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Negotiating Effectively

Make the first move a strategic choice

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The decision as to whether or not to make the first offer or demand in a negotiation needs to be a strategic choice rather than a default. The first offer can have a significant effect on the final outcome.

The author has also provided for use in a classroom or business training class a negotiation exercise that may be accessed by clicking on "[The Car Deal.](#)"

Negotiation is a constant factor in business life. While most business people will not be involved in negotiating the sale or purchase of an entire company or of multi-million-dollar contracts, many will be involved in negotiating a new lease on a building, employee salaries and raises, the division of resources among departments in a tight budget year, or, even less happily, the resolution of a lawsuit. At the very least, most people at some point will need to negotiate their own salaries.

Elements of a Negotiation

Given the ubiquitous nature of negotiations, it is important to understand how best to approach them. Three of the most important facets of a negotiation are preparation, the opening gambit, and the ability to walk away. This article addresses the importance of making the opening gambit a product of rational consideration, not a default reaction.

When asked, "Who should make the first offer/demand?" most people respond, "The other guy." When asked, "Why?" the response usually is, "That's the way it's always done." This can be a serious mistake and can deny a negotiator a crucial tool -- the effective opening offer/demand.

Timing

No matter who makes the first overture, a paramount question going through everyone's mind is, "Why is this offer being made at this time?" If the timing is correct, a settlement figure fits into the natural flow of the negotiation. If not, the settlement discussion may raise suspicions. Poor timing may indicate fear or weakness, anxiety for some reason, or a lack of sophistication about the process. Poor timing also creates the risk of polarizing one or more parties into positions which if viewed in a more objective light, are contraindicated.

There is no fail-safe formula for telling a negotiator the right time to make an opening offer. Negotiation is a dynamic exercise, and there are many considerations that impinge upon when to make the first move toward settlement. However, when the negotiations reach the appropriate point for making an opening offer/demand, the opening gambit is a crucial move. It demands very careful thought and planning -- not a knee jerk default reaction.

The Advantages of Making the First Offer/Demand

Making the first offer/demand can give a psychological advantage.

During a negotiation, issues, positions, and even interests shift and realign in accordance with a managed disclosure of information. Understanding the power of perception is paramount. If one person acquires the power to manipulate the perception of others, that person enjoys a subtle but powerful advantage. Making the first significant move can be a powerful statement and can affect others' perceptions of the one making the offer and of the situation in general. In military terms, the opening gambit is "taking the initiative." Once one party takes the initiative, the other side frequently finds it difficult to regain its own momentum.

Making a competent first offer/demand can take control of the entire negotiation.

A competent opening gambit goes hand in hand with the idea of creating a psychological advantage. The

concept is analogous to the theory of "primacy" in a courtroom trial. That is, once a participant gets the initiative and competently runs with it, the other side usually remains in a reactive mode. There are techniques that good strategists can sometimes use to regain the initiative, but such procedures tend to be "dicey." Unless recovery strategies are executed deftly by an experienced negotiator, the party trying to regain the initiative runs the risk of turning a negotiation into a confrontational/adversarial event. Such an outcome gives rise to a host of difficulties.

Making the first offer/demand will often set the ultimate settlement point, thereby allowing one to claim more of the difference between two reasonable offers.

One of the commonly taught maxims in negotiation is that usually the settlement point is approximately halfway between the first two reasonable offers. [1] A practical example can help make this point more clear. Assume "Seller" is selling a piece of property we will call Blackacre. Seller's reservation point (S/RP), the point at which he will go no lower, is \$100,000. "Buyer" wants to purchase the property. Buyer's reservation point (B/RP), the point above which s/he will not go, is \$135,000. Comparative market analyses (comps) indicate that the fair market value of this property is somewhere in the \$115,000 to \$130,000 range. Both parties have prepared in advance and know the "comps."

Experience suggests that if Seller opens with an offer to sell for \$140,000 -- a figure higher than the B/RP, but not an insulting offer -- it is unlikely Buyer will respond with \$100,000 or less. The spread would be too great to be satisfactory, and Buyer risks insulting Seller. While \$100,000 could have been a very rational opening if Buyer had made the first offer, when such an offer is given as a response to the \$140,000 opening, it might be taken as an insult and could jeopardize the negotiation or polarize Seller into a position at or near \$140,000. Consequently, depending on how badly Buyer wants the property, s/he may be required to counter at a significantly higher amount in response than could have legitimately been offered as a first bid.

The difference between the first two reasonable offers is termed "the surplus," or the "zone of agreement." If each party made an offer at the other party's reservation point (Seller making a demand of \$135,000 and Buyer making an offer of \$100,000), the zone of agreement would be \$35,000. Half of the surplus would be \$17,500, thus putting the anticipated final selling price around \$117,500, with each party claiming approximately half of the surplus.

However, when Seller demanded \$140,000, Buyer was forced to respond at a higher amount. If Buyer responded with an offer of \$120,000, the higher figures would mean the zone of agreement is now \$20,000 (\$140,000 minus \$120,000 = \$20,000). Now the halfway point between these two offers would be \$130,000. By making a strong opening, Seller likely bumped the sale price from approximately \$117,500 to something close to \$130,000. Thus Seller stands a good chance of claiming a greater share of the surplus based on the two reservation points.

Making a well-thought-out first offer/demand shows confidence in your position.

It has been said that the law is what is forcefully stated and plausibly maintained. [2] Likewise, in negotiation, if one party makes a strong plausible opening, that opening can often convince the other party that this offer merits careful consideration -- that it is credible. If presented in the right way, a well-thought-out first offer can send a message that the party making the offer is strong and confident. Such an offer can cause the other party to rethink his or her position.

It is important to note, however, that this confidence factor edge is limited to a good faith offer made with the intent of actually making a deal. If the offer or demand is merely a fishing expedition, that is tantamount to positioning by making a very low or very high opening. Then the tone and words used to couch the offer should be chosen so that they effectively transmit the intent behind the offer. Giving

unsupportable figures wrapped in a mantle of credibility is very confusing and could sabotage the whole negotiation process.

Making an effective first offer/demand shows preparation.

A well prepared, strong, confident opening offer/demand sends a message that "This person did his/her homework." Unfortunately, too many times the parties do not adequately prepare for a negotiation. When one party prepares well and the other does not, the result can be intimidating to the less prepared person. Without even intending to, the better prepared party takes the initiative and does not lose it. The prepared negotiator is usually the one who claims the larger surplus in a given negotiation.

However, in some circumstances a better prepared person might choose to wait and let the other party make the first offer. Such a strategy still can be consistent with the overall theme presented here, namely, that the first move – the opening gambit – should be a thoughtful, considered move. It should not be a default.

The Disadvantages of Making the First Offer/Demand

Going first gives intelligence to other side.

There are dangers of going first. By making the first offer/demand, the party is giving away a lot of information. For one thing, making a legitimate offer is a sign that the party is ready to reach an agreement. That signal in its own right is an important item of information.

In many sophisticated negotiations in which all the parties have done their preparation, each side has a rough idea of the zone of agreement – that area where the parties' authority to accept an agreement or sale price overlaps.^[3] Making the first move provides the other parties with a sense of the amount of the surplus that the moving party intends to claim. An offer that is ridiculously out of line may indicate a sense of urgency. It is reasonable to assume that the other party will consider this non-verbal information when it comes time to make his/her response.

Making a poor first move can also signal to the other side that the party is not prepared, or, less charitably, that the party is "bush league." For example, consider a buyer who is shopping for a product priced at \$250. If the buyer offers \$150 without giving any real reason for offering such a low figure (such as the product's being torn, dented, soiled, or out-of-date), the offer appears insulting and may not even elicit a response from the seller. On the other hand, if the buyer did his/her homework and found that the product was a discontinued model or that it was selling online or at a discount house for less money, then there might be some credibility for an offer of \$200. As our hypothesis indicates, the final sales price is generally halfway between the first two reasonable offers. By doing the requisite preparation, the Buyer stands a good chance of purchasing the product for around \$225. Such a result assumes, of course, that the product is an item the price of which is open to negotiation (which may be true more often than many people realize) and that the buyer can deal with a person who actually has the power to negotiate. In many retail situations, such negotiation may be hard to carry out.

An ill-conceived first offer/demand could terminate the negotiation.

An insulting opening offer (see above) conveys a number of messages to the recipient -- the prospective buyer's lack of seriousness, lack of appreciation for the value of the object or service, and/or lack of understanding of the negotiation process. Except for the most motivated recipients of such an offer, an insulting offer/demand is likely to shut down the negotiations.

Another adverse effect of an insulting offer/demand is that it tends to invite an insulting response, which in turn tends to polarize the transaction. The responding party may hold to an insulting response or may choose another response and hold to it even if such a response is against his/her interest to do so. Either way, an ill-conceived opening can chill any relationship developed over the course of the negotiation. If the negotiation is to be continued, the original insulting offer needs to be retracted. In so doing, the party making the offer/demand stands to lose face in the process and is likely to become less flexible as well, thus further adding to the chilling effect of a poorly conceived opening offer/demand.

The opening offer provides a cue to your anxiousness to settle.

A person's body language, tone and volume of speech, as well as the words chosen can all indicate how anxious the opening party is to settle. If there is a sense or tone of anxiety in the opening offer, the respondent has more information by which to adjust his/her response.

In *Introducing Neuro Linguistic Programming, (NLP)*, O'Connor & Seymour [4] assert that 93% of our communication is *non-verbal*. Stated another way, if all people do is listen to the words, which are often ambiguous, they miss 93% of the communication. [5] There are many indices of anxiety that are widely recognized. The more obvious cues include perspiring, a heightened pitch in the voice, inclusion of excessive details, and failure to maintain eye contact. There are more subtle signs as well.

Conclusion

Three of the critical stages in a negotiation are the preparation, the opening gambit, and the ability to walk away. One cannot say that any one stage of negotiation is more important than another, any more than one can say that the heart is more important than lungs or brain to a healthily functioning body. Each stage is an indispensable part of a successful negotiation.

If a negotiator has not prepared, that lack of preparation shows. The other party picks up on such *faux pas* in negotiation. Lack of preparation indicates a weakness on which the other side will pounce just as a lion attacks the weakest member of a herd. Even if the weakened party recovers from his/her misstep, s/he will experience difficulties during the remainder of the negotiation because s/he will be negotiating from a defensive position.

In the same way, the opening gambit is a critical move in a negotiation. It is a move that must be weighed and considered carefully. Whether one goes first or lets the other party go first should be an intentional tactic. The evaluation of the move should be predicated upon valid reasons for moving the negotiation ahead in the direction one feels is most effective. One must also remember that sometimes it is better to walk away than to accept a totally unacceptable offer. Not every negotiation reaches a successful conclusion.

[1] This writer first heard this settlement point information from Professor Randy Lowry, Director of the Straus Institute for Dispute Resolution at Pepperdine University.

[2] This is an old saying whose source is probably lost in antiquity. This author has heard it attributed to Jefferson, Hamilton, and even to Ezra Pound. However, in his 1997 seminar, David Kendall, presidential counselor and adjunct professor at Georgetown University, reminded his listeners to, "Remember the words of Aaron Burr: Law is whatever is forcefully asserted and plausibly maintained."

[3] In the Blackacre example, S/RP-B/RP = Zone of Agreement. In this example, \$35,000 was the real focus of the negotiation. It was the Zone of Agreement. Anything over half of the \$35,000 represented an increased share of the surplus. Thus if the property sold for \$120,000, Seller received an additional

\$2,500 of the surplus.

[4] Joseph O'Connor and John Seymour, *Introducing NLP*, (Thorson, 1995): 18.

[5] One of the difficulties of carrying out negotiations over the phone is that the parties miss all of the nonverbal communication, including body language, eyes movements, and gestures.



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