The Negotiator's Desk Reference

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Editors

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Section I. Introduction

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2. Learning How to Learn to Negotiate 13
Scott Peppet and Michael Moffitt

At the outset of a book with many new ideas, this chapter can help the reader *implement* what you are about to read. Analyzing research on how we can learn to learn, the authors provide specific advice to negotiators and negotiation trainers. For those whose students—or colleagues—are more hardheaded than most, this chapter should be read in conjunction with Captive Audience by Kirschner and Cambria.

Section II. You and Your Style 32

3. Integrative and Distributive Bargaining 33
Rishi Batra

The distinction between integrative and distributive negotiation is one of the baseline innovations of our field's modern development. Any number of other concepts simply cannot be understood until its lessons have been absorbed. Here, the author walks the reader through the all-important basics of this key element of understanding of negotiation: why "creating value" and claiming it represent competing goals; how these relate to the negotiator's personality; how they affect the process as it unfolds – and how, in the end and despite obstacles, they must be *integrated*, if a good result is to be reached.

4. Style and Culture in Negotiation 43
Eko Yi Liao

Even at a basic level, a negotiator's effort to understand how her own style works and how it might mesh or collide with the style of a counterpart is not only essential, but usefully illustrated in conjunction with cultural differences. Liao uses Chinese examples to show how individual styles work and don't work in common combinations, in Western as well as Asian settings. This chapter should be read in conjunction with Abramson on Good Practices, Styles and Tricks, and Batra on Integrative and Distributive Bargaining.

5. Fashioning an Effective Negotiation Style: Choosing Among Good Practices, Tactics, and Tricks **59**
Hal Abramson

Abramson points out that the term "style" in our field has two distinct connotations, because someone's conflict style and their negotiation style can be different. He first recommends clearly analyzing and understanding your personal conflict style. Then he unpacks "good practices", tactics and tricks as three key features of negotiation style to show, quite apart from questions of morality, how a negotiation style that does not account for your own conflict style will be less effective. At the same time, Abramson says, you need to invest effort in understanding your counterpart's negotiation choices, especially use of tactics and tricks, when fashioning your own effective negotiation style. This chapter should be read in conjunction with Liao on Style and Culture, Craver on Distributive Negotiation and Batra on Integrative and Distributive Negotiation.

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Charles Craver

Interest-based negotiation, transformative approaches to mediation, and other relatively recent and enlightened doctrines have created wide enthusiasm among negotiators and negotiation students. They continue, however, to bump regularly into forms of "reality" that are less appealing. In particular, there is no practical way to ensure that you will find yourself dealing only with people who have the same progressive worldview towards joint gains that you may have. In this chapter, a veteran teacher dispassionately dissects no less than 28 different varieties of "hard bargaining", and describes how to defend yourself in each case (or even, for those so inclined, how to prosecute these techniques.)

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Adrian Borbely and Julien Ohana

The authors argue that a negotiation cannot be understood by looking at its *substance* alone: a three-dimensional view that takes into equal account the negotiation's *people* and its *process* is essential to make head or tail of it. In turn, mapping these three dimensions onto a negotiator's mindset begins to make it possible for the negotiator to see where and how he or she might change things, rather than reflexively responding to the other's impetus, or narrowly pursuing a set strategy that may not be working.

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Peter Adler

Not all negotiators are capable of seeing the world in multiple dimensions, shifting their responses according to different needs, and accepting uncertainty with good grace. But the best negotiators do this routinely. Adler shows why, particularly in conflicts and transactions

that involve people and groups with different world frames or cultures, it becomes essential to be able to shape-shift, like the Greek god Proteus. This is not a charade—it is responsiveness. And it can be learned.

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9. The Social Brain 115
Alexandra Crampton

The economists' traditional and convenient concept of human beings as rational actors who pursue self-interest has by now been thoroughly amended, if not debunked. But how the complicating factors, including gender, culture, emotion, and cognitive distortions, actually work in our brains has been elusive until more recently. Lately, however, neuroscience has begun to make inroads toward a better understanding of many of these factors. This chapter describes one large piece of the puzzle: the evolution of human beings' brains into those of a highly interdependent, social species.

10. Social Intuition 127
Andrea Kupfer Schneider and Noam Ebner

To be truly effective, negotiators must try to influence their counterparts not only through substantive offers, but also through engaging their attitudes and thinking patterns. This need has been analyzed (and, increasingly, taught) mostly in terms of empathy. Here, the authors suggest that empathy is separate from a broader construct, which they term social intuition. This skill, they contend, gives a negotiator the ability to have an impact on the entire negotiation interaction. Yet it requires attention not only to developing empathy, but also nonverbal communication abilities, as well as several other elements. In an effort to make a difficult skill more accessible, they suggest dividing its learning into three elements, structured quite differently from previous discussions: understanding first the self, then the other, and then the elements of "bridging" between these two.

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Charlotte Jendresen

Contrary to what might be expected from common usage, people's creativity and their flexibility rely on entirely different structures in the brain. Here, a brain researcher describes the recent findings of neuroscience in relation to both qualities. Jendresen shows how the experience of aging (sadly) robs *everyone* of some degree of mental flexibility. The good news is, the brain can be trained for both flexibility and creativity, and your brain will adapt, altering itself physically to respond to your needs.

12. Caring for People on the Edge: Emergency Medicine, Negotiation and the Science of Compassion **155**
James O'Shea

The author, a physician specializing in emergency medicine, finds his work replete with negotiations of all kinds, many of them demanding compassion. Finding similarities to police hostage negotiation work, O'Shea reviews the neuroscience involved, and concludes that professionals of any kind who must demonstrate compassion at work can pay a price in their own peace of mind, or at an extreme, even in their ability to continue to do the job at all, when the demands exceed their time and ability to recharge their batteries of compassion. Most insidiously, the author finds hidden curricula in the training of his profession, and of others, which militate against the professional ever adopting a compassionate enough attitude to really suffer stress – or to do the job properly.

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Morton Deutsch

Have you ever been in a negotiation where you (or the other side) seem to be acting instinctively, but perhaps not helpfully? Have you wondered what was going on inside your counterpart? Deutsch summarizes how psychological theory applies to basic negotiation, and explains how negotiators' internal conflicts affect them and everybody else in the room. In a coda about our global community, he adds an analysis of how powerful individuals' internal conflicts have increasingly played out with disastrous consequences on the world stage.

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Elizabeth Jeglic and Alexander Jeglic

It's all but routine for a negotiator leaving a meeting to mutter under her breath concerning the perceived mental health issues of someone on the other side. Unfortunately, the research now demonstrates that such suspicions may not always be unreasonable. Mental health issues, it turns out, do not prevent people from assuming and holding high status in many kinds of organizations, so you may be negotiating with borderline mentally ill people with some regularity. Furthermore, we know that high-stress situations like the death of a family member, divorce or job changes, which often lead to negotiations, can trigger mental illness. Here, a psychologist and a lawyer (and sister and brother) analyze the most common types of mental illness, and tell you what to expect from each of the types you are most likely to encounter in negotiations. Crucially, they also provide recommendations as to how to deal with the reality of each type of mental illness.

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Roy Lewicki

Can you both trust and distrust the other side? In fact, we often

do exactly that. Lewicki provides practical advice on dealing with trust and distrust in each interaction. Of particular importance to negotiators facing troubled relationships, this chapter shows how distrust is not merely a mirror image of trust: it actually works quite differently. Effective negotiators must learn both to build trust and to manage distrust. This chapter should be read in conjunction with Tinsley, Cambria and Schneider on Reputations; Lewicki's chapter on Repairing Trust; and Cristal on No Trust.

16. Repairing Trust **217**
Roy Lewicki

Of course trust is important to build, and maintain. Yet inevitably, trust is sometimes violated. Here, Lewicki analyzes what happens in the wake of a trust violation, and offers prescriptions for a meaningful attempt to rebuild it. This chapter should be read in conjunction with Tinsley, Cambria and Schneider on Reputations; Lewicki's chapter on Trust and Cristal's on No Trust.

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Moty Cristal

In the final chapter of our trilogy on trust, its development and repair, a "pracademic" with significant experience of high stakes conflicts assesses situations where it is not practicable even to try to build or rebuild trust—and yet a deal must be made, whether with a political enemy, former spouse or labor union leader. For these situations, Cristal offers an alternative paradigm of three elements: allowing for the emotional component of "freedom to hate"; replacing for working purposes the concept of trust with that of respect; and building trust - in the process rather than in the good faith of the other side. These steps, he argues, can make some of the most difficult negotiations workable.

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Catherine Tinsley, Jack J. Cambria and Andrea Kupfer Schneider

Time was when a Formica plaque could often be found on the desk of a certain type of negotiator. It said "Yea, when I walk through the Valley of the Shadow of Death I shall fear no evil, for I am the meanest son of a bitch in the valley." But is it really to your advantage to have a reputation as one of the junkyard dogs of negotiation? The authors approach the question from three very different starting points. Tinsley summarizes the research on reputation in controlled settings. Schneider turns to real-life reputations of lawyers in action. Finally, Cambria shows how the life-and-death negotiations which characterize the work of the New York Police Department's Hostage Negotiation Team have led to a new understanding of reputation. This chapter should be read in conjunction with Lewicki on Trust and Hollander-Blumoff on Relationships.

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Is "I'm sorry" the hardest phrase to say? Does it matter whether you mean it? This essay examines the critically important issue of apology, and how and when an apology can be helpful or harmful in a negotiation. Reviewing the latest empirical work, the authors discuss the purpose, type and timing of an apology, to ensure that any apology given accomplishes its goals. Note that they find that an apology offered cynically or casually may be worse than none at all. This chapter is closely related to Toussaint and Waldman on Forgiveness.

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Loren Toussaint and Ellen Waldman

How many negotiations are reduced to a numbers game by the unthinking responses of professional negotiators who don't recognize what is really at stake for their clients? How many negotiators frame what "should" be achieved in the negotiation, conveniently getting around the fact that the agent can't be paid one-third of an apology? Here, a lawyer and a psychologist together examine the evidence that forgiveness may be the single most desirable negotiation outcome in many situations, when measured by the physical and mental health of those involved—but that a lockstep push toward forgiveness in all disputes is neither possible, nor desirable. This chapter should be read in conjunction with Brown & Robbennolt on Apology.

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Rebecca Hollander-Blumoff

The author argues that relationships in negotiation can be simultaneously over- and under-valued. She locates a significant stream of argument to the effect that relationships should be developed almost for their own sake, or at least with an eye to long-term and repeated dealings—and finds another that focuses on the short term and implicitly if not explicitly devalues relationships. The author contends that there is a reasonably moral and thoroughly practical view in between. Arguing that there is nothing wrong with admitting that one's goals in a negotiation may fall somewhat short of true friendship or deep mutual understanding, Hollander-Blumoff notes that it is still productive and well worth the effort to form *some* level of connection with the other party. Even this modest step can smooth the rough edges, develop better information for the use of both parties, and make more agreements, and more creative agreements, possible.

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Kimberly Wade-Benzoni

In today's world, intergroup conflict transcends time and space as we face problems that affect multiple generations. Wade-Benzoni discusses how intergenerational contexts push the boundaries of more traditional conceptions of negotiations to include the reconciliation of conflicting interests between parties who may not exist contemporane-

ously. Furthermore, research on intergenerational conflict challenges the dichotomy between "self" and "other" interest. This chapter should be read in conjunction with Welsh on Fairness.

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Andrea Kupfer Schneider

When you set out to negotiate with someone, how do you evaluate what you're really trying to achieve? Is it an unfocused want; something better than your BATNA; or anything you can get that's above your reservation price? Schneider analyzes research showing that a conscious choice of goal helps you come out with more. Four keys to this are "making your reach a little longer than your arm"; setting goals you can justify in public without laughing or lying; making them specific; and paying real attention to goals which can't be expressed in a number. It's also helpful not to take yourself too seriously. Finally, Schneider argues that we need to get used to disappointment in order to achieve true success.

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Chris Guthrie

Why is it that attractive or well-liked people tend to do better in negotiation? Guthrie explains how persuasion in negotiation works differently from persuasion in court. The psychology behind six different factors that tend to influence people is described: liking, social proof, commitment and consistency, reciprocity, authority, and scarcity all have consequences. Guthrie offers practical tips, exploring how lawyers and other negotiators can use these phenomena to influence their counterparts in negotiation.

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Donna Shestowsky

We know instinctively that not everyone is persuaded by the same set of facts or the same type of argument. Shestowsky explains the two different types of audiences we typically face in a negotiation, and provides pointers on how to persuade in the way that will be most effective to each audience. This chapter should be read in conjunction with Perceptions & Stories by Heen & Stone and Getting your Way by Guthrie.

26. Perceptions and Stories **351**
Sheila Heen and Douglas Stone

Even when the parties basically recognize the same set of facts, there are often multiple versions of what actually happened. Why is this, and how do these different versions affect negotiations? This chapter demonstrates how each side's version of "the story" in a nego-

tiation needs to be understood, if the other side is to be persuaded to make any significant step toward an agreement.

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Deborah Kolb and Jessica Porter

Workplace negotiations take place in many forms, including informal "n-negotiations" which help people create buy-in for their ideas, advocate for new projects and opportunities, develop new work schedules, and get credit (and compensation) for their work. When we negotiate over these issues, we are likely to encounter resistance from others who may be quite content with current operations. Kolb and Porter examine the types of strategic *moves* people use in these "n-negotiations", which can put others in a defensive position, and how those moves can play on social identity stereotypes and reinforce power dynamics in the workplace. The authors offer strategies for *turning* moves to maintain power and to shift negotiations to create moments of learning and transformation.

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Jeffrey Senger

Should I accept this offer? How can I measure the real value of a settlement offer now, versus the possibility of a much larger verdict years in the future? Here, a highly experienced attorney who has both tried and settled many complex cases explains how risk analysis helps us estimate outcomes with more accuracy, and make better decisions. Initially, he wrote from the viewpoint of a Government lawyer with agencies as clients. More recently he has spent seven years as a partner in a large law firm. This has led to further thoughts on the differences between how public and private sector actors perceive uncertainty—and risk.

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The author offers a supposedly basic tool, that of actually listening to your counterpart in a negotiation, as an answer to a supposedly basic dilemma—whether to cooperate or compete. He argues that negotiators tend to adopt one or the other as a general approach, but that neither outright competition nor excessive cooperation actually works to produce good results. A disciplined approach to active listening, he argues, is key to unlocking your latent ability to perform in the parts of negotiation with which you are less naturally comfortable. This chapter should be read in conjunction with Itzchakov and Kluger on Listening & Understanding.

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Guy Itzchakov and Avraham N. Kluger

You think that you listen to your counterparts in negotiation—but do you really understand them? In this chapter, Itzchakov and Kluger offer a unique, research-based perspective on the power of listening-with-understanding, based on Carl Rogers' theories in clinical psychology. This approach can change speakers' attitudes, making them more complex and less extreme, and help promote more integrative solutions. The authors outline specific tools to help us all become better listeners.

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Ava J. Abramowitz

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Kathleen O'Connor and Margaret Ormiston

Does your face determine your fortune at the bargaining table? Some of us profoundly hope not; but O'Connor and Ormiston review work from economics, psychology, and organizational behavior, and find three categories of facial features that *have* been found to make a difference. Each of these facial features has a unique and important effect in negotiation. In particular, these facial features affect how counterparts perceive negotiators.

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Jeff Thompson, Noam Ebner and Jeff Giddings

The authors first review the research indicating that what most negotiating advice focuses on—what should be said or written, and how, and when—amounts to about 7% of communication. The other 93% is nonverbal....and is mostly ignored by proponents of better negotiation. They then set out to remedy this situation by analyzing different modes of nonverbal communication, and offering a matrix of ways to understand it, and employ it more consciously and more effectively.

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Taya Cohen

The author considers character as a key element in building trust. Yet she finds moral character to be a phenomenon somewhat independent of the "calculus-based" and "identification-based" concepts of trust discussed elsewhere in this volume by Roy Lewicki. Cohen argues that individuals can be assessed as having high or low moral character, and that high moral character is justly rewarded with the trust of others.

35. Negotiation Ethics 481
Art Hinshaw

Morals, rules, or law? The author shows how ethics in negotiation can be viewed through any of these three lenses—but they produce different results. So, how to decide, when it's your case and your reputation at stake? Hinshaw works through a series of social norms, showing how people with different personality profiles tend to opt for one norm over another. He then uses these norms to demonstrate how a negotiator can assess whether a counterpart has opted for a cooperative approach, or a competitive or even a deceitful one. This is followed by analysis of how the rules applicable specifically to attorneys affect a lawyer's possible choices, and in turn, a brief tour of the applicable and overarching law. In the end, however, Hinshaw concludes that the best advice overall for even a lawyer-negotiator is to listen closely to his or her own personal sense of ethics—and follow it.

36. The Ethical Bedrock under the Negotiation Landscape 493
Kevin Gibson

Your dilemmas as a negotiator fall into two basic sets, "what's possible?" and "what's right?" The first is treated by many chapters in this book. Here, from his philosopher's background, Gibson writes about the influence of morality on negotiations, and how we can think more clearly about what's the right thing to do. This chapter should be read in conjunction with Carrie Menkel-Meadow's chapter on The Morality of Compromise.

37. Drawing on Psychology to Negotiate Ethically 503
Jennifer Robbennolt and Jean Sternlight

As negotiators seek to apply the legal and professional considerations that govern ethical decisions, they will inevitably be impacted by psychological factors. The authors review the research on "bounded ethicality" and find that even people who try to behave ethically can be led astray by psychological phenomena that cause them to unconsciously downplay and rationalize improper actions. Negotiators and organizations that are aware of this problem, however, can take steps outlined in the chapter to prevent themselves from inadvertently

acting unethically. This chapter should be read in conjunction with Hinshaw on Ethics, Cohen on Moral Character, and Rule on Online Ethics.

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Nancy Welsh

In all of negotiation there is no bigger trap than "fairness." Welsh explains why: among multiple models of fairness, people tend to believe that the one that applies *here* is the one that happens to favor *them*. This often creates a bitter element in negotiation, as each party proceeds from the unexamined assumption that its standpoint is the truly fair one. Welsh argues that for a negotiation to end well, it is imperative for both parties to assess the fairness of their own proposals from multiple points of view, not just their instinctive one—and to consider the fairness of their *procedures* as well as of their substantive proposals.

39. Achieving Process and Outcome Justice in Negotiation 533
Lynn Wagner and Daniel Druckman

The authors argue that better outcomes result when negotiations incorporate principles of justice. They review evidence that when negotiators seek justice for *all* parties, in both the process and outcome senses of the term, the outcomes are more likely to be actually implemented. The authors contend that in major negotiations in particular, such as international conflicts, it has proven to be possible to get the parties to think about different concepts of justice and fairness, which allow in turn for a richer discussion of what should be done. This pays dividends far into the future. This chapter should be read in conjunction with Welsh on Fairness.

40. Ethical Dilemmas in Technology-Based Negotiation 549
Colin Rule

In this chapter, a leading expert on online negotiation and dispute resolution considers the new ethical challenges wrought by his field. Rule finds that the advent of technology as a routine element in all sorts of negotiations has introduced new questions about impartiality, competence, cost, accessibility, confidentiality, privacy, and even the possibility of systemic biases being built into software code. As yet, he argues, few negotiators are thinking about or even aware of most of these factors. Yet they increasingly affect how your case will be handled.

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With America's increasingly multicultural population, the ability to recognize that race still matters is an important factor in negotiations. This chapter attempts to capture an important chunk of the

literature that identifies the unique experience for black persons in negotiation, and makes some suggestions to address these challenges. Because of its focus on cultural impacts of negotiating while being black, this chapter can usefully be read in conjunction with Bee Chen Goh's chapter on negotiating under Chinese culture, Gale Miller's on Codes of Culture, and Kaufman and Blanchot on Theory Meets Reality.

42. Typical Errors in Chinese-Western Negotiation 583
Bee Chen Goh

It's no longer rare for negotiators based in a Western culture and instinctively applying Western concepts to find themselves in dealings with people who start from a very different cultural frame of reference. Goh, a Chinese-Malaysian law professor working in Australia, deconstructs the typical errors that negotiators unfamiliar with Chinese culture can be expected to make. This chapter should be read in conjunction with Miller on Codes of Culture, Kaufman and Blanchot on Theory Meets Reality as well as Michael Green's on Negotiating while Black; together, they can provide you with a fast tour that will provide some hints as to what you might encounter in still other cultures—and, perhaps, in less familiar parts of your own culture.

43. Gender Differences in Negotiation 595
Julia Bear and Linda Babcock

By now, it's widely discussed that men and women tend to negotiate differently. But what does this mean in practice? Are women always disadvantaged? And what can be done to improve the gender gaps typically seen in negotiation outcomes? The authors review decades of experimental research and make a series of recommendations—both for individuals, and for organizations which increasingly see it as in their own interest to ensure fair handling of employee and other negotiations.

44. Codes of Culture in Negotiation 607
Gale Miller

Culture, Miller argues, has become a widely recognized element in negotiation at many levels. Yet he finds that this has failed to clarify how culture actually works, because culture means so many things to so many people that invoking the concept is as likely to confuse as to enlighten negotiators. The author argues for making a distinction between three different orientations to culture. They range from treating culture as widely shared values and practices of large groups and societies (which the author calls "encompassing codes"), to focusing on the distinctive social realities created in social interactions in small groups ("small group codes"). Between these extremes, he says, is the "multiple codes" orientation, which stresses the diversity of values and practices shared within cultural communities. Miller contends that understanding these three codes can help any negotiator decode what is really going on.

45. Theory Meets Reality: Negotiation and Mediation in Mali **621**
Sanda Kaufman and Eric Blanchot

Do the theories and best practices now widely understood among negotiators actually hold up, when exposed to a culture and setting very different from those in which they originated? The authors track Blanchot's experiences in a Francophone African country, and find evidence that when given such a cultural stress test, some of our field's most cherished theories do not help. It is even possible that standard approaches and remedies, applied in the wrong place, may cause active harm.

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I. William Zartman

Every negotiation has a rhythm to it—whether lyrical, musical or mechanical. The rhythm regulates a progression which, once understood, can help you realize where you stand at any given moment. Here, Zartman outlines the process and the typical steps that negotiations must work through.

47. Timing and Ripeness **653**
I. William Zartman

How do you know when it's time to get serious about negotiating? When is a deal ready to be made? In the settlement of civil disputes, we often see parties expensively delaying negotiations, even waiting for mediation till they're on the proverbial courthouse steps. Is there a science to this? From the perspective of international relations, Zartman analyzes the issue of ripeness and demonstrates when it's time to settle.

48. Dispute Domains: Negotiation in its Social Context **667**
Gale Miller and Robert Dingwall

Before metaphor and underneath framing lies the structure in which you find yourself negotiating. Because the structural elements are often buried, they can go unremarked. But many times, there is a *choice* of structure, or dispute domain, within which you may be able to pursue your negotiation. The authors use two particular domains of negotiation to explain how this works....and how you might foresee a need to switch to another process. This chapter should be read in conjunction with Gross on Arbitration's Shadow.

49. Plea Bargaining: An Example of Negotiating with Constraints **683**
Cynthia Alkon

Plea bargaining accounts for the disposition of a significant majority of criminal cases. Indeed, without this kind of negotiation, either the judicial and criminal prosecution systems would have to be radically enlarged, or they would collapse completely. Yet misunderstand-

ing of how these negotiations work is rife. Alkon describes plea-bargaining's varieties, its frequently severe constraints (which surprisingly affect prosecutors almost as badly as the defense), and outlines its potential to do better—with some relatively modest reengineering.

50. Negotiating in the Shadow of Adhesive Arbitration 701
Jill Gross

"Bargaining in the shadow of the law" is a famous phrase that by now has passed into negotiators' and particularly lawyers' subconscious. Yet as the backdrop for setting norms and expectations in negotiation, case law has been largely supplanted in recent years by a plethora of standardized, unilateral contracts which propel anyone with a subsequent grievance toward a private, confidential arbitration proceeding—and increasingly bar such individual parties not only from airing their concerns in court, but from joining with others similarly situated in a class action. The result has profound consequences for many who are trying to negotiate redress for all sorts of contract violations. This chapter should be read in conjunction with Miller & Dingwall on Dispute Domains.

51. Scripts: What to Do when Big Bad Companies Won't Negotiate 711
Carrie Menkel-Meadow and Robert Dingwall

The authors started with a "natural experiment", involving a canceled flight and the resulting competition for the last seat on the last remaining plane out: in the real world, which negotiator gets that seat? Years of further study have combined with years of further sad experience, in which the authors increasingly found themselves grappling with customer service agents with routinized training and scripts for how to deal with dissatisfied customers, in one industry after another. Here, they survey the state of play across a wide range of environments which have now adopted such playbooks—and provide suggestions for how *you* can play in turn, with ingenious and effective responses.

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Howard Gadlin, Andrea Kupfer Schneider and Chris Honeyman

Metaphors are so deeply embedded in our minds that they are, to a large extent, *how* we think. This creates an enormous trap for negotiators, as they not only tend to start out with metaphors for conflict handling that derive from war, but tend not to notice their assumptions. Yet metaphor can be the key to a solution, as well as the central problem. The authors argue that

developing a holistic understanding is the essential element in using metaphor creatively – that, and avoiding letting a metaphor creep up on us, like a thief in the night.

53. The Morality of Compromise **13**
Carrie Menkel-Meadow

Does how we negotiate reflect or shape our character, or both? Does choosing to negotiate have moral implications? What are the ethical and moral implications of making the assumption that negotiation is inappropriate? Here, Menkel-Meadow notes that not all negotiation is based in the idea of compromise, and discusses the ethical and moral underpinnings of our choices in negotiation – choices we may ignore we are making, but *cannot* avoid making. Compromise, in some cases, may be more moral and appropriate than not to negotiate at all.

54. Literature and the Teaching of Negotiation **23**
David Matz

The author, a veteran teacher of the field, found himself wondering how to address the subtler concepts necessary to teach an advanced course, in ways that would get students to think more deeply about the possibilities and limitations of their work. He discovered that literature provided a potential answer. Here, Matz discusses more than a dozen books and other writings he has found particularly insightful in teaching negotiation, and shows how each contributes to a rounded view of what negotiation can and cannot do.

55. Aesthetics in Negotiation: Part One—Four Elements **37**
Nadja Alexander and Michelle LeBaron

At least in the West, negotiators have mostly assumed that the arts have little or nothing to do with their work. Not so, say the neuroscientists, in increasingly persuasive recent work. Here, the authors review that research, and place it in context of ancient wisdom. They draw a line through the classicists' four elements—earth, water, air and fire—and relate each concept to the heart and mind of negotiators. It turns out that aesthetics are a clue to much that's going on at the back of our counterparts' minds, and our own. We will negotiate better if we take due account of the wisdom they offer. This chapter should be read in conjunction with the same authors' Part Two, in which they argue for a contemporary negotiation application of the ancient concept of alchemy.

56. Aesthetics in Negotiation: Part Two—the Uses of Alchemy **59**
Michelle LeBaron and Nadja Alexander

The authors here pursue the logic of their Part One chapter further. Showing how negotiators tend to concentrate on a limited range of skills and stimuli, while overlooking others, they argue that the ancient concept of *alchemy* works in conjunction with modern concepts of neuroscience to unlock a whole series of aesthetics-derived, embodied strategies and approaches. These, they contend, make it possible to advance "stuck" negotiations in which progress is stalled, as well as to improve a whole range of less complex negotiation processes.

57. Negotiation as Law's Shadow: On the Jurisprudence of Roger Fisher **79**
Amy J. Cohen

The author reviews the life work of one of negotiation's most famous scholars, and reveals a wholly new observation. Roger Fisher, she argues, did

not understand negotiation as primarily something that happens in the shadow of the law. Rather, based on his years thinking about international conflict, Fisher offered a theory of negotiation as a form of legal ordering and, by extension, a theory of law as a form of negotiation—one with enduring relevance for dispute resolution today.

58. Taming the Jungle of Negotiation Theories 87
John Lande

Is there such a thing as a generally reliable theory of negotiation? Is there even a coherent definition of what negotiation is? And if not, how are we to make sense of a field that produces so many examples in so many settings? Lande has studied a wide variety of texts and sources, and sets out to pull them into, if not a single coherent range, at least a recognizable matrix.

Section XI. It's a Bit Technical 106

59. Choosing Among Modes of Communication 107
Andrea Kupfer Schneider and Sean McCarthy

This chapter serves as the overview to all of the chapters on the use of different media and technology as part of negotiation. How do we make sense of all our options? The authors argue that knowing your own "default", while understanding your counterpart and the context, is crucial. Being able to choose wisely among the different modes requires careful consideration of the advantages and disadvantages that go along with each of these. This chapter can usefully be read in conjunction with Thompson, Ebner, and Giddings on Nonverbal Communication, as well as with the technology chapters—particularly, Ebner's chapters on Email, Texting, and Videoconferencing.

60. Negotiation via Email 115
Noam Ebner

Email is typically the first technology people think of when they start to imagine negotiating using a computer. By now, this is a common practice, at least for parts and phases of a typical negotiation. Yet few practitioners or students pause to consider how the technology affects what is said, how it is said, and when and how it is heard. Reviewing what is now a substantial body of research, the author finds seven major challenges in negotiating via e-mail, most of which are as yet poorly understood. He goes on to provide practical advice on each one.

61. Negotiation via Text Messaging 133
Noam Ebner

"Never!" That's the typical reply, says the author, when he queries a negotiator about negotiating through text messages. Not so fast, Ebner says—look closely at how your day goes and how your various forms of communication fit together, and you may well find yourself already handling part of that traffic via text. Furthermore, he says, in the future you can expect to use this medium more, as more and more of your counterparts depend on it. Yet negotiating via text is significantly different even from email negotiation. Ebner walks you through the assets, and the liabilities.

62. Negotiation via Videoconferencing 151
Noam Ebner

Here, Ebner addresses a tool which has crept up on negotiators. Videoconferencing for negotiation was first hailed long ago with certain expectations: high quality video at high cost, to be used for negotiation between

business teams in expensively equipped conference rooms. But now, these conditions are largely supplanted by widespread use of lower-resolution videoconferencing tools such as Skype and other low-to-no-cost programs, of varying quality and reliability. As one result, people now find themselves, routinely, in face-to-face negotiations with people whose faces cannot be seen very clearly. The social effects go far beyond this, too—concerns about who might be listening out of camera view, and other privacy and confidentiality issues, combine with widely varying levels of comfort with this technology to create a significant likelihood of a mismatch between parties who do not trust, or cannot manage, the technology or the setting equally. Ebner provides a matrix of considerations that apply to nonverbal communication in video conferencing, and another to help a negotiator understand features and risks of using video.

63. The Technology of Negotiation **171**
Noam Ebner

Here, the author follows up on his Email and Text negotiating chapters, both of which discuss technology which by now have become quite generic. This chapter is different: Ebner here describes representative examples of a burgeoning class of proprietary programs, which individually address one or another situation or problem a negotiator may have. Together, they form an expanding array of electronic helpers – and merely hint at what may be available not far into the future. It is increasingly evident, as a result, that keeping up with the field is no longer simply a matter of reading; learning new programs as they come along is virtually guaranteed to become more and more essential.

64. Lawyers and Online Negotiation **187**
Orna Rabinovich-Einy and Ethan Katsh

In the next decade, lawyers' roles will change dramatically because of the expansion of online dispute resolution (ODR). As technology increasingly pervades professional life, demand for efficient negotiation tools and software-supported dispute resolution processes can also be expected to grow. The authors discuss how lawyers' practice is changing as a result of the advent of high technology specific to their field, and outline both the uses and risks for lawyers that are associated with a whole series of specific platforms and programs that are increasingly being used to transact or settle cases online and offline, including in courts. Finding the technologies to be constantly evolving and disruptive of existing practice, the authors nevertheless conclude that lawyers have little option but to learn, use and advise their clients about these platforms. They point out that some of the new technologies promise to obviate a great deal of unrewarding work, to speed up possible resolution and, if designed appropriately, to enhance fairness and access to justice, reinforcing the negotiation field's strong interest in "process pluralism".

65. Reclaiming Attention in the Digital Generation Negotiator **201**
Lauren A. Newell

So many successive generations of people have remarked on how they don't understand the next generation that it's now become a cliché. Yet the "digital generation" does represent a departure from years of assumptions of how people will typically get and process information, how they understand the world, and how many different things they ought to expect to do at the same time. Newell reviews the research on the digital generation's ability to maintain sustained attention over time, and finds that, yes, there is a difference. Multitasking—defended by many as an efficient way to process multiple

concurrent streams of information—has been exposed as something of a myth. And there are other prices paid for assuming that one can handle multiple digital forms of communication, from cognitive overload to neurological changes. Yet communication technology is here to stay, Newell says: we have to learn how to handle it. She offers a succession of techniques for reclaiming and holding attention.

Section XII. Organizations and Teams **216**

66. Two Heads Are Better than One: Team Negotiations in Research and in Professional Soccer **217**
David F. Sally, Kathleen O'Connor and Ian Lynam

This chapter analyzes the research on what individuals accomplish, when compared to teams in which the members have differentiated functions. Not surprisingly, the teams turn out to be able to handle more information more accurately more of the time. But of course, that's not the whole story. The authors, who include two advisors to professional sports teams, use examples from professional sports to show where you might want a team to negotiate, and where it makes sense to use an individual.

67. The Organization as Negotiator **227**
Adrian Borbely and Andrea Caputo

The authors discuss the surprising shortage of research on how organizations negotiate or plan to negotiate, when the work is considered on a broader than individual level. They contrast this with evidence that certain organizations have profited enormously, and even become dominant players in their markets, largely by adopting and enforcing one consistent style and approach to negotiation, one which supports in every detail the organization's overall strategy. They argue that building on this evidence represents a potentially huge strategic opportunity for organizations which have not yet tackled consistency of purpose and of execution across all of their relationships with suppliers, employees and other stakeholders. They note, however, that the results of such consistency are not always attractive to the outside observer.

68. Productive Disagreement **239**
Howard Gadlin

The author earned his living for many years mediating between 20,000 scientists and working with interdisciplinary research teams. Reflecting on his career, Gadlin finds himself valuing disagreement (at least sometimes) more than agreement. Especially among scientists or other people who must think and work in teams, disagreement can spur new thinking. Developing this theme, Gadlin finds that the maintenance of *productive* disagreement has its own principles, and is at the heart of professional practice in an increasing number of occupations and settings which depend on developing new intellectual property.

69. The Negotiator's Role within a Dispute System Design: Justice and Accountability **249**
Lisa Blomgren Amsler

To many who are frustrated with ill-organized, expensive, catch-as-catch-can approaches to handling entirely predictable conflict, dispute system design has seemed a logical, socially productive way of planning to reduce the costs of conflict, and effectuating justice on a larger scale. Amsler shows how this is not always the case, beginning with an analysis of how Boston lawyers on all sides effectively conspired to keep the pattern and practice of abuse of

children in the Roman Catholic Church quiet for decades. This was a *system* at work—there is no denying it. Thus questions of justice and accountability arise at the outset when analyzing or, even more important, planning any dispute resolution system. Amsler lays out the criteria and makes proposals for how to design and effectuate a system that is not only systematic, but requires *justice*.

70. Thinking Ahead **265**
James Groton, Chris Honeyman and Andrea Kupfer Schneider
In several distinct domains of conflict—heavy construction, international relations and U.S. labor relations—there are by now highly sophisticated and widely-adopted techniques for anticipating future conflict. If not ensuring outright that there will be only minimal such conflicts, these techniques at least encourage the conflicts which inevitably follow the formation of a new relationship to be handled with a minimum of time, cost and stress to all involved. For the most part, the evidence is that these systems work. Surprisingly, however, most other industries and domains have yet to adopt anything comparable. The authors analyze the history and the sources of resistance, and offer a new strategy toward wider adoption and adaptation of these proven tools.

Section XIII. Negotiation Everywhere **282**

71. Negotiation and Professional Boxing: The Ringside Physician **283**
Habib Chamoun-Nicolas, Randy D. Hazlett, Joe Estwanik, Russell Mora and Gilberto Mendoza
The authors, who include unimpeachable experts on boxing, review what actually happens in the ring and in the frequently unspoken dialogue between the boxers, the referee, and the fight doctor. They find negotiation behavior routinely taking place in this most unlikely of environments. They explain why, and also show the price that is paid in injury, and sometimes a life, when the referee or the doctor gets the subtle signals wrong.

72. Negotiating With the Unknown **297**
Maria Volpe, Jack J. Cambria, Hugh McGowan and Chris Honeyman
What happens when all of the classic negotiation advice about preparation goes out the window? Negotiations "on the street" teach us how extensive preparation for the process itself—for teamwork, roles, communication patterns, and trust—is crucial for success when everything you might ordinarily want to know to prepare for a specific case is impossible to find out in time.

73. Lessons from the Extreme: What Business Negotiators Can Learn from Hostage Negotiations **311**
Paul Taylor and William Donohue
The high-stakes world of the hostage negotiator draws instinctive respect from other negotiators. But if you operate in another domain, you could be excused for thinking that hostage negotiation has nothing to do with you. That impression, it turns out, is quite often wrong. Here, two researchers draw parallels to several kinds of business and other disputes in which it often seems that one of the parties acts similarly to a hostage taker. Understanding what hostage negotiators have learned to do in response can be a real asset to a negotiator faced with one of these situations. Read this in conjunction with Tinsley, Cambria and Schneider on Reputations, and Volpe et al. on with

Negotiating with the Unknown, and you may find yourself formulating a new idea you can use tomorrow.

74. Negotiation in the Military **327**
Leonard L. Lira
Since as long as anyone can remember, negotiators have used war metaphors as a way to frame what they were thinking, and as an analogy to what might happen if no deal is reached. But the warriors themselves have wised up. In this chapter, U.S. Army Colonel (ret. 2016) Leonard Lira shows how the military has learned some hard lessons. Now, the military is well on the road toward sophistication about its own needs and practices in negotiation.

75. Martial Arts and Conflict Resolution **355**
Joel Lee and James T. Shanahan
Is there a relationship between skill in negotiation and skill in martial arts? Counterintuitive as this may be, the authors answer—*yes there is*. Starting from opposite sides of the planet and very different occupations (law teaching in Singapore, and police work in New York City), the authors have two things in common: they teach negotiation, *and* they teach martial arts. Here, they compare and contrast the worlds in which they must operate, and show how martial arts training has benefited both of them—and their negotiation students.

76. "Non-Events" and Avoiding Reality **369**
Susan Morash
What do you do when you think something should be discussed, but others don't seem to recognize there's an issue? This essay uses specific examples from health care to make a larger point. Only in recent years have health care professionals adopted standard policies against a former pattern, of choosing not to view supposedly-minor errors and "incidents" as triggering a need for a discussion with a patient. By taking the former view, of course, they had often set themselves up for confrontation or even lawsuits later, when and if the patient found out anyway. In reassessing her findings from 10 years ago, Morash finds there has been some progress, but not enough in practice. Furthermore, the intervening decade has presented society with all too many examples of "avoiding reality" and treating suspected harm to a third party as a "nonevent" in *other* fields, such as global finance. Do similar assumptions limit discussion with your kinds of clients? What are the consequences?

77. Peer Mediation **389**
John and Christel McDonald
On the surface, the authors describe an ingenious and far-reaching effort John McDonald undertook many years ago to foster peer mediation among students in schools. But for those interested in systemic change, the McDonalds' subject leads farther: this chapter stands as a demonstration of what it takes to use the political system to support a societal change that can be far-reaching for our field.

Section XIV. Agents and Tribes **396**

78. Shadow of the Tribe **397**
John Wade
The negotiations have gone on for hours or months or years. A deal is at hand. And now, the other side mentions for the first time that the approval of

some previously unremarked person is required, or there is no deal. Could you have prepared for this? Do *you* have options at this point? Are you, perhaps, the negotiator making the dread announcement that you must respond to a higher power before a deal's a deal? Here, Wade meticulously deconstructs the circumstances that lead to "shadow of the tribe" negotiations, and suggests what you can do.

79. Multiparty Negotiations in the Public Sphere **413**
Sanda Kaufman, Connie Ozawa and Deborah Shmueli

Most negotiation research in the laboratory, and much practical wisdom in the field, concerns the actions of "dyads", i.e. pairs of individuals negotiating with each other. This is far from the real-world environment of major public disputes. And in such disputes, blindly following the typical advice from less complex environments can get the negotiator or mediator and the clients into real trouble. The authors use case studies from three highly dissimilar environments to unpack the negotiating differences that apply when the parties are many, the stakes are high, and the situation is unstable.

80. Agents and Informed Consent: After the 2008 Financial Crisis **431**
Jacqueline Nolan-Haley

How can you-the-negotiator ensure that your client is really on board? Nolan-Haley argues that by paying more attention to "informed consent" not only before, but again at intervals during a negotiation, and taking care to reaffirm this as the process reaches agreement, agents will not only better serve their clients but reach better, more lasting agreements. Yet revisiting the subject, years after the 2008 financial shocks demonstrated the degree to which large institutions were ignoring these principles, she finds strong evidence that lawyers and other professionals with a duty to their clients have badly failed them. As a result, she concludes that if your attorney *isn't* asking you the hard questions, it's in your interest to ask the attorney why not. This chapter should be read in conjunction with Wade's Shadow of the Tribe.

81. Dueling Experts **439**
John Wade

Your case is complicated; it involves specialized knowledge, and without some help, the judge probably won't understand it and the jury certainly won't. Furthermore, your chances of negotiating a settlement depend on getting some degree of shared understanding with the other side of what the facts are. So you've hired your expert, and the other side has hired its expert—and now the experts themselves are locked in combat. Could you avoid this next time? In the meantime, what do you do now? Wade analyzes your options at every stage, and shows how even when the experts have delivered black-versus-white reports of the facts, you can still salvage the situation. This chapter should be read in conjunction with Adler on Negotiating Facts.

82. Negotiating the Facts **455**
Peter Adler

Many believe that in negotiations as elsewhere, facts are the bedrock, the only things that can be firmly ascertained and then relied on, in a shifting universe of personalities, perceptions and preferences. Adler, steeped in the mediation of scientific disputes, begs to differ. Facts in science are routinely challenged. Factual disagreement is also at the heart of many public policy disputes, and cannot be successfully papered over by focusing either on interests or positions. Yet after years of experimentation, public policy negotiators and mediators have made considerable progress in developing systems and

structures for uncovering the assumptions and data that underlie many difficult disputes. This makes it possible to address fact-driven disputes more productively—and the technology now exists to do this on a wider scale. Adler shows how. This chapter should be read in conjunction with Wade on *Dueling Experts*.

Section XV. Making Conflicts Less Intractable **466**

83. Getting in Sync: What to Do when Problem-Solving Fails to Fix the Problem **467**
Peter Coleman and Rob Ricigliano
In the first of a trilogy on complex cases, the authors estimate that far beyond the usual categories people think of as "intractable"—such as international, race relations or major environmental conflicts—about 5% of disputes of virtually all kinds actually fit this pattern. The authors review why this is, and outline a series of techniques developed in recent years for handling conflict of the worst kind, in any domain. This chapter should be read in conjunction with Coleman, Redding & Fisher's "Intractable 1 and 2" chapters.

84. Understanding Intractable Conflicts **489**
Peter Coleman, Nicholas Redding and Joshua Fisher
In the second chapter of our complex-case trilogy, the authors summarize recent findings from complexity science and dynamical systems theory, showing how the new insights provide the possibility of innovative levers for change. Their key findings are presented as a set of five guidelines. This follows the more general explanation in Coleman and Ricigliano on Getting in Sync and is also closely related to the next chapter, Influencing Intractable Conflicts, which also presents a set of five guidelines: this time, for actually working on a conflict which, on the surface, appears impossible to influence.

85. Influencing Intractable Conflicts **509**
Peter Coleman, Nicholas Redding and Joshua Fisher
The final chapter of our complex-case trilogy describes techniques developed in recent years which promise greater effectiveness in the admittedly frustrating process of actually tackling an intractable conflict. It should be read not only in conjunction with Understanding Intractable Conflicts by the same authors and Getting in Sync by Coleman and Ricigliano, but also in conjunction with McDonald on Kashmir, in which a retired U.S. Ambassador describes what he actually did when drawn into working on the long-standing Kashmir problem.

86. Training a Captive Audience **529**
Stuart Kirschner and Jack J. Cambria
Let's say you've finished this book and would like to use some of it. But what about your more hardheaded colleagues, team members or other audiences? Using their experience in training the highly skeptical police officers of the New York City Police Department, psychologist Stuart Kirschner and longtime (2001-2015) NYPD Hostage Negotiation Team commander Jack Cambria discuss the design of training for a potentially resistant audience.

87. Religion in Cooperation and Conflict **545**
Jeffrey R. Seul
In the first of two chapters, the author argues that the relationship between religion and conflict is widely oversimplified. Recent and careful social science research has demonstrated that contrary to the assumptions of

some people, religion most often increases its adherents' ability to relate positively to others—and this can include adherents of another religion or non at all. In contrast, he reviews the research on extreme religious militancy, including the evidence on suicide and other violent attackers, and concludes that the most careful researchers have universally found that these actions are not principally propelled by religion itself, but by other factors. In his next chapter, Seul proceeds to analysis of how religion can help to transform conflict, and how it can be consciously invoked toward that purpose.

88. Religious Prosociality for Conflict Transformation **565**
Jeffrey R. Seul

In the second of two chapters on religion and conflict, Seul reviews the research on religious prosociality, or its ability to help people relate positively to others, and finds a series of features of religion that can actually help to resolve conflict—when understood and employed appropriately. He offers a series of specific steps and strategies for particular situations, and argues that we are beginning to improve our ability to encourage the best rather than the worst of behavior when invoking religion in a conflict.

89. A New Future for Kashmir? **581**
John and Christel McDonald

Only rarely is the public privileged to track a major negotiation and see up close whether the theories actually get put into practice. A multitude of other chapters in the book are implicated here as Ambassador John McDonald talks about the prevailing assumptions, the intractable conflict, and a breakthrough move toward progress in the decades-old conflict between India and Pakistan over Kashmir. This chapter stands particularly as a practical illustration, by a consummate practitioner, of the principles explained by Coleman et al., in Intractable 1 and 2, as well as Adler's Protean Negotiator. Because so few practitioners at this level have undertaken to write down what they actually did, we have elected to preserve the original 2006 text largely intact, with only a few clarifying changes. The McDonalds' updated (2016) assessment follows. [For another view of how the field's theories apply, or do not, in a difficult environment, this chapter could be read in conjunction with Kaufman and Blanchot, *Theory Meets Reality*.]

Section XVI. Getting It Done (Strategies) **594**

90. Making Deals about Power Sharing **595**
John Wade

Power-sharing is an intrinsic element of many negotiations, particularly those which involve some kind of continued interaction in the future. The need to provide for future decisions to be made without resort to open conflict creates a series of questions, about who will make each decision or type of decision, what the criteria will be, and what essential or ancillary conditions might apply. Clear thinking is essential, and here Wade offers a gradation in 13 steps from total power held by one party to total power held by the other. Somewhere along the 11 steps in between, perhaps, is your best solution to your particular problem in negotiating today, for what must happen next week or next year.

91. The Uses of Ambiguity **609**
Chris Honeyman

The reality sinks in: everybody's now trying to reach an agreement, but on some fundamental things, the parties *really* don't agree. Some of those

involved see themselves as reasonable people, others are Standing On Principle without any thought of what that will mean in practice. Is there anything you can do to get this dispute over with before it spirals completely out of control? Yes, says Honeyman: you can allow, or even consciously design in, a bit of ambiguity here and there. Doing this knowledgeably can preserve your principles, while allowing for an agreement that works well enough for an imperfect world. This can be read with Moffitt's chapter on Contingent Agreements and Wade's on the Final Gap.

92. Contingent Agreements **619**
Michael Moffitt

What if you and the other side have very different views of the future? Should this make it harder to achieve an agreement? In fact, as Moffitt explains, these different views can provide exactly the lubricant needed for the gears to mesh. Contingent agreements can help negotiators move toward an overall agreement, even (or particularly) when they disagree. As one of several chapters discussing particular techniques for use when things get sticky, it should be read in conjunction with Wade's chapter on the Final Gap and Honeyman's on Ambiguity.

93. Crossing the Final Gap **627**
John Wade

It's three o'clock in the morning. You've been negotiating or mediating since 9 a.m. and everybody is exhausted. Each side has made more concessions that it really thinks it should have had to, and the gap between the parties has narrowed to millimeters. But there it has stuck, and will stay stuck unless you do something new. Every sophisticated negotiator or experienced mediator has a personal answer to this problem, a private stock of a few gambits, often tried and sometimes successful. But John Wade has the longest list we have ever seen, 16 techniques in all. Not one of them works all the time; but together they can materially improve your batting average.

94. Dobermans and Diplomats: Re-Opening Deadlocked Negotiations **639**
John Wade

One of the clear roles of negotiators, mediators, lawyers, managers, parents and human beings is to attempt to re-open "jammed" negotiations. Lawyers, negotiators, managers and mediators are paid to be competent, even expert, at recommencing communications and negotiations which have reached a stalemate or a tense stand-off. Yet many otherwise competent professionals find this difficult. This chapter sets out seventeen common strategies used by the most skilled "problem-solvers" to re-open negotiations between deadlocked disputants.

95. An Agreement that Lasts **655**
John Wade and Chris Honeyman

So, you finally have a deal! How can you make the deal stick? This straightforward chapter shows why deals regularly fall apart, and provides specific advice on what you can do in order to increase the likelihood that *your* agreement will survive the slings and arrows of outrageous fortune.

Section XVII. Getting It Done (with "Helpers") **670**

96. The Uses of Mediation **671**
Lela Love and Joseph Stulberg
How's your negotiation going? Would using a mediator perhaps be helpful? This chapter shows why and when mediation can help negotiators reach an agreement. It also explains the different types of mediation goals, and how each of those goals can affect the process. This should be read in conjunction with Honeyman on Working with Mediators.

97. Working with Mediators **683**
Chris Honeyman
Perhaps you've reached the point in the negotiation where it's time to bring in a third party. This chapter helps you make wise choices about whom to hire as a mediator. It's designed to help the negotiator understand how mediators actually operate, and to be aware of the skill set and biases within which any given mediator *must* operate. This should be read in conjunction with Love and Stulberg on The Uses of Mediation.

98. The Mediator as Medium: Reflections on Boxes—Black, Translucent, Refractive, and Gray **697**
Wayne Brazil
One of the U.S.'s most experienced mediators here discusses a striking difference between his own view of one critical feature of practice, and that of most of his peers. Most high-end litigators and their clients, he argues, have found most mediators to be anything but transparent as to their own thinking processes, even while pressing the parties to be more transparent about theirs. Brazil discusses the pluses and minuses of this way of working, offering his own take on transparency as an alternative. Delving further into the motivations, however, he concludes ultimately that his own practice is a bit less transparent than he thought—more "gray box" than either black or translucent box. The resulting reflection, however, stands as one of the most transparent discussions of a mediator's motivations and methods offered by a prominent practitioner.

99. Allies in Negotiation **707**
Bernard Mayer
In a thought-provoking book, Mayer analyzed new roles that experienced mediators and other conflict specialists might play, and suggested that they think more broadly about how they can best assist disputants. Here, he focuses specifically on how negotiators can enlist these specialists as allies instead of as third party neutrals. Just for openers, this could help you to get a complex negotiation framed properly, or to approach the other side in ways that will put them in the right frame of mind. But a decade after first analyzing the possible roles, Mayer has extended the reach of the underlying idea to a long list of "ally" roles which today often go unfilled—to the negotiator's and principals' disadvantage.

100. The Interpreter as Intervener **725**
Sanda Kaufman
You're about to start negotiating in a language where you can't even read the alphabet. What to do? This chapter is essential for anyone about to engage in a negotiation involving multiple languages—which could include many "domestic" negotiations in Singapore or Chicago or London or Paris. Kaufman explores how translators are neither perfectly neutral third parties,

nor part of a team (contrary to common assumptions). She then shows how they are often powerful and autonomous actors in the negotiation, and demonstrates how important it is to think about the use of interpreters *before* the day they are hired.

101. The A is for Activism **743**
Jennifer Reynolds

Negotiation, mediation, and arbitration—the three major practice areas of ADR—have become so mainstream that many argue that the "A" of ADR, which historically has stood for "alternative," no longer applies. But modern ADR originally developed as a set of practices outside the mainstream, intended in large part to promote social transformation and empower individuals. Reynolds argues that these activist roots of ADR should not be forgotten, and in fact should spur new research and pedagogy around activism, community organizing, social movements, and other "extralegal" approaches to changing law and society.