



LIFE IS A MINEFIELD

I have wanted to write a book about negotiation for a long time because life is a minefield. A person who does not know how to negotiate the perilous landscape of life can end up unhappy emotionally, legally, or economically, and can suffer personal damage to pride and self-esteem.

Several books have been published about the art of negotiation. To be blunt, these tomes are garbage, often written by university professors who have learned what little they know—or think they know—from other books written by similar academicians. None of these people have labored with insight or acumen in the field.

True to the way the United States conducts business, corporations that look for a negotiator often turn to academia. They rely on the false premise that somebody who is a professor in a particular subject must be proficient. The expert takes the assignment and then uses the work as confirmation of ability to perform such tasks. The process represents a perfect circle of the blind teaching the blind, who are then hired by the gullible.

Throw those books away!

I have negotiated billions of dollars, most often paid by a person who would have preferred to pay nothing. I have negotiated

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settlements for homes and boats, interests in businesses, patents, pets (including a parrot, Scottish terrier, and a boa constrictor), furniture, jewelry, and a piece of the Berlin Wall; child custody and visitation rights; monies that allegedly did not exist; free airline miles; vehicles (from a Rolls-Royce and electric scooters to a private railroad car and a Boeing 727 airplane); the value of legal, medical, and veterinary practices; who will do the dishes; where people will live or work; who will pay for hair plugs; the dollar value of celebrity in every profession from authors to movie stars; membership in country clubs, rubber rooms, and S&M dungeons; and collections of items ranging from toy trains, antique weather vanes, and biscuit tins to antique armor.

I am familiar with razor-sharp applications of negotiation skills for all occasions, legal and otherwise. Over the years, I have learned many proved and successful negotiation practices and have invented several new ones. Some of the concepts involve straightforward common sense and a few are devious and cunning. But they all work; take my word for it.

When people brag about their ability to negotiate, they often sound like people who boast about how they perform sex. They proudly proclaim how well they do it—but just completing the act does not mean it was a bravura performance.

Negotiation is both an art and a skill. A truism is that some people have the ability to negotiate and others do not. In more than 40 years of practicing law, I have witnessed some of the great negotiators in action and have seen firsthand the favorable results of their expertise.

GAINING POWER

I graduated from the New York University Law School in 1959 and practiced law with my father from 1959 to January 1961. Then I joined the Department of Justice headed by Attorney

General Robert Kennedy. I became a prosecutor in the U.S. Attorney's office and was a member of the nation's first Organized Crime Task Force. I was also in charge of Federal Juvenile Delinquency, prosecuting for a geographic area that included millions of people.

During my introduction to the practice of criminal law, I became aware that defense lawyers had no power; the legal deck, so to speak, was stacked in favor of the government. Prosecutors tended to move forward those cases they were confident of winning; it was the "shooting the fish in the barrel" syndrome. When I practiced in the U.S. Attorney's office, most of the prosecutors wanted to try drug cases because if they could present drug evidence to the jury, it was sufficient to convict the defendant.

Once while summing up to a jury, I held up a large glassine bag containing a substantial amount of heroin. I had thought that it would be dramatic to have it passed around the jury (which did not happen). During summation, therefore, I dangled the bag about a foot over the table in front of the jury box. Then, in an attempt to be even more shocking, I dropped it on the table. I wanted the jurors to hear and remember a resounding *thud* that would reinforce the large quantity of heroin inside. When the bag hit the table, however, it burst open splattering the white powder over the jury and me. One might believe that this was one of the happiest juries ever impaneled.

In the 1960s, U.S. prosecutors with weak or unwinnable cases developed methods to decline prosecution. To make this happen, the prosecutor had to go through the pecking order at the federal headquarters of the Department of Justice. The paradox was that some of the lawyers who sat in positions of authority at the department—those who could yea and nay the prosecution of a case—had little or no prosecutorial experience. Often these attorneys worked at Justice because of political clout. Therefore, if a lawyer

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could forward enough convoluted reasons for not prosecuting the case, the request to drop it usually would receive approval.

Another delaying method at Justice was to change the tasks for each case every month. To holdup action, lawyers would write, "awaiting Grand Jury action," "interviewing witnesses," or "re-researching the law." Attorneys could prevent cases moving forward until they left the Department.

DEFENSE LAWYERS

Through my prosecutorial work, I came to appreciate the conduct and tactics of defense lawyers, which opened my eyes to the power of negotiation. These attorneys had to possess superior negotiation skills because often a plea bargain presented the only realistic chance to reduce their clients' sentences. Today, the obligatory minimum sentencing laws mandated by state and federal statutes have made plea skills even more necessary. The process has become a Hobson's choice for defense lawyers: Take a plea bargain or roll the dice for acquittal. But if they lose the case, the client can go to prison for many years.

The so-called Court Street defense lawyers in New York City handle nickel-and-dime blue-collar crime and low-end narcotics. These street-smart legal practitioners have been toughened in the legal trenches, and they know how to speak on behalf of their clients. They receive the same fee (essentially, all a poor client can afford) whether they negotiate a plea bargain or the case moves to trial.

OTHER TYPES OF LAWYERS

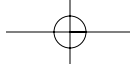
Some corporate lawyers possess poor negotiation skills. They work for the rich and powerful and occasionally forget whose

money is at stake. These attorneys seem reluctant to put on the gloves and mix it up with a legal adversary because tough bargaining is beneath them. Their attitude is that give-and-take negotiations of the hard kind should occur in a criminal law practice and not a prestigious Wall Street or Park Avenue firm.

I also have observed that new lawyers are often knowledgeable about the law but do not understand the how and why of negotiations. These neophytes are equipped with erudite skills to argue law in front of the Supreme Court, but regrettably, they cannot find their way to the courthouse. They soon learn that most cases are settled through discussion and most disputes do not go to trial. I find it incongruous that law schools do not offer specific courses in negotiation although the greater part of American law seeks the private resolution of disagreements to prevent the parties ending up in a verdict after trial.

DIVORCE—OLDEN TIMES

When I began practicing, divorce law was to law as proctology was to medicine. Before the enactment of no-fault statutes, divorce lawyers developed an unsavory reputation. On the professional ladder, the public placed these practitioners somewhat lower than shady used car salesmen and higher than axe murderers. Adultery was the sole grounds for divorce in most states. The attorneys would arrange for a "raid" to take place at a motel or hotel. The prearranged and prepaid package included a cameraman, the private detective, the prostitute found in bed with the husband, and the photograph to be developed as proof and then destroyed. The process was so patently collusive that often there was a "key man" who could open the lock on the door (the husband had supplied the key beforehand) behind which the detective would "discover" the husband and the "girlfriend."



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All to the better, this dirty era of the law has passed into history. On balance, new divorce laws are a substantial improvement on the old ones.

MODERN-DAY DIVORCE

The adoption of community property and equitable distribution statutes changed the status of divorce and also the standing of divorce lawyers. Divorce became profitable and respectable. Chief evidence of this new respectability is that corporate lawyers, who never would have touched the salaciousness of divorce before no-fault, now retain cases, or at least keep them for a longer period before referring them to a divorce lawyer. These firms use euphemisms like "family practice," "private law," and "private clients" to describe what everyone else labels plainly as divorce law or matrimonial law.

Ask divorce lawyers to estimate roughly the division of their practice between women and men, and the answer would be 80 percent—women, 20 percent—men. The reason for this wide discrepancy is that husbands often use the familiar services of their corporate or business attorneys, an opportunity that is unavailable to most nonworking wives. Wives seeking lawyers that specialize in divorce generate a list from people they know, from divorced female friends, or from articles about divorce cases in the popular press. Search methods today include surfing the Internet and watching legal shows on television that feature divorce.

DIVORCE LAW AS A TRAINING GROUND

My legal specialty is divorce, often referred to as a blood sport played out by hostile attorneys. The practice requires the combative skills of a pit bull and the Wisdom of Solomon; a smattering of

the law also helps. No other legal field has as many areas of potential antagonism where conflicts can flare—husband versus wife, attorney versus attorney, attorney versus judge and, too often, clients versus their own lawyer.

In divorce law, we usually encounter two unhappy and hostile people, with husband and wife refusing to admit failure. The participants are bitter that what started out with love and closeness has degenerated into hate and separation. Emotions are raw, and at the outset, neither side wants to be conciliatory. Negotiation speeds the process to resolution, but not without pitfalls.

OBJECTS

When most other issues have been resolved, personal objects remain a contentious area because of the couple's emotional involvement with these items. This irrational attachment to things is idiosyncratic to divorce law. It does not matter whether the article is a valuable antique or a ten-cent knickknack, feuding parties in divorce will fight furiously for possession, often preferring to destroy the object than give it to the other party.

A divorce case of a well-known female advertising executive illustrates how high emotions can escalate when enmity and possession of objects clash. I represented her husband, called a "boy toy" by the media. The wife, whose age was somewhere between sixty and death, had met her future husband when he was nineteen and working in the mailroom of her agency. After the property settlement, one matter remained unresolved: Who would take possession of their Scottish terrier, a valuable dog descended from President Franklin Roosevelt's, Fala? The judge awarded the husband sole custody of the dog and ordered the wife to leave the animal at the man's new place of business. I overheard her whisper to her lawyer, "The judge did not say the dog had to be alive when I dropped it off." Her words shocked me since the couple

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had expressed affection for the pet. I repeated this cruel statement to the judge, who issued a stern warning to the wife.

In New York State, a famous divorce case reached the highest appellate court because the divorcing pair could not negotiate ownership of an obscure object called a *tantalus*—a locked case or sideboard for storing bottles of wine or liquor. How important could this wine cabinet have been in a person's life that the dispute reached the highest court in the state? I also know of cases where the lawyers (bear in mind that a lawyer, like crime, does not pay) have chipped in to pay for a contested object that stood as a hurdle (often, the last one) to resolution.

Smart judges leave personal property decisions until the end of the divorce proceedings. They know from experience that important domestic issues (e.g., child payments and disposition of marital assets) will proceed by negotiation toward a settlement because, at core center, money solves these problems. A New York judge said, "If it's trouble, throw money at it and the problem will go away."

The gnarly hitches occur over the division of personal property. To shortcut the process, judges often ask a husband and wife to submit a list of all the personal items acquired in a marriage that are in dispute and, in one or two sentences, indicate why a particular object is important and why he or she should receive it. I was in a judge's office on another case when he reviewed two long and detailed property lists from husband and wife. Without glancing at the emotional reasons each side had written for being awarded Uncle Berky's Tiffany lamp or Grandma Patch's Hoosier cabinet, the judge checked off the items one after the other. He awarded an object for the wife and then the next for the husband until he had completed the bottom page of the long lists. He said, "How sad they fight over the inconsequential debris of an ended marriage."

The point is never to want anything too much—with the emphasis on "thing."

AVOID THIRD-PARTY ARBITERS

Always try to negotiate a satisfactory conclusion without the assistance of a third party. By agreeing to let some other person arbitrate the dispute, you relinquish control over the procedure and lose power. When a third person charts the course of resolution, the outcome becomes unpredictable.

People fail to realize that when they opt for a third party, the unknown factor is how that individual will feel on decision day. A judge who has had a bad morning with a spouse, child, or law clerk may not be in a mood to settle a dispute reasonably and fairly. This holds true for other third-party mediators as well, whether it involves requesting input from another fair-minded person or acceding to a child's wish for a parent to decide the dispute. The third person's emotional state on decision day is a crapshoot.

In some instances, employment and union contracts bind both parties to compulsory arbitration. This is a prime example eliminating the legal right of access to the judicial system with its safeguards and built-in impartiality. The supposition is that the arbitration process will be neutral and the outcome will be fair. Often, inequity is an inherent aspect of this third-party system because you choose an arbitrator for a one-time arbitration. Arbitrators, however, may sit on a dozen or more cases involving the same firm (your opponent in the arbitration) during the course of the year. Their income, to one degree or another, depends on whether the company agrees to use their services as arbitrators in future matters.

NEGOTIATIONS 101

My friend Randy Levine is the president of the New York Yankees and formerly served as New York's City Deputy Mayor for Economic Development, Planning and Administration. He has some helpful reminders about negotiation:

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Negotiation is an art not a science. There is no strict formula to the process, just some basic and fundamental rules that you play by ear. Although you're an advocate for a certain position, you have to enter into negotiations with an open mind:

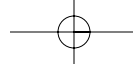
- Clear your mind. You can't be too fixed in your own judgment.
- Listening is much more important than talking. When you listen, you can hear not only the other persons' stated goal but also often what they're trying to achieve.
- Always maintain your credibility. Never agree to something that you can't or won't deliver.
- Be flexible. You can't get everything you want. Sometimes it's not good to achieve all your goals at the other person's expense.
- Never be afraid to adjust your goals. You can always say, "I was wrong about this point at the start of the negotiations." You have to realize the other person has a position, too.

DEALING WITH ODDBALLS

Although few laypeople today remember the late Harry Lipsig, who practiced negligence law in New York, in his prime he was a legend. One still hears his name when lawyers gather, "And tell sad stories of the death of kings."

Often referred to as "The King of Torts," *New York Magazine* described him as "the toughest, and most successful personal injury specialist in the country." He was 5 feet 1 inch tall and sat in his office like a Napoleon on a mammoth throne-like chair of tufted black leather. Despite his diminutive height, he was an imposing presence, a clotheshorse dandy who used his size as a power advantage.

During a lengthy and distinguished legal career, Lipsig won hundreds of millions—even billions—of dollars for his clients. But during the last years of his life, he relied on a bizarre behavioral pattern to negotiate with other attorneys: He conversed in doggerel. The patter might go something like this:



In my office I see Mr. Raoul Felder,
He thinks he's as smart as Pliny, the Elder.
But he's a lawyer, who gets in my craw,
Today I'll clean his clock with the law.

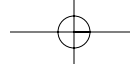
Discussions with Lipsig were a challenge because it was difficult to keep focused on the legal issues while he spoke in appalling rhymed couplets.

During one meeting in his predoggerel days, I was present when a lawyer entered the office to announce that the firm's client had turned down a resolution of a drawn-out case in which both attorneys had agreed to a settlement. Lipsig was irate and shouted, "Damn! Damn! Raoul, the source of our trouble in this business is . . . [and he groped in air to pull the right word until it came out] . . . is *clients!*"

On another occasion early in my career, my opponent in a divorce case was the great attorney Louis Nizer, a recognized legal authority on contracts, copyright, plagiarism, and public relations. His most celebrated case—a successful libel suit by Quentin Reynolds against conservative journalist Westbrook Pegler—was later memorialized in a Broadway play *A Case of Libel*. Nizer was also an author of two best-selling books about the law *My Life in Court* and *The Jury Returns*. In his day, he was the most recognized and famous lawyer in the United States.

We had negotiated a settlement, and I went to his office in the old Paramount Building on Times Square with the papers for signing. Minutes passed, and my client failed to arrive. Fifteen minutes later, she called to cancel the meeting. In the taxi ride to Nizer's office, she had read her horoscope in the *New York Daily Mirror*, which counseled against making any life decisions on that day.

I related my client's horoscope quandary to Nizer with much embarrassment. He shrugged his shoulders and said, "Some clients are so peculiar, you have to know if they're allergic to your aftershave lotion." (This may be one reason I grew a beard.)



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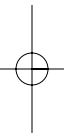
I followed Nizer's advice and always delved into the professional backgrounds, health condition, and idiosyncrasies of my legal opponents, their clients, and even my own. Knowledge is power, and time and again, some insignificant tidbit of information provided me with a wedge to negotiate for victory.

RESEARCH

Another horoscope case shows the benefit of inquiry and research. I was involved in a child custody case in Upper Westchester, New York, where the wife of my client repeatedly postponed and rearranged court dates. The time I was wasting because of these chronic delays made me livid. When I asked what was causing the erratic scheduling, my client explained that an advisor astrologer's interpretation of the Zodiac influenced his wife's everyday existence. She never left home without a positive reading. Like most astrologers, this woman's stargazer based her recommendations on the position of planets at the particular time and place of the subject's birth. All astrologers rely on ancient texts, and this one used a book from the eighteenth century.

The next time we met in court, I consulted a retired professor of astronomy from Columbia University. I did not ask his personal opinion on the Zodiac; I knew he would say it was nonsense. Instead, I handed him copies of horoscopes of people born around the same time as my client's wife. These horoscopes all discussed certain planets in relation to other planets. I asked the professor if all of the planets mentioned in the horoscopes had been known at the time the book was published. The professor replied that when this "authoritative text" was written, three planets had not yet been discovered: Uranus in 1781, Neptune in 1846, and Pluto in 1930.

In court, I argued that the wife's reasons were bogus for postponing the court dates if she depended on advice from her



astrologer, who, in turn, relied on a book about planets that was as believable as storks delivering babies. The professor's testimony accomplished more than I had anticipated because the court record now included statements showing the lack of common sense that governed the wife's life and her decisions. This information would affect her credibility as a fit parent in the custody case.

I had yet another odd custody case involving an astrologer. This mother also seemed to be under a stargazer's total control. After the husband gave us the wife's date of birth, we obtained her birth certificate from the Board of Health to determine the exact hour and minute because the time is always indicated on that document. I then hired a female private detective, who went to this particular astrologer for a reading and secretly taped the conversation.

At the meeting, as we anticipated, the astrologer asked for the day, date, and hour of the woman's birth. When my private detective revealed the exact birth time, day, and date of the wife, the astrologer was shocked, saying, "I have never seen a case like this. Believe it or not, I am now counseling your astrological twin." She admitted how much the other woman relied on the astrologer to handle life's most intimate details, including how to raise her child. Further, the astrologer boasted that she "controlled" the custody case by following the stars and the planets. We played the tape in court to my client's advantage. He won custody, and in truth, he was the more fit parent.

ARBITRATION 101

Years ago, I believed that my stockbroker cheated me by churning my portfolio, which cost me considerable money. The stockbroker, who worked for a large brokerage firm, was indicted by the U.S. government, tried, and was acquitted, although in my opinion she did not deserve that verdict.

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After I complained to the company, this stockbroker refused to send me records of my prior trades. I taped her refusal when I recorded the telephone conversation. If the broker is a big income producer, the firm looks the other way, even if churning accounts was the modus operandi for a large number of trades.

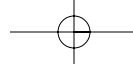
I wanted to sue this firm but could not bring legal action because of the compulsory arbitration process. I ruminated that the panel of arbitrators available to me included the same people on hand for every other dissatisfied customer. We clients had one-shot deals with members on the panel, whereas the stockbroker's firm could choose from a small group of potential arbitrators who sat repeatedly on disputes involving the company. Which side had a better shot at a fair resolution with this panel of arbitrators?

Ask your stockbroker what happens if you disagree with investment advice offered by the firm. You will be informed that in the small print of the purchase agreement (in minuscule 2-point pica), you concurred to compulsory arbitration to settle disputes. It is a flagrant example of yielding control to a third party.

SCULL SESSION

In 1985, we won the appeal of art patron Ethel Scull, who had previously lost her case when other attorneys represented her in court. We argued that she had not received a fair share of the artwork from her dissolved marriage to New York City taxi fleet tycoon, Robert Scull. In the 1960s, the couple was at the forefront of the Pop Art movement through their association with and patronage of Andy Warhol, Robert Rauschenberg, Jasper Johns, Roy Lichtenstein, and other emerging Pop artists. The Sculls were nouveau riche and enjoyed wide media attention.

Ethel had to file for an appeal because the initial proceedings denied her a fair percentage of the artworks she and her husband collected as partners during the marriage. We won in the intermediate appellate court, which reversed the trial court's decision.



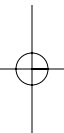
Next, Robert Scull's lawyers appealed to the highest court in the state, the New York Court of Appeals. Robert Scull died two days before the final appeal was heard, but I believe he knew his ex-wife would win that appeal.

Once the case had been adjudicated in our favor, the judge ordered the equal division of artwork based on the appraised value. The sum was in the high millions of dollars as quoted in the official appraisal by Sotheby's, the renowned art appraisers and auction house.

We researched the entire collection and discovered, with Ethel's help, that a similar painting by Jasper Johns listed by Sotheby's earlier for a \$1 million, had increased significantly to \$1.8 million. In the intervening years after the first appraisal, demand for the painter's works had skyrocketed. Over time, his paintings sold at auction for high numbers, thus raising the value of his other works, including this painting. Everyone realized that whoever picked the first work of art from the estate (i.e., the Johns painting), would gain an instant bonus of at least \$800,000.

Robert Scull's lawyers agreed to flip a coin to see who would choose the first painting. The coin tossing for millions would take place at an art warehouse in New York. The night before, I flipped a quarter for several hours, keeping track of the results. I concluded that if I started with the head side palm up, the outcome would be tails more than 50 percent of the time. I thought these skewed results probably occurred because the raised head side (George Washington's profile) contained a tad more metal, which would favor landing facedown.

On the day of the flip, I noticed that the quarter rested in the fingers of Robert Scull's lawyer with Washington's profile side up. I called tails. He flipped and dropped the coin, which rolled under a table. On the second toss, I again spotted the profile, called tails, and won. My first pick was the undervalued Jasper Johns, and Ethel had a serendipitous windfall of \$800,000.



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After the coin flip for the Johns work, we proceeded in lottery fashion to select the other paintings. All of the Sculls' art resided in a vast warehouse space alongside works from other collectors. As the lawyers made one selection after another, workers carried the pieces to other, smaller rooms, one rented by Robert Scull's estate and the other by Ethel Scull. Over time, the "his" and "hers" rooms filled, and the central space emptied of artwork.

On completion of the last transfer, the storage company turned out the lights in the large almost empty room, leaving a single bulb lit in the outside hallway. As I left the darkened room, I tripped over what appeared to be a large piece of oddly shaped lumber. At a glance, it resembled a piece of driftwood tangled in rope. I angrily kicked it off to the side, and when I reached the hallway, I told a warehouse executive that he should get rid of this leftover carpenter junk because someone could trip, fall, and sue. He entered the vast room to see what I was talking about and returned to inform me that the piece of junk I had tripped on and casually tossed aside was an expensive Rauschenberg construction. That's the trouble with being a Philistine.

By not being fair to his wife from the beginning of the divorce, Robert Scull had placed the ultimate decision in the hands of a third party and lost. Remember, results can go off into left field when someone else is the referee.

EVERYTHING IS NEGOTIABLE

When I tell people that I bargained for an expensive item at Tiffany's or Harry Winston's, they seem shocked and say, "Oh, Raoul, you can't do that." But, in truth, you can. You can negotiate for almost anything.

In our American culture, we don't bargain or hassle over a price at retail except in the new and used car market. We spot a

price tag on an expensive item in a reputable shop, and our first thought is whether it is a fair value for the price. We do not realize that we can negotiate the price downward in a luxury store.

I am not implying that someone can haggle over the menu price of a pastrami sandwich at the Carnegie Deli. That is not feasible. But with some high-ticket items, bargaining is possible. The higher priced the item, the greater the likelihood of lowering the price. A smaller margin still can generate a handsome profit for the store. And here's a surprise; rich people may be different from you but not from me—they are not embarrassed to negotiate.

A proved technique at prestigious stores is to ask for the specific department's buyer. Salespeople do not have the authority to bargain so do not waste time with these clerks; deal only with decision makers. Start negotiation by pointing to the expensive item and say, "I would like to buy this piece but the price is too high. I know you are flexible so I am asking if you would take 'x' dollars less for a cash sale today?" The worst outcome is that the buyer says "no." You will be surprised how often the buyer agrees to the sale at the price you offered.

FANCY STORES

Do not be intimidated by a fancy store. Even the most reputable high-class stores sometimes become involved in dubious transactions. It was a celebrated tale in New York that a noted fur store did a substantial business with the mistresses of wealthy men. At the women's request, the men would shop for a fur coat at this store. The sole reason for specifying this particular store was that the women could return the fur and receive the discounted value of the coat back in cash. The store ended up reselling the never worn fur as new and, in addition, pocketed the profit from the original sale.

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Another legal case involved a wealthy client who kept receiving a bill for \$120,000 from a world-famous jewelry store months after his divorce. I contacted the store, made a visit to see the manager, and discovered this story: This man's wife had picked out a huge emerald, which cost \$900,000. She asked her husband to buy the stone, but he insisted she return to the store and offer half the sum, the maximum the husband would pay. She went back to the store and agreed to pay the full \$900,000 price by giving a 50 percent down payment and paying the \$450,000 balance over time in secret monthly payments of \$30,000.

The store took the down payment and gave her a sales slip to show her husband, indicating the full price was \$450,000. She signed a private memorandum with the store, clearly stating that the full price was \$900,000. The sales slip pleased the husband, who boasted he had negotiated this famous store down by 50 percent—proof to him that big-name stores had enormous profit margins. The honest wife lived up to her promise and began paying the balance at the agreed-on monthly rate. But when the couple divorced, she told the store to bill her husband for the balance.

I remember shopping for a painting at an art gallery where I overheard the owner talking to an heiress whom I had seen often at other galleries. As she quibbled about the price of a small Impressionist drawing, she asked for and received generous terms that allowed her to take possession of the work that day and pay monthly for the next two years. The owner acceded to every one of her negotiated demands.

TWO FOR THE MONEY

The Broadway producer Jyll Rosenfeld is a foremost negotiator and bargain hunter. After she bargains the big name retailer down

as far as possible, she then offers to buy two of the item and requests an additional price reduction.

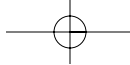
Retailers are faced with a dilemma. They can discount the item as low as possible, but if a customer wants to buy two, the quandary is whether to give a further discount. Jyll advises that sometimes there is one last step after the negotiation ends.

THE PRICE IS RIGHT PLUS

When consumers arrive at a price that is fair or within their budget, they halt at this juncture and do not continue the negotiation. But a clever tactic, called the "Horn of Plenty" or "Sweeten the Deal," will help you discover what other goodies the seller can provide. The technique works best with big-ticket items that come with postsale service agreements, or with personal contracts for services (e.g., gardeners, cleaning services).

Here is how it works: Assume that the seller wants to close the deal; after you agree on the price, then demand other goodies before signing the contract. The first step is to make a list of all the items or services (e.g., spare parts, inspections) that define or can supplement your purchase.

Once you have outlined all the extras, then begin the negotiation. Let us imagine the purchase is a central air conditioning system for a house. The total price will include the purchase and the installation. But the store can deliver many other Horn of Plenty items. Assume it guarantees two free inspections during the first year and recommends one fully paid inspection the second. Ask for three free inspections the first year and 50 percent off the full price for the second year. Maybe the store will agree to one or both. What else is in the Horn of Plenty? What about a lower price for filters? What else? Ask an open-ended question: "What can you do to sweeten the deal?"



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In a service agreement, the gardener may offer to come from spring to fall to perform the tasks outlined. But what about not just collecting the fall leaves but removing them? Ask for a discounted price on "x" number of new trees or bushes. Keep looking in the Horn of Plenty for more free or reduced-price items.

This method succeeds only at the beginning of a negotiation. The seller wants to close the deal and will accede to some of your requests. Be sure to put everything in writing.

NEGOTIABLE OPPORTUNITIES ARE WHERE YOU FIND THEM

A lawyer friend represented a senior executive at a large media company in the negotiation of his employment contract. The man became second in charge, and he and the CEO combined to make a successful team. The executive made the CEO godfather to his son, and the two families shared holidays and vacations together.

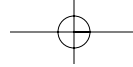
For years the business prospered, but then it fell into bad times. The CEO canned his second in command, and the terminated executive could not find another position. His life spiraled into debt and depression. It took a year for him to find another job at a lesser pay scale.

Cut to: FAO Schwarz, the wonderful toy store on Fifth Avenue, at Christmas time. The discharged executive and his son were shopping and ran into the CEO, whom they had not seen since the firing. The two men acted with cordial civility, but the son behaved in a cool and frosty manner. The CEO cum godfather said to the boy, "My Christmas gift to you is to pick out toys in the store for \$100."

"Thank you, but I cannot accept," the boy answered.

"Why not?" asked the CEO.

"Because you didn't treat my Daddy nicely."



Without skipping a beat, the CEO said, "Make that \$200 worth of toys."

Guilt, like everything else, is negotiable.

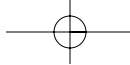
DEALING WITH OPPONENTS

Negotiation is a one-to-one process, much like a chess game with an opening, a middle game, and an end game. It succeeds when two people are involved in a reasonable and flexible give-and-take. Negotiation does not do as well in a large group or communal procedure; think of it as too many cooks spoiling the settlement broth.

No one can state when it is the right moment to go for the jugular. I have learned that by looking into my opponent's eyes for a subtle clue, I will know when to put the dagger in. On some occasions, I can smell the fear.

When I sit down for a settlement conference with the other side, I begin by saying: "I am not in business to extort you, and I couldn't care less about the fact you have unreported income or that you're supporting a mistress, or a boyfriend or girlfriend, whatever. I want to settle the matter." When I mention those personal points, I look at the person to see if I hit home on a matter of personal substance. If, yes, I will see a pronounced reaction in the eyes, the muscles in the face, or the movement of the hands. Learn to spot these signs of anxiety as an advantage.

Julie Budd is a singer of immense talent, a former opening act for Frank Sinatra in Las Vegas. She told me that when her career began, he offered valuable performing tips. He demonstrated how a performer on stage could follow the spotlight by feeling its warmth atop the head. As the spotlight moves, a singer can develop a sense for where the spot shifts and stay under the light. I tried it once on stage, and after a few minutes, I could feel the light on my head as I moved under it.



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The spotlight story speaks a similar truth; when you perceive fear or other reactions from an adversary, you can feel it and then train yourself to move with it to attain the upper hand.

It is vital to know the psychological makeup of the opposition, whether the person is a spouse, child, or a legal opponent. Some of this knowledge may come from past negotiation experience with this individual. Sometimes I remember familiar dialogue or recall past ploys. It is like facing a professional league baseball pitcher; if the curveball has been his most successful pitch, then it would be smart to look for it, or smarter yet, to avoid it.

WHEN TO GO FOR BROKE

Robert Evans, the film producer, said, "The only way you can make a deal is if you're ready to blow it."

I have an apartment in Florida along with a beach cabana. Instead of hanging a framed store-bought painting on one wall of my cabana, I wanted to have a mural painted of an idyllic tropical scene like palm trees or blue lagoons. I contacted a talented Cuban-American artist who sent me beautiful miniature mural samples with a price range from \$2,200 to \$4,200. (Whenever anyone says the price is "from . . . to," it is always the higher sum that will be charged.)

The mural was a spur-of-the-moment, half-thought-out idea; but on reflection, I discarded the notion and told the artist that although his work was beautiful, I would pass. Two weeks later, I received an e-mail from him stating that he would like to paint the mural. I replied that the top price in my budget was \$1,000 and his fees were out of my range.

The artist responded that he could do a smaller wall painting for about \$1,100. The point is, I had been ready to kill the deal since I was not convinced a mural was the right decorative choice. But when the price dropped dramatically, it ended my resistance and today I look at a beautiful mural.

DELIVER WHAT YOU SAY

In an old FBI manual, I spotted a sentence that stated agents should draw a weapon only if they were prepared to use it. The premise holds for unions that threaten to strike if demands are not met: Unless the union is willing to go out on strike for a long time, the threat is useless. An important piece of advice is that once you agree on a decision, then deliver what you promised.

In a divorce case, when major disputes are settled, the parties are so delighted to be done that they will often leave one or two items open. An immutable fact is that saying these items will be worked out later means these dangling points will be talked over for a long time. Whatever is left open and unresolved at the settlement will give headaches in the future.

When signing a contractual agreement, the mechanisms must be in place to decide remaining items. If I negotiate an employment contract but omit the overtime provision, I am making a mistake, believing that it can be worked out at a later time. If, as in this case, overtime is left open in the agreement, there must be a system that states *exactly* how to deal with overtime in the future.

During a recent divorce case, the attorneys arrived at a settlement in principle and the papers were to be signed the next time the case appeared on the calendar for trial. I knew that the other lawyer had a reputation for negotiating a final agreement and then asking for revisions favorable to his client at the last minute. To combat this trick, I had 30 boxes of discovery material delivered to the courtroom where we would sign the final papers. The boxes were stacked up behind me to the ceiling, indicating that I was prepared to start the trial.

When my adversary entered the room, he stared at the 30 boxes. I said: "I am ready to sign the final papers as we agreed to. If you so much as offer one amendment to the case, I shall go to trial. I'll be back in a few minutes and I want a decision then." Being alone in the room, with nothing to look at but the weight

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of our case, convinced him to sign the papers. The stack of boxes represented the pistol I took out of my holster. I was prepared to go to trial, which I knew he wanted to avoid.

A RUNAROUND WITH THE RUNYONS

Damon Runyon was a revered American journalist, a talented sports writer who also covered notorious criminal trials such as the Lindbergh kidnapping. Today, with memories of old New York newspapers and nightclubs long forgotten, people often hear his name in connection with his short story "The Idyll of Miss Sarah Brown," which was adapted into the Broadway musical and movie *Guys and Dolls*.

Runyon was the ultimate chronicler of the show business, sports, and the gangster demimonde of New York City. He wrote a famous line that goes, "Long ago I came to the conclusion that all life is 6 to 5 against." Ironically, he was born in Manhattan, Kansas. His body was cremated, and his close friend, Eddie Rickenbacker, then the president of American Airlines, took the funeral urn on a small plane. He flew low over Manhattan, sprinkling the columnist's ashes over Times Square in a final tribute.

Runyon's son, Damon Junior, was a great friend of mine. Junior was also a newspaperman but remained in the shadow of his famous father's reputation. At one point, he was editor of "Focus," a daily column on the front page of the *New York Herald Tribune*. For a long time, Junior was an alcoholic, but in later years, he went on the wagon. A sad fact is that he ended his life by committing suicide.

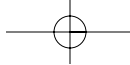
Late one night, I received a call from Junior, who wanted to meet with me pronto. Since I am an insomniac, I had no problem getting dressed and meeting him at an all-night coffee shop. He confessed that 6 months earlier he had made a stupid blunder: While drunk, Junior had given a large trunk to a prostitute pal

named Tall Tillie, one of his late-night bar companions. When he became sober, he recalled that his famous father had filled the trunk with manuscripts—unpublished works of literary significance, including short stories and a book—all of which represented large sums of money.

Junior's problem was that when he had asked Tall Tillie to give him back the trunk, she told him to buzz off. He asked me to negotiate an arrangement so that she would return the trunk with its literary contents. He trusted me and knew that I would not use any foul language. Tillie, her profession notwithstanding, could not tolerate profanity and speaking it around her (as Junior had done) precipitated a stern lecture to the speaker and then a slammed-down receiver or swift exit.

At his request, I called Tillie and arranged an early-morning rendezvous in a coffee shop after her business hours. I offered money for the trunk, emphasizing that it contained some of Junior's personal effects of a sentimental nature. She was not interested in Junior or his trunk, and then I said that he might pay \$1,000. At first, she was taken aback by that sum of money but quickly deduced that the items in the trunk might have more than sentimental value and shrewdly bargained me up to \$10,000. The trunk was worth this kind of money because Damon Runyon's writings inside could have been worth \$1 million or more.

We made a deal. Then I tried to arrange the transfer of \$10,000 for the trunk but she kept stalling on the delivery. At one point, I asked if she was trying to shake us down for more cash. But, as it turned out, she was unable to deliver the trunk because she had lost her temper and sold the trunk to a used furniture store for \$25.00 after Junior cursed at her. During the months after we made the deal, she tried to determine what had happened to the trunk. She traced it to the store owner who remembered it was filled with musty and old yellow papers that he threw out in the garbage.



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The moral is not to give hookers old trunks unless you first look inside. The cleverest negotiator may not be able to redress the bad consequences that result from your own foolish transaction.

FINDING THE RIGHT WORDS

The right vocabulary is fundamental to negotiations. My experience is that "reasonable" and "flexible" are the two key words to begin settling a dispute. When a person says, "I know you are reasonable and flexible" at the outset of a negotiation process, it obligates the other side to a fair code of conduct. These words also set the tone for a civilized discussion.

Negative or challenging words achieve the opposite result; They will raise the hackles of an opponent and sabotage the procedure. The worst opening move is to force an adversary's back to the wall. Leave room for maneuver.

FINAL THOUGHT

In negotiations, it is important to gauge the likely consequences of the outcome even if it produces a success. If I do not achieve the maximum for my client (but the settlement is fair), I may brood for a while but my life goes on. But if you go toe to toe with your spouse, child, or boss in a knock-down-drag-out fight and win, the consequences may mean the loss or damage of that relationship.

In this book, we will walk through some of life's minefields. If you pay close attention to my examples, you will wind up alive and healthy, and you will wear a smile of success.

