Negotiate to Win for Bankers

Course 2036/3036

Jim Thomas

May 20 - 24

2019 Session
NEGOTIATE TO WIN® FOR BANKERS
INSTRUCTOR: JIM THOMAS
COURSE NUMBER: 2036/3036
DATES: MAY 20-24, 2019

COURSE OUTLINE and SCHEDULE

MONDAY, MAY 20 – NEGOTIATING: WHAT LIES BENEATH
• Introductions; agenda; ground rules
• Definition of negotiation
• Major economic trends making negotiating skills a necessity for successful bank leaders
• First exercise

TUESDAY, MAY 21 – HOW AND WHY IT WORKS: THE RULES OF NEGOTIATING
• Debrief the first exercise
• Face, ego, and self-esteem in negotiation
• Americans and negotiation
• Facing the counterintuititivity problem
• Persuasion and negotiation distinguished
• The layout and reasoning behind the 21 Rules of Negotiating
• The 7 Critical Rules of Negotiating

WEDNESDAY, MAY 22 – THE RULES OF NEGOTIATING, CONTINUED
• The 7 Critical Rules of Negotiating, concluded
• The 4 Important but Obvious and the 10 Nice To Do Rules of Negotiating
• Distribute and prepare for the second exercise

THURSDAY, MAY 23 – CONCESSION MANAGEMENT
• Negotiate and debrief the second exercise
• Final review – the Nice to Do Rules
• Final review – the Important but Obvious Rules
• Distribute and prepare for the final exercise

FRIDAY, MAY 24 – PUTTING IT ALL TOGETHER
• Final review – the Critical Rules
• Negotiate and debrief the final exercise
• Review of all key course concepts; prepare for exam
• Key learnings and final thoughts
• Evaluations

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NEGOTIATE TO WIN FOR BANKERS
Jim Thomas
Washington, DC • Sunset Beach, NC
2019 Session • 20 – 24 May
LEARNING GUIDE
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Module 1:

Negotiation - What Lies Beneath

The Many Faces of a Negotiation

- Negotiation is a technique for reaching agreement between individuals in which proposals are presented and adjusted until a mutually acceptable arrangement can be found. Any time we deal with another person in order to get what we want, we're negotiating.

- All of us are negotiators — and most of us don't negotiate very well.

- We're negotiating all the time, at work and in our personal lives.
  - At work: with bosses, associates, subordinates, contractors, vendors, customers, competitors, suppliers, federal, state, and local governments, unions, diplomatic representatives.
  - Elsewhere: with spouses, lovers, friends, parents, children, salespeople, car dealers, landlords, shopkeepers, house sellers, professionals.

Trends Affecting the Importance of Good Negotiating

- Society is being impacted by revolutionary social, political, and economic changes that are sharply raising the stakes on skillful negotiating. The globalization of the economy, the growing scarcity of resources, the shrinking of margins, and the tightening of economies everywhere, have combined to make sloppy negotiating an unacceptable luxury today.

Negotiation Philosophies

- Win-win and win-lose compared; collaborative and manipulative compared; integrative and distributive compared; positional and interest-based compared; other philosophies.

Persuasion vs. Negotiation

- Generally speaking, there are two ways to get people to do things: persuasion and negotiation. While the terms are often used interchangeably, they actually describe hugely different processes. It's imperative to understand the difference.

- Persuasion uses deductive logic to secure the other side's agreement and change its behavior. It's usually successful, and most of us are pretty good at it. Persuasion is our tool of choice when we try to change each other's behavior. It's at the heart of many of our most familiar activities—
convincing, arguing, coaxing, advertising, debating, selling, nagging, and flattering.

- Persuasion is faster, easier, more natural, and in some cases more appropriate than negotiation. Even the most ardent negotiators will admit that they persuade far more than they negotiate.

"Why Can’t I Make You Understand?"

- Sometimes, however, persuasion fails. Reasonable people — fully informed and well intentioned — still disagree; sometimes stubbornly, occasionally violently.

- But what if your persuadee isn’t persuaded? What if the other side — although fully informed — doesn’t agree? What do you do now? If you’re like most persuaders, you’ll simply repeat your argument!

- We are all victims of a dangerous and enduring fallacy: understanding somehow necessitates agreement. How often have you heard — and made — statements like, “We’re just not getting through to them” and “If only we could make them understand?” The idea is that when we do “get through” to them, they’ll agree with us.

- In reality, understanding neither creates nor requires agreement. Without the slightest difficulty, humans can understand an argument perfectly and reject it utterly. The fact is that between well-informed parties with firm, differing positions, persuasion alone almost never produces agreement.

- Much of what we today call negotiating is actually just debate. Participants alternately refute each other’s positions and repeat their own. These discussions are often punctuated by such asides as, “I just couldn’t let them get away with a statement like that,” “I had to set the record straight,” and “I guess that settles that!” The climate may become so hostile that even debate comes to a stop.

- While repetition rarely produces agreement with the other side, it frequently succeeds in annoying them. Right or wrong, repetition can’t escape an implication of disrespect for the listener’s intellect. With more repetition, implication becomes declaration.

**Moving from Persuasion to Negotiation**

- If persuasion alone won’t readily bridge substantive disagreements between knowledgeable, resolute people, what will? Negotiation. Even when the other side refuses to be persuaded, their agreement can often be purchased with concessions.

- Concession-making distinguishes persuasion from negotiation. Persuaders explain, but negotiators move — they make concessions.

- If the other side can be persuaded, negotiation isn’t necessary.
Overcoming Your Natural Reluctance to Negotiate

- To become a better negotiator, you must understand why you feel the way you do about negotiating.

- Negotiating is sometimes an embarrassing, painful process. It almost always involves some degree of conflict between the interests of the parties. Occasionally, the conflict is intense – for example, when moral, emotional, or philosophical issues are negotiated. Even when less weighty matters are being bargained over, it probably won’t be an entirely pleasant experience. No matter what, the worst that can happen is that the other side will say "no."

Module 2:

WHAT "WIN-WIN" NEGOTIATING IS REALLY ALL ABOUT

- There are basically two negotiating philosophies: win-lose and win-win.

- **Win-lose:** the negotiator attempts to triumph over the other side.

- **Win-win:** the negotiator seeks an agreement that satisfies all sides.

- The problem with win-lose negotiations: the "loser" loses face. The relationship between the negotiators is compromised, and worse, the loser frequently retaliates.

- At the top of the spinal column is the oldest and most primitive part of the human intellect: our reptilian or "lizard" brain. It’s the source of our most basic instincts and emotions. When it’s aroused, logic disappears.

- When we “lose face” — when we’re humiliated, insulted, demeaned, embarrassed, or treated unjustly — our lizard brain takes over. And the lizard brain has just one way to deal with a loss of face: revenge.

- The lizard brain — that little clump of cells between the hippocampus and the amygdala — is the genesis of win-win negotiating. Why? Because win-win negotiating is the only way to insure that the other side doesn’t lose face.

- How do you do win-win negotiations? We’ll explain in detail throughout the Workshop, but here’s a basic summary of the two main techniques:

  1. At the beginning of the negotiation, “start high” – ask for more of whatever you’re seeking than you need to get. Then, as the talks progress, "reluctantly" drop back to your genuine target position.

  2. Look for creative concessions — things that one side finds valuable but aren’t particularly costly to the other side. The greater the difference between the recipient’s perceived value of the concession and its actual cost to the giver, the greater the leverage it generates.
Win-win negotiating requires outcomes to be kept within reasonable limits. It means no trickery, lying, foul play, or misbehavior. It means tactfully pointing out — not taking advantage of — the other side’s mistakes.

On rare occasions — so-called “one-shot deals” — win-lose negotiating is acceptable. You’ll never encounter a one-shot deal in the workplace, and only rarely elsewhere. In 99.9% of our negotiations, real or potential relationships are at stake — and win-lose negotiating is out of the question.

With surprising frequency, win-win and win-lose negotiations have shaped history. Let’s look at some landmark 20th and 21st Century examples.

Module 3:

THE CRITICAL RULES OF NEGOTIATING

There are 21 Rules of Negotiating, in three categories: Critical, Important but Obvious, and Nice to Do. The seven Critical Rules drive the negotiating process; they are the only Rules that should be memorized. The four Important but Obvious Rules are fundamental but self-evident. Any of the ten Nice to Do Rules can influence a negotiation, but their impact is smaller and less consistent than the other Rules.

Here are the seven Critical Rules:

1. No free gifts! Seek a trade-off (“OK, if…”) for each concession you make.
2. Start high.
3. Follow a dramatic initial concession with sharply diminishing concessions.
4. Krunch early and often.
5. Never settle issues individually. Instead, settle all issues as a package — only as a package — at the end.
6. Conclude with a nibble.
7. Keep looking for creative (high value – low cost) concessions to trade.

Rule 1: No Free Gifts! Seek a Trade-off (“OK, If…”) for Each Concession You Make.

Rather than just giving a concession to the other side, try to get something in return for it — an “if” — from them: “I can do that if you do this for me.”

A concession given without an “if” is known as a free gift — the most common negotiating mistake.

If you give a concession without an “if,” you forever forfeit that concession’s leverage. Thereafter, all you can do is remind the other side
of your earlier generosity (e.g., "You owe me one") and hope they'll feel obligated to reciprocate. This isn't bargaining, it's begging.

- There are three kinds of free gifts:
  1. Concessions made without ifs;
  2. Concessions made in response to krunches (see Rule 4;)
  3. Concessions made in response to unreasonable offers (see Rule 2).

- And, there are four kinds of "ifs":

  1. The classic trade, known technically as an "additive if", offers a concession ("I'll agree to X") but requires an "if" in trade ("IF I get Y in return").

  2. A variant of this, the "deductive if," offers a concession ("I'll agree to X"), but instead of the usual "if," it proposes the withdrawal of an earlier, tentative concession ("but then I won't be able to do Z.")

  3. The "additive variation if" offers a concession that differs from what the other side requested ("I'll agree to [something other than X]"), and requires an "if" in trade ("IF I get Y in return;") and

  4. Finally, the "deductive variation if" offers a concession that differs from what the other side requested ("I'll agree to [something other than X]"), but instead of the usual "if," it proposes the withdrawal of an earlier, tentative concession ("but then I won't be able to do Z.")

**Rule 2: Start High.**

- "Start high" is simply shorthand for "take a more assertive position in your opening offer." Obviously, if you're buying, you'd start low. Opening higher is the simplest, quickest way to dramatically improve your negotiated outcomes.

- There is a proven relationship between where a negotiator opens and where she ends up. Negotiators who have the courage to ask for more – **within reasonable limits, of course** – consistently do better than those who open more conservatively.
Your homework must include the development of an "Envelope" (your opening, target, and bottom line positions) for each issue.

- Your opening should be the most assertive position you can seek on that issue while still being at least arguably reasonable.

- Your target should be where you'd like to be on that issue at the close of the negotiation, assuming things go reasonably well.

- Your bottom line should be the minimum you could accept on that issue and still have a deal you'd find acceptable.

- The Envelope is a very flexible concept. In some cases the "spread" between the opening, target, and bottom line is quite small. In others it is very large. The opening, target, and bottom line are rarely equidistant.

- Untrained negotiators come to the table with, at most, a target and a vague bottom line. They open at their target, and quickly find themselves with two unappealing choices: 1) make no concessions to the other side, or 2) be driven further below their target with each concession.

- Your opening offer is for positioning purposes only. It establishes the other side's expectations. Your counterpart should reject it. If he accepts it, you didn't start high enough.

- Open at the edge of what's plausibly realistic, not what's "fair." Since each concession you make thereafter will be conditioned on an "if," moving from your opening to your target will win you concession after concession.

- You have only one chance to open on each issue. Given a choice between opening too assertively or too conservatively, always chose the former. You can easily come down during a negotiation (apologizing that you miscalculated, or you misunderstood the situation), but it's exceedingly difficult to go up.

- Before presenting your opening offer, ask yourself this question: what part of what I don't ask for am I likely to get?

- Starting conservatively is foolish all around. It deprives you of the flexibility that is so important in win-win negotiating. It leaves you with no choice but to stonewall the other side. And it turns your fair, reasonable offer into an empty ultimatum.

- What do you do if you're the recipient of a ridiculous opening offer? You krunch. Never respond to an unreasonable offer with a counteroffer. Until there's a realistic offer on the table, negotiations can't begin. Remember: any concession made in response to an unreasonable offer is a free gift.
Rule 3: Follow a Dramatic Initial Concession with Sharply Diminishing Concessions.

- As a general rule, negotiators will keep pushing until they're convinced that further concessions are unlikely without a disproportionate amount of added effort. As a result, a concession pattern that convincingly signaled that you were at your bottom line — when you were really at your target — would be very helpful.

- Before an issue's concession pattern can be determined, its Envelope must be calculated.

- The Rule of Halves can then be used to generate an effective concession pattern for the issue.

- The Rule of Halves is an old and rudimentary (but also simple, reliable, and very effective) formula for determining concession patterns. It says that each successive concession made on an issue should be equal to about one-half of the difference between your current position and your target on that issue.

- The Rule of Halves produces the classic "steeply tapered concession curve" in which a dramatic first concession is followed by smaller and smaller concessions.

- Remember, your target is the reference point for Rule of Halves calculations — not your bottom line!

- Each new concession made should be sharply smaller than its predecessors. A larger concession will instantly negate the pattern being established — and convincingly illustrating a new pattern in the same negotiation is virtually impossible. The result: a thoroughly confused counterpart. In negotiation, confusion = reluctance to settle.
• On the other hand, avoid moving in *exact halves*. This may reveal your pattern to the other side, and allow him to predict your target.

• A steeply-tapered concession pattern adds to the other side's bargaining position *during* a negotiation. An escalation turns the concession curve the "wrong way"; after the escalation the two sides are further apart than they were before. Escalating is one of the most inflammatory acts in negotiation. It infuriates the other side, and deadlock is the usual result.

• *Escalation* is defined as a *net worsening* of one side's bargaining position *during* a negotiation. An escalation turns the concession curve the "wrong way"; after the escalation the two sides are further apart than they were before. Escalating is one of the most inflammatory acts in negotiation. It infuriates the other side, and deadlock is the usual result.

• *Repackaging* your position – withdrawing some concessions but adding others of equal or greater value – isn't escalating. If you repackage, however, never assume that your counterpart will, without assistance, recognize your new position's equal or greater value. Instead, she may see it as a step backward and you as an escalator. Before she gets the wrong idea, take some time to clearly explain your new offer's real value.

• Sometimes you have no choice but to escalate – when circumstances beyond the negotiation change radically, or you receive new instructions from the boss. Don't delay; tell the other party as soon as you know.

• Never "shave" your concessions. If the Rule of Halves tells you to make a concession of X size, then do – *all* of it. If you move *less* than the prescribed amount ("shaving" the concession,) you'll distort your concession pattern. Now, instead of an easily understood, smoothly declining arc, your pattern will look more like an undulating noodle. The smooth arc makes sense to the other side; the noodle doesn't. They'll be confused, and they'll keep negotiating.

• If it becomes necessary for you to concede below your target, the Rule of Halves *no longer applies*. Here, your goal is to give as little as possible *while continuing to show some flexibility*. The pattern for concessions below the target is simple: small and reluctant.
- At the deadline, negotiating must stop. If the other side's last offer is inside your Envelope, nibble (see Rule 6), and close. If you don’t get the nibble, close anyway. If the other side’s last offer is not inside your Envelope, you must declare your bottom line. This should be the first time the other side has heard those or any equivalent words from you.

- Here’s a simple example of a good concession pattern:

  **Concession Pattern for the Completion of a Project**

<table>
<thead>
<tr>
<th>Your Envelope:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening:</td>
</tr>
<tr>
<td>Target:</td>
</tr>
<tr>
<td>Bottom line:</td>
</tr>
<tr>
<td>Project complete immediately</td>
</tr>
<tr>
<td>Project complete within 6 months</td>
</tr>
<tr>
<td>Project complete within 12 months</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Your concession pattern (based on the Rule of Halves):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening:</td>
</tr>
<tr>
<td>First concession:</td>
</tr>
<tr>
<td>Second concession:</td>
</tr>
<tr>
<td>Third concession:</td>
</tr>
<tr>
<td>Project completed now</td>
</tr>
<tr>
<td>Project completed in 3 months</td>
</tr>
<tr>
<td>Project completed in 5 months</td>
</tr>
<tr>
<td>Project completed in 6 months</td>
</tr>
</tbody>
</table>

  **Rule 4: Krunch Early and Often.**

  - A krunch is nothing more than a communication from you to the other side that 1) you’ve heard their offer, 2) you don’t particularly like it, and 3) you want them to give you a better offer. There are literally thousands of krunches, from gentle (“That doesn’t give me a warm feeling”) to ferocious (“Are you on drugs?”). They all say the same thing: “Do better. Give me more.”

  - The krunch is the most frequently used tool in negotiating. Even seasoned businesspeople routinely make concessions to the simplest, most obvious krunches.

  - The classic krunch – “the seven words that drive the other side crazy” – is You’ve got to do better than that. Silence is a krunch, when used in response to a counterpart's offer. So is laughter.

  - When krunching, remember: less is more. Never use a more aggressive krunch than necessary.

  - Negotiators have only two tools with which to respond to an offer from the other side: counteroffers and krunches. (“Yes” and “No” are also
possible responses, but would terminate the negotiation.) When the other side says, for example, "I'll do it for a million," the negotiator can respond with a counteroffer ("Half a million if we can settle in a week," ) or a krunch ("That's way too rich for me.")

- A krunch is almost always the best choice. Krunches are free; counteroffers (because they require you to make a concession) are expensive. As long as the other side is making concessions in response to your krunches, keep krunching. Counteroffer only when your krunches stop working, then quickly return to krunching.

- The only correct response to a krunch is some variation of the phrase, "Make me an offer." For example, responses to "That's just not satisfactory" [krunch] include, "What did you have in mind?", "What's fair?", and "What would it take?" [adaptations of "make me an offer"].

- Krunches are especially useful for people who are exceptionally uncomfortable with negotiating. Because krunches don't require any planning or premeditation, they're an excellent technique to use when nervous. Remember, when you can't think of anything else to do, krunch.

- Here's a sample of the enormous diversity of available krunches:

**Sweet, gentle krunches**

- Where do we go from here?
- Let's put our heads together on this.
- What are we really talking about, here?
- That's not in the box.
- That doesn't pencil out for us.
- That doesn't work for us.
- That doesn't give me a warm feeling.
- You need to look at your figures again.
- That isn't what I expected
- Let's talk flexibility.
- That's not close to my estimate.
- I know you can do better than that.
- Take another look at that number.
- Rethink your numbers and get back to us.
- Can we talk? We've gotta talk.
- Work with me on this.

**Middle-of-the-road krunches**

- You've got to do better than that.
- You're going to have to sweeten that number.
- I'm disappointed in that offer.
- We seem to have a misunderstanding, here.
- You're too expensive.
- You and I have a problem.
- I couldn't bring that back to my boss.
- [Name of higher-up] isn't going to like that.
- So you're suggesting ____? Really?
- That doesn't turn me on.
- That won't do. That'll never do.
- That's not ringin' my bell.
- There's got to be another way.
- I need a better number.

- Sharpen your pencil. Sharpen it some more.
- We're not in the same ballpark on this.
- That's out of my league.
- They'll never buy it.
- You're not speaking my language.
- Help me out, here.
- It'll never fly.
- You need to reconsider your position.
- How much?
- ...and??
- Give me a bone, here.
- I'm not feeling the love. We need more love.
- You're not hearing me.
- That's still too skinny.
- That doesn't change the landscape.
- Talk to me.
- There's not enough juice in that for us.
- That dog won't hunt. Pig won't fly.

**More aggressive krunches**

- Ouch!
- Maybe you should switch to decaf.
- You're killin' me! I'm dyin'!
- Do you want my children to starve?
- Do you want my business, or what?
- Do you want me to lose my job?
- That's not the right answer.
- At that price, I'll sell it to buy it from you.
- That doesn't cut it.
- I thought we were friends.
- We were hoping to make a profit this year.
- We're not a bank.
• Would you run that by me again?
• We must have a bad connection.
• My hearing aid must be acting up again.
• My copy must be wrong.
• I think someone at corporate screwed up.
• What's your real offer?
• We're not on the same page/sheet of music.
• I don't want the gold plating.
• You're being silly.
• Would you like my firstborn child too?
• You're not even close.
• We're miles apart.
• I've got a family to feed.
• Is the decimal point in the wrong place?
• There must be a typo your offer.
• Are you sure about your math?
• Does your calculator need a new battery?
• I think you've got the wrong file.
• Surely you jest.
• I love your humor.
• All kidding aside, now.
• You've got to be kidding.
• You can't be serious.
• Be serious/Be realistic.
• If I go back with that offer, I'm dead.
• That doesn't make my socks go up and down.
• Don't you like our business?
• What are you gonna do for me? [Typically follows, "Acme has offered me $_____."]
• That's your offer?
• This isn't my first rodeo.

I took an offer that bad once, but I'm divorced now.
• Is it on loan from a museum?
• It's getting pretty deep in here.
• I've got to lie down for a minute.
• Do I look like I just fell off the turnip truck?
• Do I look like the tooth fairy?
• Did I offend you in another life?
• If I gave you the whole company, what would I still owe you?
• [Laughter.]
• [Holding chest] Call 911! This is the big one!
• Did you drink your lunch?
• Are you on drugs/medication?
• What are you smoking?
• [Pointing at offer] Oh – that must be your competition's phone number!

Nonverbal krunches

• [Feigned heart attack, choking, or pulling-knife-out-of-chest gestures.]
• [Silence.]
• [Rolling eyes.]
• [Staring at ceiling.]
• [Pulling necktie over head, like a noose.]
• [A walkout – not recommended.]
• [Shaking head back and forth, slowly.]

Responses to krunches

• Make me an offer.
• Give me a number you'd be happy with.
• What are you looking for?
• What would it take?
• What could you live with?
• What do we have to do?
• What do you need?
• Do you have a figure in mind?
• What's it worth to you?
• Give me some guidance, here.
• What's equitable/fair?
• Where do we need to be?
• What were you thinking about?

**Rule 5: Never Settle Issues Individually. Instead, Settle All Issues as a Package – Only as a Package – at the End.**

• Once an issue is agreed to, it loses its leverage value in the negotiation. By deliberately keeping all issues "in play" – i.e., not firmly settled – until the end of the negotiation, you retain 100% of your leverage.

• Never firmly commit to any individual issue in the negotiation, absent agreement on all points.
• Similarly, always defer the discussion of any issue on which progress is stalled. Negotiate other matters to tentative agreement while periodically revisiting the "stuck" issues. Continue deferring the stalled issues while working the rest toward tentative resolution. Eventually, only one or two balky issues will remain unresolved – but now, they're holding up the entire transaction. Under the huge pressure this "dollar waiting on a dime" situation generates, flexibility is unfailingly found and closure achieved.

• When you feel you're getting close to an agreement (i.e., most of issues have been tentatively settled but one or two are still in contention) it's time to propose a "package" that settles everything.

• A settlement "package" proposal sounds like this: "I have a suggestion that will settle everything. I'd be willing to firmly commit to issues A, B, C, D, and E [tentatively settled items] if you could move my way on issues Y and Z [items still in actively contention]. That seems eminently fair to me. Let's wrap it up on those terms."

Rule 6: Conclude with a Nibble.

• Nibbles are small concessions obtained at the very end of a negotiation, ideally in exchange for closure. The skilled negotiator routinely trades closure for one or more nibbles, e.g., "I'm still not entirely comfortable with this, but we've close. We're very close. I'll tell you what. If you'll throw in X, Y, and Z [nibbles], we've got ourselves a deal."

• A nibble is just like any other trade, except that 1) it's small, 2) it occurs at the very end of the negotiation, and 3) it offers a big payoff: closure.

• There's a phase of special vulnerability at the end of a negotiation, known as "the stupid period." With the end in sight, negotiators frequently let their guard down.

• Nibbles don't normally amount to more than 1-5% of the value of the total transaction. When compared to the effort already expended in the negotiation, they're so small that they often pass almost unnoticed.

• When you are nibbled upon, defend with Rule 1: trade the nibble being given for a nibble in your favor.

Rule 7: Keep Looking for Creative (High Value – Low Cost) Concessions to Trade.

• Negotiation can be much more than simply dividing the pie (also known as zero-sum negotiating). With creativity, all parties can get bigger slices.

• The key to creativity is the simple fact that parties sometimes disagree about the value of a concession. A concession regarded by one side as quite valuable may be seen as inconsequential by the other. This situation opens up the possibility of a creative trade.
• High value to one side and low cost to the other side is the crucial precursor of a creative trade. The bigger the difference between the item's perceived value and its actual cost, the greater its potential leverage.

• Be on the lookout for "hot button" items that your counterpart seems to value disproportionately. At the same time, be careful not to inadvertently reveal how insignificant the items are to you.

• When you find a potential creative concession, force yourself to trade assertively for it. The fact that you don't think it's especially valuable is irrelevant. To your counterpart, it's exceedingly valuable — and your quid pro quo should reflect that value.

Module 4:
THE IMPORTANT BUT OBVIOUS RULES OF NEGOTIATING

8. Do your homework.
9. Keep the climate positive.
10. Never assume that an issue is non-negotiable just because the other side says it is. In reality, almost everything is negotiable.
11. Never accept the other side's first offer.

Rule 8: Do Your Homework.

• Negotiations succeed or fail in the homework stage.

• Experienced negotiators – believing that their knowledge and experience make preparation unnecessary – are special offenders.

• A 10:1 ratio (ten hours of homework for every hour of negotiating) is appropriate.

• The following topics, at a minimum, should be covered:
  o Most important by far: establishing Envelopes – opening, target, and bottom line positions, and relative weights – for each issue. No negotiation should be undertaken without Envelopes.
  o The subject matter, marketplace, competition, politics, laws, etc.
  o The other side's organization; structure, authority, political/economic situation.
  o The other side's boss; personality, authority, potential hot buttons.
o Your counterpart; personality, authority, potential hot buttons.

o Negotiating tactics the other side is known to use. For example, if they used good guy-bad guy in a recent negotiation, the odds are they'll use it again.

o Potential creative concessions; things that might have special appeal to the other side.

• Social homework (taking the other side out for a drink, having breakfast together, etc.) is very useful. Even normally reserved people open up in these situations. Network for information within your organization and with your social, business, and industry counterparts, also.

**Rule 9: Keep the Climate Positive.**

• Bad manners, raised voices, emotional outbursts, walkouts, intimidation, threats; anger, etc., are neither appropriate nor useful in negotiations.

• Climates tend to persist. Once they go bad, they're very hard to rebuild. Work diligently to establish and maintain a positive climate.

• Rule 9 is closely connected with Rule 13 (“Start Slowly”).

**Rule 10: Never Assume that an Issue is Non-Negotiable Because the Other Side Says It is. In Reality, Almost Everything is Negotiable.**

• The Biggest Lie in Negotiation: any declaration that something is “my bottom line.”

• Some variations of the Biggest Lie: “That matter isn’t up for discussion”; “We won’t reveal our costs under any circumstances”; “That’s the best I can do”; “I’m tapped out”; “It’s the minimum I can accept”; “This is my final offer”; “It’s nonnegotiable.”

• These declarations are both commonplace and untrue. They’re part of the background noise of negotiation. Give them no value whatsoever.

• When can you be sure the other side is truly at its bottom line? When they stop making concessions! If, over an extended period and in spite of considerable pressure from you in the form of krunches and counteroffers, the other side shows no movement whatsoever, they may actually be at their bottom line.

• *Never* lie about your own bottom line or how close you are to it. Instead, say *nothing* about your bottom line. The best offers aren’t embellished at all, e.g., “We want X” or “We’re offering Y.” Don’t add phrases like, “We
can’t take less than X" or “If you can’t do Y, we’re done.” The only time the other side should hear the words “bottom line” or their equivalent from you is when you’re truly at your bottom line. If you’ve been lying about it, they won’t believe you.

- Almost as damaging as lying about your bottom line are offers that signal you’re not at your bottom line, such as “I’m just about at my bottom line,” “We’ve gone almost as far as we can go,” and “For now, the best I can do is X.” To the other side, such statements say, “Keep negotiating with me. I have more to give.”

- Negotiators often ask the other side, “So, that’s your bottom line?” or “Is that your final offer?” Such questions aren’t merely useless, they’re self-defeating. Regardless of the other side’s answer, you’ll keep negotiating with them. And if the other side’s answer is “Yes,” your job instantly becomes more difficult – because now (thanks to your question), any concession the other side makes is a public admission that they’re liars.

- If the other side is so bad-mannered as to actually ask you for your bottom line (or ask if you’re at your bottom line), you’re confronted with one of the most dangerous moments in all of negotiation. The question must be answered in a very specific and unnatural way.

- You can’t say yes and you can’t say no. If you say, “Yes, it’s my bottom line,” and then concede further, your credibility is ruined. And you certainly can’t say, "No, it’s not my bottom line. I still have more."

- You must finesse – i.e., not answer – the question. The correct response is a two-step process. If the first step works, you don’t have to do the second. First, answer the question “Is this your bottom line?” by calling your offer a good one. You can use whatever adjective you like in place of “good”: “It’s an extremely competitive proposal”; “We think our proposal is very generous”; “It’s a very attractive offer.”

- If this doesn’t suffice and the other side persists in demanding your bottom line, move on to the second step: offer to repack your proposal: “If our proposal isn’t to your liking, we may be able to repack things in a way you’ll find more attractive.”

- The word “repackage” is the key. It strongly implies that a quid pro quo will be expected for any new concessions you make – that while the deal’s shape may change slightly, the overall value won’t.

**Rule 11: Never Accept the Other Side’s First Offer.**

- Never accept the other side’s first offer. If you do, he’ll immediately conclude that:
  1. He should have asked for more;
  2. There’s something wrong with what he got; or
3. All of the above.

- He'll vow that this will never happen again. The next time you negotiate, you'll be dealing with a predator. All because you were agreeable!
- The most challenging situation occurs when the other side's opening is at or above your target. Every bone in your body is saying, "Take it!"
- What are the odds that the other side's opening offer is their absolute minimum acceptable position? And if it isn't, won't you be leaving money on the table if you accept it?
- Reject the offer no matter how good it is. Krunch or counteroffer instead. Don't deprive the other side of the satisfaction of a good haggle.
- Rejecting the other side's opening offer yields two huge benefits:
  1. You'll get more; and
  2. The other side will be happier.

Module 5:

**THE "NICE TO DO" RULES OF NEGOTIATING**

12. Start slowly.
13. Set a complete agenda.
14. Discuss the small things first.
15. Be patient.
16. Use — and beware of — the power of legitimacy.
17. Negotiate against higher-authority people whenever possible. Keep your authority limited.
18. Consider using good guy-bad guy.
19. Try to have the other side make the first offer on the issue.
20. Keep teams small and under control.
21. Try to have the other side travel to you.

**Rule 12: Start Slowly.**

- Try to spend the first few minutes of a negotiation in non-substantive small talk instead of quickly getting to work. Why? Because people make more concessions to friends.
- The weaker your negotiating position, the more important it is to start slowly and emphasize your relationship. Even without leverage, the other side may be accommodating because they like you.
Rule 13: Set a Complete Agenda.

- After the small talk, it's time to develop an agenda: "Mr. Jones, I'd like us to discuss issues A, B, and C today. Have I overlooked anything that we should consider?"

- Notice the word "complete" in Rule 13. That means always including your counterpart's agenda with yours.

- It's better to address the other side's concerns in a systematic way instead of having them come up at random. After tabling your agenda, simply ask, "Is there anything you'd like to add to this?"

- Plug the other side's issues into the developing agenda, putting smaller issues toward the beginning and bigger ones toward the end.

- In very short or limited-issue negotiations, a written agenda probably isn't necessary. Nevertheless, negotiators should at least communicate their agendas to each other and get general agreement on a joint agenda before proceeding.

Rule 14: Discuss the Small Things First.

- It's best to discuss smaller issues earlier and bigger issues later. If a big issue is brought up early, the other side can take a tougher stance on it because so little investment is at risk.

- But with each passing minute, investment grows and failure becomes more costly and painful. The result: negotiators tend to become more flexible with time.

Rule 15: Be Patient.

- The quickening pace of commerce in recent years has significantly eroded the role of patience in negotiation. Opportunities for thoughtful, methodical give and take are rapidly disappearing from modern negotiations.

- Nevertheless, patience remains an important part of certain facets of the negotiation process. It is particularly evident in what is known as acceptance time – the process whereby an individual acquiesces to and even affirms an agreement that was initially regarded as unfair and one-sided. In steps that closely resemble grieving, initial rejection is followed by resistance, acquiescence, acceptance, approval, and, in some cases, cooperation.

- The adoption of a new position or the adjustment of existing expectations does not occur instantly. When pressed for quick capitulation, individuals often demonstrate blind, irrational resistance instead. Moving from one set of expectations to another is a journey, and if it is to be successful, it must occur at a pace unique to each individual.
Rule 16: Use – and Beware of – the Power of Legitimacy.

- Legitimacy is the tendency of something that seems authoritative or official to be accepted unquestioningly by the other side. By cloaking your position in legitimacy you discourage your counterpart from negotiating it. The greater the perceived legitimacy of something, the lower its perceived negotiability.

- The more formal and imposing the presentation, the less inclined people are to negotiate the content. Printed is more legitimate than handwritten. Handwritten is more legitimate than verbal. Glossy is more legitimate than flat. Color is more legitimate than black and white. Graphics are more legitimate than text. Online is more legitimate than offline. In general, the more official-looking the document, the less negotiable it seems to be. People look at all that tiny print and their eyes glaze over.

- Prepare and use your own forms whenever possible. With the right people in the right circumstances, legitimacy can work wonders. It's especially effective with less experienced negotiators. Hand your printed form to a pro and she'll just take out her pen and start marking it up – or offer you her printed form. Beware of the subtly hypnotic effect of elegant, polished documents. Read closely and critically, and always be ready to pull out your pen and make changes.

- Certain phrases have tremendous legitimacy. By far the most compelling of these – the granddaddy of them all – is "Let's split the difference." That phrase touches something in our DNA. Ever since we were small, whenever somebody said, "Let's split the difference," we responded with "Well, O.K." We're programmed. "Let's split the difference" is not only the Universal Settlement Tool, it's a sort of Geneva Convention under which an honorable negotiating truce can be declared.

- Never make or accept an offer to split the difference if anything more than a trivial gap still separates the parties' positions. It's a cheesy shortcut for the real negotiating still undone. Plus, the party offering to split almost always gives more than half. Respond with "I can't afford to."

- Here are a few more phrases from our legitimacy scrapbook:
  - Let's round it off to... [the more zeros a number ends in, the more legitimacy it has.]
  - It's the standard form/customary wording.
  - Everybody has to sign it.
  - It's a Dodd-Frank/ Basel III/ Volker/ Brown-Vitter [etc. etc. etc.] thing.
  - It's the industry standard clause.
  - The Legal/ Tax/ Finance/ Contracts people require it.
  - It's already been approved.
  - Fair's fair.
  - It's perfectly reasonable.
• It's always done this way.
• That's the procedure/policy.
• It's a SOX requirement [Have you actually read Sarbanes-Oxley? Do you know anyone who has?]
• It's in the regulations.
• It's an insurance thing.

• Such phrases will always be more effective with less-accomplished negotiators. Of course, you should instantly challenge such expressions when they're used against you.

Rule 17: Negotiate Against Higher-Authority People Whenever Possible. Keep Your Authority Limited.

• Try to keep your boss out of negotiations. Bosses tend to give away too much. They’re impatient, they rarely know the details as well as their subordinates, and above all, they have too much authority.

• Even having the boss meet the other side can be dangerous. Your counterpart may thereafter feel empowered to go over your head and contact “his friend” (your boss) directly.

• Regularly remind your boss about how important and powerful she is, and how that can be dangerous when negotiating.

• While it's not unusual to be uncomfortable negotiating with more senior people, it provides subordinates with a significant negotiating advantage. Higher-ups have bigger buckets than subordinates. They can’t claim that they “haven't got the authority” to make concessions.

• When using a claim of limited authority to decline an offer, be sure to counteroffer with one or more suggestions that could be settled without needing higher approval.

• If you have a lot of authority, have your subordinates do the negotiating. They'll scratch and claw to close deals within the limits of their miniscule authority, and they'll frequently succeed. If not, they'll come back for a bit more authority and return to the fray. They'll deadlock more often than you, but they'll also close better deals while refining their negotiating skills. They don’t have enough to make serious mistakes.

• When negotiating for yourself (buying cars, houses, etc.) you’re at your most dangerous – you have full authority. Be especially careful.

Rule 18: Consider Using “Good Guy-Bad Guy.”

• Good guy-bad guy is simply a variation on the old shill routine.

• First, the bad guy (usually the higher-up) scares you with threats of disaster, misfortune, calamity, and catastrophe. Then he leaves. Now
you're alone with the good guy, who apologizes for the bad guy's conduct and expresses regret at all the horrible things that will happen. Suddenly, the good guy has an idea. He'll go to bat for you. He tells you that the bad guy "owes him one" and if you'll just be a bit more flexible, with luck he "may be able to pull this one out." However, he "really needs your help" in the form of concessions.

- What the good guy is offering, while not particularly attractive, is **fabulous** in comparison to the bad guy's proposal. You quickly accept the good guy's offer before the bad guy comes back.

- In fact, the good guy and bad guy set the whole show up **in advance**.

- The best countermeasure to good guy-bad guy is to simply recognize **what's going on**. Ask yourself: is my counterpart's organization so chaotic that *they'd have a disagreement and let me watch?* Of course, the answer is no. If you can see them quarreling, it's because they wanted you to.

### Rule 19: Try to Have the Other Side Make the First Offer.

- Rule 19 is the most overrated principle in negotiating.

- You *never really know* what a counterpart is expecting. It may be *much less* than you imagine. You may have seriously overestimated the strength of the other side's position, the weakness of yours, or both.

- Getting your counterpart to make the first offer on an issue gives you the opportunity to refigure your Envelope. In particular, it lets you adjust your opening to better reflect the expectations their offer revealed.

- None of this is possible when you open first. For all you know, you could be opening at the other side's target or above it.

- To solicit an opening from the other side, use the "Make me an offer" phrases that you'd use to respond to a krunch: "What did you have in mind?" "Before I explain our position, why don't you tell me what you're proposing to do?" "What are you looking for?" "What do you need?"

- However, if **two attempts** by you fail to elicit an opening offer from your counterpart, abandon the effort. If you continue to press for an opening offer, you'll be putting your negotiating climate at risk — something far more important than who makes the first offer.

### Rule 20: Keep Teams Small and Under Control.

- Each additional person you bring with you into the negotiation increases the risk of mistakes. Confusion, people talking out of turn, and differences of opinion among team members are the biggest problems, and purely technical people are the biggest offenders.
If you must have a team, keep it small and disciplined. Use a single spokesperson, with everybody else keeping quiet. While the "single spokesperson" protocol may seem a bit stilted and artificial at first, it's the safest way to negotiate with a team.

The only exception to the one-spokesperson rule: anyone on the team may call a caucus whenever they want. Caucuses – during which a team briefly leaves to speak privately – are wonderful things. They allow team members to express their positions freely and without risk. They help everybody relax. Be sure to caucus regularly.

Note-passing and whispering are distracting. If the matter is important enough for whispering or note-writing, it's more than important enough for a caucus.

**Rule 21: Try to Have the Other Side Travel to You.**

Negotiators who invest significantly more time, effort, and expense than their counterparts in traveling to their negotiations have been shown to be very slightly more generous. This is apparently a product of the added pressure they feel to show a successful result and not return home empty-handed.

The influence of Rule 21 on negotiated outcomes has declined sharply with advances in telecommunications and is today, in general, extremely slight. Its limited effects are confined to negotiations requiring long-distance travel (intercontinental, or at a minimum, international). More significantly, the quintessential homework responsibility of every competent negotiator – the creation of Envelopes – instantly negates its effect. When Envelopes are developed before departure and adhered to after arrival, the location of the negotiation – be it Pittsburgh, Penang, or Pluto – is reduced to irrelevance.

**Module 6:**

**Concession Management**

**How and When To Make Concessions**

- **How.**
  - Make every concession *conditional*: "If you'll agree to this, we'll agree to that." Put a price tag on each one.
  - Never unconditionally commit to a concession until the negotiation concludes. Firmly agree to all issues at once, at the end.
- Until the deal is closed, all concessions remain tentative. Never hesitate to withdraw them, when appropriate.

- Make smaller concessions.

- You never have to concede on "even-steven" basis.

- Unless a proposal is illegal, unethical, immoral, or contrary to your organization's policy, try to avoid responding with a direct "no." Such a blunt rejection is inevitably face-losing for your counterpart. A better approach is to tentatively agree to the proposal, but with a condition you know your counterpart will find unacceptable. In this way, she'll make the rejection, not you.

- When your counterpart gives you a freebie, resist the urge to respond with a concession.

- If the other side's proposal is genuinely excessive, insist on a more reasonable position before you opening the negotiations. Never dignify an exorbitant proposal with a concession.

- Dramatize your concessions. Don't be shy.

  - When.

    - Most concession activity occurs close to the deadline. Until then, don't be surprised if little progress is made.

    - Never accept the other side's first offer on an issue, even if it's exactly what you want. Negotiating room has almost certainly been built into it. Your counterpart will conclude that she didn't ask for enough, and she'll try to compensate when you negotiate again.

    - Always spend some time bargaining over an issue before making a concession on it. Don't rush; give in slowly and reluctantly. Concessions made quickly have lower value to your counterpart.

**Avoiding Useless Concessions**

- Never assume that a generous concession made to the other side will be reciprocated. Your counterpart may just thank you and move on to another issue.

- If make a concession without an "if," it's perfectly proper to withdraw it — or any other concession you've tentatively made — until the deal is settled. You'll never compromise your integrity by retracting a concession.

- Any concession made in response to an excessive proposal gives your counterpart something for nothing.


**Giving Less While Getting More**

- Some concessions give away very little, but may be quite meaningful to the other side. "I'll look into it," "I'll consider it," "it's possible," and "Perhaps," are all concessions. Don't make such concessions lightly: if you've promised to "look into it," you have a duty to exactly that – in good faith – and report back with the results of your efforts.

- Promising to "do your best to sell it to your boss" can be a very meaningful concession for your counterpart. Once again, such representations impose a duty to sincerely and in good faith carry out the promised actions, and a further duty to account to the other for the results you achieved and didn't.

- Consider offering your counterpart an option to do something in the future. The big secret benefit of options is the curious way they have of being left in the file and forgotten until they've expired.

**The Ideal Concession Pattern and Timing**

- Use your concessions to tell a story to the other side: "I was very flexible at the beginning. You got lots of concessions from me. You've done a good job. However, there is a limit. You've pushed me as far as I can go. You can stop now."

- *Never* make a larger concession than those made earlier.

- The best concession pattern shows a sharp decrease in size over time. The ideal pattern for any given issue is always a product of the issue's Envelope and the Rule of Halves.

- Steadily decreasing concessions signal your growing resistance. When your concessions become very small and then stop, your counterpart is reassured that further concessions aren't readily available. This idea is reinforced by the small concessions made – with considerable reluctance, of course – at the negotiation's close.

- Don't stay in "persuasion mode" too long before making that first big, dramatic concession.

If you do, you may find yourself making hurried, overly large concessions as the deadline nears. Remember, *only small concessions should be made near the end.*
Module 7:

**HOMEWORK**

**Some Homework Tips**

- Learn as much as possible about the subject matter of the negotiation, and about your counterpart.
  - A vast amount of information can be obtained with little effort or expense. Sources include the Web, trade associations, newspapers, shareholder reports, market surveys, trade and professional journals, government publications, credit and financial reporting services, public records, colleagues, competitors, customers, press releases, and legal filings. Don't forget your own organization's files and people as sources.
  - Research your counterpart. Consider her organization's performance history, other deals she closed or couldn't close, and why. Try to discover her bargaining style, her authority, and where she fits within her organization's hierarchy.
- Conduct this research on a continuous basis. Two weeks before the negotiation is too late. The earlier you start, the easier it will be to get the information you want.
- Use every contact as a fact-finding opportunity.
- If possible, get to know the other side informally before the negotiation begins. Social information obtained in circumstances where your counterpart may be less guarded and more relaxed, can be extremely revealing.

**Establishing the Relative Weights of Your Envelopes**

- If you are negotiating more than one issue, each must be given a value or "weight" reflecting its significance relative to the others.
  - A simple way to do this is to pick a moderately important issue and assign it a value of "1." This becomes the "standard" issue against which the other issues are weighed. An issue ten times as important as the standard issue would receive a value of 10. Another issue only one-tenth as important as the standard issue would receive a value of .1.
  - Weights are important because they establish a common currency among the issues. This facilitates tracking the true cost of potential
concessions. A small concession made on a low-value issue has a
small cost, but an equally small concession on a high-value issue is
vastly more expensive.

- The *weighted* sum of every Envelope in a given negotiation is the
  "Composite Envelope." The Composite Envelope reveals how you're
doing at any point in the discussions. It provides "big picture" information
like concession resources used vs. remaining and concession burn rate.

**Sorting Out the Issues and Creating Alternatives**

- **Creativity** is a key to successful negotiations.
  - Put yourself in your counterpart's shoes.
  - Look behind her stated position and focus on her *real* interests.
  - Recognize that each side has multiple interests. There are more
    things to take into account than either side may have considered.
  - Don't judge prematurely or search for a single answer. Spend much
    more time inventing options than in deciding upon them.
  - As a negotiator, never forget that solving your counterpart's problem
    is your problem. Don't quit until you find the solution.

- **Brainstorming** is an excellent way to generate options.
  - Choose an appropriate group and permit each member to say
    whatever comes to mind on the topic. Allow no corrections,
    criticisms, or evaluations. Try to address the topic from *every*
    possible angle.

**Developing Your Negotiating Plan and Contingencies**

- **Rehearse your negotiation.** While you can never anticipate all
  contingencies, practice helps. What arguments might you make, and
  when? What information will you use in support of your position? What is
  your counterpart likely to ask for, and when? What will your response be?
  What concessions might you propose in response?

- Fully explore the alternatives available to you in the event that you *don't reach
  agreement*. Don't be caught without options. Rank-order the alternatives
  and be ready to act immediately if the negotiations break down.

- Perform the same process from the other side's perspective. The more
  you know about her alternatives, the better you'll be able to solve her
  problems and manage the negotiation.

**Choosing and Managing Your Negotiating Team**

- Do you really need a team?
Advantages:

- Teams are frequently more creative than individual negotiators. Different technical backgrounds and personalities can mean a wealth of fresh approaches and information.

- In difficult, complex negotiations, a lone negotiator may need help.

- If the other side is bringing a team, having your own team may help keep you from being intimidated.

- In international negotiations, teams are almost mandatory. Aside from helping manage the problems of language, law, currency, and culture, a larger team conveys a message of respect to the other side.

- Teams reduce the likelihood of serious errors in judgment.

Disadvantages:

- Group psychology, personality conflicts, and petty bickering can weaken or compromise the team.

- In general, the fewer the participants, the quicker the agreement.

- Team members talking carelessly can reveal confidential information to the other side.

- On balance, smaller teams are better.

Selecting the team:

- Never include someone who isn't clearly needed.

- Never include someone with a deep need to talk.

- Acknowledged experts have greater credibility and exert more influence, but can be very difficult to manage.

- In general, purely technical people should be available for consultation but not included on the team.

Managing the team:

- Avoid a significant disparity in team size.

- Make sure everyone understands what is and isn't ethical, and the limits of their authority.

- Make sure everyone eats and sleeps regularly.

- Emphasize security. Keep information on a need-to-know basis.
Keep whispering and note-passing to a minimum. Caucus on a regular basis. Absent compelling needs to the contrary, use the one-spokesperson solution.

Rehearse.

Module 8:
PERFORMING A SUCCESSFUL NEGOCIATION

Seating and Other Physical Arrangements

- Seating is of little significance in negotiation. Teams generally sit at opposite sides of the table. Team leaders may wish to sit at the heads of the table, with their teams around them.

- Some alternatives are certainly worth a try.
  - Round tables seem to slightly improve cooperation and reduce competitiveness. They encourage the parties to feel as if they are jointly facing a common task.
  - Side-by-side or right angle seating may encourage feelings of closeness and collaboration.

- The negotiating environment.
  - When selecting a meeting room, consider lighting, room color, seating, communications, room size, noise level, air conditioning, refreshments, caucus rooms, chairs, computer equipment, network and Web access, audio-visual equipment, copying facilities, freedom from interruptions.
  - If you’re the host, go all-out to make the negotiation pleasant and convenient for your counterpart and her team.

- Protest poor physical arrangements politely, but immediately.

Establishing a Positive Negotiating Climate

- Start slowly. Spend some time "schmoozing" (making small talk). Show your interest in your counterparts as individuals. Introduce your team members. Learn everyone’s names, and use them often. Tell a personal story. Solicit the other side’s help in solving your joint problem, and confirm that all ideas, options, and solutions are "on the table." Resolve to remain cool and courteous under all circumstances.

- Introduce the participants, suggest times and places for breaks, and make lunch arrangements. After the "get acquainted" period, launch the substantive discussions with a proposed agenda.
Understanding and Responding to Conflict

- Strive to keep a casual, friendly, relaxed attitude throughout the proceedings. Be investigative, not judgmental.

- Because conflict is inherent to negotiating, stress in an unavoidable part of the process. And with few exceptions, the stress that accompanied the start of the discussions only increases as they go on.

- Try to separate the people from the problem. Confine the inevitable conflict to the ideas the negotiators represent. If it is allowed to contaminate the negotiators themselves, little or no chance of agreement will remain.

- Disagree on a positive note whenever you can. Be respectful of the other side’s positions. Highlight the advantages of your proposal instead of the flaws of other suggestions. Don’t forget that your counterpart is part of a larger organization. He may be acting — perhaps reluctantly — on his instructions. His organization may have a simplistic and adversarial view of the negotiation which he must follow.

Knowing When to Stop

- At the end of any truly successful negotiation, both sides should be able to claim that they’ve won. Every negotiation has a breaking point, and if you try to wring every possible concession out of the other side, the result may be a walkout, a deadlock, or worse. Many an excellent negotiation has been ruined by last-minute greed.

- If you’re sensitive to the other side’s signals and responses, you’ll usually know when they’re near their bottom line. Resist the urge to “go for the kill.” Pushing for more when your counterpart is near his limit can overturn a negotiation that was just moments from closure.

Module 9:

Navigating Negotiation’s Minefields

The Twenty Most Common Negotiating Errors

- Too-modest opening offers.
  
  - The opening offer you’re considering is probably too conservative. Make it more assertive. You’ll get a less-than-delighted response from your counterpart initially, but you’ll do far better in the long run.

- Free concessions.
  
  - Don’t make a concession without a tradeoff. Every concession should be conditioned on a quid pro quo. Your counterpart won’t reciprocate unless he has to.
• Don't feel compelled to make concessions on an "even-steven" basis. It's perfectly appropriate to respond to the other side's $100 concession with a $50 concession (creatively selected and presented so that it appears far more valuable).

• Starting without a complete agenda.
  • Work hard to have the other side put all of their objectives on the table. Don't make any concessions until they do.

• Dealing with deadlines.
  • Your deadline is more flexible than you may think. Deadlines are usually negotiable, and should never be submitted to unquestioningly.
  • No matter what they tell you, the other side as a deadline of its own. If they didn't, they wouldn't be negotiating with you! Clever counterparts will cop an "I don't care" attitude about their deadlines so yours will seem more rigid and burdensome than theirs.
  • Be particularly skeptical of any deadline that is instituted during negotiations.
  • Get into the habit of asking yourself what will happen if you miss the deadline. You're probably exaggerating the risk.

• Quick negotiations.
  • The quicker the deal, the greater the risk. Quick deals are frequently extreme, win-lose arrangements, and less prepared and/or less skilled negotiators are usually the victims.
  • Get into the habit of "sleeping on it," particularly if you have any questions or doubts about the matter. Resist pressure – from either side – for a quick settlement. In fact, the more pressure you're subjected to, the more suspicious – and patient – you should be.
  • Good deals are almost never bargained quickly. Those all-important creative solutions take time to come to the surface. The more time you take, the greater your counterpart's investment in the negotiation, and the more flexible he's likely to be toward your proposals.

• Negotiating when surprised.
  • Never bargain about an issue unless you're fully prepared to do so. If something unforeseen comes up, take a break. If you're part of a team, call a caucus to review the new item.

• Negotiating with "funny money."
When we negotiate intangibles like man-years, annual percentage rates, averages, unit prices, billing rates, dollars per gram, and the like, it's easy to become numb to the sheer enormity of the concessions being exchanged. Frequently ask yourself, "What's that in real money?" Learn and remember the true value of every concession on the table.

- **Accepting first offers.**
  
  Whenever one's initial offer is accepted, the conclusion that it was too generous is virtually unavoidable. In response, the offeror may try to renegotiate or overturn the deal. Now and hereafter, he won't be happy.

- **Honoring unreasonable proposals.**
  
  If your counterpart's offer is unreasonable, it must be reduced before progress can resume. Any other response – worst of all, a counteroffer by you – gives the other side something for nothing.

- **Fear of silence.**
  
  Silence puts tremendous psychological pressure on the other side. Embrace silence in your negotiations; make it a habit. When you've asked your question, shut up. When you receive an offer, shut up. When you're thinking, shut up. Silence isn't just golden, it's a krunch.

- **Getting angry.**
  
  Never lose your temper in a negotiation – or show it, at a minimum. If you get angry, it's imperative that you quickly caucus or take a break. You won't be able to negotiate effectively until the anger passes.

- **Not getting the deal in writing.**
  
  It's not enough to reach agreement. You need to get it in writing. A handshake is fine as long as things are working out. If your counterpart's intentions are good, he should have no problem with a written confirmation. If he's hesitant, beware.

  If a formal agreement cannot immediately be prepared, a memorandum of agreement incorporating the major points of the deal should be signed at the conclusion of the talks or within one day at the most. The memorandum will provide a solid outline for the formal agreement to be prepared and signed later.

  You don't want to make the first offer in a negotiation, but you do want to prepare the confirming agreement, letter, or memorandum. It should faithfully reflect the terms of the agreement reached—nothing more or less.
• Negotiating when fatigued.
  o Tired negotiators make foolish errors. They are easily influenced by their counterparts, and tend to be overly susceptible to emotions. Marathon sessions and late-night deals should be avoided whenever possible. Get enough sleep and avoid excessive alcohol when you negotiate.

• Piecemeal agreements.
  o The instant an issue is resolved, its bargaining power drops to zero. It had leverage against other issues only while it remained unresolved. Settled, it's worthless. The other side can stop worrying about it. When you keep all issues in play until the final handshake, you maintain 100% of your leverage until the end. If you're pummeled on one issue, you can readily compensate elsewhere.

  o It's impossible to know how flexible or frugal to be on early issues without knowing how later issues will be handled. That's why everything must be kept in play until the end of the negotiation, then packaged into one comprehensive, negotiation-settling understanding.

  o You agree to one deal when you negotiate, not a bunch of mini-deals.

• Telephone deals.
  o All of the risks of quick negotiations, and more, are present in telephone negotiations. The telephone is the most dangerous communication medium for negotiation. Unless you must, don't negotiate on the telephone.

  o Among the risks: the callee is often not prepared; she's frequently disorganized, distracted, and surprised by the call; important points are regularly misunderstood or omitted; it's much easier for the other side to say "no" to you; you can't observe her reactions; you can't verify the statements being made.

  o If you're the callee, get into the habit of listening carefully, gracefully ending the call, and calling back when you're prepared. Make a checklist to avoid omissions. Take careful notes, and confirm agreements in writing as soon as possible.

• Being opinionated and critical.
  o Critical comments can ruin negotiating climates. Gossip, unrelated opinions, and certain types of humor – particularly ethnic and suggestive humor – are especially dangerous. Although they may appear interested in your shared gossip or opinions on unrelated issues, most negotiators find them either irrelevant or objectionable.
- **Negotiating for yourself.**
  - You are the worst possible person to have negotiating for you. You care too much. You have total authority. It's easy for you to make quick, impulsive decisions. That's why agents almost always negotiate better deals than principals.
  - If you must negotiate for yourself, set an Envelope and adhere strictly to it. Consider restricting your authority with an absent spouse or advisor whose approval must be obtained before a deal can be concluded.

- **Indiscreet disclosures.**
  - Negotiators, in general, talk too much. Full disclosure is neither required nor advisable in negotiations, and the gory details of your thinking, position, and intentions should be kept to yourself. Your counterpart may jump to a favorable conclusion if you don't block her path with a wall of information.

- **Strained eyeballs.**
  - Assume that the other side can and will read anything valuable left in view. Conversely, beware of papers that the other side makes too easy to read, or "lost" documents they can't find -- but you can't avoid. Information obtained in this manner is often deceptive.

- **Letting your guard down.**
  - A few moments of carelessness can squander the results of a long, successful negotiation. Your counterpart may have been waiting for the chance to take advantage. This is especially true when the final contract is ready to sign. Regardless of who prepared it, check everything, line by line. Don't relax until it's done.

**The Ethics of Win-Win Negotiating**

- Win-win negotiating is synonymous with ethical negotiating. Like win-win negotiating, ethical negotiating isn't just the right thing to do, it's the only thing to do. Like win-lose negotiating, unethical negotiating is unsuccessful in all but the shortest of runs. Whatever short-term friction there may be between ethics and pragmatics always disappears in the long term.

- In anything but the simplest one-shot deal, an agreement that is grounded in connivery will ultimately fail. It will either collapse as soon as the deceit is revealed, or will require around-the-clock surveillance in order to enforce compliance. Even if such an agreement survives to completion, the damage wrought by duplicity will destroy the relationships between the organizations and the negotiators. And the reputation of the dissembler will be forever diminished or destroyed.
• **Mistakes**
  
  o Never attempt to take advantage of an obvious, serious error made by the other side. If your counterpart makes a mistake that might affect the deal in a meaningful way, politely call it to her attention.

• **Bluffing, Exaggerating, and Lying**
  
  o Lying is a time-honored trick of the negotiator's trade. Falsehoods in negotiations run the gamut from "white lies" told in order to be courteous, to carefully-crafted deceptions intended to beat the other side. For some negotiators, the temptation to lie can be overwhelming. In general — and unfortunately — the risks are not very great.

  o While bluffing is a generally accepted part of bargaining, lies, false claims, and gross misrepresentations have no place in quality negotiating. While they may benefit one side in the short run, ultimately they always do far more harm than good.

  o Although it's arguably ethical, bluffing in negotiations is risky. If your bluff is called, your credibility will be wounded.

  o Be on the lookout for lying by your counterpart. Test him occasionally by asking questions to which you already have answers.

  o Lying is sufficiently common in negotiations that a good negotiator must be wary. Don't trust the other side any more than you must. By getting into the habit of verifying everything, you'll lower the chance of being victimized. Retailers always verify their patrons' credit. Likewise, if they're meaningful to the outcome of the negotiation, you should verify the other side's representations. Don't risk being victimized by a lie; protect yourself by confirming things.

  o Remember also that in some parts of the world it is considered impolite to directly refuse to do something that has been requested by another person. What a Westerner takes as a commitment may be nothing more than an attempt to be gracious.

• **Being Discreet With Your Disclosures**
  
  o Discretion in the making of disclosures is altogether different from misrepresentation. Incomplete disclosure isn't deception, and ethical negotiators aren't required to make full disclosure.

  o You're probably disclosing entirely too much information in your negotiations.

  o It's often neither necessary nor advisable to fully reveal your information on a given topic. Someone selling a business certainly wouldn't point out how desperate they are for cash to pay off
gambling debts. Unless it suits your purposes, keep your disclosures to the minimum.

- **Withdrawing Concessions You’ve Already Made**
  - Never hesitate to withdraw concessions you’ve already tentatively made. A negotiation’s issues are a single package, not individual contracts. Similarly, since your agreement to any concession is necessarily tentative until final agreement, you can’t violate your integrity by withdrawing it.
  
  - For example, if the other side insists upon – and you tentatively agree to – a particular concession, it’s perfectly appropriate for you to withdraw a concession you made elsewhere. If the other side later chooses to withdraw her demand, you can easily restore the concession you withdrew!
  
  - This principle, of course, cuts both ways. Don’t be surprised if you are called upon to renegotiate issues on which tentative agreement had previously been reached. With a little time to think about it, your counterparts can – and sometimes will – change their minds about a concession they gave or didn’t give.

- **Recognizing and Coping With Unethical Tactics**
  - How do you know if an action you’re contemplating, or something that’s been done to you, is ethical or unethical? And if someone does something unethical, what should you do about it?
  
  - There are many cases where it’s just not clear what’s ethical and what isn’t. There is no Little Golden Book of Ethics in Negotiating. While many organizations have published excellent general codes of ethics for their personnel, they rarely provide specific guidance about negotiating. The line between “good faith” and “bad faith” bargaining is still vague.
  
  - Here are a handful of ethical tests that you may find useful:
    - The old Golden Rule is probably still the most useful guide: How would you feel if the thing you’re considering was done to you? Would you think it was a justifiable negotiating move? If not, don’t do it.
    - Would you take the contemplated action with a friend or a family member?
    - How would you and your behavior be viewed by your neighbors if a detailed account of it appeared on the front page of the local newspaper? Would your family be honored or ashamed?
    - Would you be proud to tell your children about what you did?
If you’re already having misgivings about the ethics of a given action, you already have your answer: Don’t do it.

- If your counterpart behaves unethically during the negotiation, your problems are only just beginning. She has revealed her true nature to you, and she’s not likely to become rehabilitated any time soon.

- Unwittingly, she may have done you a favor. Seriously consider whether continuing the negotiation makes sense. Is this the sort of person you want to be doing business with?

- If you decide to press ahead notwithstanding, remember to guard your posterior.

Module 10:
**Negotiation Leadership**

* Negotiating organizational change
  - The most efficient organizational change occurs when employees feel they have a voice in the process.
    - Perceived control is the key factor in overcoming employee resistance to impending change and increasing employee acceptance of results.
  - Employees who are empowered with a degree of control over the change process more readily buy into, accept, and champion the process.
  - A perceived “seat at the bargaining table” seems to be the defining factor in the employees’ perception of control.
    - Research shows that a sense of control over an event makes it less threatening.
    - The “employee voice” isn’t a vote or a veto, but a genuine assurance that the employee’s point of view will be heard and considered before decisions affecting that employee are made.

* How to build your organization’s a negotiating capability
  - Most corporations consider revenue growth, cost management innovation, customer engagement, and leadership development to be mission-critical capabilities, but few understand that negotiating is a key component of success in those areas.
    - Those who make the connection between better negotiating and corporate success in mission-critical activities quickly raise negotiating to the level of a company core competency. They spend
vast sums on off-the-shelf negotiation training but fail to achieve an appropriate return on that investment. Can this result be avoided?

- Negotiation is central to corporate success. Successfully building an organization’s negotiating capability requires that it be recast as a core business process instead of an individual skill.

- Measurable and continuous improvement in a company’s negotiating capacity can be achieved without a huge expenditure.

- Companies can develop a world-class negotiating organization capable of reaching consistently higher-value agreements while protecting valuable relationships and reputations.

- The process begins by securing active support from the executive team. This is followed by an assessment of the organization’s current negotiation performance, the alignment of its incentives, goals, and restrictions, and the development of metrics and systems to track and perpetuate learning.

- Finally, an in-house negotiation training program, including negotiation mentoring and coaching, must be established. This program should be anchored by systems insuring accountability, rewards, recognition, and ongoing skill reinforcement.
The Rules of Negotiating

CRITICAL

1. No free gifts! Seek a trade-off ("OK, if...") for each concession you make.
2. Start high.
3. Follow a dramatic initial concession with sharply diminishing concessions.
4. Krunch early and often.
5. Never settle issues individually. Instead, settle all issues as a package — only as a package — at the end.
6. Conclude with a nibble.
7. Keep looking for creative (high value — low cost) concessions to trade.

IMPORTANT BUT OBVIOUS

8. Do your homework.
9. Keep the climate positive.
10. Never assume that an issue is non-negotiable just because the other side says it is. In reality, almost everything is negotiable.
11. Never accept the other side's first offer.

NICE TO DO

12. Start slowly.
13. Set a complete agenda.
14. Discuss the small things first.
15. Be patient.
16. Use/beware the power of legitimacy.
17. Negotiate against higher-authority people whenever possible. Keep your authority limited.
18. Consider using good guy-bad guy.
19. Try to have the other side make the first offer on the issue.
20. Keep teams small and under control.
21. Try to have the other side travel to you.
Today's Topics

1. Introduction
2. First exercise

Who Am I?

- Lawyer, but not that kind of lawyer
- UCLA and Georgetown
- Married to the world's best negotiator: Jackie
- Live in 2 windy places: Sunset Beach, NC and Washington, DC
- My sordid past
- Why you might have seen me before
- I wrote the book that became more famous than its author

Today's Topics

1. Debrief the first exercise
2. Face, ego, and self-esteem in negotiation
3. Americans and negotiation
4. Facing the counterintuitivity problem
5. Persuasion and negotiation distinguished
6. The layout and reasoning behind the 21 Rules of Negotiating
7. Finish as many of the 7 Critical Rules as we can
The Rules of Negotiating

- Layout and reasoning behind the 21 Rules of Negotiating
- The 7 Critical Rules of Negotiating
- The 4 Important But Obvious Rules of Negotiating
- The 10 Nice to Do Rules of Negotiating

1. NO FREE GIFTS!
Seek a TRADEOFF ("O.K., If") for each concession you make
Thoughts on Trading

- A concession without an IF is a **freebie**
- A freebie is a **wasted asset**
- The other side doesn't **value** concessions that are free or cheap
- "You owe me one" is **NOT** an IF - it's a freebie
- Your IF **justifies and explains** your concession - otherwise, your pre-concession position was a bluff/lie

Thoughts on Trading, continued

- A **logical connection** isn't necessary
- **Proportionality** isn't necessary (trading up is **good**)
- If the other side wants something, but you can't think of a good IF, then **WAIT**
- Keep all trades **tentative** until the end
- The "Japanese No"
- Takeaway: **Say "YES, IF" to EVERYTHING!**

Today's Topics

1. Finish the 7 (well, 6½, really) Critical Rules of Negotiating
2. **Briefly** discuss the 4 Important but Obvious and 10 Nice To Do Rules of Negotiating
3. Distribute second exercise and create teams

**Homework:** read second exercise and prepare Envelopes

**Start high** 2
Follow a Dramatic Initial Concession with Sharply Diminishing Concessions

The Envelope of Negotiation

\[ 0 \rightarrow T \rightarrow B/L \]

300 200 100

The Rule of Halves

\[ 0 \rightarrow T \rightarrow B/L \]

300 200 100

1. 300 - 250
2. 250 - 225
3. 225 - 212
4. 212 - 206
5. 206 - 200

The Steeply Tapered Concession Pattern

Waypoints:

There are an INFINITE number of waypoints between
- A spread of .25 and .28
- 5% and 4.5%
Pricing Indifference Curve

SUGGESTED NEGOTIATION TIMELINE

The Three Essential Krunching Reflexes:

When the other side

1. Opens
2. Offers
3. Krunches

You respond with

A krunch
A krunch
"Make me an offer"

Only settle issues 5

As a Package at the end

Conclude with a 6

Nibble
THE IMPORTANT BUT OBVIOUS RULES OF NEGOTIATING

8. Do your homework.
9. Keep the climate positive.
10. Never assume that an issue is non-negotiable because the other side says it is. In fact, almost everything is negotiable.
11. Never accept the other side’s first offer.

RULE 10 DETAIL (BOTTOM LINE STUFF)

10a. Assume they’re lying about theirs.
10b. Never lie about yours.
10c. Never ask them for theirs.
10d. If they ask for yours: "Attractive offer + repackage if necessary"

The NICE TO DO Rules of Negotiating, continued

17. Keep your authority limited. Try to negotiate against higher-authority people.
19. Try to have the other side offer first.
20. Keep your team small and under control.
21. Try to have the other side travel to you.

Second Exercise

The Credit Review Case
Tonight's Homework
(20-30 minutes max):

- Read your Credit Review Case materials; prepare Envelopes
- Be prepared to negotiate at the start of class tomorrow
- Please prepare independently, and keep materials confidential

Today's Topics

1. The Eight Commandments of Concession Management
2. Negotiate and debrief the Credit Review Case
3. Third exercise (the Parts R Us Case) distributed and teams created

Homework: read third exercise and prepare Envelopes

Commandment One:

- Follow the Rule of Halves.
- In case of doubt, see above.

Commandments Two, Three, and Four:

- Never voluntarily escalate
- Never "shave" a concession
- At the deadline:
  - If you have an offer that is inside your Envelope, nibble and close
  - If you can't get the nibble, close anyway
  - If you don't have an offer that is inside your Envelope, declare your bottom line
COMMANDMENTS FIVE AND SIX:

- Don't speculate about the other side's Envelope(s).
- Never let the other side's concession behavior affect your concession behavior. If you do, you've just put an amateur in charge of the negotiation.

COMMANDMENTS SEVEN AND EIGHT:

- Never give up before the deadline
- Avoid these (and equivalent) phrases:
  - "My opening (or initial) offer is..."
  - "We need a little bit more."
  - "Let's go about as far as we can go."
  - "Let's get the best we can do."

The Credit Review Case

THINGS TO DO:

- Trade – don't just give – your concessions
- Start high where you can
- Set an Envelope for each issue
- Taper your concessions
- Krunch throughout
- Don't settle anything individually
- Nibble at the end, right before closing

Third Exercise

The Parts R Us Case

Tonight's Homework (20-30 minutes max):

- Read your Parts R Us Case materials; prepare Envelopes
- Be prepared to negotiate at the start of class tomorrow
- Please prepare independently, and keep materials confidential

NEGOTIATE TO WIN FOR BANKERS

Day 5
Today's Topics
1. Final review – 21 Rules of Negotiating
2. Final review – Eight Commandments of Concession Management
3. Final Exam preparation will be mixed in with Items 1 and 2, above
4. Negotiate and debrief the Parts R Us Case
5. Key concepts and big takeaways
6. Final thoughts

Third Exercise

The Parts R Us Case

The Parts R Us Case
THINGS TO DO
☑ Trade – don’t just give – your concessions
☑ Start high where you can
☑ Set an Envelope for each issue
☑ Taper your concessions
☑ Krunch throughout
☑ Don’t settle anything individually
☑ Nibble at the end, right before closing

KEY LEARNINGS FROM THE WORKSHOP
1. Rules 1-6
2. Rule 10
3. Rule 17
4. 8 Commandments of Concession Management

The Envelope
O → T → B/L

THE BIG TAKEAWAY:
NEGOTIATE TO WIN FOR BANKERS

Jim Thomas
Washington, DC • Sunset Beach, NC
2019 Session • 20 – 24 May
Jim Thomas is a Washington, D.C. attorney, author, speaker, trainer, and one of the most acclaimed and respected negotiators in the United States.

Mr. Thomas has specialized in negotiation for most of his 40-year law practice. His negotiating experience encompasses mergers and acquisitions, domestic and international business transactions, arms control, the environment, trade and diplomacy, labor relations, and a host of other fields. His clients include most of the Fortune 500, as well as non-profit groups, professional and trade associations, and federal, state, and local government agencies.

He was a member of the United States' negotiating team in the successful Intermediate Nuclear Forces (INF) negotiations with the former Soviet Union. The INF Treaty brought about the first-ever reduction in the number of worldwide nuclear weapons, and under its terms almost one-half of such weapons were destroyed.

Mr. Thomas is the author of the Negotiate to Win® Workshop series, which since its debut 30 years ago has become one of the leading negotiation training programs in the world. It is the recipient of a number of ASTD and NAPM awards for excellence.

Mr. Thomas' book, Negotiate to Win, is a HarperCollins international bestseller. First published in late 2005, it was a Pulitzer Prize candidate in 2006 and is today available in 18 languages. He is the author of scores of articles about negotiating, a frequent guest on television and radio, a regular commentator on cable news, and a popular speaker at corporate, government, and association conventions, conferences, and other events. Mr. Thomas serves on the boards of several corporations, teaches at The Georgetown University Law Center, and is a member of the faculty at the University of Washington's Pacific Coast Banking School and the Graduate School of Banking at Louisiana State University.

Mr. Thomas is a graduate of the University of California at Los Angeles and The Georgetown University Law Center. He and his wife Jacqueline reside in Washington, DC and on Sunset Beach Island, North Carolina.