team of negotiators or, at a minimum, to have a friend or colleague attend the negotiation as a source of advice and as an extra set of eyes and ears. In addition to providing valuable emotional support, teams can bring a measure of objectivity and fresh ideas to the negotiation.

Research suggests that teams produce better agreements, not so much because of the extra threat of power that they bring to the table, but rather because team members can identify overlooked ways of expanding the total value of the deal to both sides.

L. Appeal to a Powerful Adversary's Sense of Justice and Fairness

People do not operate exclusively on the basis of economic efficiency, notwithstanding the economic models that would suggest otherwise. Nor do most people act exclusively on the basis of pure, brutal power. To the contrary, most individuals carry internal values, standards, and norms that govern how they interact with others and which limit their willingness to take advantage of particular situations.

As we earlier discussed, moral power can function as effectively in negotiation settings as other, rawer forms of power. The fact that one has the ability to overwhelm the other side does not automatically mean that one will do so. Appeals to fairness and justice can operate powerfully under the proper circumstances. In fact, we suspect that most negotiations involve elements of moral appeals to a greater or lesser extent.

In some cases, virtually an entire claim rests upon a moral foundation. For example, fifty years after the end of World War II, a number of Nazi-era slave laborers have pressed claims for compensation against the corporations (or their successor entities) that "employed" them during the war. Given the passage of time, one might consider these demands legally dubious, but the horror of the practice, as well as the moral stigma that companies would suffer from rejecting the claims, has led a group of roughly sixty-five companies to contribute to a 10 billion mark (\$ 5.19 billion) fund to compensate the laborers.

M. Use Weakness as a Source of Strength

Few things better illustrate the situational nature of power than the point that weakness can sometimes be a source of power. Weakness provides substantial leverage in several situations. First, a weak party with little or nothing to lose can bring a powerful weapon-indifference-to bear. For example, an indigent debtor faced with demands for payment by a creditor may convince the creditor to accept a settlement of pennies on the dollar by convincing the creditor that the debtor is "judgment proof," i.e., the debtor has few assets against which the creditor could execute a judgment. Second, the plight of a weaker party may trigger feelings of sympathy and concern in the stronger party. This may lead the stronger party to forbear from taking action against the weaker person.

We offer a somewhat unusual example to illustrate this point. In 1944, his health rapidly failing, President Franklin Roosevelt implored his daughter Anna to arrange a rendezvous with Lucy Mercer Rutherford, his lover from thirty years before. Although undoubtedly capable of thwarting a reunion and inclined to do so because of loyalty to her mother, Anna, upon reflection, eventually agreed to help. Why? As described by historian Doris Kearns Goodwin:

Anna knew that her father's strength was failing and she understood how important it would be for him to enjoy some evenings that were, as she put it, "light-hearted and gay, affording a

few hours of much needed relaxation." If seeing Lucy again provided the inspiration he needed to assuage his loneliness and buoy his spirits, then who was she to sit in judgment? ... At thirty-eight years of age ... she was learning to accept his weaknesses and enjoy his strengths.

Once again, one sees the situational nature of power. In this example, despite being arguably the most powerful person in the world, Roosevelt had to achieve his goal through weakness, not strength.

Third, weakness can trump a stronger party's power if the powerful party faces public criticism for taking action against the weaker. Publicity can often shift the balance of power when television and newspapers treat a powerful party's actions as exploitative. For example, during the Montgomery bus boycott by blacks during the mid-1950s, media coverage from across the country exposed the oppressive nature of segregation in the south, slowly leading to reform efforts. Moreover, the publicity discouraged white violence and emboldened the black boycotters, eventually leading the city government to accede to their demands.

Finally, weakness can lead to desperate acts, which in turn may make coercive behaviors by powerful parties very costly-so much that the battle may not be worth it. Rosa Parks, a black woman in Montgomery whose refusal to move from her seat to permit a white man to sit down triggered the historic boycott, had not sought a confrontation on the day that she was arrested. She was just tired and frustrated. As David Halberstam describes it:

Perhaps the most interesting thing about her was how ordinary she was, at least on the surface, almost the prototype of the black woman who toiled so hard and had so little to show for it. She had not, she later explained, thought about getting arrested that day. Later, the stunned white leaders of Montgomery repeatedly charged that Park's refusal was part of a carefully orchestrated plan on the part of the local NAACP, of which she was an officer. But that was not true; what she did represented one person's exhaustion with a system that dehumanized all black people. Something inside her finally snapped.

In such acts of desperation by the oppressed are sometimes born mighty movements that forever shift the power dynamics of a community, a city, and, ultimately, a nation. It, therefore, should not surprise that they can easily change the dynamics of a negotiation.

VI. Bargaining With Weaker Parties: Advice For the Powerful

Those who have a power advantage in a negotiation face challenges of a different sort than those with less power. As a starting point, they may find dealing with a weaker party difficult because of the weaker party's natural hesitancy to negotiate from such a vulnerable position. They may also find weaker parties more inclined to lash out when pressed too hard. Moreover, even if the stronger party can force an agreement on the weaker party, the stronger party may find the deal undermined and nitpicked after the parties have signed a contract. A short-run advantage may well turn into a long run disaster.

We offer three pieces of advice to more powerful parties to negotiations. First, do not always press advantages to the fullest. In a gracious manner, let the weaker party realize some gains

that one could have taken for himself or herself, especially if there is even a slight possibility that one will do business with the weaker party in the future. We urge this both on ethical and prudential grounds. Not only we do find overreaching to be unfair, but also we suggest that those who oppress today will find few supporters when the tables are turned-as often they are. Moreover, oppressive agreements are inherently unstable. To be successful in business, one needs not only to be viewed as tough and shrewd, but also as fair.

Second, when one has done well in a negotiation, without appearing obsequious or patronizing, one should go out of his or her way to reassure the other side how well they have done. One of the secrets of being a "powerful" negotiator is convincing opponents to trust you during the negotiation and then showing them that they also have done well.

Finally, we remind those with more power about the critical need to permit the weaker negotiators to "save face." Fisher and Ury make a compelling argument that preserving each side's dignity in a negotiation should be one of the main goals of a successful interaction. Time after time, they argue, individuals in the midst of a bargain will refuse to agree to terms they otherwise find acceptable because they cannot accept the perceived humiliation of backing down in front of an opponent. Accordingly one of the most important steps one can take is to assist the other side in accepting the terms one has sought without losing face.